

Diplomacy in Context:
Canada, New Zealand and Australia
and humanitarian arms control
treaty-making

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the degree of
Doctor of Philosophy
of
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Statement Of Authorship

I certify that the thesis has been written by me.

I certify that all information sources and literature used are indicated in the thesis.

A handwritten signature in black ink, appearing to read 'Timothea Turnbull'. The signature is fluid and cursive, with a prominent initial 'T' and a long, sweeping underline.

Timothea Turnbull

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Abstract

Since the 1990s, states have negotiated three trail-blazing multilateral treaties on conventional weapons. The 1997 Mine Ban Treaty outlaws anti-personnel landmines. The 2008 Convention on Cluster Munitions bans cluster munitions. The 2013 Arms Trade Treaty regulates and increases transparency in arms exports and imports. The negotiating processes that produced these treaties broke new ground in a number of ways. First, they explicitly focused on minimising the humanitarian impact of weapons while pursuing the goal of disarmament. Second, small and medium countries made pivotal contributions. Third, they generated new forms of multilateralism, in which coalitions of states and civil society actors creatively adapted procedural design to combine substantive expertise with lived experiences to reach negotiated outcomes adopted by majorities of UN member states.

This thesis examines the significant roles that Australia, Canada and New Zealand played in developing these treaties. In some instances, they helped to strengthen these humanitarian arms control regimes as part of a core group of states championing negotiations. At other times, they played a less engaged role. On occasion, they even slowed progress.

The thesis interrogates two research questions that flow from the contributions these three countries made to the treaty-making processes that created these three treaties. First, why do states engage in treaty-making in humanitarian arms control? Second how do they shape negotiating processes?

This thesis argues that a variety of factors determine why and how states shape conventional weapons negotiations. These include developments and dynamics in six distinct yet interlinked sites of diplomatic activity. The internal negotiating context draws in three strands of diplomatic activity, radiating out from the negotiating table to activity within negotiating rooms and extending to the corridors of diplomatic venues. Externally, treaty-making occurs against the backdrop of globalised, street-level activism, state-led advocacy by diplomats in multilateral forums, and policy-making in capital cities. In all three countries studied in this thesis, the “in capital” contextual layer proved to be the most significant driver for championing or blocking a conventional weapons negotiation process. Alignment between three dimensions is particularly important in determining a country’s negotiating trajectory, namely political priorities, policy objectives and alliance partners’ preferences.

To understand why and how Canada, New Zealand and Australia shaped conventional weapons treaty-making, this inductive thesis adopts a comparative

case study approach using process tracing. It analyses the treaty-making practice of each country in relation to the evolution of each treaty. This thesis explores how different layers of context have influenced engagement in treaty-making in these countries. It then focuses on the different diplomatic strategies and tactics that have led towards and away from treaty-making within these countries. Three case study chapters focus on cases of championing by each state, addressing the contextual elements that enabled championing and how this translated into diplomatic activity. The fourth case study chapter examines cases where these states did not champion treaties, identifying changes in contextual factors and in diplomatic activity.

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List of Abbreviations

Abbreviation	Full term
ADF	Australian Defence Forces
AI	Amnesty International
ANZUS	Security Treaty Between Australia, New Zealand and the United States of America, San Francisco, 1 September 1951. United Nations Treaty Series, vol. 131
APEC	Asia Pacific Economic Cooperation
APLM	Antipersonnel landmines
ATT	Arms Trade Treaty, New York, 24 December 2014, United Nations Treaty Series, Registration Number 52373.
CA	Control Arms Coalition
CANZ	Canada Australia New Zealand
CARICOM	Caribbean Community
CCM	Convention on Cluster Munitions, Dublin, 30 May 2008, United Nations Treaty Series, vol. 2688, p. 39.
CCW	Convention On Prohibitions Or Restrictions On The Use Of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious Or To Have Indiscriminate Effects (With Protocols I, II And III), Geneva, October 10, 1980. United Nations Treaty Series vol. 1242, P. 137
CD	Conference on Disarmament
CDR	Closer Defence Relationship, Australia and New Zealand
CHOGM	Commonwealth Heads of Government Meeting
CIDA	Canadian International Development Agency
CMC	Cluster Munitions Coalition
CRPD	Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, United Nations Treaty Series, vol. 2515, P. 3
CSSA	Canadian Shooting Sports Association
CTBT	Comprehensive Nuclear-Test-Ban Treaty, New York, September 10, 1996.
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Geneva, 03 August 1992, United Nations Treaty Series, vol. 1974, P. 75
DFAIT	Department of Foreign Affairs and International Trade, Canada
DFAT	Department of Foreign Affairs and Trade, Australia
DMZ	De-militarized Zone
DND	Department of National Defense, Canada
DOD	Department of Defence, Australia
DPRK	Democratic People's Republic of Korea
ERW	Explosive remnants of war
EU	European Union
G20	Group of 20
GDP	Gross domestic product
GGE	Group of governmental experts
HI	Handicap International
HRL	Human rights law
HRW	Human Rights Watch
IAEA	International Atomic Energy Agency
IANSANSA	International Action Network on Small Arms
ICBL	International Campaign to Ban Landmines
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDA	International Disarmament Agency, Canada
IDF	Israeli Defense Forces
IHL	International humanitarian law
ISU	Implementation support units

Abbreviation	Full term
ITI	International Tracing Instrument
JSCOT	Joint Standing Committee on Treaties, Australia
LSN	Landmine Survivors Network
MAC	Mine Action Canada
MBT	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Oslo, 18 September 1997, United Nations Treaty Series, vol. 2056, P. 211.
MFAT	Ministry of Foreign Affairs and Trade, New Zealand
MP	Minister of parliament
NAC	New Agenda Coalition
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
NNWS	Non-Nuclear Weapons State
NPT	Treaty on the Non-Proliferation of Nuclear Weapons, Washington/Moscow/London, July 1, 1968. United Nations Treaty Series vol. 729, p. 161
NRA	National Rifle Association, United States
NFA	National Firearms Association, Canada
NWS	Nuclear Weapons State
NZ	New Zealand
NZAID	New Zealand Aid Programme
NZDF	New Zealand Defence Force
ODA	Overseas development assistance
OECD	Organisation for Economic Co-operation and Development
OEWG	Open-ended working group
OPCW	Organisation for the Prohibition of Chemical Weapons
P5	Five permanent members of the United Nations Security Council
PACDAC	Public Advisory Committee on Disarmament and Arms Control, New Zealand
PGA	Parliamentarians for Global Action
PM	Prime Minister
POA	Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, New York, 20 July 2001.
PSAAG	Pacific Small Arms Action Group
QUNO	Quaker United Nations Office
SALW	Small arms and light weapons
TPP	Trans-Pacific Partnership
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNIDIR	United Nations Institute for Disarmament Research
UNMAS	United Nations Mines Action Service
UNODA	United Nations Office of Disarmament Affairs
UNROCA	United Nations Register of Conventional Arms
UNSC	United Nations Security Council
UNSCAR	United Nations Trust Facility Supporting Cooperation on Arms Regulation
UNSG	United Nations Secretary-General
US	United States of America
USSR	Union of Socialist Soviet Republics
WILPF	Women's International League for Peace and Freedom
WMD	Weapons of mass destruction
WTO	World Trade Organization

INTRODUCTION

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Introduction

The United Nations Secretary-General is the depositary of 560 treaties, 26 of which relate to arms control and disarmament.¹ Of these, the three most recent are trail-blazing. The first is the 1997 Mine Ban Treaty.² The second is the 2008 Convention on Cluster Munitions.³ The third is the 2013 Arms Trade Treaty.⁴ These treaties outlaw anti-personnel landmines, ban cluster munitions and regulate arms exports and imports. They are ground-breaking because of their focus on the humanitarian impact of weapons, the pivotal role of small and medium states in their negotiation, and the new forms of multilateralism that led to their signature.

These three treaties form part of the emerging humanitarian arms control regime, a series of rules where the guiding principle is that of protecting people, rather than producing or exporting weapons. Three 'similar but different' states, Canada, New Zealand and Australia, each played a significant role in developing these treaties. At times, each has contributed to strengthening humanitarian arms control regimes as part of the core group of states championing negotiations. At other times, each has also held back or acted to block progress. This leads to two questions, first, when do states engage in treaty-making in humanitarian arms control? Second, how do states then shape negotiating processes?

This thesis argues that states engage in multilateral treaty-making negotiations when the politics of governments, the internal policy development tools of governments and the key strategic partnerships of governments align. The external negotiating contexts in Ottawa, Wellington and Canberra and in the world influenced outcomes in the internal negotiating contexts of treaty-making. This thesis highlights the importance of the tools of diplomatic tradecraft - expertise, resources, leadership - during humanitarian arms control treaty-making at different phases and transition points in negotiations. Understanding how these elements interact requires a deeper analysis of state behaviour than purely a focus on power, diplomatic actors or negotiating strategies, three perspectives found in the disciplines of international relations, diplomatic studies and negotiation analysis.

¹ "United Nations Treaty Series Online," United Nations, accessed March 24, 2018, <https://treaties.un.org/pages/AdvanceSearch.aspx?tab=UNTS&clang=en>.

² *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, Oslo, 18 September 1997, United Nations Treaty Series, vol. 2056, P. 211.

³ *Convention on Cluster Munitions*, Dublin, 30 May 2008, United Nations Treaty Series, vol. 2688, P. 39.

⁴ *Arms Trade Treaty*, New York, 24 December 2014, United Nations Treaty Series, Registration Number 52373.

Champions of progress at times, Canada, New Zealand and Australia built commitment, drove substance and worked to agreement through coalition-building, agenda-shaping and consensus-building. At other times, they blocked processes through strategies and tactics such as forum-shifting, coalition-building and sidelining. Whether championing new treaties, or attempting to block progress, sustained technical and diplomatic expertise and resources were crucial during the treaty-making processes examined here.

Together these points show that the internal and external contexts of negotiations both matter - successful negotiation outcomes requires alignment from the multilateral negotiation tables to the streets in national capitals where public opinion is voiced. Studying treaty-making processes thus requires an approach which draws insights about states and regimes from international relations, about national diplomatic systems from diplomatic studies, and about strategies and tactics in multilateral processes from negotiation analysis.

The main contribution of this thesis is to demonstrate that multiple layers of context affect when and how states engage in multilateral treaty-making. What happens at the negotiating table is determined in part by what happens away from the table, in national capitals and in the world. Internally, the politics, policy and strategic partnerships in capital cities combine to determine whether a state engages in negotiating new treaties. The ways in which states drive processes to a treaty-making outcome vary across phases of negotiations.

To address the two research questions flagged above, namely when and how these countries engage in humanitarian arms control treaty-making, this inductive thesis adopts a comparative case study approach using process tracing. Observing patterns of regularities and irregularities during different negotiations, each process is broken down into three phases, namely commitment, substance and agreement. This thesis homes in on the moments that marked the passage between them, transition points.⁵ The thesis adopts a two-level approach, which

⁵ Transition points, the main conceptual unit of analysis of this thesis, builds on Professor Daniel Druckman's ground-breaking work on turning points. The main difference between the turning point model and the transition point model here is in the timeline of analysis. While turning points identify triggers in the immediate days or hours that preceded them, transition points include events that occurred earlier. In this way, transition points build further on the distinction between proximal and distal triggers. This is explored in Chapter 2, Section 1. Daniel Druckman, "Stages, Turning Points and Crises," *The Journal of Conflict Resolution* vol. 30 no. 2 (1986). Daniel Druckman, "Transition Points in International Negotiation: A Comparative Analysis," *The Journal of Conflict Resolution* vol. 45 no. 4 (2001). Daniel Druckman, "Departures in Negotiation: Extensions and New Directions," *Negotiation Journal* vol. 20 no. 2 (2004). Daniel Druckman and Mara Olekalns, "Turning Points in Negotiation," *Negotiation and Conflict Management Research* vol. 4 no. 1 (2011). Daniel Druckman and Valerie Rosoux, "A Comparative Analysis: Focal points and Turning Points in Negotiation," *Negotiation Journal* vol. 32 no. 2 (2016). Larry Crump and Daniel Druckman, "Turning Points and International

links two levels of context in an integrative model to explore how different events and structures influence other processes and outcomes. This goes beyond single level explanations at the international, domestic or individual negotiation levels.

Using explanations from different fields and levels of analysis, from international relations to diplomacy, foreign policy and negotiation analysis, the thesis analyses each state’s treaty-making practice in relation to the evolution of each treaty.

Three case study chapters focus on cases of championing, addressing the contextual elements that enabled it and how this translated into diplomatic activity. The fourth case study examines why and when these states did not champion treaties, identifying changes in context and diplomatic activity.

This chapter frames the problem that sparked this thesis, outlines its central arguments and the research questions that guide it before setting the path ahead.

1. Framing the problem

The starting point for this thesis was the observation of patterns of regularity and irregularity in state participation by Canada, New Zealand and Australia during three conventional weapons treaty-making processes, on landmines, cluster munitions and the arms trade.

For the three states, a leadership role in one process contrasted with a blocking or sideline role by in two other processes. Canada led the Ottawa Process, while New Zealand was a key member of the Oslo Process and Australia led the final charge on the Arms Trade Treaty (ATT) Process. Canada was absent from the Oslo and ATT Processes, as was New Zealand on the Ottawa and ATT Processes and Australia on the Ottawa and Oslo Processes. Civil society partners were critical in all three. No single discipline has yet developed a sufficiently nuanced analytical framework to account for these patterns, as shown in Figure 1.

<i>Process</i>	<i>Ottawa Process</i>	<i>Oslo Process</i>	<i>ATT Process</i>
<i>Issue</i>	<i>Treaty-making negotiations to regulate antipersonnel landmines.</i>	<i>Treaty-making negotiations to regulate cluster munitions.</i>	<i>Treaty-making negotiations to regulate the arms trade.</i>
<i>Championing actors</i>	<i>Core negotiating group includes Canada and civil society coalition, the International Campaign to Ban Landmines.</i>	<i>Core negotiating group includes New Zealand and civil society coalition, the Cluster Munitions Coalition.</i>	<i>Core negotiating group includes Australia and civil society coalition, Control Arms Coalition.</i>
<i>Other actors</i>	<i>New Zealand on the sidelines, while Australia blocks.</i>	<i>Canada and Australia block.</i>	<i>New Zealand and Canada on the sidelines.</i>

Figure 1 Three humanitarian arms control treaty-making processes

Environments: Multilateral Negotiations in the GATT and the WTO," *International Negotiation* vol.21 no. 1 (2016). Daniel Druckman, "Turning Points in Negotiation: Looking Back and Looking Forward," *Négociations* vol. 2017/2 n. 28 (2017).

2. Central arguments

This thesis advances three arguments, two theoretical and one methodological.

First, this thesis argues that domestic contexts play a significant role in determining initial state engagement in multilateral treaty-making negotiation processes through the interplay between policy, politics and partnerships.

Second, the thesis contends that diplomatic activity that pushes towards treaty-making is contingent on three factors coinciding over the course of negotiation cycles, namely expertise, resources and leadership. Procedural and substantive expertise, combined with diplomatic resources and individual leadership at the negotiation table, are vital features for states to play an active role in negotiations, whether on the championing side or on the blocking side.

Third, the thesis argues that, from a methodological point of view, a six-level analytical framework covering the contexts of diplomacy from the internal level, where negotiations take place, through to the external level, where national positions are shaped, can explain regularities and irregularities in state behaviour. This multi-level approach draws in practitioners' lived experiences to establish a detailed typology of championing and blocking during negotiation processes.

3. Contribution to the literature

Taken as a whole, both the internal and the external negotiating contexts shape negotiated outcomes on conventional weapons treaty-making. Analysing negotiation processes therefore requires a comprehensive account that extends from the negotiation table to the rooms and corridors that surround them, reaching beyond into the capitals, the world and the streets. In response to the existing gap in the literature to explain why and how states engage in humanitarian arms control treaty-making, the thesis expands on three central arguments to show that treaty formation can only be understood when six levels of diplomatic context are analysed, with the 'contexts of diplomacy' framework.

This thesis provides a powerful tool to analyse phases and transition points by including three elements of context within the direct negotiating process, and three elements of contexts outside of the negotiating process. These six layers include the different levels of analysis that three distinct academic disciplines – international relations, diplomatic studies and negotiation analysis – propose as explanations for state behaviour. Each discipline proposes one or two levels of analysis, to the exclusion of others. International relations focuses on states as unitary actors and considers aspects such as identity and motivation in a monolithic

sense, leaving little space for the influence of civil society and general publics.⁶ Diplomatic studies investigates how national diplomatic systems implement foreign policy, and points to how expertise, resources and leadership can be yielded, yet in doing so, it leaves to one side questions of policy formation.⁷

⁶ E. H. Carr, *The Twenty Years Crisis: 1919-1939: An Introduction to the Study of International Relations*, (London and New York: Harper Torchbooks, 1964). Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, (New York: Knopf, 1973). Kenneth Waltz, *Theory of international relations*, (Reading, Massachusetts: Addison-Webley, 1979). Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981). John J. Mearsheimer, "The false promise of international institutions," *International Security* vol. 19 no. 3 (1994): 5-49. Oran R. Young, "Regime dynamics: the rise and fall of international regimes," *International Organization* vol. 36 no. 2 (1982): 277-297. John Gerard Ruggie, "International regimes, transactions, and change: embedded liberalism in the post-war economic order," *International Organization* vol. 36 no. 2 (1982): 379-415. Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in *International Regimes* Stephen Krasner (ed) (Ithaca, NY: Cornell University Press, 1983): 1-22. Robert Keohane, *After hegemony: Cooperation and Discord in the World Political Economy*, (Princeton: Princeton University Press, 1984). Abram Chayes and Antonia H. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*, (Cambridge: Harvard University Press, 1995). Miles Kahler, "Multilateralism with small and large numbers," *International Organization* vol. 46 no. 3 (1992): 681-708. Andreas Hasenclever, Peter Mayer, and Volker Rittberger, *Theories of International Regimes*, (Cambridge and New York: Cambridge University Press, 1997). Paul Pierson, "Increasing returns, path dependence, and the study of politics," *American Political Science Review* vol. 94 no. 2 (2000): 251-267. J. P. Singh, "Diffusion of Power and Diplomacy: New Meanings, Problem Solving, and Deadlocks in Multilateral Negotiations," *International Negotiation* vol. 20 no. 1 (2015): 73-88. Emmanuel Adler, "Constructivism in International Relations: Sources, Contributions, and Debates," in *Handbook of International Relations*, Walter Carlsnaes, Thomas Risse-Kappen and Beth A. Simmons (eds.) (London: SAGE Publications, 2012): 112-144. Alexander Wendt, "Driving with the Rearview Mirror: on the Rational Science of Institutional Design," *International Organization* vol. 55 no. 4 (2001): 1019-1049. Martha Finnemore and Kathryn Sikkink, "International norm dynamics and political change," *International Organization* vol. 52 no. 4 (1998): 887-917. Ronald L. Jepperson, Alexander Wendt and Peter J. Katzenstein, "Norms, Identity and Culture in National Security," in *The Culture of National Security: Norms and Identity in World Politics*, Peter J. Katzenstein (ed), (New York: Columbia University Press, 1996): 33-72. Carsten Holbraad, *Middle powers in international politics*, (New York: St. Martin's Press, 1984): 57. Andrew Fenton Cooper, Richard A. Higgott, and Kim Richard Nossal, *Relocating Middle Powers: Australia and Canada In A Changing World Order* vol. 6, (Vancouver: University of British Columbia Press, 1993). Richard A. Matthew, "Middle power and NGO partnerships: the expansion of world politics," in *Reframing the agenda: the Impact of NGO and Middle Power Cooperation in International Security Policy*, Ken Rutherford, Stefan Brem, and Richard Anthony Matthew, (eds.) (Westport: Praeger Publishing, 2003): 6. Joseph S. Nye Jr, "Public diplomacy and soft power," *The Annals of the American Academy of Political and Social Science* vol. 616 no. 1 (2008): 94-109. Hedley Bull, "International Law and International Order", in *The Anarchical Society*, Hedley Bull, (London: Palgrave Macmillan, 1977): 122-155. Andrew Linklater, "What is a Good International Citizen?," *Ethics and Foreign Policy* Paul Keal (ed) (St Leonards: Allen & Unwin, 1992): 21-43.⁶ Ruth Rikowski, "A Marxist Analysis of the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights," *Policy Futures in Education* vol. 4 no. 4 (2006): 407. Eric M. Blanchard, "Gender, International Relations, and the Development of Feminist Security Theory," *Signs*, Vol. 28 no. 4 (2003): 1289.

⁷ Adam Watson, *Diplomacy: the Dialogue between States*, (London: Eyre Methuen, 1982). Robert D. Putnam, "Diplomacy and Domestic Politics: the Logic of Two-Level Games," *International Organization* vol. 42 no. 3 (1988). Rebecca Adler-Nissen, "Diplomatic Agency," in *The SAGE Handbook of Diplomacy*, Costas M. Constantinou, Pauline Kerr and Paul Sharp (eds.), (London: SAGE Publications, 2016). Halvard Leira, "A Conceptual History of Diplomacy," in *The SAGE Handbook of Diplomacy*, Costas M. Constantinou, Pauline Kerr and Paul Sharp (eds.), (London: SAGE Publications, 2016). Vincent Pouliot, "Diplomats as permanent representatives: The practical logics of the multilateral pecking order," *International Journal* vol. 66 no. 3 (2011). Christer Jönsson and Martin Hall, "Communication: An Essential Aspect of Diplomacy," *International Studies Perspectives* vol. 4 no. 2 (2003). Brian Hocking, "The Ministry of Foreign Affairs and the National Diplomatic System," in *Diplomacy in a Globalizing World*, Pauline Kerr and Geoffrey Wiseman (eds.) (Oxford University Press, 2013). Alan K. Henrikson, "Diplomacy for the 21st Century: Re-crafting the Old Guild," *Wilton Park Current Issues in International Diplomacy and Foreign Policy* vol. 1. (London: The Stationery

Negotiation analysis provides insights about how strategies and tactics in multilateral processes lead to negotiated outcomes, yet does not capture how states are empowered to use innovative processes.⁸ Separately, no single discipline provides sufficient depth to explain how and when these three states shaped processes. Together, each adds insights that illuminate changes in state behaviour over time. This thesis contributes to the existing literature of all three disciplines by providing a compelling and nuanced explanation to understand negotiated outcomes on three humanitarian arms control treaties, thereby illuminating disarmament more broadly.

Office, 1999). Jorge Heine, "On the Manner of Practicing the New Diplomacy," *Working Paper No. 11 Re-shaping Diplomacy*, (Waterloo: Centre of International Governance Innovation, 2006). Anne-Marie Slaughter, "Global Government Networks, Global Information Agencies, and Disaggregated Democracy," *Michigan Journal of International Law* vol. 24 no. 4 (2003). Geoffrey Wiseman, 'Polyilateralism' and New Modes of Global Dialogue, *Discussion Papers No. 59* (Leicester: Leicester Diplomatic Studies Programme, 1999). Margaret E. Keck, and Kathryn Sikkink, "Transnational advocacy networks in international and regional politics," *International Social Science Journal* vol. 51 no. 159 (1999). Emanuel Adler and Peter M. Haas, "Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program," *International Organization* vol. 46 no. 1 (1992). John Borrie, "Rethinking Multilateral Negotiations: Disarmament as Humanitarian Action," in *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action* John Borrie and Vanessa Martin Randin (eds), (Geneva: UNIDIR, 2005). Corneliu Bjola, "Understanding enmity and friendship in world politics: The case for a diplomatic approach," *The Hague Journal of Diplomacy* vol. 8 no. 1 (2013). James Der Derian, "Mediating Estrangement: a Theory for Diplomacy," *Review of International Studies*, vol. 13 no. 2 (1987). Paul Sharp, *Diplomatic Theory of International Relations* (New York: Cambridge University Press, 2009).

⁸ Fred Charles Iklé, *How Nations Negotiate*, (New York: Harper & Row, 1964):3-4. P. Terrence Hopmann, "Bargaining in arms control negotiations: The seabeds denuclearization treaty," *International Organization* vol. 28 no. 3 (1974). Robert J. Janosik, "Rethinking the Culture-Negotiation Link," *Negotiation Journal* vol. 3 no. 4 (1987). I. William Zartman, "Common Elements In The Analysis Of The Negotiation Process," *Negotiation Journal* vol. 4 no. 1 (1988). Phillip R. Trimble, "Arms Control and International Negotiation Theory," *Stanford Journal of International Law* vol. 25 (1988): 543- 574. I. William Zartman, "Introduction", in *International Multilateral Negotiation: Approaches to the Management of Complexity*, I. William Zartman (ed.), (San Francisco: Jossey-Bass, 1994): 1-12. I. W. Zartman and Jeffrey Z. Rubin, *Power and Negotiation*, (Ann Arbor: University of Michigan Press, 2000). Keith Krause, "Multilateral diplomacy, norm building, and UN conferences: the case of small arms and light weapons," *Global Governance* vol. 8 (2002). Larry Crump and I. William Zartman, "Multilateral Negotiation and the Management of Complexity," *International Negotiation* vol. 8, no. 1 (2003). Mara Olekalns and Laurie R. Weingart, "Emergent negotiations: stability and shifts in process dynamics," (Working Paper, Tepper School of Business, 2004). Kathleen M. O'Connor, Josh A. Arnold and Ethan R. Burris, "Negotiators' bargaining histories and their effects on future negotiation performance," *Journal of Applied Psychology* vol. 90 no. 2 (2005). Christer Jönsson, "Developing Social Relations: A Neglected Aspect of Negotiations," in *Négociation et transformations du monde* Christophe Dupont (ed.), (Paris: Negocia, 2007). Larry Crump, "A temporal model of negotiation linkage dynamics," *Negotiation Journal* vol. 23 no. 2 (2007). Larry Crump, "Negotiation process and negotiation context," *International Negotiation* vol. 16 no. 2 (2011). Daniel Druckman and Mara Olekalns, "Turning Points in Negotiation," *Negotiation and Conflict Management Research* (2011). Corneliu Bjola, "Negotiation Breakthrough Analysis: The Case of Climate Negotiations," *International Negotiation* vol. 19 no. 1 (2014). Catherine Corson, Lisa M. Campbell and Kenneth I. MacDonald, "Capturing the Personal in Politics: Ethnographies of Global Environmental Governance," *Global Environmental Politics* vol. 14 no. 3 (2014). M Larry Crump, "Toward a Theory of Negotiation Precedent," *Negotiation Journal* vol. 32 no. 2 (2016): 85-102.. Michele Griessmair, "Ups and Downs: Emotional Dynamics in Negotiations and Their Effects on (In)Equity," *Group Decision and Negotiation* vol. 26 no. 6 (2017). Megan Dee, "Group Dynamics and Interplay in UN Disarmament Forums: In Search of Consensus," *The Hague Journal of Diplomacy* vol. 12 (2017).

4. Path ahead

Noting these patterns of regularity and irregularity across similar treaty-making processes and states, the path ahead for this thesis is guided by two research questions which are addressed through a contextual framework that enables a cross-case comparative approach using process tracing that draws in multiple sources of primary data. These elements are explored in the following section, which concludes with the chapter structure of this thesis.

4.1. Research questions

Two research questions guide this thesis.

R1: When do states engage in treaty-making processes in humanitarian arms control and conventional weapons?

R2: How do states shape treaty-making in humanitarian arms control and conventional weapons?

4.2. Contexts of diplomacy framework

To address these questions, the thesis identifies two contexts to understand negotiated outcomes, at the negotiating table and away from it, otherwise expressed as the internal and external contexts. The internal layer focuses on what occurs at the table, which in turn is affected by diplomatic activity in the room and in the corridors of diplomatic venues. The external layer includes the domestic environment in capital, the international stage in the world and the street level which draws in publics and the media globally. These layers are illustrated in Figure 2 and further explored in chapter 2 of this thesis.⁹

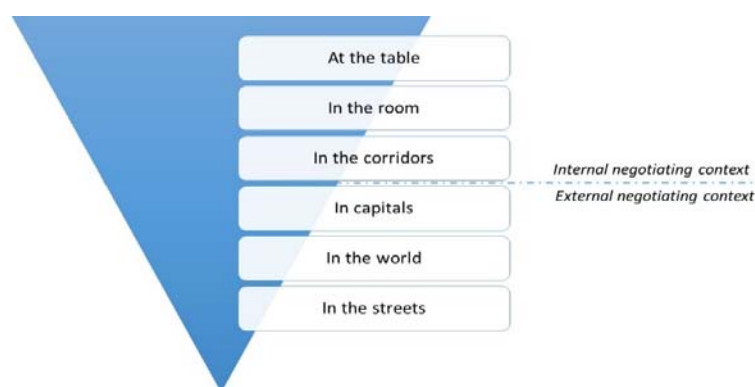


Figure 2 Contexts of diplomacy

⁹ These categories were adapted in discussion with Professor Bonnie Docherty and refined as interviews were conducted. Prof Docherty, of the Harvard Law School, was a civil society negotiator during the Oslo Process and has spent time in the Middle East on deployment with US forces. For a profile of Prof. Docherty, see Cara Solomon, “A Disarming Leader: Bonnie Docherty Recognized for Contributions to Human Rights, Clinical Community,” *International Human Rights Clinic* (blog), *Harvard Law*, May 21, 2017, <http://hrp.law.harvard.edu/staff/a-disarming-leader-bonnie-docherty-recognized-for-contributions-to-human-rights-clinical-community/>. Last accessed June 3, 2018.

The internal context captures the negotiation context itself.¹⁰ Three separate layers constitute this context. While progress at the negotiation table is the main driver of negotiated outcomes, what occurs in the negotiation room and in the corridors also plays an important role. These three spaces are constituted by states negotiating at the table from behind their flags, with coalitions of states acting in concert in the negotiating room, while civil society circulate research and lobby delegations in the corridors.

The external context captures the context outside of negotiations, constituted by three layers. These layers are “in capital”, “in the world” and “in the streets.”¹¹

For states negotiating treaties, the context in capital is broken down into three aspects. Each aspect alone is necessary but insufficient for state engagement in treaty-making processes to occur. Together, they constitute three necessary and sufficient conditions for states to champion treaty-making. The politics of the government in power is the first, with an emphasis on the relationship between prime ministers, foreign ministers and their cabinets. The centrality of Cabinet in decision-making is a particularity of Westminster parliamentary democracies. Second, the policies on arms control are developed and implemented across different ministerial portfolios. National diplomatic systems expand and adapt to draw in technical expertise from relevant ministries under the coordination of diplomats at capital and at post.

Partnerships are the third aspect at play in capitals. This relates to how each state approaches its position in the world, through relations with allies and neighbours, at local, regional and global levels.

In addition to the context in capital, events and structures in the world also influence the pace, direction and shape of final outcomes. They occur outside of the control of negotiators. Events as unpredictable as major climactic episodes or the outbreak of hostilities can propel talks in a certain direction or indeed reverse progress made. Predictable events can also exercise similar influence, such as the “lame duck” period for US Presidents entering their final year of a two-term mandate which can be seen by some as either an opportunity for sensitive files to be dealt with without electoral consequences or a risk that a future change in presidency might lead to reversals of policy decisions. In terms of structures on the world stage, legal instruments such as treaties that enshrine military alliances or

¹⁰ The internal context is explored in more detail in chapter 2, sub-section 2.1.

¹¹ The external context is explored in more detail in chapter 2, sub-section 2.2.

treaties that codify how international organisations operate can also influence negotiations in seemingly unrelated domains.

In the streets, grassroots civil society organisations use their access to the media to raise awareness of issues that are being negotiated often far away. Activating global publics in turn influences decision makers and policymakers, which flows through to governments and national negotiating positions.

The six-tier analytical model that brings these together has guided the process-tracing approach adopted in this thesis. Each case study explores these layers in detail, while the conclusion zooms out to identify and explore the broader trends and patterns at play that are revealed through these six prisms.¹²

4.3. Comparative approach

This thesis adopts a comparative case study approach to examine the patterns of regularities between three states and irregularities within each state. The research goal is hypothesis-modifying, taking existing theories about the role of context and process in multilateral negotiations and applying them to the specific arena of treaty-making in conventional weapons. The selection of the treaty processes follows the most similar systems designs approach,¹³ seeking causal explanations of variation between closely matched units of analysis. The object of observation is state engagement during three humanitarian arms control treaty-making processes. Each process led to the signature and entry into force of a new legal instrument. Each process comprised three phases marked by transition points between them.¹⁴ Core groups of states were instrumental in shepherding all three processes to a binding legal instrument.¹⁵

Comparing similar cases facilitates causation analysis by “striving to control for as many dimensions of difference between the cases as possible”.¹⁶ Zartman highlights that while the first comparative case study on multilateral negotiations involved two cases, since then, this has increased from 8 to 21 cases.¹⁷ The three cases treated in this thesis are therefore on the smaller side of the typical range. This small number provides for deeper probing, thereby bolstering the validity of

¹² The model is explored in more detail in chapter 2, section 2.

¹³ A. L. George and A. Bennett, *Case Studies And Theory Development In The Social Sciences*, (Cambridge, Massachusetts and London, England: MIT Press, 2005).

¹⁴ Transition points are examined in more detail in chapter 2.

¹⁵ This thesis limits its analysis to treaty signature. The subsequent phases (ratification and implementation) are beyond the scope of this thesis.

¹⁶ Daniel Druckman, "Case-Based Research on International Negotiation: Approaches and Data Sets," *International Negotiation* vol. 7 no. 1 (2002): 20.

¹⁷ I. William Zartman, "Comparative Case Studies," *International Negotiation* vol. 10 no. 1 (2005): 7.

the results.¹⁸ This strengthens the analysis of each case so that findings of this thesis are accessible to practitioners seeking lessons for future negotiations. The challenge is to capture case-specific detail without forfeiting wide applicability.¹⁹

Applying Rohfling's definition of a case study, "the empirical analysis of a small sample of bounded empirical phenomena that are instances of a population of similar phenomena", the analysis is made up of transition points in three treaty-making processes, where the case set is three states across three treaty cycles, and the 'bounded empirical phenomena' are state engagement in those cycles.²⁰ State engagement is treated as an instance of a population of similar phenomena, namely multilateral conventional weapons negotiations. Three negotiating processes, the three case studies, are compared to address the question of why states engage in negotiations and how they do so through multilateral diplomacy.

The comparative aspect of this thesis has two elements, a longitudinal study of each state across three cases, and a cross-treaty study of treaty-making processes and championing in each. These two elements of comparison across three cycles are brought together under a comparative case study that sheds light on why states engage in treaty-making sometimes but not always, and how states engage in treaty-making through a range of diplomatic activities.

4.3.1. Three similar yet different states

All three states are Westminster parliamentary democracies, where parliamentarians have relative influence on policy over short electoral cycles.²¹ They are among the richest nations measured in gross domestic product (GDP) per capita.²² They have similar structural features at three levels: internationally, regionally and domestically. These three common elements are outlined below.

4.3.1.1. *International outlook*

All three states have historically championed peace and security. They have been committed to multilateralism and regulating the spread and use of certain weapons since the end of World War 1.

For Canada, middle-power leadership has come through most prominently in peacekeeping. This dates back to the 1950s, when Nobel-laureate Foreign Minister

¹⁸ Daniel Druckman, "Departures in Negotiation: Extensions and New Directions," *Negotiation Journal* vol. 20 no. 2 (2004): 187.

¹⁹ Daniel Druckman, "Case-Based Research on International Negotiation: Approaches and Data Sets," *International Negotiation* vol. 7 no. 1 (2002): 33.

²⁰ Ingo Rohlfing, *Case Studies and Causal Inference: An Integrative Framework*, (New York: Palgrave Macmillan, 2012): 171.

²¹ Scott Brenton, "Ministerial Accountability for Departmental Actions Across Westminster Parliamentary Democracies," *Australian Journal of Public Administration* vol. 73 no. 4 (2015): 479.

²² World Bank Group, *2017 World Development Indicators*, (Washington DC: World Bank, 2017): 712.

Lester Pearson became the trailblazer of modern peacekeeping through his design of the UN Emergency Force deployed in the Suez Canal crisis in 1956.²³

In the case of New Zealand, it has long been unambiguously anti-nuclear, with a historic role in anti-nuclear activism from the 1950s that reflects the “globalist mentality” of domestic publics.²⁴ The most visible example of this principled approach to foreign policy was in 1984 when Wellington prohibited port visits by the American warship, the USS Buchanan, unless assurances could be given from Washington that it was not carrying nuclear weapons or material.²⁵

Australia has modelled good international citizenship through weapons control. Over the past 20 years in particular, the Australian Government has either led or been a part of informal multilateral initiatives on curbing the proliferation of weapons of mass destruction, notably on chemical and biological weapons (The Australia Group, created in 1985), on the elimination of nuclear weapons (The Canberra Commission, created in 1995) and the Australia-Japan initiative on nuclear non proliferation (the International Commission on Nuclear Non-proliferation and Disarmament, created in 2008).²⁶

4.3.1.2. *Regional role*

Regionally, all three must balance alliance partnerships and large regional neighbours. While all three states are non-nuclear armed states, they fall under the extended security umbrella of the US, one of nine states that possesses nuclear weapons, as well as NATO, of which Canada is a member and Australia and New Zealand are strategic partners. NATO includes a further two of the nine nuclear states, namely France and the UK.²⁷

Since the end of the Cold War, the shift from a bi-polar world to one where power is exercised more diffusely²⁸ has increased the existential threat for all three

²³ Christina Badescu, “Canada’s continuing engagement with United Nations Peace Operations,” *Canadian Foreign Policy* vol. 16 no. 2 (2010): 46.

²⁴ Richard Devetak and Jacqui True, “Diplomatic Divergence in the Antipodes: Globalisation, Foreign Policy and State Identity in Australia and New Zealand,” *Australian Journal of Political Science* vol. 41 no. 2 (2006): 245.

²⁵ Kevin Clements, *Back from the Brink: the Creation of a Nuclear-Free New Zealand* (Wellington: Bridget Williams Books, 2015): 112.

²⁶ Tanya Ogilvie-White, “Australia and the Non-Proliferation and Disarmament Initiative: Difficult Times for Disarmament Diplomacy,” *Policy Analysis* vol. 110 (2013): 3.

²⁷ The nine nuclear armed states are the five permanent members of the UN Security Council (US, Russia, China, France, UK) and India, Pakistan, Israel and DPRK. *SIPRI Yearbook 2016* (Oxford: Oxford University Press, 2017): 12.

²⁸ Thaza Varkey Paul, James Wirtz, and Michel Fortmann (eds) *Balance of power: theory and practice in the 21st century* (Stanford: Stanford University Press, 2004).

from nuclear weapons proliferation, which has added potency to their efforts in negotiating legal frameworks multilaterally.²⁹

Canada is a member of NATO, sharing borders with the United States (9,000kms) and Russia (through territorial claims in the Arctic circle). New Zealand was a party to the Australia New Zealand United States Security Treaty (ANZUS Treaty) until the 1984 incident mentioned above, which led to Wellington's exit.³⁰ Consequently, New Zealand relies more on the bilateral relationship with its nearest neighbour, Australia, through the Closer Defense Relationship (CDR).³¹ The ANZUS Treaty cements a military alliance between the US and Australia.³²

Conventional weapons proliferation undermines regional stability in the Pacific and the Americas, and indeed among most regions in the world.³³ It therefore constitutes a threat to the security of Australia, New Zealand and Canada. Their traditional allies (the US, the UK) and near neighbours (China) are among the top six of the world's largest exporters of conventional weapons, with the other two permanent members of the UN Security Council, Russia and France, rounding out the list, along with Germany.³⁴

4.3.1.3. Domestic features

Domestically, all three have similar forms of government, namely Westminster parliamentary systems, where the majoritarian approach provides the Cabinet of the ruling party with a strong role in decision-making and prominent figures dominating at the executive and occasionally ministerial level.³⁵ Through their respective ministries of foreign affairs, they all have strong diplomatic functions in capital and around the world.³⁶ Diplomatic network rankings in the OECD in 2016 indicate that Canada (18th), Australia (27th) and New Zealand (38th) maintain diplomatic representations in over 124 countries combined, with many co-locations

²⁹ Muthiah Alagappa, "Exploring Roles, Strategies and Implications," in *The Long Shadow: Nuclear Weapons and Security in 21st Century Asia* Muthiah Alagappa (ed.) (Singapore: NUS Press, 2009): 82.

³⁰ This was the result of the disputed passage of United States navy vessels with nuclear capability.

³¹ Robert Ayson, "When Cooperation Trumps Convergence: Emerging Trends in Australia-New Zealand Defence Relations," *Security Challenges* vol. 2 no. 3 (2006): 29.

³² Paul Dibb, *Australia's Alliance with America*, (Melbourne: University of Melbourne Press, 2003).

³³ United Nations General Assembly, "Outcome of the Sixth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," A/CONF.192/BMS/2016/WP.1/Rev.3 New York, June 10, 2016.

³⁴ Dan Smith, "Summary", *SIPRI Yearbook 2016*, (Oxford: Oxford University Press, 2017): 17.

³⁵ Arend Lijphart, *Patterns of democracy: Government forms and performance in thirty-six countries*, (New Haven: Yale University Press, 2012): 9-14.

³⁶ In Canada, Department of Foreign Affairs, Trade and International Trade (DFAIT) until 2013 when it became Department of Foreign Affairs, Trade and Development (DFATD). Known as Global Affairs Canada since 2015. In Australia, Department of Foreign Affairs and Trade (DFAT). In New Zealand, Ministry of Foreign Affairs (MFAT).

between all three.³⁷ Grassroots civil society organisations are also active in all three countries, with varying degrees of access to policy makers and political leaders, in particular on disarmament.³⁸

4.3.2. Three similar pathways to treaty-making

In each treaty-making process, one state assumed a championing role, while the other two states did not. For each case of championing, two counter cases, of blocking or sidelining, were also present for each state. This thesis analyses mechanisms, or diplomatic activity, that produced similar outcomes, in the form of new legal instruments. Figure 2 illustrates similarities between Canada, New Zealand and Australia, all three of whom played a similar role in separate (yet similar) treaties and engaged in similar diplomatic activities.

	Canada	New Zealand	Australia
<i>Case 1: Ottawa Process</i>	<i>Core group</i>	<i>On the sidelines</i>	<i>Blocker</i>
<i>Case 2: Oslo Process</i>	<i>Blocker</i>	<i>Core group</i>	<i>Blocker</i>
<i>Case 3: ATT Process</i>	<i>On the sidelines</i>	<i>On the sidelines</i>	<i>Core group</i>

Figure 3 Initial observation of patterns in conventional weapons treaty-making

4.3.3. Three ground-breaking treaty-making processes

Six common elements flow through each case. First, each process addressed the regulation of conventional weapons. Second, each process explicitly sought humanitarian outcomes, rather than classic aspects of arms control such as security and defence. Third, each process led to a treaty that entered into force. Fourth, each negotiating cycle was preceded by lengthy talks within the UN disarmament framework. Fifth, each process led to a legal instrument with stronger provisions than the existing legal instruments that preceded them. Sixth, each process involved many countries negotiating multilaterally to develop an instrument with broad to universal scope.

Taken as a whole, these six elements make these three treaty-making processes ground-breaking in terms of substance, actors and diplomatic activity.

First, on substance, an increasing focus of arms control has been to shift from regulating weapons to limiting their impact.³⁹ The centre of attention has moved to

³⁷ Lowy Institute for International Policy, *Global Diplomacy Index 2016* (Sydney: Lowy Institute, 2016).

³⁸ Meg Russell, Daniel Gover, Kristina Wollter and Meghan Benton, "Actors, Motivations and Outcomes in the Legislative Process: Policy Influence at Westminster," *Government and Opposition* vol. 52 no. 1 (2017): 1–27.

³⁹ Marie Le Chevrier, *Arms Control Policy: A Guide to the Issues*, (Santa Barbara, Praeger Security International, 2012): 135. Neil Cooper, "Humanitarian Arms Control and Processes of Securitization: Moving Weapons along the Security Spectrum," *Contemporary Security Policy* vol. 32 no. 1 (2011): 134.

people and conflict-affected states after hostilities cease.⁴⁰ The rights of victims are spelled out⁴¹ and binding commitments apply to states to provide victim assistance and address the long-term impact of weapons.⁴² These legal elements create a strong stigma surrounding the use of weapons against civilians.⁴³

Second, with respect to the actors involved, small and medium countries gathered together to build momentum for substantial change and to push for strong treaties.⁴⁴ Civil society increased this momentum through research, legal expertise, advocacy and grassroots campaigning.⁴⁵

Third, new forms of multilateralism have emerged.⁴⁶ The tension between consensus decision-making and progressive rule-making, between efficiency and legitimacy, have produced innovative approaches to avoid negotiating paralysis in existing disarmament forums.⁴⁷

⁴⁰ Ramesh Thakur and William Maley, "The Ottawa Convention on Landmines: A Landmark Humanitarian Treaty in Arms Control?" *Global Governance* vol. 5 no. 3 (1999): 273-302. Brian Rappert and Richard Moyes, "The Prohibition of Cluster Munitions: Setting International Precedents for Defining Inhumanity", *The Nonproliferation Review* vol. 16 no. 2 (2009): 237-256. Denise Garcia, "Explaining Global Norms: The Case of Negotiations on Restraining Conventional Arms," *International Negotiation* vol. 22 no. 3 (2017): 383.

⁴¹ Bonnie Docherty, "Breaking New Ground: The Convention on Cluster Munitions and the Evolution of International Humanitarian Law," *Human Rights Quarterly* vol. 31 no. 4 (2009): 934-963.

⁴² Jody Williams, Stephen D. Goose and Mary Wareham (eds.), *Banning Landmines: Disarmament, Citizen Diplomacy, and Human Security*, (New York: Rowman & Littlefield Publishers, 2008). Markus Reiterer, "Assistance to cluster munition victims: a major step toward humanitarian disarmament" in *Implementing the Convention on Cluster Munitions*, (Geneva: UNIDIR, 2010): 25-35. Maria Valenti, Robert Mtonga, Robert Gould and Michael Christ, "The Arms Trade Treaty (ATT): A public health imperative," *Journal of Public Health Policy* vol. 35 no. 1 (2014): 14-25.

⁴³ Denise Garcia, "Humanitarian security regimes," *International Affairs* vol. 91 no. 1. (2015): 55-75.

⁴⁴ Lloyd Axworthy and Sarah Taylor, "A Ban for All Seasons: the Landmines Convention and its Implications for Canadian Diplomacy", *International Journal* vol. 53 no. 2 (1998): 189-203. Gro Nystuen and Stuart Casey-Maslen, *The Convention on Cluster Munitions: A Commentary*, (New York: Oxford University Press, 2010). Stuart Casey-Maslen, Andrew Clapham, Gilles Giacca and Sarah Parker, *The Arms Trade Treaty: A Commentary*, (Oxford: Oxford University Press, 2016).

⁴⁵ Javier Alcalde, "Human Security and Disarmament Treaties: The Role of International Campaigns," *Global Policy* vol. 5 no. 2 (2014): 235-241. Keith Krause, "Transnational civil society activism and international security politics: From landmines to global zero," *Global Policy* vol. 5 no. 2 (2014): 229-34. Maritza Chan, Tomoaki Ishigaki, Rodrigo Pintado and Emily Street, *The Importance of Civil Society in United Nations and Intergovernmental Processes: Views from Four Delegates to the United Nations*, (New York: United Nations Office of Disarmament Affairs, 2014).

⁴⁶ Maxwell A. Cameron, "Democratization of Foreign Policy", in *To Walk without Fear: The Global Movement to Ban Landmines*, Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 424-447.

⁴⁷ John Borrie and Vanessa Randin (eds), *Thinking Outside the Box in Multilateral Disarmament and Arms Control Negotiations*, (Geneva: UNIDIR, 2006). Katie Hulme, "The 2008 Cluster Munition Convention: Stepping Outside the CCW Framework (Again)," *International and Comparative Law Quarterly* 58 (January 2009): 223. Jessica Corsi, "Towards Peace through Legal Innovation: The Process and the Promise of the 2008 Cluster Munitions Convention," *Harvard Human Rights Journal* vol. 22 (2009): 144-157.

4.3.3.1. *Canada as champion of the Ottawa Process*

Canada was the architect of the Ottawa process leading to the Mine Ban Treaty (MBT).⁴⁸ When talks failed to achieve significant success at the CCW at the UN, Canadian Foreign Minister Lloyd Axworthy challenged interested countries to pursue talks outside of the UN framework.⁴⁹ Canada under Axworthy went from declaration of intent to treaty signature in 15 months, bringing over 120 countries with them.⁵⁰ A pivotal partner was the International Campaign to Ban Landmines (ICBL), which included coordinator Jody Williams, as well as the President of International Committee of the Red Cross (ICRC), Cornelio Sommaruga, as acknowledged in the Resolution 52/38 of the United Nations General Assembly.⁵¹ Williams and the ICBL went on to share the Nobel Peace Prize for their role.⁵²

4.3.3.2. *New Zealand as champion of the Oslo Process*

Less than a decade later, a similar scenario unfolded on cluster munitions, with talks stalling within the UN on developing a prohibition. Norway announced that interested countries would pursue talks outside of the UN framework to develop such a ban on this form of weapon.⁵³ Again, civil society was closely linked to the success of this treaty under the umbrella of the Cluster Munitions Coalition (CMC).⁵⁴ New Zealand was part of the core group of states which led the charge, with a ban signed within 18 months, the Convention on Cluster Munitions.⁵⁵ New Zealand chaired the most difficult conference in Wellington in 2008, when a break-away group of states attempted to water down significant elements of the treaty.⁵⁶

⁴⁸ *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, Oslo, 18 September 1997, United Nations Treaty Series, vol. 2056, P. 211.

⁴⁹ Stuart Casey-Maslen, *Commentaries on Arms Control Treaties: The Convention on the Prohibition of the use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction*, (Oxford: Oxford University Press, 2015). John English, "The Ottawa Process: Paths Followed, Paths Ahead," *Australian Journal of International Affairs* vol. 52 no. 2 (1998): 121. Fen Osler Hampson and Dean F. Oliver, "Pulpit Diplomacy: A Critical Assessment of the Axworthy Doctrine", *International Journal* vol. 53 no. 3 (1998): 379-406.

⁵⁰ Ken Rutherford, *Disarming states: The international movement to ban landmines*, (Santa Barbara: ABC-CLIO, 2011).

⁵¹ UN General Assembly, Resolution 52/38, General and Complete Disarmament: Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, A/RES/52/38 (8 January 1998).

⁵² Francis Sejersted, "Presentation Speech by Professor Francis Sejersted, Chairman of the Norwegian Nobel Committee, on the occasion of the award of the Nobel Peace Prize for 1997," Oslo, December 10, 1997.

⁵³ John Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won* (Geneva: United Nations Publications/UNIDIR, 2009).

⁵⁴ Matthew Bolton and Thomas Nash, "The Role of Middle Power-NGO Coalitions in Global Policy: The Case of the Cluster Munitions Ban," *Global Policy* vol. 1 no. 2. (2010): 172-184.

⁵⁵ *Convention on Cluster Munitions*, Dublin, 30 May 2008, United Nations Treaty Series, vol. 2688, p. 39.

⁵⁶ John Borrie, *Unacceptable Harm*, 206.

4.3.3.3. *Australia as champion of the ATT Process*

From 2006, the ATT Process was led by the UK and a core group of seven states, including Australia, and extended to the NGO coalition Control Arms (CA).⁵⁷ The group of countries was known as the co-authors in reference to the yearly UN Resolutions they introduced in the UNGA.⁵⁸ Within seven years, talks progressed until a final treaty text was adopted by the UNGA, the Arms Trade Treaty.⁵⁹ Australia's contribution was vital in the last phase of talks, after the dramatic failure in March 2012 of the first diplomatic conference.⁶⁰ Stepping in to lead the second diplomatic conference, Australian Disarmament Ambassador Peter Woolcott led the process for the treaty to be adopted by majority through Resolution 67/234B of the UN General Assembly with only 3 votes against (Iran, DPRK and Syria).⁶¹

As this section has shown, the cases of Canada, New Zealand and Australia in humanitarian arms control provide a rich terrain of 'regular irregularities' to examine patterns and build theoretical and methodological arguments.

4.4. *Process tracing*

Process tracing focuses on chains of events that link a cause to an outcome. This provides an explanatory logic⁶² to understand the events, roles and relationships that led to state engagement in three weapons treaty-making processes.⁶³ Process tracing through its systematic analysis across time helps to capture the dynamics and complexity of multilateral processes empirically observed in these cases, where multiple entities and activities all come together. Talks are dynamic as they follow a path dependent process with changing preferences over time in a single series of talks. The outcomes of previous talks influence future negotiations. They are complex as they involve multiple actors interacting with external and internal factors at international, regional and domestic levels.

The problem of inter-determinancy can arise when multiple causes might account for an outcome, or multiple mechanisms might account for an outcome.

⁵⁷ Maritza Chan, Tomoaki Ishigaki, Rodrigo Pintado and Emily Street, *The Importance of Civil Society in United Nations and Intergovernmental Processes: Views from Four Delegates to the United Nations*, (United Nations Office of Disarmament Affairs (UNODA), 2014): 3-33.

⁵⁸ Anna Macdonald and Duncan Green, "Power and Change: The Arms Trade Treaty," *Oxfam Active Citizenship Case Study*, (Oxfam International, 2015): 2.

⁵⁹ *Arms Trade Treaty*, New York, 24 December 2014, United Nations Treaty Series, Registration Number 52373.

⁶⁰ Christian Kessler, "Call to arms: The Uncertain Future of the Arms Trade Treaty," *Jane's Intelligence Review* vol. 24 no. 11 (2012): 32-35.

⁶¹ United Nations General Assembly, *The Arms Trade Treaty*, A/67/L.58, April 1, 2013. Treaty text as contained in annex to document A/CONF.217.2013/L.3.

⁶² Norman Blaikie, *Approaches to Social Enquiry: Advancing Knowledge Second Edition* (Cambridge: Polity, 2007): 25.

⁶³ I. W. Zartman, "What I Want to Know about Negotiations," *International Negotiation* vol. 7 no. 1 (2002): 5-15.

To overcome this, this thesis considers different causes and mechanisms using careful triangulation of source material.⁶⁴ Under the umbrella of process tracing, two areas of analysis were identified, phases and transition points between phases. Three phases per treaty cycles were identified, with ten transition points in total. Phases and transitions are illustrated in Figure 4. In Chapter 2, this is explained and explored comprehensively.

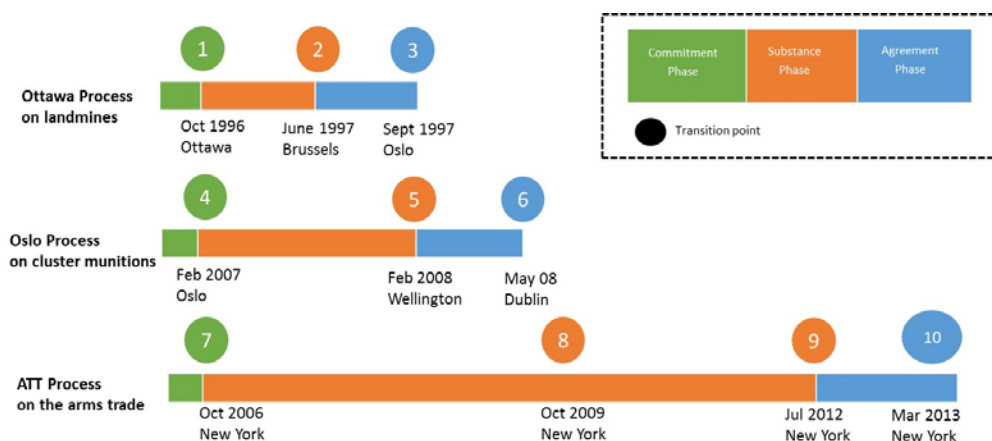


Figure 4 Phases and transition points

Arms control negotiations as a sub-set of multilateral treaty-making have specific characteristics and dynamics. Capturing their complexities requires a layered model to bring in all the dimensions to understand what is going on, while simplifying analysis so that different points can be compared and contrasted across issue area and treaty cycle. This is done using process tracing to analyse contextual characteristics across time and at system and sub-system levels.

As a first step, the various phases of multilateral treaty-making are delineated in the disarmament context. These phases are commitment, substance and agreement. The second step involves identifying the transition points between phases, so that analysis narrows down to data points that can be compared and contrasted across cycles, to draw out patterns and bring into focus the challenges, strategies and tactics that punctuate weapons negotiations.

This approach helps address both research questions. The cross-case analysis hypothesizes that context influences negotiation processes and outcomes, while the within-case analysis highlights the interplay of negotiation processes at different phases and points in treaty-making cycles.

4.5. Data sources

This thesis triangulated three sources of data to establish the process traces at the ten transition points examined.

⁶⁴ Ingo Rohlfing, *Case Studies and Causal Inference*, 175.

First, published work was analysed to build the background information on all three countries and treaty-making processes. First-hand accounts and material published by practitioners and activists were prioritised. Given the wide range of viewpoints and divergent perspectives from actors involved, biases and opinions were balanced out among different authors. For example, published first-hand accounts of the Arms Trade Treaty processes from state diplomats were compared and contrasted with different accounts from civil society and overlaid with any analysis that had been published on the events in question.

Then, through desktop research, a long list of persons of interest was drawn up. Further names were added as interviews progressed through a snowballing effect. Over 80 semi-structured interviews were conducted with a mix of:⁶⁵

- participants and observers during three negotiating cycles, including state and non state actors as well as staff of international organisations; and
- academics and analysts who research the topics covered (foreign policy, multilateral diplomacy, weapons law and IHL).

These interviews helped confirm and disprove points raised from published work but also revealed details that had been undocumented up until then, including for example diplomatic practices and strategies that were considered either trivial at the time or were not recorded formally. These interviews were also key to confirming the identification of transition points in the early stages of research.

Archival work at the UN led to the identification of sources of information about the details of negotiations, for example official documents submitted and lists of official participants at conferences as well as video footage of negotiations. Archival information deposited in Ottawa led to an unopened trove of campaign materials donated by the International Campaign to Ban Landmines (ICBL) including archived emails and correspondence indicating the extensive level of organisation and coordination of activities during the Ottawa Process.⁶⁶

4.6. Chapter structure

This introduction has introduced the problem, central arguments, contribution and research design that indicate the path ahead for the rest of this thesis.

Chapter 1 explores the existing insights from different fields of study that help explain certain elements of the irregular pattern of state behaviour, drawing on international relations, diplomatic studies, negotiation analysis and arms control.

⁶⁵ See appendix for complete list.

⁶⁶ Site visit in June 2015 to Library and Archives Canada (BAC-LAC), Ottawa, Canada.

Chapter 2 outlines the analytical framework of transition points and phases. This chapter explores how these two frameworks organise the complexity of the three multilateral negotiations explored in this thesis by highlighting the essential dynamics of each while pinpointing how certain negotiated outcomes are reached.

Chapters 3, 4 and 5 turn to the three case studies, namely championing by Canada in the Ottawa Process, by New Zealand in the Oslo Process and by Australia in the ATT Process. Each chapter is divided into three sections. The introductory section provides a negotiating history of the type of weapon that the process addresses. Then the first research question is addressed, namely when do states engage in treaty-making, by exploring three levels of context at play in capitals. Finally, the second research question is addressed, namely how do states shape processes, by analysing transition points and phases during negotiations.

Chapter 6 turns to the three states and addresses the questions of when and how states engage in treaty making by examining cases where states did not champion processes they were involved in. The chapter is divided into three sections, one per state. Each section outlines for each state the contextual factors of politics, policy and partnerships during treaty-making processes where they did not play lead role and then revisits their diplomatic activity during transition points and phases of those processes.

In the concluding chapter, both research questions are revisited to draw trends and patterns across states and processes. By comparing and contrasting the insights from the case study chapters, this thesis provides a deeper understanding of how Canada, New Zealand and Australia shape conventional weapons negotiations in multilateral fora. The conclusion reinforces the importance of 'context' as an analytical tool. This is useful in providing a comprehensive understanding of how negotiated outcomes are reached.

CHAPTER 1: THEORY AND PRACTICE OF WHY AND HOW STATES NEGOTIATE MULTILATERAL TREATIES

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Chapter 1: Theory and practice of why and how states negotiate multilateral treaties

Noting that the three treaties studied in this thesis form a pattern of new multilateralism, and noting also that three states have engaged unevenly in these three processes, different fields of literature provide explanations for these patterns in state behaviour. International relations, diplomatic studies, foreign policy analysis and negotiation analysis all offer analytical tools to view how negotiated outcomes occur.

Each field focuses on different levels of analysis, from the international to the national to the individual level. International relations analysis considers structural and ideational factors at the international level. Diplomatic studies focuses on how foreign policy is implemented through diplomatic practice in multilateral fora. Foreign policy analysis examines how policy is developed at a system and sub system level. Negotiation analysis explores what happens at the negotiation table to understand negotiated outcomes.

The main finding of this chapter is that bringing together theoretical insights from multiple fields helps illuminate negotiated outcomes in conventional weapons treaty-making. This requires an integrative framework that bridges multiple levels of analysis and activity to compare and contrast change over time, as explored in chapter 2.

This chapter looks at each field, and the gaps and insights that they present, and then connects these theoretical approaches to the practice of multilateral arms control to lay the foundations for the case studies in this thesis.

1. International relations approaches to why and how states negotiate treaties

Why do states restrict their sovereignty and agree to be bound by rules of which they are not the sole authors? Because multilateral regulatory regimes allow states to manage uncertainty through shared expectations of state behaviour. State behaviour can be understood in different ways, as an expression of relative power, of interests and of identity. Each of these viewpoints shapes different understandings of international treaty-making, as the foundational act of arms control regimes. They are surveyed below along with the gaps they present.

1.1. Schools of thought

The following section explores different ways to understand state behaviour.

1.1.1. Treaty-making driven by power

If one adopts the realist standpoint, the main preoccupation of states is the pursuit of power, both military and economic.⁶⁷ State behaviour is contingent on state power, or size, relative to others. Cooperation between states, when not dismissed as an illusion,⁶⁸ is the means by which states pursue their unilateral self-interest.⁶⁹ Smaller or less powerful states can only influence larger states when they are allowed to, leaving little room for smaller states to exercise autonomy in their actions. Hegemons make international law because it is a cost-effective instrument to ensure the security and safety of their borders by spreading the burden of the provision of public goods and limiting free-riding.⁷⁰ However, hegemons can also choose to circumvent international law, condemning treaties to the status of toothless tigers, where their effectiveness, resilience and autonomy is subject to different sets of rules for different actors.⁷¹

1.1.2. Cooperative problem-solving through treaty-making

Observing the acceleration of treaties from the 1960s as American hegemony began to decline and the growth of global interdependence, regional institutional development, and functional international service demands, it is more plausible to see treaty-making as a product of cooperation that reflects shared interests among states to address collective action problems, rather than of power.⁷² This structural approach adopts a logic of material calculation to explain state cooperation rather than a power-based one. States are more interested in absolute gains than in comparative power. States view multilateral treaties as a way to cooperatively regulate common problems through information flow, transparency, monitoring and lower transaction costs.⁷³ They adopt international rules that set standards of

⁶⁷ E. H. Carr, *The Twenty Years Crisis: 1919-1939: An Introduction to the Study of International Relations*, (London and New York: Harper Torchbooks, 1964). Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, (New York: Knopf, 1973). Kenneth Waltz, *Theory of International Relations*, (Reading, Massachusetts: Addison-Webley, 1979). Robert Gilpin, *War and Change in World Politics*, (Cambridge: Cambridge University Press, 1981). John J. Mearsheimer, "The false promise of international institutions," *International Security* vol. 19 no. 3 (1994): 5-49.

⁶⁸ John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: Norton, 2001).

⁶⁹ Kenneth Waltz, *Man, the State and War*, (New York: Columbia University Press, 2001).

⁷⁰ Oran R. Young, "Regime dynamics: the rise and fall of international regimes," *International Organization* vol. 36 no. 2 (1982): 277-297.

⁷¹ Andreas Hasenclever, Peter Mayer, and Volker Rittberger, *Theories of International Regimes*, (Cambridge and New York: Cambridge University Press, 1997).

⁷² Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, (Princeton: Princeton University Press, 1984).

⁷³ Abram Chayes and Antonia H. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*, (Cambridge: Harvard University Press, 1995):2-5.

behaviour that constrain themselves but also other states, increasing the political costs of defection for states that do not comply and constraining non participants.⁷⁴ States cooperate through multilateral institutions to promote order in an anarchic world, where shared rules create predictability and increase interdependence. Through international law, interstate conflict is more costly and less likely. Cooperation does not always prevail, not because conflict is inevitable, but as a result of flaws in procedures and institutional design, or due to more diffused power distribution among states which has opened up new bargaining tactics for weaker players that can lead to gridlocks.⁷⁵ As cooperation through international law becomes an established form of behaviour, treaty-making becomes entrenched as “best practice” and leads to more treaty-making through path dependency.⁷⁶

1.1.3. Treaty-making reflects and shapes state behaviour

Turning to agency rather than structure, state behaviour is seen as the result of changing ideas, values and learning over time. Constructivist scholars advance this view, shaped by the twin understandings of the social construction of knowledge and the construction of social reality.⁷⁷ How states perceive the system changes how they behave.⁷⁸ Rules are less important than what states make of them.⁷⁹ States behaviour follows a logic of appropriateness, ‘what is the right thing to do’,⁸⁰ rather than consequence, ‘what will the pay-off be’.⁸¹

Reputational concerns can lead states to rethink their preferences to earn their place as a respectable member of international society. For example, state practice and the use of weapons of mass destruction has gone beyond what states have

⁷⁴ Miles Kahler, "Multilateralism with small and large numbers," *International Organization* vol. 46 no. 3 (1992): 681-708.

⁷⁵ J. P. Singh, "Diffusion of Power and Diplomacy: New Meanings, Problem Solving, and Deadlocks in Multilateral Negotiations," *International Negotiation* vol. 20 no. 1 (2015): 73-88.

⁷⁶ Douglass C. North, "A transaction cost theory of politics," *Journal of Theoretical Politics* 2.4 (1990): 355-367. Taylor C. Boas, "Conceptualizing continuity and change: The composite-standard model of path dependence," *Journal of Theoretical Politics* vol. 19 no. 1 (2007): 33-54. Paul Pierson, "Increasing returns, path dependence, and the study of politics," *American Political Science Review* vol. 94 no. 2 (2000): 251-267.

⁷⁷ Emmanuel Adler, "Constructivism in International Relations: Sources, Contributions, and Debates," in *Handbook of International Relations*, Walter Carlsnaes, Thomas Risse-Kappen and Beth A. Simmons (eds.) (London: SAGE Publications, 2012): 112-144.

⁷⁸ Charles Krauthammer, "The Unipolar Moment," in *Foreign Affairs* vol. 70 no. 1 (1991): 23-34.

⁷⁹ Alexander Wendt, "Driving with the Rearview Mirror: on the Rational Science of Institutional Design," *International Organization* vol. 55 no. 4 (2001): 1047-1049.

⁸⁰ Martha Finnemore and Kathryn Sikkink, "International norm dynamics and political change," *International Organization* vol. 52 no. 4 (1998): 887.

⁸¹ Alexander Wendt, "Driving with the Rearview Mirror: on the Rational Science of Institutional Design," *International Organization* vol. 55 no. 4 (2001): 1019-1049.

agreed to as part of formal international treaties, reflecting the role of stigma in framing how a country seeks to be portrayed in the world.⁸²

From this viewpoint, multilateral treaties are part of a broader system at play, namely regimes. Regimes are made up of legal, cultural and institutional norms that combine to shape expectations of state behaviour.⁸³ Regimes are the edifice of international relations, reflecting the parameters and the perimeters of global governance⁸⁴ and setting the benchmark for right and wrong.⁸⁵

Since the 1990s, arms control regimes in conventional weapons have brought into play multilateral rules, standards of behaviour and moral prescriptions. The development of these regimes has codified existing norms, drawing in foundational elements of international humanitarian law into weapons treaties, and established new norms, expectations and subsequent understandings of states on aspects such as victim assistance.⁸⁶ These sets of rules have been created and implemented by national governments, through institutional arrangements within and between them, brokered and overseen by international organisations such as the UN.⁸⁷ State engagement in these cooperative processes and their normative outcomes indicates that a norm-centred explanation of state behaviour is plausible.

1.1.4. Middle powers exercising agency through treaty-making

Observing that non great powers have championed every conventional weapons treaty signed since the end of the Cold War, often in contradiction to the wishes of great powers, the question of why they do so requires investigation. In this sense, “non-great powers” merely refers to states other than great powers. To paraphrase Canadian Prime Minister Mackenzie King, great powers are only great because of the power they possess.⁸⁸ Canada and Australia have played a prominent role in arms control over the past twenty years and are often referred to as the archetypal

⁸² Lesley Wexler, “The International Deployment of Shame, Second-Best Responses, and Norm Entrepreneurship: The Campaign to Ban Landmines and the Landmine Ban Treaty,” *Arizona Journal of International and Comparative Law*, vol. 20 no. 1 (2003): 561-606.

⁸³ John Gerard Ruggie, “International regimes, transactions, and change: embedded liberalism in the post-war economic order,” *International Organization* vol. 36 no. 2 (1982): 379-415. Stephen Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” in *International Regimes* Stephen Krasner (ed) (Ithaca, NY: Cornell University Press, 1983): 1-22. Oran R. Young, *International cooperation: Building Regimes for Natural Resources and the Environment*, (Ithaca: Cornell University Press, 1989): 13.

⁸⁴ John Gerard Ruggie, “International regimes,” 412.

⁸⁵ Ronald L. Jepperson, Alexander Wendt and Peter J. Katzenstein, “Norms, Identity and Culture in National Security,” in *The Culture of National Security: Norms and Identity in World Politics*, Peter J. Katzenstein (ed), (New York: Columbia University Press, 1996): 71.

⁸⁶ Marie Le Chevrier, “Introduction,” *Arms Control Policy: A Guide to the Issues*, (Santa Barbara, Praeger Security International, 2012): 5.

⁸⁷ Paul Viotti, “Introduction,” *Arms Control and Global Security: A Document Guide*, (Santa Barbara, California: ABC-CLIO, 2010).

⁸⁸ Carsten Holbraad, *Middle powers in international politics*, (New York: St. Martin’s Press, 1984): 57.

Western middle powers.⁸⁹ This suggests a predisposition to multilateral treaty-making by this type of state. Middle power diplomacy notionally encompasses multilateralism,⁹⁰ and is motivated by power, prestige, pay-off and principles. On security issues, these drivers can vary as a function of the availability of resources and the level of threat posed by the regional environment.⁹¹ Referring to the Cold War period, the term designates as middle powers those states that mediated between the great powers.⁹² Since the end of this period, this term has taken on new meanings. Today, the source of influence for these states seeking to 'navigate the middle' is said to be soft power, or the ability to persuade others.⁹³ Soft power stems from values, principles and identity. By its very formulation, middle power reflects a structural explanation of state behaviour, although most middle power scholars refer to behavioural and identity characteristics rather than power. These perspectives are briefly explored below.

The behavioural perspective defines middle powers as states that pursue multilateral solutions to international problems, embrace compromise positions on international disputes and embody notions of "good international citizenship" to guide their diplomacy.⁹⁴ States develop ethically motivated foreign policy on issues of 'common good' where they have sufficient clout to implement them while accounting for alliance relationships and in the process generating diplomatic capital and even economic benefit. The pursuit of national material interest could in certain instances be superseded by the spirit of internationalism.

This concept has been applied to Canada and Australia's role on nuclear disarmament, among others.⁹⁵ Canadian diplomat John Holmes coined the

⁸⁹ Andrew Fenton Cooper, Richard A. Higgott, and Kim Richard Nossal, *Relocating Middle Powers: Australia and Canada In A Changing World Order* vol. 6, (Vancouver: University of British Columbia Press, 1993).

⁹⁰ Andrew Carr, "Is Australia a middle power? A systemic impact approach," *Australian Journal of International Affairs* vol. 68 no. 1 (2014): 72.

⁹¹ Ralf Emmers and Sarah Teo, "Regional security strategies of middle powers in the Asia-Pacific," *International Relations of the Asia-Pacific*, vol. 15 no. 2 (2015): 205.

⁹² Richard A. Matthew, "Middle power and NGO partnerships: the expansion of world politics," in *Reframing the agenda: the Impact of NGO and Middle Power Cooperation in International Security Policy*, Ken Rutherford, Stefan Brem, and Richard Anthony Matthew, (eds.) (Westport: Praeger Publishing, 2003): 6.

⁹³ Joseph S. Nye Jr, "Public diplomacy and soft power," *The Annals of the American Academy of Political and Social Science* vol. 616 no. 1 (2008): 94-109.

⁹⁴ The term "good international citizens" was coined by the former Australian Foreign Minister Gareth Evans in the late 1980s. Andrew Fenton Cooper, Richard A. Higgott and Kim Richard Nossal, *Relocating middle powers: Australia and Canada in a changing world order* vol. 6. (Vancouver: University of British Columbia Press, 1993).

⁹⁵ Marianne Hanson, "Australia and nuclear arms control as 'good international citizenship,'" (*Working Paper*, Department of International Relations, Research School of Pacific and Asian Studies, Australian National University, Canberra, 1999). Una Becker-Jakob, Gregor Hofmann, Harald Muller and Carmen Wunderlich, "Good International Citizens: Canada, Germany and Sweden," in

“middle-powermanship” variant, emphasising “discretion” and “flexibility” in the name of order and predictability by forging consensus and maintaining international order. Overall, the behavioural definition of middle power states as states that behave in a middle power way is tautological and does not clarify how state preferences are determined.⁹⁶

Turning to middle power as an element of state identity, states often seek to portray themselves in “the language of enlightenment or innovation”.⁹⁷ Political actors use this term as a rhetorical device to reach out to domestic publics or as a form of normative idealism that they wish to project.⁹⁸ In this way, by choosing to embrace the label of middle power, states are opting for a particular set of values and ideals that they aspire to hold. For Canada, these attributes include “helpful fixer”, “honest broker” and “peacemaker”.⁹⁹ For Australia, political leaders on the left of politics have used the term middle power since 1945, while on the conservative side, this is eschewed in favour of “considerable power” or “top 20 nation”.¹⁰⁰ Beyond states defining themselves as middle powers, other actors engage in labelling for instrumental purposes, for example when NGOs appeal to states by using a hook that has a normative or moral positive connotation.¹⁰¹

A systemic impact definition draws in both behaviour and identity while acknowledging size in defining middle powers. Here, middle powers are states that yield enough influence to lead change in one area of world affairs while also protecting their core interests. Drawing from Thucydides, “the strong do what they want and the weak suffer what they must”, Carr views middle powers as those that have the capacity to avoid suffering at the hands of the strong without necessarily being capable of coercing others.¹⁰² This outcome-based approach sees the power of middle powers grounded in degrees of influence. In the case of Australia, Hugh

Norm Dynamics in Multilateral Arms Control: Interests, Conflicts, and Justice, Carmen Wunderlich and Harald Muller (eds.), (Athens and London: University of Georgia Press, 2013): 207-243.

⁹⁶ Carl Ungerer, “The “Middle Power” Concept in Australian Foreign Policy,” *Australian Journal of Politics & History* vol. 53 no. 4 (2007): 538-551.

⁹⁷ Matthew Sussex, “The impotence of being earnest? Avoiding the pitfalls of ‘creative middle power diplomacy’,” *Australian Journal of International Affairs* vol. 65 no. 5 (2011): 545.

⁹⁸ David Scott, “Australia as a Middle Power: Ambiguities of Role and Identity,” *Seton Hall Journal of Diplomatic & International Relations* vol. 14 (2013): 111.

⁹⁹ Andrew Fenton Cooper, Richard A. Higgott, and Kim Richard Nossal (eds.), *Relocating Middle Powers: Australia And Canada In A Changing World Order* vol. 6 (Vancouver: University of British Columbia Press, 1993).

¹⁰⁰ Jeffrey Robertson, “Middle-Power Definitions: Confusion Reigns Supreme,” *Australian Journal of International Affairs* vol. 71 no. 4 (2017): 368.

¹⁰¹ Carl Ungerer, “The “Middle Power” Concept in Australian Foreign Policy,” *Australian Journal of Politics & History* vol. 53 no. 4 (2007): 549.

¹⁰² Andrew Carr, “Is Australia a middle power? A systemic impact approach,” *Australian Journal of International Affairs* vol. 68 no. 1 (2014): 78.

White caveats this view by asking of how much Australia has indeed accomplished as Australia's largest successes were backed by the US.¹⁰³

1.1.5. Treaty-making as a normative activity

Treaty-making can be understood as the reflection of a community of states, who together seek purposes 'beyond themselves' and are guided by ideals of ethical behaviour in developing international law.¹⁰⁴ Multilateral negotiations and the common rules, values and institutions they produce are seen through the lens of morality.¹⁰⁵ Here, states speak the common language of diplomacy and seek to fulfil their civic obligations to maintain the stability of the international system.¹⁰⁶ Using this same logic, states can also be said to instrumentalise multilateral negotiations to legitimise structures that entrench power imbalances between the West and the developing world or along gendered lines. These viewpoints are explored below.

For example, on cluster munitions, the Irish government publicly aligned itself with civil society in international talks. This has been analysed as a form of co-optation designed to legitimise structures within the international system.¹⁰⁷ A Marxist analysis would instead point to negotiated outcomes being determined by indicators such as power, wealth and imperialism.¹⁰⁸

Another lens through which to view negotiations that touch on security matters is through the gendered perspective that critical feminist scholars adopt, both in terms of the referent object of security and its scope.¹⁰⁹ At a multilateral negotiations level, they might see outcomes as a reflection of an imbalanced world, or they might analyse, at the negotiation table level, the gender of negotiators around the table as an indicator of the types of outcomes achieved.¹¹⁰

Some contend that conventional arms treaties are mere smokescreen measures, where predictability through rules makes it easier for exporting states and importing states to go about their business. If a regime contains elements that

¹⁰³ Hugh White, "Power Shift: Rethinking Australia's Place in the Asian Century," *Australian Journal of International Affairs* vol. 65 no. 1 (2011): 83.

¹⁰⁴ Hedley Bull, "International Law and International Order", in *The Anarchical Society*, Hedley Bull, (London: Palgrave Macmillan, 1977): 139.

¹⁰⁵ Hedley Bull, "Arms Control and World Order," *International Security* vol.1 no. 1 (1976): 3-16.

¹⁰⁶ Andrew Linklater, "What is a Good International Citizen?," *Ethics and Foreign Policy* Paul Keal (ed) (St Leonards: Allen & Unwin, 1992): 21-22.

¹⁰⁷ Diana O'Dwyer, "Banning Cluster Munitions and Legitimising the International System: The Role of the Irish Government and NGOs," *Irish Studies in International Affairs* vol. 25 (2014): 137-164.

¹⁰⁸ Ruth Rikowski, "A Marxist Analysis of the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights," *Policy Futures in Education* vol. 4 no. 4 (2006): 407.

¹⁰⁹ Eric M. Blanchard, "Gender, International Relations, and the Development of Feminist Security Theory," *Signs*, Vol. 28 no. 4 (2003): 1289.

¹¹⁰ Jens Mazei, Joachim Huffmeier, Philipp Freund, Alice Stuhlmacher, Lena Bilke and Guido Hertel, "A Meta-Analysis on Gender Differences in Negotiation Outcomes and Their Moderators," *Psychological Bulletin* vol. 141 no. 1 (2015): 85.

merely reflect pre-existing preferences, then rather than constraining or shaping state behaviour, they entrench the state of play and could conceivably slow the evolutionary process altogether.¹¹¹

1.2. Gaps and insights

As this section has shown, international relations offers different perspectives on why states negotiate multilateral arms control treaties. While realists look to structural elements of the international system measured in hard power terms, liberalism offers up an interest-based explanation where the give-and-take of international rules is driven by rationalist calculations. Constructivists instead explain new forms of cooperation by looking at knowledge and knowledge development and the possibility to structurally alter the international system. Within this approach, the explanatory power of norms and principled behaviour has become a dominant focus of scholarly attention. As examined above, while each of these approaches offers insights to this thesis, none provides a holistic frame through which state behaviour can be understood all of the time.

The realist approach suggests that outcomes in multilateral negotiations are determined by the most dominant states.¹¹² It also suggests that the decline of hegemonic leadership would lead to fewer treaties. However, treaties have continued to be negotiated regardless of changes in American hegemony, bipolarity in the Cold War or the emergence of a post Cold War era. This seems to discredit the realist approach in regard to conventional weapons treaty-making.

Turning to liberal internationalism as the rational pursuit of self-interest through cooperation, while this explains the increase in treaties, it does not illuminate how the same state has engaged differently in conventional weapons treaty-making over time when material features have remained constant.

The agency-centred constructivist approach provides a more satisfactory explanation for state behaviour than structural approaches. However, it is less interested in the process of why certain negotiating processes are championed and not others by the same states. In the context of arms control, the focus of attention is on what happens once norms are codified, cascade and then decay,¹¹³ rather

¹¹¹ Matthew Fuhrmann and Yonatan Lupu, "Do Arms Control Treaties Work? Assessing the Effectiveness of the Nuclear Nonproliferation Treaty," *International Studies Quarterly* vol. 60 no. 3 (2016): 532.

¹¹² Robert Gilpin, "Three ideologies of political economy," *The Political Economy of International Relations* Robert Gilpin and Jean M. Gilpin (eds), (Princeton: Princeton University Press, 1987): 52. Charles P. Kindleberger, "Dominance and leadership in the international economy," *International Studies Quarterly* vol. 25 no. 2 (1981): 244.

¹¹³ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* vol. 52 no. 4 (1998): 910.

than how certain norms take hold or where they come from.¹¹⁴ Outcomes of negotiations are the starting point rather than the end point of analysis, which limits the explanatory power of exploring irregularities and regularities between states and across time in the development of those outcomes.

While middle power theories are useful in drawing in agency and intentionality, it is implausible to claim that states that champion international talks on conventional weapons are motivated solely by their status, either perceived or sought. While acknowledging that middle powers have championed these processes, little analytical insights can be gained beyond this observation.

Critical analyses of conventional arms treaties and multilateral negotiations provide useful alternative viewpoints on state preferences and motivations, in particular when they suggest analysts should “follow the money” and examine “who benefits and how”. Again, these perspectives do not provide a plausible picture that accounts for state preferences all the time and in every circumstance.

Drawing together the five strands of theoretical insights from international relations surveyed above, this thesis offers a useful testing ground to analyse which approach, or approaches, help explain state behaviour and state motivation writ large during negotiating cycles. To unpack further how negotiated outcomes are arrived, it is vital to add a further layer of analysis, namely to ask who negotiates treaties and to explore negotiation as a diplomatic practice.

2. Diplomatic studies approaches to why and how states negotiate treaties

Multilateral negotiations are a state-centred form of diplomatic practice, where national interests are pursued by agents of the state and other diplomatic actors through statecraft and strategy.¹¹⁵ Flipping this equation around, two components emerge. Foreign policy is formed in national capitals and is then implemented internationally by diplomats. Foreign policy analysis provides core insights that fill in some of the details of how negotiating agendas are set. The field of diplomatic studies sheds further light on how diplomacy helps achieve negotiated outcomes, through the three core practices of diplomacy, namely representation, negotiation

¹¹⁴ Matthias Hofferberth and Christian Weber, "Lost in Translation: A Critique of Constructivist Norm Research," *Journal of International Relations and Development* vol. 18 no. 1 (2015): 80.

¹¹⁵ Rebecca Adler-Nissen, "Diplomatic Agency," in *The SAGE Handbook of Diplomacy*, Costas M. Constantinou, Pauline Kerr and Paul Sharp (eds.), (London: SAGE Publications, 2016): 92-94.

and communication.¹¹⁶ The different insights from this field are surveyed below along with the gaps they present.

2.1. Schools of thought

This section focuses on five theoretical insights that are useful in understanding the case studies observed in this thesis.

2.1.1. Negotiations as an act of statehood

Negotiating is an entrenched diplomatic practice, with recorded instances dating back to at least the 7th century BC, when Iberian traders cultivated contacts with Phoenicians and Etruscans off the coast of modern-day Catalonia, Spain.¹¹⁷ The archetypal act of negotiations is treaty-making. Spanning issue and region, there has been an exponential growth in treaties over the past 150 years.¹¹⁸ Treaties are more prevalent than ever, whether they lead to system-defining agreements or merely items in the day-to-day business of world politics.¹¹⁹ Negotiation of treaties takes place in established locations, has permanent personnel¹²⁰ and is most visible during diplomatic conferences with its stately minuet of flags¹²¹ and ritualised phrases.¹²² While national diplomatic services are routinely subjected to financial cut backs, permanent missions at the United Nations in New York, Geneva, Vienna, Nairobi or Addis Ababa are rarely eliminated altogether.¹²³

The enduring nature of treaty-making is tied to the way in which it enacts statehood, which it does in two ways. Adam Watson signals the duality of negotiations with the terms *raison d'état* and *raison de système*.¹²⁴ States signal their sovereignty through the act of negotiating treaties. States shape their obligations as members of the international society by adopting and signing treaties. This is done by diplomats as agents of states, negotiating, drafting and on

¹¹⁶ Halvard Leira, "A Conceptual History of Diplomacy," in *The SAGE Handbook of Diplomacy*, Costas M. Constantinou, Pauline Kerr and Paul Sharp (eds.), (London: SAGE Publications, 2016): 36.

¹¹⁷ Denise Demetriou, *Negotiating identity in the Ancient Mediterranean*, (New York: Cambridge University Press, 2012): 31.

¹¹⁸ Herman Van der Wusten, Robert A. Denemark, Matthew Hoffmann and Hasan Yonten, "The Map Of Multilateral Treaty-Making 1600–2000: A Contribution To The Historical Geography Of Diplomacy," *Tijdschrift voor economische en sociale geografie* vol. 102 no. 5 (2011): 512.

¹¹⁹ Catherine Brölmann, "Typologies and the 'Essential Juridical Character' of Treaties," in *Conceptual and Contextual Perspectives on the Modern Law of Treaties*, M Bowman and D Kritsiotis (eds), (Cambridge University Press, forthcoming): 2.

¹²⁰ Vincent Pouliot, "Diplomats as permanent representatives: The practical logics of the multilateral pecking order," *International Journal* vol. 66 no. 3 (2011): 543.

¹²¹ Phillip R. Trimble, "Arms Control and International Negotiation Theory," *Stanford Journal of International Law* vol. 25 (1988): 549.

¹²² Christer Jönsson and Martin Hall, "Communication: An Essential Aspect of Diplomacy," *International Studies Perspectives* vol. 4 no. 2 (2003): 199.

¹²³ Victor-Yves Ghebali, "L'évolution du phénomène des missions permanentes à Genève," in *Multilateral Diplomacy: The United Nations System at Geneva : a Working Guide*, Jacques Lemoine, M.A. Boisard and Evgeny M. Chussudovsky (eds.) (The Hague: Kluwer Law International, 1998): 39.

¹²⁴ Adam Watson, *Diplomacy: the Dialogue between States*, (London: Eyre Methuen, 1982): 108, 219.

occasion even signing treaties as agents acting on behalf of heads of states. In arms control, since the 1990s, there has been a multiplication of instruments that set out rules and standards of behaviour. New treaties go beyond the scope of traditional arms control, extending states' obligations and touching on humanitarian concerns and drawing in human rights law.¹²⁵ New types of diplomatic actors beyond the state have shaped the substance and progress of treaties and are increasingly being drawn into treaty monitoring and verification.¹²⁶ In parallel to established processes under the United Nations disarmament umbrella, ad hoc processes are also emerging such as the Ottawa and Oslo Processes as examined in this thesis. Decision-making processes are breaking with the traditional mould of consensus and opening up to majority rules, even within the confines of the UN. This was the case of the adoption of the ATT, approved by majority in the UN General Assembly after three states blocked consensus during the second diplomatic conference.¹²⁷

2.1.2. Policy-making leads to treaty-making

Diplomacy is nested within the national political system in which it operates.¹²⁸ Before negotiations commence at the multilateral level, many streams of work have already come together. The negotiation process starts with *one's self* as N+1, for example to establish a common policy within a government department.¹²⁹ Different government agencies can be involved, with coordination and procedures that can draw in legislative, executive and even judicial branches. Multiple overlapping issues are in play across defence, trade, foreign affairs and aid policy that bring together variable coalitions of bureaucratic actors in multiple ministries in capital. Different goals along the spectrum of disarmament to free trade are pursued through competing strategies towards or away from legal instruments, fuelled by competing strategic interests and moral imperatives.

Upstream preparatory work prior to finalising negotiation briefs can span months or years (as in the case of trade agreements).¹³⁰ To arrive at diplomatic conferences, the technical complexity of arms control requires lengthy preparatory

¹²⁵ Bonnie Docherty, "Ending Civilian Suffering: The of Humanitarian Disarmament," *Austrian Review of International and European Law* vol. 15 no. 1 (2013): 1.

¹²⁶ Denise Garcia, "Explaining Global Norms: The Case of Negotiations on Restraining Conventional Arms," *International Negotiation*, vol. 22 no. 3 (2017): 399.

¹²⁷ Ban Ki-Moon, "Secretary-General's Statement on the Adoption of the Arms Trade Treaty," New York, April 2, 2013.

¹²⁸ Brian Hocking, "The Ministry of Foreign Affairs and the National Diplomatic System," in *Diplomacy in a Globalizing World*, Pauline Kerr and Geoffrey Wiseman (eds.) (Oxford University Press, 2013): 123.

¹²⁹ Carrie Menkel-Meadow, Keynote address, 6th International Biennial on Negotiation, November 17, 2016, Novancia Business School, Paris.

¹³⁰ Saadia Touval, "Multilateral Negotiation: An Analytic Approach," *Negotiation Journal* vol. 5 no. 2 (1989): 160.

work that is conducted in inter-sessional meetings over the months and years leading up to them. This extends back to the entire process of mobilisation and policy formulation within and between states.¹³¹ How foreign policy is developed is a central component to understanding negotiated outcomes, given the direct link between policy direction and negotiating instructions. This link flows in multiple directions, as diplomats provide primary inputs into the policy process when they exchange information with their ministries as policy is being shaped.

Analysing foreign policy as an outcome draws attention to its architects, individuals who operate in groups operating under bureaucratic structures. They have downstream effects on state policies, their reformulation and in time their convergence.¹³² Actor-specific theorising draws in aspects such as leadership and behavioural drivers such as cultural patterns and national attributes.¹³³ Putting human decision-makers under the microscope opens up new questions about structure and agency and the impact that power has on negotiated outcomes, not just at a state level but also at the level of individuals at the negotiation table. For example, on cluster munitions and the international role of Norway, the arrival of the Red-Green alliance to government, with former head of the Norwegian Red Cross Gave Stor in post as Minister for Foreign Affairs, brought multiple and diverse perspectives to policy formation and led to Oslo's progressive stance as an advocate for change.¹³⁴ This level of analysis also brings into the frame how different bureaucratic units exercise influence within a single state.¹³⁵ The tensions between ministries, and within them, is a recurrent theme across conventional weapons treaty-making, notably between Ministries of Foreign Affairs and Ministries of Defense, and at the sub-systems level within Ministries of Defense between civilians and personnel with field experience.¹³⁶

2.1.3. Treaty-making as a nested activity

Noting that multilateral negotiators connect international and domestic levels through their dual roles both at home and abroad, within their ministries and

¹³¹ Keith Krause, "Multilateral diplomacy, norm building, and UN conferences: the case of small arms and light weapons," *Global Governance* vol. 8 (2002): 247.

¹³² Robert D. Putnam, "Diplomacy and Domestic Politics: the Logic of Two-Level Games," *International Organization* vol. 42 no. 3 (1988): 427.

¹³³ Valerie Hudson, "Foreign Policy Analysis: Actor-Specific Theory and the Ground of International Relations," *Foreign Policy Analysis* vol. 1 no. 1 (2005): 2-3.

¹³⁴ Margarita H. Petrova, "Small States in Humanitarian Norm Making," in *Power in a Complex Global System*, Louis W. Pauly and Bruce W. Jentleson (eds.) (London and New York: Routledge, 2014): 199.

¹³⁵ Morton Halperin and Priscilla Clapp, "Preface," in *Bureaucratic Politics and Foreign Policy Second Edition*, Morton Halperin and Priscilla Clapp (eds.), (Washington DC: Brookings Institution Press, 2006): vii.

¹³⁶ Leon V. Sigal, *Negotiating Minefields: the Landmines Ban in American Politics*, (New York: Routledge, 2006): 94-96.

around the international negotiating table, models that capture this dichotomy have a natural fit when analysing negotiated outcomes.

Two-level games, first developed by Putnam, hinge on government agents who simultaneously address domestic audiences at home and state actors at the negotiating table abroad.¹³⁷ Governments want to satisfy domestic pressures while limiting negative consequences of their actions internationally.¹³⁸ The framework combines elements of a domestic interest-based explanation of state behaviour and of an international bargaining explanation of state behaviour.

Related to Putnam's theory is the concept of boundary role conflict, a dual conceptualization of the role of state diplomats as both bargainer and representative.¹³⁹ This suggests the duality of the negotiator, responding to external and internal audiences. While monitoring the other side for evidence of movement, they are also monitoring their own side for evidence of preferences. On the home front, there are often competing preferences between ministries and competing claims on negotiating positions, both between departments (defense and foreign ministries on arms control) and within departments (civil servants in contact with international counter-parts vs domestic constituencies).¹⁴⁰ The negotiator weighs up different claims and builds a package that is acceptable to the other side and to their bureaucracy. These two processes require different interactions and sequencing, and tend to occur simultaneously, as exemplified by phone calls to capital between negotiating sessions.¹⁴¹

Both of these concepts, two-level games and boundary role conflict, are useful in drawing in the policy element of the external context and the internal context. Analysis of humanitarian arms control requires an additional contextual aspect, namely military alliances, to provide full explanatory power.

This aspect is drawn in through a further analytical framework, Kingdon's 'three streams' model of public policy, which adds a temporal dimension to the evolutionary aspect of long-running negotiations. This model zooms in on three process streams, policy problems, policy solutions, and political context.¹⁴² This approach was adapted by Tomlin to analyse the Ottawa Process, bringing together

¹³⁷ Robert D. Putnam, "Diplomacy and Domestic Politics", 434.

¹³⁸ Robert D. Putnam, "Diplomacy and Domestic Politics", 435.

¹³⁹ Daniel Druckman, "Boundary role conflict: Negotiation as dual responsiveness," *Journal of Conflict Resolution* vol. 21 no. 4 (1977): 641.

¹⁴⁰ David A. Lax and James K. Sebenius, "Thinking coalitionally: party arithmetic, process opportunism, and strategic sequencing," in *Negotiation Analysis* (Ann Arbor: the University of Michigan Press, 1991): 189.

¹⁴¹ Daniel Druckman, "Boundary role conflict", 660.

¹⁴² John Kingdon, *Agendas, Alternatives, and Public Policies* 2nd Edition, (New York: Longman, 2003).

policy analysis and international negotiations from pre-negotiation through to outcome. Breakthroughs in the Ottawa Process occurred when the three streams converged in Ottawa and created a window of opportunity to break the deadlock in multilateral talks in Geneva through a Canadian initiative.¹⁴³ This three-component policy framework of the domestic context provides a constructive way in which to understand the external aspects of negotiations.

2.1.4. Negotiating horizontally

The multiplication of new types of actors in arms control diplomacy today has been held up to be a new form of diplomacy. The traditional model of diplomacy was organised around small groups of elites within bureaucracies congregating in international forums. The 'guild' or club model of state diplomacy was built around diplomats as gatekeepers of the international system.¹⁴⁴ In disarmament diplomacy today, this model has been replaced by networks of experts and advocates across governments, civil society and international organisations.¹⁴⁵

Working methods are changing. Diplomats are leveraging their ability to connect nodes of activity in multiple locations within their governments and the broader community beyond national borders.¹⁴⁶ Problem-solving individuals have reshaped pre-existing practices.¹⁴⁷ They are finding ways to circumvent institutional hurdles, such as consensus decision-making, and transmitting ideas across the world and between worlds, spanning the government-non government divide via bilateral, multilateral and poly-lateral diplomacy.¹⁴⁸ These 'agents of change', also known as

¹⁴³ Brian Tomlin, "On a Fast-Track to a Ban: The Canadian Policy," *Canadian Foreign Policy Journal* vol. 5 no. 3 (1998): 19.

¹⁴⁴ Alan K. Henrikson, "Diplomacy for the 21st Century: Re-crafting the Old Guild," *Wilton Park Current Issues in International Diplomacy and Foreign Policy* vol. 1. (London: The Stationery Office, 1999).

¹⁴⁵ Jorge Heine, "On the Manner of Practicing the New Diplomacy," *Working Paper No. 11 Reshaping Diplomacy*, (Waterloo: Centre of International Governance Innovation, 2006): 5.

¹⁴⁶ Anne-Marie Slaughter, *The Chessboard and the Web: Strategies of Connection in a Networked World*, (New Haven and London: Yale University Press, 2017). Anne-Marie Slaughter, "Global Government Networks, Global Information Agencies, and Disaggregated Democracy," *Michigan Journal of International Law* vol. 24 no. 4 (2003): 1041.

¹⁴⁷ J. P. Singh, "Diffusion of Power and Diplomacy: New Meanings, Problem Solving, and Deadlocks in Multilateral Negotiations," *International Negotiation* vol. 20 no. 1 (2015): 78.

¹⁴⁸ Geoffrey Wiseman, 'Polylateralism' and New Modes of Global Dialogue, *Discussion Papers No. 59* (Leicester: Leicester Diplomatic Studies Programme, 1999): 51.

'norm entrepreneurs'¹⁴⁹ or 'policy entrepreneurs',¹⁵⁰ can be found in policy processes, internationally as well as in domestic sites of governance. Loosely organised in transnational networks¹⁵¹ across policy and government,¹⁵² these actors share knowledge, expertise and principled views on technical and complex issues.¹⁵³ These epistemic communities formalise "ways of knowing", generating information in an area of expertise and then diffusing it. Ruggie coined the term 'epistemic community' after Michel Foucault, to refer to "a set of shared symbols and references, mutual expectations and a mutual predictability of intention".¹⁵⁴

The root of the term, episteme, refers to knowledge. Members of epistemic committees are present for example on national committees that look at international humanitarian law, or as members of organisations such as the Pugwash Group which bring together eminent international scientists who influence domestic policymaking on nuclear disarmament.¹⁵⁵ Adler highlighted that epistemic communities not only constituted new regimes, but that regimes themselves had transformative effects in empowering new actors, triggering new epistemic communities in turn.¹⁵⁶

While the presence of civil society in these networks is noteworthy as a new feature of diplomacy, diplomats remain central to reaching negotiated outcomes. States are signatories to treaties and therefore their agents remain the key actors in processes. These processes, while spurred on in their early phases by NGOs and organisations outside the state,¹⁵⁷ were concluded on diplomats' watch. To be sure, diplomatic actors are now more varied and diverse than during the Cold War.

¹⁴⁹ Ethan A. Nadelmann, "Global Prohibition Regimes: the Evolution of Norms in International Society," *International Organization* vol. 44 no. 4 (1990): 479–526. Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* vol. 52 no. 4 (1998): 887-917. Carmen Wunderlich, "Theoretical approaches in norm dynamics," in *Norm Dynamics in Multilateral Arms Control: Interests, Conflicts, and Justice*, Carmen Wunderlich and Harald Muller (eds.), (Athens and London: University of Georgia Press, 2013): 20-47. Maria Rost Rublee, *Nonproliferation Norms: Why States choose Nuclear Restraint*, (Athens and London: University of Georgia Press, 2009).

¹⁵⁰ Mark Bevir, Rod A.W. Rhodes and Patrick Weller, "Traditions of governance: interpreting the changing role of the public sector," *Public Administration* vol. 81 no. 1 (2003): 1-17.

¹⁵¹ Margaret E. Keck, and Kathryn Sikkink, "Transnational advocacy networks in international and regional politics," *International Social Science Journal* vol. 51 no. 159 (1999): 89-101.

¹⁵² Wolfgang H. Reinicke, "The Other World Wide Web: Global Public Policy Networks." *Foreign Policy* no. 117 (1999): 53.

¹⁵³ John Gerard Ruggie, *Constructing the World Polity*, (Taylor and Francis, 1998): 55-56.

¹⁵⁴ Peter M. Haas, "Introduction: Epistemic Communities and International Policy Coordination," *International Organization* vol. 46 no. 1 (1992): 31.

¹⁵⁵ Andreas Antoniadou, "Epistemic Communities, Epistemes and the Construction of (World) Politics," *Global Society*, vol. 17 no. 1 (2003): 32.

¹⁵⁶ Peter M. Haas, "Introduction," 33.

¹⁵⁷ Denise Garcia, "Introduction", in *Disarmament Diplomacy and Human Security: Regimes, Norms and Moral Progress in International Relations*, Denise Garcia (London and New York: Routledge, 2011): 7.

States remain the central actors of high politics, of which conventional weapon treaty-making is one of its mainstays.

2.1.5. Knowledge-driven treaty-making

The humanitarian principle of ending civilian suffering is driving the development of a new kind of international diplomatic and legal practice- humanitarian disarmament law.¹⁵⁸ Humanitarian disarmament treaty-making since the Cold War has been fundamentally shaped by first-hand knowledge and expertise of the consequences of weapons systems, as seen in the intertwining of international humanitarian law within the Ottawa Treaty, the Convention on Cluster Munitions and the Arms Trade Treaty, as this thesis examines in detail.

Knowledge shared among diplomatic actors and civil society has become a determinant factor of regime formation through treaty negotiations.¹⁵⁹ Prominent weapons regimes cover weapons of mass destruction, such as nuclear weapons, chemical weapons, and biological and toxicological weapons, as well as conventional weapons, namely landmines, cluster munitions and the arms trade. These regimes are covered in detail in chapter two of this thesis. These treaties are referred to as cooperative security regimes, defined by their intrinsic moral purpose¹⁶⁰ and humanitarian focus.¹⁶¹ They are characterised by altruistic imperatives that humanise international security through the setting of principle, multilaterally agreed proscriptions.¹⁶² In conventional weapons, this new corpus is characterised by three types of provisions. Each instrument establishes absolute rules, provide remedial measures for victim assistance and prescribes a cooperative approach to implementation.¹⁶³

Recent negotiations have shifted in focus from traditional security interests to human security interests. This is captured in a series of contrasting activities, forums and actors. While traditional security led to efforts to control the use of weapons, through adjustments within existing disarmament forums, human security instead looks to stigmatise them and aims for radical change and is forum

¹⁵⁸ Bonnie Docherty, "Ending Civilian Suffering: The Purpose, Provisions, and Promise of Humanitarian Disarmament Law," *Austrian Review of International and European Law Online* vol. 15 no. 1 (2010): 11.

¹⁵⁹ Emanuel Adler and Peter M. Haas, "Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program," *International Organization* vol. 46 no. 1 (1992): 367.

¹⁶⁰ Harald Muller, "Introduction," in *Norm Dynamics in Multilateral Arms Control: Interests, Conflicts, and Justice*, Carmen Wunderlich and Harald Muller (eds.), (Athens and London: University of Georgia Press, 2013).

¹⁶¹ Neil Cooper and David Mutimer, "Arms Control for the 21st Century: Controlling the Means of Violence," *Contemporary Security Policy* vol. 32 no. 1 (2011): 7.

¹⁶² Denise Garcia, "Humanitarian security regimes," *International Affairs* vol. 91 no. 1 (2015): 59.

¹⁶³ Rebecca Johnson, "The United Nations and Disarmament Treaties," *UN Chronicle* vol. 51 no. 3 (2014).

agnostic.¹⁶⁴ Military utility drives the former, while humanitarian costs drive the latter.¹⁶⁵ The arms industry and defence policy makers influence the former, while the military with combat experience, foreign policy makers and activist civil society, influence the latter.¹⁶⁶ John Borrie, a former New Zealand disarmament diplomat and UN official, now a UNIDIR researcher, attributes the cut-through of humanitarian approaches to disarmament to the aggregation of data from diverse sources of information and the active presence of knowledge-sharing networks.¹⁶⁷

This change in approach was grounded in forms of knowledge, from first-hand accounts from the field of the humanitarian consequences of the use of weapons, to the emphasis on research to disprove conventional wisdom on the impact of weapons in conflict zones during and after hostilities have ceased, as well as through novel legal argumentation to reverse previously held principles of warfare and weaponry and challenge old mindsets.

2.2. Gaps and insights

This section has surveyed negotiation as a form of diplomatic practice and statecraft. This section argues that a straightforward analysis of the emergence of different forms of multilateral arms control treaty-making as a continuation of states exercising their sovereign prerogatives does not go far enough. The profound change in the nature of negotiated outcomes signals a rupture in how states are seeking to manage enmity and friendship in world politics,¹⁶⁸ in how they are changing the mediation of estrangement¹⁶⁹ and separateness.¹⁷⁰ From the perspective of policy formation, drawing in human decision-makers is a valuable insight from foreign policy analysis that adds a necessary, if partial, dimension to how negotiated outcomes are achieved. Viewing negotiation as a nested activity, for example through Kingdon's three streams model, helps identify particular moments in time and focus analytical attention on points that can be compared across multiple cases. This thesis expands on this approach by capturing the finer

¹⁶⁴ Patrick McCarthy, "Deconstructing Disarmament: The Challenge of Making the Disarmament and Arms Control Machinery Responsive to the Humanitarian Imperative", in *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action* John Borrie and Vanessa Martin Randin (eds), (Geneva: UNIDIR, 2005): 51

¹⁶⁵ Patrick McCarthy, "Deconstructing Disarmament", 52.

¹⁶⁶ Patrick McCarthy, "Deconstructing Disarmament", 59.

¹⁶⁷ John Borrie, "Rethinking Multilateral Negotiations: Disarmament as Humanitarian Action," in *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action* John Borrie and Vanessa Martin Randin (eds), (Geneva: UNIDIR, 2005): 21.

¹⁶⁸ Corneliu Bjola, "Understanding enmity and friendship in world politics: The case for a diplomatic approach," *The Hague Journal of Diplomacy* vol. 8 no. 1 (2013): 4.

¹⁶⁹ James Der Derian, "Mediating Estrangement: a Theory for Diplomacy," *Review of International Studies*, vol. 13 no. 2 (1987): 94.

¹⁷⁰ Paul Sharp, *Diplomatic Theory of International Relations* (New York: Cambridge University Press, 2009): 81.

details of the negotiating context, which helps strengthen the useful foundations foreshadowed by this model, as shown in chapter 2. Viewing negotiations on an expanded horizontal axis, namely reaching beyond the state as the principal agent of diplomacy, overstates the significance of the emergence of new methods of doing diplomacy in conventional arms control. Instead, a knowledge-driven perspective illuminates the connections between traditional and hybrid diplomacy and provides a more plausible explanation for the recent wave of disarmament treaties. For this perspective to hold, it must remain anchored in a state-centric framework, which allows for diplomats and negotiators to be considered through the lens of individuals motivated by ideas situated within loose communities of experts and civil society actors who are united in their intent to achieve negotiated outcomes that address real world problems.

Bringing together these different perspectives, a third level of analysis helps pinpoint which form of practice is in play at different points in time during negotiations. To draw under the microscope the complexities of negotiated outcomes, the field of negotiation analysis provides a rich and necessary complement to insights from international relations and diplomatic studies.

3. Negotiation analysis approaches to why and how states negotiate treaties

Negotiation analysis, which seeks to address how negotiated outcomes are arrived at, offers pathways to analyse the complexities of negotiations. To understand how negotiation outcomes are reached, what occurs around the table is of primary interest. Once diplomats cross the threshold of multilateral venues, while their negotiating positions have already been determined based on policy objectives from their capitals, the means and methods by which they then enact them has a determinant effect on outcomes.¹⁷¹

How negotiations evolve and the conditions under which they may experience breakthrough points is intimately linked to moves at the negotiating table, in the room and in the corridors of diplomatic conferences, where break-through points are path-dependently shaped by results of previous meetings.¹⁷² Negotiation level analysis provides foundational insights about areas to investigate to shine a light

¹⁷¹ Alisher Faizullaev, "Diplomatic interactions and negotiations," *Negotiation Journal* vol. 30 no. 3 (2014): 277.

¹⁷² Corneliu Bjola, "Negotiation Breakthrough Analysis: The Case of Climate Negotiations," *International Negotiation* vol. 19 no. 1 (2014): 148.

on how negotiated outcomes emerge. Different approaches are surveyed below along with the gaps they present.

3.1. Schools of thought

Five views from negotiation analysis on state-led treaty-making are now outlined.

3.1.1. Negotiation as process

Competing definitions of negotiation exist. All implicitly include the concept of process, ranging from the succinct 'giving something to get something',¹⁷³ to the complex, *a process in which explicit proposals are put forward for the purpose of reaching an agreement on an exchange or on the realisation of a common interest where conflicting interests are present.*¹⁷⁴

During the Cold War, when arms control negotiations brought together the USSR and the US, they were defined according to a bilateral formula, "autonomous entities seeking to reach a compromise on mutually accepted goals."¹⁷⁵ From the 1990s, the bilateral dynamic underwent a profound transformation by opening up to multilateralism. Bilateral and multilateral negotiations are distinct, far more than merely numerically. This is evident in the first study of multilateral negotiations, published in 1994, which highlighted six important dimensions, namely (1) multiple actors; (2) multiple issues; (3) diversity of roles; (4) consensus; (5) rules; and (6) coalitions of interests and positions.¹⁷⁶

This has created tension between the old and the new processes of negotiating arms control arrangements, where the legacy of the formal rules of procedure in UN disarmament forums and the informal practices of disarmament diplomats from the Cold War with its bipolar dynamic have at times created roadblocks for progress in the years since the 1990s with a more diffuse, multilateral power dynamic. This notably has led to ad hoc processes that have emerged outside the consensus-driven UN architecture.

In the case of weapons treaty-making, the UN through its various disarmament bodies had not lived up to its potential to create a platform for small powers to influence the development of principles, norms and rules on landmines and cluster munitions. Frustration with the lack of progress in forums such as the Conference on Disarmament (which has failed to agree on a working agenda for over a decade)

¹⁷³ I. William Zartman, "Common Elements In The Analysis Of The Negotiation Process," *Negotiation Journal* vol. 4 no. 1 (1988): 33.

¹⁷⁴ Fred Charles Iklé, *How Nations Negotiate*, (New York: Harper & Row, 1964).

¹⁷⁵ Phillip R. Trimble, "Arms Control and International Negotiation Theory," *Stanford Journal of International Law* vol. 25 (1988): 544.

¹⁷⁶ I. William Zartman, "Introduction", in *International Multilateral Negotiation: Approaches to the Management of Complexity*, I. William Zartman (ed.), (San Francisco: Jossey-Bass, 1994): 9.

and the Convention on Certain Conventional Weapons (whose review mechanisms are hampered by the practice of consensus decision-making) has created the impetus for progress outside of the UN. Nonetheless, regular meetings have created regular opportunities for interactions between national delegations and civil society on the margins of proceedings.

On small arms and light weapons, and the arms trade more broadly, political imperatives have often obstructed reaching agreement on collective action beyond political non-binding declarations such as the Programme of Action (POA) signed in 2001.¹⁷⁷ The yearly mandates agreed between 2006-2012 in the UN General Assembly were however crucial in the ATT treaty-making process, driven by core group states working together through their New York permanent missions and in capital. These aspects are examined in the case study chapters.

3.1.2. Complexity and multilateral processes

These layers of complexity are particularly apparent during international diplomatic conferences, one of the most complex negotiation types and a necessary step in the end-game of treaty-making.¹⁷⁸ In multilateral arms control, all 193 UN members can exercise a right of veto when processes adopt consensus decision-making and each is subject to intricate systems and sub systems level bargaining in their capitals. Arms control has implications for security, defence, trade, foreign affairs, aid and even sports (in the case of small arms). The diversity of roles that are played by state diplomats, civil society and international organisations such as the International Committee for the Red Cross (ICRC) or Human Rights Watch (HRW) varies according to the particular phase of negotiations and changes across time according to where the negotiating momentum lies and in particular how actors seek to shape the agenda and champion or block progress.¹⁷⁹

Consensus and rules of procedure more broadly are also the subject of intense negotiations, at times even overshadowing substantive debate, and can lead diplomatic talks to potential stalemate, as in the case of behind-the-scenes talks that delayed the start of 2012 Diplomatic Conference on the Arms Trade Treaty when two entities sought to redefine observer status privileges (Palestine and the Holy See). This is explored in more detail in chapter 5 of this thesis.

¹⁷⁷ Megan Dee, "Group Dynamics and Interplay in UN Disarmament Forums: In Search of Consensus," *The Hague Journal of Diplomacy* vol. 12 (2017): 159.

¹⁷⁸ Larry Crump and I. William Zartman 2003, "Multilateral Negotiation and the Management of Complexity," *International Negotiation* vol. 8, no. 1 (2003): 1-5.

¹⁷⁹ Brian Rappert, Richard Moyes, Anna Crowe and Thomas Nash, "The Roles of Civil Society in the Development of Standards around New Weapons and Other Technologies of Warfare," *International Review of the Red Cross, suppl. New Technologies and Warfare* vol. 94 no. 886 (2012): 769.

Coalitions of actors, opportunistic and enduring, substantive and strategic, are crucial to navigating the complexities of multilateral processes and set the tempo for progress and stalemates, notably in setting the battlelines between weapons producers and affected states in the case of cluster munitions and landmines. The thread that binds these six characteristics of multilateral arms control together is linkage between and across processes and actors.¹⁸⁰

3.1.3. Integrative approach to negotiations

Analysing how negotiations evolve at the multilateral table can start from different perspectives. How individuals behave, how strategic moves are made, how processes are followed and how power is exercised are four angles of analytical attack adopted by negotiation analysts.

Behavioural analysis looks at actors and the personality of individual negotiators. Strategic analysis calculates moves and their potential payoffs in game theoretic explanations most notably. The process perspective assumes that preferences of negotiating parties are fixed from the beginning and that any variations that do occur reflect changes in calculation and weighting of win-sets. The structural approach considers the number of parties, what power negotiators have and what they do with it through the actions undertaken and the resources that made them possible. Two forms of power are considered, the power to produce negotiations and the power to produce an outcome.¹⁸¹

Each perspective can help explain certain outcomes in diverse areas. An integrative approach brings all elements together to examine how actor preferences change over time. This temporal aspect is particularly important in negotiating cycles that occur over long periods of time, such as the seven-year track that led to the 2013 Arms Trade Treaty. Tracing outcomes back to their origins, notably stretching before negotiations begin, integrative analysis tracks changing preferences over time and breaks down negotiations into phases with corresponding changes in behaviour and outcome.

3.1.4. Negotiators as social actors

As a social activity invoking many processes, treaty-making does not begin from a blank slate. It is embedded in a social and organisational environment, made up of social actors who negotiate, represent and communicate within and between overlapping and intertwined structures that are fluid and evolving in structure and

¹⁸⁰ Larry Crump, "Toward a Theory of Negotiation Precedent," *Negotiation Journal* vol. 32 no. 2 (2016): 87.

¹⁸¹ I. W. Zartman and Jeffrey Z. Rubin, *Power and Negotiation*, (Ann Arbor: University of Michigan Press, 2000).

in preference.¹⁸² Interests, meaning and identity are constructed, deconstructed and reconstructed across cycles of talks, leading towards or away from treaties as outputs and feeding in to new negotiating cycles and tracks.

The 'shadow of the future' is always present in weapons treaty-making. Negotiators will likely cross paths over the course of their careers, particularly those with multilateral expertise. One disarmament process often leads to another, where networks of actors interact over time and over related issues.¹⁸³ The shared culture and language of diplomatic negotiations allows for cross-cultural communication with a minimum of unnecessary misunderstanding.¹⁸⁴ This conditions social interactions at the table and in the corridors of negotiating forums.¹⁸⁵ As interactions continue, growing trust makes it possible to move beyond transactional interactions and towards exchanges with more diffuse outcomes.¹⁸⁶ Prior impasses can leave a cloud hanging over future outcomes in the same way that shared successes can pave the way to future success.¹⁸⁷

The social aspect of negotiators, humans interacting with humans, driven by motivations that are not always rational and calculated, is critical.¹⁸⁸ Carrying this over to systemic analysis is fraught with methodological difficulties and pitfalls for researchers, the first of which is identifying primary data for comparative purposes. Acknowledging these barriers, it is nonetheless possible to record details of micro-level interactions and to strive for 'thick' descriptions of individual behaviour where they seem to plausibly explain breakthroughs or hurdles in talks, such as prior working relationships between diplomats indicating levels of trust or distrust.¹⁸⁹

¹⁸² Christer Jönsson, "Developing Social Relations: A Neglected Aspect of Negotiations," in *Négociation et transformations du monde* Christophe Dupont (ed.), (Paris: Negocia, 2007): 166.

¹⁸³ Larry Crump, "A temporal model of negotiation linkage dynamics," *Negotiation Journal* vol. 23 no. 2 (2007): 119.

¹⁸⁴ Christer Jönsson, "Relationships between Negotiators: A Neglected Topic in the Study of Negotiation," *International Negotiation* vol. 20 no. 1 (2015): 7.

¹⁸⁵ Keith Krause, "Multilateral diplomacy, norm building, and UN conferences: the case of small arms and light weapons," *Global Governance* vol. 8 (2002): 247.

¹⁸⁶ Robert O. Keohane, "Multilateralism: an agenda for research," *International Journal* vol. 45 no. 4 (1990): 734.

¹⁸⁷ Kathleen M. O'Connor, Josh A. Arnold and Ethan R. Burris, "Negotiators' bargaining histories and their effects on future negotiation performance," *Journal of Applied Psychology* vol. 90 no. 2 (2005): 350.

¹⁸⁸ Michele Griessmair, "Ups and Downs: Emotional Dynamics in Negotiations and Their Effects on (In)Equity," *Group Decision and Negotiation* vol. 26 no. 6 (2017): 1086.

¹⁸⁹ Catherine Corson, Lisa M. Campbell and Kenneth I. MacDonald, "Capturing the Personal in Politics: Ethnographies of Global Environmental Governance," *Global Environmental Politics* vol. 14 no. 3 (2014): 21.

3.1.5. Context matters

Context - the set of factors or circumstances that surround a negotiation, neither explains everything nor does it explain nothing about negotiated outcomes.¹⁹⁰ While context alone does not lead to outcomes, contextual elements are crucial for treaty-making to emerge from disarmament processes.

Contextual factors can halt, suspend, support and advance negotiations.¹⁹¹ In the 1960s, domestic context (a balance between different factions) and international context (common interests held by competing alliance members) explain why test ban negotiations were successfully concluded.¹⁹² The historical 'baggage' of seasoned disarmament diplomats can entrench informal practices but can also provide a wider range of potential solutions to given problems.¹⁹³

In the 1990s, ten factors, including external events, linkage across treaties and various strategies and tactics used by multiple networked actors including individuals, were identified as bearing causal weight in the Oslo Process on cluster munitions.¹⁹⁴ Multiple treaty-making processes that run in parallel can intersect, where progress or lack of progress in one forum will impact favourably or unfavourably talks in another. During the Oslo Process, talks on cluster munitions ran side by side between the UN Office in Geneva and the ad-hoc process in multiple capital cities, with the same diplomats crossing over.

Trade-offs and compromises can occur between processes in different areas, as in the case of Canadian and Australian talks at the prime ministerial level at a Commonwealth Heads of Government (CHOGM) summit during the Ottawa Process which led to Canberra's support of the MBT and Ottawa's support of an Australian trade initiative.¹⁹⁵ Context shapes outcomes subtly rather than overtly, making the task of analysis difficult as contextual characteristics are not sufficient inputs to explain negotiated outcomes.¹⁹⁶

¹⁹⁰ Robert J. Janosik, "Rethinking the Culture-Negotiation Link," *Negotiation Journal* vol. 3 no. 4 (1987): 393.

¹⁹¹ Larry Crump, "Negotiation Process and Negotiation Context," *International Negotiation* vol. 16 no. 2 (2011): 198.

¹⁹² P. Terrence Hopmann, "Bargaining in arms control negotiations: The seabeds denuclearization treaty," *International Organization* vol. 28 no. 3 (1974): 323.

¹⁹³ Daniel Druckman and Mara Olekalns, "Turning Points in Negotiation," *Negotiation and Conflict Management Research* (2011): 1-7.

¹⁹⁴ Denise Garcia, *Disarmament Diplomacy and Human Security: Regimes, Norms and Moral Progress in International Relations*, (London and New York: Routledge, 2011).

¹⁹⁵ William Maley, "The UN, NGOs, and the land-mines initiative: An Australian perspective," in *Enhancing Global Governance: Towards a New Diplomacy?* Andrew F. Cooper, John English and Ramesh Thakur (eds.) (New York: United Nations University, 2002): 101.

¹⁹⁶ Mara Olekalns and Laurie R. Weingart, "Emergent negotiations: stability and shifts in process dynamics," *Negotiation and Conflict Management Research*, vol 1 (2), (2008), p. 36.

3.2. Gaps and insights

All five vectors of negotiations outlined above – process, complexity, integrative systems, social actors and context – need to be brought in to add meaning to why and how states pursue treaty-making, and to understand why and how they turn away from pursuing negotiated outcomes. Analysing the processes of negotiations requires paying attention to the tensions between formal frameworks and processes in practice in humanitarian arms control.

Complexity is a feature of multilateral negotiations that needs to be understood to explain outcomes. How to analyse it over time is a challenge. As adopted in this thesis, integrative frameworks open the possibility that individuals, process, strategy or power can at times push or pull talks in different directions, thereby avoiding forcing explanations into a single category. Integrative frameworks capture social practice by triangulating personal accounts of events to identify the micro-level mechanisms that shape outcomes. While difficult to track and measure, the influence of context on multilateral policymaking processes nonetheless requires exploration as part of an integrative approach. To address all levels of analysis that shed light on negotiated outcomes, this thesis adopts a multi-layered analytical framework that draws in multiple explanations and understandings of context and reaches beyond academic schools of thought.¹⁹⁷ This approach is outlined in chapter 2 and applied to three cases in chapters 3, 4, 5 and 6. The specific context of multilateral arms control is outlined below, as a first step to connecting theory to practice.

4. Multilateral arms control: theory meets practice

To begin to connect theory to practice, the following section turns to the practice of multilateral arms control to set the scene for the case studies that follow. Multilateral arms control draws in various concepts which are defined and discussed below. First, multilateralism is defined as both a mode of practice and as a principled approach to international relations. Then, arms control is defined and contextualised as a policy area within the broad landscape of international law. Third, the UN's disarmament machinery is detailed, exploring how multilateral arms control is put into practice from a diplomatic point of view.

¹⁹⁷ Keith Krause, "Multilateral diplomacy, norm building, and UN conferences: the case of small arms and light weapons," *Global Governance* vol. 8 (2002): 247.

4.1. Multilateralism

Multilateralism occupies two types of spaces, both physical and conceptual. It refers to the organisation of diplomacy in multilateral forums, where states coordinate national policies through ad hoc arrangements or institutions.¹⁹⁸ It also refers to the institution of multilateralism, which encompasses codified habits, practices, ideas and norms of international society.¹⁹⁹

These two facets are most visible in international institutions such as the UN. On the one hand, the UN is a forum where states pursue foreign policy in a cost-effective, efficient manner. On the other, it is a space where states engage in social construction. According to the first view, state preferences remain fixed and international organisations (IOs) are considered to be structures rather than actors. According to the latter view, however, IOs are a fluid site of contestation and change. Moreover, the organisations themselves can exercise agency.

These differing perspectives, between practice and principle, also apply to the UN's foundational text, the UN Charter.²⁰⁰ It can be viewed as a series of rules that are applied when it suits great powers, for example, or as a document that unites the international community in the pursuit of higher aspirations.

Multilateralism is a value-laden term that goes beyond a practice. As a dynamic process of mutual construction between many, multilateralism can reinforce the normative legitimacy of the object of talks.²⁰¹ It can be seen to be the primary, interrelated norm of diplomatic culture.²⁰² It can take on a normative dimension that relates to the quality of an institutional arrangement, reflecting an underlying form of cooperation that has emerged since the Second World War.²⁰³

In contrast with a normative conceptualisation of pursuing international public good,²⁰⁴ a narrower viewpoint sees multilateralism as a tactical force multiplier to operationalise foreign policy, rather than one of its drivers.²⁰⁵ As a tactic,

¹⁹⁸ Robert O. Keohane, "Multilateralism: An Agenda for Research," *International Journal* vol. 45 no. 4 (1990): 731.

¹⁹⁹ James A. Caporaso, "International Relations Theory and Multilateralism: The Search for Foundations," *International Organization* vol. 46 no. 3 (1992): 629.

²⁰⁰ *Charter of the United Nations*, San Francisco, October 24, 1945. United Nations Treaty Series.

²⁰¹ Jutta Brunnée and Stephen J. Toope, "International Law and Constructivism: Elements of an Interactional Theory of International Law," *Columbia Journal of Transnational Law* vol. 39 (2000): 19.

²⁰² Stuart Murray, Paul Sharp, Geoffrey Wiseman, David Crikemans and Jan Melissen, "The Present and Future of Diplomacy and Diplomatic Studies," *International Studies Review* vol. 13 no. 4 (2011): 709.

²⁰³ John Gerard Ruggie, "Multilateralism: the Anatomy of an Institution," *International Organization* vol. 46 no. 3 (1992): 572.

²⁰⁴ L. Sarty, "'Sunset Boulevard' Revisited? Canadian Internationalism After the Cold War," *International Journal* vol. 48 no. 4 (1993): 751.

²⁰⁵ Andy W. Knight, "Pluri-lateral Multilateralism: Canada's Emerging International Policy?," in *Canada Among Nations, 2005: Splitting Images* vol. 7, Andrew F. Cooper and Dane Rowlands (eds), (McGill-Queen's Press-MQUP, 2005): 112.

multilateralism can reinforce the power of larger states, thus perpetuating procedural biases and outcomes that favour great powers.²⁰⁶ For example, US exceptionalism on multilateral human rights treaties can be seen as regressive, leading to the development of treaties that the US initially agrees to adopt, but then goes on to exempt itself from through reservations appended to treaties, or through non adoption or non compliance.²⁰⁷

Multilateralism takes on different forms across issue areas. In arms control, both practice and principle have been enmeshed since the end of the Cold War, as the following section illustrates.

4.2. Arms control

4.2.1. Arms control as a policy area

The concept of 'arms control' dates back to the 1950s, to the international agreements between the US and the USSR designed to curtail the bilateral arms race and achieve balance and parity in armaments. It emerged in contrast to 'complete and general disarmament' which has been a fixed UNGA agenda item since 1959.²⁰⁸ 'Arms control' was adopted as it became clear that complete disarmament was unattainable in the polarised climate of the Cold War.²⁰⁹ Arms control was originally conceived as peace through the manipulation of force,²¹⁰ encompassing all forms of military cooperation between potential enemies to reduce the likelihood of war.²¹¹ Arms control was a military strategy to achieve international security.²¹²

From the 1990s, the bi-polar order began to fragment with a consequent reappraisal of security.²¹³ Alliance considerations gave way to economic

²⁰⁶ Harald Muller and Carmen Wunderlich (eds.) *Norm dynamics in multilateral arms control: Interests, conflicts, and justice*, (Athens and London: University of Georgia Press, 2013).

²⁰⁷ Michael Ignatieff, *American Exceptionalism and Human Rights*, (Princeton: Princeton University Press, 2009): 23.

²⁰⁸ United Nations General Assembly, Resolution 1378 General and Complete Disarmament, New York, November 20, 1959.

²⁰⁹ Robert J. Mathews and Timothy McCormack, "The Relationship between international humanitarian law and arms control" in *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Helen Durham and Timothy McCormack (eds.) (The Hague/London/New York: Martinus Nijhoff Publishers, 1999): 73.

²¹⁰ Hedley Bull, "International Theory: The Case for a Classical Approach," *World Politics* vol. 18 no. 3 (1966): 361.

²¹¹ Thomas C. Schelling and Morton H. Halperin, *Strategy and Arms Control*, (New York: Twentieth Century Fund, 1961).

²¹² Thomas C. Schelling, "Introduction" in *Arms Control: Cooperative Security in a Changing Environment* Jeffrey Arthur Larsen and James J. Wirtz (eds.) (Boulder, Colorado: Lynne Rienner Publishers, 2002): 3.

²¹³ Simon Dalby, "Security, modernity, ecology: the dilemmas of post-cold war security discourse," *Alternatives* vol. 17 no. 1 (1992): 94.

priorities.²¹⁴ Security began to be revisited through the lens of people, not states.²¹⁵ Arms control was redefined by some as “controlling the means of violence”.²¹⁶

The concept of human security began to emerge in academic work and among certain Western governments, such as under Prime Minister Chretien and his Foreign Minister Lloyd Axworthy in Canada in the 1990s, positing that transnational collective action problems demand whole-of-society responses, and that military force is not the sole path to peace.²¹⁷ Government policy and international weapons law expanded in scope, with an increase in rules, norms and expectations to address civilian protection and reverse the subordination of humanitarian objectives to military efficiency.²¹⁸

Arms control today has one or more of four aims. It can seek to reduce arms spending to prevent diversion from areas such as development.²¹⁹ It can aim to resolve conflict by fostering predictability through confidence-building measures.²²⁰ It can target limiting damage during conflicts, through agreements to ban or restrict weapons, military activities and force deployment.²²¹ It can look to eliminate conflict, by limiting the evolution and proliferation of weapons.²²²

Contemporary arms control encompasses both processes and outcomes.²²³ As a process, arms control instruments establish norms of conduct for states on the use of weapons. As a long-term outcome, disarmament through arms control seeks to eliminate the ways in which states wage war.²²⁴ This has led to a mosaic of partial security regimes with regional and international instruments that cover the possession, use, development and transfer of weapons, regulating under what circumstances, against whom and for what ends the “technologies of violence” are

²¹⁴ Ken Booth, "Security and Emancipation," *Review of International Studies* vol. 17 no. 4 (1991): 313-326.

²¹⁵ R. B. J. Walker, "Security, Sovereignty, and the Challenge of World Politics," *Alternatives: Global, Local, Political* vol. 15, no. 1 (1990): 3.

²¹⁶ Neil Cooper and David Mutimer, "Arms Control for the 21st Century," 12.

²¹⁷ Lloyd Axworthy, "Canada and human security: the need for leadership," *International Journal* vol. 52 no. 2 (1997): 184.

²¹⁸ Simone Wisotzki, "Humanitarian Arms Control: The Anti-Personnel Mine Ban Treaty, the Programme of Action on Small Arms and Light Weapons, and the Convention on Cluster Munition," in *Norm dynamics in multilateral arms control: Interests, conflicts, and justice*, Harald Muller and Carmen Wunderlich (eds.) (Athens and London: University of Georgia Press, 2013): 82.

²¹⁹ Paul Viotti, "A Template for Understanding Arms Control," in *Arms Control and Global Security: A Document Guide*, Robert Williams and Paul Viotti (eds.) (Santa Barbara: ABC-CLIO, 2012): 7.

²²⁰ Paul Viotti, "A Template for Understanding Arms Control", 8.

²²¹ Paul Viotti, "A Template for Understanding Arms Control," 8.

²²² Keith Krause, "Leashing the Dogs of War: Arms Control from Sovereignty to Governmentality," *Contemporary Security Policy* vol. 32 no. 1 (2011): 35.

²²³ Neil Cooper and David Mutimer, "Arms Control for the 21st Century," 3.

²²⁴ Jeffrey A. Larsen and James J. Wirtz (eds.), *Arms control and cooperative security* (Boulder, Colorado : Lynne Rienner Publishers, 2009).

used.²²⁵ The following section examines this mosaic in detail to examine how states pursue arms control through multilateral frameworks.

4.2.2. Arms control in international law

Arms control in international law is regulated through multilateral treaties and general principles of international law which guide the work of the UN's disarmament machinery, through practices, processes and standing bodies as enshrined in the UN Charter. Two categories of weapons are regulated, namely weapons of mass destruction (WMD) and conventional weapons. WMD include nuclear weapons, biological weapons and chemical weapons. Conventional weapons cover all forms of weapons that are not WMDs.²²⁶

As outlined below, both categories are regulated through multilateral weapons treaties and general principles of international law. Multilateral treaties seek to prohibit, stop the proliferation or regulate specific aspects of weapons. General principles are enshrined in treaties and customary international law. In addition, the UN's disarmament machinery, made up of standing bodies and other institutional UN measures, country groupings and reporting mechanisms also contribute to the broader legal arms control framework.

4.2.2.1. Multilateral weapons treaties

Multilateral weapons treaties restrict one, more or every specific element of the lifecycle of a weapon, from research and development, to testing, production, deployment, use, storage, transfer and destruction. In this section, all 26 existing weapons treaties are outlined, according to the type of outcome they regulate, from disarmament to non proliferation and arms control.

4.2.2.1.1. Disarmament

Eight multilateral disarmament instruments restrict all aspects of the lifecycle of a weapon, through comprehensive bans and prohibitions. These include bans on poisonous gases,²²⁷ biological weapons²²⁸ and on chemical weapons,²²⁹ as well as

²²⁵ Keith Krause and Michael C. Williams, "Broadening the Agenda of Security Studies: Politics and Methods," *Mershon International Studies Review* vol. 40 no. 2 (1996): 229.

²²⁶ Melissa Gillis, *Disarmament: a Basic Guide* Third Edition, (New York: United Nations, 2012): 57.

²²⁷ *Protocol For The Prohibition Of The Use In War Of Asphyxiating, Poisonous Or Other Gases, And Of Bacteriological Methods Of Warfare*, Geneva, May 9, 1926. United Nations Treaty Series vol. 94, p. 65.

²²⁸ *Convention On The Prohibition Of The Development, Production And Stockpiling Of Bacteriological (Biological) And Toxin Weapons And On Their Destruction*, Washington/Moscow/London, April 10, 1972. United Nations Treaty Series vol. 1015, p. 163.

²²⁹ *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, Geneva, September 3, 1992. United Nations Treaty Series vol. 1974 (p.45) and vol. 1975 (p.3).

bans on weapons in the sea bed²³⁰ and on environmental modifications for military purposes.²³¹ Weapons with non-detectable fragments, incendiary weapons and weapons with blinding lasers²³² are also prohibited, under Protocols I, III and IV respectively, to the ‘Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects’, commonly referred to as the CCW.²³³

The CCW has two parts, a ‘chapeau’ with general principles and five protocols. These protocols include three bans (as above) and two arms control instruments (see below). The lack of progress in the CCW on APLMs and cluster munitions created windows of opportunity for the two most recent disarmament treaties, the MBT²³⁴ and the CCM,²³⁵ examined in this thesis. An additional treaty banning nuclear weapons, adopted in 2017, is yet to enter into force.²³⁶

4.2.2.1.2. Non proliferation

Different restrictions on nuclear weapons are imposed via three multilateral instruments, two on testing²³⁷ and one on non-proliferation.²³⁸ Five regions are nuclear-free zones through multilateral treaties (in Latin America,²³⁹ the South

²³⁰ *Treaty On The Prohibition Of The Emplacement Of Nuclear Weapons And Other Weapons Of Mass Destruction On The Sea-Bed And The Ocean Floor And In The Subsoil Thereof*, Washington/Moscow/London, February 11, 1971. United Nations Treaty Series vol. 955, p. 115.

²³¹ *Convention On The Prohibition Of Military Or Any Other Hostile Use Of Environmental Modification Techniques* New York, December 10, 1976. United Nations Treaty Series vol. 1108, p. 151.

²³² *Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons)*, Vienna, October 13, 1995. United Nations Treaty Series vol. 2024, p.163.

²³³ *Convention On Prohibitions Or Restrictions On The Use Of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious Or To Have Indiscriminate Effects (With Protocols I, II And III)*, Geneva, October 10, 1980. United Nations Treaty Series vol. 1242, p. 137.

²³⁴ *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, Oslo, 18 September 1997, United Nations Treaty Series, vol. 2056, P. 211.

²³⁵ *Convention on Cluster Munitions*, Dublin, 30 May 2008, United Nations Treaty Series, vol. 2688, p. 39.

²³⁶ United Nations General Assembly, “Agenda Item 9: Negotiations, Pursuant To Paragraph 8 Of General Assembly Resolution 71/258 Of 23 December 2016, On A Legally Binding Instrument To Prohibit Nuclear Weapons, Leading Towards Their Total Elimination,” A/CONF.229/2017/8, New York, July 7, 2017.

²³⁷ *Treaty Banning Nuclear Weapon Tests In The Atmosphere, In Outer Space And Under Water*, Moscow, August 5, 1963. Vol. 480, p. 43. *Comprehensive Nuclear-Test-Ban Treaty*, New York, September 10, 1996.

²³⁸ *Treaty on the Non-Proliferation of Nuclear Weapons*, Washington/Moscow/London, July 1, 1968. United Nations Treaty Series vol. 729, p. 161.

²³⁹ *Treaty for the Prohibition of Nuclear Weapons in Latin America*, Mexico City, February 14, 1967. United Nations Treaty Series vol. 634 p. 281.

Pacific,²⁴⁰ Southeast Asia,²⁴¹ Central Asia²⁴² and Africa²⁴³). Non proliferation instruments introduce different obligations for two categories of states, nuclear weapons states (NWS) and non nuclear weapons states (NNWS). For example, under the Nuclear Non Proliferation Treaty, NNWS are prohibited from obtaining nuclear weapons while the NWS have restrictions on the use of their existing weapons but are not required to destroy them. While Article VI of the NPT confirms that all states party are obliged to move to disarmament, namely the destruction of their nuclear arsenals, it is clear that the nuclear states have no intention of disarming. The de facto end game here is to restrict nuclear weapons without an explicit goal of a prohibition on nuclear weapons.

4.2.2.1.3. Arms control

Eleven multilateral arms control treaties exist. One has a specific territorial scope, regulating arms control on the moon.²⁴⁴ Four cover limited aspects of weapons in specific regions (armed forces in Europe,²⁴⁵ air surveillance in NATO and Warsaw Pact members,²⁴⁶ firearms in North and South America²⁴⁷ and trade in small arms and light weapons in Central Africa²⁴⁸). The UN's Programme of Action on small arms and light weapons²⁴⁹ – a political agreement among all UN member states – led to two universally-applicable instruments, one legally-binding on firearms²⁵⁰ and the second politically-binding on weapons tracing.²⁵¹ Two CCW protocols

²⁴⁰ *South Pacific Nuclear Free Zone Treaty*, Rarotonga, August 6, 1985. United Nations Treaty Series, vol. 1445.

²⁴¹ *Treaty on the Southeast Asia Nuclear Weapon-Free Zone*, Bangkok, December 15, 1995. United Nations Treaty Series, vol. 1981.

²⁴² *Treaty On A Nuclear-Weapon-Free Zone In Central Asia*, Semipalatinsk, September 8, 2006. United Nations Treaty Series, vol. 2970.

²⁴³ *The African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty)*, Cairo, April 11, 1996. Depository: African Union.

²⁴⁴ *Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*, New York, December 5, 1979. United Nations Treaty Series vol. 1363, p. 3.

²⁴⁵ *Treaty On Conventional Armed Forces In Europe*, Paris, November 19, 1990. United Nations Treaty Series vol. 2441 (p. 285), vol. 2442 (p.3) and vol 2443 (p. 3).

²⁴⁶ *Treaty on Open Skies*, March 24, 1990. Depositories: Governments of Canada and Hungary.

²⁴⁷ *Inter-American Convention Against The Illicit Manufacturing Of And Trafficking In Firearms, Ammunition, Explosives And Other Related Materials*, Washington, November 14, 1997. United Nations Treaty Series vol. 2029.

²⁴⁸ *Central African Convention For The Control Of Small Arms And Light Weapons, Their Ammunition And All Parts And Components That Can Be Used For Their Manufacture, Repair And Assembly*, Kinshasa, April 30, 2010. United Nations Treaty Series.

²⁴⁹ United Nations, *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, in "Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-29 July 2001," A/CONF.192/15 (2001): 7-16.

²⁵⁰ *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*, New York, May 31, 2001. United Nations Treaty Series 2326, p. 208.

²⁵¹ *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*, New York, December 5, 2006. United Nations, A/DEC/60/519.

regulate the use of mines and booby traps²⁵² and explosive remnants of war (ERW).²⁵³ The Arms Trade Treaty (ATT), the most recent treaty to enter into force on conventional weapons, regulates the trade of all categories of conventional weapons and parts and ammunition to help prevent their unlawful use in perpetrating violations of IHL and human rights law, and the long term impact on peace, security and justice.²⁵⁴

4.2.2.2. *General principles of international law*

While weapons treaties regulate specific aspects of weapons use, via the disarmament, non proliferation and arms control instruments specified above, general principles of international law also apply to weapons. These principles are codified through IHL treaties and through customary international law.

4.2.2.2.1. *General principles from treaties*

International humanitarian law (IHL), known as the laws of the war, cover the rules that apply to mitigate as far as possible the barbarity and suffering caused by war.²⁵⁵ The foundations of IHL were laid in a series of Conventions named after the cities they were established in, namely Geneva and The Hague. The 1864 Geneva Convention was later subsumed under the 1949 Geneva Convention and its Additional Protocols (1977, 1993 and 2005).²⁵⁶ The Hague Conventions were adopted in 1899 and 1907.²⁵⁷ On the use of weapons, three general principles are codified in IHL treaties, namely that the means and methods of warfare are not unlimited; that weapons should not inflict superfluous injury or cause unnecessary

²⁵² *Protocol On Prohibitions Or Restrictions On The Use Of Mines, Booby-Traps And Other Devices As Amended On 3 May 1996 (Protocol II, As Amended On 3 May 1996) Annexed To The Convention On Prohibitions Or Restrictions On The Use Of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious Or To Have Indiscriminate Effects*, Geneva, May 3, 1996. United Nations Treaty Series vol. 248, p. 93.

²⁵³ *Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V)*, Geneva, November 28, 2011. United Nations Treaty Series vol. 2399, p. 1.

²⁵⁴ *Arms Trade Treaty*, New York, 24 December 2014, United Nations Treaty Series, Registration Number 52373.

²⁵⁵ Antonio Cassese, "Current Challenges to International Humanitarian Law," in *The Oxford Handbook of International Law in Armed Conflict* Andrew Clapham and Paola Gaeta (eds.) (Oxford: Oxford University Press, 2014): 6.

²⁵⁶ *Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field* August 12, 1949. *Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea*, August 12, 1949. *Geneva Convention (III) on Prisoners of War*, August 12, 1949. *Geneva Convention (IV) on Civilians*, August 12, 1949. *Additional Protocol (I) to the Geneva Conventions (1977) and Annex (I) as amended (1993)* November 30, 1993. *Additional Protocol (II) to the Geneva Conventions*, June 8, 1977. *Additional Protocol (III) to the Geneva Conventions*, December 8, 2005.

²⁵⁷ *Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864*. The Hague, 29 July 1899. *Declaration (IV,1), to Prohibit, for the Term of Five Years, the Launching of Projectiles and Explosives from Balloons, and Other Methods of Similar Nature*. The Hague, 29 July 1899. *Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention*. The Hague, 18 October 1907.

suffering; and that weapons should not be indiscriminate.²⁵⁸ These principles are core to the chapeau convention of the CCW, as outlined above.

4.2.2.2. General principles from customary law

Customary international law derives from a general practice accepted as law. It has two sources. The first is state practice, including military manuals, national legislation, national case law and other national practice.²⁵⁹ The second source, is *opinio juris*. This denotes a state's belief that is bound to a particular law.²⁶⁰ On this second source, scholars hotly debate where to seek out, and interpret, evidence to support claims of beliefs.²⁶¹ For example, a UNGA statement by a state is held by some to indicate an actual benchmark of state practice, while others claim it represents an aspirational statement or merely rhetoric.²⁶²

On weapons use, general principles from both sources of customary law have been collated by the International Committee of the Red Cross (ICRC) in a collection spanning every aspect of IHL across 50 countries and 40 armed conflicts, in the ICRC Study on Customary International Humanitarian Law.²⁶³

The use of weapons, the means and methods of warfare, is restricted through three principles of customary international law. These are the prohibition of weapons that cause superfluous injury or unnecessary suffering,²⁶⁴ the principle of proportionality between military utility and humanitarian consequences²⁶⁵ and the principle of distinction between civilians and combatants.²⁶⁶ They are linked to the general principles of the Geneva Conventions, as above.

²⁵⁸ Steven Haines, "The Developing Law of Weapons: Humanity, Distinction, and Precautions in Attack," *The Oxford Handbook of International Law in Armed Conflict* Andrew Clapham and Paola Gaeta (eds.) (Oxford: Oxford University Press, 2014): 289.

²⁵⁹ Hugh Thirlway, *The Sources of International Law*, (Oxford: Oxford Scholarly Authorities on International Law, 2014): 53.

²⁶⁰ Hugh Thirlway, *The Sources of International Law*, 73.

²⁶¹ László Blutman, "Conceptual Confusion and Methodological Deficiencies: Some Ways that Theories on Customary International Law Fail," *The European Journal of International Law* vol. 25 no. 2 (2014): 529.

²⁶² Roozbeh (Rudy) B. Baker, "Customary International Law in the 21st Century: Old Challenges and New Debates," *The European Journal of International Law* vol. 21 no. 1 (2010): 179.

²⁶³ Theodor Meron, "Customary Humanitarian Law Today: From the Academy to the Courtroom," *The Oxford Handbook of International Law in Armed Conflict* Andrew Clapham and Paola Gaeta (eds.), (Oxford: Oxford University Press, 2014): 45.

²⁶⁴ International Committee of the Red Cross (ICRC), "Rule 70, Weapons of a Nature to Cause Superfluous Injury or Unnecessary Suffering," in Chapter 20 General Principles on the Use of Weapons, *ICRC Study on Customary International Humanitarian Law* https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter20_rule70 Last accessed Mar 30, 2018.

²⁶⁵ International Committee of the Red Cross (ICRC), "Rule 71, Weapons That Are by Nature Indiscriminate," in Chapter 20 General Principles on the Use of Weapons, *ICRC Study on Customary International Humanitarian Law* https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter20_rule71 Last accessed Mar 30, 2018.

²⁶⁶ International Committee of the Red Cross (ICRC), "Rule 1, The Principle of Distinction between Civilians and Combatants," in Chapter 21 General Principles on the Use of Weapons, *ICRC Study on Customary International Humanitarian Law* https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1 Last accessed Mar 30, 2018.

4.3. Disarmament diplomacy

Arms control through disarmament diplomacy is a core function of the UN's disarmament agencies and bodies, via their practices, processes and procedures. This is collectively known as the UN's disarmament machinery, first introduced at the 1978 UN Special Session on Disarmament.²⁶⁷ This organizational focus stems from the UN Charter, which recognised the responsibility of the international community in tackling the ongoing risks that proliferation presents to peace and security and imposes an opportunity cost for economic and social development.²⁶⁸

There are two types of UN standing bodies, those that develop new legal instruments and those that verify existing instruments. Beyond these standing bodies, the UN provides organizational support to the development and implementation of multilateral treaties through the United Nations Office of Disarmament Affairs (UNODA), as an administrative support agency, and the United Nations Institute for Disarmament Research (UNIDIR), as a research institute. Reporting functions are an important daily feature of disarmament diplomacy, as enacted through various bodies. All of these aspects of surveyed below. This section concludes with a discussion of the practices, processes and procedures of multilateral treaty-making on disarmament.

4.3.1. Developing new legal instruments

Standing bodies with a mandate to develop new legal instruments include two disarmament bodies, the UN Disarmament Commission and the Conference on Disarmament (CD). Since 1996, they have not developed any new instruments.²⁶⁹ Standing bodies with a wide remit, the UNSC and the UNGA, also play a significant role in setting benchmarks for states to follow on disarmament.

The UN Disarmament Commission is recommendation-making body set up in 1978. It is a subsidiary organ of the UNGA, operating on consensus. Prior to the

²⁶⁷ United Nations, "Resolution Adopted on the Report of the Ad Hoc Committee of the 10th Special Session: Final Document," A/RES/S-10/2, (1978): 10.

²⁶⁸ Chapter V, Article 26: "In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments." *Charter of the United Nations*, San Francisco June 26, 1945, United Nations Treaty Collection.

²⁶⁹ United Nations General Assembly, "Break Deadlock in Disarmament Machinery by Casting Aside Narrow National Interests, 'Misguided Notions of Parity', Speakers Tell First Committee," UNGA Media Release, New York, October 9, 2017. GA/DIS/3576.

2017 adoption of a report on confidence-building measures for conventional arms, the Commission had not adopted any recommendations since 1999.²⁷⁰

In the CD, the practice of linkage was introduced in 1995. This meant that the CD's agenda for work could only be agreed to if all agenda items were agreed to. Since then, other than the 1996 Conventional Test Ban Treaty (CTBT),²⁷¹ no issue has been negotiated in the CD, with programmes of work only agreed to twice, in 1998 and 2009. The CD was described as "a hollow shell" by one of the former heads of its organisational body, due to its complicated working procedures, regional spoilers and political linkages between issues that prevented progress.²⁷²

Other bodies with a mandate to develop new instruments include UN organs with a wider remit, the UNSC and the UNGA.

The UNSC has primary responsibility for the maintenance of international peace and security. It is tasked with developing and overseeing programmes for disarmament and arms regulation. In practice, the UNSC has reflected progress made, rather than pushing for progress, on initiating legal instruments. This includes adopting resolutions, for example via the 1540 Committee that was set up in 2004 as a result of Resolution 1540 to encourage international cooperation on the threat posed by WMDs to international peace and security.²⁷³ The UNSC, through its mandate in the UN Charter,²⁷⁴ imposes sanctions which include measures on non proliferation. In June 2017, measures on arms embargoes and/or non proliferation were included in 12 of the 14 sanctions regimes in operation at the time (all except Guinea-Bissau and South Sudan).²⁷⁵

The UNGA, through the First Committee, puts forward resolutions that advance disarmament and international security through general principles and concrete agreements on cooperation in the regulation of arms. The steps towards an ATT were set out through First Committee Resolutions that were then adopted by the UNGA and specified the procedures to shape the final legal instrument.²⁷⁶

²⁷⁰ United Nations Office for Disarmament Affairs (UNODA), "UN Disarmament Commission adopts by consensus 'Practical confidence-building measures in the field of conventional weapons,'" UNODA Media Release, New York, April 24, 2017.

²⁷¹ *Comprehensive Nuclear-Test-Ban Treaty*, New York, September 10, 1996.

²⁷² Tim Caughley, "The Conference on Disarmament: Breaking the Ice," *The CD Discussion Series*, (Geneva: UNIDIR, 2011): 8.

²⁷³ United Nations Security Council, Resolution 1540 on the Threat of Weapons of Mass Destruction, S/RES/1540 (2004), April 28, 2004.

²⁷⁴ Article 41 of the UN Charter, which covers measures not involving the use of force. *Charter of the United Nations*, San Francisco June 26, 1945, United Nations Treaty Collection.

²⁷⁵ United Nations Department of Political Affairs, "Graphs on currently active sanctions regimes and restrictions as of 30 June 2017," *Repertoire of the Practice of the Security Council* (2017). <http://www.un.org/en/sc/repertoire/data.shtml#rel-2>. Last accessed 31 March 2018.

²⁷⁶ See chapter 5 of this thesis for a detailed commentary of each resolution.

4.3.2. Implementing existing treaties

Treaty implementation of existing bodies of law has flourished through the creation of three verification agencies and four implementation support units for the most recent multilateral treaties (the CCW, the MBT, the CCM and the ATT).

Agencies include the International Atomic Energy Agency (IAEA) that can refer states that do not comply with the Nuclear Non-Proliferation Treaty (NPT) to the UN Security Council. The IAEA, set up in Vienna in 1957, aims to promote cooperation in the field of peaceful nuclear technology.²⁷⁷

The second agency is the Organisation for the Prohibition on Chemical Weapons (OPCW), the implementing body for the Chemical Weapons Convention, which has monitoring and verification functions as 'the world's chemical weapons watchdog.'²⁷⁸ The OPCW was awarded the Nobel Peace Prize for its efforts in destroying stockpiles of weapons in Syria.²⁷⁹

The third agency is the Preparatory Commission for the Comprehensive Test Ban Treaty (CTBTO). It was established in 1996 under the terms of the CTBT as an interim organisation of verification prior to the treaty's entry into force. It monitors and verifies the conduct of nuclear tests.²⁸⁰

Implementation Support Units (ISUs) have been established for the CCW, the MBT, the CCM and the ATT. ISUs are permanent agencies, albeit with small staff (3-4 staff). They compile reporting submitted by national governments of states parties. ISUs also support the organisation of periodic meetings of states parties as well as treaty review conferences. These meetings and conferences regularly face procedural issues linked to cumbersome decision-making, echoing the formal diplomatic negotiation conferences of their respective treaties. ISUs accumulate institutional knowledge and help facilitate periodic meetings by supporting the diplomatic conference presidents who are nominated from among state delegations. This support includes procedural aspects of running multilateral conferences and the coordination of conference secretariats.²⁸¹

²⁷⁷ International Atomic Energy Agency, *IAEA Annual Report 2016*, (Vienna: IAEA, 2017): 1.

²⁷⁸ Anthony Deutsch, "Exclusive: Chemical Weapons Watchdog Investigates Ghouta Attacks," *Reuters*, February 27, 2018.

²⁷⁹ Nobel Media, "The Nobel Peace Prize 2013 – Press Release," Oslo, October 11, 2013.

²⁸⁰ Article II The Organization "1. The States Parties hereby establish the Comprehensive Nuclear Test-Ban Treaty Organization (hereinafter referred to as "the Organization") to achieve the object and purpose of this Treaty, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties." *Comprehensive Nuclear-Test-Ban Treaty*, New York, September 10, 1996. United Nations Treaty Series.

²⁸¹ For the CCW, whose Implementation Support Unit (ISU) is based at the Geneva branch of the United Nations Office for Disarmament Affairs, see Meeting of the High Contracting Parties to the Convention, "Final Report" November 13, 2009 CCW/MSP/2009/5. For the Mine Ban Treaty, see

4.3.3. Organisational support

In addition to these two types of standing bodies, the United Nations Office of Disarmament Affairs (UNODA) provides organisational support to both forums, including during diplomatic conferences and negotiations such as with the ATT Process.²⁸² The United Nations Institute for Disarmament Research (UNIDIR) undertakes research and publications on disarmament topics to contribute to the development of future treaties.²⁸³

4.3.4. Reporting

On reporting and conventional weapons, different mechanisms have been introduced since 1991. The 1991 UN Register of Conventional Arms provides a streamlined approach to reporting, by gathering national reports from states every year and publishing them in a consolidated format.²⁸⁴ This voluntary mechanism is reliant on the data that is provided to it by states.

On the monitoring side, the most notable example is the Landmines Monitor, funded by States parties to the MBT, which publishes yearly reports on worldwide use, production, transfer and stockpiling of APLMs. While funded by State parties, the Monitor is staffed by members of NGOs, such as Human Rights Watch, who are at sufficient arms' length from states to be trusted for their impartiality from state pressures – although they are of course beholden to other constituencies. The same organisation took on the reporting aspect once the CCM entered in to force, becoming the Landmines and Cluster Munitions Monitor.²⁸⁵

4.3.5. Disarmament diplomacy in practice

All these aspects of multilateral arms control come together in the daily lives of disarmament diplomats through a complex web of processes, practices and procedures in an often cumbersome framework.²⁸⁶

Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, "Draft Decision on Strengthening Financial Governance and Transparency with the ISU," November 30, 2015 APLC/MSP.14/2015/L.1. For the Convention on Cluster Munitions ISU, see "The Implementation Support Unit of the Convention on Cluster Munitions (ISU-CCM) Brochure", <http://www.clusterconvention.org/wp-content/uploads/2017/10/ISU-CCM-brochure.pdf>. For the Arms Trade Treaty secretariat, see Third Conference of States Parties, "Report On The ATT Secretariat's Activities For The Period 2016/2017," July 20, 2017 ATT/CSP/2017/SEC/154/Conf.Sec.Rep.

²⁸² Melissa Gillis, *Disarmament: a Basic Guide* Third Edition, (New York: United Nations, 2012): 103.

²⁸³ United Nations General Assembly, Resolution 39/148, "Statute of the United Nations Disarmament Research Institute," A/RES/39/148.H, December 17, 1984.

²⁸⁴ United Nations General Assembly, Resolution 46/36, "General and Complete Disarmament: Transparency in Armaments," A/RES/46/36, December 6, 1991.

²⁸⁵ International Campaign to Ban Landmines–Cluster Munition Coalition (ICBL-CMC), *Cluster Munition Monitor 2017*, (International Campaign to Ban Landmines–Cluster Munition Coalition (ICBL-CMC), 2017): ii.

²⁸⁶ Tim Caughley, *Disarmament Machinery: a Fresh Approach*, (Geneva: UNIDIR, 2010): 1.

The UN's legacy aspects can perpetuate aspects of work that were not always intended but which have become modes of procedure. This "junk DNA" can hamper the evolution of practices and processes, notably within the CD.²⁸⁷ Diplomats who negotiate in multiple forums transmit unwanted features, such as the consensus rule. This corpus of diplomats can lead ad hoc processes outside the UN. In reaction to entrenched procedural and institutional flaws, both the Ottawa and Oslo Processes broke with existing modes of activity and positioned themselves outside the UN's disarmament machinery. Products of these processes, namely international treaties, nonetheless constitute elements of the UN system of codified legal regimes. Concrete treaty provisions give rise to legal rights and obligations with the UNSG as the official repository and custodian.

While the aim of multilateral arms control negotiations is generally treaty-making, states may seek other outcomes, such as the normalisation of the diplomatic status of a state²⁸⁸ or the reinforcement of relationships with others.²⁸⁹ Appearing to negotiate may be enough to satisfy parties.²⁹⁰ At a broader level, while multilateral treaties are the direct outputs of negotiations, they can reinforce the foundations of global governance by strengthening the multilateral regulatory weapons regime and the UN disarmament machinery. Treaties and the rules they enshrine can consolidate international society by adding coherence to actions, institutions and state behaviour. Beyond pursuing their interests, states seek to reinforce their values through the negotiation of legal regimes.²⁹¹

When talks fail to lead to treaties, this can take on ramifications beyond the treaty's intended area, by highlighting the constraints on international law's capacity to address global problems, such as peace agreements that falter and lead parties in conflict to seek redress through violence.²⁹² The success of negotiations can be evaluated on whether agreement was reached, and whether the agreement produces, and reflects, the benefits that states were seeking.²⁹³

²⁸⁷ John Borrie and Vanessa Martin Randin, "A Comparison Between Arms Control and Other Multilateral Negotiation Processes," in *Alternative approaches in multilateral decision making: disarmament as humanitarian action*, John Borrie and Vanessa Martin Randin (eds.), (Geneva: UNIDIR, 2005): 112.

²⁸⁸ Fred Charles Iklé, *How Nations Negotiate*, (New York: Harper and Row, 1964).

²⁸⁹ Roger Fisher, William Ury and Bruce Patton, *Getting to Yes* 2nd Edition, (New York: Penguin Books, 1991): 38.

²⁹⁰ Phillip R. Trimble, "Arms Control and International Negotiation Theory," *Stanford Journal of International Law* vol. 25 (1988): 543.

²⁹¹ Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *International Organization* vol. 36 no. 2 (1982): 200.

²⁹² Phillip R. Trimble, "Arms Control", 555.

²⁹³ Phillip R. Trimble, "Arms Control", 561.

CHAPTER 2: ANALYTICAL FRAMEWORK

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Chapter 2: Analytical Framework

This chapter argues that to address the questions of why and how states negotiate treaty-making on humanitarian arms control, multi-dimensional, longitudinal analysis is required to draw in multiple layers of diplomatic contexts across phases and transitions points to compare and contrast states over time.

Conventional weapons policy intersects with international and domestic policy areas such as aid, trade, foreign policy, defence and procurement. Disarmament diplomacy involves a range of strategies in different locations at various levels, and with multiple actors. States seeking to maximise their ability to persuade while deploying their available resources are reactive to these environments in flux. This substantive breadth adds to the already complex field of multilateral negotiations. For analysts, the first task is to establish who is negotiating, and how, and the outcomes they are pursuing. Then, changes over time are tracked. Situating these aspects in their contexts provides clarity to shine a light on the overarching dynamics in play. Explanatory frameworks need to capture the multitude of actors, issues, strategies, goals and motivations.²⁹⁴

This thesis adopts one such analytical framework that focusses attention on phases, and in particular on transition points, through the lens of the different contexts of diplomacy that surround these points. In each treaty cycle, three phases were identified, namely the commitment, substance and agreement phases. The points that marked the passage between these phases, transition points, are the primary research focus of this thesis, with each point viewed at six different levels of context. Three levels constitute the internal negotiating context, these are 'at the table', 'in the room' and 'in the corridors'. Three levels constitute the external negotiating context, these are 'in capital', 'in the world' and 'in the streets'. Particular forms of diplomatic strategies and tactics then emerged, from championing to 'on the sidelines' to blocking. In total, ten transition points across nine phases of negotiations during three treaty-making cycles and for three states are analysed. This approach emerged during desktop research, archival research and interviews with negotiators. The chapter proceeds in two parts. Section 1 introduces phases and transition points, while section 2 explores the six-layered 'contexts of diplomacy' model.

²⁹⁴ Larry Crump and I. William Zartman, "Multilateral Negotiation and the Management of Complexity," *International Negotiation* vol. 8 no.1 (2003): 1-5.

1. Phases and transition points

This thesis draws on analysis from ten transition points that marked the passage between three phases of negotiations common to all three cycles of treaty-making. The three-phase 'transition point' qualitative framework in this thesis was adapted from Druckman's three-stage 'turning point' quantitative framework that is often used for large-N studies. This framework was adapted to suit the detailed analysis of a small number of multilateral negotiations by applying a 'contexts of diplomacy' framework to each transition point. This opens avenues of investigation that link internal and external negotiating contexts.

1.1. Origins of the framework

For this thesis, the methodological journey started from the end-point, the negotiated outcome. Patterned exchanges were analysed between negotiating parties over a defined period.²⁹⁵ By employing a longitudinal analysis, namely a chronological account of events and decisions, changes were captured that would have been missed by cross-sectional comparisons looking at a point-in-time, such as voting patterns at treaty adoption. Three primary sources were used:

- 1) Official declarations and agreements;
- 2) Official decisions to formalise rules of procedure; and
- 3) Interviews with negotiators to identify transition points in context.

These sources led to the identification of a three-phase sequential negotiation processes, a linear journey where previous steps led to subsequent steps. This is similar to Zartman and Berman's sequential three-phase model, which includes diagnosis, formulation, and detailing.²⁹⁶ This pattern contrasted with cyclical negotiations identified elsewhere, where talks progressed based on monitoring and learning with an uneven pace of progress, moving forward in fits and starts.²⁹⁷

While negotiation scholars tend to break negotiations into two broad phases, the political phase and the technical phase,²⁹⁸ this thesis instead identified three different phases of activity in line with different strategic pieces of the puzzle that emerged over time, namely political commitment, treaty substance and agreement on a final instrument. The first phase, political commitment, included aspects

²⁹⁵ Daniel Druckman, "Time-Series Designs and Analyses," *International Negotiation* vol. 9 no. 3 (2004): 3979.

²⁹⁶ I. William Zartman and Maureen R. Berman, *The Practical Negotiator*, (New Haven: Yale University Press, 1982).

²⁹⁷ Victor Kremenyuk (ed), *International Negotiation. Analysis, Approaches, Issues* 2nd Edition (San Francisco: Jossey-Bass, 2002).

²⁹⁸ Mara Olekalns and Laurie R. Weingart, "Emergent Negotiations: Stability and Shifts in Process Dynamics," *Tepper School of Business* (2004): 542.

commonly used by negotiation scholars under the analytic category of the pre-negotiation phase, or origins and preliminary manoeuvres.²⁹⁹ This is when parties explore the possibility of negotiating, conduct preparations, and sound out other parties. The second phase identified in this thesis, substance, shares elements of the formula phase as commonly analysed by negotiation scholars, where parties jointly search for and settle on a formula to guide future work and progress from issues to proposals.³⁰⁰ The last phase, referred to in this thesis as the agreement phase, involves negotiators working out the details of an agreement. A similar three-phase approach has been used for humanitarian security treaty-making to capture the interactions of state and non state actors.³⁰¹

The first step for this thesis was to categorise long chains of talks into discrete, analytical phases to book-end analysis. Three distinct, sequential phases were identified. These phases are ‘commitment’, ‘substance’ and ‘agreement’. During the commitment phase, states discuss and then agree to formally begin talks on a treaty. During the substance phase, states agree on what will be included in the scope of a treaty, and the rules and procedures for treaty talks to be held. During the final phase, the agreement phase, treaty negotiations are held and culminate when states agree on the text of a treaty.

Second, ten transition points were identified. They are analytically significant as they were pivotal junctions in the treaty processes examined. They are path dependent, with progress contingent on the successful navigation of each point. Transition points are “events or processes that mark passage from one stage to the next, signalling progress from earlier to later stages”.³⁰² This approach allows for a structured, focused comparison of points across a series of negotiations.³⁰³

Phases and transition points are represented in Figure 5.



Figure 5 Three phase sequential model

²⁹⁹ Janice Gross Stein, “Getting to the Table: Processes of International Pre Negotiation,” *International Journal* vol. 44 no. 2 (1989): 231.

³⁰⁰ I. William Zartman and Maureen R. Berman, *The Practical Negotiator*, (New Haven: Yale University Press, 1982).

³⁰¹ Denise Garcia, *Disarmament Diplomacy and Human Security*, (New York: Taylor and Francis, 2011).

³⁰² Daniel Druckman, "Dimensions of International Negotiations: Structures, Processes, and Outcomes," *Group Decision and Negotiation* vol. 6 no. 5 (1997): 395.

³⁰³ A. L. George and A. Bennett, *Case studies and theory development in the social sciences*, (Cambridge, Massachusetts and London, England: MIT Press, 2005).

1.2. Phases

The following section explores phases and transition points, by situating them within the relevant literature and detailing how they were applied in this thesis.

1.2.1. Political commitment phase

The political commitment phase can last years, decades or longer. The origins of multilateral codification of conventional weapons can be traced back to the UN Charter, which enshrined the primary importance of international peace and security through disarmament.³⁰⁴ The first multilateral disarmament treaty dates back to the 1860s and the prohibition on dum-dum bullets.³⁰⁵

During this phase, actors' preferences are formed as they converge on the conclusion that a joint solution is possible.³⁰⁶ Negotiators or policymakers progress from awareness of a problem to searching for a formula or framework for a negotiated solution. During this phase, agenda-setting can be split into two. First, negotiators recognise that a problem exists and set the cognitive agenda. Second, they propose solutions and add them to the legal-normative agenda.³⁰⁷

In this stylised model, civil society can shape the cognitive agenda, while states are the main actors at the legal-normative level. This opens the door to operationalising how civil society exerts influence, given that they are effective at drawing public and policy attention to problems at the cognitive agenda-level notably by leveraging eye-witness accounts. Rutherford developed this two-level-agenda model based on the civil society campaign to ban landmines. Latham refutes this position, suggesting that "many states become responsive to pro-ban NGOs only after they had already opted to adopt a pro-ban posture".³⁰⁸ In humanitarian disarmament, the pre-negotiation phase involves information-sharing, activism and advocacy from civil society. Here, "moral argumentation, passion, creativity and coalition building among multiple actors" emerge.³⁰⁹

1.2.2. Substance phase

The substance involves a mapping out of all areas of divergence and convergence among parties on questions of substance. Intensive work-streams over months and

³⁰⁴ See section 1 of this chapter for the full text of Article 26_ *Charter of the United Nations*, San Francisco June 26, 1945, United Nations Treaty Collection.

³⁰⁵ *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*. Saint Petersburg, 29 November / 11 December 1868.

³⁰⁶ I. William Zartman, "Common Elements in the Analysis of the Negotiation Process," *Negotiation Journal* 4.1 (1988): 37.

³⁰⁷ Kenneth R. Rutherford, "The Evolving Arms Control Agenda: Implications Of The Role Of Ngos In Banning Antipersonnel Landmines" *World Politics* vol. 53 no. 1 (2000): 74.

³⁰⁸ Andrew Latham, "Global Cultural Change and the Transnational Campaign to Ban Antipersonnel Landmines: A Research Agenda", YCISS Toronto, Occasional Paper No. 62, (2000): 3.

³⁰⁹ Denise Garcia, "Humanitarian Security Regimes," *International Affairs* vol. 91 no.1 (2015): 71.

years lead up to formal, plenary conferences. Important ground is covered to identify where divergences lie, what the main issues are and for submission of initial proposals. Agendas are debated and agreed, definitions are fixed, and the costs and benefits of an agreement become clearer. Domestic groups mobilise in defense of their interests, which brings new actors into the game.³¹⁰

1.2.3. Agreement phase

This phase is when the formal negotiations occur, generally in diplomatic conferences. Adapting one's framing and 'picking the moment' at which to advance alternatives is very important during multilateral negotiations. During the diplomatic negotiating conference, as the intensity of discussions picks up as the clock ticks over, breakthroughs and break-downs in talks determine whether agreement will be reached and which compromises will be made to reach it.

The implementation and verification phase follows on from the signature and ratification of treaties on reaching their threshold for entry into force. The obligations enshrined in international legal instruments require national legislation to be enacted at the domestic level. While not examined in this thesis, this phase of treaty-making requires state commitment to ensure that the spirit of the treaty is translated into the letter of domestic law, and that efforts are maintained to abide by the obligations set out in treaties at a national level and that universal membership is extended and maintained at the international level.

When observing multilateral weapons treaty-making, this three-phase sequenced model captures different levels of context and draws in actors, strategies and tactics over time, which can last many years in the case of conventional weapons. This helps determine how phases progress towards an outcome by bringing together elements of comparison over the duration of talks. This is done through the transition points approach, examined in the next section.

1.3. Transition points

Negotiation scholars analyse points in time through the lens of concepts such as ripeness,³¹¹ impasses³¹² and deadlocks.³¹³ When determining the method of

³¹⁰ Andrew Moravcsik, "Introduction, Integrating international and domestic theories of international bargaining" in *Double-edged diplomacy: International bargaining and domestic politics* Peter B. Evans, Harold Karan Jacobson and Robert D. Putnam (eds.) (Berkeley: University of California Press, 1993): 9.

³¹¹ I. William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa*, (New York: Oxford University Press, 1985): 359.

³¹² Daniel Druckman, "Transition Points in International Negotiation: A Comparative Analysis," *The Journal of Conflict Resolution* vol. 45 no. 4 (2001): 521.

³¹³ Amrita Narlikar, "Introduction" in *Deadlocks in Multilateral Negotiations: Causes and Solutions* Amrita Narlikar (ed.), (Cambridge: Cambridge University Press, 2010): 3.

investigation for this thesis, elements of all were identified and then combined into a variation known as transition points. These concepts are outlined below.

The point of ripeness is a critical juncture which can lead to negotiation and mediation occurs when two parties perceive themselves to be in a mutually hurting stalemate, from where neither believe they can win a victory. Here, negotiations conclude when the parties find a solution that is preferable to continued conflict and to continued negotiations. This highlights the role of the mediator in shaping perceptions between both sides.³¹⁴

Impasses, when progress fails to occur after alternatives are offered but not agreed to, can turn a frozen negotiation around. Impasses are often a wake-up call to negotiators, particularly when they escalate into crises. Negative consequences can trigger transition points that lead to agreements. While ripeness and impasses frequently occur in talks between two parties, deadlocks are features of the complex dynamics of multilateral talks.

Deadlocks occur when two conditions occur simultaneously, namely an extended period of non-agreement coincides with a 'landmark moment' in the negotiation process which fails to trigger concessions to ensure an agreement.

The case studies in this thesis focus on the counterpart to deadlocks, namely transition points. The transition point model is an adaptation of Druckman's turning points model, which builds on Sawyer and Guetzkow's 1965 framework to distinguish background factors from concurrent processes and outcomes.³¹⁵ The transition points approach in this thesis uses the same components, where the triggers, transition points and consequences are examined through the "contexts of negotiation" framework that emerged from initial investigation of the three cases studies through desktop research and interviews with practitioners.

Transition points are distinguished from the events that triggered them, which can be procedural, substantive and external.³¹⁶ Transition points are followed by consequences moving towards or away from the next phase.³¹⁷ The approach is based on causal sequencing between each stage, where critical events can propel negotiations on to a different course.³¹⁸ For this thesis, each transition point is

³¹⁴ I. William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa*, (New York: Oxford University Press, 1985).

³¹⁵ Daniel Druckman, "Stages, Turning Points and Crises," *The Journal of Conflict Resolution* vol. 30 no. 2 (1986): 327.

³¹⁶ Daniel Druckman, "Departures in Negotiation: Extensions and New Directions," *Negotiation Journal* vol. 20 no. 2 (2004): 185.

³¹⁷ Daniel Druckman, "Negotiation and Theory: Implications for Negotiation Theory," *International Negotiation* vol. 6 no. 2 (2001): 281-.

³¹⁸ Daniel Druckman and Mara Olekalns, "Turning Points in Negotiation," *Negotiation and Conflict Management Research* vol. 4 no. 1 (2011): 5.

analysed from the perspective of engagement in treaty-making processes (one lead country) and then from the perspective of the other states (who were not part of the core group). This is represented in Figure 6. The following section turns to the two subsequent aspects of transition points.

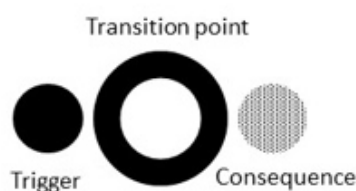


Figure 6 Transition points broken down into three component parts

1.3.1. Triggers

Triggers lead to transition points in negotiations. Three types exist. Procedural triggers and substantive triggers occur in the internal negotiating context, while external triggers occur in the external context.

Procedural triggers alter the structure or format of negotiations and the pathways to negotiated outcomes. They occur within the procedural framework of a negotiating forum or process. They include calling for a vote on an issue or on the adoption of a treaty, as well as invitations to meetings and conferences.

Substantive triggers shape the substance of negotiations. They present compelling new ways of conceptualising issues. They include solutions to specific problems, new research that contradicts accepted wisdom, how elements are packaged, and new frameworks through which to view problems and solutions.

External triggers can include events in states that are actively engaged in the negotiating process, such as a change in government, or they can include events that have a global impact in the broader international context, such as the outbreak of conflict or the onset of a financial crisis.

1.3.2. Transition points

Transition points mark the passage between phases. They are critical junctures on the path to reaching a negotiated outcome. They can propel negotiations towards or away from a successful outcome.³¹⁹ They can move the negotiating process on a trajectory toward or away from agreement. They signal progress from earlier phases to later ones. They can also indicate points in time when negotiations

³¹⁹ Daniel Druckman, "Departures in Negotiation: Extensions and New Directions," *Negotiation Journal* vol. 20 no. 2 (2004): 189.

regress. Transition points often take place at meetings or conferences that bring together a critical mass of states. They are identified by the official documents that “cement” them, such as public declarations, UNGA resolutions, and draft and final treaty texts.

Transition points – while snapshots themselves – create a mosaic across time that enables comparative analysis between different cycles of talks and between different state actors. The dynamic aspects of the negotiation process emerge by analysing the three different components of each transition point, triggers, the transition point itself, and consequences. These stages correspond to three questions. What triggered the transition point? What type of departure was it? What were the consequences?

Transition points mark movements at the negotiating table. They are the decisions by a party or parties to agree to, or reject, a proposed change or idea.

The distinction between triggers and transition points requires careful analysis. In reaction to a trigger, the transition point is the inflection point that marked a step towards, or a step away from, the path to a negotiated outcome. Transition points can be sudden moves away from the expected pathway, or they can be predictable moves that have already been foreseen by negotiators.

Abrupt transition points are sudden departures from a pattern of give-and-take and include interim or final agreements or deadlocks as well as unexpected transitions from one stage to another. Less abrupt transition points can be precipitated by new proposals that alter discussions somewhat or adjust the terms of trade and somewhat predictable stage transitions.

In this thesis, the first transition point, arguably the most difficult step, involves a progressive state or group of states “floating the idea” of starting a new treaty process. This first transition point triggers the transition from the political commitment phase to the substance phase, through the adoption of a formal declaration to begin discussions on how a new treaty will be negotiated.

The second transition point, ending the substance phase and kick-starting the agreement phase, is reached when states agree on the scope of future talks and the concrete shape of those talks, such as decision-making rules and dates and venues. The formal elements for the next phase are captured in an official, public document agreed to by each state wishing to participate in formal negotiations.

The last transition point, always during a diplomatic conference, involves adopting a final treaty text that is the product of multiple drafts over preceding

weeks or months. This signals the passage from the agreement phase to the negotiated outcome, opening the door for signature and treaty adoption.

1.3.3. Consequences

Transition points can lead to positive and negative consequences. Positive consequences are positive in the sense that they move talks in the direction of results or agreements. Negative consequences lead in the opposite direction, towards impasses or stumbling blocks. In this thesis, consequences include formalising operating procedures for subsequent phases of negotiations, setting the substantive agenda and establishing modes of treaty adoption.

1.4. Transition point framework

This thesis employs the concepts above to construct a robust framework to analyse how the three states examined engaged in and shaped negotiations in each of the three treaty-making cases.

This thesis combines a three-phase sequential approach with the transition point model to compare and contrast how the three states have deployed negotiating strategies and tactics to achieve negotiated outcomes. Three phases, common to all three treaties, have been identified. Each phase followed an uninterrupted run of the same strategy leading to a specific outcome. This model identifies two separate political phases of pre-negotiation, commitment and substance, that led to the technical phase, agreement. This is captured in Figure 7.

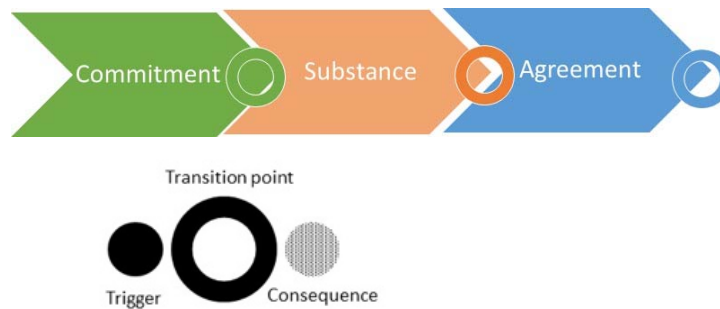


Figure 7 Three phase sequential model

During the political commitment phase, lasting for a significant period such as years or decades, states arrive at a public statement of intent from a critical mass of states that foreshadows progress towards a binding instrument. States agree to formally begin talks on a treaty. Progress here leads to substantive negotiations about scope and design of future instruments during the substance phase.

During the substance phase, states agree on the scope of a treaty, and the rules and procedures for talks to be held. Once the perimeters of a future legal instrument have been agreed, this is consolidated in the third and final phase.

The agreement phase involves fine-tuning details and seeking buy-in from as many states as possible which culminates when states agree on the treaty text.

Applying the transition point model to the three phases common to each treaty process, ten transition points emerged.

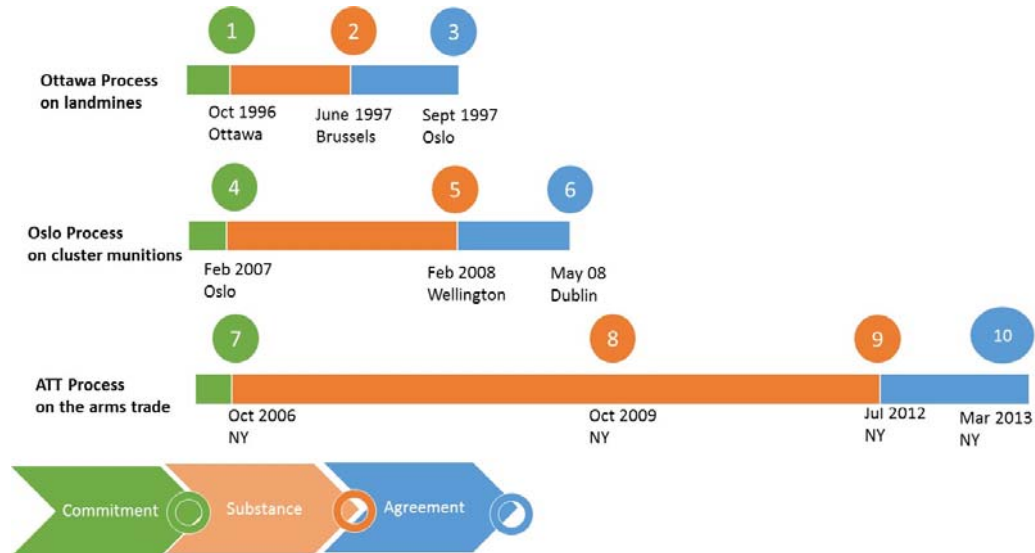


Figure 8 Ten transition points

2. Contexts of negotiations

This section explains how this thesis operationalises the “contexts of diplomacy” approach to analysing negotiations. Diplomatic contexts are separated into two categories, internal and external, with three layers each, using the physical sites of diplomacy to distinguish between types of diplomatic activity and actors.

This approach starts with the internal context, the negotiating table occupied by individual states, opening out to negotiating rooms where coalitions operate in concert, and then the corridors of diplomatic venues where civil society seek to influence negotiated outcomes.

Broadening out to the external context, this includes ‘in capital’, in ‘the world’ and ‘in the streets’. The ‘in capital’ level is shaped by three factors, the politics of governments, the policy area of arms control and strategic partnerships through alliance relationships. ‘In the world’ level encompasses events and structures outside of the negotiators control which nonetheless affect outcomes. ‘In the streets’ refers to grassroots activity, where global publics yield influence through civil society and the media. These six layers are represented in Figure 9.

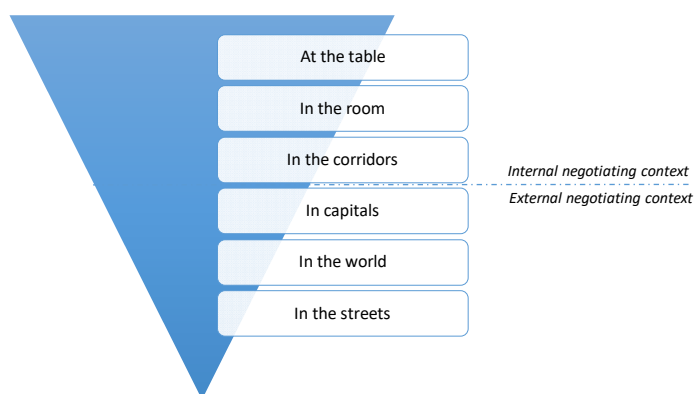


Figure 9 Contexts of diplomacy

2.1. Internal context

The internal context of negotiations includes three nested levels that are situated inside diplomatic venues. These levels are categorised as ‘at the table’, ‘in the room’ and ‘in the corridors’ of multilateral meetings. This distinguishes between states negotiating at the table, coalitions of state and non state actors developing common strategies in the room to influence negotiations, and interactions that occur in the corridors, where civil society and other observers can seek to influence state diplomats. These three layers are described below.

2.1.1. At the table, states in interaction

This site of diplomatic activity is the heart of negotiating processes, although rarely around one physical table, given the UN has 193 members. This level includes interactions between state-designated officials carried out behind flags and state name-plates. It covers formal, plenary and committee meetings during diplomatic conferences, and side events and technical and preparatory meetings that are held over months and years leading up to these conferences.

States remain the key actors in multilateral weapons treaty-making processes, as signatories to treaties. However they are not unitary actors. State delegations comprise individuals organised hierarchically and functionally along intricate lines of power and authority, accountable to the public and to parliaments.

Contrasting practitioners’ eye-witness accounts with analysis from researchers, there is a significant gap between what the former describe as their lived experience and the latter, who require methodological foundations to be able to test hypotheses about negotiations in general.

While observers note that diplomats and national representatives within the UN disarmament machinery are “more than simply mouthpieces of their

governments”³²⁰ and “it’s the people that made this happen”, those who analyse diplomatic activity cannot easily substantiate these claims given the difficulties of untangling the multiple strands, causes and effects, triggers and responses.

To address the challenge of substantiating claims by participants, this thesis draws on primary and secondary sources, including interviews with diplomats and published accounts by participants and observers from multiple perspectives. This approach seeks to capture how different actors perceived the roles of individuals. At multiple points the thesis underlines the role of specific diplomats on processes, mapping out where possible the specific strategies and communication tools that particular actors adopted.

2.1.2. In the room, coalitions working in concert

A crucial dynamic in the room during negotiations is the presence of groupings and coalitions of states, providing a means to cut through the near impossibility of syncoating individual positions among a 193-member voting constituency, namely UN member states. Groupings and coalitions of states are essential to move forward through collective modes of working and negotiating. The tempo they set can steer talks towards negotiated outcomes or impede progress. The practice of country groupings is well entrenched in multilateral arms control, to foster confidence-building and knowledge-sharing. On WMDs, these include the Nuclear Suppliers Group (NSG) and the US-led Proliferation Security Initiative (PSI), which foster collaboration and cooperation and formulate guidelines for best practice.³²¹ In humanitarian disarmament diplomacy, this practice has evolved into the formation of core groups of small and medium states and civil society, which have initiated the Ottawa, Oslo and ATT Processes.

The close contact and communication required to maintain groups and coalitions occurs mainly through informal interactions, in delegate lounges and cafes within and around diplomatic venues during conferences. This might include coffee breaks, side events, formal dining rooms, hotel bars, diplomatic receptions, civil society gatherings, or even restrooms.

The foundational work of coalition building, – where agendas are set and divisions of labour are formalised – takes place in the long periods leading up to conference, in permanent missions and UN offices. Space and opportunity to

³²⁰ John Borrie, “Rethinking Multilateral Negotiations: Disarmament as Humanitarian Action,” in *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action*, John Borrie and Vanessa Martin Randin (eds.), (Geneva: UNIDIR, 2005): 15.

³²¹ International Atomic Energy Agency, “The Nuclear Suppliers Group: Its Origins, Role and Activities,” Information Circular INFCIRC/539/Rev.6, January 22, 2015.

interact without microphones and away from the scrutiny of other delegations, civil society and even other members of one's own negotiating team is a pre-requisite for this form of micro-level diplomacy.

As personal relationships develop in formal and informal settings, negotiators can build trust and establish predictability, which makes it possible to gauge flexibility and rigidity of others' positions. This is particularly the case for disarmament diplomacy in Geneva, where diplomats are posted on multi-year postings and are in regular contact for extended periods. Often diplomats from different missions will live in the same area, shop in the same supermarkets and send their children to the same schools as their colleagues from other missions.

At times, states look to NGOs for alternative perspectives to go beyond the boundaries of the formal mandates of capitals. During talks on landmines, the Quakers Office in Geneva and New York hosted off-the-record gatherings in their meeting rooms to provide safe spaces in which diplomats and others could talk freely. This duality between formal and informal processes was described as "being in the middle while remaining on the edge".³²² Actors on the margins of talks, not affiliated to states, are well placed to open the 'neutral' middle-ground between contrasting positions of states as they are coming in from the outside.

2.1.3. In the corridors, civil society leveraging influence

Moving out of the room, the corridors constitute another site that shapes the negotiating context. Observers with a stake in the process but no seat at the table leverage their influence in the corridors. An idiosyncratic feature of disarmament diplomacy is the starting point of negotiation processes across different states and civil society. All three processes in this thesis were led initially by civil society actors, who developed potential solutions – bans on weapons and a comprehensive arms trade treaty – which were then taken up by states and culminated in international legal instruments.

This indicates a systemic shift as governmental and non governmental processes converge.³²³ During the Ottawa Process, for example, specific drafting contributions by civil society to the second draft "the Second Tentative Austrian draft" can be traced directly.³²⁴

³²² David Atwood, "NGOs and multilateral disarmament diplomacy: limits and possibilities," in *Thinking Outside the Box in Multilateral Disarmament and Arms Control Negotiations* John Borrie and Vanessa Rand Martin (eds), (Geneva: UNIDIR, 2006): 33.

³²³ David Atwood, "NGOs and Disarmament: Views from the Coal Face," *Disarmament Forum* vol. 1. (2002): 5.

³²⁴ Stuart Casey-Maslen, *Commentaries on Arms Control Treaties: The Convention on the Prohibition of the use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction*, (Oxford: Oxford University Press, 2015): 21.

Access to the corridors requires skilful negotiations in order to obtain observer status, which is granted to established organisations such as the International Committee of the Red Cross (ICRC) as well as smaller NGOs who have the resources to obtain accreditation through ECOSOC. The status of observer allows entry to most formal diplomatic venues and can also be granted to states who are not actively negotiating, for example as they are not parties to the relevant body or treaty. At times observers are permitted to make formal interventions during opening and closing plenaries, subject to the rules of procedure and the discretion of the president of the conference. Here, the UN facilitates civil society access to disarmament talks, providing an opportunity to influence governmental delegations and UN agencies by lobbying them directly.

The vantage point from the corridors enables civil society representatives to identify where interests lie and to track shifts in energy in the room. These observers are conduits to the outside world, providing real time reporting on how negotiations are unfolding to the public via social media platforms. Furthermore, they can also deploy resources, strategies and tactics to influence diplomats when they step away from the table.³²⁵ One example of observer influence within the negotiating room can be seen in the dissemination of reports on tables near the doors to diplomatic venues.³²⁶ Civil society is also active in capitals, raising grassroots awareness through protests but also through advocacy, research and policy development. The difference in approach is generally framed using models of “theory of change” which are common in most mission statements of civil society organisations.³²⁷ From the back of the room, state and non state actors also bring in the media and by extension public opinion.

The shift from secret diplomacy (total exclusion of media and public) and closed-door diplomacy (partially excluded)³²⁸ to open diplomacy (open and extensive coverage)³²⁹ is a potent tool for civil society and state diplomats to amplify their messages across platforms. An example is the newsletter, Ban Treaty News (BTN), produced by the NGO coalition ICBL during the Ottawa Process, which was distributed to diplomats daily during talks and widely circulated to the media. BTN

³²⁵ Javier Alcalde, "Human Security and Disarmament Treaties: The Role of International Campaigns," *Global Policy* vol. 5 no. 2 (2014): 241.

³²⁶ Keith Krause, "Multilateral diplomacy, norm building, and UN conferences: the case of small arms and light weapons," *Global Governance* vol. 8 (2002): 247.

³²⁷ Jean L. Cohen and Andrew Arato, "Introduction," in *Civil Society and Political Theory*, (Cambridge and London: MIT Press, 1994): 1-2.

³²⁸ William Maley, "Quiet and Secret Diplomacy," in *The SAGE Handbook of Diplomacy* Pauline Kerr, Costas M. Constantinou and Paul Sharp (eds.) (London and Los Angeles: SAGE, 2016.): 451.

³²⁹ Eytan Gilboa, "Mass Communication and Diplomacy: A Theoretical Framework," *Communication Theory* vol. 10 no.3 (2000): 306.

included editorials, information on country positions and the controversial “good country” list.³³⁰ The British Red Cross helped link Diana, Princess of Wales, to the HALO Trust which organised two visits to mine-affected zones.³³¹ The attention generated equated to a US\$2 million PR campaign.³³²

Civil society uses corridors to great effect to engage negotiators and media through photographic exhibitions in conference venues to bring in the faces of victims of explosive remnants of war. During the Ottawa Process, photos of survivors and communities were displayed in and around meeting venues to keep the human face of this issue before governments. When ad hoc processes take place outside of the UN, when they “leave the building”, this opens the door for practices to break with convention and creates space for civil society to exert more influence. In these contexts of forum fragmentation,³³³ reframing, resources and partnerships by civil society and partner states can have a lasting effect.³³⁴

The UN itself can also exercise influence as both an actor in the room and as the host of talks. In the case of weapons treaty-making, while the UN has provided a valuable negotiating forum, it has not exercised agency as a separate entity outside of relaying member state preferences. The limited role played by the United Nations Office for Disarmament Affairs (UNODA) during the ATT, as a functional unit focused on logistics for conferences rather than on providing expertise and substantive input, extended to the choice of experts supporting diplomatic conference presidents.

Under Ambassador Garcia Moritan (2012) and Ambassador Woolcott (2013), both teams were made up of experts from outside the UNODA. When the selection process commenced to establish the ATT’s permanent secretariat, UNODA was not included on the short-list of three locations presented to the First Meeting of States Parties in Mexico in 2014.³³⁵

In contrast, the International Committee of the Red Cross (ICRC) has had a significant role to play in shaping state preferences and as a leading architect in

³³⁰ Ken Rutherford, “The Landmine Ban and NGOs: the role of communications technologies,” *Journal of Transnational Associations* vol. 2 (2000): 60.

³³¹ Jerry White, “Landmine survivors speak out,” *Disarmament Forum* vol. 4 (1999): 12.

³³² Nicola Short, “The role of NGOs in the Ottawa Process to ban landmines,” *International Negotiation* vol. 4 no. 3 (1999): 485.

³³³ Amandine Orsini, “Multi-forum non-state actors: Navigating the regime complexes for forestry and genetic resources,” *Global Environmental Politics* vol. 13 no. 3 (2013): 37.

³³⁴ Michele M. Betsill, “Reflections on the Analytical Framework and NGO Diplomacy,” in *NGO Diplomacy: the Influence of Nongovernmental Organizations in International Environmental Negotiations*, Michele Betsill and Elizabeth Corell (eds.) (2008): 204.

³³⁵ Sibylle Bauer and Mark Bromley, “‘Rules of the Road’ for the Arms Trade Treaty agreed in Cancun but stiffer tests lie ahead,” *SIPRI Commentary*, August 28, 2015.

norm development on landmines and cluster munitions, with ICRC President Sommaruga spearheading a global campaign in 1995 on behalf of the ICRC, and the Red Cross movement as a whole, calling for a ban on antipersonnel landmines.³³⁶ This was the first time the ICRC had taken such a public stance.³³⁷ The ICRC attended all meetings of both the Ottawa and Oslo Processes, contributing hundreds of expert reports and substantive drafting inputs. ICRC reports produced in 1996 during the CCW Protocol Amendment discussions contradicted military experts by claiming that the establishment of minefields was not only time-consuming, expensive and dangerous, but that the devices concerned were of limited military utility compared to their devastating humanitarian impacts. The ICRC role continued in importance after the Protocol Amendment discussions ended in May 1996 without agreement on a complete landmine ban, although its coverage was extended to non-international armed conflicts, this in the wake of conflicts in the former Yugoslavia, where mine deployments occurred, and following the significant International Court Tribunal for the former Yugoslavia Tadić ruling.³³⁸ The ICRC thus contributed both expertise and legitimacy to weapons treaty-making.

While this shift in physical location is significant, states remain the key actors in treaty-making processes, as signatories of the final negotiated instruments and as subjects of the rights and obligations enshrined therein. In this sense, while activity in the room and corridors of negotiating venues can shape substantive and procedural aspects of multilateral negotiations, including the agenda and how arguments are framed, the centre of gravity remains the negotiating table, where formal deliberations take place and final decisions are taken.

2.2. External context

Stepping away from the internal context, three levels of analysis exist in the external context, in capital, in the world, and in the streets. All are detailed below.

2.2.1. In capital, at the intersection of politics, policy and partnerships

When negotiators walk in to diplomatic venues, their instructions from capital set the direction and often the detail for their positions. National diplomatic systems in disarmament diplomacy follow a hub and spokes model. At the hub, diplomats

³³⁶ Ivan Cook and Martine Letts, "A Twilight Zone? Diplomacy and the International Committee of the Red Cross," *Global Governance and Diplomacy*, Andrew F. Cooper, Brian Hocking and William Maley (eds), (Basingstoke: Palgrave Macmillan UK, 2008): 105.

³³⁷ Cornelio Sommaruga, "Humanitarian Challenges on the Threshold of the Twenty-First Century: Keynote address, Cornelio Sommaruga, President of the International Committee of the Red Cross, 26th International Conference of the Red Cross and Red Crescent, February 29, 1996," *International Review of the Red Cross*, no. 310 (1996).

³³⁸ J-P Lavoyer and Louis Maresca, "The Role of the ICRC in the Development of International Humanitarian Law," *International Negotiation* vol. 4 no. 3 (1999): 525.

from ministries of foreign affairs coordinate government-wide inputs and provide a stable structure with representation at the UN Offices in Geneva and New York. The spokes represent the lines of communication to different ministries with broad interests in disarmament, from defence to trade and aid, and agencies with specific disarmament-related responsibilities, such as those that regulate sports firearms and weapons exports. The context in capital comprises three key dimensions that shape what occurs within the internal context. These are both necessary and sufficient conditions for states to engage in negotiations.³³⁹

2.2.1.1. *Politics*

The politics of the governing political party is the first major dimension of the “in capital” context. This thesis focuses on Westminster parliamentary democracies. The majoritarian Westminster approach gives the Cabinet of the ruling party a strong role in decision-making, with prominent figures at the executive and occasionally ministerial level.³⁴⁰ The Westminster model of governance embodies four traditions: royal prerogative; responsible government; constitutional bureaucracy; and representative government.³⁴¹ These shape decision-making on foreign policy, requiring Cabinet approval to proceed with negotiations and Parliamentary approval to ratify treaties. Permanent bureaucracies are also integral to policy development, while the concept of representative government aims to ensure that policy reflects the interests and values of its constituents.

The relationship between the prime minister, foreign minister and cabinet shapes the trajectory of politics and policy. The foreign policy direction is in turn influenced by the style of diplomacy favoured by the governing party and its attitude to multilateralism. Civil society organisations are also active in all three countries, with varying degrees of access to policy-makers and political leaders.³⁴²

Domestic political priorities can sometimes influence foreign policy, creating a two-level dynamic through which foreign policy is used to reinforce domestic political standing and outcomes. In the case of the Ottawa Treaty, Australia formalised its intent to sign the MBT after Prime Ministers John Howard and Jean Chretien met on the sidelines of a Commonwealth Heads of Government (CHOGM)

³³⁹ Brian Tomlin, “On a fast-track to a ban: The Canadian policy,” *Canadian Foreign Policy Journal* vol. 5 no. 3 (1998): 11.

³⁴⁰ Arend Lijphart, *Patterns of democracy: Government forms and performance in thirty-six countries*, (New Haven and London: Yale University Press, 2012): 14.

³⁴¹ Rod AW Rhodes, John Wanna, and Patrick Weller, *Comparing Westminster*, (Oxford: Oxford University Press, 2009).

³⁴² Meg Russell, Daniel Gover, Kristina Wollter and Meghan Benton, “Actors, Motivations and Outcomes in the Legislative Process: Policy Influence at Westminster,” *Government and Opposition* vol. 52 no. 1 (2017): 1.

Summit and discussed the MBT and two Australian trade initiatives. Canberra and Ottawa bolstered their counterpart's initiative across two previously unrelated policy areas, enabling both Prime Ministers to garner significant support to 'land' a win internationally and reinforce domestic popularity for their governments.³⁴³ This two-level dynamic can also flow in the reverse direction, where a state leverages an international agreement in order to shape change domestically. This occurs for example in the European Union.³⁴⁴

2.2.1.2. Policy

Policy on the substantive elements of arms control and disarmament is developed and implemented across different ministerial portfolios. National diplomatic systems expand and adapt to draw in technical expertise from relevant ministries under the coordination of diplomats in capital and at post. State preferences change over the course of political cycles and depending on where expert knowledge lies among policymakers, from ministers to public servants.³⁴⁵ While ambitious domestic policy can enable states to play a leadership role internationally, this dynamic can also halt or slow progress if domestic policy has become entrenched through previous contractual agreements.³⁴⁶ When specialised agencies take carriage of the implementation of multilateral treaties, this can entrench a particular approach to issues that can shape preferences in favour of existing frameworks and away from alternative approaches.³⁴⁷ For example, agencies with a mandate to implement IHL as codified in the CCW might prioritise the future development of additional protocols under the CCW framework, rather than opting for an ad hoc approach outside the CCW.

A significant policy objective pursued by all three states is a seat on the UN Security Council. Campaigns led by all three required support from UN members.

For New Zealand, the lead role played by Wellington during the Oslo Process reinforced its claims that small states could make a difference in world affairs, which was the central message of its successful UNSC election bid in 2015.³⁴⁸

³⁴³ Norichika Kanie, "Leadership in Multilateral Negotiation and Domestic Policy: The Netherlands at the Kyoto Protocol Negotiation," *International Negotiation* vol. 8 no. 2 (2003): 341.

³⁴⁴ Norichika Kanie, *Leadership in Multilateral Negotiation*, 365.

³⁴⁵ Christian Downie, "Three Ways to Understand State Actors in International Negotiations: Climate Change in the Clinton Years (1993–2000)," *Global Environmental Politics* vol. 13 no. 4 (2013): 22-40.

³⁴⁶ Kenneth Adelman, "Arms Control with and without Agreements," *Foreign Affairs* vol. 63 no. 2 (1984): 242.

³⁴⁷ Abram Chayes, "An Inquiry into the Workings of Arms Control Agreements," *Harvard Law Review* (1972): 909.

³⁴⁸ New Zealand Government, "New Zealand takes UN Security Council seat," January 6, 2015.

For Canada, Ottawa's unsuccessful UNSC bid under Prime Minister Steven Harper prompted a backlash against the UN, with Harper delegating attendance at Leaders' Week at the UN General Assembly to Foreign Minister John Baird. These interventions, from 2012-2016, focussed on criticisms of the UN as an organisation and highlighted Canada's achievements outside of the multilateral arena. From then on, Canada scaled back its resources in the ATT preparatory process, although it is likely that this would have been the case regardless of the outcome of the campaign, as Harper's focus internationally was on a niche issue, women's and children's care. In this way, unsuccessful campaigns can have a negative consequence on participation in multilateral forums.

For Australia, new aid relationships were forged in West Africa and the Caribbean during the UNSC campaign, two regions heavily affected by the illicit trade in small arms and key drivers for the ATT.³⁴⁹ Additional resourcing and staffing to the Australian Permanent Mission in New York deployed for the UNSC campaign were allocated to the ATT preparatory process. While an elected member of the UNSC, Australia also co-sponsored a UNSC Resolution on the Small Arms and Light Weapons.³⁵⁰ Drawing together these three campaigns, linkages exist between different policy outcomes, where the pursuit of objectives in one domain (eg temporary membership the UNSC) can reinforce action in other areas (eg championing a treaty cycle). This link is not always positive. For example, if the first goal, namely election to the UNSC, is not achieved, then this can lead to a turn away from activity that falls under that same framework, in this case the UN.

2.2.1.3. Partnerships

The third aspect in capitals, partnerships, relates to how states approach their position in the world, through relations with regional and military allies. In this thesis, this mainly looks at the relationship between the US and each government on security, defense and trade policies, notably how regional security frameworks intersect. Through their ministries of foreign affairs,³⁵¹ each state has significant diplomatic functions in their capitals and around the world, as detailed in the introduction. All three balance alliance partnerships while maintaining constructive relations with large regional neighbours, as explored in chapter 1.

³⁴⁹ Bob Carr, Australian Minister for Foreign Affairs, "Australian National Statement to the UN Arms Trade Treaty Conference," New York, July 3, 2012.

³⁵⁰ United Nations Security Council, Resolution 2117 on Small Arms and Light Weapons, S/RES/2117 (2013), September 26, 2013.

³⁵¹ In Canada, Department of Foreign Affairs, Trade and International Trade (DFAIT) until 2013 when it became Department of Foreign Affairs, Trade and Development (DFATD). Known as Global Affairs Canada since 2015. In Australia, Department of Foreign Affairs and Trade (DFAT). In New Zealand, Ministry of Foreign Affairs (MFAT).

2.2.2. In the world – geopolitics in play

The context ‘in the world’ includes actors, events and structures that operate outside the control of negotiators.³⁵²

2.2.2.1. Events

Unpredictable events like major climactic episodes or the outbreak of hostilities can change the trajectory of negotiations. Shortly before the Oslo diplomatic conference, the death of Princess Diana, a prominent advocate for land mine victims, placed significant pressure on the UK to support a ban on landmines. Predictable events can also influence talks. For instance, the “lame duck” period for US Presidents in the final year of a two-term mandate may be viewed either as an opportunity to address sensitive files without electoral consequences, or as a risky negotiating period in which any gains might subsequently be reversed by the future administration. Casting the analytical net wide when examining transition points in negotiations can help pinpoint unexpected changes in negotiating positions, or changes in negotiating strategies. While events can trigger changes in positions, alone they do not bear direct causal weight on negotiated outcomes. In the example above, the change in London’s negotiating instructions due to negative press surrounding the British royal family’s reaction to the death of Diana, Princess of Wales, had an impact because the UK joined the ranks of those states pushing for a ban treaty. However, this tragic accident, in and of itself, did not directly cause agreement on the Ottawa Treaty.

2.2.2.2. Structures

As foreshadowed above, multiple disarmament forums co-exist, spanning weapons of mass destruction and conventional weapons. This facilitates linkages across issues and actors, a feature of multilateral talks for diplomats whose mandates will often cross over multiple divides simultaneously. Breakthroughs in one forum can lead to or away from progress elsewhere through competitive and opportunistic forces.³⁵³ On cluster munitions, two forums sought simultaneously to develop a multilateral legal instrument. The CCW in Geneva, and the Oslo Process, with meetings around the world, operated in parallel and with significant cross-over among negotiators. When the CCW failed to adopt a timeline, this added momentum to the Oslo Process and created pressure on those states who were members of both forums and who had publicly committed to action.

³⁵² Daniel Druckman, “Dimensions of International Negotiations: Structures, Processes, and Outcomes,” *Group Decision and Negotiation* vol. 6 no. 5 (1997): 399.

³⁵³ Gilbert Winham, *International Trade and the Tokyo Round Negotiation*, (Princeton: Princeton University Press, 1987).

In terms of structures on the world stage, legal instruments such as treaties that enshrine military alliances or codify how international organisations operate can also influence negotiations in unrelated domains. One of the substantive issues to resolve during the Oslo Process was the question of interoperability, namely the impact that the future treaty would have on military alliance obligations between Oslo Process participants and their major military alliance partners, notably the US. The US did not participate in the Oslo Process, yet it nevertheless exerted significant pressure on its alliance partners in Ottawa, and Canberra, to respect its strategic interests. In this way, the structures enshrined under NATO and ANZUS led to particular pressure points along the way to the CCM.

Previous treaty cycles can also create momentum for new cycles, by making it easier to start, maintain and conclude another set of talks.³⁵⁴ The Ottawa Treaty paved the way for the Oslo Process a decade later by proving that ad hoc disarmament processes outside of the UN were a feasible route. The 'ad hoc option' is now commonly considered, most recently in the context of a UN-mandated Open-Ended Working Group addressing future negotiations on banning nuclear weapons. While nuclear talks eventually remained within the UN disarmament framework, the possibility of pursuing action through different avenues raised the stakes for states opposing the talks.³⁵⁵ If talks were inevitable, then it was preferable for these reluctant states that they should occur within the UN, with its informal practice of consensus, rather than in an ad hoc forum, where rules could be set by participants. In this way, historical precedents on the international stage can influence future negotiated outcomes.

2.2.3. In the streets, global publics

This final layer of the external negotiating context recognises the influence of public opinion on national decision-making. Grassroots activism amplifies the voices of everyday citizens through collective action. This activism tends to have maximal effect when it brings together large numbers, with strategies and tactics designed to attract the attention of the media and elected representatives. A small-scale, low budget, localised public campaign - such as the pyramid of single shoes placed in front of the UN offices in Geneva – can attract global media coverage and reach millions of people through social media.

³⁵⁴ Charan Devereaux, Robert Lawrence and Michael Watkins, *Case Studies in US Trade Negotiation*, (New York: Columbia University Press, 2006).

³⁵⁵ Ray Acheson, Thomas Nash and Richard Moyes, *Report on A Treaty Banning Nuclear Weapons Developing a legal framework for the prohibition and elimination of nuclear weapons*, (London and Geneva: Article 36 and Reaching Critical Will, 2014): 20-21.

Other campaigns draw potency from building connections between different regions. For example, local activities organised around the world during the “Global Week of Action Against Gun Violence” can grab headlines if they connect a critical mass of communities.³⁵⁶ Activism in the streets can influence negotiated outcomes when it begins to shape policy in capitals, and when it attracts the media’s gaze.

2.3. Negotiating strategies and tactics

The three states examined in this thesis have enacted different negotiating strategies and tactics at different times. A state’s negotiating strategy is defined by the objective it is seeking to achieve through a negotiated outcome. Tactics are the means by which states pursue a negotiating strategy and will typically vary depending on the particular phase of the negotiating cycle.

2.3.1. Negotiating strategies

As observed in this thesis, a negotiating strategy has three important elements. The first is the desired outcome that states are pursuing, for example a binding legal instrument on the use of a category of weapon. The second element is the process by which this outcome will be achieved, namely how substantive elements are negotiated through rules and procedural approach. This can be via a standing forum, through a process defined by stage-gates mandated by UN resolutions or an ad hoc process. The third element relates to the allocation of resources, including funding, people and political capital. Three influential negotiating strategies are evident in the approaches employed by the three states across the three cycles examined in this thesis. These strategies are championing, blocking and sidelining.

A championing strategy aims to build momentum towards a negotiated outcome within a given negotiating process through sustained diplomatic activity.

A blocking strategy aims to slow down progress towards a negotiated outcome within a given process through sustained diplomatic activity.

‘On the sidelines’ is a strategy of presence rather than advocacy, where a state is in the room but does not consistently engage in diplomatic activity. Given the length of conventional weapons negotiating processes, a sidelining strategy may sometimes be the most viable option for states with limited resources. This strategy enables states to engage in temporary championing or blocking in a given phase or at a point in time.

³⁵⁶ IANSA, “Global Week of Action Against Gun Violence,” <http://en.iansa.org/campaign/global-week-of-action-against-gun-violence> Last accessed April 4, 2018.

Leadership is required for both championing and blocking strategies to come to fruition around the negotiating table.³⁵⁷ Leverage, skills and innovation are brought together to “solve or circumvent the collective action problems that plague the efforts of parties seeking to wrap joint gains in processes of institutional bargaining”.³⁵⁸ Leadership is operationalised via individuals as agents of their states, where ‘Ambassador Mackay’ is interchangeable with the flag behind which he sits, in this case, New Zealand.

In conventional weapons treaty-making, leadership can be broken down into two components, namely substantive and procedural, or intellectual and entrepreneurial leadership.³⁵⁹ Leadership is typified by a principled stance, where negotiating positions are framed in normative terms.³⁶⁰ Innovative solutions and procedural strategies enable states to shape the contours of a negotiated outcome by designing the pathways to get there.

Leadership at the multilateral table is underpinned by the domestic level, in terms of resources, top-down political support and policy alignment.³⁶¹ While expertise in substance and process would plausibly play a significant role in blocking strategies, the case studies examined in this thesis do not include any cases of blocking that changed the outcome of a negotiating process.

Another form of leadership, coercive leadership, emerges far less frequently in weapons talks as it tends to be exercised by great powers who normally eschew multilateral negotiations. Here, the hard power attributes of a state translate into bargaining leverage through coercive tactics, including arm twisting and bribery.³⁶² Both were on display by the US during the Oslo Process. Although not part of negotiations, Washington engaged in bilateral demarches with states present at the negotiating table in a bid to shift negotiations to a different forum, threatening in one case to cancel aid if its position was not endorsed and maintaining pressure on allies to push the alternative forum. This example highlights that since the end of the Cold War period, great powers are no longer required for treaty-making.

³⁵⁷ Arild Underdal, “Leadership Theory: Rediscovering the Arts of Management,” in *International Multilateral Negotiation: Approaches to the Management of Complexity*, I. William Zartman (ed.) (San Francisco: Jossey-Bass, 1994): 178-200.

³⁵⁸ Oran R. Young, “Political Leadership and Regime Formation: on the Development of Institutions in International Society,” *International organization* vol. 45 no. 3 (1991): 285.

³⁵⁹ Oran R. Young, ‘Political leadership,’ 303.

³⁶⁰ Fen Osler Hampson and Holly Reid, “Coalition diversity and normative legitimacy in human security negotiations,” *International Negotiation* vol. 8 no. 1 (2003): 8.

³⁶¹ Kanie Norichika, “Domestic Policy and Leadership in Multilateral Diplomacy: The Case of The Netherlands’ Kyoto Protocol Negotiation,” *International Negotiation* vol. 8 (2003): 339.

³⁶² Charles Kindleberger, “Dominance and leadership in the international economy,” *International Studies Quarterly* vol. 25 no. 2 (1981): 243.

These three negotiating strategies are represented in the table below:

	<i>Canada</i>	<i>New Zealand</i>	<i>Australia</i>
Case 1: Ottawa Process	Championing	<i>On the sidelines</i>	Blocking
Case 2: Oslo Process	Blocking	Championing	Blocking
Case 3: ATT Process	<i>On the sidelines</i>	<i>On the sidelines</i>	Championing

Figure 10 Negotiating strategies

2.3.2. Negotiating tactics

States can employ different tactics at different points in sequenced phases to set or maintain negotiations on a trajectory towards (or away from) a negotiated outcome. Championing and blocking tactics are detailed in the section below, with examples drawn from the three negotiating processes studied in this thesis.

2.3.2.1. Championing tactics

Championing states seek to arrive at a negotiated outcome that satisfies a majority of states, following the procedural pathway set out by the negotiating process and in line with a principled approach. Championing tactics range from building momentum, to bringing together a core group of champion states, to agenda-shaping, to broadening participation in the endgame.

A foundation of championing strategies is the formation of coalitions of actors to aggregate power and resources. This permits a champion state to exert more influence than it could alone, assisting to win over the majority of voices for a negotiated outcome.³⁶³ In the three cases in this thesis, during the initial stages, core groups of 5-10 states banded together to put pressure on their regional and military allies to consider aspects of weapons regulation. NGOs were also force multipliers, engaging more states and more regions through their networks of umbrella organisations.³⁶⁴ Core groups brought together the comparative advantage of state and non-state actors. States represented the coalition during negotiations and in intergovernmental forums, while also providing funding.³⁶⁵ NGOs transmitted their experiences from the field, lobbied governments and mobilised publics and the media. These purposive coalitions were crucial in the initial stages of each process. They shared knowledge and understanding over time and developed patterns of collaborative cooperation.³⁶⁶

³⁶³ Saadia Touval, "Multilateral Negotiation: An Analytic Approach," *Negotiation Journal* vol. 5 no. 2 (1989): 162.

³⁶⁴ Matthew Bolton and Thomas Nash, "The Role of Middle Power-NGO Coalitions in Global Policy: The Case of the Cluster Munitions Ban," *Global Policy* vol. 1 no. 2 (2010): 178.

³⁶⁵ Matthew Bolton and Thomas Nash, "The Role of Middle Power-NGO Coalitions", 180.

³⁶⁶ This is explained in detail in chapters 3,4,5 and 6 of this thesis.

As the focus shifted to substantive negotiations and increasing the pool of state signatories for the future instrument, practical coalitions emerged in each process. These tactical alliances linked actors with a shared agenda to build momentum towards a successful outcome.³⁶⁷ In the final stages of talks, cross-cutting coalitions are a potent tactic to bridge divides between parties. Often it is small states or middle powers that exercise key bridging roles. This was the case for Australia in the case of the ATT Process, when the incoming Australian President of the Final Diplomatic Conference spent months travelling to each continent to shore up support for the end-game to negotiations after the first Diplomatic Conference failed to secure agreement.

While coalitions may be effective, particularly if they have built up trust over time, they may also hinder agreement. Reaching agreement within coalitions can be difficult. Moreover, if changes in position are required this can generate tensions and disagreements.³⁶⁸ In the Ottawa Process, the ICBL broke rank with Canada as the core group champion, perceiving a softening stance from Canada in the face of American pressure during the endgame in Oslo.³⁶⁹ While Canada believed that US support for the Ottawa Treaty was achievable and vital to the success of the future instrument, its main NGO partners saw American withdrawal from talks as an indicator that the instrument was strong and progressive.³⁷⁰

The cross-pollination between civil society and small and medium size countries can be observed at the delegation level, with states such as Australia, Canada, and New Zealand including civil society delegates as part of their national delegations from the 1990s onwards. On the Canadian delegations, Steve Torino (National Firearms Association) and Kenneth Epps (Project Ploughshares) participated during separate phases of the ATT Process.³⁷¹ For New Zealand, John Head, the convenor of the NGO New Zealand Campaign Against Landmines (CALM), joined the official delegation in the later stages of the Ottawa Process.³⁷² On Australian delegations, Sister Patricia Pak Poy (Australian Network to Ban Landmines) participated during

³⁶⁷ This is explained in detail in chapters 3,4,5 and 6 of this thesis.

³⁶⁸ Saadia Touval, "Multilateral Negotiation", 159.

³⁶⁹ Valerie Warmington and Celina Tuttle, "The Canadian Campaign," *To Walk Without Fear: the Global Movement to Ban Landmines*, Maxwell Cameron, Robert Lawson and Brian Tomlin (eds.) (Don Mills: Oxford University Press Canada, 1998): 57.

³⁷⁰ Lesley Wexler, "The International Deployment of Shame, Second-Best Responses, and Norm Entrepreneurship: The Campaign to Ban Landmines and the Landmine Ban Treaty," *Arizona Journal of International and Comparative Law* vol. 20 (2003): 561.

³⁷¹ Habib Massoud (Deputy Director, Non-proliferation and Disarmament division, DFAIT), 'Witness evidence to Meeting #041, Standing Committee on Foreign Affairs and International Development, Canadian Parliament, 41st Parliament, 1st Session, Ottawa' 11 June 2012.

³⁷² Deborah Morris, Minister Of Youth Affairs, New Zealand, "Statement At The Ottawa Treaty Signing Conference For A Global Ban On Landmines," Media release, Ottawa, December 3, 1997.

the Ottawa Process while Ben Murphy (Oxfam) participated during the ATT Process.³⁷³ This form of diplomacy is not without critics, who claim that NGO involvement is sought by states for the aura of legitimacy that it bestows.³⁷⁴

2.3.2.2. *Blocking tactics*

This thesis identified three recurrent forms of blocking, procedural manoeuvring, forum shifting and positional bargaining. In each case, states seek either a lowest-common denominator outcome or no outcome. They remain at the table to shape the future direction of talks and the substance of the final instrument.

Procedural manoeuvring through agenda shaping can slow momentum and direct talks away from the intended outcome. Like championing, this requires allies. Tactics include building blocking coalitions, providing alternative outcomes and challenging the majoritarian view as substantive discussions intensify.

Forum shifting involves attempting to shift talks to another forum, to alter the substance of treaty instruments. It emerges in conventional weapons as there are competing forums on similar issues, from the Conference on Disarmament (CD) to the CCW to ad hoc forums.³⁷⁵ This “chessboard” tactic seeks to shift to an alternative venue more closely aligned to states’ interests, either in terms of institutions, actors or outcomes.³⁷⁶ This prolongs talks indefinitely or shifts the negotiated outcome from binding agreements to political declarations.³⁷⁷

Positional bargaining is part of an underlying blocking tactic that favours distributive bargaining over integrative modes.³⁷⁸ Distributive tactics involve an adversarial win-lose outcome with fixed expectations and interests. Parties focus on utility and value-claiming and engage in a zero-sum game, through competitive bargaining with high initial demands and few concessions.³⁷⁹ This contrasts with integrative tactics where negotiators seek mutually advantageous results, with flexible interests open to change through problem-solving.

³⁷³ Senator Ian Campbell, “Ministerial Statement – Inhumane Weapons Convention,” Senate, *Debates*, October 16, 1996, Hansard, P. 4288. Oxfam Australia, “Australia ratifies historic Arms Trade Treaty: Now let’s ensure it makes a difference,” *Oxfam Analysis and Opinion*, June 4, 2014.

³⁷⁴ Diana O’Dwyer, *Global Civil Society and Hegemonic Global Governance: a Gramscian Analysis of the NGO Campaigns to Ban Landmines and Cluster Munitions*, (PhD Dissertation, Dublin City University, 2014): 3.

³⁷⁵ Laurence R. Helfer, “Regime shifting in the international intellectual property system” *Perspectives on Politics* vol. 7 no.1 (2009): 39.

³⁷⁶ Laurence Helfer, “Regime Shifting: the TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking,” *Yale Journal of International Law* vol. 29 (2004): 1.

³⁷⁷ Peter Drahos, “Four Lessons for Developing Countries from the Trade Negotiations over Access to Medicines,” *Liverpool Law Review* vol. 28 no. 1 (2007): 13.

³⁷⁸ Roger Fisher, William Ury and Bruce Patton, *Getting to Yes 2nd Edition*, (New York: Penguin Books, 1991): 7.

³⁷⁹ Robert McKersie, Joel Cutcher-Gershenfeld, “Labor-Management Relations: Understanding and Practicing Effective Negotiations,” *Negotiation Journal* vol. 25 no. 4. (2009): 499.

The focus is on cooperation and value-creation.³⁸⁰ Negotiators introduce mutually-beneficial agenda items, communicate openly and seek imaginative solutions that go beyond opening positions and towards value-creation.

The complexity of mixed-motive contexts, where cooperation and conflict interact, can lead to the negotiator's dilemma, where negotiators lose out if they enter talks using a different mode to their counterparts.³⁸¹ This also raises issues for analysts in capturing the full story. The most useful approach is to analyse a 'spectrum', rather than either/or, from distributive to integrative tactics.³⁸²

2.3.2.3. *'On the sidelines' tactics*

'On the sidelines' tactics include a presence in the room, ranging from benign 'keeping the seat' warm to active forms of championing or blocking during particular phases. The spurts of activism on occasion led to joining championing or blocking coalitions during windows of opportunity and endorsing public statements by champions or blockers. This thesis includes two examples of 'championing on the sidelines,' New Zealand during the Ottawa and ATT Processes, and one of 'blocking on the sidelines,' Canada on the ATT Process.

'On the sidelines' can capture progressive or conservative positions. Both can result in the absence of a negotiated outcome. Wellington was pushing for a broader scope on the ATT and pushing back on consensus decision-making, two issues which could have seen the US, Russia and China pull out of talks. Wellington's Ambassador lobbied civil society to reject the first draft ATT in New York in 2012 as it was not progressive enough.³⁸³ Ottawa's public framing of the ATT as a threat to its domestic gun-owners reinforced the messaging from the powerful US gun lobby, whose influence in Washington was significant. In both cases, neither state was intent on reaching a negotiated outcome, with one seeking the weakest possible rules and the other the strongest.

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The case studies that follow in chapters 3, 4,5 and 6 apply the phases, transitions points and contexts of diplomacy approach to illuminate broader patterns of why and how states engage in treaty-making.

³⁸⁰ Robert McKersie and Joel Cutcher-Gershenfeld, "Labor-Management Relations", 499.

³⁸¹ David Lax and James Sebenius, "The Manager as Negotiator: The Negotiator's Dilemma: Creating and Claiming Value," *Dispute Resolution* 2 (1992): 50.

³⁸² John Odell, "Creating Data on International Negotiation Strategies, Alternatives and Outcomes," *International Negotiation* vol. 7 no. 1 (2002): 39.

³⁸³ This is explored in detail in chapter 6 of this thesis.

CHAPTER 3: CANADA AND THE OTTAWA PROCESS ON LANDMINES

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Chapter 3: Canada and the Ottawa Process on landmines

This chapter demonstrates that a multi-layered contextual model helps to understand why and how Canada championed and shaped the negotiating process that led to the Mine Ban Treaty (MBT).³⁸⁴ Breaking down negotiations into phases and transition points, and then examining multiple sites of diplomatic and policy activity, provides a fine-grained identification of why and how Canada championed the Ottawa Process over 14 months. The chapter examines the three transition points that led to the MBT.

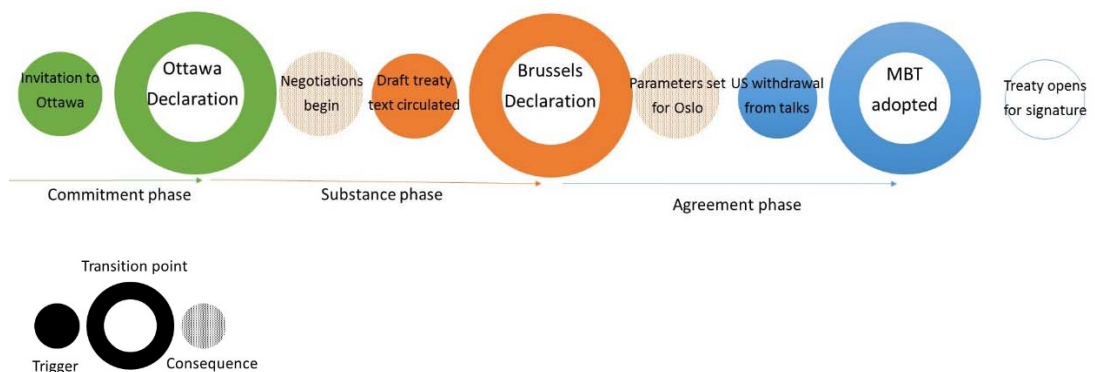


Figure 11 Transition points in the Ottawa Process

The chapter argues that domestic politics, external policy and strategic partnerships all aligned in Ottawa, enabling Canada to champion the Ottawa Process on landmines (APLMs). The political stripes of the state were changing, coinciding with an opportunity to pursue policy goals that aligned with the ambitions of a newly minted minister and were not likely, at least initially, to jeopardise relations with Canada's partners, including its largest neighbour, the United States of America (US), as well as its North American Treaty Organisation (NATO) allies. This alignment occurred just as multilateral landmines negotiations in Geneva failed to make progress³⁸⁵ and while public awareness was reaching a critical juncture through civil society activism in the streets.³⁸⁶

³⁸⁴ *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, Oslo, 18 September 1997, United Nations Treaty Series, vol. 2056, P. 211.

³⁸⁵ These talks were part of regular reviews of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW). *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III)*, Geneva, 10 October 1980, United Nations Treaty Series, vol. 1342, P.137.

³⁸⁶ The International Campaign To Ban Landmines (ICBL) was an umbrella coalition that grew from six NGOs in October 1992 to over 1,200 NGOs by the end of 1998. National campaigns run by local ICBL members run in France, Italy and Cambodia between 1993 and 1994 helped trigger national moratoriums in these key countries on the road to an international ban. Jody Williams and Steve Goose, "The International Campaign To Ban Landmines", in *To Walk without Fear: The Global*

Through coalition-building with state and non state allies, Canada shaped procedures to achieve a humanitarian outcome to which states had to commit from the start of talks. The treaty that emerged created an innovative template for future efforts at humanitarian arms control.

The chapter proceeds in three sections. The first section discusses the MBT's humanitarian origins and how it evolved to become a hybrid arms control/humanitarian instrument. The second section analyses the "in capital" context that prompted Canada to champion the Ottawa Process, using the lenses of politics, policy and partnerships. The third section explores three transition points of this process, considering diplomatic activity across the six different contexts of diplomacy identified in chapter 2, as shown below. The focus here is on how Canada shaped the Ottawa Process through negotiating strategies and tactics. The chapter concludes by drawing together the patterns and trends of state championing and diplomatic activity that emerge from this case study.

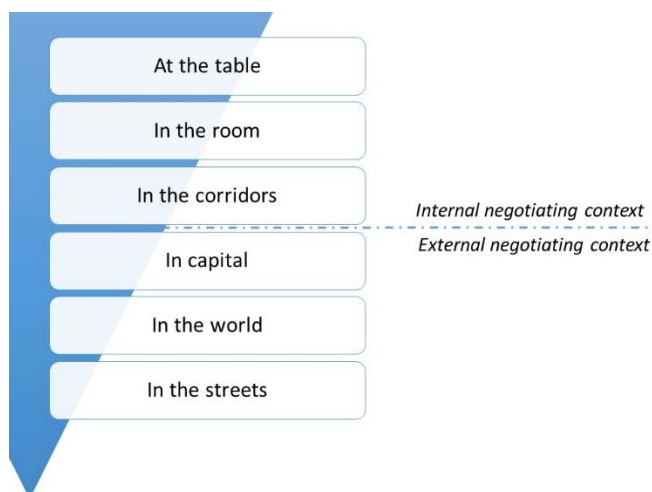


Figure 12 Contexts of diplomacy

1. Humanitarian arms control and landmines

The MBT, a hybrid disarmament and humanitarian instrument, resulted from decades-long efforts by civil society and then at the multilateral level. The Treaty's obligations are far-reaching. This section outlines the steps that led to the treaty before explaining how the MBT has changed arms control.

1.1 Historical overview

In 1991, Human Rights Watch (HRW) and Physicians For Human Rights published first-hand accounts of deaths and maiming through APLMs in Cambodia from

doctors and aid workers returning from the frontlines.³⁸⁷ Their testimonies were picked up by mainstream media.³⁸⁸ In 1992, the call for a global ban on landmines was taken up by a coalition of over 650 non-governmental organisations (NGOs), under the banner of the International Campaign to Ban Landmines (ICBL).³⁸⁹ For the first time since efforts to regulate chemical weapons in the 1920s, the International Committee of the Red Cross (ICRC) publicly called for a ban on a weapon and funded a media campaign to build public support.³⁹⁰ The UN Secretary-General Boutros Ghali added his personal support by indicating the importance of demining for UN peacekeeping operations.³⁹¹

In 1993, the release of two reports, one from the US State Department and one from Human Rights Watch and Physicians For Peace, added momentum to the push for a global solution.³⁹² The United Nations General Assembly (UNGA) adopted Resolution 49/75 urging all States to declare a moratorium on the export of APLMs “at the earliest possible date”.³⁹³

Government experts were divided on the legality of the use and military utility of APLMs.³⁹⁴ Some considered the indiscriminate nature of these victim-activated weapons (which remain active after cessation of hostilities) to contravene two principles of international humanitarian law (IHL) that seek to balance

³⁸⁷ Human Rights Watch and Physicians for Human Rights, *The Coward's War: Landmines in Cambodia*, (Washington: Human Rights Watch and Physicians for Human Rights, 1991).

³⁸⁸ The cover of Time Magazine's December 1993 issue portrayed a Cambodian landmines victim, with a 10-page feature article. Scott MacLeod, “Landmines: the Devil's Seed”, *Time Magazine*, 13 December 1993. The New York Times Magazine front cover on 23 January 1994 featured a landmine and was followed by a 9-page feature. Donovan Webster, “It's The Little Bombs That Kill You”, *New York Times Magazine*, 23 January 1994.

³⁸⁹ Richard A. Matthew and Kenneth R. Rutherford, “The Evolutionary Dynamics of the Movement to Ban Landmines”, *Alternatives: Global, Local, Political* Vol. 28, No. 1 (Jan.-Feb. 2003): 37.

³⁹⁰ Cornelio Sommaruga, “Launching of the International Media Campaign against Antipersonnel landmines by the ICRC and National Red Cross and Red Crescent Societies, Geneva, Switzerland, 22 November 1995” in *The Banning of Anti-Personnel Landmines: The Legal Contribution of the International Committee of the Red Cross 1955–1999*, eds. Louis Maresca and Stuart Maslen (Cambridge: Cambridge University Press, 2000): 404-06.

³⁹¹ United Nations Secretary General, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, A/47/277* (17 June 1992): paragraph 58.

³⁹² The State Department Report declared that APLMs were “one of the most toxic and widespread pollution facing mankind”. It estimated that 90 million APLMs were emplaced in 62 countries, causing monthly fatalities or maiming of 600-1200 people. The Human Rights Watch Report contained case studies from Cambodia, detailing the human impact at an individual level. Office of International Security and Peacekeeping Operations *Hidden Killers: The Global Landmine Crisis 1994: Report to the U.S. Congress on the Problem with Uncleared Landmines and the United States Strategy for Demining and Landmine Control* (Washington DC: US Department of State, 1995): 2. The Arms Project of Human Rights Watch and Physicians for Human Rights *Landmines: A Deadly Legacy* (Washington: Human Rights Watch and Physicians for Human Rights, 1993).

³⁹³ United Nations General Assembly, Resolution 49/75 on General and complete disarmament: Moratorium on the export of anti-personnel land-mines, A/Res/4975 (15 December 1994): item D.

³⁹⁴ International Committee of the Red Cross *Anti-Personnel Landmines: Friend or Foe? A Study of the Military Use and Effectiveness of Anti-Personnel Mines* (Geneva: International Committee of the Red Cross, 1996): 7-8.

humanitarian concerns with military necessity.³⁹⁵ Others, in particular military legal experts, contended that APLMs could be used to achieve objectives without contravening IHL, through technological advances (such as with smart mines) and when used in controlled circumstances (such as in delimited minefields).³⁹⁶

From 1994, states began to take unilateral national measures, with twenty producer states introducing temporary or permanent national moratoria.³⁹⁷ However, on the multilateral stage, state diplomats and officials had not yet arrived at a clear consensus on the negotiating forum nor on the shape of a future legal instrument. Three options were possible.³⁹⁸

The first option was the Conference on Disarmament (CD), the United Nations' (UN) purpose-built negotiating forum for disarmament treaties.³⁹⁹ Its 65 members included the major conventional weapons producers and exporters.⁴⁰⁰ The US and other military powers favoured the CD.⁴⁰¹ Ban advocates considered it an unattractive venue as they believed it was unlikely to lead to an agreement due to its custom of consensus-based decision-making.⁴⁰² While both the 1992 Chemical

³⁹⁵ IHL as customary law has been codified in the Hague Conventions of 1899 and 1907, in the four Geneva Conventions of 1949 and in the two Protocols additional to the Geneva Conventions, adopted in 1977. It applies to all States regardless of whether they are parties to these Conventions and Protocols. The two cardinal principles of IHL referred to above are (1) the rule of distinction between military and civilian objects and persons and (2) the prohibition of action that inflicts unnecessary suffering on combatants. (1) is detailed in Article 51 of the First Additional Protocol of 1977 to the Geneva Convention while (2) is detailed in Article 35.2 of the Second Additional Protocol of 1977 to the Geneva Convention. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), Geneva, 8 June 1977, United Nations Treaty Series, vol. 1125, P. 3. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II), Geneva, 8 June 1977, United Nations Treaty Series, vol. 1125, P. 609.

³⁹⁶ International Committee of the Red Cross, "Military doctrine and use of landmines," in *Anti-Personnel Landmines: Friend or Foe? A Study of the Military Use and Effectiveness of Anti-Personnel Mines* International Committee of the Red Cross (Geneva: International Committee of the Red Cross, 1996): 14-23.

³⁹⁷ In 1995, Belgium passed the first domestic law against APM use, production, procurement, sale and transfer. The Norwegian Parliament passed a binding resolution calling for the government to work towards a ban, and Switzerland renounced the use of APMs by its armed forces. United Nations General Assembly, Resolution 50/701 on the United Nations Secretary-General's Report on Moratorium on the export of antipersonnel landmines, A/50/701 (03 November 1995): paragraph 8.

³⁹⁸ Robert Lawson, Mark Gwozdecky, Jill Sinclair and Ralph Lysyshn, "The Ottawa Process and the International Movement to Ban Anti-Personnel Mines," in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.), (Toronto: Oxford University Press Canada, 1998): 164-165.

³⁹⁹ The Conference on Disarmament (CD) was formed in 1984 and is the only permanent multilateral body for negotiating disarmament treaties. Its members meet in Geneva in three sessions a year, with annual reporting to the UN General Assembly.

⁴⁰⁰ In 1995, CD members included nine of the top 10 military spenders. These were the United States (1), Russia (2), China (3), Japan (4), France (5), Germany (6), United Kingdom (7), Italy (8) and the Republic of Korea (10). U.S. Arms Control And Disarmament Agency, *World Military Expenditures and Arms Transfers 1996* (Washington: U.S. Arms Control And Disarmament Agency, 1997): 5.

⁴⁰¹ Christopher Kirkey, "The Global Elimination of Landmines: Where Is Washington?" *Bridgewater Review* 19, no. 1, (2000): 5.

⁴⁰² The CD's rules of procedures were adopted at the First Special Session on Disarmament of the United Nations General Assembly (SSOD) in 1979 and are updated regularly. Since 1979, they have included decision-making by consensus (Rule 18). Conference on Disarmament, "Rules Of Procedure

Weapons Convention (CWC) and the 1996 Comprehensive Nuclear Test Ban Treaty (CTBT) were negotiated within the CD, these treaties related to weapons held by only a few countries.⁴⁰³ By contrast, most military forces held APLMs, adding a layer of complexity to the already cumbersome rule of consensus decision-making.⁴⁰⁴

The second avenue was the international humanitarian law framework treaty, the 1980 Convention on Certain Conventional Weapons (CCW).⁴⁰⁵ The CCW sought to regulate the use of inhumane weapons, with the inclusion of Protocol II in the first wave of protocols annexed to the CCW. However, while these provisions regulated certain aspects of the use of the weapon, they did not prohibit their use nor address humanitarian aspects of their use.⁴⁰⁶ In 1995, the Third Review Conference of the CCW was held. Prior to the Conference, states agreed to add talks on an amended protocol on landmines to the agenda for the Conference due to the failure of the existing Protocol II to slow the rate of use and production of APLMs. This seemed a promising avenue for action. However, talks yielded few results.⁴⁰⁷ The text was finally agreed in May 1995.⁴⁰⁸ It was roundly condemned by some states as problematic because it introduced restrictions rather than an outright ban on landmines.⁴⁰⁹ Amended Protocol II (APII) was unsatisfactory because it maintained the legitimacy of the weapon, which militaries were

Of The Conference On Disarmament," CD/8/Rev.9, Geneva, December 19, 2003. This rule had presented significant challenges to the CD in 1996 during talks on the CTBT. Although the text was agreed within the CD after three years of talks, a veto from one state (India) blocked the treaty's entry into force as consensus from all 44 members with nuclear research reactors on their territory (including India) was a requirement. The final adoption of the treaty occurred instead in New York at a vote in the UN General Assembly. Although China, Egypt, Iran, Israel and the United States signed the CTBT, they are yet to ratify the Treaty and in 2018 it had yet to enter into force. Arundhati Ghose, "The Comprehensive Nuclear Test Ban Treaty: Intricate Moments during the Negotiations," *Indian Foreign Affairs Journal* vol. 8, no. 2 (2013): 215.

⁴⁰³ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Geneva, 03 August 1992, United Nations Treaty Series, vol. 1974, P. 75. Comprehensive Nuclear-Test-Ban Treaty, New York, 10 September 1996.

⁴⁰⁴ Cornelio Sommaruga (President of the ICRC), "A Global Ban on Landmines: Treaty Signing Conference and Mine Action Forum," Statement, 2 December 1997, Ottawa, Canada.

⁴⁰⁵ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III), Geneva, 10 October 1980, United Nations Treaty Series, vol. 1342, P.137.

⁴⁰⁶ Stuart Maslen and Peter Herby, "An international ban on anti-personnel mines: History and negotiation of the "Ottawa treaty", *International Review of the Red Cross* vol. 38 (1998): 697.

⁴⁰⁷ Three additional negotiating sessions over five months were required to overcome multiple roadblocks. Stuart Casey-Maslen, *Commentaries on Arms Control Treaties: The Convention on the Prohibition of the use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction*, (Oxford: Oxford University Press, 2015): 21.

⁴⁰⁸ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II, as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, Geneva, 3 May 1996, vol. 2048, P. 93.

⁴⁰⁹ Jozef Goldblat. "Anti-Personnel Mines: From Mere Restrictions to a Total Ban." *Security Dialogue* vol. 30 no. 1 (1999): 14.

commonly using in contravention with weak guidelines according to the ICRC.⁴¹⁰ Activists denounced it as a humanitarian failure claiming that it ignored the consequences for civilians and in post conflict areas as without a ban on production, states could continue to transfer or sell stockpiles that were easy to move.⁴¹¹

This left a third option, namely stepping outside existing UN frameworks (the CD and the CCW) and creating an entirely new process. Canada took the lead in pursuing this option that led to the MBT.⁴¹²

Lloyd Axworthy built up a groundswell of political commitment to initiate a sustained cycle of technical negotiations outside the accepted UN disarmament framework. A diverse coalition of state and non-state actors led the innovative negotiating process to create the conditions for a hybrid legal instrument to emerge.⁴¹³ These included Norway, Austria and Belgium who hosted significant meetings and conferences, as well as South Africa (whose disarmament ambassador Jacob Selesi presided over the diplomatic conference) and the Philippines (whose President Ferdinand Ramos was a General fighting an insurgent group that used mines at the time).⁴¹⁴ Mexico and the Philippines were regional champions, while the Netherlands and Ireland played significant roles while holding the European Union (EU) presidency.⁴¹⁵ Non-state actors, notably the ICBL and the ICRC, provided technical expertise, credibility gained on the frontlines of conflict and public pressure for a strong outcome, namely a complete ban on APLMs.⁴¹⁶

These intense diplomatic efforts began in Ottawa on 3 October 1996 and ended in Oslo on 18 September 1997 when 122 states adopted the MBT. The MBT opened for signature in Ottawa on 3 and 4 December 1997 and at the UN Headquarters in New York on 5 December 1997. It entered into force on 1 March 1999, six months after the 40th instrument of ratification had been deposited, with a total of 71 signatories.⁴¹⁷ Major weapons users remained outside, including China, Russia and

⁴¹⁰ Louise Doswald-Beck and Peter Herby, "Land Mines: a Critical Examination of Existing Legal Instruments," *UNIDIR Newsletter* No. 28/29 (1995): 1-2.

⁴¹¹ Don Hubert, "The Landmine Ban: a case study in humanitarian advocacy," *Occasional Paper #42* Thomas J. Watson Jr. Institute for International Studies (2000): 16.

⁴¹² John English, "The Ottawa process: Paths followed, paths ahead," *Australian Journal of International Affairs* 52.2 (1998): 121.

⁴¹³ Mark Gwozdecky and Jill Sinclair, "Landmines and human security," in *Human Security and the New Diplomacy: Protecting People, Promoting Peace* Don Hubert and Robert G. McRae (eds) (Montreal: McGill-Queen's University Press, 2001):32.

⁴¹⁴ John English, "The Ottawa process," 123.

⁴¹⁵ John English, "The Ottawa process," 124.

⁴¹⁶ Michael Dolan and Chris Hunt, "Negotiating in the Ottawa Process," in *To Walk without Fear: The Global Movement to Ban Landmines*, Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 401.

⁴¹⁷ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction, Oslo, 18 September 1997, United Nations Treaty Series, vol. 2056, P. 211.

the US. In the eyes of a Canadian participant, the Ottawa Process redefined the shape of the negotiating table and the type of participant that sat around it, drawing in new forms of connections beyond state limits to add “a new texture in the international system”.⁴¹⁸

The MBT was the fastest multilateral global arms control treaty to enter into force in the 20th century.⁴¹⁹ It marked the first time that states sought to eradicate a conventional weapon that had been continuously used in conflict since 1940.⁴²⁰ The legacy of the MBT on international politics was cemented through the awarding of the Nobel Peace Prize to the ICBL and its coordinator in 1997.⁴²¹

1.2 Outline of the Treaty

The MBT aims to end the suffering and casualties caused by APLMs through a ban on their full lifecycle and by addressing the ongoing humanitarian impact of existing APLMs.⁴²² The MBT is a hybrid humanitarian disarmament treaty, including elements of arms control and international humanitarian law.⁴²³ Provisions from both areas are found in the four pillars that make up the treaty. Two pillars draw on arms control and disarmament law, first through the universalisation of the ban and second through stockpile destruction provisions.⁴²⁴ The two other pillars draw

⁴¹⁸ John English, "The Ottawa process," 126.

⁴¹⁹ Ken Rutherford, *Disarming states: The international movement to ban landmines*, (Santa Barbara: ABC-CLIO, 2011): 121.

⁴²⁰ International Committee of the Red Cross, "Anti-Personnel Landmines: Friend or Foe? A Study of the Military Use and Effectiveness of Anti-Personnel Mines," (Geneva: International Committee of the Red Cross, 1996): 7.

⁴²¹ Nobel Prize Committee, "Press Release - Nobel Peace Prize 1997", *Nobel Media* 10 October 1997.

⁴²² The Geneva International Centre for Humanitarian Demining characterised the use of the term 'full lifecycle' in the MBT's Preamble as reflective of States Parties' implicit understanding that 'proportionality extends over time'. Oppositor to that view was among the concerns of governments opposing the landmine and cluster munitions ban treaties. See first line of the Preamble of the Treaty. "Preamble: The States Parties, Determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement (...).

⁴²³ Bonnie Docherty, "Ending Civilian Suffering: the Purpose, Provisions, and Promise of Humanitarian Disarmament Law," *Austrian Review of International and European Law Online* 15.1 (2010): 8.

⁴²⁴ These are found in particular in articles 1 and 4 of the Treaty. **Article 1, General obligations** "1. Each State Party undertakes never under any circumstances: a) To use anti-personnel mines; b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines; c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention. 2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention." **Article 4, Destruction of stockpiled anti-personnel mines** "Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines 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."

on international humanitarian law, through provisions on mine clearance and on victim assistance.⁴²⁵

The MBT attracted substantial financial commitments for its implementation. Financial pledges for mine action flowing from the MBT totalled \$500 million in 1997, compared to an estimated \$700 million overall spend over the preceding decades of the 20th century.⁴²⁶ Canada, Norway and Finland provided funding to establish the treaty's de facto monitoring instrument, the NGO-led Landmine Monitor.⁴²⁷ Within a short period, both signatory and non signatory states began to take measures to eradicate APLMs.⁴²⁸

Most states, parties and non-state parties, have phased out APLMs from their military arsenals, despite the MBT's initial membership not extending to any producer or exporter state.⁴²⁹ This is in part due to the development of more sophisticated weapons.⁴³⁰ By April 2018, the MBT had 164 States Parties, including large stockpilers and many states affected by mine contamination.⁴³¹ A small number of states and non state groups continue to use pre MBT stockpiles.⁴³²

⁴²⁵ Article 5: Destruction of anti-personnel mines in mined areas. "1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party. 2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means (...)."

Article 6: International cooperation and assistance 1. (...) each State Party has the right to seek and receive assistance, where feasible, from other States Parties. 3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. (...)."

⁴²⁶ International Campaign to Ban Landmines, 'Executive Summary', in *Landmine Monitor 1999* (International Campaign to Ban Landmines: April 1999): 19.

⁴²⁷ The Landmine Monitor has published data on all aspects of APLMs since 1999, when it established its reporting baseline for states parties and estimated data for non states parties to the MBT.

⁴²⁸ For instance, the US announced that it would stop using "dumb" landmines, that it would find an alternative to landmines, that the export ban would continue, and that it would meet the treaty's terms by 2007. Mary Wareham, "Rhetoric and policy realities in the US", in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 240.

⁴²⁹ The 2015 Landmine Monitor (on calendar year 2014) reported that casualties from landmines were at approximately 40% of the rate recorded in the 1999 Landmine Monitor (on calendar year 1998). On production, 11 potential producer states were identified in the 2015 Landmine Monitor compared to 52 reported in the 1999 Landmine Monitor.

⁴³⁰ Rather than large weapons producers, landmines were produced by small companies with limited ability to lobby for their continued use. Don Hubert, "New" humanitarian advocacy? Civil society and the landmines ban," in *Fighting for Human Rights* Paul Gready (ed) (London: Routledge 2004): 95.

⁴³¹ UN Treaties Collection, 'Chapter XXVI Disarmament' in *Status Of Treaties* (New York: United Nations, 2018): 35597.

⁴³² In the 2015 Landmine Monitor, 57 states and four other areas have an identified threat of antipersonnel mine contamination. In the 1999 Landmine Monitor, these figures were at 88 states. The 2015 Landmine Monitor reported that in 2014 three states (all non state parties to the MBT) used landmines: Myanmar, Syria and North Korea. With the exception of Yemen in 2013, no state party to the MBT has used landmines since the MBT came into force. Non state armed groups in 10 countries were reported to have used landmines in 2014. See Monitoring and Research Committee, International Campaign to Ban Landmines – Cluster Munition Coalition, "Major findings" in

2. Why Canada championed the Ottawa Process

Activism in the streets provided the initial impetus to begin negotiations to ban APLMs. In multilateral diplomatic forums, talks on regulating APLMs triggered the emergence of the ad-hoc Ottawa Process as the most viable of three different avenues within the UN framework. Focusing on Canada, three drivers at the “in capital” level in Ottawa created the conditions for Canadian championing. These were the politics of the left-leaning Liberal Chrétien government, its arms control policy and Canada’s strategic partners, notably the US.

2.1 Domestic politics

In the aftermath of the Conservative Party’s failure to pass Federal constitutional reforms in 1992,⁴³³ the Liberal Jean Chrétien and his party were elected to government in 1994 with a parliamentary majority.⁴³⁴ During Chrétien’s tenure, he continued to grapple with the country’s most important political divide, the question of Quebec and its continued existence in federal Canada.⁴³⁵

Chrétien sought to tap into the historical trend that had seen Canadians consolidate their national unity through foreign policy.⁴³⁶ Canadians tend to agree that they share a set of values nation-wide, including ‘the joint pursuit of democracy, human rights and the rule of law.’⁴³⁷ The strategic importance of foreign policy on national unity soon came into play, when the separatist Parti

Landmine Monitor 2015 (International Campaign to Ban Landmines – Cluster Munition Coalition, 2015):9. In 2015, this trend was reversed with a ‘decade-high number of new casualties’ due to armed conflict in Afghanistan, Iraq, Libya, Syria, Ukraine and Yemen, with non state armed groups accounting for use in at least 10 countries (Afghanistan, Colombia, Iraq, Libya, Myanmar, Pakistan, Syria, Ukraine and Nigeria). See Monitoring and Research Committee, International Campaign to Ban Landmines – Cluster Munition Coalition (ICBL-CMC), “Major findings” in *Landmine Monitor 2016* (International Campaign to Ban Landmines – Cluster Munition Coalition: November 2015):1.

⁴³³ The status of Quebec was under the spotlight from the early 1990s when proposed Federal constitutional reforms, the 1992 Charlottetown Accords, were not passed. These would have clarified the federal-provincial division of powers, with a specific status for Quebec as a separate entity within the Confederation. The failure to agree on these accords undermined the Progressive Conservative government of Brian Mulroney, who resigned and was replaced by Kim Campbell eight months prior to federal elections. Richard Johnston, “An Inverted Logroll: The Charlottetown Accord and the Referendum,” *PS: Political Science and Politics* 26: 1, (1993): 48.

⁴³⁴ R. K. Weaver, “Electoral Earthquake,” in *The Brookings Review*, vol. 12, no. 1 (1994): 46.

⁴³⁵ Jennifer M. Welsh, “Canada and the World: Beyond Middle Power” *The Oxford Handbook of Canadian Politics* (Oxford: Oxford University Press, 2010): 361.

⁴³⁶ Public polling conducted since the 1950s shows that Canadians are highly global in their outlook, with Quebec always polling amongst the highest. Sources include the Pew Global Attitudes Project, polls conducted by the Canadian Institute for International Peace and Security, COMPAS/Gallup. Jean-Sébastien Rioux, “Two solitudes: Quebecers’ attitudes regarding Canadian security and defence policy,” *Canadian Defence & Foreign Affairs Institute Research Paper Series*, (Calgary:2004): 25.

⁴³⁷ These values are commonly identified in official government documents from 1995 to 2003. Bell traces these themes in documents from DFAIT from the 1995 Foreign Policy White Paper to the 2005 International Policy Statement. Colleen Bell, *The Freedom of Security: Governing Canada in the Age of Counter-Terrorism* (Vancouver: UBC Press, 2011): 40.

Quebecois won a majority in the 1994 Quebec provincial elections with an electoral promise of a 1995 referendum on separation from the Confederation.⁴³⁸

In forming his first Cabinet, Chrétien was aware of the importance of strengthening ties with Quebec to “fight off the separatists”.⁴³⁹ He nominated the Montréal MP André Ouellet as Minister of Foreign Affairs. Chrétien hoped to help maintain Quebec in the union by rallying Quebecois to the Confederation through its foreign policy.⁴⁴⁰ After the Quebec referendum returned a narrow “No” to separation in December 1995, Ouellet was nominated as head of Canada Post with his ministerial position filled by Lloyd Axworthy in January 1996.

Axworthy’s political career began in the prairies in his home province, Saskatchewan, where he served as an elected member of the province’s Legislative Assembly for 6 years. He moved to Federal parliament for 20 years. He was Opposition Critic for Trade in the 1980s with a notable public stance against free trade, before spending three years as Opposition Critic on External Affairs. With a PhD from Princeton, his political views were shaped by his Uniting Church roots and his strong stance against the Vietnam War which earned him the nickname “Pink Lloyd” for his left-leaning politics.⁴⁴¹

Chrétien did not actively steer foreign policy. Instead, he deferred to his ministers, in contrast to his Conservative predecessor Brian Mulroney, who had personally driven foreign policy objectives such as strengthening the US- Canadian relationship and opposing the apartheid regime in South Africa.⁴⁴² Chrétien was also facing a growing domestic budget deficit, necessitating cuts to the foreign affairs budget. This triggered a decline in defence spending and overseas development aid (ODA) in Chrétien’s first budget as well as a decrease in funding to UN-based organisations in his second budget.⁴⁴³ Constrained by these budgetary pressures, Chrétien pursued a “voluntary, independent and internationalist” role

⁴³⁸ Brian O’Neal, “Distinct Society: origins, interpretations, implications,” *Background Paper*, (Ottawa: Political and Social Affairs Division, Parliamentary Information and Research Service, Parliament of Canada, 1995): 20.

⁴³⁹ Jean Chrétien, *My Years as Prime Minister*, (Toronto: Vintage Canada, 2010): 26.

⁴⁴⁰ Tom Keating, “A passive internationalist: Jean Chrétien and Canadian foreign policy,” *Revue d’études constitutionnelles* 9 (2004): 115.

⁴⁴¹ John English, “In the liberal tradition: Lloyd Axworthy,” in *The Axworthy Legacy* Fen Osler Hampson, Norman Hilmer and Maureen Appel Molo (eds), (Toronto: Oxford University Press Canada, 2001): 90-91.

⁴⁴² Tom Keating, “A passive internationalist”, 115.

⁴⁴³ Kim Richard Nossal, “Pinchpenny Diplomacy: The Decline of Good International Citizenship in Canadian Foreign Policy,” *International Journal* 54.1 (1999): 93.

for the government, based on Canadian values, linking foreign and domestic policies, while publicly keeping a distance from the American administration.⁴⁴⁴

The consequence of Chrétien's relative lack of interest in foreign policy was that Axworthy was able to shape and implement what would become Canada's decade-long signature foreign policy platform, namely human security.⁴⁴⁵ His short but successful mandate was defined by the MBT, a popular move not only for voters in Quebec but throughout the country and around the world.

2.2 External policy

In the 1990s, Canadian policymakers sought to build on their Cold War reputation as international mediators on nuclear issues to assume a leadership role on a broader range of disarmament issues using multilateral diplomacy.⁴⁴⁶ This shift coincided with the post Cold War rise in intra state conflict and the resurgence of warfare through conventional weapons.⁴⁴⁷

The central tenets of Canada's foreign policy became: (1) more inclusive role for civil society;⁴⁴⁸ (2) budget cuts to defence;⁴⁴⁹ (3) using multilateral diplomacy through soft power;⁴⁵⁰ and (4) the pursuit of human security policy emphasising development objectives.⁴⁵¹

⁴⁴⁴ Nelson Michaud, "The Prime Minister, PMO and PCO: Makers of Canadian foreign policy?" in *Handbook of Canadian foreign policy*, Patrick James, Nelson Michaud, and Marc O'Reilly (eds.) (Lexington Books, 2006): 40.

⁴⁴⁵ Bruce Wallace, "Second Wind," *Maclean's* vol. 110, no. 48, (1997): 18.

⁴⁴⁶ This spanned many decades, from Canadian arms control negotiators who worked in the 1950s with the US and the Soviet Union to agree on common language to avoid complete deadlock, to Canadian efforts to reconcile nuclear and non nuclear weapon states during talks on the Nuclear Non-Proliferation Treaty (NPT) in the 1960s, to playing a notable role in talks that led to the adoption of the 1996 Comprehensive Test Ban Treaty (CTBT). Carl Ungerer, "Influence without Power: Middle Powers and Arms Control Diplomacy during the Cold War," *Diplomacy & Statecraft*, vol. 18, no. 2 (2007): 409.

⁴⁴⁷ Gareth Evans, "Cooperative security and intra-state conflict," *Foreign Policy* 10/96 (1994): 3.

⁴⁴⁸ The 1993 Red Book, launched by the Liberal Party during the election campaign, outlined a more inclusive role for civil society in foreign policy. This became a key feature of the Ottawa Process, notably the alliance between the Canadian government, the ICBL, and the ICRC along with the strong support of two UN Secretaries-General. Alison Van Rooy, "Civil society and the Axworthy touch," in *The Axworthy Legacy* eds. Fen Osler Hampson, Norman Hilmer and Maureen Appel Molot, (Toronto: Oxford University Press Canada, 2001): 254-55.

⁴⁴⁹ The November 1994 Defence White Paper stated a change in focus for Canada away from peacekeeping operations, with budget cuts to the Department of Defense (DND) for the first three years of Chrétien's government. With a modest defence industry, the military-industrial establishment holds very little sway in Ottawa, and Canadians in general do not support increased defence expenditure. John Barrett, "Arms control and Canada's security policy," *International Journal* 42.4 (1987): 749.

⁴⁵⁰ This reflected the change in focus of security policy from a state-centric military approach towards a human security-oriented approach. Vincent Rigby, "The Canadian Forces and Human Security: A Redundant or Relevant Military?," in *The Axworthy Legacy* Fen Osler Hampson, Norman Hilmer and Maureen Appel Molot (eds), (Toronto: Oxford University Press Canada, 2001): 41.

⁴⁵¹ The February 1995 "Canada in the World" foreign policy statement expanded on the UNDP's concept of human security, emphasising the relationship between national sovereignty and human rights to include the responsibility of a country's government to protect its citizens. David Bosold and Wilfried Von Bredow, "Human Security: A radical or rhetorical shift in Canada's foreign policy?," *International Journal* 61.4 (2006): 831. The term "human security" first appeared in the 1994 UN

Canada's connection to the UN was built on its contributions to peacekeeping. In the 1950s, Nobel-laureate Foreign Minister Lester Pearson became the figurehead of modern peacekeeping through his design of the UN Emergency Force deployed in the Suez Canal crisis in 1956.⁴⁵² Despite this historical link to peacekeeping, Canada's contribution declined steadily, a reflection of budgetary pressure rather than a turn away from the UN.⁴⁵³ In 1994, Canada announced its bid for a non-permanent seat on the UN Security Council in 1999-2000, which was seen as a strategic platform to extend elements of human security.⁴⁵⁴

From 1994, Canada signalled its growing commitment to a stronger landmines regime in a series of public statements. Chrétien added APLMs to the agenda of his first Group of Seven (G7) meeting, held in Naples in July 1994.⁴⁵⁵ In November 1994, in response to a question from an NGO delegate at gathering of pro-ban NGOs, Ouellet declared 'landmines should be banned not only in Canada but everywhere in the world'. This was picked up on camera by a Canadian Broadcasting Corporation (CBC) reporter.⁴⁵⁶ Ouellet's Defense counterpart David Collenette, under intense public scrutiny generated by this declaration, agreed to a moratorium on Canadian APLM exports in November 1995.⁴⁵⁷ In January 1996, Axworthy assumed responsibility for the landmines files on taking office. On 3 May 1995, a Canadian CCW delegate announced that Ottawa would host a strategy meeting to address a global prohibition on APLMs.⁴⁵⁸

The pursuit of the MBT satisfied all three central foreign policy tenets noted above and was an excellent way to operationalise human security.

First, a human security approach placed people at the heart of security policy, rather than states. Civil society actors in Canada and around the world were

Development Programme report. Security is seen through the lens of people rather than territory, through two components, freedom from fear and freedom from want. Development as an outcome of security replaces weapons as its guarantors. This reframing flowed from non traditional security threats in the post Cold War world, ranging from illicit trade in goods and weapons, environmental threats, epidemics, terrorism and human rights abuses. United Nations Development Programme, *Human development report*, (New York: Oxford University Press, 1994): 22.

⁴⁵² Christina Badescu, "Canada's continuing engagement with United Nations Peace Operations," *Canadian Foreign Policy 16(2)* (2010): 46.

⁴⁵³ Louis Delvoie. "Curious ambiguities: Canada's international security policy," *Policy-Options 22.1* (2001): 38.

⁴⁵⁴ David Malone and Patrick Wittmann, "Canada and the UN security council in the post-cold war era," *Canadian Issues* (2002): 42.

⁴⁵⁵ Napoli Summit 1994, "G7 Chairman's statement (Political)," Naples, July 10, 1994, p.1. "We assign priority to the problems of anti-personnel landmines, including efforts to curb their indiscriminate use, halt their export, assist in their clearance worldwide. "

⁴⁵⁶ Valerie Warmington and Cecilia Tuttle, "The Canadian Campaign", 54.

⁴⁵⁷ Brian Tomlin, "On a Fast-Track to a Ban," in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 191.

⁴⁵⁸ Brian Tomlin, "On a Fast-Track," 196.

increasingly publicizing the injuries and deaths caused by landmines. Banning APLMs was a classic fit for a human security focus.⁴⁵⁹

Second, given the budgetary constraints, the only tools that Canada could deploy were its tools of influence - in other words, soft power as opposed to “hard”, or military, power. To be sure, negotiating a ban would require diplomatic finesse and expertise, but this would cost relatively little.⁴⁶⁰ Borrowing from Joseph Nye’s articulation of power in the American context, Axworthy listed tactics such as ‘skills in communicating, negotiating, mobilising opinion, working within multilateral bodies and promoting international initiatives’.⁴⁶¹ This included seeking out allies and collaborators from within coalitions of like-minded States and NGOs to aggregate soft power into a powerful force on the world stage.⁴⁶²

Third, Canada could cement its reputation as a force for change by playing a championing role and shaping new norms. Axworthy’s priorities included low tech weapons systems (landmines and small weapons), stronger international criminal legislation (the International Criminal Court) and specific measures to address the root causes of instability (child soldiers and ‘blood’ diamonds).⁴⁶³

Media coverage of landmine victims was impacting the Canadian public and increasing awareness of the civilian cost of conflict in South East Asia. Ottawa was confronted with a pressing problem. Civil society had already found a possible solution, namely a ban. This instrument of normative change could shape the behaviour of states and reflect Canadian values – and within budgetary constraints.

2.3 Strategic partnerships

Since Confederation in 1867, Canadian foreign policy has had to contend with the US – perceived by some as “the elephant”⁴⁶⁴ or the “800-pound gorilla”⁴⁶⁵ - who shares its largest border. Choosing between enhanced bilateral cooperation or wider international responsibilities has been a recurring theme in post war Canadian foreign policy.⁴⁶⁶

⁴⁵⁹ Daryl Copeland, “The Axworthy Years: Canadian Foreign Policy in the Era of Diminished Capacity”, in *The Axworthy Legacy* Fen Osler Hampson, Norman Hilmer and Maureen Appel Molot (eds), (Toronto: Oxford University Press Canada, 2001): 154.

⁴⁶⁰ Brian Tomlin, “On a Fast-Track,” 204.

⁴⁶¹ Daryl Copeland, “The Axworthy Years”, 154.

⁴⁶² Michael Dolan and Chris Hunt, “Negotiating in the Ottawa Process”, 393.

⁴⁶³ David Bosold and Wilfried Von Bredow, “Human Security”, 837.

⁴⁶⁴ Archives, C. B. C. “Trudeau's Washington Press Club speech. CBC Archives, March 25,” (1969).

⁴⁶⁵ Lloyd Axworthy, “Foreword,” in *Landmines and human security: international politics and war's hidden legacy*, Richard Matthew, Bryan McDonald and Kenneth R. Rutherford (eds.) (New York: State University of New York Press, 2004): 7.

⁴⁶⁶ Jennifer M. Welsh, “Canada and the World,” 365.

While proximity to the US guarantees Canadian territorial security, it also curtails Canadian autonomy to take action on disarmament in the international system.⁴⁶⁷ On fundamental issues that touch on security, notably in areas relating to NATO, Canadian policy sits in parallel with the US.⁴⁶⁸ However, on issues where sufficient space exists to pursue an independent line without compromising US/NATO relations, Canada can and does take the lead in pushing for alternative approaches via multilateral platforms rather than regional or bilateral channels,⁴⁶⁹ such as Prime Minister Pierre Trudeau's activism on nuclear deterrence through the UN's Social Session on Disarmament in 1979.⁴⁷⁰

Since the early 1990s, US Senator Patrick Leahy led American efforts to address the threat from APLMs by lobbying the administrations of President Bush and then President Clinton. Early in the Clinton presidency, Washington indicated it was willing to pursue a strong line on curtailing the use of the weapon, starting with a national moratorium on exports. In July 1993, UN Ambassador Madeline Albright and US Representative for Special Political Affairs Karl Inderfurth travelled to Somalia and Cambodia and met landmine victims. Initially a supporter of strong measures, Albright's position would become much more subdued when she succeeded Warren Christopher as Secretary of State in December 1997.⁴⁷¹

In 1994, President Clinton included in his annual speech to the UNGA the goal of reaching "an eventual elimination of landmines".⁴⁷² In 1996, the US sponsored a UNGA Resolution called for a binding international agreement to ban certain forms of landmines.⁴⁷³ However, as Clinton's position weakened as he came under threat of impeachment, it became increasingly difficult to counter pressure from the Pentagon and the Department of Defense who were opposed to the ban.⁴⁷⁴ Canada sought US participation in the ban throughout the process and into the very last

⁴⁶⁷ L. Macdonald, "A fine balance: multilateralism and bilateralism in Canadian policy in the North American region," *Canadian Foreign Policy* 16, no. 2 (2010): 112.

⁴⁶⁸ Stéphane Roussel & Samir Battiss, "National Security: Culture Stratégique Et Concept Stratégique: Le Canada Et Les Réformes De L'Otan," *Canadian Foreign Policy Journal* 16, no.2 (2010): 42.

⁴⁶⁹ Andrew F. Cooper and Dane Rowlands, "A State of Disconnects – the Fracturing of Canadian Foreign Policy," *Canada Among Nations, 2005: Splitting Images*, eds. Andrew F. Cooper and Dane Rowlands (Montreal: McGill-Queen's Press – MQUP, 2005): 3.

⁴⁷⁰ Paul Meyer, "Pierre Trudeau and the "Suffocation" of the nuclear arms race," *International Journal*, vol. 71 no. 3 : 407.

⁴⁷¹ Leon V. Sigal, *Negotiating minefields*, 51.

⁴⁷² "And today I am proposing a first step toward the eventual elimination of a less visible but still deadly threat: the world's 85 million antipersonnel land mines, one for every 50 people on the face of the Earth. I ask all nations to join with us and conclude an agreement to reduce the number and availability of those mines." US State Department, "Address by President Bill Clinton to the UN General Assembly," September 26, 1994.

⁴⁷³ United Nations General Assembly, Resolution 51/45 on General and complete disarmament: An international agreement to ban anti-personnel landmines, A/Res/51/45 (10 January 1997): item S.

⁴⁷⁴ Leon V. Sigal, *Negotiating minefields*, 239.

days of the Oslo conference, when Ottawa obtained a 48-hour extension on the negotiating deadline at the request of the US, in the hope that the US could become a signatory to the treaty.⁴⁷⁵ While some of Canada's partners, notably the ICBL, saw the non-participation of the US as a reflection of the MBT's progressive nature, Canada did not want to "mark points" against, nor provoke, its powerful neighbour.

When weighing up the potential risk for Canada in pursuing a strong line on the MBT, policymakers would have been more concerned with not obtaining enough countries to support the ban, rather than with provoking the ire of Washington. Initial signals from the US had shown strong support for regulating APLMs.⁴⁷⁶ At the bilateral level, the risk for Canada lay not in the substantive direction (regulating APLMs) but in the method of pursuing talks outside of existing UN forums, the CD and the CCW, the preferred options for the US.⁴⁷⁷

3. How Canada shaped the Ottawa Process

This section examines the three Ottawa Process transition points, from their triggers to their consequences. These points marked the passage between three phases of negotiations, from commitment to substance and agreement. The six layers of context identified as key elements of the analytical framework are analysed at each point.

This section reveals that Canada championed the Ottawa Process by building and maintaining a core group of state and non state actors who invested diplomatic capital and resources. Ottawa and the core group developed procedural innovations to circumvent hurdles and maintain momentum, while breaking with the past to go beyond existing approaches and pave the way for a path-breaking hybrid treaty merging humanitarian and arms control principles to ban APLMs.

⁴⁷⁵ Ambassador Inderfurth as the US's Special Representative for Global Humanitarian Demining attended the Ottawa signing ceremony and explained that while the US could not sign the treaty, the US felt part of the process and that they would keep working hard. Leon V. Sigal, *Negotiating minefields*, 219.

⁴⁷⁶ On numbers, Canada would bring to bear its close connections to most UN member states through the Commonwealth, La Francophonie, the Organization of American States (OAS), and the Organization for Security and Cooperation in Europe (OSCE). David Malone, "Eyes on The Prize: The quest for non-permanent seats on the UN Security Council," *Global Governance* vol. 6 no.1 (2000): 8.

⁴⁷⁷ Leon V. Sigal, *Negotiating minefields*, 78.

3.1 Transition point 1: Ottawa, October 5, 1996

The first transition point was Lloyd Axworthy's announcement on 5 October 1996 that states would reconvene a year later to adopt binding rules on APLMs.⁴⁷⁸



Figure 13 Transition point 1: Ottawa, October 5, 1996

3.1.1 Trigger: Geneva, May 3, 1996, announcement of Ottawa strategy meeting

On 3 May 1996, the last day of the Third Review Conference of the CCW, Amended Protocol II of the CCW was adopted in Geneva.⁴⁷⁹ It fell short of banning APLMs. This gave Lloyd Axworthy a window of opportunity to lead international action.⁴⁸⁰ The Canadian delegation invited states to attend a strategy conference in Ottawa later that year, titled 'Towards a Global Ban on Anti-Personnel Mines'.⁴⁸¹ Canada announced the initiative at a joint press conference with the ICBL.⁴⁸² This triggered the transition point in Ottawa in October 1996.

3.1.2 Transition point: announcement of target date for treaty signature

The build-up of momentum across both the internal and external negotiating contexts during the Ottawa strategy conference created a snowball effect that led to Axworthy's date announcement.

3.1.2.1.1 At the table

To attend the Ottawa meeting, Canada imposed as a precondition that states commit to a ban beforehand by signing up to a draft Declaration calling for the conclusion of a legally-binding international agreement.⁴⁸³ 50 States signed up.⁴⁸⁴

⁴⁷⁸ Government of Canada Foreign Affairs and International Trade, "Notes for an address by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, at the closing session of the International Strategy Conference towards a Global Ban on Anti-personnel Mines", Ottawa, October 5, 1996.

⁴⁷⁹ Protocol on Prohibition or Restrictions on the Use of Mines, Booby-traps and Other Devices as Amended on 3 May 1996, UN Doc CCW/CONF.1/16 (Part 1), 32.

⁴⁸⁰ John Cadman, "Negotiating the Convention on Anti-Personnel Landmines", in *Canada's International Policies* eds. Brian Tomlin, Norman Hillmer and Fen Osler Hampson, (Toronto: Oxford University Press Canada, 2008): 296.

⁴⁸¹ Brian Tomlin, "On a Fast-Track," 195.

⁴⁸² Jody Williams and Steve Goose, "The International Campaign To Ban Landmines", in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 33.

⁴⁸³ Robert Lawson, Mark Gwozdecky, Jill Sinclair and Ralph Lysyshyn, "The Ottawa Process and the International Movement to Ban Anti-Personnel Mines," in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 161.

⁴⁸⁴ Lawson et al, "The Ottawa Process," 162.

This novel approach to weapons negotiations reinforced the point that standard operating procedures such as consensus decision-making would not be followed by default. From 3-5 October 1996, 74 countries attended the Ottawa meeting.⁴⁸⁵ On 5 October 1996, 50 states adopted the Ottawa Declaration including the Chairman's Action Plan.⁴⁸⁶ DFAIT officials had drafted it in consultation with two members of the ICBL Steering Committee, Steve Goose and Jody Williams.⁴⁸⁷ On the last day of talks, after states had formally adopted the Ottawa Declaration, Minister Axworthy took to the podium to close the meeting formally. He issued a dramatic call challenging states to reconvene the following year, in 1997, to sign a treaty to ban APLMs and "to put rhetoric into action."⁴⁸⁸ He invited the ICBL to join forces with national delegations. Axworthy's unexpected invitation left the US "furious" about Canadian "grandstanding".⁴⁸⁹

3.1.2.1.2 In the room

By hosting the conference in Ottawa, Canada was not constrained by the rules of existing forums such as the CCW and the CD on who could participate. While 50 states in attendance signed up to pursuing a ban, a further 24 observing states attended without committing to the Declaration, perhaps anticipating at that point that being in the room would help gauge the likelihood of progress and possibly work to slow it down in the future.⁴⁹⁰ Other actors from NGOs, international organisations and UN agencies were also present in the room.⁴⁹¹

3.1.2.1.3 In the corridors

In a sign of the future dynamics of the Process, Canada only alerted a select few of the plan to announce an end-date to the process. These individuals were the ICBL Coordinator Jody Williams and ICRC President Cornelio Sommaruga. UN Secretary General (UNSG) Kofi Annan also provided his blessing in advance.⁴⁹² No other State

⁴⁸⁵ Lawson et al, "The Ottawa Process,"162.

⁴⁸⁶ The Declaration was annexed to a letter addressed to the UN Secretary-General which was tabled as an official UN document. United Nations General Assembly, First Committee, Agenda item 71, Letter dated 16 October 1996 from the Representative and Ambassador of Canada to the United Nations for Disarmament addressed to the Secretary-General, A/c.151/10, (18 October 1996).

⁴⁸⁷ Leon V. Sigal, *Negotiating Minefields*, 158.

⁴⁸⁸ Government of Canada Foreign Affairs and International Trade, "Notes for an address by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, at the closing session of the International Strategy Conference towards a Global Ban on Anti-personnel Mines", Ottawa, October 5, 1996.

⁴⁸⁹ John English, "Paths followed", 121.

⁴⁹⁰ China adopted this strategy, attending all major meetings as an observer while maintaining public opposition to the ban. Stuart Maslen, *Anti-personnel Mines under Humanitarian Law* (Oxford: Intersentia, 2001): 147-48.

⁴⁹¹ Melissa Gillis, *Disarmament: A Basic Guide Second Edition*, (New York: United Nations, 2013): 75.

⁴⁹² This was made possible through a fortuitous connection. Mary Fowler, the wife of Canada's Ambassador to the UN, was a UN official with the Department of Humanitarian Affairs. Fowler sought out the UN Secretary-General's endorsement in New York. Leon V. Sigal, *Negotiating Minefields*, 158.

was aware beforehand of the plan. This dramatic call-to-arms prompted the end of American participation in the Process in the short-term.

3.1.2.1.4 In capital

Within DFAIT, the landmines file sat with the International Security Bureau (ISB)'s Non Proliferation, Arms Control and Disarmament Division (IDA).⁴⁹³ The IDA was a three-person team with close knowledge of APLMs and their use in conflict, having served in the armed forces.⁴⁹⁴ In March 1995, the IDA recommended in an internal memo that Canada pursue multilateral regulations on APLMs by hosting a meeting of pro-ban states and civil society outside the UN system.⁴⁹⁵ They knew this approach would be supported by a core group of allies with whom they had been having informal sessions in Geneva since late 1994. The group included state diplomats, ICRC advisers and the ICBL's steering committee.⁴⁹⁶ In May 1995, when CCW talks in Geneva failed to produce a strong result, the IDA put their plan into motion. The Ottawa strategy conference was announced and duly took place with enough states attending for the IDA team to push for an ambitious agenda to secure genuine action. On the second day of the three-day meeting, DFAIT staffers pitched a bold idea to Minister Axworthy.⁴⁹⁷ The two key questions were, where to hold talks, including the option of taking talks outside the usual UN machinery, and how to jump-start negotiations.⁴⁹⁸ On the recommendation of IDA Director Jill Sinclair, DFAIT official Ralph Lysyshyn proposed inviting everyone back a year later to sign a treaty.⁴⁹⁹ This would cost \$CAN2 million. The date and budget were approved by Paul Heinbecker, assistant deputy minister for global and security policy at DFAIT.⁵⁰⁰

3.1.2.1.5 In the world

As noted above, President Clinton and the State Department in Washington had been early supporters of a ban on APLMs. However, from the start of the Ottawa Process onwards, the threat of impeachment weakened Clinton's political capital and diminished his ability to influence opponents of a ban in the Department of

⁴⁹³ Jill Sinclair, the director of IDA, previously served as NATO liaison officer in Europe where she had built an extensive network among foreign officials. Mark Gwozdecky, a diplomat previously stationed in Syria, was the IDA's deputy director. Sinclair recruited a former colleague from the armed services, Bob Lawson, to join IDA as a policy officer in November 1995. Brian Tomlin, "On a Fast-Track," 185; 192.

⁴⁹⁴ Brian Tomlin, "On a Fast-Track," 196.

⁴⁹⁵ Brian Tomlin, "On a Fast-Track," 194.

⁴⁹⁶ Lawson et al, "The Ottawa Process", 166.

⁴⁹⁷ According to Hubert, "government statements were being carefully monitored by Canadian officials in order to gauge the depth of support for rapid negotiations leading to a comprehensive ban." Don Hubert, "The Landmine Ban," 88.

⁴⁹⁸ Mark Gwozdecky and Jill Sinclair, "Landmines and human security," 32.

⁴⁹⁹ Brian Tomlin, "On a Fast-Track", 202.

⁵⁰⁰ Brian Tomlin, "On a Fast-Track", 204.

Defense and the Joint Chiefs of Staff Committee. They preferred a regulatory approach to curb APLMs that would follow a traditional process within the CD.⁵⁰¹ This became the official policy.

3.1.2.1.6 In the streets

The May announcement of the Ottawa meeting in October galvanised Canadian mine action NGOs. Coordinated by MAC (Mines Action Canada), local-level awareness-raising activities included speaking tours of landmine survivors, a film festival and a media blitz connecting local press with international survivors to relay their personal testimonies. This led to intense public interest in the lead-up to and during the Ottawa meeting, echoed around the world through the ICBL network.⁵⁰²

3.1.3 Consequence: Negotiations begin

The adoption of the Ottawa Declaration and Axworthy's dramatic call-to-arms paved the way for formal negotiations within the Ottawa Process. Canada became the lead coordinator to achieve a ban by 1997. The core group, including states, the ICBL and the ICRC, organised an intense timetable of regional conferences, workshops and bilateral meetings around the world over the following months.⁵⁰³

3.2 Transition point 2: Brussels, June 27, 1997

The second transition point was the adoption of the Brussels Declaration by 97 states on 27 June 1995 at the Brussels Conference on Anti-Personnel Mines.⁵⁰⁴



Figure 14 Transition point 2: Brussels, June 27, 1997

3.2.1 Trigger: Final draft treaty text circulated

The substantive elements of the treaty were drafted following an iterative process of informal and formal talks (in Vienna and Bonn notably) and written responses from 70 states (pro-ban states and others), as well as the UN, the ICRC and the

⁵⁰¹ Ken Rutherford, *Disarming states: The international movement to ban landmines*, (Santa Barbara: ABC-CLIO, 2011): 85.

⁵⁰² Valerie Warmington and Cecilia Tuttle, "The Canadian Campaign", 57-8.

⁵⁰³ Lawson et al., "The Ottawa Process," 167.

⁵⁰⁴ Conference on Disarmament, "Letter Dated 9 July 1997 Addressed To The Secretariat Of The Conference On Disarmament By The Office Of The Permanent Representative Of Belgium To The Conference On Disarmament, Transmitting The Closing Document Of The Brussels International Conference For A Global Ban On Anti-Personnel Mines," 16 July 1997, CD/1467.

ICBL.⁵⁰⁵ Austria played the role of ‘penholder’ – taking on the coordination of document drafting- which led to the final draft treaty after the 1996 Ottawa strategy meeting, after three rounds of drafts circulated via the Austrian Mission in Geneva between October 1996 and May 1997. The initial structure and wording were taken from previous weapons bans on chemical weapons and on biological weapons.⁵⁰⁶ Additional articles relating to victim assistance and demining were then added, signalling a departure from classic disarmament treaties. The third draft treaty text from Austria sent by email on 13 May 1997 received broad support, which paved the way for the convening of the Brussels Conference.⁵⁰⁷

3.2.2 Transition point: Adoption of Brussels Declaration

The number of states committed to a ban doubled from Ottawa in October 1996 to Brussels in June 1997. Annexed to the Brussels Declaration were the Austrian draft text and the rules of procedure for the Oslo conference in September.⁵⁰⁸

3.2.2.1 *At the table*

The Brussels Conference was the “make-or-break” point for the Ottawa Process to progress to the next and final phase in negotiations.⁵⁰⁹ It was here that states settled on the substantive agenda. The future treaty would be comprehensive in scope, covering armed conflict and times of peace. The crucial question of definitions was resolved.⁵¹⁰ The treaty would contain two strands of core obligations. The first would address security risks through disarmament provisions (prohibition on the use, stockpiling, production and transfer of mines). The second would address the humanitarian consequences through IHL provisions (mine destruction). The Brussels meeting left open until Oslo the question of compliance

⁵⁰⁵ For example, in February 1997 in Vienna, 111 delegations attended the “Experts Meeting on the Text of a Total Ban Convention”. Thomas Hajnocki, Thomas Desch and Deborah Chatsis, “The Ban Treaty,” in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 294-5.

⁵⁰⁶ The informal drafting process had started in May 1996 at a CCW meeting in Geneva, when the Austrian delegation circulated a concise text with standard disarmament articles from the Chemical Weapons Convention. Thomas Hajnocki, Thomas Desch and Deborah Chatsis, “The Ban Treaty,” in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 292.

⁵⁰⁷ Ann Peters, “International partnerships on the road to ban anti-personnel landmines” in *Case study for the UN Vision Project on Global Public Policy Networks* (Washington D.C.: Open Society Institute, 2009): 1-31.

⁵⁰⁸ The Declaration and its attachments were included in Louis Maresca and Stuart Maslen (eds.), *The Banning of Anti-Personnel Landmines: the Legal Contribution of the ICRC*, (Cambridge: Cambridge University Press, 2000):541-547.

⁵⁰⁹ Jody Williams and Stephen Goose, “The International Campaign to Ban Landmines,” in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 41.

⁵¹⁰ The word “principally” was dropped from the APII definition of a mine, and the word “intentionally” added in to cover dual-use weapons and weapons with similar effect to landmines (ie victim-detonated with indiscriminate effect). Leon V. Sigal, *Negotiating Minefields*, 166.

mechanisms.⁵¹¹ The textual details of each article would be hammered out in Oslo too. With a doubling of state commitments and agreement on a final draft as a baseline, political commitment was secured to move to final negotiations.

3.2.2.2 *In the room*

In the lead-up to Brussels, a division of labour was required among the core group of states and non state actors, who were predisposed and ready to take up the workload. Two intensive tracks of activity were pursued over six months, focused on the substance of the future treaty and on increasing state participation. The core group, steered by the IDA team in Ottawa, included cross-regional representation that undercut traditional UN negotiating blocs by including members of the EU and the Group of 77 (G77).⁵¹² Within the core group, the ICRC and the ICBL brought to bear multiple mechanisms, such as the preparation of expert studies, mass promotional material, lobbying of governments from below, and representation at or around intergovernmental conferences.⁵¹³ Their extensive networks throughout mine affected countries in particular were useful for gaining support on every continent. In addition to state delegations, more than 130 NGO representatives from 40 countries attended the largest gathering of governments on APLMs.⁵¹⁴

3.2.2.3 *In the corridors*

The Declaration paved the way for the ICBL, the ICRC and other non state actors to continue to participate, with the Declaration acknowledging “the active support of the ICRC, ICBL and numerous other NGOs”.⁵¹⁵ Through the combination of the ICBL’s campaigning know-how, the ICRC’s networks and reputation and Canadian funding, a series of 11 regional initiatives, conferences and workshops were held. As a result, mine-affected countries in Europe, Africa, South America and South East Asia joined the process.⁵¹⁶

3.2.2.4 *In capital*

After the Ottawa Conference, Canada’s IDA took on the role of coordinating the core group, made up of seven states and two non state actors, the ICBL and the ICRC. While the IDA were based in Ottawa, they operated through their

⁵¹¹ Two options were in play, an arms-control approach with an intrusive verification regime or an IHL model of a fact-finding mechanism. Leon V. Sigal, *Negotiating Minefields*, 169.

⁵¹² Lawson et al, “The Ottawa Process,” 167.

⁵¹³ Don Hubert, “The Landmine Ban,” 22.

⁵¹⁴ Jody Williams and Steve Goose, “The International Campaign,” 41.

⁵¹⁵ Conference on Disarmament, “Letter dated 9 July 1997 addressed to the Secretariat of the Conference on Disarmament by the Office of the Permanent Representative of Belgium to the Conference on Disarmament, transmitting the closing document of the Brussels International Conference for a Global Ban on Anti-Personnel Mines”, CD/1467 (16 July 1997).

⁵¹⁶ Robert Lawson et al, “The Ottawa Process,” 176-77.

counterparts in Canadian missions around the world. The IDA were in daily contact in person, by phone and by fax with the core group in “an almost seamless web of cooperation.”⁵¹⁷ Together the core group worked as “a single diplomatic team, integrated and completely interoperable”.⁵¹⁸ They developed and deployed a strategic plan to meet Axworthy’s 1997 goal by undertaking joint diplomatic efforts, using bilateral relations, regional settings and the UN system.⁵¹⁹

3.2.2.5 *In the world*

In January 1997, the international community signalled its intent to pursue action on APLMs at the UNGA with the adoption of Resolution 51/45/S.⁵²⁰ 156 States voted in favour of the completion of negotiations “as soon as possible” on legally-binding rules to ban the use, stockpiling, production and transfer of APLMs.⁵²¹ Elections brought changes in government and in landmines policy in Paris and in London. French President Jacques Chirac and British Prime Minister Tony Blair became strong supporters of a complete ban within the Ottawa Process, adding significant weight to the exodus from the CD that had already begun in January among disillusioned European states, when the CD failed to add APLMs to its working agenda for 1997.⁵²² The activism of Diana, Princess of Wales, drew intense media scrutiny from January 1997 onwards, starting with a highly publicized visit to Angola as a guest of the British Red Cross and Halo Trust, a British NGO working to clear mines.⁵²³ Print and broadcast media captured this trip, focusing global attention on the plight of landmines victims. Diana called on the British government to ban APLMs as the only humanitarian option, for which she would be labelled a “loose cannon”.⁵²⁴ The final phase of negotiations progressed smoothly with the French and the United Kingdom (UK).⁵²⁵

⁵¹⁷ Ann Peters, “International partnerships,” 13.

⁵¹⁸ Robert Lawson et al, “The Ottawa Process,” 167.

⁵¹⁹ Don Hubert, “The Landmine Ban,” 18.

⁵²⁰ UN General Assembly, Resolution 51/45/S, General and Complete Disarmament: An International Agreement to Ban Anti-personnel Landmines, A/RES/51/45 (10 January 1997).

⁵²¹ In November 1995, the UN Secretary-General Boutros Boutros-Ghali had used this exact formulation and called for the UN to pursue such efforts, in the foreword to the proceedings of a Council on Foreign Relations symposium on landmines in 1995. Don Hubert, “The Landmine Ban,” 7.

⁵²² This included NATO members Italy and Spain, as well as regional European states the Czech Republic, Hungary, and Bosnia. Leon V. Sigal, *Negotiating Minefields*, 172.

⁵²³ Kenneth Rutherford, *Disarming States*, 102.

⁵²⁴ Kenneth Rutherford cites Fred Barbash, “Royal Spin,” *Washington Post*, February 14, 1997.

Kenneth Rutherford, *Disarming States*, 102.

⁵²⁵ This was reinforced through the tragic circumstance of her death on 31 August 1997 in Paris, days before the opening of the Oslo Conference, which increased pressure on the newly elected government in the UK to hold true to their electoral promise to pursue a ban. Ken Rutherford, *Disarming States*, 107.

Officials in Washington were caught off guard by the pace of progress and the reframing of APLMs as a humanitarian issue.⁵²⁶ Although the US did not formally participate in meetings in Brussels, an American delegation was stationed in a hotel across the road from the conference venue. In bilateral meetings in the margins of the meeting, key countries revealed to the American team that they were leaning towards the Ottawa Process.

Realising that a negotiated outcome was likely to occur, something to which 97 states had already signed up, US Secretary of State Madeline Albright convinced the Joint Chiefs of Staff to shift US policy.⁵²⁷ Washington signed the Brussels Declaration on 18 August to secure entry to talks in Oslo.⁵²⁸ Not having officially been at the table in Brussels, Washington's five red lines had not been tabled.⁵²⁹ One in particular was bright red - the continued use of APLMs in the Demilitarised Zone (DMZ) zone separating the Democratic People's Republic of Korea (DPRK) from the Republic of Korea (ROK). Entering talks in the final phase of the end game, the US was strategically on the back-foot. It would be difficult to renegotiate ground that had already been covered in Brussels. Albright's first move upon signing the Declaration was therefore to contact US embassies with the five red lines for delivery to key foreign governments.⁵³⁰

3.2.2.6 *In the streets*

In the lead-up to Brussels, the ICBL pursued two types of grassroots campaigns to underpin the efforts of the core group. First, through its 1,000+ NGO member network, the ICBL connected with local voters and mobilised citizens around the world. Second, in the corridors of parliaments and legislatures globally, ICBL members raised awareness and built support among policy makers. One example that demonstrates this intertwining of grassroots advocacy was the 24-28 February 1997 4th International NGO Conference to Ban Landmines in Maputo, Mozambique. In the lead-up to the Conference, the ICBL provided training and tools for national campaigns supporting the ban in Angola, Somalia, Zambia and Zimbabwe. Hundreds of NGO participants from 60 countries expressed

⁵²⁶ Leon V. Sigal, *Negotiating Minefields*, 192.

⁵²⁷ Albright's argument, to participate for political and diplomatic reasons, prevailed over the Joint Chiefs of Staff who were fundamentally opposed to significant provisions of the Austrian text. Leon V. Sigal, *Negotiating Minefields*, 197.

⁵²⁸ Leon V. Sigal, *Negotiating Minefields*, 198.

⁵²⁹ The US's five "non-negotiable" provisions were (1) a geographical exemption for the use of landmines in Korea, (2) a change in definitions of APLMs to allow the use of anti-handling devices placed near anti-tank mines, (3) a nine year period for entry into force, (4) strengthened verification measures, and the (5) right to withdraw when "supreme national interests are threatened."⁵²⁹

⁵³⁰ Leon V. Sigal, *Negotiating landmines*, 199.

unconditional support for Ottawa Process. After the Maputo Conference, Mozambique and South Africa announced unilateral landmine bans, with Malawi and Swaziland indicating support for a comprehensive ban treaty.⁵³¹

3.2.3 Consequence: Agreement on parameters for final phase

After this transition point, the Oslo Diplomatic Conference was confirmed for September 1997. Full participation on the basis of the Austrian text was limited to countries supporting the Brussels Declaration. 97 states signed the Brussels Declaration on 27 June, with 10 more states signing before the Oslo meeting.

3.3 Transition point 3: Oslo, September 18, 1997

On 18 September 1997, 89 States adopted the final text of the MBT following the three-week 'Oslo Diplomatic Conference on an International Total Ban on Anti-Personnel Land Mines' which began in Oslo on 1 September 1997.⁵³²



Figure 15 Transition point 3: Oslo, September 18, 1997

3.3.1 Trigger: US withdraw from talks at Oslo Diplomatic Conference

The U.S. withdrawal of its amendments on September 17, the second last day of the Conference, triggered the adoption of the Treaty by removing the only unresolved issues left for negotiating states to agree on.⁵³³ The US were looking for support to include an exception on the use of APLMs in the Demilitarized Zone (DMZ) on the Korean Peninsula, the main American red line.⁵³⁴ This was one of three remaining red lines for Washington, which also included provisions for the right to withdraw from treaty obligations during conflict and the exemption for US mixed-mine systems including anti-handling devices.⁵³⁵

Not only did Washington lack allies to force its amendments through, its support was not needed for the MBT to be adopted. In drafting the Conference's rules of procedure, Norway had anticipated and mitigated for this scenario.⁵³⁶

⁵³¹ Don Hubert, "The Landmine Ban," 21.

⁵³² Virgil Wiebe et al, *Commentaries*, 41.

⁵³³ Robert Lawson et. al, "The Ottawa Process," 179.

⁵³⁴ Leon V. Sigal, *Negotiating minefields*, 211.

⁵³⁵ Kenneth Rutherford, *Disarming States*, 112.

⁵³⁶ Virgil Wiebe et al, *Commentaries*, 38-9.

3.3.2 Transition point: Adoption of Treaty

The confluence of events inside and outside the negotiating venue came together to lead to the adoption of the Treaty in Oslo.

3.3.2.1 *At the table*

In Oslo, 91 states participated in negotiations. 89 States adopted the final text, the revised Austrian draft, without a vote on 18 September 1997.

The rules were adopted unanimously at the start of proceedings. They included a two-thirds majority rule on decision-making, combined with the guiding principle that ‘nothing was agreed until everything was agreed’.⁵³⁷ Votes were allowed to break deadlocks.⁵³⁸ The draft Austrian text, with its 20 articles over 10 pages, was the single negotiating text. The South African Disarmament Ambassador Jacob Selebi, a tough negotiator known for his outspoken views vis a vis Washington, was elected Conference President.⁵³⁹

The programme of work was split into three areas to be addressed over three weeks. In the first week, problem areas would be identified in the final Austrian draft text.⁵⁴⁰ In a break with established custom, no time was allocated for opening statements by states. All proposed textual amendments would be tabled in the first three days.⁵⁴¹ Over the second week, detailed negotiations would resolve contentious issues, under the stewardship of five “Friends of the Chair” in separate working groups.⁵⁴² The third and final week would be dedicated to text finalization and translations as well as official statements.⁵⁴³

While this programme of work was adopted on the first day of talks, from the second day the negotiating agenda was hijacked by the US position.⁵⁴⁴ This intense focus on Washington’s five red-lines diverted attention away from other contentious areas and instead focused on the tug of war between the US and the majority of other states.

Contrary to expectations, the Treaty introduced stronger regulations than the initial draft Austrian package.⁵⁴⁵ Canada brokered compliance and verification

⁵³⁷ Virgil Wiebe et al, *Commentaries*, 39.

⁵³⁸ Robert Lawson et al, “The Ottawa Process”, 177.

⁵³⁹ Michael Dolan and Chris Hunt, “Negotiating in the Ottawa Process,” 410.

⁵⁴⁰ Robert Lawson et al, “The Ottawa Process”, 177.

⁵⁴¹ ICRC, ‘Oslo Diplomatic Conference on an international total ban on anti-personnel landmines, 1-18 September 1997: report on the Conference’, Geneva: ICRC (18 September 1997): 1.

⁵⁴² ICRC, ‘Oslo Diplomatic Conference’, 1.

⁵⁴³ ICRC, ‘Oslo Diplomatic Conference’, 1.

⁵⁴⁴ US negotiator Eric Newsom used the term “non-negotiable” during the first US intervention in the opening days of the meeting. Mary Wareham, “Rhetoric and political realities in the United States,” in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 232.

⁵⁴⁵ Williams and Goose, “The International Campaign,” 45.

measures to include a mixed approach combining verification and humanitarian considerations.⁵⁴⁶ States agreed to a wide-reaching definition of a mine, which removed the term “primarily” as presented in the final Austrian text agreed to in Brussels, thereby strengthening the scope of the ban.⁵⁴⁷ Time-bound mine clearance obligations were introduced, with an in-built extension mechanism in recognition of the difficulties that post conflict states might encounter in abiding by these obligations.⁵⁴⁸ Even the most strident of voices pushing for a strong treaty applauded the final treaty, from pro-ban states to civil society, including the ICBL, the ICRC and mine victim networks worldwide.⁵⁴⁹

3.3.2.2 *In the room*

Washington’s hijacking of the negotiating agenda benefited the core group by diverting attention away from the details carried over from Brussels, with potentially contentious issues as yet unresolved, towards combatting a higher-level threat to the Treaty, namely that it would fall shy from a complete ban with the inclusion of US exclusions. The presence of the ICBL, ICRC and the UN in the room was instrumental in consolidating the core group’s strong position against the initial five, then three, US red lines.⁵⁵⁰ While the US received initial support from their military allies Australia, Japan and Poland, this did not translate into agreement by the majority of states.⁵⁵¹ Until the last days, when the President allowed a 48-hour extension on talks for the US to pursue alternate drafting options, the core group held strong and maintained their cohesion on the principles of a categorical ban.⁵⁵²

3.3.2.3 *In the corridors*

Transparency and scrutiny over proceedings in the negotiating rooms were guaranteed through ICBL’s conference newsletter, the *Ban Treaty News*, and daily info sheets, both of which emailed around the world but also within the negotiation halls.⁵⁵³ Substantive contributions such as papers proposing draft wording were

⁵⁴⁶ Article 8, Facilitation and Clarification of Compliance, allows for a clarification mechanism whereby states can raise situations in which they believe other states are non-compliant, with states in question invited to reply through a five-stage information exchange. Stuart Casey-Maslen, *Commentaries on Arms Control Treaties*, 216.

⁵⁴⁷ Article 2.1. “Anti personnel mines’ means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.”

⁵⁴⁸ Article 4. “Destruction of stockpiled anti-personnel mines. Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but no later than four years after the entry into force of this Convention for that State Party.”

⁵⁴⁹ John English, “Paths Followed”, 131.

⁵⁵⁰ Kenneth Rutherford, *Disarming States*, 111.

⁵⁵¹ Don Hubert, “The Landmine Ban,” 23.

⁵⁵² Williams and Goose, *To Walk Without Fear*, 36.

⁵⁵³ Dolan and Hunt, 411.

also circulated among delegates. The ICBL was ideally situated in the corridor across from the main negotiation hall thanks to a Norwegian affiliate's lobbying efforts, a strategic thoroughfare for negotiators on their way to talks.⁵⁵⁴ Through this steady wave of information, the ICBL reinforced the mantra of "no loopholes, no reservations and no exceptions" throughout the conference.

3.3.2.4 *In capital*

Ottawa's position on US participation became a contentious issue for the ICBL, which used its artillery of public relations tactics to put pressure on Minister Axworthy.⁵⁵⁵ Canada sought the inclusion of Washington from the beginning of the Process as they believed that this would greatly strengthen the impact of the final Treaty.⁵⁵⁶ This position contrasted with the ICBL, which felt that the absence of Washington's signature would legitimise rather than weaken the treaty.⁵⁵⁷

On the final weekend of talks, Washington pursued intense bilateral discussions with significant foreign capitals to finalise an alternate text.⁵⁵⁸ These continued on the Monday (a public holiday in Norway). The US requested an additional 24 hours (Tuesday) from the chair to continue bilateral talks and reach a compromise text. The chair accepted this request, with Canada's support.⁵⁵⁹ During this period of extra time, lobbying efforts came straight from the Oval Office, with US President Clinton telephoning Jean Chretien in Ottawa twice over two days, as well as other leaders around the world.⁵⁶⁰ How far Ottawa was willing to go to bring Washington in to the treaty is a matter of contention, with some sceptical that Ottawa's lobbying efforts were designed to convince Washington to drop its red lines or whether Ottawa was prepared to mediate their inclusion in an acceptable format.⁵⁶¹ This led the ICBL to denounce Canada as "the 51st state in the American union".⁵⁶² The US then withdrew from formal proceedings.

3.3.2.5 *In the world*

Walking in to the conference, three prominent weapons producers and regional powers were committed to a strong outcome. Elections in Europe in May brought added momentum to the push for a ban. The newly-elected Labor UK government

⁵⁵⁴ Williams and Goose, 42.

⁵⁵⁵ Leon V. Sigal, *Negotiating minefields*, 214.

⁵⁵⁶ Cecilia Tuttle, "Landmine ban rooted in civil society," *Peace Magazine*, vol. 13, no. 6 (1997): 17.

⁵⁵⁷ Leon V. Sigal, *Negotiating minefields*, 202.

⁵⁵⁸ Stuart Maslen, *Commentaries on Arms Control Treaties*, 42.

⁵⁵⁹ Stuart Maslen, *Commentaries on Arms Control Treaties*, 43.

⁵⁶⁰ Don Hubert, "Humanitarian Advocacy", 44.

⁵⁶¹ Kenneth Rutherford, *Disarming States*, 113.

⁵⁶² Don Hubert, "Humanitarian Advocacy," 44.

had included in their electoral campaign the promise to pursue a global ban.⁵⁶³ Elections in France had brought in a Socialist government which had adopted a strong, pro-ban stance from Brussels onwards.⁵⁶⁴ Pretoria's full support was behind Jacob Selebi, the South African President of the Diplomatic Conference, notably from President Nelson Mandela, a fierce advocate against APLMs.⁵⁶⁵ While affected states had been heavily involved from the beginning of the Process, such as Cambodia and Laos, the addition of weapons producers and P5 states added real strength to the push for a strong ban, underpinned by ICBL member organisations around the world. The combined strength of state diplomats and NGOs in Oslo made it possible to counter US pressure to weaken the ban through the provisions for which they were advocating.⁵⁶⁶

3.3.2.6 *In the streets*

The ICBL's national campaigns in the lead-up to and during the Oslo Conference included a rolling calendar of public events such as pyramids of single shoes placed in proximity to the Eiffel Tower in Paris and the Capitol in Washington, with dozens of national campaigns effectively amplifying the voices of victims to gain media attention in every region around the world through photography exhibitions, media interviews, petitions, marches and protests.⁵⁶⁷ Another NGO network brought to the Ottawa Process another important voice, that of landmine survivors, through the Landmine Survivors Network (LSN), founded as the CCW Review Conference was convening in Geneva in 1996. The LSN was affiliated to the Halo Trust, which had organised for Princess Diana to tour minefields in Angola. This combination of mass grassroots campaigns, plus high profile media attention, drew global publics in to the Oslo Conference, in particular when Princess Diana died in Paris in the days leading up to the Conference.

⁵⁶³ David King and Laird Hindle, "Europe and the Ottawa Process," in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 257.

⁵⁶⁴ Philippe Chabasse, 'The French Campaign,' in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 61.

⁵⁶⁵ Noel Stott, 'The South African Campaign', in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 72.

⁵⁶⁶ A survey conducted with national delegates in Oslo found that two factors were most often cited as influential in shaping the outcome, the presence of NGOs in the room and the importance of regional blocs of states Maxwell A. Cameron, Robert Lawson and Brian Tomlin, 'To Walk Without Fear', in *To Walk without Fear: The Global Movement to Ban Landmines* Brian W. Tomlin, Maxwell A. Cameron, and Robert J. Lawson (eds.) (New York/Toronto: Oxford University Press, 1998): 11.

⁵⁶⁷ Don Hubert, "Humanitarian Advocacy", 32.

3.3.3 Consequence: Treaty signature

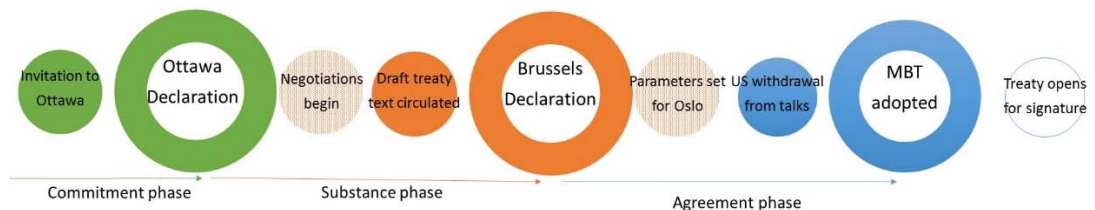
With the treaty having been adopted without the US, it was unclear how many states would travel to Ottawa three months later for the signing ceremony. The joint awarding of the Nobel Peace Prize on November 10, 1997 in Oslo to the ICBL and its coordinator Jody Williams in November was a welcome boost for expected signatories in Ottawa a month later, as was the declaration of intention to sign from two states that had originally supported US amendments and who were not expected to sign, namely Australia and Japan.⁵⁶⁸

At a signing ceremony held in Ottawa, the MBT opened for signature on 3- 4 December 1997 and subsequently on a permanent basis at the UN Headquarters in New York from 5 December 1997. 122 states signed in Ottawa.⁵⁶⁹ The event, “more like a pop concert than a treaty-signing ceremony,” was attended by 2,400 representatives from signatory governments, 35 observer governments, international organizations, and NGOs.⁵⁷⁰

The MBT entered into force on 1 March 1999 with a total of 71 Signatories, six months after its 40th instrument of ratification was deposited in New York by Burkina Faso on 17 September 1998.⁵⁷¹ The MBT was the fastest multilateral global arms control treaty to enter into force in the 20th century.⁵⁷²

4. Trends and patterns

This chapter has examined how and why Canada championed and shaped the Ottawa Process. This chapter analysed the Ottawa Process at its three transitions points that marked the passage from growing political commitment to a ban, through to substantive negotiations on the shape of the future treaty and the rules of procedure that would bring it to light, and finally through to agreement on a legally-binding set of regulations as a negotiated outcome.



⁵⁶⁸ Kenneth Rutherford, *Disarming States*, 116-17.

⁵⁶⁹ Stuart Casey-Maslen, *Commentaries on Arms Control Treaties*, 43.

⁵⁷⁰ John English, "The Ottawa process," 121.

⁵⁷¹ *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, Oslo, 18 September 1997, United Nations Treaty Series, vol. 2056, P. 211.

⁵⁷² John English, "The Ottawa process," 121.

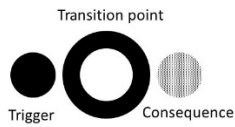


Figure 16 Transition points in the Ottawa Process

These three points were analysed at six different contextual levels to focus on the interplay between the external and internal negotiating contexts and the enabling factors that led to the passage of three transition points. This approach has identified key trends and patterns, which are synthesized below.

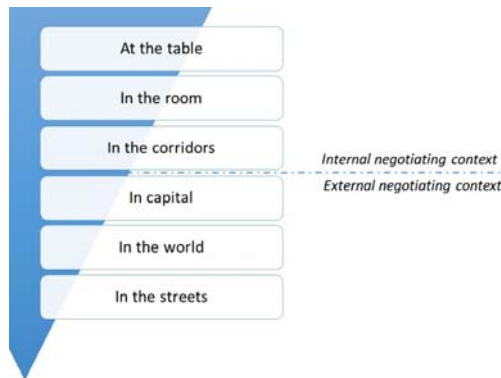


Figure 17 Contexts of diplomacy

4.1 Why do states champion negotiating processes in humanitarian arms control?

While global civil society activism and increasing state engagement created a window of opportunity to address the problem of APLMs, Ottawa’s championing stance can be traced back to a conducive environment in capital, through the alignment of three ‘in capital’ factors. These were domestic politics, external policy and strategic partnerships.

4.1.1 Internationalist policy

In Ottawa, Chretien’s Liberal government led a broader Canadian push to redesign the international multilateral architecture and promote the goals of human security, returning Canada to its historic roots in multilateralism through the UN. Negotiating the MBT was the first and arguably most substantial outcome of this policy direction. The reasons why this internationalist posture was adopted reflected various factors. The role of foreign policy had immediate value as a hook to keep Canada united, under pressure from the province of Quebec which was toying with a break from the confederation. Quebec’s penchant for principled multilateralism is one aspect to the province’s identity, which reflects its own existentialist quest to have its voice heard from within a larger, federated structure.

Canada's long history of engagement with the UN, through peace-keeping operations notably, is particularly present under Liberal governments. An international presence entails budgetary outlay, which was anathema to the Chretien government, facing financial cut-backs to keep national debt manageable. Pursuing a high-profile humanitarian issue was only possible within tight budgetary constraints, which was the case for the landmines file. Political capital was arguably the highest investment required, as the task laid out in Ottawa in 1996 required diplomatic dexterity from committed staff – who were already working for DFAIT.

4.1.2 Entrepreneurial leader

The pursuit of an internationalist policy came together when Minister Axworthy took over from Minister Ouellet in January 1996. Axworthy's appetite for a principled approach to foreign policy predated his ministerial role, having embraced the pillars of human security from his time as Opposition Critic. From his first days as minister, he sought policy leads from within DFAIT which would provide Canada with cheap options to advance an agenda for change on the world stage. While he was a risk-taker, he had a restrictive budget for implementation. Within 100 days of taking up office, he had connected with a committed policy unit. This combination of ideas and personalities took Ottawa from a "standing start" to a championing position within 18 months of Axworthy's appointment.⁵⁷³ His embrace of civil society helped maximise the chances of a negotiated outcome being achieved, through the division of labour this allowed but also as a platform to amplify the awareness of the negotiations under way. This personal disposition flowed naturally from Axworthy's history as a student activist during the Vietnam War, and his roots within the Uniting Church, while also proving to be an excellent strategic move for the Ottawa Process. This proximity with non state actors did not, however, guarantee him immunity from their scrutiny, as vividly illustrated with the ICBL's campaign to call out what they saw to be his collusion with Washington in the last days of negotiations in Oslo. Axworthy's entrepreneurial qualities were equal parts grounded in his principles and in political opportunism.

4.1.3 Distracted ally

The US, the "800-pound gorilla" on Ottawa's doorstep, had initially signalled its intent to pursue a humanitarian approach to regulating APLMs, from as early as 1993. Fast forward four years, and Washington's reluctant participation coupled with explicit red-lines that were unacceptable to most states led to its last-minute

⁵⁷³ John English, "The Ottawa process," 121.

withdrawal from talks in Oslo. This change in posture was in part due to the weakening of President Clinton's domestic standing due to concerns over impeachment, which reduced his margin of manoeuvre to overcome reluctance within senior ranks of his administration.

While Ottawa's initial embrace of the landmines file fell in with the signals from Washington at the time, presenting this choice of issue area as relatively uncontroversial for the bilateral strategic relationship, Minister Axworthy was quick to attract the ire of the US through the announcement of a target end-date for the process and through his subsequent embrace of an ad hoc process outside UN frameworks. Washington left the room at this point, only to return to the process once talks had already progressed towards a draft treaty text that was beyond what the US could commit to and was also likely to garner majority support of UN members. Both of these miscalculations led to Washington's re-entry into the Process after Brussels once the course had already been set for the end-game. Caught on the back-foot, the US was unlikely to be able to change the direction set by other Ottawa Process members. Ottawa was nonetheless acutely aware of Washington's attempts to find a way to join the treaty and was equally sold on the value of having the US sign the treaty. Axworthy's last-ditch bid to buy the US delegation time to find a way in were again testament to the value placed on US participation. During the delicate few days in the end of the Oslo conference, Ottawa's efforts to keep Washington on side earned Canada the dubious title of "52nd state of the United States".

While the US-Canadian bilateral relationship was never under serious threat during the Ottawa Process, this was partly because Washington had mistimed its attempts to impose a more incremental and narrower set of regulations. When Ottawa did try to create space for its neighbour, this came at a heavy cost for its reputation, and notably the minister himself. If the relationship had been more seriously tested, it is impossible to gauge how Ottawa would have reacted and whether the strategic relationship would have been prioritised. Canada's distracted ally, luckily, never put this to the test until it was too late, at which point Ottawa exerted diplomatic efforts to keep Washington in the tent.

4.2 How do states shape negotiating processes?

The above analysis reveals the importance of hybrid coalitions, innovative processes and breaking with the past to achieve humanitarian arms control outcomes by reaching beyond entrenched practices in traditional forums.

4.2.1 Hybrid coalitions

Under the stewardship of a small policy unit in Ottawa, Canada and a core group of states and non state actors championed the Ottawa Process, investing financial and diplomatic capital over a sustained 14-month period. The group had broad cross-regional representation – South Africa, Mexico, Philippines plus small and large European states Belgium, Austria, Ireland, Switzerland, Netherlands and Norway. The group also divided up different functions, with Austria as expert drafter, Norway monitoring procedural aspects of negotiations, South Africa providing a seasoned Conference President and others hosting meetings and contributing experts and voices from the field. Civil society advocates joined as equal partners, from the ICBL's steering committee (Steven Goose from HRW, Jody Williams from VVAF) to the ICRC's technical experts (IHL experts Louis Maresca and others) plus UN agencies representatives adding in their demining expertise from the field.

Canadian officials created the core group in the corridors of the UN in Geneva before the APII was adopted during the Third Review Conference of the CCW. It was here that diplomats, activists, practitioners first came together, hosted under the auspices of the Geneva Forum and in particular David Atwood of the Quakers Office at the United Nations (QUNO).

The expertise, credibility and public clout of the ICBL and the ICRC catalysed the process, crucially as part of the division of labour along two tracks of activity to work towards substantive agreement and doubling of state commitments between the first and last phase of talks. They were the only ones in the loop for Lloyd Axworthy's call to action at the first Ottawa meeting, with public endorsements by Cornelio Sommaruga (president of ICRC), Jody Williams (ICBL) and Kofi Annan (UNSG). At the signing ceremony in Ottawa 18 months later, all three took the stage as Lloyd Axworthy signed and also ratified the Treaty on behalf of Canada with Prime Minister Jean Chrétien looking on.

The sum total of the core group and its members ensured that all gaps were plugged as the Ottawa Process sought to make substantive headway and accumulate state signatories within a very short period of time. Here, diplomats and activists operated on an equal footing and played to each other's strengths, combining diplomatic and procedural expertise on one hand with presence and credibility in the field in affected countries around the world.

This hybrid coalition continues today, with the UNSG the depositary of the MBT and the ICBL leading monitoring activities through Landmines Monitor.

4.2.2 Innovative procedures

When CCW talks in May 1996 failed to adopt strong rules, Canada seized the moment to galvanise a small group of vocal states and thought leaders into a new direction that would purposefully avoid the tyranny of consensus where the pace of progress was set by the slowest actor. The Ottawa Process was created to achieve a defined outcome (a ban) by a target end-date (1997) through a two-track approach involving a diverse coalition of state and non state actors.

Through its design, the process reflected the intended outcome, rather than having the outcome dependent on process. This reversed the traditional route for disarmament treaties, where the established negotiating process (within the CD or the CCW) typically would determine the outcome (based on “the tyranny of consensus” and contingent on agreement from major powers), the logistics (venue and end dates, eg CD standing sessions) and participation (members of the CD or the CCW, very strict limitations on non state actor participation). Lloyd Axworthy’s challenge, effectively setting an end-date for the ban process, created the necessary urgency for talks to accelerate along a fast-track to a strong ban.

On consensus decision-making, the lessons from the AP II and the CD had been put into action and well learnt since the first meeting in Ottawa. Throughout the process, the tyranny of consensus, with lowest common denominator states setting the tempo, had been avoided through a “self-selection” approach to participation. Only those states willing to commit a strong push for a ban were permitted to participate in major meetings, with Declarations circulated in advance of meetings for states to agree to as a pre-condition for full attendance.

4.2.3 Breaking with the past

Ottawa’s move away from consensus was a departure from how disarmament was typically conducted internationally, where negotiation and adoption by consensus were considered prerequisites for an agreement to be effective. In this sense, some states were held to be more important than others, notably weapons producers. Universal adherence was a core ingredient for the success of an arms agreement and therefore consensus was required from the start of talks.

Instead, the Ottawa Process defined - before formal talks began - what the end-point would be. By making participation conditional on committing to a ban beforehand, Ottawa signalled that standard UN protocols would not be the default option for the Ottawa Process’s rules of procedure. Opting out of a consensus-based approach meant stepping out of the existing UN forums where consensus was a long-held practice although not a mandated procedure. In proposing a

change in venue (outside of the UN) and in format (inviting only states interested in pursuing a strong outcome), Ottawa signalled that it was not bound by the UN's disarmament negotiating forums, and was willing to explore all avenues, including outside of the standard disarmament framework.

CHAPTER 4: NEW ZEALAND AND THE OSLO PROCESS ON CLUSTER MUNITIONS

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Chapter 4: New Zealand and the Oslo Process on cluster munitions

This chapter demonstrates that a multi-layered contextual model is needed to understand why and how New Zealand championed and shaped the negotiating process that led to the Convention on Cluster Munitions (CCM).⁵⁷⁴ Breaking down negotiations into phases and transition points, and examining multiple sites of diplomatic and policy activity, led to a fine-grained identification of New Zealand's championing of the Oslo Process. This chapter examines the three transition points that led to the CCM's adoption in 24 months.

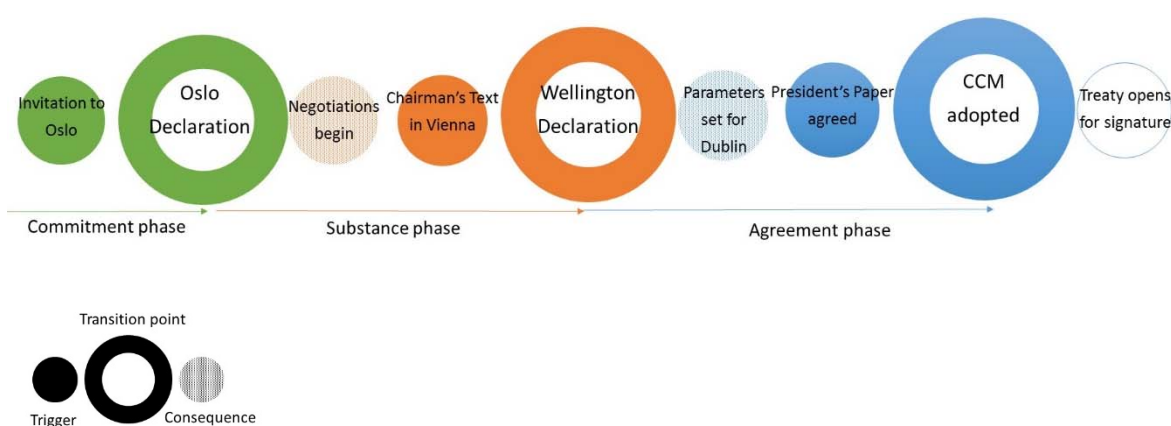


Figure 18 Transitions points in the Oslo Process

The chapter argues that domestic politics, external policy and strategic partnerships all aligned in Wellington, which enabled New Zealand's championing of the Oslo Process on cluster munitions. Helen Clark's Labour government, with its lessened emphasis on military armed forces and its independent stance in the pursuit of disarmament, invested significant diplomatic capital in taking a lead role, while Defence and Disarmament Minister Phil Goff provided a single policy direction spanning two portfolios. New Zealand held a steady course in line with its disarmament values while maintaining behind-the-scenes links with its periphery, notably Canberra and its implicit if delicate alliance with Washington.

This alignment coincided with the emergence of two parallel negotiating tracks on cluster munitions. In Geneva, major weapons producing states preferred the consensus-driven approach of the CCW.⁵⁷⁵ By contrast, states affected by explosive remnants of war (ERW) preferred the majority decision-making approach of the

⁵⁷⁴ *Convention on Cluster Munitions*, Dublin, 30 May 2008, United Nations Treaty Series, vol. 2688, p. 39.

⁵⁷⁵ *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III)*, Geneva, 10 October 1980, United Nations Treaty Series, vol. 1342, 137.

Oslo Process. This double-track dynamic created a heightened level of urgency for talks as states sought to focus multilateral attention on their preferred track.⁵⁷⁶

New Zealand was a champion of the Oslo Process as a member of the core group under Norwegian leadership. Wellington exercised procedural dexterity to help achieve a humanitarian outcome that states had to commit to from the start of talks. The CCM followed in the footsteps of the Mine Ban Treaty (MBT). But it also contained path-breaking features. Addressing a more complex and widespread weapon, the CCM built on the MBT's foundations to extend in terms of scope, definitions and ambition.

This chapter proceeds in three sections. The first section looks at the humanitarian origins of the CCM and how it evolved to become a hybrid arms control/humanitarian instrument. The second section analyses New Zealand's championing at the "in capital" level through the lenses of domestic politics, external policy and strategic partnerships. The third section explores the three transition points of this process, weaving in New Zealand diplomatic activity across the six different contexts of diplomacy identified in chapter 2, as shown in the chart below. The focus here is on how New Zealand shaped the Oslo Process through negotiating strategies and tactics. The chapter concludes by drawing together patterns and trends of state championing and diplomatic activity.

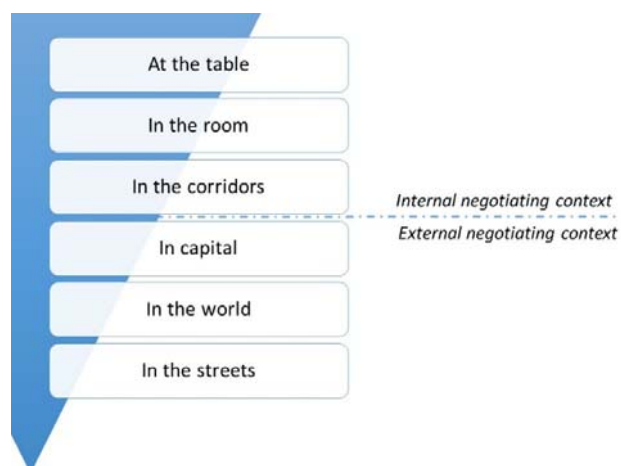


Figure 19 Contexts of diplomacy

⁵⁷⁶ John Borrie, *Unacceptable Harm*, 160.

1. Humanitarian arms control and cluster munitions

The CCM introduced a strong prohibitions regime on the use of cluster munitions with a wide scope from preventive to remedial measures. When the Oslo Process began, armed forces in 93 countries possessed cluster munitions.⁵⁷⁷ While the starting point for the Oslo Process was the innovative Ottawa Process that preceded it, the CCM went beyond the MBT's humanitarian foundations.⁵⁷⁸ In terms of legal precedents, the CCM introduced the path-breaking definition of victim assistance and more comprehensive provisions than the MBT, building on the experiences of a decade of MBT implementation.⁵⁷⁹

1.1 Historical overview

From the 1960s, cluster munitions were used around the world, notably by US forces in South-East Asia.⁵⁸⁰ As testimony emerged highlighting their humanitarian impact, cluster munitions became a permanent fixture on the agendas of multilateral forums. From the 1980s, disarmament forums in Geneva and New York began to discuss regulating cluster munitions, mainly under the umbrella of international humanitarian law (IHL) within the CCW framework. Most military lawyers felt that their military utility outweighed their humanitarian consequences.⁵⁸¹ However, field case studies, from Yugoslavia and Chechnya, cast doubt on the technical foundations of these claims.⁵⁸² Militaries saw cluster munitions as more effective than single bombs because of their wide coverage.⁵⁸³ However, they also had high dud rates (up to 30%), large footprints (surface areas can be carpeted with millions of sub-munitions) and long shelf life (unexploded munitions are de facto landmines and can explode up to 7 years after hostilities

⁵⁷⁷ International Campaign to Ban Landmines – Cluster

Munition Coalition (ICBL-CMC), *Cluster Munition Monitor 2018* (ICBL-CMC, 2018): 21.

⁵⁷⁸ Robert Williams and Paul Viotti (eds.), *Arms Control: History, Theory & Policy* (Santa Barbara: ABC-CLIO, 2012): 275.

⁵⁷⁹ Bonnie Docherty, "Breaking new ground: The Convention on Cluster Munitions and the Evolution of International Humanitarian Law," *Human Rights Quarterly* 31, no. 4 (2009): 949.

⁵⁸⁰ Rae McGrath, *Cluster Bombs, Military Effectiveness and Impact on Civilians* (London: UK Working Group on Landmines, 2000): 7.

⁵⁸¹ Thomas J. Herthel, "On the Chopping Block: Cluster Munitions and the Law of War," *Air Force Law Review* 51 (2001): 251.

⁵⁸² Virgil Wiebe, "Footprints of Death: Cluster Bombs as Indiscriminate Weapons Under International Humanitarian Law," *Michigan Journal of International Law* 22 (2000): 123.

⁵⁸³ Virgil Wiebe, "Footprints of Death," 88.

have ended).⁵⁸⁴ At the time, efforts were focused on technological advances to curb the nefarious consequences on civilians rather than on eliminating the weapons.⁵⁸⁵ The use of cluster munitions continued into the twenty-first century as a dominant feature of United States (US) firepower.⁵⁸⁶ They were used by US-led forces in Iraq and Kuwait in 1991,⁵⁸⁷ by North Atlantic Treaty Organisation (NATO) forces in the Federal Republic of Yugoslavia in 1999,⁵⁸⁸ by US forces in Afghanistan in 2001-2002⁵⁸⁹ and by US-led forces in Iraq in 2003.⁵⁹⁰ A 2004 US Department of Defense report tabled in the US Congress indicated that 88% of the US Army's artillery was made up of cluster munitions, an estimated 1 billion sub-munitions.⁵⁹¹

The 2003 Protocol V to the CCW on ERW began to shift the focus of United Nations (UN) disarmament talks to a systematic consideration of the long-term effects of weapons on people and communities rather than negotiating weapons systems category by category.⁵⁹² Although Protocol V did contain humanitarian elements, such as compulsory reporting and establishing state responsibility for ERW clearance, its scope was limited to post conflict remedial measures.⁵⁹³

Momentum was also building in the ranks of civil society. Since the 1970s, NGOs had been drawing attention to the human toll of cluster munitions and the impact of US cluster munitions in Cambodia, Lao People's Democratic Republic and Vietnam.⁵⁹⁴ From 2004, a targeted campaign to call for a ban brought together over 350 organisations under the Cluster Munitions Coalition (CMC). The CMC followed

⁵⁸⁴ Mark Hiznay, "Operational and technical aspects of cluster munitions," *Disarmament Forum* 4 (2006): 21-22.

⁵⁸⁵ These advances largely focused on reducing sub-munition failure rates and targeting more accurately the main conventional munition from which sub-munitions are dispersed. Thomas J. Herthel, "On the Chopping Block", 264.

⁵⁸⁶ Cluster Munitions Monitor, *Banning Cluster Munitions: Government Policy and Practice* (Ottawa: Mines Action Canada, 2009): 251.

⁵⁸⁷ The US, France and the UK dropped 61,000 cluster bombs containing 20 million sub-munitions. Human Rights Watch, *United States/Afghanistan, Fatally Flawed: Cluster Bombs and Their Use by The United States in Afghanistan*, (Washington: Human Rights Watch, 2002): 40.

⁵⁸⁸ The US, UK and the Netherlands dropped 1,765 cluster bombs containing 295, 000 sub-munitions. Human Rights Watch, *United States/Afghanistan*, 41.

⁵⁸⁹ The US dropped 1,228 cluster munitions containing 248, 056 sub-munitions. Human Rights Watch, *United States/Afghanistan*, 42.

⁵⁹⁰ The US and the UK used nearly 13,000 cluster munitions containing an estimated 1.8 million to 2 million sub-munitions over three weeks. Human Rights Watch, *Survey of Cluster Munition Policy and Practice* (Washington: Human Rights Watch, 2007): 8-9.

⁵⁹¹ Human Rights Watch, "The Current US Cluster Munition Stockpile," in *Time to Take Stock: The U.S. Cluster Munition Inventory and the FY 2006 Department of Defense Budget* (Washington D.C.: Human Rights Watch, July 2005): 2.

⁵⁹² J. McClelland, "Conventional Weapons: A Cluster Of Developments," *International and Comparative Law Quarterly* 54 No. 3 (2005): 760.

⁵⁹³ Louis Maresca, "Cluster Munitions: Moving Towards Specific Legislation," *Disarmament Forum* 4 (2006): 30.

⁵⁹⁴ The earliest advocates were from the Mennonite Central Committee (MCC) in the 1970s, who were active along with Mines Advisory Group in demining in Laos. Titus Peachey, "Munitions and Mines: Peace Education for Laos," *Journal of Conventional Weapons Destruction* 5, no. 1 (2001): 83

the MBT's blueprint, piloted by ICBL veterans from the Ottawa Process such as Human Rights Watch' Steve Goose, and growing to include organisations and individuals in over 90 countries.⁵⁹⁵

The catalyst for concerted multilateral action came in 2006. In July-August, Hezbollah and Israel defence forces (IDF) blanketed South Lebanon with four million sub-munitions over 34 days over a five-week period, leaving approximately one million duds and displacing over a million people.⁵⁹⁶ In the last 72 hours of the conflict, the IDF dropped over a million cluster munitions.⁵⁹⁷ With a cease-fire already on the horizon, this pursuit of an area-denial strategy drew heavy criticism.⁵⁹⁸ The number of munitions failing to explode and becoming de facto landmines was considerably higher than the widely-accepted rates by military experts.⁵⁹⁹ This was highly problematic in regard to the general principles of IHL, namely distinction (between civilians and military during hostilities), proportionality (avoiding excessive consequences for civilians in terms of military objectives) and choice of weapon (to ensure the least impact on civilians).⁶⁰⁰

As people returned to their villages after the conflict, casualties escalated of which 98% were civilians.⁶⁰¹ Others were seriously injured or denied access to their livelihoods, such as farmers whose land was contaminated.⁶⁰² This highlighted the

⁵⁹⁵ The CMC and the ICBL merged in 2011 and the Landmines Monitor expanded to include annual reporting on cluster munitions as the de facto monitoring function of the CMC. International Campaign to Ban Landmines–Cluster Munition Coalition. (ICBL-CMC), *Cluster Munition Monitor 2017* (Washington, ICBL-CMC, 2017): ii.

⁵⁹⁶ United Nations Mine Action Service, *United Nations Mine Action Service Annual Report 2006* (New York: United Nations, 2007): 45.

⁵⁹⁷ Handicap International, *Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities* (Brussels: Handicap International, 2007): 120.

⁵⁹⁸ Within days of the cease-fire, the UN Human Rights Council established a commission of inquiry into Israel's "grave violations of human rights and breaches of international humanitarian law" during a special session convened in Geneva through the adoption of Resolution S-2/1. The Resolution is in annex to the Report that contains their findings. The major finding of the Report was: "As these [cluster bomb] sites were often located in civilian built up or agricultural areas the long term effects of these weapons on the civilian population should have been obvious." United Nations General Assembly, Human Rights Council, Mission to Lebanon (7–14 September 2006), UN Doc A/HRC/2/7, paras. 55 and 56.

⁵⁹⁹ Human Rights Watch came to this conclusion by comparing data on failure rates published by manufacturers of between 2-20% with the dud rate of 30% observed on the ground by the United Nations Mine Action Coordination Centre South Lebanon (UNMACC-SL). Human Rights Watch, *Civilians Under Assault: Hezbollah's Rocket Attacks on Israel in the 2006 War* (Washington D.C.: Human Rights Watch, 2007): 6.

⁶⁰⁰ Brian Rappert and Richard Moyes, "The prohibition of cluster munitions: setting international precedents for defining inhumanity," *Nonproliferation Review* 16, no. 2 (2009): 243.

⁶⁰¹ These included at least 207 men, women and children who were killed as a result of unexploded ordnance in close proximity to fields, villages, schools and homes. Handicap International, *Circle of Impact*, 120.

⁶⁰² 965 cluster munition sites were identified, with roughly 5% of agriculture land in Southern Lebanon considered to be contaminated by unexploded ordnance. Greg Crowther, *The economic impact of cluster munition contamination in Lebanon* (London: Landmine Action, 2008): 2-4.

indiscriminate nature of the weapons.⁶⁰³ A massive clearance operation was required, which led to the documentation of the impact of these weapons on individuals and communities. States began to shift their policies concerning cluster munitions. Between 2006-2009, a dozen states made dramatic changes to their national policies on the military necessity and legality of cluster munitions.⁶⁰⁴ Multilateral talks followed in various forums, which eventually prompted the successful negotiation of the 2008 CCM.

1.2 Outline of the treaty

The CCM combines aspects of arms control and disarmament as well as humanitarian principles. The CCM established a disarmament goal with a complete ban on the use, acquisition, stockpiling or transfer of cluster munitions.⁶⁰⁵ From a humanitarian perspective, the CCM established an effects-based definition of a cluster munition, and introduced specific and cumulative criteria for exceptions to the ban.⁶⁰⁶ This legal framework, an effects-based definition and a shift in the burden of proof to weapons producers, sets a legal precedent.⁶⁰⁷ On interoperability, namely cooperation between states parties and non states parties, the CCM sets a precedent in a controversial area.⁶⁰⁸ Under Article 21 (3), armed forces of states-parties to the treaty are allowed to participate in operations with non-state parties which might engage in activities banned by the treaty.⁶⁰⁹

⁶⁰³ Daniele Ressler and Elizabeth Wise, "Cluster Munitions and ERW in Lebanon," *Journal of Conventional Weapons Destruction* 10, no. 2 (2006): 12.

⁶⁰⁴ These ranged from putting in place national bans and moratoriums to exploring technological enhancements to reduce dud rates and improve targeting. Twelve states put in place bans and moratoriums on cluster munitions between 2006-2009, including Belgium, Norway, Austria, Hungary, the Netherlands, Croatia, Bosnia and Herzegovina, Bulgaria, Spain, Ireland and Luxembourg. Cluster Munitions Monitor, *Banning Cluster Munitions: Government Policy and Practice* (Ottawa: Mines Action Canada, 2009): 12.

⁶⁰⁵ Article 1. General obligations and scope of application. 1. Each State Party undertakes never under any circumstances to: (a) Use cluster munitions; (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.

⁶⁰⁶ Article 2. 2. 'Cluster munition' means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following: (...) (c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics: (i) Each munition contains fewer than ten explosive submunitions; (ii) Each explosive submunition weighs more than four kilograms; (iii) Each explosive submunition is designed to detect and engage a single target object; (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism; (v) Each explosive submunition is equipped with an electronic self-deactivating feature (...).

⁶⁰⁷ Bonnie Docherty, "Breaking New Ground," 935.

⁶⁰⁸ William H. Boothby, *Weapons and the Law of Armed Conflict*, 2nd ed. (Oxford: Oxford University Press, 2016): 277.

⁶⁰⁹ Article 21. Relations with States not party to this Convention (...) 3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party. 4. Nothing in paragraph 3 of this Article shall authorise a State Party: (a) To develop, produce or otherwise

The CCM also addressed the humanitarian consequences of cluster munitions for victims and communities, with extensive provisions on victim assistance.⁶¹⁰ Preventing more casualties is a central foundation of the CCM, both at the point-of-use as well as long-term harm from failed munitions.⁶¹¹ The CCM also contains a comprehensive definition of “victim” which opens the door to substantial and broad reaching remedial measures that fall on user states and affected states.⁶¹² Other provisions were to include annual transparency reporting requirements, obligations to provide risk education, special responsibilities for past users and the mechanism for deadline extension requests.⁶¹³ The scope and mandate of the

acquire cluster munitions; (b) To itself stockpile or transfer cluster munitions; (c) To itself use cluster munitions; or (d) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

⁶¹⁰ Article 5. Victim assistance. 1. Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. ... 2. In fulfilling its obligations under paragraph 1 of this Article each State Party shall: (a) Assess the needs of cluster munition victims; (b) Develop, implement and enforce any necessary national laws and policies; (c) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors; (d) Take steps to mobilise national and international resources; (e) Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs; (f) Closely consult with and actively involve cluster munition victims and their representative organisations; (g) Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and (h) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

⁶¹¹ Katie Hulme, "The 2008 Cluster Munition Convention: Stepping Outside the CCW Framework (Again)," *International and Comparative Law Quarterly* 58 (January 2009): 223.

⁶¹² Article 2. Definitions 1. ‘Cluster munition victims’ means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.

⁶¹³ Article 7. Transparency measures. 1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party, on: (a) The national implementation measures referred to in Article 9 of this Convention; (b) The total of all cluster munitions, including explosive submunitions, referred to in paragraph 1 of Article 3 of this Convention, to include a breakdown of their type, quantity and, if possible, lot numbers of each type; (c) The technical characteristics of each type of cluster munition produced by that State Party prior to entry into force of this Convention (...); (d) The status and progress of programmes for the conversion or decommissioning of production facilities for cluster munitions; (e) The status and progress of programmes for the destruction, in accordance with Article 3 of this Convention, of cluster munitions (...); (f) The types and quantities of cluster munitions, including explosive submunitions, destroyed in accordance with Article 3 of this Convention (...); (g) Stockpiles of cluster munitions, including explosive submunitions, discovered after reported completion of the programme referred to in sub-paragraph (e) of this paragraph, and plans for their destruction in accordance with Article 3 of this Convention; (h) To the extent possible, the size and location of all cluster munition contaminated areas under its jurisdiction or control (...); (i) The status and progress of programmes for the clearance and destruction of all types and quantities of cluster munition remnants cleared and destroyed in accordance with Article 4 of this Convention (...); (j) The measures taken to provide risk reduction education and, in particular, an immediate and effective warning to civilians living in cluster munition contaminated areas under its jurisdiction or control; (k) The status and progress of

MBT's monitoring and reporting capability, the annual Landmines Monitor, was extended to include cluster munitions from 2010 onwards.

The Ottawa Process laid the pathway for the Oslo Process in two ways. First, the Ottawa Process had proven that fast-track talks for a ban could work outside the established UN disarmament machinery. Second, it shaped a generation of diplomats and activists equipped with tactics and strategies.⁶¹⁴

The CCM also went further than the MBT. On substance, the CCM's victim assistance provisions are more comprehensive.⁶¹⁵ The CCM's coverage includes a weapon whose strategic importance was far greater than APLMs were.⁶¹⁶

The CCM opened for signature in Oslo on 03 December 2008. Among the nations that did not sign the treaty were major producers and stockpilers, including China, India, Israel, Pakistan, Russia and the US.

Since the treaty entered into force in August 2010, production has decreased and stockpile destruction and mine clearance have increased.⁶¹⁷ Victim assistance has increased, with states committed to a streamlined action plan.⁶¹⁸

However, continued use and production indicate that cluster munitions will not be eliminated anytime soon. They have been used in at least seven other theatres of conflict since the CCM entered into force, mainly by government forces, in Cambodia, Libya, Sudan and South Sudan. Saudi-led forces used cluster munitions in Yemen in 2016.⁶¹⁹ Russian and Syrian forces also used them in Syria in 2015.⁶²⁰ In 2016, casualties doubled from 2015, recording the second highest increase since the CCM entered into force.⁶²¹

implementation of its obligations under Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims and to collect reliable relevant data with respect to cluster munition victims; The information provided in accordance with paragraph 1 of this Article shall be updated by the States Parties annually... .

⁶¹⁴ Norway as the lead country was represented by Geneva-based Disarmament Ambassador Steffen Kongstad who had also been active in the Ottawa Process. Within the CMC, its co-chair Steve Goose had been part of the steering committee of the ICBL. The CMC's coordinator Thomas Nash had been a junior New Zealand diplomat during the Ottawa Process. Mary Wareham, the NZ coordinator of the ICBL affiliate CALM, was a key NGO contact during the Wellington Conference as a member of Oxfam NZ and later Human Rights Watch. John Borrie, *Unacceptable Harm*, 44-48; 144.

⁶¹⁵ Bonnie Docherty, "Breaking new ground," 935.

⁶¹⁶ Mark Hiznay, "Operational and technical aspects," 18-20.

⁶¹⁷ Of the 34 states that have been known to produce cluster munitions, 18 have ceased since the treaty entered into force, including one non signatory to the CCM, Argentina. At least 425 square kilometres of land has been cleared, with 535,000 sub-munitions destroyed. International Campaign to Ban Landmines-Cluster Munition Coalition (ICBL-CMC), *Cluster Munition Monitor 2017* (Washington, ICBL-CMC, 2017): 2-3; 54.

⁶¹⁸ ICBL-CMC, *Cluster Munition Monitor 2017*, 3.

⁶¹⁹ Cluster Munitions Coalition, *Saudi-led coalition strikes Yemen's capital with cluster bombs*, Press release, January 7, 2016.

⁶²⁰ Human Rights Watch, "Press release: Russia/Syria: Extensive Recent Use of Cluster Munitions," Washington DC, December 20, 2015.

⁶²¹ ICBL-CMC, *Cluster Munition Monitor 2017*, 2.

Cluster munitions remain a highly lucrative industry. In 2016, an independent report identified that in 2014 alone, seven cluster munitions producers from seven different countries received USD\$27 billion in financial investments from 151 financial institutions.⁶²²

2. Why New Zealand championed the Oslo Process

After the humanitarian impact of the conflict in Lebanon in July-August 2006, a core group of eight states led by Norway and including New Zealand initiated negotiations on a ban.⁶²³

Three elements of the “in capital” context reveal why New Zealand was part of the core group of championing states in the Oslo Process, in contrast with its low-key presence in the Ottawa Process. These are domestic politics, external policy and strategic partnerships. First, Helen Clark’s government was elected on a progressive political platform with a natural fit for disarmament. Second, the humanitarian impact of cluster munitions was high on the radar of New Zealand’s disarmament team because of their recent experience negotiating the Convention on Rights of People with a Disability (CRPD), coupled with frontline testimony from the team of NZ de-miners in Lebanon. This occurred against the backdrop of the delicate legacy of the Australia New Zealand United States Treaty (ANZUS) which saw Wellington excluded from US security guarantees in 1984 as a result of the strong anti-nuclear stance by the Lange Labour government.

2.1 Domestic politics

Labour Prime Minister Helen Clark served three terms from 1999 to 2008. Until then, New Zealand’s parliament had been dominated by the National Party. Over the period 1945-1999, the National Party had governed for 38 years, to Labour’s 17 years.⁶²⁴ As the party of change, Labour’s periods of government brought in change and radical departures. Labour’s previous mandate, under PM David Lange from 1984-89, had ushered in a period of change for New Zealand, including the nuclear-free policy formally enshrined through national legislation. Ten years on, Clark and her Foreign Minister Phil Goff signalled within weeks of taking office that the new government would follow a transformative pathway on foreign policy, notably on

⁶²² Commissioned by PAX on worldwide investments in cluster munitions, the report investigated seven cluster munitions producers among a larger universe of companies to establish links between producers and financial institutions. Of the seven identified, two are based in the US, two in China, two in South Korea and one in Singapore. IKV Pax Christi and Netwerk Vlaanderen, *Worldwide Investments in Cluster Munitions: a Shared Responsibility, June 2016 Update* (Utrecht: PAX Netherlands, 2016): 3.

⁶²³ Denise Garcia, *Disarmament Diplomacy*, 166.

⁶²⁴ Gavin McLean, 'Premiers and prime ministers', *Te Ara - the Encyclopedia of New Zealand* (2006).

human rights.⁶²⁵ Clark's mandate carried through on the Labour tradition of change, with the decision to abolish the strike-force capabilities of the Air Force in 2001 the most high-profile aspect of this agenda.⁶²⁶

A further aspect to the domestic political environment was the expanded role of ministers as a result of reforms in 1995 which brought in a mixed-member proportional electoral system. This reform was designed to dilute prime ministerial power and provide senior ministers with more influence in decision-making on policy matters such as foreign affairs and defence. By permitting a fairer system of representation, compared to the previous 'first past the post' system, MMP meant the regular appearance of coalition governments less likely to be forced into line by dominating Prime Ministers as had occurred under previous leaders such as Robert Muldoon.⁶²⁷ MMP reforms gave Clark's ministers considerable power to push for action on issues such as on cluster munitions in the case of Phil Goff. As a student at the University of Auckland, Prime Minister Clark had been active on issues such as the Vietnam War, the apartheid regime in South Africa and New Zealand's nuclear policy. This is where she first met Phil Goff, who became a senior member of her cabinet.⁶²⁸ Phil Goff's ministerial responsibilities included concurrent appointments as Minister of Defence and Minister for Disarmament and Arms Control which coincided with the first phase of negotiations on cluster munitions.⁶²⁹

During the last phase of the Oslo Process, Goff became Minister for Foreign Affairs. In this role he oversaw the Ministry for Foreign Affairs and Trade (MFAT), which included the International Security and Disarmament Division, the policy unit responsible for coordination, implementation and advocacy on arms control and disarmament.⁶³⁰ He also had a direct connection in to the disarmament community through his regular interactions with the Public Advisory Committee on Disarmament and Arms Control (PACDAC), made up of civil society representatives and interested citizens which advises the government on disarmament. Created in

⁶²⁵ Phil Goff, "Where to in Foreign Policy?" and Helen Clark "New Zealand Foreign Policy: Pushing the Big Ideas." both in *New Zealand International Review* 25, no. 4 (July-August 2000): 5-6.

⁶²⁶ Peter Greener, *Timing is Everything: the politics and processes of New Zealand Defence Acquisition Decision Making* (Canberra: ANU E Press, 2009): 13.

⁶²⁷ These reforms were introduced to safeguard against concentration of power by prime ministers. Jack Vowles, "The Politics of Electoral Reform in New Zealand," *International Political Science Review / Revue internationale de science politique* 16, no. 1 (1995): 95.

⁶²⁸ Claudia Eyley and Dan Salmon, *Helen Clark: Inside Stories*, (Auckland: Auckland University Press, 2015): 203.

⁶²⁹ John Borrie, *Unacceptable Harm*, 133.

⁶³⁰ International Campaign to Ban Landmines (ICBL), "New Zealand Country Profile", in *Landmine Monitor 2000* (Washington, Human Rights Watch, 2000): 2.

1986 through New Zealand's nuclear-free national legislation, the PACDAC uses its access to ministers to maintain pressure on nuclear issues in particular.⁶³¹

Through Goff's networks in the peace movement, he also personally knew a large number of potential non-governmental organisation (NGO) advisers to include on New Zealand's official delegations to the UN.⁶³² Over his tenure, he built and reinforced personal networks between officials, ministers and civil society. These contacts would come to play a key role in the Oslo Process, notably during the organisation of the Wellington conference – New Zealand's largest international diplomatic meeting and an organisational and logistical feat.

2.2 External policy

Since joining the League of Nations in the aftermath of World War One, New Zealand has had a bipartisan disarmament orientation that has shaped and guided policy, notably on nuclear weapons.⁶³³ Wellington's activism on nuclear weapons dates back to the negotiation in the 1960s of the Non Proliferation Treaty (NPT), with New Zealand one of its first signatories as it opened for signature in 1968.⁶³⁴

In 1984, the Labour opposition proposed legislation to make New Zealand nuclear free by calling for the prohibition of nuclear weapons in its territories.⁶³⁵ A snap election followed and brought Labour's Lange to power where he held true to his electoral promise of cementing New Zealand's status as nuclear free.⁶³⁶ The first test of his resolve occurred in early February 1985 when his government declined a request for a port visit by the American frigate the USS Buchanan, on the basis that Wellington had not received confirmation that it was not nuclear enabled.⁶³⁷ Following this, the US stepped away from its ANZUS obligations to New Zealand.⁶³⁸

The 1987 Nuclear Free Zone legislation introduced by the Lange government constitutionally enshrined the obligation to pursue a world free of nuclear weapons.⁶³⁹ New Zealand revived multilateral efforts to prohibit nuclear weapons

⁶³¹ Lyndon Burford, "Principled pragmatism: non-governmental influence on nuclear disarmament advocacy 1995-2000", *Global Change, Peace & Security* 23, no. 1 (2011): 60.

⁶³² Lyndon Burford, "Principled pragmatism," 61.

⁶³³ Paul G. Buchanan, "Lilliputian in fluid times: New Zealand foreign policy after the cold war," *Political Science Quarterly* 125, no. 2 (2010): 258-260.

⁶³⁴ *Treaty on the Non-Proliferation of Nuclear Weapons*, Washington/Moscow/London, 5 March 1970, United Nations Treaty Series 729, 161.

⁶³⁵ Wade Huntley, "The kiwi that roared," *The Nonproliferation Review* 4 (1996): 1.

⁶³⁶ Wade Huntley, "The kiwi that roared," 1.

⁶³⁷ Kevin Clements, *Back from the Brink: the Creation of a Nuclear-Free New Zealand* (Wellington: Bridget Williams Books, 2015): 112.

⁶³⁸ US Secretary of State George Schultz, "Address to the East-West Center, Honolulu, July 17, 1985", *Department of State Bulletin* 85 (1985): 33-35.

⁶³⁹ Robert Ayson, "Towards a Nuclear Weapons Free World? New Zealand and the Quest for Global Nuclear Disarmament," *International Journal* 55, no. 4 (Autumn 2000): 531.

by taking the question of the legality of nuclear weapons to the International Court of Justice (ICJ), which ruled in 1996 “that the threat or use of nuclear weapons would be contrary to the rules of international law and in particular the principles and rules of humanitarian law ruling”.⁶⁴⁰ The New Agenda Coalition (NAC) at the UN was a key catalyst in this revival, bringing together New Zealand and six other states from all regions (Brazil, Egypt, Ireland, Mexico, South Africa and Sweden). It has tabled UNGA Resolutions since 1997 with a focus on an eventual ban.⁶⁴¹

The longevity of NZ’s nuclear position has been linked to the strongly-held popularity domestically of the “David-and-Goliath” type of confrontation with larger nations, which has pitted New Zealand against two permanent members of the UNSC (P5) members, the US and France, on nuclear issues. This stance has come to symbolise “the national resolve to forge a distinctive foreign policy in the face of strong opposition”.⁶⁴² This cemented international roles for New Zealand politicians of that era,⁶⁴³ characterised by Wellington’s strong anti nuclear rhetoric on French nuclear testing in the South Pacific between 1966-95⁶⁴⁴ and access to ports for US frigates in 1985. New Zealand has had two very successful terms on the UN Security Council in 1993-94 and 2015-16. During both terms, the reputation of Wellington’s envoys was reinforced, first in crisis management during the Rwandan genocide, and second in pursuing contentious issues, such as the status of Palestine.⁶⁴⁵

New Zealand’s legacy in nuclear disarmament, along with its natural predisposition to challenge larger states and its longstanding expertise in demining, made pursuing action on conventional weapons a natural fit. New Zealand’s commitment to the Oslo Process was channelled through the Geneva-based disarmament team which included legal experts who had negotiated the CRPD.⁶⁴⁶

⁶⁴⁰ In 1996, the resumption of seabed nuclear testing by the French in the Pacific led to the reopening of the ICJ case by New Zealand and Australia on the legality of testing. Although the case failed on the grounds that the testing was not conducted in the atmosphere, the Court’s judgement of illegality was a milestone for those arguing for the elimination of nuclear weapons. Saul Mendlovitz and Peter Weiss, “Judging the Illegality of Nuclear Weapons: Arms Control Moves to the World Court,” *Arms Control Today* 26 (1996): 10.

⁶⁴¹ New Zealand first tabled a resolution at the UNGA in 1972 under a National government in favour of a Comprehensive Test Ban, which has been renewed every year since. David J. McCraw, “New Zealand’s Foreign Policy in the 1990s: In the National Tradition?,” *The Pacific Review* 13, no. 4 (2000): 586.

⁶⁴² Robert G Patman, “Globalisation, sovereignty and the transformation of New Zealand Foreign policy,” *Working Paper 21/05 Centre for Strategic Studies* (Wellington: Victoria University, 2005): 8.

⁶⁴³ Don McKinnon, Bolger’s Foreign Minister, took up the position of Secretary General of the Commonwealth. Labor Prime Minister, Mike Moore, was appointed to a three-year term as Director-General of the WTO. In 2016, Helen Clark was in contention for the UN Secretary General after a decade at the head of the UN Development Programme, the largest UN agency. Raymond Miller, *Democracy in New Zealand* (Auckland: Auckland University Press: 2015), 18.

⁶⁴⁴ Sandra Radu, “What Lies Beneath”, *Harvard International Review* 23, no. 1 (Spring 2001): 79.

⁶⁴⁵ John Borrie, *Unacceptable Harm*, 133.

⁶⁴⁶ John Borrie, *Unacceptable Harm*, 46.

The starting point for New Zealand's commitment was a meeting between Goff and the Norwegian Foreign Affairs Minister Støre in January 2006 in Oslo, in which they discussed cluster munitions. The two foreign ministers shared a dislike of these weapons. As one official present at the meeting put it, "he [Goff] and Støre sat down together and it could have been the same person talking". They both had seen firsthand the indiscriminate effects of cluster munitions in Afghanistan.⁶⁴⁷ Both ministers considered that their use violated humanitarian law. They agreed on the need to take urgent action with or without CCW states parties.⁶⁴⁸ For them, action meant going beyond ineffectual regulations and introducing a complete prohibition, with remedial measures for victims. This was put evocatively by Minister Phil Goff who wanted the international community to 'put the fence at the top of the cliff and not simply be the ambulance.'⁶⁴⁹

Phil Goff was in a strong position to pursue an internationalist role for New Zealand in Geneva and New York. He had oversight of both defence and disarmament portfolios and was a trusted ally of the Prime Minister. Goff committed NZDF deminers to deploy to Lebanon in September 2006 with the United Nations Interim Force in Lebanon as part of two ten-person explosive ordnance disposal teams. He had previously witnessed first-hand the impact on civilian life through unexploded ordnance, having visited NZ peace-keepers deployed in Bougainville and East Timor.⁶⁵⁰

At post, Geneva-based Disarmament Ambassador Don Mackay's involvement was a feature from the early stages of talks right through to the finalisation of the treaty. He notably played a decisive role in maintaining a tough stance when pressure was brought to bear from weapons producers and US allies during the Wellington meeting, the largest disarmament meeting convened in New Zealand. Mackay held strong until the last days of talks in Dublin, balancing the views of the progressive majority and the powerful minority through legal expertise and "sheer doggedness".⁶⁵¹ This combination of a strong stance on disarmament and a willingness to take on unpopular positions with larger states was a natural step in the history of progressive diplomacy by New Zealand under Labour governments.

⁶⁴⁷ John Borrie, *Unacceptable Harm*, 150.

⁶⁴⁸ Goff's progressive stance was further reinforced after he heard first-hand from New Zealand's expert deminers deployed to Lebanon in 2006 with UNMAS about the devastating consequences of unexploded remnants of war. John Borrie, *Unacceptable Harm*, 133.

⁶⁴⁹ Phil Goff, "Opening address of the Wellington Conference on Cluster Munitions", (Speech, February 17, 2008, Wellington, New Zealand). Transcript published by New Zealand Ministry of Foreign Affairs and Trade.

⁶⁵⁰ Phil Goff, "Address to the Push for Peace Symposium, Auckland War Memorial Museum", (Speech, 10 November, 2005, Auckland, New Zealand).

⁶⁵¹ John Borrie, *Unacceptable Harm*, 224.

2.3 Strategic partnerships

New Zealand's closest allies have remained constant over time, from regional neighbour Australia, to military power the US and colonial power the United Kingdom (UK) (in the first half of the 20th century in particular).⁶⁵² These states have been steady allies and closely aligned on strategic global security issues, albeit with relations strained with the US from the mid 1980s. The connections between them have been formalised through treaties and arrangements that cover regional security, defence and defence intelligence. Many were set up in the immediate post World War Two period and have endured.

Defence intelligence sharing was an early and essential plank linking all four states, when the 1949 bilateral BRUSA Agreement between the UK and the US evolved into the five-member 1956 UKUSA Agreement to include Canada, Australia and New Zealand, more commonly known as the "Five-Eyes".⁶⁵³

During this same period, in 1950, a tripartite strategic plan was set up to protect the region around modern-day Malaysia, through a four-party coalition, drawing in the UK, New Zealand and Australia and covering the Malayan area, known as ANZAM (Anglo-New Zealand-Australia-Malaya area).⁶⁵⁴

This was followed by the 1951 Australian New Zealand United States (ANZUS) pact, which enshrined explicit obligations of a legal, political and technical nature. Legally, in case of an armed attack, parties are committed to consulting,⁶⁵⁵ although this does not extend to an explicit commit to act in response, which is subject to 'constitutional processes'.⁶⁵⁶ Politically, the Treaty has led to regular high-level meetings.⁶⁵⁷ Technically, it has provided access to the US military technology, through defence trade, joint facilities and intelligence-sharing as foreshadowed in

⁶⁵² Robert G Patman, "Globalisation, sovereignty," 3.

⁶⁵³ Matthew M. Aid, *The secret sentry: The untold history of the National Security Agency* (New York, Bloomsbury Publishing, 2009): 12.

⁶⁵⁴ Peter Greener, *Timing is Everything*, 13.

⁶⁵⁵ Article III. The Parties will consult together whenever in the opinion of any of them the territorial integrity, political independence or security of any of the Parties is threatened in the Pacific.

⁶⁵⁶ Article IV. Each Party recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

⁶⁵⁷ Article VII. The Parties hereby establish a Council, consisting of their Foreign Ministers or their Deputies, to consider matters concerning the implementation of this Treaty. The Council should be so organized as to be able to meet at any time.

article 2.⁶⁵⁸ Beyond these aspects, the Treaty also refers to unity, independence, regional stability and international peace and security.⁶⁵⁹

This was followed three years later in 1954 by formalised arrangements to combat communism in South East Asia under the Manila Treaty (the South East Asia Collective Defence Treaty) which included the creation of the South East Asia Treaty Organisation. In addition to the US, the UK, New Zealand and Australia, other states also became signatories – France, France, the Philippines, Pakistan and Thailand.

The 1971 Five Power Defence Arrangement was a limited military alliance between New Zealand and the UK, Australia, Malaysia and Singapore. It is limited to incursions on land territory and does not include New Zealand's Extended Economic Zone (EEZ), a surface area five times larger than land mass.⁶⁶⁰

In 1985, New Zealand refused entry to its ports to the US frigate USS Buchanan on the grounds that it may violate anti-nuclear policy.⁶⁶¹ As a result, the United States rescinded their ANZUS commitments to New Zealand. Following this, Wellington reinforced its ties with Australia through the 1991 Closer Defence Relationship (CDR). The CDR enshrined mutual defence obligations across the Tasman and includes policy, intelligence and security, logistics, and science and technology agreements.⁶⁶² Under the CDR, the New Zealand Government committed to purchasing two Australian-manufactured Anzac frigates as the "entry price" in closer defence relations which would see Australia guarantee the integrity of New Zealand in case of an attack.⁶⁶³

⁶⁵⁸ Article II. In order more effectively to achieve the objective of this Treaty the Parties separately and jointly by means of continuous and effective self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack.

⁶⁵⁹ Preamble. REAFFIRMING their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all Governments, and desiring to strengthen the fabric of peace in the Pacific Area, NOTING that the United States already has arrangements pursuant to which its armed forces are stationed in the Philippines, and has armed forces and administrative responsibilities in the Ryukyus, and upon the coming into force of the Japanese Peace Treaty may also station armed forces in and about Japan to assist in the preservation of peace and security in the Japan Area, RECOGNIZING that Australia and New Zealand as members of the British Commonwealth of Nations have military obligations outside as well as within the Pacific Area, DESIRING to declare publicly and formally their sense of unity, so that no potential aggressor could be under the illusion that any of them stand alone in the Pacific Area, and DESIRING further to coordinate their efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific Area.

⁶⁶⁰ Jim Rolfe, "New Zealand's Security: Alliances And Other Military Relationships," Working Paper 10/97, Centre for Strategic Studies (Wellington: Victoria University, 1997): 10.

⁶⁶¹ David McCraw, "New Zealand's Defence Policy: From Realism to Idealism?," *Defense & Security Analysis* 24, no. 1 (2008): 24.

⁶⁶² The 1991 Closer Defence Relationship agreement (CDR) with Australia was established in 1991 after New Zealand's de facto exit from the ANZUS Treaty. Jim Rolfe, "New Zealand's Security," 11.

⁶⁶³ Derek Quigley, "The Evolution of New Zealand Defence Policy," *Security Challenges* 2, no. 3 (2006): 43.

On taking office, Clark outlined the path forward for New Zealand's foreign and defence policies in the Defence Policy Framework.⁶⁶⁴ It was driven by the principle that without any direct threat, New Zealand's defence forces would be oriented to collective security obligations and multilateral peace support operations rather than the defence of territory. New Zealand's global responsibilities would guide its efforts to "defuse tensions, build confidence, maintain stability and in general terms try to uphold the provisions of good international order".⁶⁶⁵

This led to a policy focus on non-proliferation, humanitarian relief, environmental protection and diplomatic mediation.⁶⁶⁶ Soft power elements were prioritised over more costly military, or hard power, approaches.⁶⁶⁷ Peacekeeping would be the top priority for the New Zealand Defence Force (NZDF).⁶⁶⁸ This also had a budgetary impact, with Wellington effectively entering into a burden sharing arrangement with the UN for participation in blue helmet operations.⁶⁶⁹ On humanitarian action, Clark's administration maintained NZDF's tradition of service in mine action, from field deployment in Afghanistan, Bosnia-Herzegovina, Cambodia and Croatia, to funding of aid programmes for victim assistance to regions affected by mines.⁶⁷⁰

Under Clark's tenure, rebuilding relations with the US continued. The substantial readjustment after 1985, when Wellington and Washington remained "friends but no longer allies",⁶⁷¹ shows that the friendship has withstood the test of the time without significantly impeding New Zealand's room to manoeuvre on arms control.⁶⁷² While ensuring that NZDF abided by the nuclear-free legislation, Wellington "bent over backwards to be a very good friend of the US".⁶⁷³

NZ troops have continued to participate in US-led deployments in the Middle East, the Persian Gulf and Afghanistan. This includes in 2003 when Wellington

⁶⁶⁴ Government of New Zealand, *Defence Policy Framework* (Wellington: Government of New Zealand, 2000).

⁶⁶⁵ Peter Cozens, "Some Reflections on Notions of Defence and the Use of Armed Force: A Perspective from New Zealand," *Security Challenges* 2 no. 3 (October 2006): 19.

⁶⁶⁶ Colin James, "Norman Kirk, Robert Muldoon, David Lange, and Helen Clark - and John Key," *Political Science* 60, no. 2 (2008): 100.

⁶⁶⁷ David McCraw, "New Zealand Foreign Policy Under the Clark Government: High Tide of Liberal Internationalism?," *Pacific Affairs* 78, no. 2 (2005): 223.

⁶⁶⁸ Greener, *Timing is Everything*, 13.

⁶⁶⁹ Andreas Reitzig, "The Contours of New Zealand Foreign Policy" in *New Zealand and the World: Past, Present and Future*, eds. Robert G. Patman, Iati Iati and Balazs Kigilics, (Singapore: World Scientific Publishing Company 2018), 397.

⁶⁷⁰ International Campaign to Ban Landmines, "New Zealand Country Profile" in *Landmine Monitor Report 1999* (Washington: Human Rights Watch, 1999): 372.

⁶⁷¹ Term coined by Robert Ayson to characterize the 'strategic partnership' that emerged from the 2010s. Tracy Watkins, "Agreement with US sees NZ as 'de Facto' Ally," *The Dominion*, June 20, 2012.

⁶⁷² Robert G Patman, "Globalisation, Sovereignty," 7.

⁶⁷³ Citing Helen Clark, in Robert G. Patman and Jeremy Hall, "New Zealand-US Relations in a Globalising World: Moving Together or Moving Apart?" in Roderick Alley (ed.), *New Zealand in World Affairs IV* (Wellington: Victoria University Press, 2007), 127.

dispatched the frigate HMNZS Te Kaha, along with engineers and armed troops, to assist in Iraq's reconstruction efforts despite Wellington's public opposition to the US's involvement in Iraq.⁶⁷⁴

Overall, Wellington's progressive politics and principled policy on disarmament coexisted without notable friction with a close defence relationship with Australia – a reluctant Oslo Process participant – and concerted attempts at rapprochement with the United States, an opponent to the Oslo Process.

3. How New Zealand shaped the Oslo Process

This section examines the three Oslo Process transition points, from triggers to consequences. These points marked the passage between phases, from commitment to substance and agreement. Six layers of context are analysed.

The section argues that New Zealand shaped the Oslo Process by adopting a championing strategy with three distinctive features. In a diverse core group coalition of states and non state actors led by Norway, New Zealand's legal and procedural expertise drove progress in every phase of negotiations as talks progressed from commitment to substance and agreement. Breaking with past precedents on procedure and legal arguments, New Zealand played a championing role at the heart of the Oslo Process.

3.1 Transition point 4: Oslo, February 23, 2007

The first transition point of the Oslo Process occurred when 49 states signed the Oslo Declaration on 23 February 2007,⁶⁷⁵ committing to pursuing strong regulations on cluster munitions outside the existing UN forum, the CCW. This led to the start of formal talks negotiations in the Oslo Process.



Figure 20 Transition point 4: Oslo, February 23, 2007

⁶⁷⁴ Radio New Zealand, "New Zealand's 15-year role in Iraq," October 7, 2015.

⁶⁷⁵ Gro Nystuen and Stuart Casey-Maslen, "Annexe 2: Oslo Declaration", in *The Convention on Cluster Munitions: A Commentary*, eds. Gro Nystuen and Stuart Casey-Maslen (New York: Oxford University Press, 2010), 631.

3.1.1 Trigger: invitation to Oslo Meeting

On the final day of the Third Review Conference of the CCW in Geneva, member states failed to adopt a negotiating agenda to start talks on an amended protocol on cluster munitions.⁶⁷⁶ Disappointed with this outcome, 25 states renewed the call they had issued at the beginning of the Conference for a negotiating mandate for a prohibition on the use of unreliable and/or inaccurate cluster munitions in civilian areas.⁶⁷⁷ This was followed by an invitation to CCW states from Norwegian Foreign Minister Jonas Gahr Støre to attend a strategy meeting in Oslo in February 2007. With the combined impact of Norway's invitation and 25 states speaking as one, critical mass was reached for the formal start of talks on stronger regulations of cluster munitions.

3.1.2 Transition point 4: 46 states adopt Oslo Declaration

Between 22-23 February 2007, 49 countries attended the Oslo Conference in the Soria Maria Hotel including states affected by cluster munitions.⁶⁷⁸ The Oslo Conference was held in the same location where the Norwegian Red-Green Coalition had launched its 2005 electoral campaign with a pledge to take international action on cluster munitions.⁶⁷⁹ After winning the elections, Foreign Minister Jonas Gave Støre, the former head of Norwegian Red Cross, followed through with this promise. 46 states adopted the Oslo Declaration, committing to negotiate and adopt by the end of the following year a "legally-binding instrument prohibiting the use, production, stockpiling and transfer of cluster munitions that cause unacceptable harm to civilians".⁶⁸⁰

3.1.2.1 *At the table*

The Ottawa Process precedent was maintained, namely that the 'price of entry' to attend the meeting was a pre-commitment to the Oslo Declaration and its intended outcome, addressing humanitarian concerns on cluster munitions.⁶⁸¹

⁶⁷⁶ Virgil Wiebe et al, "Introduction," in *The Convention on Cluster Munitions: A Commentary*, 17.

⁶⁷⁷ At the start of the Third Review Meeting of the CCW, a group of 26 states proposed adding to the negotiating agenda a legally binding instrument to address the humanitarian concerns posed by cluster munitions. The proposal was rejected by a few major military states. States invoked a variety of reasons, for example that "they were not convinced that these weapons if they're used properly cause a problem" or that "they were needed out of military utility". Under the informal rule of consensus, this stopped any further talks. Rappert and Moyes, "The Prohibition of Cluster Munitions," 241-42.

⁶⁷⁸ Affected states in Southeast Asia, notably Cambodia and Laos, were active from the outset of the Oslo Process. Other participants included Afghanistan, Angola, Argentina, Bosnia and Herzegovina, Guatemala, Indonesia, Jordan, Latvia, Lebanon, Mozambique, and South Africa. John Borrie, *Unacceptable Harm*, 159.

⁶⁷⁹ Wiebe et al, "Introduction", 16.

⁶⁸⁰ Three participating states chose not to endorse the Declaration, namely Japan, Poland and Romania (all three US military allies).

⁶⁸¹ Wiebe et al, "Introduction," 18.

The Oslo Declaration had two important features. First, it committed states to a negotiating cycle outside of the UN framework with an explicit end-date, a maximum duration of 22 months.⁶⁸² Second, it provided a roadmap to the Diplomatic Convention to be held in Dublin with a series of international meetings planned in Lima, Vienna, Belgrade and Wellington that would address technical aspects of the treaty while also encouraging greater engagement.⁶⁸³

The Declaration was intentionally ambiguous on scope, with the formula “cluster munitions that cause unacceptable harm”.⁶⁸⁴ For cluster munitions users and producers, this formula indicated that only some cluster munitions would fall under the Treaty’s scope. Weapons that caused ‘acceptable harm’ would not be prohibited. For states whose starting point was that all cluster munitions caused unacceptable harm, this formula was also adequate as it indicated the possibility of a complete ban on the horizon with a strong humanitarian link.

3.1.2.2 *In the room*

A small group of states had been informally canvassing possible avenues to regulate cluster munitions over several years prior to 2006, under the auspices of the Geneva Forum, a collaborative series of events organised by the Quaker’s UN Office, the United Nations Institute for Disarmament Research (UNIDIR) and the University of Geneva.⁶⁸⁵ This group had made it clear to CCW participants that if progress did not occur within the UN confines, the group would seek alternatives outside, through the tabling of declarations at the start and end of the Review Conference, as noted previously. This group became the core group of the Oslo Process, led by Norway, and including Austria, Ireland, Mexico, New Zealand and Peru, and the Holy See.⁶⁸⁶ The core group also included several UN agencies, the ICRC and the CMC, providing first hand testimony of the impact on civilians of cluster munitions and legal expertise on drafting.⁶⁸⁷ The participation of civil society as official observers to formal and informal negotiations was one of the procedural foundations of the Oslo Process.

This coalition of state and non state diplomats was the driving force for the Oslo Process. Norway’s hosting of the inaugural meeting of the Oslo Process was backed up with unwavering financial and political support, while other core group states hosted meetings, contributed expertise and helped steer key milestones during the

⁶⁸² This ended up taking 18 months.

⁶⁸³ John Borrie, *Unacceptable Harm*, 159.

⁶⁸⁴ Wiebe et al, “Introduction,” 18.

⁶⁸⁵ John Borrie, *Unacceptable Harm*, 124-25.

⁶⁸⁶ Wiebe et al, “Introduction,” 14.

⁶⁸⁷ Wiebe et al, “Introduction,” 17.

Process. Core group states took on two forms of risk. They signed up to the political risk of being associated with a process whose outcome was not guaranteed and where major military allies would lobby for an outcome favourable to their military operations. They agreed to bear the brunt of the financial risk and burden of organising conferences outside of the UN.⁶⁸⁸

As part of the Oslo roadmap, the rolling calendar of official meetings around the world was also intended to maintain and grow momentum away from the table, tapping into civil society's expertise in targeting local, parliamentary and policy-making level, in particular within affected states in the developing world.⁶⁸⁹

3.1.2.3 *In the corridors*

The CMC came together as a coalition in 2003, following an ERW Conference in Dublin Castle which was leading up to a CCW Review Conference on an ERW Protocol.⁶⁹⁰ Drawing together the combined might of well-established civil society actors Pax Christi, Human Rights Watch, Mines Action Canada and Handicap International, among others, the CMC began to develop a strategic policy on cluster munitions from 2005 onwards, in the lead-up to the next CCW Review Conference in 2006.⁶⁹¹ They built up their contacts and exchanges with national governments in pushing for moratoriums. This cumulatively helped establish the CMC as a credible actor when opportunities opened in the multilateral space in the vacuum left by the CCW Review Conference in 2006, as detailed above. Regular fixtures at the nascent core group meetings in Geneva, they were also joined by ICRC legal experts based across the road from the UN compound.⁶⁹² The UNDP lined up to reinforce this call for a strong set of rules to protect civilians from cluster munitions.⁶⁹³ Guidance and support also came from the United Nations Mines Action Service (UNMAS), notably from John Flanagan, the Chief Operating Officer of UNMAS and a former NZDF deminer.⁶⁹⁴ With a strong network built up over years, CMC's presence in Oslo was felt strongly through speakers invited by the Norwegian government from CMC members HRW, HI and UNICEF, as well as a screening of a documentary from Australian landmine activist John Rodsted.⁶⁹⁵

⁶⁸⁸ UNDP also provided financial contributions to enable the participation of certain developing countries in international meetings.

⁶⁸⁹ John Borrie, *Unacceptable Harm*, 165.

⁶⁹⁰ John Borrie, *Unacceptable Harm*, 56.

⁶⁹¹ John Borrie, *Unacceptable Harm*, 56.

⁶⁹² John Borrie, *Unacceptable Harm*, 61.

⁶⁹³ John Borrie, *Unacceptable Harm*, 153.

⁶⁹⁴ John Borrie, *Unacceptable Harm*, 164.

⁶⁹⁵ John Borrie, *Unacceptable Harm*, 152.

3.1.2.4 *In capital*

Wellington's top-down ministerial engagement through Phil Goff required procedural and legal expertise in capital and at post in New Zealand's Disarmament Mission to the UN in Geneva.⁶⁹⁶ NZ Disarmament Ambassador Don Mackay and his small team in Geneva played a significant role in building broad political commitment in the lead-up to the Norwegian invitation. Mackay, a seasoned lawyer, had been immersed in humanitarian negotiations, as Chairman of the UN Ad-Hoc Committee that negotiated the 2006 UN Convention on the Rights of People with Disabilities (CRPD).⁶⁹⁷ The 'paradigm shift' introduced under the CRPD saw the first explicit recognition of the rights of people with disabilities in international law.⁶⁹⁸ Another striking shift introduced by the CRPD was the nature of the treaty, which Mackay referred to as an 'implementation convention' with practical pathways for existing, legally-enshrined human rights to be enacted within national legislative frameworks.⁶⁹⁹ The negotiating process had included a high-level of participation from civil society activists, many with disabilities, under the official slogan of 'Nothing About Us Without Us.'⁷⁰⁰ This combination of specialists in capital and at post came together as Norway was ramping up the Oslo Process.

3.1.2.5 *In the world*

In the aftermath of the grave humanitarian toll of the conflict in Lebanon in July-August 2006, New Zealand and Norway reiterated during proceedings at the UN's First Committee in October that year that action on a comprehensive, far-reaching legally binding instrument was required.⁷⁰¹ A few weeks later, this was echoed in a call-to-arms from then UN Secretary-General Kofi Annan. Annan called for a "freeze" on the use of cluster munitions in populated areas and the destruction of "inaccurate and unreliable" cluster munitions.⁷⁰²

⁶⁹⁶ John Borrie, *Unacceptable Harm*, 46.

⁶⁹⁷ *Convention on the Rights of Persons with Disabilities*, New York, 13 December 2006, United Nations Treaty Series, vol. 2515, P. 3.

⁶⁹⁸ Rosemary Kayess and Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities," *Human Rights Law Review* 8, no. 1 (January 2008): 2.

⁶⁹⁹ Don Mackay, "Introduction," in *Human Rights Indicators for People with Disability*, Phillip French (Brisbane: Disability Studies and Research Institute, 2008): 7.

⁷⁰⁰ Kayess and French, 'Out of Darkness into Light?,' 4.

⁷⁰¹ During two days of thematic debate on conventional weapons at the UN's First Committee, Norway and New Zealand raised the need for a legally-binding rules on cluster munitions. New Zealand called out five elements in particular, namely (1) the persistent nature of failed cluster munitions; (2) the use of cluster munitions in areas populated by civilians; (3) indiscriminate uses that attack both combatants and civilians; (4) the way these weapons kill civilians and destroy civilian objects; and (5) the proliferation and retention of "outmoded" cluster munitions. NGO Reporting on the GA First Committee on Disarmament and International Security, "First Committee Monitor, Second edition, October 9-13, 2006," (2006): 10.

⁷⁰² UN News, "Annan calls for immediate action on cluster bombs," Geneva, November 7, 2006.

These two interventions at the UN foreshadowed a fork in the road as two parallel tracks opened to pursue stronger regulations. One track involved negotiating an additional protocol to the Convention on Certain Conventional Weapons (CCW) during the November 2006 Review Conference, while the Oslo Process presented an alternative and parallel avenue from February 2007. Weapons producing states favoured talks in the consensus-driven CCW with an undefined outcome. High contracting parties included major producers China, Russia, the US and Israel.⁷⁰³

The other track, the Oslo Process, included affected states and had a specified time frame and more scope to reach a strong outcome. Some states were active in both, notably NATO members and US allies Australia, Canada and Japan.

Among the states that straddled both the CCW and the Oslo Process tracks, a small but strong bloc emerged, the like-minded group of producers and US allies. They were seeking a final compromise to assuage public calls for strong action while maintaining their security priorities. This heterogeneous group were motivated by quite distinct priorities.⁷⁰⁴ On the one hand, producers wanted to ring-fence their existing stockpiles of weapons. The UK, France and Germany were the most vocal among the group which also included Finland and Japan. On the other, US allies wanted to preserve the future viability of joint American military operations. Given the US was unlikely to adopt the treaty and widely used cluster munitions, US allies were concerned about potential clashes between their alliance obligations and the new obligations under the treaty.⁷⁰⁵

3.1.2.6 In the streets

The devastating humanitarian impact of the conflict in Lebanon resonated strongly around the world, as images were picked up by mainstream media and transmitted into homes. This caught the attention of parliamentarians, who pushed for national moratoriums in dozens of states, which led to renewed focus on how multilateral talks would address the high profile issue.⁷⁰⁶ In parallel with the Oslo Conference, a

⁷⁰³ 21 states were also accredited as observers. See "Report of the Third Review Conference of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW)" CCW/CONF.III/11(Part I) GE.07-60637 (E) Geneva (2006).

⁷⁰⁴ Wiebe et al, "Introduction", 24-25.

⁷⁰⁵ The United States has opposed calls to ban the use of cluster munitions, which they considered to be "legal, serve legitimate and important military requirements, and cause only a small proportion of post-conflict civilian casualties resulting from unexploded ordnance." See John R. Crook, "Contemporary Practice Of The United States", *American Journal of International Law* 102, No. 4 (October, 2008): 889.

⁷⁰⁶ Denise Garcia, "Banning Evil: Cluster Munitions and the Successful Formation of a Global Prohibition Regime", *Cornell International Affairs Review* 5, no. 2 (2012): 45.

series of side-events run by NGOs was convened to share knowledge and provide practical training in advocacy and media training through a series of workshops led by survivors and NGO activists from the field.⁷⁰⁷

3.1.3 Consequence: Negotiations begin

Formal negotiations started with the adoption of the Oslo Declaration, powered by the core group led by Norway and advocates from civil society, the ICRC and the United Nations Development Program (UNDP), through its logistical capacity to organise events and its advocacy stemming from first-hand experience.⁷⁰⁸ Complex hurdles needed to be surmounted. On the substantive side, the scope of the instrument required refinement from the deliberately vague formulation “cluster munitions that cause unacceptable harm to civilians”. Humanitarian aspects needed to be far-reaching to satisfy the concerns of affected states on issues such as victim assistance and transition periods. The prohibition needed to be comprehensive to be meaningful but would require at least one producer state to sign on. Maintaining enough states in the room while pursuing a significant outcome was a delicate balancing act between legitimacy and pragmatism.

3.2 Transition point 5: Wellington, February 22, 2008

The third transition point in the Oslo Process was the adoption of the Wellington Declaration following the Wellington Conference.⁷⁰⁹

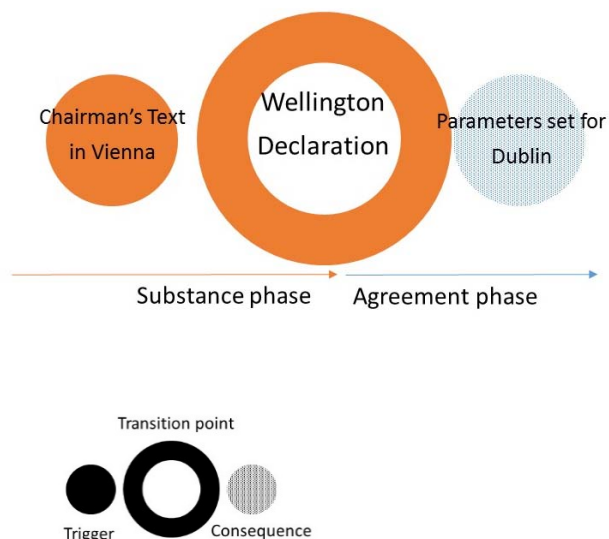


Figure 21 Transition point 5: Wellington, February 22, 2008

⁷⁰⁷ Katherine Harrison, “Report From the Oslo Conference on Cluster Munitions,” Women’s International League for Peace and Freedom, March 15, 2007.

⁷⁰⁸ John Borrie, *Unacceptable Harm*, 163.

⁷⁰⁹ Gro Nystuen and Stuart Casey-Maslen, “Annexe 7: Wellington Declaration”, in *The Convention on Cluster Munitions: A Commentary*, Gro Nystuen and Stuart Casey-Maslen (eds.) (New York: Oxford University Press, 2010), 674.

3.2.1 Trigger: Chairman's Discussion Text established in Vienna

To advance to the next phase, the purposefully ambiguous 'unacceptable harm' formula required clarification. After months of talks, a definitional formula was incorporated in the Chairman's Discussion text adopted at a meeting in Vienna, attended by 138 states.⁷¹⁰ This became the baseline text for negotiations in Wellington two months later.

The definitional formula was developed by New Zealand Disarmament Ambassador Don Mackay, and his colleague Charlotte Darlow.⁷¹¹ They engaged in an intense period of diplomatic activity to advocate a legal approach, as opposed to a political one, to define what constituted unacceptable harm by cluster munitions. They argued that producers and users who wanted to continue to manufacture and use cluster munitions must make a convincing case for their acceptability in humanitarian terms.⁷¹² All cluster munitions would be deemed to cause unacceptable harm. Negotiations would focus on the characteristics a weapon would need to meet in order not to be banned, rather than negotiating which weapons to ban.⁷¹³ For states to argue for a weapon to be excluded from the ban, they would need to demonstrate that they did not disproportionately harm civilians. This approach was informed by IHL, under Article 36 of Additional Protocol I to the Geneva Conventions, and the requirements of precaution and due diligence. Don Mackay as lead negotiator on definitions in Vienna and then in Wellington provided opportunities for states to take the floor and state their official positions in arguing for specific weapons to be excluded from the prohibition. No state took him up on this at either meeting. This approach contrasts with the CCW where restricted weapons have to be "ruled in", based on technical criteria.⁷¹⁴

This came after a research report was tabled in Vienna two months previously, which showed that the failure rate of the Norwegian national arsenal of cluster munitions was much higher than the official figures.⁷¹⁵ Commissioned by the

⁷¹⁰ Wiebe et al, "Introduction", 24.

⁷¹¹ John Borrie, *Unacceptable Harm*, 268.

⁷¹² Wiebe et al, "Introduction", 24.

⁷¹³ Brian Rappert, *A Convention Beyond The Convention*, (London: Landmine Action, 2008): 22.

⁷¹⁴ Rappert and Moyes, "The Prohibition on Cluster Munitions," 238.

⁷¹⁵ Based on testing by Norwegian officials of Norwegian arsenals, the report "M85: an analysis of reliability" was conducted by Norwegian People's Aid, the Norwegian Defense Research Establishment and British arms expert Colin King Associates. It introduced evidence that contradicted accepted figures on the dud rate of the M85 cluster munition. M85 munitions were held by Norway and other NATO states and used by Israeli forces in 2006 in Southern Lebanon. Post conflicts surveys done in Southern Lebanon showed that claims of 99% reliability for the M-85 sub-munition were false. These claims had overestimated the reliability of features such as self-destruct, self-neutralisation or self-deactivation. This was a tipping point in terms of mounting evidence that demonstrated that cluster munitions were by their very design likely to lead to high rates of unexploded ordnance and subsequent long-lasting contamination. Gro Nystuen, "A New Treaty Banning Cluster Munitions: the Interplay between Disarmament Diplomacy and Humanitarian

Norwegian Department of Defense, the M86 Report contradicted previously held figures on dud rates of cluster munitions equipped with self-neutralisation or self-destruction mechanisms. While the accepted figure had been less than 1%, this report returned results upwards of 10%.⁷¹⁶ This reinforced the need for a comprehensive ban, recognising that the humanitarian consequences of weapons were more significant than had been previously thought.⁷¹⁷

The consequence of this ‘reversal of burden of proof’ principle was the negotiation of a list of five cumulative technical criteria which would exempt a cluster munition from being banned. This would allow for the future development of cluster munitions if they complied with features that would ensure compliance with the IHL principles of proportionality and discrimination.⁷¹⁸

3.2.2 Transition point: 82 states adopt the Wellington Declaration

Armed with the President’s Paper enshrining a precautionary approach, negotiators in Wellington had a solid base to adopt the Wellington Declaration and formally enter the commitment phase of the Oslo Process.

3.2.2.1 *At the table*

Two months after the Vienna meeting, New Zealand hosted the Wellington Conference, the country’s largest disarmament meeting and multilateral conference. Over the four-day Wellington conference, the far-reaching scope of the final baseline text attracted majority support. The precautionary principle was formalised as a feature for the final treaty based on the ‘reversal of burden of proof’, as noted above. This support did not extend to the like-minded group of states, who were said to be “dupliciously stirring things up in” in order to force their wording into the baseline text for Dublin.⁷¹⁹ To prevent this from happening, the New Zealand delegation proposed a creative procedural solution without conceding ground on the strong draft negotiating text. Divergent wording was included as a compendium annexed to the Wellington Declaration.

Requirements,” in *Security: a Multidisciplinary Normative Approach*, ed. Cecilia M. Bailliet (Leiden: Martinus Nijhoff, 2009): 146.

⁷¹⁶ Gro Nystuen, “A New Treaty,” 147.

⁷¹⁷ This was the same approach taken during the Ottawa Process. Kenneth Rutherford, Nerina Čevra and Tracey Begley, “Connecting the Dots: The Ottawa Convention and the CCM,” *Journal of Conventional Weapons Destruction* 12 (2009): 43.

⁷¹⁸ Daniel Raccuia, “The Convention on Cluster Munitions: An Incomplete Solution to the Cluster Munition Problem,” *Vanderbilt Journal of Transnational Law* 44 (2011): 490.

⁷¹⁹ While the costs of organizing the event were carried by the New Zealand government, a key ally on the ground was campaigner Mary Wareham who had been part of the Ottawa Process through the ICBL where she had picked up expertise in conference management during the international meetings that ICBL had coordinated with DFAIT. Phil Goff, “Cluster Munitions (Prohibition) Bill - First Reading”, New Zealand Parliament, *Debates* 656, Wellington, July 28, 2009, 5182.

On 22 February 2008, on the last day of the Conference, 82 governments signed the Wellington Declaration with rules of procedure for the Dublin Diplomatic Conference in May and the compendium of alternate wording. Defence and Disarmament Minister Phil Goff was delighted with the outcome, declaring on the final day that, “What we’ve seen here in three days is more progress than we’ve seen in five years in Geneva.”⁷²⁰

3.2.2.2 *In the room*

Mackay applied his negotiating expertise combined with a heightened understanding of issues relating to people with disabilities – reinforcing the importance of curtailing the impact of weapons that can trigger these disabilities - to support Norwegian Ambassador Steffen Kongstad, a veteran of the MBT negotiations and therefore steeped in the intricacies of negotiating a hybrid arms control and humanitarian law instrument. Activist states from affected regions united in Wellington to resist the efforts from like-minded states to water down the text. A group of a dozen smaller states from Asia, Latin America and Africa were feeling the pressure yet were implacable about the need for a strong text. They gave Ambassador Mackay a private, signed letter asking for his continued support and naming the states that were lobbying them hard to back away. While they felt that they could not maintain a strong public position, they exhorted Mackay to remain faithful to the strong stance on definitions.⁷²¹ As a last resort, they were prepared for Mackay to go public with this letter. This was not required as Mackay was able to resist these attempts to water down the definitional approach.

3.2.2.3 *In the corridors*

The CMC fielded delegates in the main conference room and participated in open-ended discussions in other rooms of the Wellington Town Hall, where the meeting was taking place.⁷²² In technical areas relating to legal questions and weapons technology, the CMC had a small group of highly trained negotiators with field experience, who ably “cross-examined’ the proposals from state diplomats.⁷²³

⁷²⁰ Reuters, “Goff hails Wellington cluster bomb declaration,” New Zealand News, February 22, 2008.

⁷²¹ In a bilateral briefing with American officials in Canberra after the Wellington conference, a DFAT official shared that (...) *at one point during the meeting a rumour was circulated, allegedly by the Cluster Munitions Coalition (CMC), that future mine clearing assistance activities would be discontinued in countries that voted against the Like-Minded Group.*

⁷²² John Borrie, *Unacceptable Harm*, 205.

⁷²³ John Borrie, *Unacceptable Harm*, 206.

3.2.2.4 *In the streets*

Mary Wareham, a civil society activist with ICBL during the Ottawa Process, helped organise the Wellington conference and provided critical advice on the logistics of running a large multilateral disarmament event. Her behind-the-scenes input was matched with street-level presence through the New Zealand Aotearoa Cluster Munitions Campaign, which she founded after returning to her home country New Zealand after many years in Washington DC.⁷²⁴ Wareham's expertise in harnessing public awareness led to visible presence in the streets, with public demonstrations involving placards and chalked outlines of explosive weapons victims in the public square leading to the conference venue. Activists turned the spotlight on negotiators as they walked to and from proceedings while engaging the media to put public pressure on capitals if they showed signs of weakening, a tactic known as naming and shaming.⁷²⁵ Civil society raised awareness among the public and media about how talks were unfolding, calling out gaps between official state policy and negotiating positions during talks. This street-level activity raised the intensity of proceedings and irritated states targeted by the public campaign, notably US allies who complained in a public declaration at the end of the Conference.⁷²⁶

3.2.2.5 *In capital*

Lines of communication were kept open between Wellington and Canberra throughout the Oslo Process, which would help prevent talks on difficult issues slowing overall progress.⁷²⁷ New Zealand's close connections with US allies Australia and the UK helped to stabilise the situation when tensions were at their peak during the Oslo Process. While spearheading efforts to achieve a strong humanitarian prohibition, New Zealand also played a low-key role in brokering provisions on interoperability, in line with Australia's position, and kept in discrete contact with the US embassy in Wellington.⁷²⁸

3.2.2.6 *In the world*

The Wellington Conference was a fork in the road for the parallel tracks of talks in the Oslo Process and the CCW. The official 'take' had been that these tracks were

⁷²⁴ She had worked closely with Jody Williams as the US coordinator for the Campaign to Ban Landmines and later with Steve Goose who became her boss at Human Rights Watch. John Borrie, *Unacceptable Harm*, 144.

⁷²⁵ John Borrie, *Unacceptable Harm*, 221.

⁷²⁶ John Borrie, *Unacceptable Harm*, 216.

⁷²⁷ Embassy Canberra, "Cluster Munitions: Australia Comments On Oslo Process," Wikileaks Cable: 08CANBERRA90_a, dated February 4, 2008, https://wikileaks.org/plusd/cables/08CANBERRA90_a.html.

⁷²⁸ Embassy Wellington, "New Zealand, Cluster Munitions, And Interoperability," Wikileaks Cable: 08WELLINGTON157_a, dated 8 May, 2008, https://wikileaks.org/plusd/cables/08WELLINGTON157_a.html.

“complementary and mutually reinforcing”.⁷²⁹ To be sure, this had cumulatively provided more opportunities for further contact between diplomatic actors overlapping on both processes.⁷³⁰ For example, this was the case during the ICRC expert meeting on cluster munitions in April 2007 in Montreux, which helped advance substantive debates under way in both tracks.⁷³¹ Oslo Process meetings were organized at different times to CCW meetings in Geneva to avoid clashes. However, this parallel track, of “old” and “new” ways of regulating arms control, created a binary choice for states. The Oslo Process held a mirror up to the CCW and forced states to choose between an unwieldy process with a limited outcome and a rapid process with a prohibition as an outcome. Ultimately, this co-existence created friction. This friction was most apparent in Wellington when the like-minded group were faced with the choice between a strong outcome in Dublin or stalled talks in Geneva. As this choice fast approached, US officials from the State Department’s Arms Control unit were contacting capital cities and advising a cautious approach to talks within the Oslo Process as they feared that a strong treaty would impede the ability of US military forces to operate abroad.⁷³² US diplomatic staff posted in country were contacting local officials with suggested talking points for Oslo negotiators.⁷³³ US allies within the Oslo Process focused on developing a workable arrangement for states with joint operations with the US and those hosting US bases, in the shape of provisions on interoperability.⁷³⁴

3.2.3 Consequence: agreement on parameters for final phase

At this transition point between the substance and the agreement phase, a strong result in Dublin appeared likely given the draft negotiating baseline text adopted in Wellington and the majority decision-making rules of procedures. The hurdles on definitions and victim assistance were cleared, opening up the possibility that

⁷²⁹ This formula was originally used by Ban Ki Moon and frequently appears in official statements of state representatives. John Borrie, *Unacceptable Harm*, 242.

⁷³⁰ Wiebe et al, “Introduction”, 24-25.

⁷³¹ In April 2007, the ICRC convened an expert meeting in Montreux, Switzerland to address “Humanitarian, Military, Technical and Legal Challenges of Cluster Munitions”. It brought military personnel from user states into contact with clearance personnel for systematic discussions on the humanitarian impact of cluster munitions in the field. Issues addressed included Issues addressed in the meeting included the military role of cluster munitions and their technical evolution; the adequacy or inadequacy of existing international humanitarian law and potential restrictions on the use of cluster munitions. ICRC, “Report of Expert Meeting: Humanitarian, Military, Technical and Legal Challenges of Cluster Munitions, 18-20 April 2007, Montreux,” (2007): 4.

⁷³² Embassy NATO, “Allies Support U.S. Request For NATO Military Advice On Impact Of Oslo Cluster Munitions Ban,” Wikileaks Cable: 08USNATO143_a, dated April 23, 2008 https://wikileaks.org/plusd/cables/08USNATO143_a.html .

⁷³³ See for example Embassy Lusaka, “Zambia On Oslo Process And Cluster Munitions”, dated 15 May 2008, https://wikileaks.org/plusd/cables/08LUSAKA536_a.html .

⁷³⁴ Embassy Canberra, “Australia's Response To Cluster Munitions Demarche,” Wikileaks Cable: 07CANBERRA1763_a, dated 18 December 2007 https://wikileaks.org/plusd/cables/07CANBERRA1763_a.html

Dublin might produce an ambitious remedial framework.⁷³⁵ The Wellington Conference helped to shore up participation for Dublin. New Zealand's location in the Asia-Pacific enabled Pacific Island states to attend and join the Oslo Process.⁷³⁶

3.3 Transition point 6: Dublin, May 30, 2008

The Oslo Process reached its final transition point in Dublin on 30 May 2008 when the CCM was adopted by acclamation, after the two-week 'Diplomatic Conference for the Adoption of a Convention on Cluster Munitions,' held in the Gaelic football stadium Croke Park between 18-30 May 2008.⁷³⁷

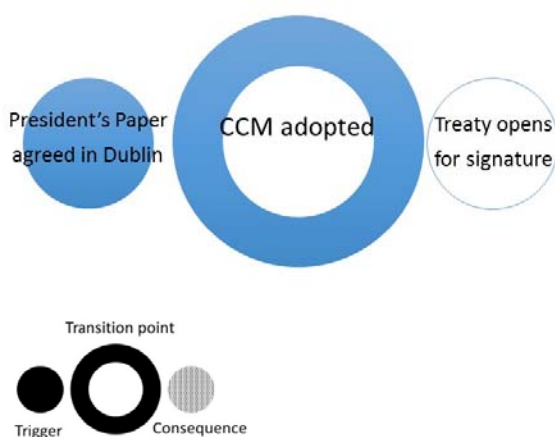


Figure 22 Transition point 6: Dublin, May 30, 2008

3.3.1 Trigger: Presidency Paper finalised

Under the Presidency of Ambassador Daithi O'Ceallaigh of Ireland, the Dublin Diplomatic Conference brought together 107 states, a steady increase from 46 states in Oslo and 82 states in Wellington. Observers included an additional 20 states, UN agencies and several hundred civil society CMC campaigners.

3.3.2 Transition point: 107 States adopt the CCM

The final transition point was the CCM's adoption on 30 May 2008 in Dublin.

3.3.2.1 At the table

On the first day, the draft rules of procedure annexed to the Wellington Declaration were adopted. They included majority decision-making, with full participation only open to signatories of the Declaration. Civil society was granted full access and was able to take the floor during formal and plenary sessions.⁷³⁸

During the first week, diplomats discussed the text line by line. As differences emerged, O'Ceallaigh appointed seven Friends of the President to lead work-

⁷³⁵ John Borrie, *Unacceptable Harm*, 221.

⁷³⁶ John Borrie, *Unacceptable Harm*, 221.

⁷³⁷ Diplomatic Conference For The Adoption Of A Convention On Cluster Munitions, 'Summary Record Of Fourth Session Of The Plenary And Closing Ceremony Of The Conference,' CCMSR/4.

⁷³⁸ John Borrie, *Unacceptable Harm*, 266.

streams to agree on wording to feed into the rolling President's Paper.⁷³⁹ These work-streams were led by a mix of diplomats from the Core Group but also from the Like-Minded Group. This was a strategic move designed to keep as many states in the tent as possible during talks but more importantly committed to signing afterwards. Core Group states led work on definitions (Don Mackay), stockpile destruction (Norway's Steffen Kongstad), clearance (Ireland's Jim Burke), victim assistance (Austria's Markus Reiterer) and compliance (South Africa's Xolisa Mabhongo) while Like-Minded States took carriage of interoperability (Switzerland's Christine Schraner) and the Preamble (Australia's Caroline Millar).⁷⁴⁰ Under Ambassador Mackay's guidance, the 'definitions' work-stream clarified the list of characteristics for weapons to be excluded from ban.⁷⁴¹ The victim assistance work-stream drafted far-reaching measures and a path-breaking legal definition of victim.⁷⁴² The interoperability work-stream drafted a sub-clause under article 21 of the final text. This provision ensured that states parties would not jeopardise future military operations with allies who were not signatories. States party to the Treaty could thus continue to cooperate and engage in military operations with states not party to the Treaty that used, stockpiled and transferred cluster munitions.⁷⁴³

On the final Tuesday, after eight days of talks, the draft President's Paper incorporated a full set of provisions from each work-stream. That morning, the British delegation revealed that UK Prime Minister Gordon Brown would announce the complete destruction of UK stockpiles. As a result, the divisive issue of transition periods was taken off the table.⁷⁴⁴

After an intense 10-hour period of bilateral meetings with 30 delegations and the President's team, the text was refined to represent "the best balance of interests and compromise".⁷⁴⁵ On 28 May, O'Ceallaigh introduced the President's Paper as a consolidated "take it or leave it" text.⁷⁴⁶ 71 states spoke in support and none opposed. States agreed to reconvene on 30 May to adopt the text.

⁷³⁹ The text was negotiated in English. In the final week, as the substance approached a final form, it was translated into Spanish and French, two of the five UN languages. Neither Russian nor Chinese translations were required as neither Russia nor China were participants, although Chinese observers had taken part in all meetings of the Oslo Process. John Borrie, *Unacceptable Harm*, 267.

⁷⁴⁰ Wiebe et al, "Introduction", 31-32.

⁷⁴¹ John Borrie, *Unacceptable Harm*, 277.

⁷⁴² Bonnie Docherty, "Breaking New Ground," 949.

⁷⁴³ Nystuen and Casey-Maslen, *The Convention on Cluster Munitions*, 571-73.

⁷⁴⁴ This announcement came as a surprise to all, including the British delegation. John Borrie, *Unacceptable Harm*, 294.

⁷⁴⁵ Cluster Munitions Monitor, *Banning Cluster Munitions*, 7.

⁷⁴⁶ Wiebe et al, "Introduction", 35.

On Friday 30 May, 107 participating states adopted the CCM by acclamation. The resulting treaty was far-reaching in scope and global in membership, covering states from every region in the world and both producer and affected states. Combining preventive and remedial measures over the entire lifecycle of a munition, the CCM set a precedent by defining a weapon with specific and cumulative technical criteria for exclusions.⁷⁴⁷ On the contentious issue of interoperability, the clause is subject to interpretation through national legislation “in the spirit in which the text was negotiated”.⁷⁴⁸ Activist Steve Goose described it as the “only stain on the otherwise perfect cloth of the CCM”.⁷⁴⁹ What is *not* contained within the Convention is the most notable feature of the final text. No broad exclusions from the ban were introduced. Moreover, there was no provision for a transition period on the use of cluster munitions, thus rendering them illegal from the moment the CCM entered into force.⁷⁵⁰

3.3.2.2 *In the room*

Divergent interests between producers led to a parting of ways among the like-minded group as progress was made on definitions. Producers Germany and France obtained exemptions for their arsenals through the five-element definitional criteria.⁷⁵¹ The UK also changed tack, as noted above. Only a small group of ‘like-minded’ remained, all US allies including Canada and Australia. They led a strong push on the issue of interoperability in the end-game, focussing their diplomatic efforts on negotiating wording on interoperability that would be compatible with their strategic partnerships. With one of their own, Switzerland, leading the work on interoperability, the tone was set from the first days of work on developing a solution that would make it feasible for like-minded states to sign on in the endgame. Although the compromise adopted was not ideal from the perspective

⁷⁴⁷ Bonnie Docherty, “Breaking new ground,” 953.

⁷⁴⁸ Given the emphasis placed on humanitarian concerns throughout the treaty text, as well as the focus they were given throughout the Oslo Process, the hope of those proposing and agreeing to this clause was that it would push States parties to lobby their military allies and non-state parties to become signatories. However this was not necessarily the case, as explored in chapter 6 of this thesis on blocking by Canada and Australia during the Oslo Process.

⁷⁴⁹ Wiebe et al, “Introduction”, 35.

⁷⁵⁰ This was a sticking point for the like-minded. John Borrie and Rosy Cave, “The Humanitarian Effects of Cluster Munitions: Why Should We Worry?,” *Disarmament Forum* 4 (2006), 5.

⁷⁵¹ Five definitional features were included in the final text. If weapons complied with all five, they were exempt from the ban. These features were so restrictive that they excluded the vast majority of weapons in circulation, while still leaving the door open for future weapons to be developed that would comply with these five features. Bonnie Docherty, et al, “Article 2 Definitions”, in *The Convention on Cluster Munitions: a Commentary*, 161.

of CMC negotiators,⁷⁵² ultimately the Conference President was able to pull together a package that was acceptable to almost all participants in Dublin.

3.3.2.3 *In the corridors*

Survivors and activists at Croke Park Stadium put human faces to the negotiations. The CMC had secured the visible and vocal presence of representatives from its global ranks, such as survivors of exploded remnants of war from Ban Advocates. The Ban Advocates Initiative was developed by Handicap International (HI), an NGO with field presence in mine-affected states. HI brought together survivors from a dozen countries, first on the margins of a 2007 Oslo Process meeting in Belgrade, and for subsequent negotiations in Dublin. Their task was to lobby delegates to push for a weapons ban.⁷⁵³ Their presence served to reinforce the humanitarian viewpoint, rather than the military utility angle.⁷⁵⁴ Under CMC's coordination, advocates were equipped with policy papers to influence states that were likely to push or pull away from strong outcomes.⁷⁵⁵

3.3.2.4 *In capital*

After the tense Wellington meeting, the pressure remained on Wellington to make sure that the concerns of its strategic partners, Australia and the United States, were shoe-horned in to the final treaty, mainly through provisions on interoperability. In the period between Wellington and Dublin, Defence Minister Goff met with his newly-elected defence and trade counterparts in Sydney on an official visit to reinforce the trade and defence ties between both countries.⁷⁵⁶ While the Oslo Process was not officially on the agenda, the timing of the two-day visit was timely and opportune to reassure Canberra, three weeks after the conclusion of the Wellington Conference had left the like-minded group, including Australia, unsatisfied of the direction of the future treaty.

3.3.2.5 *In the world*

The CCW track presented a more gradual approach, and less ambitious goal, by shifting talks to a consensus-driven forum with less ambitious goals.⁷⁵⁷ The continued efforts of some of the Like-Minded Group to shift talks to the CCW in Geneva persisted through the Oslo Process. While this could have risked derailing

⁷⁵² Torfinn Risløe Arnsten, "Commentary, Article 21 Relations with States not party to this Convention", in *The Convention on Cluster Munitions: a Commentary*, 565.

⁷⁵³ Juliette Rutherford (ed), *Advocacy with Victims* (Brussels: Handicap International, 2013): 12.

⁷⁵⁴ Denise Garcia, *Disarmament Diplomacy*, 168.

⁷⁵⁵ John Borrie, *Unacceptable Harm*, 260.

⁷⁵⁶ Phil Goff, "Press release: Defence Minister Phil Goff meets Australian counterpart in Sydney," March 8, 2008.

⁷⁵⁷ Nout van Woudenberg and Wouter Wormgoor, "The Cluster Munitions Convention: Around The World In One Year," *Yearbook of International Humanitarian Law* 11 (December 2008): 392-3.

progress within the Oslo Process, it instead reinforced it when the CCW track stalled from April 2008 onwards.⁷⁵⁸ CCW members who had publicly committed to action were then forced to opt for the Oslo Process when it became the only viable option.⁷⁵⁹ CCW states parties maintained ongoing efforts for the negotiating of a protocol on cluster munitions, during Dublin and for several years afterwards.⁷⁶⁰ They continued to push for an additional protocol to include the major producers and military powers who had not signed the CCM, notably the US, China and Russia.⁷⁶¹ A draft protocol was presented at the 2011 CCW Review Conference. However, a group of CCM signatories who were also CCW members refused to adopt it, and the rule of consensus led to the draft Protocol being abandoned.⁷⁶²

3.3.2.6 *In the streets*

The CMC activated its advocacy and outreach activities in capitals of affected states to encourage them to attend in Dublin. First, it targeted states likely to participate by signing up to the Wellington Declaration. It also identified regional champions, such as Zambia in Africa and Mexico in Latin America, and helped develop strategies to expand the number of states in their area willing to travel to Dublin.⁷⁶³

Second, it selectively targeted certain states and political leaders for grassroots campaigns. Rather than mass public communication, with large budgets and diffuse audiences, NGOs under the CMC banner used the media to mobilise publics in specific states and on specific issues. The logic here was to leverage the ‘potential energy’ of negative public opinion, whereby politicians would react to the prospect of being attacked by publics if they did not take a public stance on cluster munitions.⁷⁶⁴ A priority here was the UK, a prominent like-minded state.⁷⁶⁵ London had issued a flurry of statements in support of the humanitarian objectives of the

⁷⁵⁸ Wiebe et al, “Introduction”, 21; 23.

⁷⁵⁹ Matthew Bolton and Thomas Nash, “The Role of Middle Power-NGO Coalitions in Global Policy: The Case of the Cluster Munitions Ban,” *Global Policy* 1, no. 2 (May 2010): 177.

⁷⁶⁰ Gro Nystuen, “CCW Draft Protocol VI on Cluster Munitions— a Step Backwards,” *FICHL Policy Brief Series 5* (Torekl Opsahl Academic E-Publisher: 2011), 2-3.

⁷⁶¹ For example, as the Oslo ceremony was beginning, the Department of State released a statement reiterating Washington's position that “such a general ban on cluster munitions will put the lives of our military men and women, and those of our coalition partners, at risk.” The statement claimed the Oslo Treaty would cause “unacceptable harm” to US military forces – the IHL term used to refer to the effects of weapons on civilians. John Borrie, *Unacceptable Harm*, xvii.

⁷⁶² Adoption of a second protocol could have had serious negative repercussions for civilian protection by reducing the stigmatization of cluster munitions and by giving states the option of joining an instrument with lower standards. It would have set a bad legal precedent by following a strong treaty with a weaker one for the first time in the history of international humanitarian law.

⁷⁶³ For example, Zambia led a bloc from the African Union and became its spokesperson. John Borrie, *Unacceptable Harm*, 258.

⁷⁶⁴ Bolton and Nash, “Middle powers,” 180.

⁷⁶⁵ Media engagement was one lever the CMC used. Nation-wide public demonstrations were another, for example staging local protests close to Westminster to catch the attention of MPs on their way to Parliament.

Oslo Process.⁷⁶⁶ The UK was both a weapons producer and a US ally with a P5 veto, hosting US military installations on its territory. As noted above, the Brown government did eventually change position dramatically in the final phase of talks. An example of this targeted, ‘low-budget’ campaigning tool in the UK was the publication of a letter in *The Times* from former senior British military generals calling for London to destroy its stocks and push for a categorical ban.⁷⁶⁷ The cumulative impact of an increase in numbers of states attending, plus the change in stance from London, as well as Paris and Berlin, tilted the balance in the room very strongly in favour of a smooth run to the finish line in Dublin.

3.3.3 Consequence: Treaty signature

94 states returned to Oslo on 02-04 December 2008 to sign the CCM. The date coincided both with the International Day of Persons with Disabilities and with the 11th anniversary of the MBT signing. The CCM entered into force on 1 August 2010, 6 months after the 40th ratification, from Burkina Faso.⁷⁶⁸ The pace of entry into force was only matched by the MBT a decade earlier.

The contentious paragraph 2 of Article 21 remained a polarising aspect long after the Treaty was signed. Despite hopes that the paragraph would be interpreted in the spirit of universalisation, which article 21 mainly addresses, the wording left open wide scope for states to devise national implementation that reflects their specific domestic context.⁷⁶⁹ The legal debate centres on whether the prohibition in article 1 of the CCM can be overridden by article 21, clause B, on interoperability. In 2012, the ICRC raised concerns that some States were adopting domestic legislation that would permit members of armed forces of CCM signatories to be directly involved in the deployment of cluster munitions during operations with non

⁷⁶⁶ The Brown government was looking for a popular win to appease increasingly disgruntled voters in the lead-up to a UK general election. More and more statements from the government came out in the weeks preceding Dublin indicating measures that would be taken to address humanitarian concerns over their stockpiles of weapons. John Borrie, *Unacceptable Harm*, 293-94.

⁷⁶⁷ Wiebe et al, “Introduction”, 32.

⁷⁶⁸ *Convention on Cluster Munitions*, Dublin, 30 May 2008, United Nations Treaty Series, vol. 2688, P. 39.

⁷⁶⁹ Article 21. Relations with States not party to this Convention 1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention. 2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions. 3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party. 4. Nothing in paragraph 3 of this Article shall authorise a State Party: (a) To develop, produce or otherwise acquire cluster munitions; (b) To itself stockpile or transfer cluster munitions; (c) To itself use cluster munitions; or (d) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

CCM signatories.⁷⁷⁰ Domestic legislation in Australia, Canada, Japan, and the UK has been interpreted as allowing for the interoperability clause to overrule the prohibition in article 1 of the Treaty.⁷⁷¹

4. Trends and Patterns

This chapter examined how and why New Zealand championed the Oslo Process. The chapter analysed the Oslo Process at three points in time – three transitions points – that marked the passage from growing political commitment to strong multilateral rules, through to substantive negotiations on the shape of the future treaty and the rules of procedure that would bring it to light, through to agreement on a legally-binding set of regulations as a negotiated outcome.

This chapter has argued that Wellington adopted a championing stance when three “in capital” features aligned, namely progressive politics, principled policy and low-priority partnerships. This chapter argues that this championing strategy is made up of three features, dividing and conquering through coalitions, outcome-focused procedures and setting new precedents in arms control.

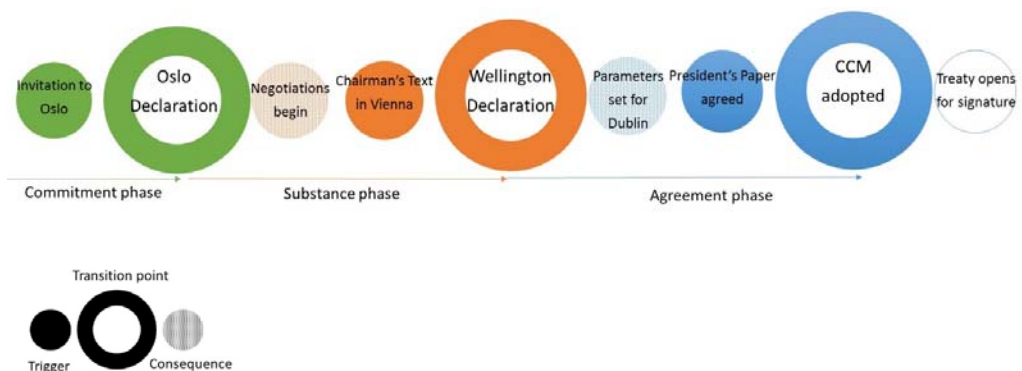


Figure 23 Transitions points in the Oslo Process

These three points in time were analysed at six different contextual levels in order to focus on the interplay between the external and internal negotiating contexts and the enabling factors that led to them. This approach identified key trends and patterns that emerge from the Oslo Process case, synthesized below.

⁷⁷⁰ ICRC, *Convention on Cluster Munitions Interoperability and National Legislation: The View of the International Committee of the Red Cross*, (Geneva: ICRC, 2011): 2.

⁷⁷¹ ICBL-CMC, *Cluster Munition Monitor 2017*, 3.

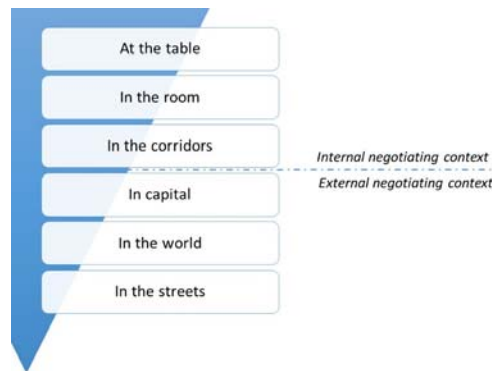


Figure 24 Contexts of diplomacy

4.1 Why do states champion negotiating processes in humanitarian arms control?

Wellington’s championing of the Oslo Process occurred against the backdrop of progressive politics under Helen Clark’s Labour government, carrying through the tradition of a principled approach to disarmament in line with nuclear-free legislation, and occurring in a context where following in the footsteps of strategic partners, who were reluctant to endorse the Oslo Process’s negotiated outcome, was not seen as a priority.

4.1.1 Progressive politics

Labour in New Zealand has traditionally been the party of progressive change when it holds power – with National the historically dominant party. Under PM Lange in the 1980s, this played out on the ANZUS file in relation to nuclear policy. This tradition continued under Clark’s three successive Labour governments, with her ‘signature’ policy being the elimination of the New Zealand Air force. The pursuit of progressive politics opened the door to a strong stance on cluster munitions, in particular under the ministerial mandate of Phil Goff, linked to Clark through their experience as student peace activists. Goff’s portfolios were the ideal foundation to provide top-down political support to the skilled diplomats at post and in capital, firstly under his combined defence and disarmament mandate, and then as minister for foreign affairs and trade. The electoral changes that preceded Clark’s tenure resulted in the consolidation of ministerial powers, rebalancing away from the prime minister towards members of Cabinet. This too provided ministers committed to particular issues, such as Goff on cluster munitions, with a stronger voice in setting the strategic agenda.

4.1.2 Principled disarmament policy

In addition to the progressive political setting under Clark, New Zealand’s legacy in disarmament and its anti-nuclear policy foreshadowed pursuing a humanitarian direction on conventional weapons. New Zealand had diplomatic credibility on this

file as well as institutional knowledge of practice in navigating the multilateral frameworks in Geneva and New York. Policymakers were therefore well versed in pursuing normative agendas through multilateral diplomacy. In addition, diplomats at post, with strong legal backgrounds and training, had dedicated the previous years to negotiating another multilateral treaty, Convention on the Rights of People With a Disability, which had involved legal debates on definitions which was directly applicable to the humanitarian-driven talks in the Oslo Process. This accumulation of expertise was channelled effectively towards cluster munitions. This fortuitous combination of diplomatic and legal expertise, combined with New Zealand's legacy on nuclear non proliferation, coincided with a window of opportunity in Geneva when the CCW Review Conference failed to satisfy the growing push for stronger regulations in the wake of events in Lebanon.

4.1.3 Low-priority partnerships

New Zealand's strategic partnerships were anchored through defence arrangements with Canberra through the CDR and the commitment of NZDF troops to UN peace-keeping missions, as well as through discrete support of US deployments. While Wellington had been steadily working to bring the US closer after the US rescinded their defence obligations to New Zealand in the 1980s under ANZUS, Wellington was nonetheless able to maintain a strong position on interoperability – a primary concern for the US - without jeopardising its close and cordial ties with Australia. Wellington's distance from the US – imposed rather than chosen in the case of ANZUS – did lend credibility to New Zealand during the Oslo Process from progressive states and civil society. At the same time, its proximity to Australia was also a source of reassurance to the like-minded group and the US as discrete lines of communication were held open, notably in helping broker the final provisions of the relevant sub-clause within article 21 touching on interoperability.

4.2 How do states shape negotiating processes?

As one of the core groups of states led by Norway, looking to initiate a treaty outside of the UN's disarmament forums, New Zealand contributed creative procedural approaches and substantive expertise and helped build political momentum. The significant role it played coincided with a supportive minister in Wellington and an engaged disarmament ambassador in Geneva. The detailed analysis of the three transition points in the Oslo Process illustrates how the Ottawa Process formula, namely, coalitions between states and civil society, innovative procedural design and breaking with the past, continued to set a precedent in an

even more complex area of weapons control that was deadlocked in the same traditional UN forum as landmines had been.

4.2.1 Dividing and conquering through coalitions

The effectiveness of the Norwegian-led core group came from the division of labour between state and non state actors and across areas of competence and expertise. In the case of New Zealand, prior legal expertise in humanitarian negotiations on the CRPD was put to very good use in piloting the extensive work on definitions which could have seen the Oslo Process land on a weaker negotiated outcome. Enshrining a precautionary approach to cluster munitions, where all weapons were covered under the ban unless a specific and cumulative list of specifications were met, was at the core of the categorical ban. In addition to the legal expertise required to build this foundational aspect of the CCM, diplomatic finesse was also required to keep the cogs turning on the complex talks in such a way that the progressive majority were satisfied and the incremental minority were not able to dilute progress without stopping proceedings either. Here, New Zealand too played a crucial role, hosting the all-important Wellington Conference to ensure the passage from substance to commitment of the Oslo Process. New Zealand's part to play in proceedings was merely one aspect of the core group's approach to coalitions, which saw other states play similar roles in combining specific legal expertise with hosting of conferences and commitment of diplomatic resources to sustain the intense periods of work over the Oslo Process. Key to the coalition was the presence of CMC members, as negotiators in the room, activists in the corridors and awareness-raisers in the streets.

4.2.2 Outcome-focused procedures

Working from the Ottawa Process blueprint, the Oslo Process was time-bound from the beginning with a clearly articulated series of steps that would lead to a final negotiated outcome and a transparent procedural approach whereby civil society had full access (and therefore influence) in proceedings. Importantly, majority decision-making would rule, in contrast with the consensus-driven rules of the UN disarmament machinery. While strategic ambiguity was essential to the first phase of talks, with a final outcome phrased in the initial Oslo Declaration in such a way that states were not committed up front to a potential blanket ban, this was replaced in the second phase of talks with a definite position on a humanitarian-motivated prohibition to cover the weapon category. This procedural approach was adopted after the parallel track in the CCW had hit substantial hurdles, and placed the like-minded group in a corner when the Oslo Process became the only viable

option to pursue what states had publicly-declared as their priority, effective rules on cluster munitions. The tensions between the core group and the like-minded group hit a very tense moment in Wellington, saved by the dexterity of the Conference President, Don Mackay, who used a creative procedural loophole to incorporate additional wording in a compendium annexed to the Wellington Declaration while maintaining the baseline text for final negotiations intact. The procedural finesses of the Oslo Process were rounded out in Dublin under the Conference President, who incorporated a mix of progressive and incremental states as Friends of the President, in order to bring together a final treaty that was acceptable to all while addressing the competing humanitarian and operational concerns of the most influential outlier states on both sides of the spectrum.

4.2.3 Setting new precedents

The Oslo Process had explicitly signalled a break with historical precedents in conventional weapons treaty-making, both substantively and procedurally. The legitimacy of this approach was anchored in the conflict in Lebanon which had shown to the world that military claims that the utility of cluster munitions outweighed their impact on civilians were simply not playing out in battlefields. Faced with the evidence emerging from Lebanon, and despite considerable pressure for action, the CCW failed to deliver a compelling avenue for multilateral rules to be negotiated. Adopting the Ottawa Process approach, the Oslo Process went further in terms of establishing new legal norms – on victim assistance, on definitions – and did so for a more complex, and more commonly found, weapon. New Zealand's political, policy and defence environments at the time were conducive, or not unconducive (on the defense front), for the legally-astute and diplomatically-savvy team based in Geneva to pair up with Norway and other progressively-minded states and non state actors to take this mandate for change and run with a cleverly-planned strategic approach. This new wave of diplomatic activity, with its multiple strands of activities and actors, made it possible to surmount the additional, and unique, situation of having to contend with a parallel track of talks within the CCW, which risked stealing oxygen from the Oslo Process. Here too the Oslo Process, with Wellington one voice among a dozen of equally committed states and civil society actors, managed to chart a path which led around the significant hurdle of a competing diplomatic forum and arrive at a weapons prohibition endorsed from the early stages by a majority of UN states.

CHAPTER 5: AUSTRALIA AND THE ARMS TRADE TREATY PROCESS

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Chapter 5: Australia and the Arms Trade Treaty Process

This chapter demonstrates that a multi-layered contextual model is needed to understand why and how Australia championed and shaped the negotiating process that led to the Arms Trade Treaty (ATT).⁷⁷² Breaking down negotiations into phases and transition points, and then examining multiple sites of diplomatic and policy activity, provides a fine-grained identification of why and how Australia championed the ATT Process over seven years. This chapter examines the four transition points that led to the ATT.

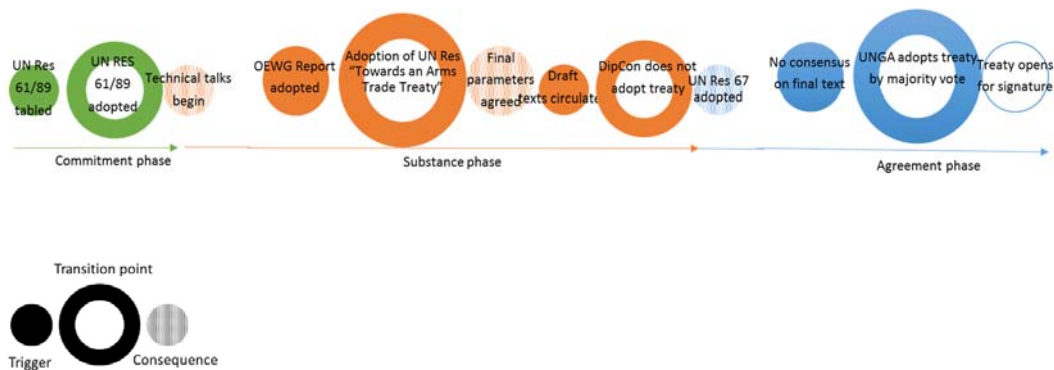


Figure 25 Transition points in the ATT Process

The chapter argues that domestic politics, external policy and strategic partnerships all aligned in Canberra, which enabled Australia's championing of the ATT Process. Five successive governments from across the political divide maintained bi-partisan support for championing over seven years, balancing a principled approach to peace and security with close strategic ties with the US.

The ATT Process applied aspects of the Ottawa/Oslo blueprint, such as coalitions/procedural design/ humanitarian objectives, to a substantively different field, arms transfers, and framework, the United Nations (UN) in New York.

Australia was a champion of the ATT Process as a member of the co-authors group under British leadership. Canberra's seven-year commitment to the ATT Process required resources, expertise and, in the last phase, procedural dexterity and diplomatic leadership to shepherd the ATT through to its adoption in the United Nations General Assembly (UNGA). This chapter proceeds in three sections. The first section looks at the humanitarian features of the ATT and how it evolved over time to become a hybrid arms control/humanitarian instrument. Second, Australia's championing of the ATT Process is analysed at the "in capital" level

⁷⁷² *Arms Trade Treaty*, New York, 24 December 2014, United Nations Treaty Series, Registration Number 52373.

through the lens of domestic politics, external policy and strategic partnerships. Third, the four transition points of this process are explored, weaving in Australia’s diplomatic activity across six different contexts of diplomacy identified in chapter 2, as shown in the chart below. The focus here is on how Australia shaped the ATT Process through negotiating strategies and tactics. The chapter concludes by drawing together the patterns and trends of state championing and diplomatic activity in this case.

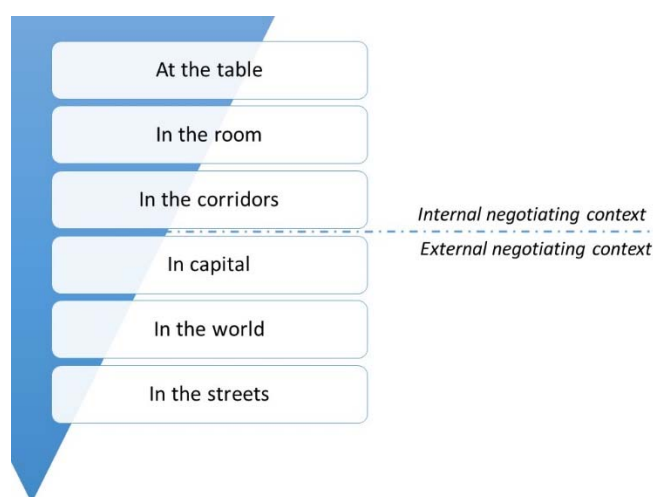


Figure 26 Contexts of diplomacy

1. Humanitarian arms control and the arms trade

Technological advances continue to drive efficiency and profitability in conventional weapons, making it easier and more lucrative to wage war but also to maintain security in the daily lives of citizens around the world. Since the 2000s, in parallel to increased sophistication of weapons, arms transfers have also increased in volume and in value, with exports concentrated among the US, Russia, the EU and China. Arms imports were highly diffused among recipients, but with a distinct North-South flow to developing countries.⁷⁷³ Regulating weapons is a complex and notoriously difficult policy area. One category of weapon, small arms and light weapons (SALW), illustrates in particular this dichotomy. Licitly and illicitly traded SALW perpetuate cycles of instability and conflict, hamper sustainable development and rule of law, and lead directly to violations of human rights. It is worth noting that SALW do have a role to play in breaking these cycles and helping build the foundations for stability and responsible governance.⁷⁷⁴

⁷⁷³ John Buckley and George Kassimeris, "Introduction," in John Buckley and George Kassimeris (eds.), *The Ashgate Research Companion to Modern Warfare*, (London: Routledge, 2016): iii.

⁷⁷⁴ Small Arms and Light Weapons (SALW) have been an ongoing agenda item at the UN since 1996 when Resolution 50/70 was adopted on Transparency in Armaments. UN General Assembly, Resolution 50/70, Transparency in Armaments, A/RES/50/70 (January 15, 1996). The link between illicit SALW proliferation and conflict was again highlighted in the UN Secretary-General's 2016

Prior to the Arms Trade Treaty (ATT), there was an ineffectual patchwork of national, regional and international principles, rules and regulations. National rules on arms transfers varied from state to state, falling under different areas of legislation and administration, from trade policy and export and import controls to foreign policy and arms control.⁷⁷⁵ No set of binding rules linked supplier states to transit states to recipient states.⁷⁷⁶

Rules addressed either the supply or the demand side of arms control, and only in specific regions.⁷⁷⁷ This left gaps in the chain of arms transfers, through which “too many weapons (...) end up in the wrong hands.”⁷⁷⁸ The ATT was the first multilateral, binding step to address the “blind spot” of world politics.⁷⁷⁹

1.1 Historical overview

The end of the Cold War saw a profound change in the nature of conflict. The relative stability under superpower bipolarity, where regional tensions and insecurity were kept in check or propped up as proxy theatres of conflict for the United States (US) and the Union of Socialist Soviet Republics (USSR), gave way to an increase in intrastate conflict which was no longer tempered by American or Soviet control. With this came a renewed focus on conventional arms transfers.⁷⁸⁰

From the early 1990s, international and regional forums began to focus on the trade and trafficking in conventional weapons, in particular in small arms. International efforts began at the UN, with agreement in 1991 by the five states with a permanent seat and a United Nations Security Council right of veto, known as the P5, on “Guidelines for Conventional Arms Transfers” that set out criteria that states should base their arms exports decisions on.⁷⁸¹ This was followed by the 1991

Report on SALW. United Nations Secretary-General, “The Illicit Trade in Small Arms and Light Weapons in all its Aspects: Report of the Secretary-General,” A/71/438–A/CONF.192/BMS/2016/1, October 4, 2016. P.3.

⁷⁷⁵ United Nations Secretary-General, “The Illicit Trade in Small Arms and Light Weapons in all its Aspects: Report of the Secretary-General,” A/71/438–A/CONF.192/BMS/2016/1 (2016): 4-7.

⁷⁷⁶ Marc Finaud, “The Arms Trade Treaty: Half Full or Half Empty?,” *GCSP Policy Paper 2013/6* (Geneva: Geneva Centre for Security Policy, 2013): 2.

⁷⁷⁷ Existing instruments were political engagements rather than legally binding (with one exception on firearms) and had a specific focus (regionally or on a category of weapon). Stuart Casey-Maslen, Andrew Clapham, Gilles Giacca and Sarah Parker, “Introduction,” in *The Arms Trade Treaty: A Commentary*, Oxford Commentaries on International Law, Stuart Casey-Maslen, Andrew Clapham, Gilles Giacca and Sarah Parker (eds.), (Oxford: Oxford University Press, 2016):5-6.

⁷⁷⁸ *Witness evidence to Meeting #041: Standing Committee on Foreign Affairs and International Development*, Canadian Parliament, 41st Parliament, 1st Session, Ottawa (11 June 2012) (statement of Hilary Homes, Amnesty International).

⁷⁷⁹ Denise Garcia, “Global Norms on Arms: The Significance of the Arms Trade Treaty for Global Security in World Politics,” *Global Policy* 5.4 (2014): 427.

⁷⁸⁰ Stuart Casey-Maslen et al, “Introduction,” 4.

⁷⁸¹ Conference on Disarmament, ‘Guidelines for Conventional Arms Transfer,’ CD/1113, Geneva, 26 November 1991.

United Nations Register of Conventional Arms (UNROCA), a voluntary state reporting mechanism to increase transparency on arms trades.⁷⁸²

Regional rules and principles began to evolve. In Europe, the 1992 Treaty on Conventional Armed Forces in Europe (CFE) set ceilings on five categories of heavy military weapons for NATO members and Warsaw Pact members, an area referred to as the Atlantic-to-the-Urals (ATTU).⁷⁸³ In 1999, membership expanded to other Central European countries as part of the Dayton Agreement for Peace in Bosnia and Herzegovina.⁷⁸⁴ In 1998 the EU adopted a non-binding set of guidelines on arms transfers for its member states on both exports and import.⁷⁸⁵ This was replaced by EU-wide legally-binding rules on arms exports in 2008.⁷⁸⁶ In the Americas in the late 1990s, states adopted two Conventions to regulate trafficking in firearms⁷⁸⁷ and conventional weapons transfers.⁷⁸⁸ In the early 2000s, states negotiated three regional instruments on firearms and SALW in Southern Africa,⁷⁸⁹ in the Great Lakes and the Horn of Africa,⁷⁹⁰ and in West Africa⁷⁹¹ with a fourth in Central Africa yet to enter into force as at 6 May 2018.⁷⁹²

Multilateral action followed in parallel with the emergence of regional rules. In 1992, the United Nations Secretary-General (UNSG), Boutros Boutros-Ghali,

⁷⁸² United Nations General Assembly, Resolution 46/36, "General and Complete Disarmament: Transparency in Armaments," A/RES/46/36, December 6, 1991.

⁷⁸³ *Conventional Armed Forces in Europe Treaty*, United States Department of State, *Treaties and Agreements*, Paris, 19 November 1990.

⁷⁸⁴ *Agreement on Adaptation of The Treaty on Conventional Armed Forces in Europe*, United States Department of State, *Treaties and Agreements*, Istanbul, 19 November 1999.

⁷⁸⁵ *European Union Code of Conduct on Arms Exports*, European Union – The Council, 8675/2/98, Brussels June 5, 1998.

⁷⁸⁶ *Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment*, Official Journal of the European Union, L335/99, 12 December 2008.

⁷⁸⁷ *Inter-American Convention Against The Illicit Manufacturing Of And Trafficking In Firearms, Ammunition, Explosives, And Other Related Materials*, A-63, Depository: General Secretariat of the Organisation of American States, Washington, 14 November 1997.

⁷⁸⁸ *Inter-American Convention On Transparency In Conventional Weapons Acquisitions*, A-64, Depository: General Secretariat Of The Organisation Of American States, Guatemala City, 7 June 1999.

⁷⁸⁹ *Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) Region*, Depository: Secretariat of the Organization of African Unity, 8 November 2004.

⁷⁹⁰ *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*, Depository: Nairobi Secretariat, Intergovernmental Authority on Development (IGAD), Nairobi, May 5, 2005.

⁷⁹¹ *Economic Community Of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials*, Depository: ECOWAS Secretariat, Abuja, September 28, 2009.

⁷⁹² *Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly*, UN Treaty Series, Registration no. 54327, March 8, 2017.

released the Report, 'Agenda for Peace',⁷⁹³ which flagged micro-disarmament as a priority, in the context of the evolution of peacekeeping operations and the threats to peace deployments in the field.

In 1995, Costa Rican Nobel Laureate Oscar Arrias added his voice to Amnesty International (AI)'s call for action.⁷⁹⁴ AI had begun advocating for multilateral rules a decade earlier from their London offices, when the British media revealed that UK suppliers had provided Idi Amin's death squads in Uganda with military and paramilitary equipment to commit grave violations of human rights.⁷⁹⁵

In 1996, two sets of guidelines were adopted. The 1996 Wassenaar Arrangement established a politically-binding mechanism to prevent states from acquiring and using arms in contravention with international law.⁷⁹⁶ The United Nations Disarmament Commission adopted rules for international transfers.⁷⁹⁷

In 2001, the Arrias-EU initiative on a Code of Conduct led to a proposed global framework on an arms trade treaty.⁷⁹⁸ The guiding principle was the link between 'indiscriminate' arms transfers, human rights violations and conflicts.⁷⁹⁹

In 2001, the United Nations Conference to Establish a Programme of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light Weapons in All Its Aspects (POA) was held.⁸⁰⁰ The POA followed on from a series of reports and recommendations by the UN Panel of Governmental Experts on Small Arms established in 1995.⁸⁰¹ Adopted by all UN members, the non-binding POA was limited in scope to illicit trade and established voluntary measures, such as designating interstate coordination agencies.⁸⁰² Rather than addressing the wider relationship between SALW and development, human rights and public health, it

⁷⁹³ United Nations General Assembly, "An Agenda For Peace: Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992," A/47/277, 17 June 1992.

⁷⁹⁴ Ernie Regehr, "An International Code of Conduct on Arms Transfers," *The Ploughshares Monitor* vol.18 issue 2, (1997): 1.

⁷⁹⁵ Daniel Mack and Brian Wood, "Civil society and the drive towards an Arms Trade Treaty," Background Paper, United Nations Institute for Disarmament Research (UNIDIR), (Geneva, UNIDIR, 2010): 3.

⁷⁹⁶ *Wassenaar Arrangement on Export Control for Conventional Arms and Dual-Use Goods and Technologies*, WA-DOC (17) PUB 001, Wassenaar, December 19, 1995.

⁷⁹⁷ United Nations Disarmament Commission, *Guidelines on conventional arms control/limitation and disarmament, with particular emphasis on consolidation of peace in the context of General Assembly resolution 51/45 N*, United Nations Report of the Disarmament Commission to the United Nations General Assembly, A/52/42, New York, 9 May 1997.

⁷⁹⁸ Daniel Mack and Brian Wood, "Civil society and the drive towards an Arms Trade Treaty," 5.

⁷⁹⁹ Ernie Regehr, "An International code of conduct on arms transfers," 3.

⁸⁰⁰ *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, A/CONF.192/15, New York, 20 July 2001.

⁸⁰¹ Aaron Karp, "Small Arms: Back to the Future," *Brown Journal of World Affairs* 9.1 (2002): 183.

⁸⁰² Simone Wisotzki, "Between morality and military interests: norm setting in humanitarian arms control," *PRIF-Reports No. 92*, (Frankfurt: Peace Research Institute Frankfurt, 2009): 3.

focused on supply-side initiatives.⁸⁰³ The POA has had little impact beyond triggering the negotiation of two additional instruments, on firearms⁸⁰⁴ and tracing,⁸⁰⁵ and establishing regular diplomatic meetings until 2006.⁸⁰⁶

In October 2003, Oxfam and AI founded the Control Arms Coalition (CA) to bring together non-governmental organisations (NGOs) committed to arms regulation.⁸⁰⁷ Costa Rica, Mali and Cambodia took up the call to pursue an ATT.⁸⁰⁸

From 2004, British Foreign Minister Jack Straw's public advocacy propelled these efforts into the multilateral spotlight.⁸⁰⁹ London proceeded to gather a coalition of advocate states, the co-authors group, and civil society allies, through CA, to champion the ATT Process.⁸¹⁰

Within two years, in October 2006, the ATT was added to the UNGA's agenda by the co-authors group. This marked the start of the seven-year ATT Process.

1.2 Outline of treaty

The ATT is the first multilateral agreement to regulate the trade of weapons in the name of peace, security and stability by explicitly linking arms transfers with grave human rights violations. It does so to reduce human suffering and to prevent the misallocation of limited resources by promoting transparency and cooperation.⁸¹¹

⁸⁰³ Keith Krause, "Building the agenda of human security: policy and practice within the Human Security Network," *International Social Science Journal* 59. 1 (2008): 78.

⁸⁰⁴ *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*, New York, July 3, 2005, United Nations Treaty Series, vol. 2326, p. 208.

⁸⁰⁵ *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*, United Nations General Assembly, A/CONF.192/15, 8 December 2005.

⁸⁰⁶ Natalie Goldring, 'The 2006 review conference on small arms and light weapons: a study in frustration,' in *Disarmament Diplomacy* 84 (2007): 1.

⁸⁰⁷ Javier Alcalde, "The Control Arms Campaign: a case study of NGO impacts on international relations after the Cold War," in K. Fahlenbrach, M. Klimke, J. Scharloth and L. Wong, (eds.) *The Establishment Responds: Power, Politics, and Protest Since 1945* (New York: Palgrave Macmillan US, 2012): 184-186.

⁸⁰⁸ Roy Isbister and Kloe Tricot O'Farrell, "Lessons learned: How NGOs contributed to the ATT success," in *Peace in Progress* no. 16 (International Catalan Institute for Peace, 2013).

⁸⁰⁹ Arms regulations was a recurrent feature of Straw's public appearances at home and abroad. See for example Jack Straw's 30 September 2004 speech to the annual Labor Conference and 15 March 2005 speech to the Institute of Civil Engineers. "Delivering progressive values to the wider world". Speech by Jack Straw, Foreign Secretary, Labour Party Annual Conference, Brighton Centre, 20 September 2004. "UK Proposals for a Global Arms Trade Treaty." Speech by Jack Shaw, Foreign Secretary, Institute of Civil Engineers, London, March 15, 2005.

⁸¹⁰ The UK-led co-authors group included six other states, Argentina, Australia, Costa Rica, Finland, Japan and Kenya. See section below.

⁸¹¹ The Preamble. "The States Parties to this Treaty, (...) Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts, (...) Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms (...)."

States established global standards for both legal and illicit trade in '7+1' categories of weapons, ammunition, parts and components.⁸¹²

Reflecting the importance of IHL compliance in arms control, the ATT requires weapons exporters to assess whether the weapons they are exporting have an 'overriding risk' of being used to commit grave violations of IHL and human rights law (HRL).⁸¹³ If so, the ATT prohibits states parties from authorising such transfers.⁸¹⁴ This shift from weapons systems to humanitarian concerns firmly situates the ATT as a successor to the Mine Ban Treaty (MBT) and the Convention on Cluster Munitions (CCM),⁸¹⁵ even while it was never intended to lead to a prohibition.

In practice, states parties have three obligations under the ATT, with the end-goal of creating an environment of state accountability in the traditionally murky world of arms sales.⁸¹⁶ First, states must establish national control systems to apply to imports and exports of arms as well as transit and brokering.⁸¹⁷ Second, these national mechanisms will be used by states to systematically assess transfers

⁸¹² Article 2. Scope "1. This Treaty shall apply to all conventional arms within the following categories: (a) Battle tanks; (b) Armoured combat vehicles; (c) Large-calibre artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; (g) Missiles and missile launchers; and (h) Small arms and light weapons." Article 3. Ammunition/Munitions. "Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2(1)". Article 4. Parts and Components

"Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1)".

⁸¹³ Article 6. Prohibitions "3. A State Party shall not authorize any transfer of conventional arms (...) if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians (...), or other war crimes (...). Article 7. Export and Export Assessment "1. If the export is not prohibited under Article 6, each exporting State Party shall (...) assess the potential that the conventional arms or items: (a) would contribute to or undermine peace and security; (b) could be used to: (i) commit or facilitate a serious violation of international humanitarian law; (ii) commit or facilitate a serious violation of international human rights law; (iii) commit or facilitate an act constituting an offence under international conventions or relating to terrorism to which the exporting State is a Party; or (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party (...). 4. The exporting State Party shall take into account the risk of the conventional arms (...) being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

⁸¹⁴ Article 7. Export and Export Assessment "3. If (...) the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.(...)."

⁸¹⁵ Both treaties are examined in detail in the two preceding chapters in this thesis.

⁸¹⁶ Rachel Stohl, "Tell the Truth about the Arms Treaty," *New York Times*, April 12, 2013.

⁸¹⁷ Article 12. Record-Keeping 1. Each State Party shall maintain national records (...) of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2(1). 2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2(1) that are transferred to its territory as the final destination or that are authorized to transit or trans-shipment territory under its jurisdiction. 3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2(1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.

against criteria to ensure that prohibited transfers do not proceed.⁸¹⁸ Third, states commit to complying with reporting requirements to ensure their arms sales meet global standards and norms.⁸¹⁹

The ATT does not specify the form and format of national reporting, nor specific measures for assistance and cooperation.⁸²⁰ States with little expertise in export control systems will potentially struggle to be able to meet their obligations.⁸²¹ Serious question marks remain about whether exporter states will apply the standards they negotiated in the ATT, particularly for those with powerful economic interests in weapons production. In the case of the US, while it is unlikely Washington will ratify the treaty despite having signed it, it is unclear whether signature alone of the ATT will influence US compliance.

For those negotiating the ATT, this instrument is just the first step in tackling the complex issues that underpin the arms trade in all its forms.⁸²² Jo Adamson, the UK's lead negotiator at the end of the ATT process, describes the Treaty as setting a baseline, or a floor, rather than setting best practices, or a ceiling.⁸²³ There are significant gaps to be covered. As Parker notes, the ATT covers only international transfers, while the most significant issue for small arms-related problems is controlling arms already within national borders.⁸²⁴

⁸¹⁸ Article 7. Export and Export Assessment. 5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2(1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.

⁸¹⁹ Article 13. Reporting 1. Each State Party shall, within the first year after entry into force of this Treaty (...) provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. (...). 3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2(1) (...).

⁸²⁰ The relevant articles do not go beyond general principles. For example, in Article 12 - Record Keeping and in Article 13 - Reporting, no mention is made of the form of record keeping or reporting beyond. Broad terms only are used in Article 15 - international cooperation such as "States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty."

⁸²¹ For example, in the case of Afghanistan, the independent US government watchdog, the Special Inspector General for Afghanistan Reconstruction (SIGAR), found in 2014 that more than 465,000 light weapons supplied by the US to Afghan army and police had disappeared from American databases through inaccurate record-keeping, with even more grave systems errors in Afghan agencies. With high risks of diversion in Afghanistan, the risks are high that these weapons would end up in the wrong hands. This example illustrates the importance of international cooperation on transfer of know-how on weapons control systems and the obligations that the ATT creates in this regard as an important and tangible step towards reducing risks associated to arms transfers. Reuters World News, "U.S., Afghanistan fail to track U.S.-supplied small arms: Watchdog" Washington 29 July 2014.

⁸²² Jo Adamson and Guy Pollard, "The Arms Trade Treaty: making a difference", *Verification and Implementation 2015*, (London: Vertic, 2015): 144.

⁸²³ Jo Adamson, "Raising the Bar for Negotiations on an ATT," *Arms Control Today* vol. 42 no. 7 (2012): 12.

⁸²⁴ Sarah Parker, "The Arms Trade Treaty: a Step Forward in Small Arms Control?," *Small Arms Survey Research Notes* Number 30 (2013): 4.

The US Secretary of State John Kerry welcomed the ATT, underlining its potential to reduce the chances of conventional arms being used “to carry out the world’s worst crimes, including terrorism, genocide, crimes against humanity and war crimes”.⁸²⁵ While the US is optimistic, it is the only major weapons exporting states to have signed the Treaty (and is unlikely to ratify). China and Russia are yet to sign, not least ratify. This is unlikely too in the case of major importers, such as India and Saudi Arabia, who are also yet to sign the ATT.⁸²⁶

As with every international legal instrument, the impact of the ATT will depend on how diligently states implement national obligations in the absence of any formal verification mechanism.⁸²⁷ Civil society’s role in keeping the pressure on exporting states in particular will help maintain the spirit of the treaty.⁸²⁸

At the same time, there is a danger that the “trade” aspect of the ATT might eliminate certain producers from the market and benefit others, by effectively levelling the playing field in export controls and possibly even facilitating those who commit atrocities.⁸²⁹ The treaty lacks specificity and leaves substantial room for interpretation of obligations by states parties.⁸³⁰ While ‘constructive ambiguity’ may be a necessary feature in the course of consensus-bound negotiations within the UN, the overall impact of the treaty may turn on how states parties choose to interpret the spirit of the ATT. While greater accountability can limit the magnitude of proliferation, it may never stop the widespread and substantial flow of weapons between conflicts, notably through diversion.⁸³¹

This example illustrates two vital aspects of the future effectiveness of the treaty. States parties must exercise political will in meeting the commitments they have made. Moreover, civil society and the public must call them out when they

⁸²⁵ Cited in Colum Lynch, “U.N. passes landmark Arms Trade Treaty; some major powers abstain”, *Foreign Policy*, April 2, 2013.

⁸²⁶ As signalled by lead US negotiator Thomas Countryman, the US signature alone is still important as it encourages other states to sign rather than “hiding behind the lack of signature by the US”. David Horner and Daryl Kimball “Advancing the Arms Trade Treaty: An Interview With U.S. ATT Negotiator Thomas Countryman”, *Arms Control Today* vol. 44 no. 3 (2014): 17.

⁸²⁷ Laurence Lustgarten, “The Arms Trade Treaty: Achievements, Failings, Future,” *The International and Comparative Law Quarterly*, vol. 64, no. 4 (2015): 598.

⁸²⁸ For example, during the British Parliament’s Committees on Arms Export Controls (CAEC) 2016 Inquiry into the use of UK-manufactured arms in Yemen, testimony from three NGOs (Saferworld, Amnesty International and Control Arms) explicitly stated that the UK was in violation of its ATT obligations in regards to IHL through the supply of British arms suspected to have been used by a Saudi-led coalition in Yemen. British Parliament, *The Use of UK manufactured arms in Yemen: Written Evidence from the Foreign and Commonwealth Office*, House of Commons Foreign Affairs Committee, Fourth Report of Session 2016-17, 14 September 2016, HC688.

⁸²⁹ Denise Garcia, “Global Norms on Arms: The Significance of the Arms Trade Treaty for Global Security in World Politics,” *Global Policy* 5.4 (2014): 431.

⁸³⁰ Sarah Parker, “The Arms Trade Treaty: a Step Forward in Small Arms Control?”, *Small Arms Survey Research Notes* Number 30 (2013): 4.

⁸³¹ Matthew Schroeder, Dan Smith and Rachel Stohl, *The Small Arms Trade: A Beginner’s Guide*, (London: Oneworld Publications, 2012): 44.

are found not to be abiding by the spirit of the ATT to apply the highest standards for regulating arms transfers, eradicating illicit trade and preventing diversion.

Since its entry into force, the ATT has already faced significant hurdles. Signatories such as the UK have come under intense public scrutiny in relation to deals with Saudi Arabia and whether they are fulfilling their obligations in good faith.⁸³² The ATT is merely the first step in seeking multilateral regulations in an area that is strategic in nature and underpinned by a highly lucrative industry.

2. Why Australia championed the ATT Process

Turning now to the role of Australia as one of the seven co-authors of the ATT Process, three elements of the context ‘in capital’ are relevant to understanding why Canberra remained committed to playing a championing role in the ATT Process. This proactive and sustained participation marks a distinct departure from the Ottawa and Oslo Processes that preceded it.

First, the bipartisan support of five successive governments of different stripes was instrumental. Second, Australia’s policy settings over the seven-year period aligned with the substantive ground and perceived outcomes of an arms trade treaty, particularly towards the end of the process which coincided with a significant allocation of diplomatic resources in New York to support the Australian bid for UNSC election. Third, Australia’s relations with the world, mediated through its strategic US partnership, were unaffected by the ATT Process, given that neither Washington nor Canberra would need to adjust their existing national arms imports and exports control measures. These are analysed in detail below.

2.1 Domestic politics

From the start of the ATT Process in 2006 until entry into force in 2014, five Australian foreign ministers took carriage of the ATT file as part of successive governments under two Liberal Prime Ministers and three Labor Prime Ministers.⁸³³ All maintained a consistent commitment to the ATT process in terms of resources, funding and support to bolster the negotiating cycle.

⁸³² Jamie Doward, “Does UK’s lucrative arms trade come at the cost of political repression?,” *The Guardian*, 12 February 2017.

⁸³³ Liberal Prime Minister John Howard (1996-2007, 38th, 39th, 40th, and 41st Parliaments), Labor Prime Minister Kevin Rudd (2007-2010, 42nd Parliament), Labor Prime Minister Julia Gillard (2010-2013, 42nd and 43rd Parliaments), Labor Prime Minister Kevin Rudd (2013, 43rd Parliament), Liberal Prime Minister Tony Abbott (2013-2015, 44th Parliament). Official records of each parliament are published in the “Parliamentary Handbook of the Commonwealth of Australia” series published by the Department of Parliamentary Services, Canberra, Australia.

Although not a multilateralist, Prime Minister John Howard had a particular interest in small arms proliferation. On 28 April 1996, within weeks of Howard taking office, a lone gunman killed 35 civilians and injured 18 others in Port Arthur in Tasmania with a freely-obtained gun.⁸³⁴ Canberra's response was swift. Within three days, PM Howard announced that federal legislation would be introduced within days to mandate a national gun ownership registry.⁸³⁵ This traumatic event and Howard's swift response to it became the hallmark of his leadership over three successive terms, as Australia's second longest-serving Prime Minister.⁸³⁶

A Labor government was elected in 2007, headed by Kevin Rudd. For Rudd, Australia's rightful place on the world stage was as a "creative middle power" engaging in multilateral diplomacy at the UN and in the Group of Twenty (G20).⁸³⁷ The G20 is a high-level forum bringing together the finance ministers of the 19 most advanced economies in the world, and the European Union. It emerged in 1999 in response to the Asian financial crisis and the need for greater dialogue to address transnational economic issues.⁸³⁸ Climate change, strengthening of global governance structures and deeper engagement in Asia were high on the agenda from Rudd's time as prime minister and then as foreign minister from 2011, with the foundational US alliance included as one of three pillars along with Australia's role at the UN and regional engagement.⁸³⁹

Securing election to the United Nations Security Council (UNSC) was a tactical objective.⁸⁴⁰ For the campaign for election to the UNSC to succeed, Australia sought support (namely, votes) from the Caribbean and Africa, heavily affected by illicit

⁸³⁴ For example, in 2017, Labor politician Andrew Leigh, who sits on the opposite side of politics to John Howard, flagged this legacy in an opinion piece for the *Washington Post* where he advocated for a similar approach to gun control to be adopted in the US. Andrew Leigh, "Australian conservatives took on gun control. It worked", *The Washington Post (Online)*, October 6, 2017.

⁸³⁵ John Howard, "Parliament House, Canberra, 10 May 1996: transcript of press conference", Press Release database, Australian Parliamentary Library, 10 May 1996.

⁸³⁶ The Labor Party had long held the conviction that Australia could have a significant impact through 'force-magnifying' multilateral forums such as the UN and regional groupings such as the Asia Pacific Economic Community (APEC). Tanya Plibersek, "Australia's International Affairs: The Labor Approach", *Australian Journal of International Affairs* 2016 Federal Election Foreign Policy Special Section (2016): 2-3.

⁸³⁷ Kevin Rudd, "The rise of the Asia Pacific and the role of creative middle power diplomacy," Speech, Oslo University, Norway, 19 May 2011.

⁸³⁸ Kevin Rudd, "The rise of the Asia Pacific and the role of creative middle power diplomacy," Speech, Oslo University, Norway, 19 May 2011. Nicole Brangwin, "Multilateral engagement—Australia's role in the United Nations Security Council and the G20," *Parliamentary Library Briefing Book – Key Issues for the 44th Parliament*, Parliamentary Library (Canberra: Commonwealth of Australia, 2013): 136.

⁸³⁹ Kevin Rudd, "Leading not following: the renewal of Australian middle power diplomacy, Speech, The Sydney Institute, 19 September 2006," *The Sydney Papers* vol. 19 no.1 (2007): 3.

⁸⁴⁰ Andrew Carr and Chris Roberts, "Foreign Policy," in *The Rudd Government Australian Commonwealth Administration 2007–2010*, Chris Aulich and Mark Evans (eds), ANU Epress (2010): 247.

and irresponsible arms transfers.⁸⁴¹ Key states from these regions were already co-authors along with Australia in the ATT process.⁸⁴² Australia also provided financial support for state delegates to attend multilateral meetings from Pacific nations and from the Caribbean community (CARICOM), and also increased aid contributions substantially to these two regions.⁸⁴³ This substantial commitment of resources and finance was noteworthy given the climate of austerity at the time, and the slowing down in global trade due to the global financial crisis.⁸⁴⁴ In October 2012, Australia was elected to the UNSC by a majority in the first round.⁸⁴⁵

Australia's commitment to the ATT continued under Julia Gillard as PM from June 2010. While Gillard's main foreign policy focus was on the politically thorny issue of refugees, her term also saw concrete steps on the path to Rudd's strategic repositioning towards Asia, notably through the launch of a national strategy detailed in the "Australia in the Asian Century White Paper."⁸⁴⁶

While Labor was in power for the April 2013 adoption and June 2013 signature of the ATT in New York, its ratification in June 2014 occurred under a Liberal/National government headed by Tony Abbott.⁸⁴⁷ Support for the ATT was signalled early in Prime Minister Tony Abbott's tenure, which began in September 2013. Although Abbott had foreshadowed a change in policy direction under the banner "More Jakarta, less Geneva",⁸⁴⁸ this did not carry through to the ATT. In September 2013, at the UNSC, Foreign Minister Julie Bishop presided over Resolution 2117 (2013), the Council's first on small arms and light weapons.⁸⁴⁹ In its first week, the Abbott government announced that it was reversing Labor's budgetary trend, with significant budget cuts to the Department of Foreign Affairs and Trade (DFAT) personnel and the Australian aid budget. These cuts did not affect Australia's financial commitments to the ATT. Canberra has maintained funding since Australia signed the ATT in June 2013 to the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR), the multi-donor assistance

⁸⁴¹ Kevin Rudd, "25 September 2010 - Australia's statement to the 65th Session of the United Nations General Assembly," New York, 25 September 2010.

⁸⁴² Notably Costa Rica, Mexico, Kenya and South Africa.

⁸⁴³ Callum Cross, "Australia's Campaign for a Seat on the United Nations Security Council," *Australian Outlook - Australian Institute of International Affairs*, 21 March 2016.

⁸⁴⁴ Kevin Rudd, "Australia's foreign policy priorities and our candidature for the UN Security Council," Speech to the National Press Club, Canberra, June 1, 2011.

⁸⁴⁵ Nina Markovic, "Australia wins seat on United Nations Security Council: what next?," *Parliamentary Library, Parliament of Australia*, 19 October 2012.

⁸⁴⁶ Julia Gillard and Commonwealth of Australia, *Australia in The Asian Century: White Paper*, (Canberra: Australia in the Asian Century Task Force, 2012).

⁸⁴⁷ Bob Carr, "Australia's foreign policy directions," National Press Club Address, 26 June 2013.

⁸⁴⁸ Tony Abbott, "Address to Official Dinner, Istana Negara, Jakarta," September 30, 2013.

⁸⁴⁹ United Nations Security Council, Resolution 2117, Small Arms and Light Weapons, S/RES/2117, 26 September 2013.

fund to help less developed countries ratify and implement the ATT which was set up jointly by Australia, Germany and Finland.⁸⁵⁰

2.2 External policy

On weapons proliferation, Australia's expertise lies in technical measures that regulate and curb rather than prohibit or ban. Australia's position on arms control and nuclear weapons is to seek out the middle ground, with phased, balanced and verifiable progress rather than abrupt departures from the status quo.⁸⁵¹ This form of regulation is equally suited to conventional weapons. Canberra's championing of the ATT Process was consistent with this predisposition legacy from nuclear weapons initiatives over 50 years. The choice of forum, within the UN's disarmament machinery, was Australia's preferred option to conduct disarmament diplomacy, given the importance placed by Canberra on engaging with outlier states, notably weapons producers. This highlights the "principled pragmatism" of Australian arms control diplomacy,⁸⁵² which combines reliance on the US to guarantee national security through Washington's policy of nuclear deterrence, with a commitment to multilateral institutions and a rule-of-law approach to peace and security.⁸⁵³ In this context, Australia's quest for the middle ground translates as seeking to establish workable compromises to reconcile the diversity of viewpoints from proponents of complete disarmament to weapons producers – often leaving all sides uncomfortable. These themes are explored below.

Australia's track record was strong in institutional settings dominated by consensus and on delicate issue areas that have a direct impact on global security.⁸⁵⁴ Australia was therefore well positioned to participate from the beginning in 2006 when technical talks kicked off in the ATT.

⁸⁵⁰ The Fund finances projects to build up national regulations on arms in order to support the implementation of the ATT and the UN's Programme of Action on Small Arms and Light Weapons (POA). United Nations Office for Disarmament Affairs (UNODA), *Programmes Financed From Voluntary Contributions 2015-16*, (New York: UNODA, 2017): 2.

⁸⁵¹ The two exceptions to this – when Australia sought to unbalance the status quo – were the Canberra Commission and the ICNND Tanya Ogilvie-White, "Australia and the Non-Proliferation and Disarmament Initiative: difficult times for disarmament diplomacy", *Policy Analysis* vol. 110 (2013): 3.

⁸⁵² Commonwealth of Australia, *2017 Foreign Policy White Paper*, (Canberra: 2017): 1-4.

⁸⁵³ While Australian policy-makers frequently refer to American guarantees of security in official policy documents, it is worth pointing out that these have never been put to the test and are much less frequently referred to by US policy-makers.

⁸⁵⁴ For example, Australia played an important role in shaping two treaties that were negotiated within the Conference on Disarmament, bans on chemical weapons and on nuclear tests, where decisions were taken under consensus. *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, Geneva, September 3, 1992, *United Nations Treaty Series*, Registration no. 33757, vol. 1974, p.45. *Comprehensive Nuclear-Test-Ban Treaty*, New York 1996, United Nations Treaty Series (No registration number or Volume/Page number recorded).

Substantively, the ATT is a trade instrument that required complex and technical input on weapons proliferation. Diplomatically, negotiations were entrenched within the UN disarmament process with two procedural preconditions, namely consensus decision-making and the participation of all UN members notably weapons producers and importers.

Australia pursued this normative agenda between 2008-12 by contributing Canberra-based experts on weapons, trade, customs and defence and diplomats from New York, Geneva and Washington to all phases of work.⁸⁵⁵

A lead co-author from the start of the ATT Process, and a constant US ally throughout, Australia was well positioned to rebuild bridges during the second diplomatic conference, in 2013, after initial talks failed to arrive at consensus on a final text during the first diplomatic conference in 2012– an election year in the US.⁸⁵⁶ Trusted by its Atlantic allies to represent faithfully its views, Australia had shown over seven years of talks its commitment to bringing the technical expertise and knowledge required to develop an implementable, effective treaty that reflected the complexity of the issues under its scope.

Australia's diplomatic assets were activated during the end game in 2013, when Ambassador Peter Woolcott stepped in as president of the final conference, supported by his team in Geneva and DFAT colleagues in Canberra.⁸⁵⁷

In June 2014, Australia was among the first 30 states to ratify the ATT.⁸⁵⁸ While no new legislation was required by Australia to give effect to the ATT given existing export control systems, the political and diplomatic commitment of five governments over seven years of negotiations came at the cost of supporting other initiatives. The ATT's implementation will also require sustained funding.⁸⁵⁹

⁸⁵⁵ This was complemented by financial support, as detailed in an earlier section of this chapter.

⁸⁵⁶ Rick Gladstone, "UN Misses Its Deadline for Arms Pact", *New York Times*, July 27, 2012.

⁸⁵⁷ Gary Quinlan (Ambassador and Permanent Representative of Australia to the United Nations), "2 April 2013 – Statement to the United Nations General Assembly," April 2, 2013, New York.

⁸⁵⁸ This ratification occurred on recommendation of the Joint Standing Committee on Treaties (JSCOT) after the ATT was tabled on 13 December 2013. This recommendation was made based on consideration of a National Interest Assessment (NIA) prepared by the Department of Foreign Affairs and Trade (DFAT), which was debated in committee by JSCOT committee members. The JSCOT is made up of 16 elected members of both houses of the Australian Parliament, nominated by Government, Opposition and minority groups and independents. Parliament of the Commonwealth of Australia - Joint Standing Committee on Treaties, "Chapter 3 Arms Trade Treaty", *Report 138 Joint Standing Committee on Treaties*, (2014): 27.

⁸⁵⁹ Aside from minor administrative costs associated with national reporting obligations, other costs expected to be incurred are related to contributions to the operational costs for the international implementation of the Treaty, namely Conferences of States Parties and operating budget for the Geneva-based, 3-person ATT implementation support unit. Parliament of the Commonwealth of Australia - Joint Standing Committee on Treaties, "Chapter 3 Arms Trade Treaty", *Report 138 Joint Standing Committee on Treaties*, (2014): 27.

2.3 Strategic partnerships

Australia's ties with Washington were considerably strengthened over the course of the ATT Process, under conservative/Republican governments (Howard and Bush) and Labor/Democrat governments (Rudd/Gillard and Obama). London and Canberra continued in their long tradition of consultation and friendship during this period as well. These two strategic partnerships – with the US and the UK – shaped Australia's participation in the ATT Process, from its first phases when Canberra joined the UK as part of the co-author's group, to the end-game, when Australian Disarmament Ambassador stepped in to overcome the final hurdle after Washington's initial reluctance to sign on to the first draft treaty. These themes are explored in more detail below.

Howard's three prime ministerial terms strengthened ties with Washington. This was noticeable after September 11, 2001, when Australia was one of the US's most vocal allies under the Bush administration's "war on terror".⁸⁶⁰

Starting in 2003, Australian troops were present for every overseas deployment by US forces. The intervention in Iraq was the most emblematic, and controversial, of this period. The public backlash among states in the 'Coalition of the Willing' was significant, perhaps most of all in the UK.⁸⁶¹ This connection was front of mind for Foreign Minister Alexander Downer when he was contacted in 2006 by the British Foreign Secretary Jack Straw about supporting the UK's efforts to begin talks in the UN on a future arms trade treaty. Howard and Downer saw this as a chance to bolster relations with the Blair government, unpopular at the time in the aftermath of the intervention in Iraq and facing a potentially fatal internal Labour party rift.⁸⁶²

Under PM Rudd, the consensus on close proximity with Washington was maintained. This was helped by the election of the Democratic President Barack Obama, whose party had a more natural fit in political terms.⁸⁶³ This was accompanied by a Labor Party commitment during the election campaign to maintain the previous government's 3% real annual growth in the defence budget,

⁸⁶⁰ Kathleen Gleeson, *Australia's 'war on terror' Discourse*, (New York: Ashgate Publishing, 2014): 42.

⁸⁶¹ Simon Jeffery, "UK's 'biggest peace rally'", *The Guardian*, February 16, 2003.

⁸⁶² Private interview, Alexander Downer, 2015.

⁸⁶³ Luis Charbonneau, "After Obama win, U.S. backs new U.N. arms treaty talks", *Reuters World News*, November 8, 2012.

although Labor did not adhere to this once in power.⁸⁶⁴ Liberal PM Tony Abbott went on to set the annual target increase in defence spending at 2%.⁸⁶⁵

The strategic partnership was reinforced by the 2011 joint announcement by PM Gillard and President Obama on the 60th anniversary of ANZUS that US troops would be permanently stationed on Australian soil for the first time, with rotational deployments of US Marines in Darwin and enhanced access for US military aircraft to Royal Australian Air Force facilities in the Northern Territory.⁸⁶⁶ The symbolism of this gesture was reinforced when President Obama prefaced the joint announcement made with Julia Gillard, then Labor PM, with the statement that “the United States of America has no stronger ally than Australia”.⁸⁶⁷

The bilateral relationship was never jeopardized during ATT talks. The reticence of the Bush administration to support ATT efforts, for example by voting against the initial UNGA Resolution, was replaced by President Obama’s support – on condition that consensus prevail over talks.⁸⁶⁸ Australia’s engagement at the negotiation table paralleled Washington’s views, for example on the contentious issue of ammunition, parts and components which the US was seeking to exclude from the scope of the ATT during the first diplomatic conference.⁸⁶⁹

Any tensions between Washington and Canberra were smoothed over behind the scenes (if any occurred at all). In Australian politics in general, as opposed to other American allies such as Canada or New Zealand as outlined in previous chapters, politicians do not tend to adopt public positions against the US in order to gain traction domestically or internationally. The Australian strategy is more to engage in behind-the-scenes talks and maintain open and transparent lines of communication in order to head off potential sources of friction away from the spotlight.⁸⁷⁰ Ultimately the binding obligations brought in by the ATT fall below the existing standards that already apply domestically in both the US and Australia.⁸⁷¹

⁸⁶⁴ Labor delivered this in only three of six defence budgets between 2007 – 2013. David Watt and Alan Payne, “Trends in Defence Expenditure Since 1901”, in *Research Paper no. 3 Budget Review 2013–14* (2013): 55.

⁸⁶⁵ David Johnston (Minister for Defence), “Media release: Minister for Defence - Budget 2014-15 – Defence Budget Overview”, 13 May 2014.

⁸⁶⁶ Office of the Press Secretary in The White House, “Remarks by President Obama and Prime Minister Gillard of Australia in Joint Press Conference,” 16 November 2011, Canberra.

⁸⁶⁷ Office of the Press Secretary in The White House, “Remarks by President Obama and Prime Minister Gillard of Australia in Joint Press Conference,” 16 November 2011, Canberra.

⁸⁶⁸ Arshad Mohammed, “US Reverses Stance on Treaty to Regulate Arms Trade”, *Reuters*, October 15, 2009.

⁸⁶⁹ Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 140.

⁸⁷⁰ Peter Edwards, “Permanent Friends? Historical Reflections on the Australian-American Alliance”, *Lowy Institute Paper 08*, (2005): 2-4.

⁸⁷¹ Oxfam, “Saving Lives with Common Sense: the Case for Continued US Support for the Arms Trade Treaty”, Oxfam Briefing Paper, (25 September 2013): 3.

No impact will be felt on either the bilateral military alliance or the bilateral arms trade relationship.

3. How Australia shaped the ATT Process

This section examines the four ATT Process transition points, from their triggers to their consequences. These points marked the passage between three phases of negotiations, from commitment to substance and then agreement. Six layers of context are analysed at each point.

This section argues that Australia shaped the ATT Process by adopting a championing strategy made up of three distinctive features. Working within the UK-led co-authors' group of states and non state actors, Australia's sustained technical and procedural activity over seven years drove progress in every phase of negotiations as talks progressed from commitment to substance and agreement. Creatively adapting rules of procedure and decision-making, Australia was able to shepherd the Process through to the adoption of the ATT in the UNGA despite the failure of the first Diplomatic Conference to produce a final treaty.

3.1 Transition point 7: New York, 26 October 2006

The first transition point in the ATT Process, marking the passage between the commitment and substance phases, was the adoption of UN Resolution 61/89 in New York on 26 October 2006.⁸⁷²

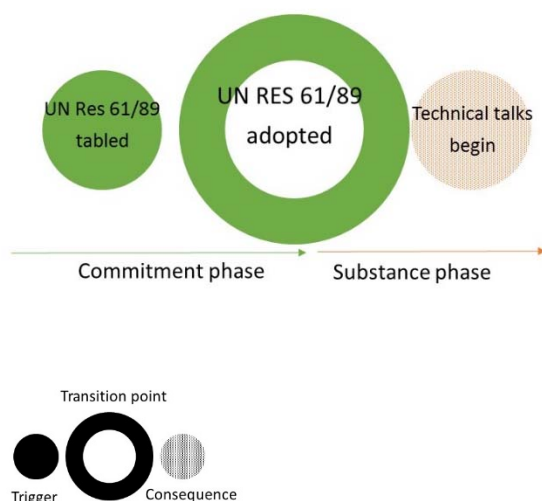


Figure 27 Transition point 7: New York, 26 October 2006

Parliament of the Commonwealth of Australia - Joint Standing Committee on Treaties, "Chapter 3 Arms Trade Treaty", *Report 138 Joint Standing Committee on Treaties*, (2014): 25.

⁸⁷² United Nations General Assembly, Resolution 61/89 Towards an Arms Trade Treaty, A/RES/61/89, New York, December 6, 2006.

3.1.1 Trigger: UK and co-authors table Resolution 61/89

In July 2006, at the First Review Conference of the PoA, the UK and the co-authors had the backing of 55 states to publicly call for an ATT.⁸⁷³ Not only did the meeting fail to agree on concrete steps towards regulations, it also failed to find common ground on a final communique. The Review Conference's President Ambassador Kariyawasam attributed the disappointing result to various factors internal to the process including the rule of consensus which had allowed a small number of states to hold up progress.⁸⁷⁴ The UK and the co-authors then formed a plan to target the UN General Assembly, specifically via a draft resolution to be tabled at the First Committee session in October that year. They circulated a draft text for feedback between July and September 2006 among members of the UNGA First Committee.⁸⁷⁵ The lobbying efforts of the co-authors paid off, with 77 states co-sponsoring and all but one of the 153 First Committee voting in favour. Only the United States voted against. The aim of the draft resolution was to set in motion a process within the UN that would lead to "common international standards" relating to the "import, export and transfer of conventional arms." The driver for action was also stated in the preamble which noted that "the absence of standards is a contributory factor in conflicts, the displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability, and sustainable development".⁸⁷⁶

3.1.2 Transition point: UN Resolution to commence study on future ATT

The First Committee's draft resolution adopted in October was adopted by the UNGA on 6 December 2006, formally starting the ATT Process.⁸⁷⁷

3.1.2.1 At the table

On 6 December 2006, at the UN General Assembly, Resolution 61/89 was tabled by UK Ambassador John Duncan on behalf of the co-authors. It was formally adopted and received more votes in its favour than at First Committee. A total of 153 votes were cast in favour, with the US casting the only vote against. Based on statements and debates during the First Committee proceedings, more states had been expected to vote against the Resolution but did not do so. Sceptical states at this

⁸⁷³ Anna Macdonald and Duncan Green, "Power and Change The Arms Trade Treaty," *Oxfam Active Citizenship Case Study*, (Oxfam International, 2015): 2.

⁸⁷⁴ Natalie Goldring, "The 2006 Review Conference On Small Arms And Light Weapons: A Study In Frustration," *Disarmament Diplomacy* no. 84 (2007): 2.

⁸⁷⁵ Sarah Parker, *Implications of States' Views on an Arms Trade Treaty*, (Geneva, UNIDIR 2008): 5.

⁸⁷⁶ United Nations General Assembly First Committee, Draft Resolution, Towards An Arms Trade Treaty: Establishing Common International Standards For The Import, Export And Transfer Of Conventional Weapons, A/C.1/61/L.55, 12 October 2006.

⁸⁷⁷ United Nations General Assembly, Resolution 61/89, Towards an Arms Trade Treaty, A/RES/61/89, 18 December 2006.

time included China, Cuba, Jamaica, Iran, Libya, Bahrain, Comoros, Djibouti, Egypt, Iraq, Oman, Qatar, Saudi Arabia, Somalia, Syria, United Arab Emirates, Yemen and Pakistan.⁸⁷⁸ This firmly situated the ATT Process within the UN's New York disarmament machinery. This substantive trigger opened up avenues for a future instrument without scaring off sceptical states. The Resolution introduced measures over two years, namely two reports addressing feasibility, scope and draft parameters for a future ATT, without committing states to any further action beyond fact finding. The first report included statements from member states.⁸⁷⁹ The second report was authored by a Group of Government Experts (GGE).⁸⁸⁰ In 2008, the second UN Resolution on the ATT established the third step in the ATT Process.⁸⁸¹ The mandate for this third step was to canvass legal options, built on the insights gleaned from the first two steps, namely political perspectives (states views) and technical analysis (from the GGE). The aim here was to reconcile national imperatives with humanitarian goals in a viable regulatory framework. This was done over the course of six sessions of the Open-Ended Working Group (OEWG), starting in 2009, examining the feasibility, scope and parameters of an ATT. The OEWG began to trace out the lay of the land, bringing into focus how much states were willing to commit to as well as foreshadowing what was technically possible in a particularly complex area of regulation given the overlap between trade, security, governance and human rights, as noted earlier in this chapter. Ambassador Roberto García Moritán of Argentina chaired the GGE and the OEWG and presided over the 2012 Negotiating Conference.⁸⁸²

3.1.2.2 *In the room*

From the first steps at the UN, the six co-authors under UK leadership were the motors of progress during the ATT Process. They had been carefully chosen by London through a series of workshops and focus groups with over 30 states,

⁸⁷⁸ Sarah Parker, "Moving ahead on small arms control: A focus on the 2006 Session of the UN First Committee," *CHD Analysis*, (Geneva: Centre for Humanitarian Dialogue, 2007):1.

⁸⁷⁹ In 2007, 94 states submitted their views to the UNSG. United Nations General Assembly, "Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms, Report of the Secretary-General", A/62/278 (Part 1, Part II, Addendum 1, Addendum 2, Addendum 3, Addendum 4), 17 August 2007.

⁸⁸⁰ States views from the first report formed the basis for a second report, by a Group of Governmental Experts (GGE), after 11 days of meetings with 26 national experts. United Nations General Assembly, "Report Of The Group Of Governmental Experts To Examine The Feasibility, Scope And Draft Parameters For A Comprehensive, Legally Binding Instrument Establishing Common International Standards For The Import, Export And Transfer Of Conventional Arms", A/63/334, August 26, 2008.

⁸⁸¹ United Nations General Assembly, Resolution 63/240, Towards an Arms Trade Treaty: Establishing Common International Standards For The Import, Export And Transfer Of Conventional Arms, A/RES/63/240, 08 January 2008.

⁸⁸² Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 10-11.

international organisations, weapons industry representatives and NGOs in 2005-06.⁸⁸³ The co-authors, as they became known given their involvement in crafting UN Resolutions, provided regional force multipliers across the world.

Costa Rica had been an ATT proponent from 2004, under the championing of former President and Nobel laureate Oscar Sanchez Arias. Argentina provided a further foot in to the Americas. Japan led initiatives within the UN from the 1990s onwards to address the proliferation of small arms and light weapons. Kenya had long suffered the direct effects of regional instability due to irresponsible arms transfers. Finland added strong multilateral experience from Europe and NATO to underpin the UK's commitment.⁸⁸⁴ Australia's participation was sealed with a phone call from Jack Straw to Alexander Downer and followed on from PM John Howard's commitment to gun control, as noted previously in this chapter.

3.1.2.3 *In the corridors*

The co-authors' coalition included close ties with the CA, bringing in core competencies in advocacy and media engagement as well as substantive expertise in arms control, human rights, and development gained over twenty years of activism for an ATT. In 2006, the steering committee expanded to include the International Action Network on Small Arms (IANSA), created in 1998 and supported by the Canadian government. More NGOs came on board to cover over 120 countries. The small CA team was based in London in part to foster the encouraging signals hinting at a future leadership role on arms regulation from the UK, a P5 Member and major arms exporter. Oxfam GB campaigner Anna Macdonald was seconded to lead the CA in New York. A member of the Cluster Munitions Coalition, she had first-hand experience of the dynamics of NGO coalitions within country groupings.⁸⁸⁵

CA coordinated efforts targeting New York-based UN diplomats with evidence-driven research and an active presence within UN negotiating rooms by the Hudson. In 2005, Amnesty International (AI), one of CA's co-founders, published a report that articulated the 'golden principles' for states to incorporate into a future

⁸⁸³ John Duncan, "The UK's role in the UN Arms Trade Treaty," *Civil Service Quarterly* Cabinet Office, Government of the United Kingdom, London (July 2013).

⁸⁸⁴ Javier Alcalde, "The Control Arms Campaign: a case study of NGO impacts on international relations after the Cold War," K. Fahlenbrach, M. Klimke, J. Scharloth and L. Wong, (eds.) *The establishment responds: power, politics, and protest since 1945* (New York: Palgrave Macmillan US, 2012): 187.

⁸⁸⁵ Matthew Bolton, Helena Whall, Allison Pytlak, Hector Guerra and Katelyn E. James, "The Arms Trade Treaty from a Global Civil Society Perspective: Introducing Global Policy's Special Section," *Global Policy* vol. 5 no.4 (2014): 435.

treaty, including IHL and HRL provisions.⁸⁸⁶ In 2007, CA tabled a report with the UNSG that included “People’s Consultations” from 53 countries in parallel to state submissions on an ATT.⁸⁸⁷ In September 2008, they targeted UN First Committee delegates at UN offices in New York, with a pair of 20-foot sunglasses placed in the UN basement to reinforce their slogan, “The World Is Watching.”⁸⁸⁸ They also staged a rickshaw race between all 192 UN missions in New York in 192 minutes, on a rickshaw, on October 21, 2008. This included a video from Archbishop Desmond Tutu, calling on states to vote ‘yes’ on the ATT that week.⁸⁸⁹

3.1.2.4 *In capital*

In Canberra, a change of government in October 2007 had brought in a new Prime Minister, Labor’s Kevin Rudd, and a new foreign minister, Stephen Smith. Less than a year later, PM Rudd announced at the UNGA in 2008 that Australia would be seeking a temporary seat on the UNSC.⁸⁹⁰ This signalled a renewed focus from Canberra on Australia’s UN activities as well as increased scope to seek additional funding on multilateral issues. The Labor governments that followed over the next six years under Rudd, Gillard and Rudd saw significant increases in aid budget and in the Department of Foreign Affairs and Trade (DFAT) budget and personnel, as well as the transition of AusAid to the status of independent agency. This was in part to rebuild Australia’s international policy machinery which had seen significant cuts under Howard, but was also a reflection of the aim to increase overseas development aid to position Australia in the top 10 of global donors.⁸⁹¹

3.1.2.5 *In the world*

From 2005, the EU began to intensify its efforts on arms trade regulations. In 2005, the EU Council adopted a Strategy to Combat the Illegal Trade in SALW,⁸⁹² while also publicly backing progress at the UN during the ATT Process through a European

⁸⁸⁶ Published in four of the UN’s five official languages, English, French, Spanish and Arabic. Amnesty International, *Blood At The Crossroads Making The Case For A Global Arms Trade Treaty*, (London: Amnesty International, 2008): 7.

⁸⁸⁷ Control Arms, *Voices from Around the World- The People’s Consultation for an Arms Trade Treaty 2007 Global Report*, (London: Control Arms, 2007): 3.

⁸⁸⁸ Daniel Mack and Brian Wood, "Civil society and the drive towards an Arms Trade Treaty," Background Paper, United Nations Institute for Disarmament Research (UNIDIR), (Geneva, UNIDIR, 2010): 3.

⁸⁸⁹ Oxfam International, “Annual Report 2008-2009”, (Oxford: Oxfam International, 2009): 14.

⁸⁹⁰ Kevin Rudd, “Speech by Prime Minister Kevin Rudd to the United Nations General Assembly”, September 25, 2008.

⁸⁹¹ Stephen Smith and Australian Labor Party, “A Good International Citizen: Australia’s Development Assistance”, Australian Labor Party (2010): 4.

⁸⁹² Council of the European Union, “Strategy To Combat Illicit Trade And Excessive Accumulation Of SALW And Their Ammunition”, 5319/06, Circulated on 13 January 2006.

Parliament resolution,⁸⁹³ with all EU members voting in favour of all UNGA Resolutions on the ATT.⁸⁹⁴ In 2008, the EU Council then adopted a more rigorous and updated Code of Conduct on arms exports for its members.⁸⁹⁵

Many African states also supported the ATT Process from the first UNGA resolutions onwards,⁸⁹⁶ for example during the African Union (AU) Conference on SALW in Namibia in 2005.⁸⁹⁷ The Process was less visible in other regions.⁸⁹⁸

3.1.2.6 *In the streets*

CA'S UN-based advocacy was matched with work done at the regional and local grassroots levels.⁸⁹⁹ Local CA members relayed the voices of those affected by the irresponsible arms trade through traditional and new media campaigns to capture the attention of citizens and policymakers.⁹⁰⁰ This included the 2006 "Million Faces" online photo petition with submissions from 160 countries, which was presented in June 2006 to UNSG Annan by Julius Arile, an armed violence survivor from Kenya.⁹⁰¹ Further afield, examples include a silent rally in Fiji, a stunt with arms "for sale" at São Paulo's busiest street market, a peace meal in Papua New Guinea and a sit-in in front of Morocco's parliament.⁹⁰² CA also mobilized prominent voices in support of an open letter in support of the ATT Process, which included Liberian president Ellen Johnson Sirleaf, British actress Helen Mirren and former Irish president Mary Robinson and 20 war correspondents.⁹⁰³

⁸⁹³ European Parliament, "European Parliament Resolution On Small Arms And Light Weapons, With A View To The 2006 Review Conference On The United Nations Programme Of Action To Prevent, Combat And Eradicate Trade In Small Arms And Light Weapons In All Its Aspects, And Towards The Establishment Of An International Arms Trade Treaty," P6_TA(2006)0274, Adopted 15 June 2006.

⁸⁹⁴ Sara Depauw, "The European Union's Involvement In Negotiating An Arms Trade Treaty", *Non-Proliferation Papers* No. 23 (2012): 2.

⁸⁹⁵ European Parliament, "European Parliament Resolution Of 13 March 2008 On The EU Code Of Conduct On Arms Exports – Failure Of The Council To Adopt The Common Position And Transform The Code Into A Legally Binding Instrument", Adopted 13 March 2008.

⁸⁹⁶ Dominique Dye, "Africa and an arms trade treaty", *Institute for Security Studies (ISS) Papers* issue 191 (2009): 5.

⁸⁹⁷ African Union, Second Continental Conference of African Governmental Experts on the Illicit Trade in Small Arms and Light Weapons, 14-16 December 2005, Windhoek, Namibia.

⁸⁹⁸ For example, ASEAN has never actively supported the process and none of its members went on to sign the treaty (as at December 2017). Michael Weiss, "The Arms Trade Treaty in the Asia-Pacific", *The Diplomat*, December 22, 2017.

⁸⁹⁹ Daniel Mack and Brian Wood, "Civil society and the drive towards an Arms Trade Treaty," United Nations Institute for Disarmament Research (UNIDIR), Geneva (2009): 7.

⁹⁰⁰ Small Arms Survey, "Breaking New Ground? The Arms Trade Treaty" in *Small Arms Survey 2014: Women and Guns* (Cambridge: Cambridge University Press, 2014): 78.

⁹⁰¹ UN News, "Annan receives arms petition by one-millionth signer, vows to transmit call onward", 26 June 2006.

⁹⁰² Daniel Mack and Brian Wood, "Civil society", 10.

⁹⁰³ Amnesty International Press Release, "Leaders, celebrities and journalists call on governments to deliver life-saving Arms Trade Treaty", 23 April 2007.

3.1.3 Consequence: technical talks begin

As the ATT Process progressed from commitment to substance, the intricacies of talks required negotiators to engage in UN rules of procedure while mastering the substance of the text and engaging in multilateral manoeuvring. Among the UK-led co-authors group, Australia brought expertise in all three aspects. Their delegation was the largest in numbers and the broadest in terms of expertise. Officials from the Australian UN mission in New York and in Geneva and the Embassy in Washington were regular participants, as well as officials from Canberra from the Department of Foreign Affairs (Arms Control, Non Proliferation and International Law), Attorney General's Department (International Law section), Department of Defence, Customs and the Office of National Assessment attended from 2008 onwards, with Foreign Minister Carr and his political staff also attending both diplomatic conferences.⁹⁰⁴

3.2 Transition point 8: New York, December 2, 2009

The second transition point in the ATT Process, which marked the passage between the substance and agreement phases, was the adoption of UN Resolution 64/48 at the UNGA in New York on December 2, 2009.⁹⁰⁵

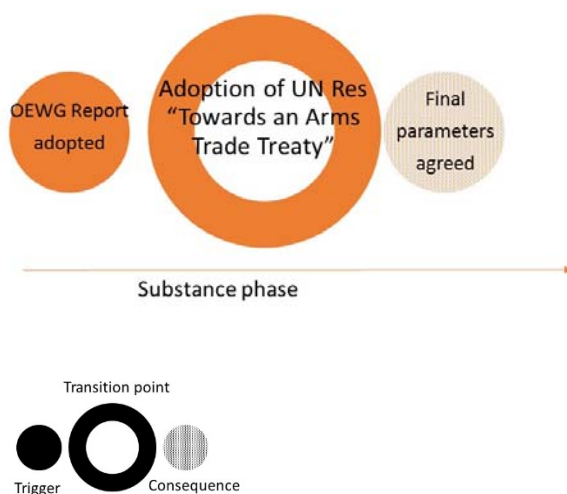


Figure 28 Transition point 8: New York, December 2, 2009

3.2.1 Trigger: OEWG Report adopted by consensus

On 17 July 2009, at the UNGA First Committee, the Open-Ended Working Group (OEWG) Final Report and its recommendations were adopted by consensus.⁹⁰⁶

⁹⁰⁴ This analysis was done for this thesis and drew on the participant lists for the 20 meetings during the substance phase of the ATT Process, available via the United Nations Office of Disarmament Affairs (UNODA): www.un.org/disarmament/att/2013-conference/2013-att-documents/. Last accessed June 9, 2018

⁹⁰⁵ United Nations General Assembly, Resolution 64/48 The Arms Trade Treaty, A/RES/64/48, December 2, 2009.

⁹⁰⁶ United Nations General Assembly First Committee, The Arms Trade Treaty: Revised Draft Resolution, A/C.1/64/L.38/Rev.1, October 28, 2009.

After two working sessions of the six originally provisioned for, negotiators made enough progress on substantive issues to transform the remaining four sessions into preparatory committee meetings.⁹⁰⁷ With a narrowing gap between viewpoints, the time was right for technical talks to evolve into negotiations.

Although seven states had previously held the position that an ATT was not feasible, and some were still unconvinced about a legally binding instrument, they did not block further work.⁹⁰⁸ The adoption of the OEWG Report indicated that the discussion had shifted “from ‘whether’ to ‘when’ and ‘how’.”⁹⁰⁹

3.2.2 Transition point: UN Resolution to negotiate an ATT

The adoption of UN Resolution 64/48 in the UNGA on 2 December 2009 set the parameters for the final phase of negotiations.

3.2.2.1 *At the table*

On 30 October 2009, the UNGA First Committee voted in favour of the co-authors’ draft resolution, which was then adopted by the UNGA as Resolution 64/48 on 2 December 2009. This signified the UNGA’s agreement to negotiate a legally binding treaty in 2012.⁹¹⁰ Resolution 64/48 specified the timetable for five preparatory meetings to pave the way.⁹¹¹ Consensus would guide decision-making.⁹¹² This was the US’ condition to agree not to block the ATT, as noted previously. Resolution 64/48 included the addition of the ATT as an agenda item for the 67th UN Session after the conclusion of the 2012 diplomatic conference.⁹¹³

⁹⁰⁷ [Resolution 64/48. The Arms Trade Treaty \(...\)](#). “6. Further decides to consider the remaining sessions of the Open-ended Working Group in 2010 and 2011 as a preparatory committee for the United Nations Conference on the Arms Trade Treaty”.

⁹⁰⁸ China, Egypt, India, Israel, Pakistan, Russia and Venezuela. Sarah Parker, “Implications of states’ views on an arms trade treaty,” (Geneva: United Nations Institute for Disarmament Research, 2008): 9-10.

⁹⁰⁹ Daniel Mack and Brian Wood, “Civil society and the drive towards an Arms Trade Treaty,” *United Nations Institute for Disarmament Research*, (Geneva: UNIDIR, 2009): 4.

⁹¹⁰ [Resolution 64/48. The Arms Trade Treaty \(...\)](#) “4. Decides, therefore, to convene a United Nations Conference on the Arms Trade Treaty to meet for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms”.

⁹¹¹ [Resolution 64/48. The Arms Trade Treaty \(...\)](#) “7. Requests the Preparatory Committee, at its four sessions in 2010 and 2011, to make recommendations to the United Nations Conference on the Arms Trade Treaty on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms (...). 8. Decides to establish a fifth session of the Preparatory Committee in 2012 of up to three days’ duration to decide on all relevant procedural matters, including the composition of the Bureau, the draft agenda and the submission of documents, for the United Nations Conference on the Arms Trade Treaty (...).”

⁹¹² [Resolution 64/48. The Arms Trade Treaty \(...\)](#) “5. Also decides that the United Nations Conference on the Arms Trade Treaty will be undertaken in an open and transparent manner, on the basis of consensus, to achieve a strong and robust treaty”.

⁹¹³ [Resolution 64/48. The Arms Trade Treaty \(...\)](#) “9. Requests the Secretary-General to seek the views of Member States on proposed treaty elements and other relevant issues relating to the United Nations Conference on the Arms Trade Treaty, and to submit a report to the General Assembly at its sixty-sixth session;”.

3.2.2.2 *In the room*

The co-authors, along with CA, coordinated campaigning and lobbying efforts to shore up numbers and keep the pressure on the ATT Process to deliver a strong, binding treaty.⁹¹⁴ A key component of these efforts was to build evidence in order to shape national positions, with CA commissioning reports that were then circulated and distributed on tables in negotiating rooms.⁹¹⁵

3.2.2.3 *In the corridors*

In parallel with the work being conducted within the ATT Process, the co-authors and civil society sought the participation of as many states as possible to ensure that the ATT would have greater impact than the ineffective measures that had preceded it (such as the POA). Australia turned to its immediate neighbourhood to shore up state participation. This included DFAT-funded Oxfam workshops in the Pacific. Funded by Canberra, the Pacific Small Arms Action Group (PSAAG) organised for Pacific delegations to attend Preparatory Committee meetings in New York.⁹¹⁶ Between 2011-12, DFAT funded three workshops for the Caribbean Community (CARICOM) to develop a common approach on the ATT.⁹¹⁷ In 2011, DFAT provided funding via the United Nations Development Fund's Voluntary Sponsorship Fund to delegations from the Caribbean, Africa and the Pacific.⁹¹⁸ In the lead-up to the Diplomatic Conference in 2012, Australia, Germany and Finland also initiated the UNSCAR fund, as noted earlier in this chapter.

3.2.2.4 *In capital*

The ATT Process proceeded at a fast pace by New York standards. Each step forward was firmly anchored in the UN's procedural practices, from submission of state views to technical input (through the GGE) followed by legal options being canvassed (OEWG). Canberra's allocation of resources helped pilot all of these steps, with Canberra-based experts providing the expertise for Australia to deliver the most statements during the four Preparatory Committees, contributing

⁹¹⁴ Anna Macdonald and Duncan Green, "Power and Change: the Arms Trade Treaty," *Oxfam Active Citizenship Case Study*, (Oxfam International, 2015): 4.

⁹¹⁵ Edmund Cairns, "Arms Without Borders: why a globalized trade needs global controls," *Control Arms/Amnesty International/IANSA/Oxfam International* (London: Oxfam International, 2006): 1-4.

⁹¹⁶ Matthew Bolton and Katelyn E. James, "Nascent Spirit of New York or Ghost of Arms Control Past? The Normative Implications of the Arms Trade Treaty for Global Policymaking," *Global Policy* 5.4 (2014): 7.

⁹¹⁷ Gary Quinlan, "United Nations General Assembly First Committee Thematic Statement On Conventional Weapons, Statement By H.E. Mr Gary Quinlan, Ambassador And Permanent Representative Of Australia To The United Nations", October 18, 2011.

⁹¹⁸ Gary Quinlan, "United Nations General Assembly First Committee Thematic Statement On Conventional Weapons, Statement By H.E. Mr Gary Quinlan, Ambassador And Permanent Representative Of Australia To The United Nations", October 18, 2011.

substantive elements to the debates on scope, criteria and implementation.⁹¹⁹ To promote the increase in numbers of states participating in the process, Australia also chaired the informal “Friday Group” among New York-based diplomats.⁹²⁰

3.2.2.5 *In the world*

Before October 2009, the hold-out for progress had been US opposition. As the world’s largest exporter of conventional weapons, representing 30% of global arms exports,⁹²¹ the US were integral and all states acknowledged that further progress would only be possible with the US on board. No indication had been forthcoming from the Obama administration which had taken office in January 2008 about whether the US position would shift from his predecessor. The US voted against UN resolutions in 2007 on the GGE and in 2008 on the OEWG.⁹²²

On 12 October 2009, US Secretary of State Hillary Clinton announced a reversal of the US opposition to pursuing next steps on a legal instrument on arms trade.⁹²³ The condition for American support was that consensus would be required for a future treaty to be adopted. This created a certain amount of backlash among progressive states and civil society who were concerned that this would significantly undermine the strength of any legal instrument that would emerge, or perhaps impede progress altogether.⁹²⁴

3.2.2.6 *In the streets*

The CA harnessed a global network of partner NGOs to maintain pressure and attention on the ATT from the grassroots up to policymakers, parliamentarians and diplomats. Organised along with Parliamentarians for Global Action (PGA), a member of CA, the Control Arms Global Parliamentarians Declaration was circulated and signed by over 2,000 members of 124 national parliaments between November 2011 and July 2012. It was delivered to UNSG Ban Ki-Moon on the first day of the Diplomatic Conference.⁹²⁵

⁹¹⁹ 16 statements for Australia, followed by Russia (13), Switzerland (12), Norway (11), Israel and Trinidad and Tobago (10 each), Brazil, Costa Rica and Spain (9 each), and the UK (8). This analysis was done for this thesis and drew on the participant lists for the 20 meetings that took place during the substance phase of the ATT Process, available at the United Nations Office of Disarmament Affairs (UNODA)’s website: www.un.org/disarmament/att/2013-conference/2013-att-documents/.

⁹²⁰ Stephen Smith, Minister for Foreign Affairs, “Answers to Questions in Writing,” House of Representatives, *Debates*, February 2, 2010, p. 155.

⁹²¹ SIPRI, “Summary,” in *SIPRI Yearbook 2009*, (Oxford: Oxford University Press, 2010): 14.

⁹²² Jo Adamson and Guy Pollard, “The Arms Trade Treaty”, 152.

⁹²³ Hilary Rodham Clinton, Secretary of State, “Press statement: U.S. Support for the Arms Trade Treaty,” Washington D.C., October 14, 2009.

⁹²⁴ Jeff Abramson, “U.S. Supports Arms Trade Treaty Process,” in *Arms Control Today* vol. 39 (2009).

⁹²⁵ Parliamentarians for Global Action, “PGA President Ross Robertson Hands Over Control Arms Parliamentarian Declaration to UNSG Ban Ki-Moon”, July 3, 2012.

3.2.2.7 Consequence: Agreement on parameters for final phase

Resolution 64/48 specified the timetable for the following two years to lead up to the ATT Diplomatic Conference, with five sessions in New York, each lasting between 1-2 weeks, under the leadership of Argentinean Ambassador Roberto Garcia Moritan.⁹²⁶ He was supported by eight Vice-Chairs and Friends of the Chair.⁹²⁷ Ambassador Moritan had over 40 years' experience in disarmament. He had negotiated on every arms control treaty since the 1970s. He was familiar and proficient in step-by-step negotiations.⁹²⁸

The result of these five work-streams was a report, which also included a draft treaty text that Moritan and his team had crafted based on their discussions with state diplomats, although no textual negotiations had taken place during this phase.⁹²⁹ In addition to this report, states also contributed their views in a separate report.⁹³⁰ Consensus was confirmed as the mode of procedure, despite concerns from progressive states and some parts of civil society that this approach would hamstring proceedings as it did in the POA process, as above.

3.3 Transition point 9: New York, July 27, 2012

The third transition point in the ATT Process was July 27, 2012, when the ATT Diplomatic Conference failed to produce a final treaty text. The draft text that emerged from this transition point, CRP.1, was critical to arriving at the fourth and final transition point of the ATT Process.

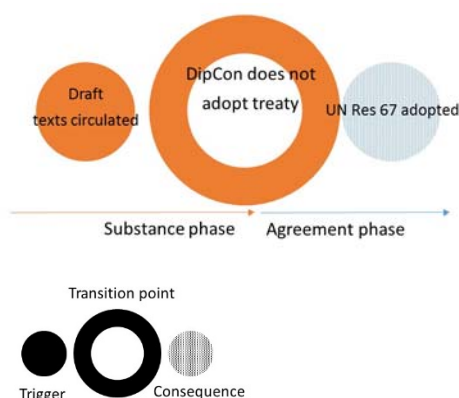


Figure 29 Transition point 9: New York, July 27, 2012

⁹²⁶ Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 10.

⁹²⁷ Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 10.

⁹²⁸ Eugenia Riera, "Interview with Roberto Garcia Moritan, chairman of the Global Arms Treaty Diplomatic Conference", *International Catalan Institute for Peace (ICIP) E-Review* issue 13 (2012): 1.

⁹²⁹ United Nations General Assembly, *Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty*, A/CONF.217.1

⁹³⁰ United Nations General Assembly, *Compilation of views on the elements of an arms trade treaty*, A/CONF.217/2 and A/CONF.217/2/Add.1.

3.3.1 Trigger: draft text compiled in last week of talks

The United Nations Conference on the Arms Trade Treaty was convened in New York from Monday 2 July to Friday 27 July 2012. Before talks had begun, the Conference was almost derailed due to a credentials issue.⁹³¹ Talks effectively began on Thursday 5 July.

On Thursday 26 July, President Moritan and his team produced a final draft text for the treaty, CRP1.⁹³² It included elements put forward by progressive states such as references to IHL.⁹³³ It did not include ammunition, in line with the US position.⁹³⁴ It contained legal ambiguities, inconsistencies and unclear terminology.⁹³⁵ These flaws partly reflected Moritan's ambitions to include specific wording and elements from as many states as possible so that they would recognize their contributions to the final document.⁹³⁶ The draft was widely supported but fell short of the necessary consensus.

3.3.2 Transition point: talks fail to reach consensus

The third transition point, on Friday July 27, 2012, was the last day of the ATT Diplomatic Conference, when negotiators failed to reach consensus on wording for a final treaty text.⁹³⁷ The proposed text, CRP1, was not adopted as states called for more time to address significant issues.

3.3.2.1 *At the table*

Ambassador Moritan and his team circulated the first full draft text to states on the final Tuesday, July 24. The first draft was considered too weak even for sceptic

⁹³¹ This concerned the participation of Palestine, who had been allocated seating in the Conference in an area designated for member states. The issue was resolved when both Palestine and the Holy See were reseated as observers rather than in alphabetical order among member state. This delayed the start of the conference until the evening of Tuesday 03 July after the translators had left. States agreed on rules of procedure and the provisional agenda as well as election of the Conference officers. Talks were then postponed for the July 4 public holiday. Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 10.

⁹³² United Nations Conference on the Arms Trade Treaty, "Draft of the Arms Trade Treaty Submitted by the President of the Conference," A/CONF.217/CRP.1, Submitted 26 July 2012.

⁹³³ CRP.1 Draft of the Arms Trade Treaty, Article 4 National assessment (...) "2. Prior to authorization (...), the State Party shall assess whether the proposed export of conventional arms could: (a) Be used to commit or facilitate a serious violation of international humanitarian law; (b) Be used to commit or facilitate a serious violation of international human rights law; (...). 5. If (...) the State Party finds that there is an overriding risk of any of the consequences under paragraph 2 of this article, the State Party shall not authorize the export."

⁹³⁴ CRP.1 Draft of the Arms Trade Treaty, Article 2 Scope "A. Covered items 1. This Treaty shall apply to all conventional arms within the following categories, at a minimum: (a) Battle tanks; (b) Armoured combat vehicles; (c) Large-calibre artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; (g) Missiles and missile launchers; and (h) Small arms and light weapons."

⁹³⁵ Sarah Parker and Stuart Casey-Maslen, "The Draft Arms Trade Treaty", *Academy Briefing No. 2*, Geneva Academy of International Humanitarian Law and Human Rights, (Geneva: 2012): 19-40.

⁹³⁶ Sarah Parker and Stuart Casey-Maslen, "The Draft Arms Trade Treaty", *Academy Briefing No. 2*, Geneva Academy of International Humanitarian Law and Human Rights, (Geneva: 2012):8.

⁹³⁷ Michelle Nichols, "UN fails to agree landmark arms-trade treaty", *Reuters*, July 29, 2012.

states and was rejected by progressives and civil society.⁹³⁸ Negotiators took up the drafting process in plenary without making progress. One national delegate described the process as a train crash in slow motion.⁹³⁹ On Friday, the final day of the Conference, it was clear that consensus would not be reached on CRP1.

The US had emphasised that consensus was required for the Conference to adopt a treaty, and that it sought a text that the US Senate would ratify.⁹⁴⁰ This required more time to finalise the treaty⁹⁴¹ The US was joined by Cuba, North Korea, Russia and Venezuela.⁹⁴² 90 states expressed support for CRP1 and stated they were in a position to adopt it, supported by the NGO community despite the absence of several provisions they had called for.⁹⁴³

However, on the basis of the rules of procedure on consensus, Ambassador Moritan had no option but to conclude proceedings without a finalized treaty given the lack of consensus foreshadowed in the plenary session. The response to CRP1 indicated that Moritan had overstretched in his ambitious commitments to a broad base of states. Although the Conference ended without adopting a treaty text, the Final Report with CRP1 in attachment, was adopted.

3.3.2.2 *In the room*

The President's overarching aim was to find a delicate middle-ground between maximalist states, progressive states and sceptical states while keeping a watchful eye on spoiler states.⁹⁴⁴ These four broad categories are detailed below.

The most sceptical of the scepticals was the 'Friends of the ATT' group (Iran, North Korea and Syria as well as at times Cuba, Pakistan, Venezuela and Zimbabwe), who were concerned by sanctions on arms imports curbing their arsenals. They were against any form of binding regulations.⁹⁴⁵ They were joined by a small

⁹³⁸ Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 11.

⁹³⁹ "About 80 States are actively contributing to an on-screen Word document in the negotiating room to which new text is laboriously added in red-coloured revision mode. Watching this chaotic approach to treaty elaboration is akin to viewing a train crash in slow motion." Stuart Casey-Malen, "Eton Mess: Monday July 16, 2012", Arms Trade Treaty Blog, <http://armstradetreaty.blogspot.ch>. Blogsite hosted by the Geneva Academy of International Humanitarian Law and Human Rights and the Oxford Martin School Programme on Human Rights. Last accessed March 18, 2018.

⁹⁴⁰ Thomas Countryman (Assistant Secretary, Bureau of International Security and Nonproliferation, US Department of State), "Remarks by Thomas Countryman: Positions for the United States in the Upcoming Arms Trade Treaty Conference", Stimson Center, Washington DC, April 16, 2012.

⁹⁴¹ Denise Garcia, "Explaining Global Norms: the Case of Negotiations on Restraining Conventional Arms", *International Negotiation* vol. 22 (2017): 395.

⁹⁴² Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 11.

⁹⁴³ Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 11.

⁹⁴⁴ Mark Bromley, Neil Cooper and Paul Holtom, "The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history", *International Affairs* vol. 88 no. 5 (Royal Institute of International Affairs, 2012): 1037.

⁹⁴⁵ Arms Control Association, "Closing the Deal on a Robust Global Arms Trade Treaty", *Issue Briefs* Volume 4, Issue 3, 13 March 2013.

number of civil society actors with considerable clout nonetheless, including the NRA in the US and their Canadian counterparts.⁹⁴⁶

Most established and emerging arms exporters, while sceptical of a strong set of regulations, did support a limited treaty that would not affect their access to technology or export markets. This group included China, Egypt, India and Russia, as well as members of the Association of Southeast Asian Nations, the Collective Security Treaty Organization and the League of Arab States.⁹⁴⁷

The co-authors' group sat in the mainstream of views, seeking a compromise that would bridge concerns of producers and users with those of affected regions. US endorsement was a key objective.⁹⁴⁸

Progressive states and most civil society actors saw the future treaty as adding more rigor to export standards. Progressive states included Norway, Mexico, the Caribbean states and the African states.⁹⁴⁹ They were looking to prohibit exports facilitating human rights and international humanitarian law violations. These states included Iceland and Finland who were pushing for wording on gender-based violence. They wanted a comprehensive treaty to include stringent HRL and IHL provisions.⁹⁵⁰ In the end, these 4 groups could not be reconciled in the final draft.

3.3.2.3 *In the corridors*

With plenary sessions taken up by states providing statements about their existing positions, progress occurred instead in informal sessions. These included break-out sessions coordinated by Vice-Presidents as well as daily off-the-books gatherings between 10pm and the early morning hours in the Indonesia Lounge.⁹⁵¹ These sessions took place without translators and without air-conditioning in cramped conditions, often to the exclusion of civil society.⁹⁵² CA representatives were partly able to circumvent this when they were included as part of national delegations. The Australian and New Zealand delegations included members of Oxfam, while CA representatives were included on various national delegations at various times during the preparatory process and the negotiating conference, for example when Roy Isbister (on the CA steering committee representing Saferworld) was included

⁹⁴⁶ Louis Charbonneau, "National Rifle Association vows to fight arms trade treaty at U.N.," *Reuters*, December 28, 2012.

⁹⁴⁷ Mark Bromley, Neil Cooper and Paul Holtom, "The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history," *International Affairs* vol. 88 no. 5 (Royal Institute of International Affairs, 2012): 1039.

⁹⁴⁸ Anna Macdonald and Duncan Green, "Power and Change The Arms Trade Treaty," *Oxfam Active Citizenship Case Study*, (Oxfam International, 2015): 4.

⁹⁴⁹ Mark Bromley et al, "The UN Arms Trade Treaty", 1037.

⁹⁵⁰ Mark Bromley et al, "The UN Arms Trade Treaty", 1037.

⁹⁵¹ Jo Adamson and Guy Pollard, "The Arms Trade Treaty", 153.

⁹⁵² Jo Adamson and Guy Pollard, "The Arms Trade Treaty", 153.

on the delegation from Palau at the 2012 negotiating conference.⁹⁵³ Anna Macdonald (coordinator of CA) was included on the delegation from Tonga at the 2013 negotiating conference.⁹⁵⁴ Ambassador Moritan was accused of “waging a war by exhaustion”, ratcheting up pressure on delegates to push hard on red lines.⁹⁵⁵ During this time, as one of eight vice-presidents, the Australian delegation consistently bridged the divide on either side of the spectrum. Australia included in its delegation a mix of diplomats and technical experts on issues such as export control systems. Its position was consistent and based on arguments that reflected deep knowledge of the complex areas overlapping in the context of a hybrid instrument merging arms control and arms flows. This built Australia’s reputation as a state with both substantive expertise and diplomatic pragmatism linking both sides of the progressive/sceptical divide. While supportive of IHL and HRL provisions, Australia was willing to compromise on issues such as the scope of the treaty, necessary to achieve a final outcome. This was most apparent on ammunition, which the US wanted excluded from the final treaty.

3.3.2.4 In capital

Within Parliament in Canberra, efforts to advocate for the ATT were led by the Labor member for Fremantle, Melissa Parke, a former UN staffer and President of the UN Grouping in Parliament.⁹⁵⁶ More than 50 Australian Members of Parliament and Senators from all major political parties supported a global petition supporting the ATT tabled on 25 June 2012 by Parke.⁹⁵⁷ Australia’s campaign for temporary election to the UNSC was reaching its peak in 2012.

3.3.2.5 In the world

During the Process, the UK’s position gravitated to the centre, in line with the remaining P5 states (the US and France) who were pushing for inclusion of certain IHL and HRL conditions on exports while maintaining state security issues.⁹⁵⁸ This change in position was evident in 2011 with the P5 statement calling for a ‘simple, short and easy-to-implement’ treaty.⁹⁵⁹ This led to the UK stepping away from its role within the co-authors group, notably posting long-standing disarmament

⁹⁵³ United Nations Conference on Arms Trade Treaty, “List of Participants,” New York, A/CONF.217/2012/INF/1 .

⁹⁵⁴ United Nations Conference on Arms Trade Treaty, “List of Participants,” New York, A/CONF.217/2013/INF/2 .

⁹⁵⁵ Jo Adamson and Guy Pollard, “The Arms Trade Treaty”, 153.

⁹⁵⁶ Melissa Parke, “Farewell Speech,” House of Representatives, *Debates*, 4 May 2016, Hansard p. 4326.

⁹⁵⁷ Melissa Parke, “Private Members’ Business: Motion to Endorse the Global Parliamentary Declaration on the Arms Trade Treaty”, House of Representatives, *Debates*, 25 June 2012, p. 7598.

⁹⁵⁸ Mark Bromley et al, “The UN Arms Trade Treaty”, 1038.

⁹⁵⁹ Mark Bromley et al, “The UN Arms Trade Treaty”, 1038.

diplomat John Duncan to the Falklands and leaving a vacuum of leadership over 6-8 months before his successor was appointed, at the lower rank of ambassador.

3.3.2.6 *In the streets*

CA organised events around the world. These included public events, notably the Global Week of Action in the lead-up to the Conference. Coordinated through IANSA, between June 11-17 2012, over 300 events were held in 90 countries to promote grassroots awareness of efforts to combat the arms trade, from football matches in Benin to documentary festivals in Mexico.⁹⁶⁰ Support from high profile advocates was amplified through the media, including messages of support from Liberian President Ellen Sirleaf.⁹⁶¹ The collective voices of parliamentarians and citizens around the world were heard through the Parliamentarians for Global Action petition signed by over 1,000 parliamentarians⁹⁶² and a global petition from ordinary citizens with over 6000,000 signatures. Both were presented to UNSG Ban Ki-Moon at the opening of the Conference.⁹⁶³

3.3.3 *Consequence: UNGA Resolution to finalise stalled negotiations*

Notwithstanding the disappointing end to talks in July, the momentum among states remained to achieve a legal instrument. On October 18, 2012, the co-authors exercised procedural expertise and astute diplomacy by introducing a draft Resolution to the UNGA's First Committee,⁹⁶⁴ subsequently adopted by the UNGA on 24 December as Resolution 67/234,⁹⁶⁵ to bank on the momentum for a treaty and continue UN efforts in 2013 to strengthen the treaty text.⁹⁶⁶ A further diplomatic negotiating conference was convened for March 2013.⁹⁶⁷ The rules of procedure were unchanged from the first Diplomatic Conference. CRP1 would be used as the baseline for talks.⁹⁶⁸ A procedural mechanism was added, namely that

⁹⁶⁰ IANSA, "Global Week of Action Against Gun Violence," <http://en.iansa.org/campaign/global-week-of-action-against-gun-violence> Last accessed April 4, 2018.

⁹⁶¹ United Nations General Assembly Press Release, "Flood of Weapons, Ammunition into Countries under Sanctions Shows Current Control Systems Do Not Work, Conference on Arms Trade Treaty Told," New York, July 12, 2012, DC3368.

⁹⁶² Parliamentarians for Global Action, "1,000 signatures for the ATT", New York/The Hague April 25, 2012. <http://www.pgaction.org/fr/news/1000-signatures-for-the-att.html>.

⁹⁶³ Helena Whall and Allison Pytlak, "The Role of Civil Society in the International Negotiations on the Arms Trade Treaty," *Global Policy* vol. 5 no. 4 (2014): 465.

⁹⁶⁴ United Nations General Assembly, *The Arms Trade Treaty*, A/C.1/67/L.11, October 18, 2012.

⁹⁶⁵ United Nations General Assembly, Resolution 67/234 The Arms Trade Treaty, A/RES/67/234, December 24, 2012.

⁹⁶⁶ Jo Adamson and Guy Pollard, "The Arms Trade Treaty", 155.

⁹⁶⁷ "The General Assembly, (...) Decides to convene in New York, from 18 to 28 March 2013, the Final United Nations Conference on the Arms Trade Treaty, to be governed by the rules of procedure adopted on 3 July 2012 (...), in order to finalize the elaboration of the Arms Trade Treaty, in an open and transparent manner, utilizing the modalities, applied mutatis mutandis, under which the United Nations Conference on the Arms Trade Treaty operated; (...)." United Nations General Assembly, Resolution 67/234 The Arms Trade Treaty, A/RES/67/234, December 24, 2012.

⁹⁶⁸ "3. Also decides that the draft text of the Arms Trade Treaty submitted by the President of the United Nations Conference on the Arms Trade Treaty on 26 July 2012 in conference room paper

the UNGA would remain seized of the ATT with a final report to be presented during its 67th Session.⁹⁶⁹ This ensured that the ATT was on the UNGA’s agenda, regardless of the outcome of the second conference.

3.4 Transition point 10: New York, April 2, 2013

The fourth and final transition point in the ATT Process, and the second point in the agreement phase, was the adoption by the majority of UNGA members of the ATT on April 02, 2013.⁹⁷⁰

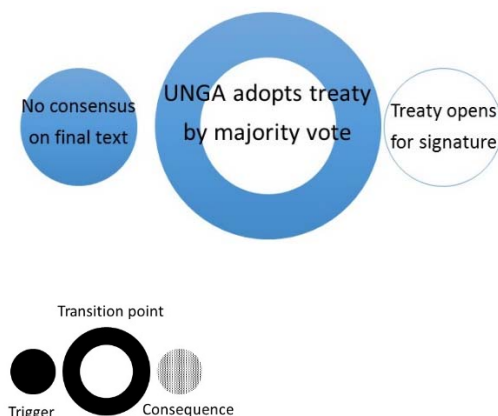


Figure 30 Transition point 10: New York, April 2, 2013

3.4.1 Trigger: consensus blocks final treaty text

From 18 to 28 March 2013, negotiators again gathered in New York. While fewer gaps remained to be filled, less time was allocated and the stakes were even higher than in 2012. A new President took over the reins during the 2013 Diplomatic Conference, Australian Disarmament Ambassador Peter Woolcott. Appointed to Geneva in 2012, Woolcott was a seasoned diplomat who had not been involved in the ATT Process until late in the seven-year process. The dynamic and at times abrasive approach adopted by Moritan over six years was crucial in clearing the path towards the ATT. Reaching the end goal required a different approach, a more conciliatory stance to bring different views together.⁹⁷¹

A/CONF.217/CRP.1 shall be the basis for future work on the Arms Trade Treaty, without prejudice to the right of delegations to put forward additional proposals on that text;". United Nations General Assembly, Resolution 67/234 The Arms Trade Treaty, A/RES/67/234, December 24, 2012.

⁹⁶⁹ "7. Decides to remain seized of the matter during its sixty-seventh session, and in doing so calls upon the President of the Final United Nations Conference on the Arms Trade Treaty to report on the outcome of the Conference to the General Assembly at a meeting to be held as soon as possible after 28 March 2013; 8. Also decides to include in the provisional agenda of its sixty-eighth session an item entitled 'The Arms Trade Treaty'." United Nations General Assembly, Resolution 67/234 The Arms Trade Treaty, A/RES/67/234, December 24, 2012.

⁹⁷⁰ United Nations General Assembly, The Arms Trade Treaty, A/67/L.58, April 1, 2013. Treaty text as contained in annex to document A/CONF.217.2013/L.3 .

⁹⁷¹ John Duncan, "The UK's role in the UN Arms Trade Treaty," *Civil Service Quarterly* Cabinet Office, Government of the United Kingdom, London (July 2013).

This contrast in diplomatic styles, between New York and Geneva, was most apparent at this phase. Ambassador Woolcott implemented a meticulously planned strategy to strengthen and consolidate the existing draft treaty while maintaining consensus as a *modus operandi* for talks and for decision-making. Switching modes of diplomacy ultimately led to a breakthrough.⁹⁷²

An example of these contrasting approaches is how drafting took place. Under Moritan in 2012, the drafting process was centralized within his team. The final draft text was a compilation of elements that Moritan felt captured an acceptable position to all. It was circulated to delegations in its entirety for the first time in the final week of talks. Under Woolcott in 2013, formal negotiating sessions were focused on three successive drafts, presented at the start of each of the three weeks of the conference, with Woolcott and his team dividing their time between open sessions and bilateral meetings with hold-out states. Compromise wording was finessed with outlier states and in collaboration with 11 facilitators who coordinated informal meetings on the main points of disagreement.⁹⁷³

3.4.2 Transition point: treaty adopted in the General Assembly

The fourth transition point in the ATT Process was the ATT's adoption by the UNGA on April 2, 2012.⁹⁷⁴ Only three voted against, Iran, Syria and the DPRK.⁹⁷⁵

3.4.2.1 *At the table*

Between December 2012 and March 2013, Ambassador Woolcott consulted extensively in New York and Geneva, regionally at African Union headquarters in Addis Ababa, Ethiopia and bilaterally in a number of capitals.⁹⁷⁶

In parallel with outreach efforts, legal scrubbing of CRP1 also took place.⁹⁷⁷ Woolcott's team included senior Australia public servants and expert lawyers from DFAT seconded from the Australian delegation to assist the Conference. Temporary increases in staffing at post in New York as part of the Australian UNSC bid had also resulted in a breadth of expertise at the disposal of the mission. Australian diplomats attended all of the separate work stream and meetings during the first

⁹⁷² John Duncan, "The UK's role".

⁹⁷³ Matthew Bolton and Katelyn E. James, "Nascent Spirit of New York", 441-42.

⁹⁷⁴ United Nations General Assembly, The Arms Trade Treaty, A/67/L.58, April 1, 2013. Treaty text as contained in annex to document A/CONF.217.2013/L.3,

⁹⁷⁵ UN News, "UN General Assembly approves global arms trade treaty", April 2, 2013.

⁹⁷⁶ Statement by H.E. Ambassador Peter Woolcott, President-designate of the Final United Nations Conference on the Arms Trade Treaty, To The Meeting of African Members of Parliaments on "Addressing the Illicit Trade in Small Arms and Light Weapons: Supporting an Arms Trade Treaty" Windhoek, Namibia 7-8 March 2013.

⁹⁷⁷ Jo Adamson and Guy Pollard, "The Arms Trade Treat", 157.

negotiating conference.⁹⁷⁸ Woolcott also kept on US export systems expert Rachel Stohl and UK disarmament diplomat Guy Pollard, both of whom were part of Moritan's team since the GGE and held the institutional memory of six years of concerted effort.

Woolcott and his peers at the Department of Foreign Affairs and Trade (DFAT) were well versed in bridging the divide between their close US allies and more progressive countries, such as near neighbour New Zealand.

At the conferences in 2012 and 2013, the same divide existed between progressive states and sceptical states on scope and prohibitions on transfers.⁹⁷⁹ However, with these differences brought to light under Moritan's stewardship, Woolcott could then step in to craft compromises.

Using the CRP1 as a detailed and generally acceptable baseline, Ambassador Woolcott and his team announced that they would produce one draft text per week over three weeks, which they did.⁹⁸⁰ This led to a strengthened third and final text by the final days of the Conference, which delegates would either have to adopt or abandon.⁹⁸¹ The text had broad support and was described by Woolcott as leaving all sides uncomfortable, where concessions were made by all in a finely poised balance between trade-offs in one area and gains in another.⁹⁸²

In the final plenary, Iran, Syria and the DPRK blocked consensus because the treaty did not ban arms exports to rebel groups.⁹⁸³ This led to a last-minute initiative from Mexico, who proposed that the ATT be adopted 'by consensus' despite these three votes against, on the grounds that the United Nations had no established definition of consensus. This was opposed by Russia.⁹⁸⁴ Some

⁹⁷⁸ According to participant lists for the 20 meetings that took place during the substance phase of the ATT Process, available at the United Nations Office of Disarmament Affairs (UNODA)'s website: www.un.org/disarmament/att/2013-conference/2013-att-documents/.

⁹⁷⁹ For example, the "7+1" formula on scope was both a concession for sceptical states who had wanted to exclude small arms and light weapons (the "+1" on top of the UNROCA's seven categories of conventional weapons) and a concession for progressive states who had been pushing for ammunition, parts and components to be subject to the same provisions as the "7+1". Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 58.

⁹⁸⁰ Matthew Bolton and Katelyn E. James, "Nascent Spirit of New York", 441.

⁹⁸¹ Stuart Casey-Malen, "Take it or leave it, Wednesday March 27, 2013", Arms Trade Treaty Blog, <http://armstradetreaty.blogspot.ch>. Blogsite hosted by the Geneva Academy of International Humanitarian Law and Human Rights and the Oxford Martin School Programme on Human Rights. Last accessed March 18, 2018.

⁹⁸² As Woolcott put it, "(...) the text could not have been any stronger while still holding the disparate interests in the room together." Matthew Bolton and Katelyn E. James, "Nascent Spirit of New York", 441.

⁹⁸³ Library of House of Commons, United Kingdom, "The Arms Trade Treaty," Standard Note SN05802, 21 Nov 2014.

⁹⁸⁴ Stuart Casey-Malen, "A Sign of the Times? Monday June 3, 2013", Arms Trade Treaty Blog, <http://armstradetreaty.blogspot.ch>. Blogsite hosted by the Geneva Academy of International Humanitarian Law and Human Rights and the Oxford Martin School Programme on Human Rights. Last accessed March 18, 2018.

diplomats, and many NGO campaigners, were quick to critique consensus at this point, with #consensusfail trending on Twitter on the evening of March 28th.⁹⁸⁵ Instead, the path forward for the ATT was adoption by a majority in the UNGA. On Tuesday 1 April 2013, at a special session of the UNGA, 70 states co-sponsored the UNGA Resolution for the ATT to be put to vote for adoption by majority. The ATT was adopted by an overwhelming majority, with only three votes against –Iran, Syria and DPRK.⁹⁸⁶ This procedural move was reminiscent of the endgame on negotiations on the Comprehensive Test Ban Treaty (CTBT) which had included Peter Woolcott in the Australian delegation. When CTBT negotiations collapsed in the Conference on Disarmament in Geneva following India blocking consensus, Australia submitted the treaty text in New York as an attachment to a resolution adopting the treaty and called on states to sign it.⁹⁸⁷

Compared to CRP1, the 2013 ATT was strengthened in two key areas.⁹⁸⁸ First, a loophole introduced by India in 2012 had been closed off. States would no longer be able to invoke “defence cooperation agreements” to avoid ATT obligations.⁹⁸⁹ Second, risk assessment was broadened to take into consideration IHL, HRL and terrorism conventions plus diversion and gender-based violence.⁹⁹⁰ The 2013 text was also diluted somewhat, with references removed to corruption and development in authorizing arms flows.

3.4.2.2 *In the room*

Ambassador Woolcott was committed to consensus as a mode of negotiation and of decision-making, where predictability and communication would create “an open and transparent process towards a consensus outcome.”⁹⁹¹ To this end, his extended web of vice-presidents and facilitators took carriage of different aspects

⁹⁸⁵ Stuart Casey-Malen, “Iran, North Korea, and Syria shoot down the ATT ... but only for now, Thursday March 28, 2013”, Arms Trade Treaty Blog, <http://armstradetreaty.blogspot.ch>. Blogsite hosted by the Geneva Academy of International Humanitarian Law and Human Rights and the Oxford Martin School Programme on Human Rights. Last accessed March 18, 2018.

⁹⁸⁶ Of the top ten arms exporters, the US and the UK were co-sponsors and Germany, France, Spain, Italy, Ukraine and Israel voted in favor. However, most other major and emerging military powers abstained, including China, Russia, India, Egypt and Saudi Arabia. Matthew Bolton and Katelyn E. James, “Nascent Spirit of New York”, 441.

⁹⁸⁷ Matthew Bolton and Katelyn E. James, “Nascent Spirit of New York”, 449.

⁹⁸⁸ As a civil society commentator has stated, “with the benefit of 20-20 hindsight, the US hold-out in 2012 led to a much stronger treaty outcome”. Stuart Casey-Malen, “One more push in the UN or shall we do it right?” Thursday July 28, 2012”, Arms Trade Treaty Blog, <http://armstradetreaty.blogspot.ch>. Blogsite hosted by the Geneva Academy of International Humanitarian Law and Human Rights and the Oxford Martin School Programme on Human Rights. Last accessed March 18, 2018.

⁹⁸⁹ Jo Adamson and Guy Pollard, “The Arms Trade Treaty”, 156.

⁹⁹⁰ Stuart Casey-Maslen et al, *The Arms Trade Treaty*, 177.

⁹⁹¹ Peter Woolcott, “Statement to the UN General Assembly by the President of the Final United Nations Conference on the Arms Trade Treaty”, New York, April 2, 2013.

of the treaty. To underpin this division of labor, Woolcott divided up his small team of advisers between plenaries and bilaterals and between scepticals and spoilers (where Woolcott focused) and progressives (other team members). All were equipped with daily talking points in order to ensure consistency. Consensus would prove as elusive for Woolcott as it had been for Moritan. When the final draft text was opposed by three outlier states on the final day of the conference, Ambassador Woolcott was in a position to activate the “eclipsing” of consensus and open the way to a majority adoption of the treaty. The legitimacy of this tactic was grounded in the concerted efforts to negotiate by consensus until then.

The UN Resolution which had set up the Second Conference included a procedural mechanism to enable a future treaty to be brought directly to the UNGA if consensus was not possible. When this played out, President Woolcott invoked the Plan B, or “off ramp”, to put the treaty to a vote at the UNGA.

This required concerted action from co-authors and key allies, notably from progressive states and civil society, to table a draft resolution at the end of the Conference and then secure as many co-sponsors over four days in order to introduce Resolution A/67/L.58 and secure the ATT’s adoption by majority vote in the UNGA at a special session.⁹⁹²

At the closing session of the Conference, Kenya on behalf of the co-authors, plus Mexico, New Zealand, Nigeria, Norway and the US, circulated the draft Resolution. The following Tuesday 2 April, 75 states co-sponsored the Resolution with the draft text in annexe. The ATT was then adopted.⁹⁹³

3.4.2.3 In the corridors

CA and its partners were adept at working the corridors to garner support and shape positions of particular regional groupings. For example, the Africa Group’s change in direction from a mainstream position to a progressive position on human rights was seen to be a consequence of lobbying from civil society and churches, Control Arms and other maximalist states.⁹⁹⁴ An innovative tool was developed by CA and Reaching Critical Will, the disarmament body of the Women’s International League for Peace and Freedom (WILPF) to aid campaigning efforts in the corridors. This was the ‘Arms Trade Treaty Negotiation Mapping Database’, which tracked

⁹⁹² United Nations General Assembly, The Arms Trade Treaty, A/67/L.58, April 1, 2013. Treaty text as contained in annex to document A/CONF.217.2013/L.3,

⁹⁹³ United Nations Secretary-General, “Statement: Secretary-General’s Statement on the adoption of the Arms Trade Treaty,” New York, April 2, 2013.

⁹⁹⁴ Matthew Bolton and Katelyn E. James, “Nascent Spirit of New York”, 445.

national positions and voting patterns for each UN member state.⁹⁹⁵ This resource helped local-level campaigners develop tailored approaches to their governments and also assisted the co-authors and progressive states, and quite possibly other coalitions, to develop strategies to identify spoilers and find potential allies.

3.4.2.4 In capital

In the lead-up to October 2012 elections for the temporary seat at the UNSC, Australia's delegation in New York was focused on garnering extra support for Canberra's bid. PM Gillard's address to the UNGA in September 2012 reinforced Australia's UN credentials as a state committed to "high ideals and practical progress," referring for example to the development of new norms within the UN to prevent atrocities.⁹⁹⁶ This was one area of focus of the ATT, with elements of IHL and HRL infused within the treaty to stop the flow of arms to perpetrators of atrocities.⁹⁹⁷ With Australia's Disarmament Ambassador Woolcott as President-designate from September onwards, and Australia's UNSC term commencing on January 1, 2013 after election in October 2012, Canberra continued to support the participation of delegations from the Asia Pacific, the Caribbean and Africa to attend the final Diplomatic Conference while also ensuring a full complement of staff covered Australia's UNSC mandate. This meant that extra resources were on hand to dovetail in with Ambassador's Woolcott role as President of the Conference and also to fully staff Australia's delegation to the final conference, under Australia's UN Permanent Representative in New York, Gary Quinlan.

3.4.2.5 In the world

US elections in November 2012 had returned President Obama for a second term, with the Democrats retaining a majority in the Senate and the Republicans retaining a majority in the House of Representatives. While the re-election of Obama freed up space for the US to pursue the ATT away from the spotlight of domestic interest groups such as the NRA who had put pressure on the US position during the July 2012 Diplomatic Conference, Republican control of the House foreshadowed that the US would be unlikely to ratify the ATT in the short term.

⁹⁹⁵ The database used States' submissions from 2007-2012, as well as official statements during UN debates, in the OEWG, in the preparatory process and during diplomatic conferences. <http://armstreaty.org/> Last accessed 29 March 2018.

⁹⁹⁶ Julia Gillard, "Statement by The Hon Julia Gillard MP, Prime Minister of Australia at the 67th Session of the General Assembly of the United Nations," New York, September 26, 2012.

⁹⁹⁷ **Article 6** Prohibitions 'State party shall not authorize any transfer if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions, attacks directed against civilian objects or civilians, or other war crimes defined by international agreements to which the State is a party.'

3.4.2.6 *In the streets*

With the momentum behind an ATT indicating that a result was likely in March 2013, civil society focused on providing support to state delegations, through the provision of pro bono legal advice through the ATT Legal Response Network and by circulating and presenting detailed commentary on the draft treaty (CRP.1) which would carry over from the first to the second negotiating conference.⁹⁹⁸

3.4.3 *Consequence: Treaty signature*

On 3 June 2013, the ATT opened for signature in New York. Angela Kane, the UN High Representative for Disarmament, opened by stating that the ATT was a "robust treaty", paying tribute to Ambassador Woolcott's "outstanding stewardship".⁹⁹⁹ 67 states signed in New York between 3-5 June 2013. The US signed on 23 September 2013 as the 91st state to do so. 19 months after it was opened for signature, the treaty entered into force on 24 December 2014, 90 days after eight countries deposited their ratifications and the treaty reached its threshold of 50 ratifications.¹⁰⁰⁰ Since then, the ATT has grown to 131 signatories, with Palestine admitted as a state party on March 29, 2018.¹⁰⁰¹

The 2014 entry into force of the ATT, under two years after it was opened for signature, reflects the instrument's high profile and strong support from a broad coalition of states, particularly within Europe, Africa and the Americas.¹⁰⁰² In the absence of any other multilateral rules on arms transfers (except in the niche area of the illicit trade in firearms), any addition would have added substantively to the arms trade regime. With the inclusion of IHL and HRL conditions, the ATT reaches beyond arms control and into the humanitarian space.

4. Trends and Patterns

This chapter has argued that three 'in capital' factors aligned in Canberra and led to a championing stance. This chapter argues that this strategy includes three features, working in coalition with the co-authors and civil society, contributing technical and procedural expertise, and creatively circumventing hurdles.

⁹⁹⁸ Helena Whall and Allison Pytlak, "The Role of Civil Society," 461.

⁹⁹⁹ Stuart Casey-Malen, "A Sign of the Times? Monday June 3, 2013", Arms Trade Treaty Blog, <http://armstradetreaty.blogspot.ch>. Blogsite hosted by the Geneva Academy of International Humanitarian Law and Human Rights and the Oxford Martin School Programme on Human Rights. Last accessed March 18, 2018.

¹⁰⁰⁰ *Arms Trade Treaty*, New York, 24 December 2014, United Nations Treaty Series, Registration Number 52373.

¹⁰⁰¹ See United Nations Treaty Series for up-to-date list of signatories and states parties. *Arms Trade Treaty*, Registration Number 52373.

¹⁰⁰² Sibylle Bauer and Mark Bromley, "Dual use and arms trade controls: the Arms Trade Treaty," *SIPRI Yearbook 2015* (Oxford: Oxford University Press, 2016): 616.

This chapter has demonstrated the utility of a multi-layered approach to analysing diplomatic contexts, where negotiations are broken down into three phases, from commitment to substance and then agreement. As is the case for this chapter, when talks do not proceed as planned – two diplomatic conferences rather than one originally foreshadowed – this analytical approach provides a clear point of comparison to compare and contrast how negotiations evolved.

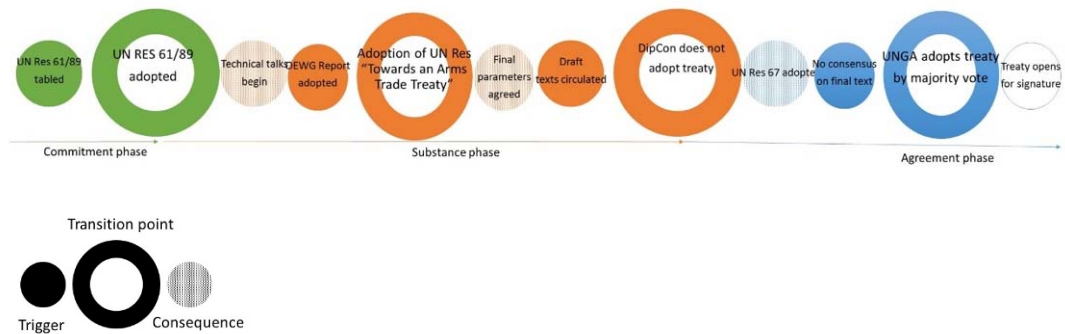


Figure 31 Transition points in the ATT Process

4.1 When do states engage in negotiating processes in conventional weapons?

Examining Australia’s consistent and sustained commitment to the ATT Process over seven years and five successive governments of different stripes, three perspectives shine a light on this continuity through change. The ATT Process advanced changing political objectives, while tapping into Australia’s expertise and legacy on negotiating weapons systems. Canberra’s partnerships were strengthened through Australia’s role as trusted broker between UN members.

4.1.1 Bipartisan politics

Politically, one of the hallmarks of Howard’s Conservative government had been its strong reaction on gun regulation following the Port Arthur massacre. Under Rudd’s Labor government, reviving Australia’s multilateralist credentials was a top priority from the beginning of Labor’s terms in government. Both of these political ‘flags’ were consistent with the outcomes being pursued in the ATT Process.

From an arms control perspective, tighter international rules echoed Howard’s domestic legislation. From a multilateral perspective, pursuing rules to curb the effects of the arms trade on international peace and security sat neatly within Australia’s ambitions under Rudd for election to the United Nations Security Council (UNSC). While the successful election was a feather in the cap for Rudd’s Labor government, Abbott’s Liberal government claimed a handsome trophy during Australia’s tenure on the UNSC through Foreign Minister Bishop’s authoring of the Council’s First Resolution on small arms and light weapons.

4.1.2 Legacy policy pathways

From a policy lens, the ATT Process navigated a steady path, juggling both sides of Australia's foreign policy coin: security and trade. Canberra's legacy of technical expertise in proliferation and control mechanisms had a compelling overlap with the end outcome of an arms trade treaty which would tread a middle ground of incremental steps towards tighter regulation, rather than an abrupt departure from the existing status quo such as banning a category of weapon such as landmines or cluster munitions. Australia's legacy, and fully resourced staff with the requisite competencies and skills, were critical to tackle the complexity and detail required to develop export and import control measures. Australia's preference for incrementalism on weapons, plus the UN-grounded negotiating process, suited the ATT pathways from its beginnings at First Committee in 2006.

4.1.3 Fit-for-purpose with close partners

In terms of partnerships and Australia's place in the world, Canberra was neatly placed to mediate between the different UN Member states shaping the ATT Process. As a close military ally of the US and significant importer of American conventional weapons, Australia had easy channels of communication to Washington and was a trusted ally of a state that was at the heart of the ATT Process and whose presence was a condition sine qua none of progress.

Firmly anchored in a strong alliance with Washington, Australia was also at the heart of the co-author's group. Its ties with the UK had secured Canberra's place in the core group from the beginning of the ATT Process. Equally, Australia had the ear of progressive states such as neighbour New Zealand. Through financial support, Canberra sought to guarantee broad state participation from the Pacific, the Caribbean and Africa. Australia's sustained commitment in terms of resources, financing and expertise over seven years earned the credibility and trust of the group and of UN member states more broadly, such that the Disarmament Ambassador Peter Woolcott was able to step in when the treaty failed to garner consensus and get it over the line at the second attempt.

4.2 How do states shape negotiating processes?

The analysis of the four transition points in the ATT Process has shown three aspects of Australian diplomatic activity contributed to shepherding a complex technical instrument through the UN's disarmament machinery.

Australia brought to the co-authors group procedural expertise, committing diplomatic and technical resources from beginning to end and partnered with other states and civil society in a fluid coalition of actors to ensure that consensus did not

prevent the emergence of a final treaty. These three elements – procedural expertise, sustained diplomatic commitment and coalitions - underpinned Australian efforts to support the UK as lead state in the first stages of the ATT process, and were key in achieving an outcome in the end-game of negotiations when the first diplomatic conference failed to reach consensus.

4.2.1 Evolving coalitions

Over the course of the three phases of the ATT Process, different forms of coalition evolved to account for the shifts in centres of gravity from building political commitment, to developing substantive solutions, and garnering agreement. Australia was present from the beginning, from when the initial co-author's group hammered out the first resolutions, to the country groupings driving the GGE and OEWG processes that covered technical and legal negotiations, to the "Friends of the Chair" group supporting Ambassador Moritan in 2012, right through to the heart of the 2013 Conference under Diplomatic President Peter Woolcott. Throughout the seven-year process, the Australian delegation helped draw in allies from civil society to the different coalitions it participated in, recognising that they could help plug technical, procedural and diplomatic gaps. They also provided financial support to CA and its partners to make participation of smaller delegations possible and. Dividing up tasks among eclectic groupings led to a highly-efficient process which progressed faster than typical UN processes do, skipping for example the last two of six preparatory committee inter-sessionals and proceeding to negotiate ahead of schedule through the quality and pace of substantive work undertaken in New York.

4.2.2 Long-term investments in technical and diplomatic expertise

The ATT Process proceeded at a fast pace by New York standards. Each step was firmly anchored in the UN's practices, where states were invited to submit their views at every step and with experts put forward through state nominations to pilot first the GGE and then the OEWG processes. The preparatory technical work took less time than originally planned in UN Resolutions, reflecting the quality of contributions from technical experts and state diplomats between 2006-09. Substantively, Australia submitted more national statements than any other state, including co-authoring and co-sponsoring all four UNGA Resolutions. Australia's consistent allocation of both technical and diplomatic practitioners at this time, and indeed throughout the process, contributed towards substantive progress and maintaining the delicate balance required in a consensus-driven environment.

4.2.3 Procedure-driven progress

In addition to the contributions flagged in the previous section, Australia also contributed procedural expertise as a vice-president of the technical and then preparatory processes between 2006-12, and as a Friend of the Chair, and one of eight vice-presidents, during the first Diplomatic Conference. Australia's procedural expertise was most prominently in play during the second and final Diplomatic Conference, when Ambassador Woolcott took on the conference presidency and shepherded through the final drafting process and expertly led the alternative, majority UNGA route when three states prevented the adoption by consensus of the ATT. This move, foreshadowed by the co-authors when drafting the UN Resolution which led to the final Diplomatic Conference, echoed the approach taken on the 1996 CTBT. The delicate task of following consensus – Washington's sine qua non – while keeping the door open, albeit the back door, on the UNGA as a majority voting forum for treaty adoption, was well executed by Woolcott in the mould of the CTBT, with this time around, a much more successful outcome – namely, the ATT's entry into force within 18 months of opening for signature, unlike the CTBT which is yet to enter into force. Following in a series of set steps and phases, as articulated and adopted in UN Resolutions, created predictability and trust for the outlier states – weapons producers and users – and bought them time to buy in to the process. The meticulous process from Resolution to GGE and then to OEWG, between 2006 and 2009, also allowed for progress to be made on the ATT when Washington was opposed to it under the Bush Administration, so that upon change of government under President Obama, the building blocks had been laid for a swift uptake from then onwards. Procedural options again helped steer the process away from the failure of the first conference and onto the path of a second conference, with an in-built mechanism to go to the UNGA as required.

~~ This chapter was the third case study in this thesis, examining Australia's championing of the ATT Process. The next chapter now turns to cases of blocking and sidelining in the case of all three states examined thus far.

CHAPTER 6. BLOCKING AND ON THE SIDELINES

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Chapter 6. Blocking and on the sidelines

The previous chapters examined three cases of state championing in three treaty-making processes. The focus of this chapter is to examine cases where states did not champion processes. Canada's championing of the Ottawa Process on landmines (APLMs) contrasts with its blocking and 'sitting on the sidelines' approach on cluster munitions and the arms trade. New Zealand's instrumental role in the successful negotiation of the Oslo Process was preceded and followed by sitting on the sidelines of negotiations on APLMs and the arms trade. Australia shepherded the Arms Trade Treaty (ATT) Process through to a successful outcome, despite having blocked codification of weapons in previous cycles.¹⁰⁰³

This chapter argues that these contrasting postures can be traced to changes in Ottawa, Wellington and Canberra. It examines how championing states in one process adopt blocking or 'on the sidelines' strategies in other processes. The chapter situates these changes in the external context, at the "in capital" level.¹⁰⁰⁴

The chapter proceeds in four sections. The first section is a typology of two diplomatic strategies, blocking and 'sitting on the sidelines'. The following three sections look in detail at Canada, New Zealand and Australia, tracing their pursuit of both strategies over ten transition points. Each section examines why each capital did not champion, and how they shaped negotiating processes. The "in capital" level is broken down into three component parts, namely domestic politics, external policy and strategic partnerships. In all three cases, changes of government occurred in parallel with changing diplomatic strategies, which had a notable effect in Canada and New Zealand, but not in Australia.

Changes in policy direction, linked to shifts in security and trade environment, also influenced how all three engaged in treaty-making. Relations with partners, notably with the US as a military partner of all three and with the UN as the preeminent multilateral forum, also shaped blocking and sitting on the sidelines in line with Washington's preferences and the UN's negotiating agendas.

This chapter concludes by identifying trends and patterns across all three cases to show how domestic politics, external policy and strategic partnerships shape blocking and sitting on the sidelines strategies in treaty-making.

¹⁰⁰³ The findings that form the basis of this chapter have been published in abridged format by the author, see Timothea Horn, "Different diplomatic tracks to disarmament", *Négociations* n. 29 (2018): 21-38.

¹⁰⁰⁴ The other layers of the external negotiating context for each negotiating cycle – "in the world" and "in the streets" – have been extensively covered in the preceding case study chapters.

1. Context in capital

Domestic politics, external policy and strategic partnerships are three core elements of the “in capital” negotiating context that shape the negotiating mandate that states bring to the negotiating table. While previous chapters have examined how those factors led to a championing posture, this chapter instead turns to two contrasting strategies – blocking and sitting on the sidelines. “In capital” factors equally shape these forms of diplomatic activity. This chapter shows an overarching theme of differentiation in capitals, of rupture between political predecessors and successors, as a key factor in changes to policy and relations with partnerships leading to blocking and sitting on the sidelines strategies on conventional weapons treaty-making. This is summarised below.

1.1 Domestic politics

When governments adopt a blocking or ‘on the sidelines’ strategy, this can serve to mark a rupture with championing by political predecessors. This change in posture follows the cleavages that tend to exist between left-of-centre and right-of-centre politics, such as a predisposition for a form of diplomacy (multilateral vs bilateral) or for issues (foreign affairs and development vs trade and security). When Conservative governments took office in Canada and New Zealand, both Ottawa and Wellington adopted blocking or ‘sitting on the sidelines’ strategies on conventional weapons treaty-making talks. In contrast, they adopted championing strategies under Liberal/Labor governments that preceded or succeeded them.

In the case of Canada, Conservative PM Harper was seeking to distance himself from his predecessor’s trademark multilateral disarmament initiative, the Ottawa Treaty, and the broader human security policy that also had ties with small arms and light weapons regulation. His electoral base on the West Coast of Canada, traditionally conservative and trade oriented, was less persuaded by the internationalist projection of Canadian identity that predominated on the East Coast and in Quebec. The blocking strategy adopted on the Oslo Process and the benign ‘sitting on the sidelines’ stance in the ATT Process, which he did not sign, were both products of this break from the past.

For New Zealand, Nationals Bolger/Shiple and Key were both also engaged in breaks with the past. Labor’s David Lange and Helen Clark, predecessors to National’s Bolger/Shiple and Key, were both strident anti nuclear voices. Departing from the course set by both was crucial in order to bring Wellington closer to Washington, which has been a key foreign policy objective of NZ’s prime

ministers since the 1990s. Clark, too, was set on this course yet was also open to challenging US views when it mattered, for example in the case of cluster munitions, which coincided with a Democratic presidency.

In Australia, two outlier cases were illustrated. On APLMs, a change in government saw the Coalition publicly support the Ottawa Process in contrast with their Labor predecessors. This coincided with the final phase of talks as a negotiated outcome appeared inevitable, which suggests a cautious approach to interpreting this change in stance. In the case of blocking and the Oslo Process, a steady course was maintained as both parties alternated in government.

1.2 External policy

Changes in policy on arms control and disarmament also flowed on from changes in political stripes. In Ottawa and Wellington, diplomatic resources were significantly reduced through restructuring and budget cuts to DFAIT and MFAT. Expertise and resources were reprioritised to trade deals, such as the TPP (for Wellington and Ottawa) and the Keystone Pipeline (Ottawa). In both Australian examples, outliers again in this chapter, Australia's policy preference for negotiations to occur within UN forums was consistent across party-lines and reflected Australia's long-standing legacy of technical expertise in negotiating complex arms control instruments.

1.3 Strategic partnerships

The third element to the "in capital" context, partnerships, is also a shaping factor in negotiating strategies adopted at the table. The common theme in capital across all three cases of blocking was the relationship with Washington. Alignment with the American position led to the commitment of diplomatic resources to actively engage in a blocking stance. In contrast, all three 'sitting on the sidelines' strategies tended to go against Washington's direction without any particular consequence given they led to inconspicuous presence in the room. Trade relations, in the form of the TPP (in the case of all three capitals), as well as the significant arms flows (in the case of Ottawa and Canberra), were never far from consideration for politicians and policymakers when it came to setting a course during multilateral talks. A particular approach at the negotiating table was always measured in capital against the impact it would have on the bilateral relationship. On the multilateral stage, while campaigns for election to the UNSC are a common marker for championing strategies, they also appear to have an impact on sitting on the sidelines, with the case of Canada's failed bid to the Council led Harper to a distancing from the UN.

2. Blocking and on the sidelines as diplomatic strategies

Turning now to the internal negotiating context, the diplomatic strategies of blocking and sitting on the sidelines involve different forms of diplomatic activity during different phases of negotiations at different layers of context.

2.1 Blocking

Three examples of blocking strategies emerged from the three cases in this thesis, namely Australia on the Ottawa and Oslo Processes, and Canada during the Oslo Process. Three characteristics were identified, namely regime shifting as the intended outcome, investment in diplomatic resources and coalition-building.

First, in all three cases, the intent of the blocking strategy was to shift the focus of negotiations to a different negotiating forum. The aim was not to block progress on talks to regulate a particular category of weapon, but more to shift focus towards an alternative venue. For the case of APLMs and cluster munitions, the alternative venues preferred by some states were the CCW and the Conference on Disarmament, which were entrenched within the UN. But the processes that eventually prevailed, the ad hoc Ottawa and Oslo Processes, because they were conducted separate to the UN's machinery, were able to adopt decisions by majority, include weapons-affected states and could accommodate arms control and IHL provisions. In contrast, the CD and the CCW included weapons producers and exporters, operated on the rule of consensus decision-making and were designed with specific instruments, namely arms control measures for the CD and optional protocols with IHL elements for the CCW. The overarching point of difference between ad hoc processes and UN forums was however that while the latter favoured incremental measures which would be acceptable to a broad, lowest-common-denominator membership, the former had more scope to be progressive in nature and to aim for a high watermark.

Second, the pre-conditions for blocking were the allocation of resources and expertise to sustain diplomatic activity in multiple streams, often at the same time. Pursuing a blocking strategy meant a doubling in effort, as states maintained a presence in both processes to manage and counteract the pace of progress across streams of work. While each state had a permanent presence in Geneva, at the CD and in the CCW, participation in the Ottawa and Oslo Processes required an intense workload and travel calendar with meetings organised around the world in short periods of time. Blocking therefore had a cost impact.

Third, coalition-building was a key feature of the blocking strategy in two cases, via the Like-minded group in the Oslo Process. This disparate group of a dozen states were attempting to divert talks away from the Oslo Process for different reasons, either to protect their weapons arsenals from a ban (France, Germany, the UK) or to avoid issues of operational incompatibility with military partners who deployed cluster munitions (US allies including Australia and Canada). The Like-minded group straddled both UN processes and the Oslo Process. These states had publicly committed to take action on cluster munitions, which ultimately left them no option when the CCW track stalled but to negotiate the Convention on Cluster Munitions in Dublin. The main force of the coalition was in presenting a small but influential voice of caution to slow down the Oslo Process as it was seeking to push for a maximalist scope and strong ban in the first phases of talks. The Group was out-manoeuvred in Wellington when their propositions for changes were relegated to an annexe to the draft negotiating text. The Group was most visible when it co-authored a statement in protest against the forceful tactics adopted in Wellington by civil society. The Like-Minded group was a force multiplier for the agendas of its members in the early stages of talks, on the controversial topic of interoperability in the case of Ottawa and Canberra, yet this potency was lost as the influential voices of London, Paris and Bonn pursued a softer stance once they had secured provisions to protect their weapons.

2.2 On the sidelines

Three examples of 'on the sidelines' were identified in the set of three cases examined in this thesis, namely New Zealand on the Ottawa and ATT Processes and Canada on the ATT Process. This 'low maintenance' strategy, of remaining on the sidelines and 'keeping the seat warm', was pursued with varying intended outcomes and requiring modest resources with little strategic risk at play.

Sitting on the sidelines in all three cases required little commitment of resources and did not jeopardise significantly any bilateral or regional relationships. It can be seen as a low-risk, low-maintenance approach that kept states present among peers on the multilateral stage at little cost.

On the Ottawa Treaty, Wellington was broadly sympathetic to the Ottawa Process however their attention was diverted to the nuclear file which was being prosecuted within the CD after New Zealand successfully applied for membership. This particular case reflects mainly the limitations on small states and the choices that are required when prosecuting issues on the multilateral stage.

The ATT Process and its two cases of sitting on the sidelines are illustrative of a more compelling system at play. The strategies adopted by New Zealand and Canada share two features. A treaty at all cost was not a desired outcome for either, and both engaged closely with civil society. The significant difference was that Wellington's ambassador was pursuing a progressive agenda under-the-radar of a disinterested minister in capital, while Ottawa was appealing to interest groups at home for electoral gain using an international platform to amplify their message.

Wellington and Ottawa's benign presence was directed towards different outcomes. On the ATT, while Wellington's Disarmament Ambassador signalled that no treaty was better than a weak treaty, the view from Ottawa was also that no treaty was acceptable, but in their case, preferable to a strong treaty.

In both cases, both states were tied to NGO efforts. Wellington's Ambassador Higginson was actively strategizing with progressive voices such as Norway and CA to ensure a strong regulatory approach was taken on scope and IHL/HRL provisions.¹⁰⁰⁵ In contrast, Ottawa's official delegation to the ATT included a steady presence of the National Firearms Association (NFA) to the exclusion of representatives from the disarmament group Project Ploughshares who had historically also been included. The two key planks of the NFA overlapped with the official Canadian position during the ATT Process, namely that Canada's national standards on export systems exempted Ottawa from further regulation and that domestic firearms owners should be protected from international rules.

The divergence in intent between both 'on the sidelines' strategies was striking. Ambassador Higginson of New Zealand was a significant individual voice in the ATT Process during substantive debates and left her mark at a personal level. One individual from a small state in a forum of 193 states over seven years has limited ability to influence, particularly in the absence of top-down political support or resources beyond a small permanent presence in Geneva. Yet Ambassador Higginson's progressive voice at the ATT negotiating table did contribute to the overall process, as recognised by Oxfam New Zealand. Ottawa's influence was marginal and served mainly to echo the position of the National Firearms Association. This position, identical to their National Rifle Association (NRA) counterparts across the border, was built on a flawed argument. The scope of the ATT was always on import and

¹⁰⁰⁵ In two areas, on the nature of overriding vs substantial risk and the inclusion of munitions and ammunition, New Zealand's Declaration appended to the Treaty stated that Wellington would adopt a strong interpretation of both, namely applying substantial risk and covering both munitions and ammunition. See "Declaration Made Upon Ratification – New Zealand," *Arms Trade Treaty*, New York, 24 December 2014, United Nations Treaty Series, Registration Number 52373. See page 10.

export flows of weapons, with no flow-on effects for domestic owners. This had been clear all throughout the seven-year process and yet was a steadfast refrain, either disingenuously or through ignorance.

While Ambassador Higginson's role in the ATT Process highlights that individuals with expertise can engage and influence debates, Ottawa's role highlights instead how multilateral platforms can be manipulated for domestic, political agendas.

3. Canada, blocking and on the sidelines (2003-2013)

This section examines how changes in Ottawa shaped Canada's change in approach from a championing posture in the Ottawa Process on APLMs to a blocking and sidelines posture on both the Oslo and ATT Processes.

3.1 Why didn't Ottawa champion?

Since the 1990s, Canada's conventional weapons diplomacy reflected the divide between Liberal Jean Chretien (and his successor Paul Martin) and the Conservative Steven Harper. Contrasting Canada's activist role during the Ottawa Process with its attempts to block progress on the Oslo and ATT Processes, key differences emerge in domestic politics, external policy and strategic partnerships. Regulating cluster munitions and on the arms trade was not high on Canada's international agenda in Geneva or in New York. Rather, under Harper, Ottawa took a back-seat position. This shaped Canada's blocking during the Oslo Process and Ottawa's 'sitting on the sidelines' during the ATT Process.

This section examines how the mandates of conservative Prime Minister Stephen Harper moulded domestic politics, policymaking and alliances in Ottawa, and by extension Ottawa's engagement on cluster munitions and the ATT. This reset reflected the prioritisation of trade and domestic interest groups under Harper, as well as an overt demarcation from Liberal predecessors and their internationalist, human security-oriented foreign policy. This section outlines the policies adopted, which are then explored over seven transition points.

3.1.1 Conservative politics

The Liberals' first 3-year term in government under Chretien was extended by five years over two elections, with consecutive majority governments.¹⁰⁰⁶ The Liberal Paul Martin then led a minority government for the last two years,¹⁰⁰⁷ before a

¹⁰⁰⁶ Government of Canada, "Twenty-Sixth Ministry," *Guide to Canadian Ministries since Confederation*, <http://guide-ministries.canada.ca>. Last accessed 18 April 2018.

¹⁰⁰⁷ Government of Canada, "Twenty-Seventh Ministry," *Guide to Canadian Ministries since Confederation*, <http://guide-ministries.canada.ca>. Last accessed 18 April 2018.

funding scandal came to light, which had occurred under Chretien's mandate. Martin then lost the elections.¹⁰⁰⁸ Three Conservative mandates followed under Stephen Harper over three elections, the first two in minority followed by a majority.¹⁰⁰⁹ While changes in policy were already in train under Minister Axworthy's Liberal successors at DFAIT, progressively shifting from human security to trade and economic diplomacy,¹⁰¹⁰ the Conservative Harper government ushered in a metamorphosis.¹⁰¹¹ This "big break" centred on five defining policy features.¹⁰¹²

Harper's political allies and electors were firmly at the centre of his foreign policy which was designed to bolster patriotic pride by reinvigorating the military.¹⁰¹³ Multilateral institutions and "talk shops" such as the Commonwealth and La Francophonie were near abandoned, particularly after Canada's bid for election to the UN Security Council in 2010 failed.¹⁰¹⁴ As Harper and then Baird reiterated in public speeches, from 2010 onwards, "we're not going to go along just to get along".¹⁰¹⁵ Policy decisions were made primarily on the basis of trade and jobs, where a close and solid relationship with the US was a key plank.¹⁰¹⁶ Structural changes also led to scaling down of diplomats at post and in Ottawa as well as a shrinking portfolio of diplomatic properties.¹⁰¹⁷ Along with the axing of CIDA, substantial cuts to the foreign aid programmes were also made.¹⁰¹⁸

2006 marked the beginning of the Conservative Party's three terms in government under Prime Minister Stephen Harper. Demographic change among electoral bases opened the path for Stephen Harper and his party to government. Harper's first mandate saw a minority government returned, thanks to an increase

¹⁰⁰⁸ Harold D. Clarke, Allan Kornberg, Thomas Scotto and Joe Twyman, "Flawless Campaign, Fragile Victory: Voting in Canada's 2006 Federal Election," in *PS: Political Science and Politics* vol. 39 no. 4 (2006): 815.

¹⁰⁰⁹ Government of Canada, "Twenty-Eighth Ministry," *Guide to Canadian Ministries since Confederation*, <http://guide-ministries.canada.ca>. Last accessed 18 April 2018.

¹⁰¹⁰ Adam Chapnick, "A diplomatic counter-revolution: Conservative foreign policy, 2006-11," *International Journal* vol. 67 no. 1 (2012): 141.

¹⁰¹¹ Yves Frenette, "Conscripting Canada's Past: The Harper Government and the Politics of Memory," *Canadian Journal of History* vol. 49 no. 1 (2014): 51.

¹⁰¹² John Ibbitson, "The Big Break: The Conservative Transformation of Canada's Foreign Policy," *Centre for International Governance and Innovation Papers* vol. 29. (2014): 7-8.

¹⁰¹³ Adam Chapnick, "A diplomatic counter-revolution," 146-148.

¹⁰¹⁴ Tom Keating, "The Transition in Canadian Foreign Policy Through an English School Lens," *International Journal* vol. 69 no. 2 (2014): 177.

¹⁰¹⁵ Canada, "Statement by the Honorable John Baird, Minister of Foreign Affairs of Canada to the Sixty-Sixth Session of the United Nations General Assembly," New York, September 26, 2011.

¹⁰¹⁶ Asa McKercher and Leah Sarson, "Dollars and Sense? The Harper Government, Economic Diplomacy, and Canadian Foreign Policy," *International Journal* vol. 71 no. 3 (2016): 351.

¹⁰¹⁷ Lee-Anne Goodman, "Canada Day in D.C. just one victim of cuts to embassy hospitality budgets: Embassies struggling under budget cuts," *The Canadian Press*, Toronto, June 30, 2011.

¹⁰¹⁸ Les Whittington, "Different Canada' Looming?: Canadians discovering the full implications of Conservatives' budget", *Toronto Star*, Toronto April 22, 2012.

in voters and votes in the West and in the Wheat belt, both traditionally conservative, and a rise from 10% to 20% of the vote in Quebec on the back of a promise to explore “open federalism”.¹⁰¹⁹ Harper’s second mandate saw him returned, again with a minority government.

The multilateralist, voluntarist and international approach embraced by Quebec and the Eastern province under the Liberal and indeed the Progressive Conservative governments of the last half of the twentieth century was abandoned, in favour of an inwardly-focused, populist and jobs-oriented approach that appealed to the voters in strategic ridings (electorates).¹⁰²⁰

Harper’s foreign and security policies broke from the bipartisan approach, where disagreements ended at the water’s edge, that had existed over the 20th century, contrasting not only with the Liberal Chretien/Martin years but also with the Progressive Conservative years of Mulroney that preceded them.¹⁰²¹

Harper’s approach involved engaging in issues which saw the convergence of domestic electoral politics and interest-driven policy against a principled backdrop. Trade is understood as the predominant form of national interest.¹⁰²² This included his pro-Israeli stance which was popular among Jewish voters,¹⁰²³ his anti-Russian stance in Ukraine favourable with the large immigrant community¹⁰²⁴ and his about-face on and public rapprochement with China after he suffered domestic backlash to his initial criticism of Beijing (which included an official visit from the Dalai Lama).¹⁰²⁵ In 2015, an election year, Harper’s diaspora politics also included a timely visit from India’s PM Modi who praised Harper during public meetings of Indian-Canadians in key Conservative districts.¹⁰²⁶

3.1.2 Trade-oriented external policy

The international context changed after the MBT was signed in 1997, notably with the pre-eminence of security concerns. Lloyd Axworthy’s signature policy, human security, was progressively abandoned under the Liberal foreign ministers that followed him from 2000 as the focus turned to economic diplomacy and the

¹⁰¹⁹ Ian Macdonald, “Stephen Harper’s Quebec,” *National Post*, January 31, 2006.

¹⁰²⁰ Howard Cody, “Minority Government in Canada: The Stephen Harper Experience,” *The American Review of Canadian Studies* vol. 38 no. 1 (2008): 32-33.

¹⁰²¹ Adam Chapnick, “A diplomatic counter-revolution”, 142.

¹⁰²² Asa McKercher and Leah Sarson, “Dollars and Sense?”, 352.

¹⁰²³ Paul C. Merkley, “At Issue Reversing The Poles: How The Pro-Israeli Policy Of Canada’s Conservative Government May Be Moving Jewish Voters From Left To Right,” *Jewish Political Studies Review* vol. 23 no. 1/2 (2011): 57-58.

¹⁰²⁴ John Ibbitson, “Harper’s foreign policy: Ukraine and the Diaspora vote,” *Centre for International Governance Innovation*, March 19, 2014.

¹⁰²⁵ Kim Richard Nossal and Leah Sarson, “About Face: Explaining Changes in Canada’s China Policy, 2006–2012,” *Canadian Foreign Policy Journal* vol. 20 no. 2 (2014): 148.

¹⁰²⁶ Tim Harper, “India’s Modi gives Harper and Tories a boost,” *The Guelph Mercury*, April 20, 2015.

reconfiguration of international security after September 11, 2001. Policymakers focused on Afghanistan, increasing defence spending under Department of Defence (DND) and away from DFAIT, notably with the overseas deployment in Afghanistan, the largest since the Korean War.¹⁰²⁷ Under PM Martin, defence budgets were increased to sustain the build-up of Canadian armed forces, through budget cuts to the International Development Agency (CIDA) and peacekeeping.¹⁰²⁸ This contrasts with PM Chretien, when Martin as finance minister cut the defence budget to 0.9% of GDP.¹⁰²⁹ These trends were reinforced under the Conservative government, with Canada's contributions to peacekeeping dropping from being the largest donor in 1992 to a contingent of 111 peacekeepers in 2015 (out of a total UN deployment of over 125,000).¹⁰³⁰

The Harper Conservative governments came to office on a platform of radical change with the preceding Liberal governments.¹⁰³¹ Harper's electoral base on the West Coast was conservative and trade-minded, while Chretien had been elected by internationalist Quebec and the East Coast. Harper actively sought to demarcate his government from the successes of his predecessors, such as the MBT and the signature policy of Foreign Minister Lloyd Axworthy, human security. This drew him and his government away from an activist foreign affairs stance more broadly, and disarmament and arms control in particular. Harper and his Foreign Minister John Baird were focused elsewhere, mainly on building and consolidating bilateral trade relationships. Structural changes to DFAIT saw a reprioritisation away from humanitarian and development policy to trade. Light-touch arms control policy was shaped by strategic considerations of influential Conservative voting groups who favoured weaker government intervention.

On arms control, the Canadian position reflected first and foremost domestic concerns. Domestic interest groups active on gun ownership were a key electoral constituency. Canada's early support of multilateral action on small arms and light weapons in the early 2000s, notably as an active architect of the UN 2001

¹⁰²⁷ David Perry, "Canada's Seven Billion Dollar War: The Cost of Canadian Forces Operations in Afghanistan: The Cost of Canadian Forces Operations in Afghanistan," *International Journal* vol. 63 no. 3 (2008): 703.

¹⁰²⁸ Philippe Lagassé and Joel J. Sokolsky, "A Larger "Footprint" In Ottawa: General Hillier And Canada's Shifting Civil-Military Relationship, 2005-2008," *Canadian Foreign Policy* vol. 15 no.2 (2009): 16-II.

¹⁰²⁹ Steven Staples, "Martin's Defence Policy Dilemma: Truth is, Paul Martin and Stephen Harper Agree on Most Defence and Foreign Policy issues," *The Hill Times* no. 746 (2004): 17.

¹⁰³⁰ Michael K. Carroll, "Peacekeeping: Canada's past, but not its present and future?" *International Journal* vol. 71 no. 1 (2016): 167.

¹⁰³¹ Paul Heinbecker, former adviser to Conservative PM Brian Mulroney and Liberal PM Jean Chretien, quoted in John Ibbitson, "The Big Break: The Innovative Transformation of Canada's Foreign Policy," *Centre for International Governance and Innovation Papers* vol. 29. (2014): 12.

Programme of Action on Small Arms and Light Weapons, faded under Steven Harper. In 2006, Steven Harper's first electoral campaign included the promise to abolish the 1995 long-gun registry introduced by Chretien after 14 women were killed at Montreal's Ecole Polytechnique in 1989.¹⁰³² The repeal of the registry was passed in 2012 once the Conservatives commanded a majority in the Senate.¹⁰³³ The link between domestic interests and foreign policy was evident with the inclusion of the National Firearms Association (NFA)¹⁰³⁴ and the Canadian Sports Shooting Association (CSSA) on every Canadian delegation to ATT talks.¹⁰³⁵ Under Chretien and Martin, the delegation had also included Project Ploughshares, a disarmament NGO. Two key positions were the cornerstone of Canada's official position.¹⁰³⁶ First, Ottawa claimed that existing Canadian regulations on arms exports and imports were stringent enough and that multilateral rules were therefore not applicable. Second, Ottawa argued that the interests of gun owners in Canada needed to be protected. Here too, multilateral rules were not welcome. This second argument was a mirror image of the position of the Canadian firearms lobbies and of the American National Rifles Association (NRA).¹⁰³⁷

Despite strong domestic policies, Canada under Harper did not sign on to multilateral arms regulation agreements such as the International Tracing Instrument (ITI) and the ATT. There were two reasons for this. First, Canadian export standards were already rigorous enough. Second, domestic gun ownership "by responsible, law-aiding private firearms owners" needed to be protected from any potential changes, or "burdens", forced from outside.¹⁰³⁸

For Harper, the ATT was primarily designed for other regions of the world, where regulations were either insufficient or non-existent, in order to "keep weapons out of the hands of criminals and terrorists".¹⁰³⁹ While the Canadian position distinguished between "bad guys" and legitimate firearms owners, this did

¹⁰³² Conservative Party of Canada, *Stand Up for Canada, Conservative Party of Canada Federal Election Platform*, (Conservative Party of Canada, 2006) : 23.

¹⁰³³ Ian MacLeod, "Gun ruling bolsters Harper," *National Post*, March 28, 2015.

¹⁰³⁴ Thomas Walkom, "Prime Minister Stephen Harper's pro-gun stance causing concern," *The Star*, December 21, 2012.

¹⁰³⁵ Steve Torino, President, Canadian Shooting Sports Association, "Witness Evidence, Standing Committee on Foreign Affairs and International Development, Canadian Parliament, 42nd Parliament, 1st Session," House of Commons, Ottawa, November 2, 2017.

¹⁰³⁶ Habib Massoud, Deputy Director, Non-proliferation and Disarmament division, DFAIT, "Witness evidence to Meeting #041, Standing Committee on Foreign Affairs and International Development, Parliament, 1st Session," House of Commons, Ottawa, June 11, 2012.

¹⁰³⁷ Mike Blanchfield, "Firearms lobby warns Ottawa against signing UN arms trade treaty," *The Globe and Mail*, Toronto, October 2, 2013.

¹⁰³⁸ Habib Massoud, "Witness evidence to Meeting #041", June 11, 2012.

¹⁰³⁹ Habib Massoud, "Witness evidence to Meeting #041", June 11, 2012.

not extend to incorporating social-economic criteria making explicit the link between illegal weapons transfers and violations of IHL and human rights.¹⁰⁴⁰

On cluster munitions, Canada's official policy was an incremental path to a partial ban rather than a complete ban, with a preference for negotiations within the CCW rather than outside of the UN's disarmament machinery, with strong provisions on victim assistance.¹⁰⁴¹ This was in stark contrast to the MBT.

Canada's cautious approach reflected balancing public concerns after the use of cluster munitions in Lebanon with "keeping the door open" for future Canadian use in joint operations with the US as manufacturer of 70% of cluster munitions.¹⁰⁴² Nonetheless, Canada endorsed the official declarations from Oslo and Wellington and indeed signed the CCM in Dublin in 2008.¹⁰⁴³

3.1.3 Defence-focused strategic partnerships

Under Harper, the relationship with Washington was important, but trade interests came first. In his 2006 electoral campaign, Harper promised to improve ties with Washington, which he went on to do first with the Bush Administration and then with the Obama Administration, notably on trade. The two neighbours share the world's largest bilateral trading relationship, underpinned by two bilateral free trade agreements signed between 1996 and 2016.¹⁰⁴⁴

As Condoleezza Rice noted, this led to a predominance of trade-related issues making their way onto leader's agenda rather than higher-order foreign policy issues. These included gripes related to red-tape at the land border, issues with trade in auto parts following a 2009 deal between Washington and Ottawa, and the development of the Keystone XL pipeline. After the Obama administration vetoed the pipeline, which would have linked the Alberta oilfields to the US, Harper took his proposal to China to construct an alternative route.¹⁰⁴⁵

Harper's overarching priority was protecting Canadian trade interests and influential domestic interest groups. Harper privileged Canadian trade over proximity to Washington, including on the environment, as seen through Canada's reneging on the Kyoto Protocol on the environment just as the Obama

¹⁰⁴⁰ Warren Bell, "Stephen Harper position on global Arms Trade Treaty reads like a page out of NRA handbook," *Vancouver Observer*, Vancouver, December 27, 2014.

¹⁰⁴¹ Landmine Monitor, "Canada," in *Banning Cluster Munitions: Government Policy and Practice*, (Ottawa: Mines Action Canada, 2009): 53.

¹⁰⁴² John Borrie, *Unacceptable Harm*, 172-3.

¹⁰⁴³ Landmine Monitor, "Canada," 53.

¹⁰⁴⁴ Carl Ek and Ian F. Fergusson, "Report for Congress: Canada-U.S. Relations," *Congressional Research Service* (2010): 16-20.

¹⁰⁴⁵ David Ljunggren, "Canada PM vows to ensure key oil pipeline is built," *Reuters*, Guangzhou, February 10, 2012.

administration was ramping up efforts. This was driven by domestic oil interests. The turn to trade was visible in Harper's selective application of a principled human rights policy with China.¹⁰⁴⁶ This came to the fore on the ATT, with Ottawa's passive presence in the later stages driven by the domestic gun lobby's interests, indicating a divergence with Washington's push for finalisation. The overall impact of pursuing "dollar diplomacy" under the Harper era – where Ottawa's engagement "was reduced to a very narrow calculation" – was a reduced global presence.¹⁰⁴⁷ In a further break with the past, Harper sought to turn away from diplomatic engagement on the multilateral stage, most conspicuously after the failed bid for a temporary seat on the UNSC in 2009.¹⁰⁴⁸ This turn away was reflected in Harper's decision not to address the UNGA's Leaders Week for the two following years.¹⁰⁴⁹

3.2 How did Ottawa shape negotiating processes?

This section links the "in capital" context in Ottawa to Canada's diplomatic activity in the Oslo and ATT Processes, indicating a pattern of blocking and sidelining that contrasts with the earlier championing role during the Ottawa Process.

3.2.1 Oslo Process

Canada followed a blocking strategy in the Oslo Process, along with Australia and the like-minded group of producers and US allies. It focused on shifting talks to the CCW in Geneva. When this option evaporated, it changed tack and zeroed in on scope and definitional amendments, including the interoperability clause to limit the potential of the now inevitable treaty to adversely impact joint US operations. Ottawa's weapons expertise made lead negotiator Earl Turcotte the obvious choice to craft the clause on interoperability in Dublin, although he later resigned in protest over national implementation.¹⁰⁵⁰

3.2.1.1 Transition point 4: Oslo, February 23, 2007

Canada's preference was to negotiate a cluster munitions protocol within the CCW. When options were being put forward in the final week of the CCW Review

¹⁰⁴⁶ Kim Richard Nossal and Leah Sarson, "About Face", 47.

¹⁰⁴⁷ Asa McKercher and Leah Sarson, "Dollars and sense?", 352.

¹⁰⁴⁸ Joanna Slater and Steven Chase, "Harper refuses to sign landmark arms trade treaty, presses for maternal-health reform," *The Globe and Mail*, September 25, 2013.

¹⁰⁴⁹ Roland Paris, "Are Canadians Still Liberal Internationalists? Foreign Policy and Public Opinion in the Harper Era," *International Journal* vol. 69, no. 3 (2014): 274-307.

¹⁰⁵⁰ Turcotte's resignation was directly related to the controversial Article 21 that Turcotte and others on the Canadian negotiating team in Dublin fought for against strong opposition from advocacy groups. While the clause was key for countries involved with the United States in Afghanistan and in any future joint operations, it was mutually agreed that any interpretation should be within the spirit of the entire treaty — that joint operations would be allowed only if cluster bombs are not used and are not, in any way, part of a joint military scenario. Mike Blanchfield, "Former Canadian arms negotiator blasts Ottawa's cluster-bomb bill," *The Canadian Press*, November 24, 2013.

Conference, Canada intervened in plenary to propose amendments to a UK proposal to establish a Governmental Group of Experts (GGE) to explore further how existing IHL provisions should be applied to cluster munitions.¹⁰⁵¹ Canada saw the way forward on cluster munitions to be within the CCW as an extension of existing provisions, rather than a new instrument with new provisions. Canada's motivation in taking up Norway's invitation to Oslo was not so much endorsement of a ban but more political and strategic gains, as "it looked better to the outside world to be involved."¹⁰⁵² This offered the prospect of influencing the process.

Ten months later in Oslo, Canada was the first NATO state to address plenary and endorse the Oslo Declaration. In committing to the ambiguous formulation of banning "cluster munitions that cause unacceptable harm to civilians", Ottawa opted for the more restrictive scoping interpretation that only *certain* cluster munitions would be banned, namely those causing unacceptable harm. Ottawa was pursuing a parallel talk on cluster munitions within the CCW framework. Strategically, the Oslo Process would be used as a lever to apply pressure to the cluster munitions producers and users within the CCW. This was intended to ensure that rapid progress would take place in the CCW rather than elsewhere, where the numeric advantage would lie with non-producing and non-using states.

3.2.1.2 Transition point 5: Wellington, February 22, 2008

Canada and the like-minded group's strategy of backing two horses back-fired in June after consensus was not reached at the CCW. In Wellington, as the parameters and substantive framework were set for the final phase of Oslo Process, it was clear that it was no longer possible to starve the Oslo process of oxygen. However, for those states publicly committed to taking multilateral action on cluster munitions, the only option to avoid domestic backlash was the Oslo Process. On interoperability, Canada began to take a lead role to steer a path that would assuage public concerns about responding adequately to the humanitarian crisis in Southern Lebanon while not jeopardizing US military relations. At the closing in Wellington, Canada associated itself with a statement on behalf of the like-minded group declaring dissatisfaction with the conference as it felt different opinions and

¹⁰⁵¹John Borrie, *Unacceptable Harm*, 125.

¹⁰⁵²John Borrie, *Unacceptable Harm*, 157.

views had not been considered in a balanced way.¹⁰⁵³ Canada made its own statement severely criticizing the conduct of NGOs.¹⁰⁵⁴

3.2.1.3 Transition point 6: Dublin, May 30, 2008

Interoperability was a clear red-line for Ottawa. From Canada's perspective, the timing coincided with talks on trade with the U.S. Ottawa was keen to maintain relations with the US, and the Americans held very strong views on interoperability. Ottawa stepped in at Dublin, as one of 20 states included in the working group on interoperability headed by a Swiss diplomat as Friend of the Chair. From within the working group, Canadian military lawyers actively shaped the final inclusion of what would become article 21. The result was satisfactory to the US allies for whom it had created real dilemmas. The Convention went on to be signed by Canada.

Its implementation under national legislation was controversial, in particular on interoperability and national measures which effectively left the door open for Canadian troops to engage in military operations involving cluster munitions if their partners held them in their arsenals. Canada's lead negotiator Earl Turcotte, who had been a part of the working group on interoperability, resigned in protest at the 2012 Bill S-10 adopted by the Canadian Senate. He believed it did not reflect the spirit of the Convention. Senator Romeo Dallaire, the NATO Force commander in Rwanda in 1994 later elected to the Canadian Senate, was another vocal critic, saying at the time, "We nearly wrote the whole damned convention and now (...) we are literally coming out as an outfit that talks out both sides of its mouth."¹⁰⁵⁵

¹⁰⁵³ France on behalf of Like-Minded Countries, "Closing Plenary, Statement," Wellington, February 22, 2008. "All Like-Minded countries have committed in good faith and unequivocally to the negotiation of a draft convention banning the production, use, stockpiling and trade of cluster munitions causing unacceptable harm to the civilian population. The vast majority of Like-Minded countries have signed up to the Oslo Declaration since the beginning of the process. We participated openly and constructively in the Oslo, Lima and Vienna Conferences. We took part in all the discussions and made concrete proposals. We are disappointed by the conditions in which this conference took place. We regret that the views expressed in this conference have not been expressed in a balanced way here, contrary to the spirit of Oslo." (Author's translation).

¹⁰⁵⁴ Canada, "Wellington Conference on Cluster Munitions, Closing Remarks," Wellington, February 22, 2008. "NGOs' currency in this process is diminished by some of the tactics employed to influence the process. Countries such as my own and several close allies have been vilified in press interviews and in press releases produced by the CMC.... We have been accused of quote trying to undermine an international treaty on cluster munitions enquire unquote. Nothing could be further from the truth. Such accusations are unfounded and unfair. In my view such tactics are demanding and counterproductive. They tarnish the credibility of your organisations and do a disservice to the noble cause you advance."

¹⁰⁵⁵ Robin Collins, "Can We Fix Canada's Flawed Cluster Bomb Treaty Legislation?" *Peace Magazine* vol. 29 no. 1 (2013): 14.

3.2.2 ATT Process

3.2.2.1 *Transition point 7: New York, 26 October 2006*

From the late 1990s, Canada was a proponent of multilateral action on small arms and light weapons under Lloyd Axworthy's tenure.¹⁰⁵⁶ Canada led reporting efforts and contributed funds towards implementation and universalization.¹⁰⁵⁷ By the time the First Review conference was held in 2006, the UN Program of Action on Small Arms (POA) process had not shown encouraging results. Canada began to explore other options in multilateral arenas, co-sponsoring the first resolution on the ATT at the UNGA in 2006.¹⁰⁵⁸ Canada's 2007 submission to the UN Secretary-General indicated that Ottawa was pushing for a comprehensive scope and a focus on human rights and IHL principles.¹⁰⁵⁹

3.2.2.2 *Transition point 8: New York, December 2, 2009*

From 2006-2009, as the ATT Process progressed, Canada under Harper followed the US position closely. Canada's largest arms export client was the Pentagon while the US was Canada's largest arms supplier. Exact figures are hard to obtain as US military exports do not require permits in line with the Defence agreement between the two countries. Project Ploughshares, a weapons-monitoring NGO, estimates that Canadian sales to the US exceed all other sales combined.¹⁰⁶⁰

The US and Canadian domestic gun lobbies held similar views and had similar levels of influence domestically, as outlined earlier, reinforcing Ottawa's narrow focus on curtailing any expansion of scope to national use. As Foreign Minister Baird relayed to the Foreign Affairs committee, "a moose hunter travelling from the United States to Newfoundland isn't the challenge".¹⁰⁶¹ Rather, the ATT's focus should be on "someone exporting 10,000 machine guns to the Middle East".¹⁰⁶² The substantive work was left to others. Canada's few interventions were aimed at narrowing technical definitions, highlighting concerns over sport and hunting arms, which they sought to exempt explicitly in the preamble.¹⁰⁶³

¹⁰⁵⁶ Adam Parsons and Ken Epps, *Review of Progress in Canadian implementation of UN Programme of Action* (Ottawa: Peacebuild Small Arms Working Group/Project Ploughshares, 2008): 1.

¹⁰⁵⁷ Adam Parsons and Kenneth Epps, *Review*, 2.

¹⁰⁵⁸ United Nations General Assembly, Resolution 61/89 Towards an Arms Trade Treaty, A/RES/61/89, New York, December 6, 2006.

¹⁰⁵⁹ United Nations General Assembly, "Towards An Arms Trade Treaty: Establishing Common International Standards For The Import, Export And Transfer Of Conventional Arms: Report Of The Secretary-General," A/62/278 (Part II) (2007). Canadian submission, pages 39-43.

¹⁰⁶⁰ David Pugliese, "Canadian weapons exports reach new levels," *Ottawa Citizen*, December 19, 2014.

¹⁰⁶¹ John Baird, "Evidence of Meeting #13 for Foreign Affairs and International Development in the Canadian 41st Parliament, 1st Session," December 1, 2011.

¹⁰⁶² John Baird, "Evidence of Meeting #13", December 1, 2011.

¹⁰⁶³ Bryn Weese, "Canada tries to exempt hunting rifles from UN Arms Trade Treaty negotiations" Toronto, July 15, 2011.

3.2.2.3 Transition point 9: New York, 22 July 2012

In the lead-up to the 2012 diplomatic conference, support was intensifying in Ottawa from Canadian politicians. One in four Canadian parliamentarians signed the Global Parliamentarian Declaration on the ATT, compared to one in five from Australia, a co-author and one of the “motors” of the ATT Process.¹⁰⁶⁴ Canada maintained a low profile.¹⁰⁶⁵ Ottawa’s previous strategy went unchanged, voicing concerns over technical details and reiterating that firearm owners in Canada would be excluded from the treaty’s scope.¹⁰⁶⁶ This was reiterated to the Foreign Affairs Committee in Ottawa, with two aspects called out – the legitimacy of domestic fire arms owners and the absence of any extra regulations to them.¹⁰⁶⁷ Ottawa was absent from efforts at consensus, although Canada’s name was added to the declaration of 90 countries pushing for further work on an ATT.¹⁰⁶⁸

3.2.2.4 Transition point 10: New York, April 2, 2013

When the ATT was brought to the UNGA to be adopted by vote, Canada was among the 155 UN members who voted “yes”. Two months later when the treaty was opened for signature, however, Canada did not sign, citing concerns that the treaty would affect lawful firearms owners.¹⁰⁶⁹ Nor did it sign after September 25, 2013 when US Secretary of State John Kerry signed.¹⁰⁷⁰ When the Treaty came into effect on 24 December 2014, Harper and his Foreign Minister John Baird reiterated that Ottawa did not need to sign on to the Treaty given Canada’s existing rigorous export standards. This is consistent with the position maintained over the course of ATT talks, namely that Canadian export standards go beyond those introduced in the ATT and that becoming a signatory will not change the systems already in place. This argument can also be used to support the case for signature and ratification. Other states with similarly high standards of regulation have signed the ATT, such as the US and Australia.

¹⁰⁶⁴ Parliamentarians for Global Action (PGA), “Control Arms Global Parliamentary Declaration on the Arms Trade Treaty,” April 25, 2012.

¹⁰⁶⁵ Lee Berthiaume, “Canada on sidelines as UN arms treaty comes into effect,” *Ottawa Citizen*, December 24, 2014.

¹⁰⁶⁶ Kenneth Epps, “A Lacklustre Performance: Canada’s Input At The Arms Trade Treaty Negotiations Was At Best Unimpressive And At Worst Harmful,” *The Ploughshares Monitor* vol. 33 no. 3 (2012): 7.

¹⁰⁶⁷ Habib Massoud, “Evidence of Meeting #41,” June 11, 2012,.”

¹⁰⁶⁸ Ken Epps, “Farewell to the arms trade treaty for now,” *The Globe and Mail*, Aug 1, 2012.

¹⁰⁶⁹ Joanna Slater and Steven Chase, “Harper refuses to sign landmark arms trade treaty, presses for maternal-health reform,” *The Globe and Mail*, September 25, 2013.

¹⁰⁷⁰ The US is unlikely to ratify the Treaty in the short to mid-term given the composition of the US Senate since then.

Commentators in Canada have suggested that Canada's reticence might be due to an increase in arms trade between Ottawa and Riyadh from 2014.¹⁰⁷¹ This includes Canada's largest arms trade export deal worth \$CAN15 billion for the provision of armoured vehicles.¹⁰⁷² With the rise of regional conflicts in the Middle East, often linked to Saudi Arabia, questions would no doubt have been asked of Canada had it signed the ATT.

4. New Zealand on the sidelines

This section contrasts Wellington's championing role during the Oslo Process with its position on the sidelines during the Ottawa and ATT Process, linking this change in diplomatic activity to the "in capital" environment in flux.

4.1 Why didn't Wellington champion?

This section contrasts Bolger and Key's National governments with Clark's Labour government to situate changes in policy and partner management as factors in New Zealand's position on the sidelines at the Ottawa and ATT Processes.

4.1.1 Conservative politics

New Zealand's presence on the sidelines during the Ottawa and ATT Processes (1995-98; 2008-13) was a product of the Conservative National party's domestic politics, and of their approach to arms control policy and how they sought to manage relations with strategic partners.

Conservative National governments were in power during the Ottawa Process (under Jim Bolger and Jenny Shipley) and during the later stages of the ATT Process (under John Key).¹⁰⁷³ In between, Helen Clark's Labour government championed the Oslo Process. While Bolger/Shipley and Key followed a similar approach, the contrast between National and Labour was stark. Wellington's position on the sidelines during the Ottawa and ATT Processes broke with New Zealand's championing role in the Oslo Process.

Jim Bolger led two National governments (1990-97)¹⁰⁷⁴ before being replaced by Jenny Shipley (1997-99).¹⁰⁷⁵ Bolger led concerted efforts to revitalizing the US

¹⁰⁷¹ Kirsty Wigglesworth, "The Saudi arms deal: What we've learned so far, and what could happen next," *The Globe and Mail*, January 14, 2016.

¹⁰⁷² Stephen Chase and Richard Blackwell, "Ottawa touts sale of military vehicles to Saudi Arabia," *The Globe and Mail*, February 14, 2014.

¹⁰⁷³ New Zealand Ministry for Culture and Heritage, "Premiers and Prime Ministers of New Zealand – John Key". <https://nzhistory.govt.nz/people/john-key> . Last accessed 21 April 2018.

¹⁰⁷⁴ New Zealand Ministry for Culture and Heritage, "Premiers and Prime Ministers of New Zealand, Jim Bolger". <https://nzhistory.govt.nz/people/jim-bolger> . Last accessed 9 June 2018.

¹⁰⁷⁵ New Zealand Ministry for Culture and Heritage, "Premiers and Prime Ministers of New Zealand, Jenny Shipley". <https://nzhistory.govt.nz/people/jenny-shipley> . Last accessed 9 June 2018.

alliance relationship after its estrangement under David Lange. One of his first items of business was to contribute to US forces in the first Gulf War, sending two Hercules transport aircrafts to the Persian Gulf and a medical team to Bahrain.¹⁰⁷⁶ New Zealand also increased its contributions to peace-keeping.¹⁰⁷⁷

The Nationals' foreign policy has traditionally been one of pragmatism and 'quiet diplomacy' rather than moralism and megaphone diplomacy.¹⁰⁷⁸ Bolger's foreign minister Don McKinnon defined the government's approach on foreign policy in these terms, a theme reprised by Murray McCully, Key's Foreign Minister.¹⁰⁷⁹ It is largely driven by two forces, security and trade, and by defence alliances within the Anglosphere (the UK, the US and Australia). New Zealand's proximity to Australia was noted by McCully, who claims that the relationship is "not really a foreign policy relationship", when "Prime Ministers, without reference to their foreign ministries, arrange sleepovers at each other's houses".¹⁰⁸⁰ Trade has been prioritised under National governments, with the nuclear file attracting the most attention when the spotlight occasionally turned to arms control.

From 2008, securing a seat on the UNSC was also a focus for Minister McCully. McCully holds his most important achievement at the Ministry of Foreign Affairs and Trade (MFAT) to be the successful campaign for election to the UNSC.¹⁰⁸¹ Rather than an endorsement of multilateralism, this was framed as an opportunity for New Zealand to lead efforts to reshaping a flawed institution.¹⁰⁸²

4.1.2 Trade first in external policy

Under Bolger, Wellington's first UN disarmament ambassador in Geneva was appointed, Clive Pearson.¹⁰⁸³ Pearson spearheaded New Zealand's participation in the New Agenda Coalition, which Foreign Affairs Minister Don Mackinnon (along with seven other Ministers) brought together to push for concerted efforts on nuclear disarmament in the wake of success on the 1996 CTBT.¹⁰⁸⁴

¹⁰⁷⁶ David J. McCraw, "New Zealand's Foreign Policy In The 1990s", 579.

¹⁰⁷⁷ Paul G. Buchanan, "Lilliputian in Fluid Times: New Zealand Foreign Policy after the Cold War," *Political Science Quarterly* vol. 125, no. 2 (2010): 26

¹⁰⁷⁸ David J. McCraw, "New Zealand's Foreign Policy In The 1990s", 590.

¹⁰⁷⁹ Tom Lansford, "New Zealand, Role in Persian Gulf, Afghanistan and Iraq Wars" in *The Encyclopedia of Middle East Wars: The United States in the Persian Gulf, Afghanistan, and Iraq Conflicts*, Spencer Tucker and Priscilla M. Roberts (eds.) (Santa Barbara: ABC-CLIO, 2010): 897-899.

¹⁰⁸⁰ Murray McCully, Minister for Foreign Affairs, "Address to the New Zealand Institute of International Affairs," Wellington, April 5, 2017.

¹⁰⁸¹ Robert Ayson, "NZ-US relations and Murray McCully's foreign policy legacy," *The Interpreter – The Lowy Institute Blog*, May 15, 2017.

¹⁰⁸² Murray McCully, "Address," Wellington, April 5, 2017.

¹⁰⁸³ Robert Ayson, "Towards a nuclear weapons free world? New Zealand and the quest for global nuclear disarmament," *International Journal* vol. 55 no. 4 (2000): 532.

¹⁰⁸⁴ Robert Ayson, "Towards a nuclear weapons free world?", 531.

The persistence of the nuclear stance has at times been challenged by critics, in order to strengthen US ties. The National Party considered and rejected the idea of abandoning this stance under Bolger's government and when in opposition during Clark's tenure.¹⁰⁸⁵ The party paid the price for this proposed change in the 1990 elections. Key's electoral campaign therefore abandoned it, arguing that nuclear activism had become hard-wired into the collective psyche of New Zealand.¹⁰⁸⁶

From Key's first term onwards, disarmament dropped off the front stage, with the reintegration of the Disarmament and Arms Control portfolio into the Ministry for Foreign Affairs during Key's second term, and with no Minister of Disarmament appointed.¹⁰⁸⁷ The direction set, John Key allowed considerable scope to Murray McCully, his "politically skilful foreign minister," to exert real influence.¹⁰⁸⁸ This led to budget cuts and a significant reduction in resources and size of MFAT. This includes the Humanitarian Declaration presented by New Zealand's Dell Higgie on behalf of 120 countries in 2013 to the UNGA.¹⁰⁸⁹ New Zealand's aid agency NZAID was also brought back under MFAT, accompanied by tightening of overseas development aid (ODA). Diplomats were subject to tight control on what could be said on record with little scope for creativity at post or at capital.

Under Key's watch, there has been a much-touted turn towards trade. This has been a recurrent theme in Key's official statements both at the UN and during state of the nation addresses spanning his three premierships.¹⁰⁹⁰ Relations with the US and China cemented over this time in a demonstration of deft diplomatic manoeuvring by Key and McCully. From 2008 onwards, Key was turned towards finalising trade negotiations under the Trans-Pacific Partnership (TPP) after the US entered talks that had first been initiated in 2005. The starting point had been the P4 free trade agreement between New Zealand, Brunei, Chile and Singapore.¹⁰⁹¹

¹⁰⁸⁵ Robert G. Patman, "Globalisation, Sovereignty And The Transformation Of New Zealand Foreign Policy," *Working Paper 21/05* Centre for Strategic Studies Victoria University Wellington (2005): 11.

¹⁰⁸⁶ David MacDonald and Brendon O'Connor, "Australia and New Zealand – America's Antipodean Anglosphere Allies?," *Australian Political Science Association (APSA) Paper* (2010).

¹⁰⁸⁷ Kevin Clements, "What happened to the New Zealand Peace Movement? Anti-Nuclear Politics and the Quest for a More Independent Foreign Policy," in *New Zealand And The World: Past, Present And Future* Robert Patman, Iati Iati and Balazs Kiglics (eds.) (Singapore: World Scientific, 2018):230.

¹⁰⁸⁸ Robert Ayson, "NZ-US Relations".

¹⁰⁸⁹ Dell Higgie, "United Nations 69th Session First Committee: Joint Statement on the Humanitarian Consequences of Nuclear Weapons, Delivered by Ambassador Dell Higgie," *Thematic Debate on Nuclear Weapons*, New York, October 20, 2014.

¹⁰⁹⁰ John Key, Prime Minister of New Zealand, "68th Session of the United Nations General Assembly, Statement by the Rt Hon John Key," New York, September 26, 2013. Andy Fyers, "John Key's State Of The Nation Speeches – The Words He's Never Said," *National Politics*, 27 January 2016.

¹⁰⁹¹ Deborah Elms, "The Origins and Evolution of the Trans-Pacific Partnership Trade Negotiations," *Asian Survey* vol. 56 no. 6 (2016): 1017.

Key was invited by President Obama to take a lead role during TPP talks at APEC in 2013.¹⁰⁹² A year later, Key and Chinese President Xi Jinping announced a comprehensive strategic partnership centred on trade.¹⁰⁹³ Within two years, New Zealand became the first developed country to join the Chinese-led Asian Investment Bank.¹⁰⁹⁴ This deepening of relations began under Helen Clark, when New Zealand became the first developed country to conclude a bilateral Free Trade Agreement with China after supporting its accession to the WTO.¹⁰⁹⁵

The nuclear file was briefly in the spotlight during Key's term, in the wake of US President Obama's 2009 Prague Speech in support of disarmament in the lead-up to the 2010 NPT Review Conference.¹⁰⁹⁶ The NAC group was revitalised to channel momentum on the nuclear file. However, as American interest waned, so too did the prospects of the NAC achieving its progressive goals.¹⁰⁹⁷

This example illustrates the Key government's arms-length approach to pursuing arms control measures at the multilateral table. The high watermark on the multilateral stage was securing a temporary seat on the UNSC, in McCully's words, "like winning the world cup in diplomacy".¹⁰⁹⁸ Aspirations beyond this were not seriously pursued nor sought.

It is noteworthy that at the 2015 NPT Review Conference, Clark's former disarmament and arms control minister Phil Goff joined the national delegation, indicating that New Zealand's bipartisan nuclear-free stance remains intact.¹⁰⁹⁹

New Zealand's continued influence on nuclear and conventional weapons disarmament was channelled through Wellington's Geneva-based Ambassador Dell Higgin, whose open mandate behind the scenes during negotiations contrasted with the low-key presence of the Minister and Prime Minister when it came to advocating positions that would not be welcomed by Washington and Canberra.¹¹⁰⁰

¹⁰⁹² New Zealand Herald, "Key talks Pacific Partnership with Obama," October 11, 2013.

¹⁰⁹³ New Zealand Government, "Joint Statement between New Zealand and the People's Republic of China on the Establishment of a Comprehensive Strategic Partnership," November 21, 2014.

¹⁰⁹⁴ Tian Shaohui, "Commentary: China's Belt and Road 'circle of friends' expanding," *Xinhuanet*, April 1, 2017.

¹⁰⁹⁵ Jim McLay, "New Zealand's Free Trade Agreement with China in Context: Demonstrating Leadership in a Globalised World," *Yearbook of New Zealand Jurisprudence* vol.11/12 (2008-9): 1.

¹⁰⁹⁶ Barack Obama, "Remarks By President Barack Obama In Prague As Delivered," Office of the Press Secretary, Washington, April 5, 2009.

¹⁰⁹⁷ Lewis Dunn, "Finding a Way Out of the NPT Disarmament Stalemate," *Arms Control Today* vol. 45 no. 3 (2015): 12.

¹⁰⁹⁸ Murray McCully, Minister for Foreign Affairs, "Address to the New Zealand Institute of International Affairs," Wellington, April 5, 2017.

¹⁰⁹⁹ Lindy Laird, "NZ Leader in Nuclear Thinking," *The Northern Advocate*, Wellington, May 6, 2015.

¹¹⁰⁰ United Nations Office for Disarmament Affairs, "Launch of The New Zealand Lectures on Disarmament by High Representative for Disarmament," UNODA, New York, October 7, 2014.

New Zealand's position on the sidelines alternated between benign participation and spirited presence (albeit with little impact). Wellington was present in the room on APLMs without pursuing a mandate to shape talks. A decade later, the New Zealand Disarmament Ambassador Dell Higgie left her mark as a person of influence during the ATT who made the most of the wide latitude that comes from a disinterested mandate from capital. Higgie served between 2009-2015 as New Zealand's Permanent Representative to the UN in Geneva and Disarmament Ambassador, taking up the role of Wellington-based Permanent Representative to the Geneva-based Conference on Disarmament in late 2015.¹¹⁰¹ Although not supported by additional resources or top-down political support, Higgie was given carte blanche to pursue a progressive stance during weapons talks. She notably spearheaded the Humanitarian Initiative on Nuclear Weapons, which sought to reignite the nuclear debate by considering the devastating impact on people and communities of the potential use of weapons.

In 2014, Ambassador Higgie presented a joint statement on behalf of 155 states at the UN arguing for nuclear disarmament based on the humanitarian consequences of their use, as above. This statement was followed in 2015 by a politically binding commitment, the Humanitarian Pledge,¹¹⁰² which New Zealand did not sign.¹¹⁰³ Media reports speculated that Washington had been applying pressure on allies not to do so.¹¹⁰⁴ Wellington's reluctance to sign plausibly lies elsewhere, in the document itself which contained a series of commitments which were inconsistent and difficult to implement. This is consistent with New Zealand's subsequent support, in 2016, of the Humanitarian Pledge.¹¹⁰⁵ Higgie adopted a progressive position in partnership with civil society and other like-minded states such as Norway on technical aspects of the treaty and on procedures, notably the hot button topic of consensus-decision making.¹¹⁰⁶

¹¹⁰¹Murray McCully, "Press release: McCully names new Ambassador to UN in Geneva," New Zealand Government, Wellington, April 3, 2009.

¹¹⁰² Conference on Disarmament, "Note Verbale Dated 25 August 2015 From The Permanent Mission Of Austria Addressed To The Secretary-General Of The Conference On Disarmament Transmitting Text Of The Humanitarian Pledge Supported By 114 Members Of The United Nations," CD/2039, Geneva, August 28, 2015.

¹¹⁰³ Alyn Ware, "Nuclear Disarmament, Five Steps New Zealand Should Take," *Incline*, September 2, 2015.

¹¹⁰⁴ Dita De Boni, "Let's pledge to ban nuclear bombs," *New Zealand Herald*, August 6, 2015.

¹¹⁰⁵ United Nations General Assembly, Resolution 71/47 Humanitarian Pledge For The Prohibition and Elimination Of Nuclear Weapons, A/RES/71/47, New York, December 12, 2016.

¹¹⁰⁶ Alexander Kmentt, "The Development Of The International Initiative On The Humanitarian Impact Of Nuclear Weapons And Its Effect On The Nuclear Weapons Debate," *International Review of the Red Cross* vol. 97 no.899 (2015): 688.

Higgie's presence and ability to shine a spotlight on complex issues ensured that when states and civil society were prosecuting a position, they would be challenged to defend it under the knowledgeable gaze of a seasoned diplomat with proven legal and procedural pedigree.¹¹⁰⁷ Higgie's lines of communication to civil society were always open, for example alerting NGOs that they should push against the adoption of the first draft treaty which fell short of the mark during the 2012 diplomatic conference in New York.

4.1.3 Closing the gap with the US

Improving relations with the US has been a constant feature for both major parties in New Zealand politics since the 1990s.¹¹⁰⁸ Under PM Bolger, Wellington would attempt to shed its independent position due to its anti-nuclear stance and move into the main tent at the UN. This would be done through a revitalised peacekeeping effort and through election to the UNSC. Wellington's temporary two-year mandate on the Council in 1993-94 left a lasting impression at home and abroad, proving New Zealand could successfully enact internationalist ambitions.

Taking up the Presidency of the Council as the Rwandan genocide began, Ambassador Colin Keating ably demonstrated Wellington's competency in engaging in multilateral diplomacy at the highest level.¹¹⁰⁹ This theme would continue under Clark, with differences between left-of-centre Labor and right-of-centre National most notably in how strategic partnerships are operationalised, rather than on the broader direction.¹¹¹⁰

Labor under Clark preferred "soft", flexible partnerships and multilateral approaches, in contrast with National's "stronger" alliances in the case of Bolger and Key via bilateral or limited-number multinational negotiations. Another difference is resource allocation, with MFAT bearing the brunt of significant budgetary cuts under Key.¹¹¹¹ This nuance between Labour and National led to divergent pathways while pursuing the same direction. Clark was less inclined to appease American sensibilities on cluster munitions than Bolger was on landmines. Action on landmines internationally coincided with a window of opportunity that was opening on the nuclear file. Bolger sought the nuclear path instead, seeking

¹¹⁰⁷ Dell Higgie, Ambassador For Disarmament, "Opening statement, United Nations Conference on the Arms Trade Treaty," New York, July 3, 2012.

¹¹⁰⁸ Robert Ayson and David Capie, "Part Of The Pivot? The Washington Declaration And US-NZ Relations," *Asia Pacific Bulletin* 172 (2012): 1-2.

¹¹⁰⁹ David J. McCraw, "New Zealand's Foreign Policy in the 1990s", 589.

¹¹¹⁰ Bruce Vaughn, "Report for Congress: New Zealand: Background and Bilateral Relations with the United States," *Congressional Research Service* (2017): 4-5.

¹¹¹¹ Paul Buchanan, "Deconstructing New Zealand Foreign Policy," *36th Parallel Geopolitics and Strategic Assessment* (2012).

appointment to the Conference on Disarmament in the final stages of the CTBT,¹¹¹² and through the ICJ proceedings about the legality of nuclear weapons against the backdrop of French nuclear testing.¹¹¹³ John Key was less disposed to set a course independently of the US on the arms trade than his predecessor Clark had been on cluster munitions.

Under Key, closer ties with the US has been the most significant achievement in the last decade.¹¹¹⁴ This renewal was cemented in official documents such as the 2010 Wellington Declaration, an important diplomatic “signal” signed by Hilary Clinton as Secretary of State in person with Minister McCully as her counterpart.¹¹¹⁵ This paved the way for a more concrete commitment in 2012 on bilateral military cooperation with the Washington Agreement.¹¹¹⁶ In McCully’s last year as Minister in 2016, two US ships visited New Zealand, a remarkable turn-around less than 30 years after the USS Buchanan was refused entry to NZ waters.¹¹¹⁷ This was only possible after changes to US policy, clearing the way for this visit to be made without infringing on New Zealand legislation.

4.2 How did Wellington shape negotiating processes?

This section links the “in capital” context in Wellington with New Zealand’s inconspicuous position on the sidelines in the Ottawa and ATT Processes.

4.2.1.1 Transition point 1: Ottawa, October 5, 1996

In September 1995, New Zealand called for a full ban in Vienna during CCW talks.¹¹¹⁸ Seven months later, Wellington announced a unilateral ban on the use of APLMs on 22 April 1996.¹¹¹⁹ This coincided with Ottawa’s search for potential allies in Geneva, earning Wellington an invitation to attend an informal dinner that same evening with 12 other progressive states that Canada had approached informally about conducting future talks outside of the UN framework.¹¹²⁰ Wellington did not engage in the core group. Attention was diverted to the nuclear file, in particular membership to the Conference on Disarmament. This came through in June 1996

¹¹¹² Robert Ayson, “Towards a nuclear weapons free world? New Zealand and the quest for global nuclear disarmament,” *International Journal* vol. 55 no. 4 (2000): 534.

¹¹¹³ Stephen M. Tokarz, “A golden opportunity dismissed: the New Zealand v. France nuclear tests case,” *Denver Journal of International Law and Policy*, vol. 26. no. 4 (1998): 745.

¹¹¹⁴ Robert Ayson, “Towards a nuclear weapons free world?”, 538.

¹¹¹⁵ Bruce Vaughn, “Report for Congress”, 7.

¹¹¹⁶ Robert Ayson, “NZ-US relations and Murray McCully’s foreign policy legacy,” *The Interpreter – The Lowy Institute Blog*, May 15, 2017.

¹¹¹⁷ Bruce Vaughn, “Report for Congress”, 9.

¹¹¹⁸ Landmine Monitor, “New Zealand Mine Ban Policy,” in *Landmine Monitor Report 2002* International Campaign to Ban Landmines (ed.) (Washington: Human Rights Watch 2002): 370.

¹¹¹⁹ Landmine Monitor, “New Zealand Mine Ban Policy,” 370.

¹¹²⁰ John English, “The Ottawa Process: Paths followed, paths ahead,” *Australian Journal of International Affairs* vol. 52 no. 2 (1998): 125.

in time for the finalization of the Comprehensive Test Ban Treaty (CTBT), as mentioned earlier in this chapter. New Zealand attended all meetings of the Ottawa Process, starting with the Ottawa Declaration in October 1996.¹¹²¹

4.2.1.2 *Transition point 2: Brussels, June 27, 1997*

New Zealand attended talks in Brussels and signed the Declaration, without making any substantive contribution to talks.

4.2.1.3 *Transition point 3: Oslo, September 18, 1997*

New Zealand's Geneva disarmament ambassador Clive Pearson represented Wellington in Oslo in 1997. The New Zealand delegation included NGO representatives, who had galvanized public support at home through the Coalition Against Landmines (CALM), notably CALM's coordinator Mary Wareham.¹¹²² Wareham then joined the Washington-based ICBL team and from 2006 led NZ's NGO efforts on cluster munitions.¹¹²³ Pearson's small diplomatic team in Geneva included Thomas Nash, who accompanied him in Oslo. Nash went on to join the steering committee of the Cluster Munitions Coalition.

In Ambassador Pearson's words, the treaty process "stands out as a uniquely successful humanitarian and disarmament endeavour", driven by a "can-do dynamic," "a pertinent reminder of the power of collective will".¹¹²⁴ Minister of Youth Affairs Deborah Morris signed the treaty in Ottawa, with ratification and implementing legislation passed a year later.¹¹²⁵ The ratification process was not uncontentious. Opposition MP Dianne Yates stated in Parliament that the Bolger government had been reluctant to endorse the ban until the latter stages of talks, referring to the National party as "going along with the United States line".¹¹²⁶ This view contrasts with the Minister for Disarmament and Arms Control, Don Mackinnon, who claimed that New Zealand had been at the centre of talks.¹¹²⁷

¹¹²¹ Deborah Morris, Minister of Youth Affairs, "Statement At The Ottawa Treaty Signing Conference For A Global Ban On Landmines by The Honourable Deborah Morris Minister Of Youth Affairs, New Zealand," Ottawa, December 3, 1997.

¹¹²² Deborah Morris, Minister of Youth Affairs, "Statement At The Ottawa Treaty Signing Conference For A Global Ban On Landmines by The Honourable Deborah Morris Minister Of Youth Affairs, New Zealand," Ottawa, December 3, 1997.

¹¹²³ Ken Rutherford, *Disarming States: The International Movement To Ban Landmines* ABC-CLIO (2011).

¹¹²⁴ In 2001 at UNGA debate where New Zealand co-sponsored and voted in favour of a UNGA Resolution 56/24M calling for universalisation.

¹¹²⁵ Don McKinnon, "Press release: Morris to sign Ottawa Treaty for New Zealand," December 1, 1997.

¹¹²⁶ New Zealand Parliamentary Debate Hansard (03 December 1998) Volume 574 NZPD, 210-212

¹¹²⁷ Press Releases issued by MFAT, including 01 December 1997 announcing that Deborah Morris, Minister of Youth Affairs, would be attending the signing ceremony in Ottawa.

While New Zealand may have lacked visibility during negotiations, its public role since has been one of prominent championing through universalisation efforts in the Pacific region and by contributing resources and personnel for demining activities around the world such as annual contributions to the UN Mines Action Fund and sponsoring a 2001 conference with representatives from the Cook Islands, Fiji, Kiribati, Papua New Guinea, Samoa, Tonga, and Vanuatu, as well as a representative of the Pacific Forum Secretariat based in Suva, Fiji.¹¹²⁸

The enduring legacy of New Zealand's participation in the Ottawa Process is its formative impression on two of its delegation, Wareham and Nash. As NGO campaigners, they played an important role a decade later in the Oslo Process, in which New Zealand would take a more frontline approach.

4.2.1.4 Transition point 7: New York, 26 October 2006

Under Prime Minister Helen Clark, New Zealand's position at the 2006 PoA Review Conference was to make explicit the connection between protecting international humanitarian law and curbing the illegal trade in firearms.¹¹²⁹ This strong stance did not lead to results at the PoA, with Wellington's Disarmament and Arms Control Minister Phil Goff regretting the missed opportunity.¹¹³⁰ This progressive approach foreshadowed New Zealand's constant support during the ATT Process, starting with its co-sponsoring of the 2006 resolution. Wellington's 2007 submission to the UNSG articulated the need for an ambitious minimum set of standards that would cover licit and illicit transfers and go further than the existing array of arrangements in place, setting a strong position that would be carried through after Key's National government came into power in 2008 to each ATT resolution until 2013.¹¹³¹

4.2.1.5 Transition point 8: New York, December 2, 2009

New Zealand's presence in the room was felt more particularly from 2009 OEWG onwards. Disarmament Ambassador Dell Higgie pushed for the conclusion of "not just any Treaty - but for a strong and meaningful one."¹¹³² With a small team in Geneva, New Zealand's modest means were stretched to organisations promoting

¹¹²⁸ Clive Pearson, "Statement by H.E. Ambassador Clive Pearson to the Ottawa Convention Intersessional Programme Standing Committee on General Status and Operation of the Convention," Geneva, May 11, 2001.

¹¹²⁹ Philip Alpers, "Guns and the Pacific – a Wasteful Hiccup at the United Nations" *APSN Net Policy Forum*, October 19, 2006.

¹¹³⁰ Philip Alpers, "Guns and the Pacific",

¹¹³¹ United Nations General Assembly, "Towards An Arms Trade Treaty: Establishing Common International Standards For The Import, Export And Transfer Of Conventional Arms: Report Of The Secretary-General," A/62/278 (Part II) (2007). New Zealand submission, pages 147-149.

¹¹³² Dell Higgie, "General Debate Statement by New Zealand Ambassador for Disarmament to the Arms Trade Treaty First Conference of States Parties," Cancun, August 24-27, 2015.

a progressive agenda, for example by making their mission available in New York to the Parliamentarians for Global Action (PGA) on 08 April 2010.¹¹³³

Ambassador Higgle's interventions were in line with the progressive group of states that included several Latin American and African states as well as Norway and Iceland. They were aligned with the NGO coalition Control Arms in prosecuting the case for a strong treaty based on humanitarian consequences.¹¹³⁴ The group was strongly opposed to the consensus rule in procedural debates. The co-authors had incorporated this as a precondition of US participation.

The progressive states effectively counter balanced those states that were either indifferent or opposed to the treaty and kept the pressure on the co-author 'motor' to maintain a strong course and not compromise on a middle-of-the-road result on issues such as definitions of key terms and scope.¹¹³⁵

4.2.1.6 *Transition point 9: New York, July 27, 2012*

New Zealand did not play a leading role in building consensus as part of the co-authors groups. Wellington instead pushed for a maximalist position.¹¹³⁶ New Zealand worked closely with Control Arms to co-develop negotiating strategies and coordinate lobbying efforts across the spectrum of progressive, middle-of-the-road and obstructionist states.¹¹³⁷ The de facto merging of diplomatic forces between New Zealand, other progressive states and maximalist NGOs was felt most explicitly in the lead-up to and during the 2012 diplomatic conference. Wellington's overall contribution was acknowledged by OXFAM New Zealand, who commended the progressive efforts by New Zealand during the 2012 Diplomatic conference.¹¹³⁸

4.2.1.7 *Transition point 10: New York, April 2, 2013*

In the final stages of talks, New Zealand adopted a more conciliatory position in support of an agreement. At the Second Diplomatic Conference, Ambassador Higgle was appointed as a facilitator on general implementation, along with 10 other diplomats, with the aim of working towards consensus.¹¹³⁹ Ambassador

¹¹³³ Parliamentarians for Global Action, "Press statement: PGA Strategy Meeting on the Contribution of Parliamentarians to the Process of Negotiations of an Arms Trade Treaty (ATT)," New York, April 8, 2010.

¹¹³⁴ Helena Whall and Allison Pytlak, "The Role of Civil Society", 457.

¹¹³⁵ Gro Nystuen and Kjolv Egeland, "The Potential of the Arms Trade Treaty to Reduce Violations to International Humanitarian Law and Human Rights Law," *Promoting Peace Through International Law* Cecilia Bailliet and Kjetil Mujezinovic Larsen (eds.) (Oxford: Oxford University Press, 2015): 214.

¹¹³⁶ New Zealand Permanent Mission to the United Nations, "Opening statement, United Nations Conference on the Arms Trade Treaty 2-27 July 2012," July 3, 2012.

¹¹³⁷ Helena Whall and Allison Pytlak, "The Role of Civil Society", 457.

¹¹³⁸ Oxfam New Zealand, "NZ Must Play Critical Role in Saving Arms Trade Treaty," Wellington, 29 July 2012.

¹¹³⁹ Peter Woolcott, "The Arms Trade Treaty," *UN Audiovisual Library of International Law*, (New York: United Nations, 2014).

Higgie referred to her work on the ATT as the issue “which gives me the greatest sense of satisfaction and the best justification for my pay packet”.¹¹⁴⁰ New Zealand was among the first states to sign the ATT in June 2013.¹¹⁴¹

5. Australia, blocking (1994 – 2007)

5.1 Why didn't Canberra champion?

Three main features of the “in capital” context in Canberra, namely domestic politics, external policy and strategic partnerships, shaped the blocking posture it adopted at the negotiating table during the Ottawa and Oslo Processes (1994 – 2007). Bipartisan political preference for the prestige of multilateral diplomacy in nuclear weapons and weapons of mass destruction (WMD) left little appetite to engage in conventional weapons treaty-making. Translating Australia's successful history of negotiating non proliferation measures into high profile advocacy for landmines and cluster munitions was not on the agenda under either political party.

5.1.1 Bi-partisan incrementalism

With the exception of the 1996 Comprehensive Test Ban Treaty (CTBT), Australia's strong suit in disarmament diplomacy has not been in treaty-making but instead in advancing a “middle of the road” approach to developing measures that introduce reductions rather than elimination of weapons.

Australia's track record in negotiating non-proliferation and disarmament measures dates back to the early days of the United Nations, from the strong diplomatic efforts that led to the 1968 Nuclear Non-Proliferation Treaty (NPT) through to Prime Minister Hawke's activism of the 1980s, for example on the Chemical Weapons Convention (CWC).

Australian diplomacy efforts on the NPT helped lead to the successful negotiation of binding obligations on technical aspects of non-proliferation of nuclear weapons.¹¹⁴² Under the Hawke Labor government (1983-1991), Foreign Minister Bill Hayden (1983-88) appointed an ambassador for disarmament to be based in Geneva and initiated the Australia Group in 1986, an informal forum of states seeking to harmonise export controls to prevent the development of

¹¹⁴⁰ Dell Higgie, “Farewell Statement by Dell Higgie, Ambassador of Disarmament and Permanent Representative of New Zealand to the Conference on Disarmament”, Conference on Disarmament 2013 Session, Geneva, 2013).

¹¹⁴¹ Oxfam New Zealand, “New Zealand to lead in signing of international Arms Trade Treaty,” Wellington, June 3, 2013.

¹¹⁴² Wayne Reynolds and David Lee (eds), *Australia And The Nuclear Non-Proliferation Treaty 1945–1974* (Canberra: Australian Department of Foreign Affairs and Trade, 2013): xxxvii – xlv.

chemical or biological weapons.¹¹⁴³ Hayden led the Australian delegation at the third NPT conference in 1986 and at negotiations on the Treaty of Rarotonga to create a Pacific nuclear-free zone.¹¹⁴⁴

Continuing in this trend, Prime Minister Paul Keating (1992-1996) and Prime Minister John Howard (1996-2007) sought the prestige of developing multilateral solutions on nuclear issues. In Prime Minister Keating's case, this extended beyond non-proliferation into disarmament, with modest success. The broad direction of Australia's nuclear diplomacy has been that nuclear weapons are necessary for international security but that they should be kept to a minimum and preferably in the hands of trusted allies.¹¹⁴⁵

Initiatives included technical mechanisms to curb proliferation, on occasion with a view to disarmament such as the chemical weapons ban, with Australia's Geneva-based disarmament diplomats playing a crucial role in negotiations on the adoption of the Chemical Weapons Convention (CWC) by the CD in 1993. The CWC is legally binding, with verification through the OPCW.¹¹⁴⁶

The 1996 Comprehensive Test Ban Treaty (CTBT), a stepping-stone approach to nuclear disarmament, is one of many incremental additions through the work of diplomats at post and experts on exports controls in Canberra.¹¹⁴⁷ The CTBT was prosecuted by Foreign Minister Gareth Evans and his team of diplomats, spanning the tenures of Hawke and Keating. Alexander Downer, Evans's Liberal successor, backed his DFAT negotiators to take the CTBT text to the UNGA where it was passed by resolution, after failing to find consensus in Geneva when India rejected the text which was supported by Russia and China.¹¹⁴⁸ The CTBT is yet to enter into force as India's ratification is required to pass the threshold for entry.

Australia's diplomatic role has been in bridge-building between large powers and the world.¹¹⁴⁹ Six initiatives are emblematic of this and of Australia's "middle-of-the-road" approach to disarmament. These range from the 1995 Canberra

¹¹⁴³ Matthew Jordan, "Arms Control and Disarmament" *Australia and the United Nations* David Lee and James Cotton (eds.) (Canberra: Australian Department of Foreign Affairs and Trade, 2012): 292.

¹¹⁴⁴ Matthew Jordan, "Arms Control and Disarmament", 292.

¹¹⁴⁵ Jacques E.C. Hymans, "Isotopes and identity: Australia and the nuclear weapons option, 1949–1999," *The Nonproliferation Review* vol. 7 no. 1 (2000): 3.

¹¹⁴⁶ *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, United Nations Treaty Series vol. 1974 p. 45 and vol. 1975 p. 3, Geneva, 3 September 1992.

¹¹⁴⁷ Fiona Skivington, "Comprehensive Test Ban Treaty: Australia's Goal," *Insight* vol. 4 (Canberra: Australian Department of Foreign Affairs and Trade, 1995).

¹¹⁴⁸ Alexander Downer, MP, Minister For Foreign Affairs Of Australia, "The United Nations For The 21st Century: Statement To The Fifty-First General Assembly Of The United Nations," New York, 30 September 1996.

¹¹⁴⁹ Matthew Jordan, "Arms Control and Disarmament," 294.

Commission study on the feasibility of nuclear disarmament, to the Seven-Nation Initiative promoting technical cooperation and research, to the 2008-10 International Commission on Nuclear Non-Proliferation and Disarmament (ICNND) exploring measures for states and the Non-Proliferation and Disarmament Initiative (NPDI) bringing together foreign ministers from 10 states to follow-up on steps decided at the 2010 NPT Review Conference.¹¹⁵⁰

5.1.2 Anchoring arms control within the UN

Canberra's policy preference lay in traditional arms control and the development of incremental approaches crafted by technical weapons experts. This was very different in nature and in practice to the Ottawa and Oslo Processes. They went in the direction of outright bans, blending different legal approaches from arms control and humanitarian law, and were ad hoc in nature. Given the procedural approach and the object of talks of both Processes, Australia's expertise therefore played against active participation in their early stages.

From the outset, the Ottawa and Oslo Processes were problematic for Canberra due to the diplomatic forums in which they took place, namely through a series of ad-hoc meetings in capitals around the world. Canberra was reluctant to engage in negotiations hosted outside of the formal venues instituted under the UN Charter and the CCW framework. In line with Washington's viewpoint, two main reasons underpinned this reluctance, namely concerns about membership and preferences for incremental measures in existing forums.

First, Australia's position was that universalisation of regulations was crucial, even at the expense of a lower threshold of regulations. Most importantly, weapon producing countries needed to sign up. They did not participate in the Ottawa and Oslo Processes and were unlikely to ratify the treaties that emerged. They were however parties to the CD and the CCW. Therefore Canberra's preferred option was the CD on APLMs and the CCW on cluster munitions.

In addition to concerns about participation, Australia also shared Washington's reluctance to move talks away from negotiating forums that had been set up to deal with specific issues. The rules of procedures of both the CD and the CCW set a predictable path for incremental codification. The custom of consensus decision-making meant that states least inclined towards change could slow down proceedings. Australia's view was that a strong treaty whose signatories did not

¹¹⁵⁰ Tanya Ogilvie-White, "Australia and the Non-Proliferation and Disarmament Initiative: difficult times for disarmament diplomacy," *Policy Analysis - Australian Strategic Policy Institute*, vol. 110 (2013).

include weapons suppliers would be ineffectual, if not detrimental, if attention was diverted from an inclusive process and a broad membership.

On the regulation of APLMs, Australia's consistent position from Evans to Downer was that this was a case for disarmament rather than a humanitarian issue. On APLMs, Evans' impassioned challenge in 1991 for governments to 'put their concerted efforts into building imaginative, fair and effective arms control regimes' did not extend to conventional arms.¹¹⁵¹ Evans remained sceptical until the end of his mandate about the parallel process to pursue a global ban on APLMs outside of the CD or the CCW. He stated as late as June 1995 that the "moral position" on APLMs was to take action within these forums rather than waste diplomatic efforts on a "hopeless utopia".¹¹⁵² Evans saw measures on transparency on export controls and conventional weapons as the only, modest option for the path forward with the P5 to set the tempo.¹¹⁵³ The CD, the UN's disarmament negotiating forum, was the natural and preferred venue.

While Alexander Downer was quick to announce on taking office in March 1996 that Australia would sign the Ottawa Treaty, this was not so much a change in direction but rather a reflection of the treaty as a *fait accompli*. After its signature, Downer maintained Evans' efforts on broadening the scope of the CCW¹¹⁵⁴ and for more stringent rules in the CD.¹¹⁵⁵

On the regulation of cluster munitions, while Australia had shifted its approach and was in favour of a humanitarian perspective, here the preferred forum was the CCW. The CCW's *raison d'être* was to codify humanitarian law through protocols attached to its overarching framework. With talks on cluster munitions in the CCW following an uneven trajectory in contrast with the ad hoc Oslo Process which was ramping up, Canberra reversed its original position of opting out of the ad hoc process and maintained a foot in both camps, as explored in chapter 4 of this thesis. Canberra's role within the small but influential like-minded group of states was to ensure that the future legal treaty would not push too far in a progressive direction of strong, comprehensive regulations, as explored in chapter 4 of this thesis. Once

¹¹⁵¹ Gareth Evans, "Address by the Minister for Foreign Affairs and Trade of Australia, Senator Gareth Evans, to the United Nations Conference on Disarmament Issues, Arms control and disarmament: a chance for progress" Kyoto, May 27, 1991.

¹¹⁵² Gareth Evans, "Letter to the Editor," *The Canberra Times*, Canberra, June 14, 1995.

¹¹⁵³ Eric Sidoti, "The Landmines Campaign: A Lesson in Advocacy for our Times," *Occasional Paper, Human Rights Council of Australia* (2006): 5.

¹¹⁵⁴ Alexander Downer, Australian Minister for Foreign Affairs, "Media Release: Australia to Chair Major International Conference on Conventional Arms Control," Canberra, April 11, 2001.

¹¹⁵⁵ Alexander Downer, Australian Minister for Foreign Affairs, "Media Release: Conference on Disarmament re-appoints Australian Ambassador as Special Coordinator on Landmines," Canberra, May 17, 1998.

the CCM was signed, Australian efforts would again continue in the CCW track. Talks were finally abandoned in 2011 after less rigorous rules were blocked by CCM signatories exercising the rule of consensus to prevent the erosion of the legal high-water mark set by the CCM.¹¹⁵⁶

5.1.3 Glued to the US bilateral partnership

Australia's entrenched connection to its military alliance with the US, underwritten by a significant arms trade relationship, was a third, and most determining, factor in Australia's position of regime shifting on APLMs and cluster munitions.

Australia's significant landmass and coastline,¹¹⁵⁷ its distant allies and occasionally fraught relations with regional neighbours shape perceptions of vulnerability from Australian policymakers driven by the "tyranny of distance".¹¹⁵⁸ Maintaining a strong alliance with the US was fundamental, if not existential.¹¹⁵⁹ This turn across the Atlantic dates back the 1940s. The UK had been Australia's major ally after European colonization until the 1942 fall of Singapore, when British troops were perceived to have 'turned their backs' on Australians. This sealed the emergence of independent Australian foreign policy, a decade after the 1931 Westminster Accords had foreshadowed the separation with London.¹¹⁶⁰

The US bilateral relationship, notably through the 1951 ANZUS treaty, has bipartisan support, as noted earlier. Australian policy-makers generally hold that the obligations under ANZUS include an automatic reply from American forces should Australia be attacked, drawing in America's nuclear capability to support Australia's security. Without American nuclear weapons, an attack against Australia would be more likely. Australia therefore falls under the extended deterrence of the American nuclear umbrella – this is indeed the perception of Australian policy-makers, although whether this holds true when viewed from Washington has never been truly tested, nor consistently and public affirmed.¹¹⁶¹ Mainstream consensus is that "Australia must do what it takes to shore up the Alliance".¹¹⁶² This extends

¹¹⁵⁶ Farrah Zughni, "Cluster Munitions Protocol Fails," *Arms Control Today*, Geneva, December 2, 2011.

¹¹⁵⁷ Desmond Ball, "The Strategic Essence," *Australian Journal of International Affairs*, vol. 55 no. 2 (2001): 237.

¹¹⁵⁸ Geoffrey Blainey, *The tyranny of distance: how distance shaped Australia's history*, (Melbourne: Sun Books, 1966).

¹¹⁵⁹ Desmond Ball, "The Strategic Essence," 235.

¹¹⁶⁰ P.G. Edwards, "Foreign Policies," *Australians – A Historical Library, From 1939* vol. 5, Ann Curthoys, A.W. Martin and Tim Rowse (eds.) (Fairfax, Syme & Weldon Associates, 1986): 31.

¹¹⁶¹ Stephan Frühling and Andrew O'Neil, "Nuclear Weapons, the United States and Alliances in Europe and Asia: Toward an Institutional Perspective," *Contemporary Security Policy* vol. 38 no.1 (2017): 4-25.

¹¹⁶² Mark Beeson and Richard Higgott, "The changing architecture of politics in the Asia-Pacific: Australia's middle power moment?," in *International Relations of the Asia-Pacific* vol. 14 no. 2 (2013): 215-237 .

to close participation with NATO as a strategic partner. Participation in joint US and NATO military operations is supported by both sides of Parliament.¹¹⁶³ On the public record and in the bilateral arms trade arena, Australia's steadfast US relationship has been reflected in Canberra's multilateral diplomatic efforts abroad and as a driver of foreign and defence policy at home.

The arms trade is an important aspect to the bilateral relationship. Australia – the sixth largest global importer of conventional weapons¹¹⁶⁴ obtains most of its weapons from the US (61%).¹¹⁶⁵ Australia is the 11th largest importer of US major weapons, accounting for 6.7% of the total US weapons exports.¹¹⁶⁶ Bilateral trade is facilitated by Australian legislation such as the 2010 Defence Trade Expenditure Treaty signed under Rudd and ratified by the US Senate in September 2010.¹¹⁶⁷ Labor and Liberal Party leaders alike have maintained a steady political commitment to the US alliance through participation in all major US military operations since then, as well as significant investment in the defence systems that underpin this undertaking.¹¹⁶⁸ This has been underpinned by the Liberal Party's historical commitment to 3% growth in defense spending, which has fluctuated over time while remaining positive (if at times more modest) and has been matched in spirit by similar commitments under Labor leaders.¹¹⁶⁹

PM John Howard had a personal focus on the bilateral US relationship. He saw Canberra as the Pacific spoke to Washington's hub, famously misquoted as Canberra being the US's "deputy sheriff" in the region.¹¹⁷⁰ This included involvement as part of the 'Coalition of the Willing' in Iraq in 2003, with a small deployment that was highly publicized domestically,¹¹⁷¹ as well as a decade-long commitment to NATO efforts in Afghanistan.¹¹⁷² The start of these operations

¹¹⁶³ Nick Bisley, "'An ally for all the years to come': why Australia is not a conflicted US ally," *Australian Journal of International Affairs* vol. 67 no. 4 (2013): 415. 403-418].

¹¹⁶⁴ Pieter D. Wezeman, Aude Fleurant, Alexandra Kuimova, Nan Tian and Siemon T. Wezeman, "Trends in International Arms Transfers, 2017" (Stockholm: Stockholm International Peace Research Institute, 2018): 2.

¹¹⁶⁵ Pieter D. Wezeman et al, "Trends in International Arms Transfers, 2017", 2.

¹¹⁶⁶ Pieter D. Wezeman et al, "Trends in International Arms Transfers, 2017", 3.

¹¹⁶⁷ *Treaty Between The Government Of Australia And The Government Of The United States Of America Concerning Defense Trade Cooperation (Sydney, 5 September 2007) Implementing Arrangement (Washington, 14 March 2008)*, Australian Treaty Series [2013] ATS 17, Entry Into Force: 16 May 2013.

¹¹⁶⁸ Naomi Woodley, "Defence 'holy grail', a long-term bipartisan agreement, to be subject of inquiry," *ABC News*, Canberra, June 17, 2017.

¹¹⁶⁹ Andrew Carr and Peter J. Dean, "The Funding Illusion: The 2% of GDP Furphy in Australia's Defence Debate," *Security Challenges* vol. 9 no. 4 (2013): 67.

¹¹⁷⁰ William Tow, "Deputy Sheriff or Independent Ally? Evolving Australian-American Ties in an Ambiguous World Order," *The Pacific Review* vol. 17 no. 2 (2004): 287.

¹¹⁷¹ Hon. John Howard, MP "Transcript Of The Prime Minister: Address To The Nation," Canberra, March 20, 2003.

¹¹⁷² Senator Robert Hill, Minister for Defence, "Media Release: Australian Defence Forces in Afghanistan," Canberra, December 3, 2001.

coincided with the term of Republican President George W. Bush, whose politics were broadly compatible with Howard's conservative stance.

On arms control and disarmament, Australia's efforts at regime shifting on landmines and cluster munitions were compatible and complementary to the US position as a producer of both types of weapons and a significant user of the latter, as noted in chapter 4. US preferences were for talks to occur in existing diplomatic forums with their structural bias towards incremental, lowest common denominator outcomes. These forums were driven by military powers who held the overwhelming balance of power and could control the pace and substance of discussions, as noted in chapter 4. This shaped Australia's multilateral engagement in Geneva, both in terms of adopting a moderate approach on issues such as landmine regulation and cluster munitions, but also in terms of process with Australia at the vanguard of keeping talks confined to forums such as the CD and the CCW. This is particularly true of cluster munitions, a core component of military arsenals when the CCM was being negotiated, as opposed to landmines whose utility was on the decline by the time the Ottawa Treaty was negotiated.

5.2 How did Canberra shape negotiating processes?

In both the Ottawa and the Oslo Processes, Canberra initially pursued a strategy of regime shifting away from ad hoc processes towards the CCW and the CD. When both Processes looked set to reach an outcome, Canberra changed direction and eventually signed both Treaties. This section examines Canberra's diplomatic activity in the context of changes in capital.

5.2.1.1 *Transition point 1: Ottawa, October 5, 1996*

In April 1996, in the lead-up to the CCW Review Conference, the Australian government announced its support for international action on banning APLMs and the suspension of their operational use by the Australian Defence Force.¹¹⁷³

This was the culmination of lobbying efforts, since the early 1990s, for the Australian government to adopt a humanitarian approach, prosecuted by the Australian Network for the Campaign to Ban Landmines (ANCBL), and in particular by Sister Patricia Pak Poy. Pak Poy had been a member of the Australia negotiating delegation to the CCW since 1995, where she had direct interactions with state officials during Meetings of States Parties to the CCW.

¹¹⁷³ Australian Department of Foreign Affairs, "Australia Pledges Support For A Global Ban On Anti-Personnel Landmines; Unilaterally Suspends Use," Media Release, Canberra, April 15, 1996.

Pak Poy, a Catholic nun from Adelaide, led the ANCBL from its launch in 1993, bringing in key partners such as Oxfam, the Australian Red Cross and Australian-based UN affiliates to focus the Australian government's attention on the humanitarian impacts of APLMs and the urgency of a global ban through a grassroots campaign including film screenings, photos exhibitions and public rallies. Pak Poy's impact was acknowledged in 1998 by the Returned Services League which named her person of the year at their annual conference. Foreign Minister Alexander Downer also recognized her role.¹¹⁷⁴

The public campaign helped sway the balance between government officials pushing for a humanitarian approach to a ban (within DFAT and within the ranks of the ADF in the Department of Defense) and others steadfastly resolute on their commitment to the arms control approach of further regulation rather than prohibition (mainly civilian legal experts within DoD).

While Canberra had called for international action, this was understood to be firmly situated within the UN framework and not within the Ottawa Process. When the CCW avenue resulted in a disappointing outcome, the CD was the next preferred option. While publicly commending the Ottawa strategy meeting as "an important backdrop" for "raising public awareness",¹¹⁷⁵ Australia was actively pursuing the CD avenue from January 1997, pushing for either an ad hoc group or a special coordinator to set in motion negotiations within the CD.¹¹⁷⁶

5.2.1.2 Transition point 2: Brussels, June 27, 1997

On the day that the Brussels Declaration was adopted, Australia's Disarmament Ambassador John Campbell took up the role of Special Disarmament Coordinator to the CD in Geneva in June 1997. He was tasked with developing a mandate for discussions to commence within that forum.¹¹⁷⁷ APLMs had not been added to the CD's agenda in January, despite US, UK and French backing. Even "talks about talks" had not been agreed to.¹¹⁷⁸ Australia was still betting on the CD as the most realistic

¹¹⁷⁴ Alexander Downer, "Foreword," in *A Path is Made by Walking it: Reflections on the Australian Network to Ban Landmines, 1991-2006* Patricia Pak-Poy, (ed) (Melbourne: David Lovell Publishing and ICBL Australian Network to Ban Landmines, 2006): v-vi.

¹¹⁷⁵ Australia, "Statement to the International Strategy Conference Towards a Global Ban on Anti-Personnel Mines," Ottawa, October 3, 1996. Reproduced in 'Australian Practice of International Law 1996, Armed Conflict and Security Matters,' *Australian Yearbook of International Law 1997 Vol. 18*, DW Greig and Hilary Charlesworth (eds.) (Canberra: Centre for International and Public Law, Faculty of Law, Australian National University: 1998): 453-455.

¹¹⁷⁶ Ada Cheung, "The Ottawa Convention Negotiating History – a DFAT view," in *A Path is Made by Walking it: Reflections on the Australian Network to Ban Landmines, 1991-2006* Patricia Pak-Poy (ed) (Melbourne: David Lovell Publishing and ICBL Australian Network to Ban Landmines, 2006): 53.

¹¹⁷⁷ Alexander Downer, Minister for Foreign Affairs, "Conference On Disarmament Appoints Australian Ambassador As Special Coordinator On Landmines," Canberra, June 27, 1997.

¹¹⁷⁸ Don Hubert, *The Landmine Ban: a case study in humanitarian advocacy*, Thomas J. Watson Jr. Institute for International Studies (2000).

forum through which to pursue regulation of APLMs, through an incremental approach starting with the ramping up of demining operations.¹¹⁷⁹ For Canberra, the inclusion of major APLM producers in the CD was worth the risk of a weak outcome as efforts would be futile if exporting states such as China, Russia and India did not join. All indications were that they would not. Major APLM producers China and Russia continued their explicit opposition to a total ban and to the Ottawa Process. India, another major producer, saw Geneva as the legitimate venue for disarmament negotiations on APLMs. All three believed that bypassing the UN would run the risk of undermining its legitimacy.¹¹⁸⁰

As progress in the Ottawa Process ramped up, the CD path under Ambassador Campbell was postponed in August 1997. An extension to Campbell's mandate was blocked that year, but reinstated in 1998 and 1999.¹¹⁸¹ While the CD avenue was firmly closed, Canberra maintained support for the CCW track, co-sponsoring Resolution 51 at the UNGA in November that year that called for all states to sign the Amended Protocol II on Landmines to the CCW.

5.2.1.3 Transition point 3: Oslo, September 18, 1997

In Oslo, Australia continued to support US amendments until Washington pulled out of talks on the second last day, opening the door to the treaty's adoption.

Two months after Oslo, the Foreign and Defence Ministers jointly announced that the government had taken the "difficult decision"¹¹⁸² to be among the initial MBT signatories. This had little to do with substance and all to do with politics. In between the adoption and signature of the treaty, PM Howard met with his Canadian counterpart Chretien in Edinburgh during a Commonwealth Heads of Government Meeting. Howard's request for Canada's support on an Australian trade proposal was met with a Canadian request for Canberra's backing of the MBT.¹¹⁸³ Australia shifted to supporting a total ban "when the hard yards had been won" and the US position became untenable.¹¹⁸⁴ FM Downer's speech on

¹¹⁷⁹ Alexander Downer, "Media Release, "Conference On Disarmament Appoints Australian Ambassador As Special Coordinator On Landmines," June 27, 1997.

¹¹⁸⁰ Stuart Maslen and Richard Lloyd, *Mine Action after Diana: Progress in the Struggle Against Landmines*, Pluto Press (2004).

¹¹⁸¹ Landmine Monitor, "Australia Mine Ban Policy," in *Landmine Monitor Report 2000 International Campaign to Ban Landmines* (ed.) (Washington: Human Rights Watch 2002): 203.

¹¹⁸² Eric Sidoti, "The Landmines Campaign: A Lesson in Advocacy for our Times" in *A path is made by walking it: Reflections on the Australian network to ban landmines, 1991-2006* Patricia Pak-Poy (ed) (Melbourne: David Lovell Publishing and ICBL Australian Network to Ban Landmines, 2006): 114.

¹¹⁸³ William Maley, "The UN, NGOs, and the land-mines initiative: An Australian perspective," in *Enhancing Global Governance: Towards a New Diplomacy?* Andrew F. Cooper, John English and Ramesh Thakur (eds.) (New York: United Nations University, 2002): 101.

¹¹⁸⁴ Eric Sidoti, "The Landmines Campaign", 114.

Australia's ratification of the Ottawa Treaty in February 1999 referred to the CD, reinforcing the preference for a broad membership and a fixed forum.

Nonetheless, Australia was among the first signatories in 1997 and went on to destroy stockpiles in 1999.¹¹⁸⁵ Funding for victim assistance has been ongoing, and Australia has contributed to implementation in various capacities, as co-rapporteur and co-chair of the Standing Committees on Stockpile Destruction (2000-02), Victim Assistance (2002-04; 2009-11), and Mine Clearance (2007-09) and was president of the Seventh Meeting of States Parties in 2006.¹¹⁸⁶

5.2.1.4 Transition point 4: Oslo, February 23, 2007

Australia's position throughout the Oslo Process and beyond in the CCW track reflected a cautious approach. Australia's mantra was one of balance. A middle ground was needed between humanitarian concerns and military considerations. The MBT had set a precedent for a weapon that was no longer a vital component of military arsenals. In contrast, cluster munitions were a core element to military arsenals with sophisticated capabilities. Additionally, operational impacts on the strategic military alliance with the US were never far from mind for negotiators and Cabinet (both conservative and Labor after a change during the process).¹¹⁸⁷

Canberra was sceptical of whether action in the Oslo track would be effective. In the lead-up to the Oslo Conference, Australian diplomats in Geneva were consulting informally with US allies. This included Turkey and other like-minded countries (UK, Germany, the Netherlands, Finland and Japan). The price of entry to the Conference was a pre-commitment to the Oslo Declaration which had been circulated prior. Diplomatic cables sent from US diplomats at post to Washington relay details of meetings that were conducted between US officials and their counterparts in Ankara and Tokyo. These show that in January, this informal group of five countries "were in wide agreement that the provision for a total ban (...) be removed from the final declaration".¹¹⁸⁸ These cables suggest that Turkey's

¹¹⁸⁵ The payment of services rendered by the Royal Australian Engineers for mine clearance was a full cost charge against Ausaid. The deployment as an exercise in military training came from public funds intended for humanitarian purposes. Rae McGrath, *Landmines and Unexploded Ordnance. A Resource Book* (London: Pluto Press, 2000): 79.

¹¹⁸⁶ Department of Foreign Affairs, "Mine Action," <http://dfat.gov.au/international-relations/security/non-proliferation-disarmament-arms-control/conventional-weapons-missiles/mine-action/Pages/mine-action.aspx> . Last accessed April 27, 2018.

¹¹⁸⁷ Australian Parliament, "Convention on Cluster Munitions and Australia's role" in *Report of the Inquiry by the Australian Parliament's Senate Standing Committee of Foreign Affairs and Trade on the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010* (Canberra , 2010): Paragraphs 1.9-1.16.

¹¹⁸⁸ Embassy Ankara, "Turkey Agrees With US Position on Cluster Munitions," Wikileaks Cable: 07Ankara1246, dated May 22, 2007, https://wikileaks.org/plusd/cables/07ANKARA1246_a.html Embassy Tokyo, "Japan Supports U.S. Position On Cluster Munitions," Wikileaks Cable: 07Tokyo438, dated January 1, 2007, https://wikileaks.org/plusd/cables/07TOKYO438_a.html .

participation in the process overall was not so much a signal of support for the intended outcome but more a safeguard action to limit the scope of the final treaty. According to Japanese officials, at the end of January, Australia was still undecided about whether it would seek an invitation to attend in Oslo.¹¹⁸⁹ Ultimately, Australia did not attend the Oslo Conference.

The Australian government at the time believed that the CCW was the only appropriate venue for talks to progress, as Canberra deemed essential the presence of the world's major producers. While most were CCW members, few affected states were. Emblematic of Canberra's stance was the inclusion of legal expert Professor Timothy McCormack as an Australian expert in the delegation in Geneva, who was brought in in 2005 to conduct and analyse a questionnaire circulated to CCW members on international humanitarian law and explosive remnants of war. This exercise was intended to gauge the state of play of existing rules, the results of which could be used to demonstrate that a gap existed or did not.¹¹⁹⁰ Yet even in the CCW, Australia did not support the negotiation of a legal instrument during the CCW Review Conference.

5.2.1.5 Transition point 5: Wellington, February 22, 2008

Australia's preferred CCW option had fallen away by the time the Wellington Conference took place, leaving the Oslo Process as the default option. Canberra changed tack and sought to shape the final text in lock-step with its like-minded US allied peers, introducing discussion papers on interoperability and definitions.

On interoperability, Australia introduced a discussion paper outlining its concerns. On definitions, Australia also submitted a proposal to exclude sensor-fused systems from the scope of causing "unacceptable harm". This was based on the argument that they contained effective fail-safe mechanisms. Both were included in the compendium of views annexed to the Wellington Declaration. Australia, like Canada, protested this move for their proposals to be effectively

¹¹⁸⁹ Embassy Tokyo, "Japan Supports U.S. Position On Cluster Munitions," Wikileaks Cable: 07Tokyo438, dated January 1, 2007, https://wikileaks.org/plusd/cables/07TOKYO438_a.html.

¹¹⁹⁰ As the original Report confirms, only a third of the governments approached responded. However, as stated on pages 8-9, 'it is clear from responses to the questionnaire that very few States have thought through how the Rule on Distinction, the Prohibition on Indiscriminate Attacks or the Rule on Proportionality, for example, apply in practical terms to the problem of ERW. (...) Many States Parties to Additional Protocol I still have not adopted a formal weapons review process to implement their legal obligation pursuant to Article 36(2) and they should be encouraged to do so.' Third Review Conference Of The States Parties To The Convention On Prohibitions Or Restrictions On The Use Of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious Or To Have Indiscriminate Effects, "Procedural Report Group Of Governmental Experts Of The States Parties To The Convention On Prohibitions Or Restrictions On The Use Of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious Or To Have Indiscriminate Effects," Geneva, October 13, 2006. CCW/CONF.III/7/Add.1, CCW/GGE/XV/6/Add.1.

relegated to background material, and signed up to the strongly worded statement from the group. But they also signed up to the Wellington Declaration and secured their ticket of entry to the Dublin conference.

Washington, absent from proceedings in Wellington, was in close contact with Canberra before and after the diplomatic conference. Regarding interoperability, Australia reassured Washington that it would be included in the treaty text. Australia also sought US input on which African countries to approach for support and from which countries to seek feedback on proposed Canadian wording. DFAT also touched on its intentions to introduce an exclusion clause that would allow parties to the Convention to invoke a waiting period of either 10 or 15 years on the application of the provisions of the treaty during “combined operations and activities with non-party states”.¹¹⁹¹ On definitions, DFAT relayed that they would be pushing to exclude sensor-fused weapons. These weapons, stockpiled by the US Armed Forces, were also at the time in development by 14 other arms producers including most of the Like-Minded Group.¹¹⁹² As for procedural matters, Canberra was pushing for consensus decision-making and not the 2/3 majority proposal put forward by the Core Group. They were also trying to curb the potential impact of NGOs in Dublin by restricting their participation in Dublin.

Diplomatic cables indicate concerns voiced by the DFAT official about their participation and influence in Wellington. The official noted that the like-minded group were particularly put out by proceedings “in bad faith” that occurred in New Zealand, when draft Rules of Procedure for Dublin effectively side-lined the Group’s annexed textual changes from future talks in Ireland, in contrast to changes from NGOs which were included in the draft text. The DFAT official articulated tactics to employ to ensure that this would not recur in Dublin, suggesting the option of invoking the precedent set during talks on the Rome Statute of the International Criminal Court, where non-voting participants were excluded from side meetings and final discussions.¹¹⁹³ Canberra’s advice to Washington was to maintain pressure

¹¹⁹¹ Embassy Canberra, “Wellington Cluster Munitions Meeting Outcomes,” Wikileaks Cable: 08Canberra199, dated February 27, 2008

https://wikileaks.org/plusd/cables/08CANBERRA199_a.html

¹¹⁹² Human Rights Watch, *Survey of Cluster Munitions Produced and Stockpiled: Briefing Paper Prepared for the ICRC Experts Meeting on Cluster Munitions, Montreux, Switzerland* (April 2007).

¹¹⁹³ Embassy Canberra, “Wellington Cluster Munitions Meeting Outcomes,” Wikileaks Cable: 08Canberra199, dated February 27, 2008

https://wikileaks.org/plusd/cables/08CANBERRA199_a.html

at the CCW in April on cross-over CCW and Oslo states to “resolve our common issues with the Oslo Convention.”¹¹⁹⁴

5.2.1.6 Transition point 6: Dublin, May 30, 2008

In Dublin, Canberra maintained its position of balancing humanitarian consequences with military considerations, arguing that technological advances would increase the reliability of cluster munitions. While interoperability was a “deal-breaker”,¹¹⁹⁵ Australia left Canada to take the lead on drafting as both states shared concerns and priorities. Australia was brought in during the latter stages of talks as Friend of the Chair on the Preamble, its moderate voice trusted by the like-minded group (which had fragmented by that stage).

Australia publicly framed its support in humanitarian terms when it signed the CCM in Oslo. Canberra highlighted Australia’s role in this success in public statements such as during the Minister’s address to the UN GA Thematic Debate during the 64th Session on Conventional Weapons.

Interoperability post-Dublin was politically contentious. The polarising debates in Australia, paralleling those in Canada, centred on exemptions to the ban for national defence force participation in military operations with non-signatories through domestic enactment of legislation in both states.¹¹⁹⁶

Both in Canberra and in Ottawa, similar acts of parliament privileged an interpretation of paragraph 2 of article 21 to provide an exemption to the prohibition for joint operations with non-signatories.¹¹⁹⁷ An alternative interpretation of that same clause would have placed it in the wider context of the article 21 which addressed the issue of universalisation of the prohibition.

In Australia, public protests occurred from a wide variety of organisations in the field of development (Oxfam) and human rights (Amnesty), as well as legal practitioners (such as the Law Council of Australia) through an open letter tabled by the Greens Senator Scott Ludlam in Parliament in July 2011.¹¹⁹⁸

¹¹⁹⁴ Embassy Canberra, “Wellington Cluster Munitions Meeting Outcomes,” Wikileaks Cable: 08Canberra199, dated February 27, 2008
https://wikileaks.org/plusd/cables/08CANNBERRA199_a.html

¹¹⁹⁵ Landmine Monitor, “Australia,” in *Banning Cluster Munitions: Government Policy and Practice*, (Ottawa: Mines Action Canada, 2010): 120.

¹¹⁹⁶ Senator Scott Ludlam, “Senate must fix fundamentally flawed cluster bomb law – Greens,” Media Release, Canberra, May 11, 2011. Melinda Kuritzky, “Docherty’s Testimony Highlights Flaws in Canadian Bill on Cluster Munitions,” *Human Rights @ Harvard Law*, October 23, 2012.

¹¹⁹⁷ Thalif Deen, “Western Double Standards on Deadly Cluster Bombs,” *Inter Press Services (IPS)*, September 9, 2015.

¹¹⁹⁸ Senator Scott Ludlam, “Speech: Open Letter to the Minister for Defence, the Minister for Foreign Affairs and the Attorney General,” July 6, 2011, Joint Standing Committee on Treaties, *Senate Hansard*, P. 4194.

In a submission to the Australian Parliament's Joint Standing Committee on Treaties (JSCOT), a consultative parliamentary body which analyses international treaties before they are presented for adoption, the government interpreted clause 2 in article 21 of the CCM to signify that Australia could maintain cooperation with its allies, notably the US, as long as ADF personnel are neither first nor last in the chain of command when cluster munitions are used.¹¹⁹⁹

~ This chapter reviewed two diplomatic strategies, blocking and sitting on the sidelines, to contrast when and how they were adopted as compared to a championing strategy. This chapter demonstrates that all three strategies are embedded in the external negotiating context in which they occur. Specifically, changes in the "in capital" level shape when states engage at the negotiating table.¹²⁰⁰ Three factors come into play, namely domestic politics, external policy and strategic partnerships in capital. How states engage in blocking and sitting on the sidelines was also outlined in fine detail in this chapter. Overall, this chapter has shown that a multi-layered contextual model captures variations in strategies during treaty-making processes.

¹¹⁹⁹ The Parliament Of The Commonwealth Of Australia, *Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 Explanatory Memorandum*, (2010): 4.

¹²⁰⁰ The other two layers of the external negotiating context for each negotiating cycle – "in the world" and "in the streets" – have been extensively covered in the preceding case study chapters.

CHAPTER 7: CONCLUSION

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Chapter 7: Conclusion

The thesis examined how Canada, New Zealand and Australia championed, respectively, the negotiation processes that led to the Mine Ban Treaty (MBT), the Convention on Cluster Munitions (CCM) and the Arms Trade Treaty (ATT). Tracking these states over three cases revealed differences in negotiating strategies over time, with each state championing one treaty process while blocking or on the sidelines for two others. This is illustrated below:

	Canada	New Zealand	Australia
<i>Case 1: Ottawa Process</i>	<i>Core group</i>	<i>On the sidelines</i>	<i>Blocker</i>
<i>Case 2: Oslo Process</i>	<i>Blocker</i>	<i>Core group</i>	<i>Blocker</i>
<i>Case 3: ATT Process</i>	<i>On the sidelines</i>	<i>On the sidelines</i>	<i>Core group</i>

Figure 32 Patterns in conventional weapons treaty-making

A multi-layered contextual model focused analysis on six different levels of activity. These six levels were split between the external negotiating context (in capital/in the world/ in the streets), and the internal negotiating context (at the table/in the room/ in the corridors). These viewpoints provided contextual detail to trace the processes that led to ten transition points during negotiations of three binding legal instruments. Two primary research questions were interrogated. When do states engage in treaty-making processes? How do states then shape treaty-making over different phases of negotiations?

This concluding chapter proceeds in four sections. In the first section, the first research question is addressed. Then, the second section turns to the second research question. The third section explores the methodological contribution of the ‘contexts of diplomacy’ model. The fourth section revisits the core insights from international relations, diplomatic studies and negotiation analysis in light of the findings of this thesis. The final section turns to the policy implications of this thesis for multilateral diplomacy and conventional weapons treaty-making in Canada, New Zealand and Australia, with attention paid to implications beyond these states and this issue-area where relevant.

1. When do states engage in treaty-making?

This thesis demonstrates that in the case of Canada, New Zealand and Australia, states engage in conventional weapons treaty-making when three “in capital” elements align, namely politics, policy and partnerships. Governments in power set negotiating directions that reflect their political objectives and national policy expertise against the strategic backdrop of their relations with military partners and their interactions in multilateral diplomacy. When all three point in the direction of

a negotiated outcome, state engagement follows. The two other levels of the external negotiating context, in the world and in the streets, influence state engagement only to the extent that they create a window of opportunity for global action. Civil society activism at the street level, in tandem with events and structures on the world stage (such as the outbreak of conflicts and entrenched modes of diplomacy), can trigger negotiations. Yet these two layers were not sufficient to influence state engagement for Canada, New Zealand and Australia. These are represented in Figure 33.

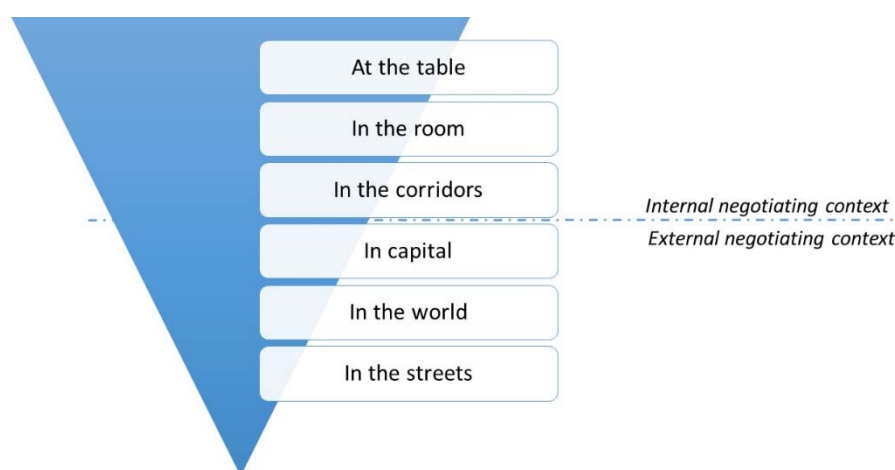


Figure 33 Contexts of diplomacy

1.1. Momentum from the streets

While civil society street-level activism has generated momentum for state-led action on the multilateral stage, this has not always triggered Canada, New Zealand and Australia to champion negotiating cycles. While the street level does contribute to a conducive environment for treaty-making to occur, its impact on whether states champion, block or sit on the sidelines is less direct.

Each of the three treaties examined was preceded by concerted civil society action for multilateral regulations driven by humanitarian concerns. Local-level networks of globally-connected civil society organisations relayed powerful testimony from the frontlines to publics and policymakers around the world, providing compelling evidence for action to be taken. This ranged from high profile media coverage of landmines driven by the International Campaign to Ban Landmines (ICBL) such as articles in prominent publications such as *Time Magazine* and *The New Yorker*, to cluster munitions activism through the erection of a three-legged chair outside the UN offices in Geneva to represent survivors of explosive remnants of war, and the “Million Faces” global petition coordinated by Control Arms and presented to the UNSG in New York in 2004.

This was paired with solutions crafted by civil society experts to address this problem. On landmines and cluster munitions, legal experts contributed draft texts and substantive input to propel state-led action in a progressive direction, while the first draft of a Global Arms Trade Treaty was developed in the decade preceding UN-hosted state negotiations by Nobel Peace Prize laureate Oscar Sanchez Arrias. Grassroots activism provided an efficient vehicle to highlight humanitarian issues, while civil society also contributed legal and technical know-how to translate the problems into solutions on the multilateral stage.

While these were significant inputs into the processes themselves, this level of activity did not, alone, influence whether the three states engaged in talks.

1.2. Movement in the world

Events that occur in the world and informal and formal structures on the world stage can also affect negotiating cycles.

The conflicts in South-East Asia in the 1960s and 1970s and in Southern Lebanon in 2006 added urgency to the calls to ramp up multilateral talks on landmines and cluster munitions. These events shone a spotlight on the humanitarian impact of weapons on civilians and placed pressure on states to take action.

The enduring structures of multilateral diplomacy are both formal, such as the UN, and informal, such as the formation of groups of states pushing for action on specific issues. These structures can also impact disarmament diplomacy. The UN creates opportunities for high level interaction during the annual leaders' week in September to launch the UNGA's yearly session. Diplomats at 193 permanent missions to the UN in New York and Geneva also interact regularly in standing forums such as the Conference on Disarmament. These forums bring networks of diplomats and observers together. The genesis of the ATT Process can be traced back to the 2001 UN Programme of Action's calendar of regular meetings, ultimately leading to the ATT Process from 2006 onwards.

Enduring formal structures also create procedural legacies, such as consensus-driven decision-making and lowest common denominator outcomes. Nuclear non-proliferation diplomacy, for example, provided a procedural precedent when the CTBT was adopted by majority within the UNGA in 1996, as detailed in chapter 1. Provisions were made for this option to be left open on the Arms Trade Treaty in 2013, when consensus proved elusive, as noted in chapter 6.

Informal structures can emerge from the formal structures of multilateral diplomacy and the opportunities they offer for dialogue and exchange. Groupings of states form coalitions to pursue common agendas. Three states affected by the

illicit exports of small arms, Costa Rica, Mali and Cambodia, banded together from 2001 to shine a spotlight on the need for stronger regulations of conventional weapons. A game-changing moment occurred when the UK joined in the call for an arms trade treaty, leading to the formation of the co-authors group. The initial coalition and the subsequent larger group interacted through the formal settings of the UN and consisted of permanent staff to UN missions who were in regular, and close, interaction over a period of seven years.

Events and structures in the world therefore can and do influence treaty-making processes on weapons. As examined in the cases of Canada, New Zealand and Australia examined earlier, all three states engaged differently in the three negotiation processes, even while similar external contexts were at play in the streets and in the world. These two external layers were thus largely decisive because they triggered the global push for talks to occur.

1.3. Active leadership in capital

This thesis has demonstrated that the third layer of the external context, “in capital,” is the key factor that shapes state engagement in humanitarian arms control treaty-making in the three states examined. This level encompasses legislative, executive and judiciary branches of national governments. This thesis has argued that three “in capital” factors in particular shape national positions, namely politics, policy and partnerships.

Permanent civil service also plays a prominent role in shaping policy and can exert influence on ministers to change policy direction. The policy environment includes ministries of foreign affairs and extends out to all national portfolios where decisions are made that shape negotiation mandates on disarmament, from foreign affairs and security, to trade and beyond.

How states perceive their place in the world drives the strategic partnerships that they forge to reflect the threats and opportunities that emerge from their geography. These partnerships in turn carry significant weight in negotiations.

Second, the policy settings on arms control and disarmament are shaped by the expertise and competencies of technical, diplomatic and legal experts within government departments and budgetary and structural resources deployed.

The third aspect is that of partnerships, namely how capitals manage their place in the world through defence alliances, security partnerships and trade arrangements as well as across multilateral platforms.

1.3.1. Politics in flux

First, the political party in power and its electoral platform has significant bearing on the substantive issues to be negotiated and on process. Over two decades of conventional weapons treaty-making, Canada, New Zealand and Australia had multiple changes of government. While in Ottawa and Wellington, a clear divide exists between multilateral championing by left-of-centre governments and blocking or sidelining under right-of-centre governments, this was not the case in Canberra. A closer analysis of the political dimension must go beyond this divide. This thesis finds in this respect that the relationship between Prime Ministers and ministers is a key part of the political dimension. Those individuals, in combination with their political platforms, therefore shape championing of processes.

The political context in the Westminster tradition includes the government in power, headed by a Prime Minister who is closely surrounded by their Cabinet. The Cabinet process has a significant influence on decision-making. This is most visible to the outside world when sitting Prime Ministers are replaced by their own party, as in all three states examined in this thesis. Leadership changes often reflect tensions within Cabinet, and implicitly require ministerial endorsement as ministers tend to yield influence within their party.

The dynamics of Cabinet are therefore pertinent in the context of foreign affairs, where prime ministers often devolve authority to their ministers. When looking at championing approaches to treaty making processes, the relationship between Prime Minister and relevant ministers is crucial. Ambitious ministers have personally invested in pursuing files on landmines and cluster munitions, leading to Canada's involvement under Minister Lloyd Axworthy and New Zealand's involvement under Minister Phil Goff. The initial step of engagement in the loose coalition of states that would go on to champion the ATT Process from Australia's side was a phone call between ministers, in this case Australian Minister Alexander Downer in Canberra and British Foreign Secretary, Jack Straw, in London, in 2004.

1.3.2. Human-centred policy

A second factor that leads to state engagement is policy, namely the arms control and disarmament policies in place throughout treaty-making processes. This thesis finds that a pre-condition for state engagement in the initial, commitment stages of treaty-making is alignment between the negotiated outcome being pursued and the policies in place in capital. Policy in this sense refers to the substance of negotiated outcomes, namely weapons treaties that focus on the impact of the use

of weapons on civilians. A policy setting that emphasised a humanitarian approach to weapons law preceded championing in all three cases examined.

Policy also refers to a preference for multilateral diplomacy as a mode of negotiation. In all three cases of championing, the governments in power at the time emphasized multilateralism as the preferred setting for international policy, with the most direct manifestation of this being the pursuit of a temporary seat on the UNSC by all three. Conversely, a preference for “Jakarta over Geneva”, hard power over soft power to paraphrase the Australian Conservative Prime Minister Tony Abbott, characterised the approach of governments in power during blocking and sidelining phases of diplomatic activity.

The precondition of policy alignment and negotiated outcome is pertinent for initial state engagement in processes. This relationship is fluid over different phases of negotiation. Indeed, this can be reversed as negotiated outcomes loom on the horizon. Policy can be reset to accommodate a forgone conclusion and position capitals in a supportive or progressive stance, even while the preceding phases had seen blocking strategies in play. This was the case for Canada and Australia in the Like-minded group of states in the Oslo Process. They had initially worked hard to shift talks to a different forum, the CCW, until this was blocked and they reverted to the Oslo Process, with attempts to narrow the scope of the final treaty.

1.3.3. Partnerships in parallel

In tandem with political and policy alignment, the third required element for state engagement is coherence between partnerships and negotiated outcomes. Negotiating stances, whether championing, blocking or sidelining, are closely coordinated with each state’s military and strategic allies. On issues of disarmament and conventional weapons, with relatively little impact on the daily lives of citizens of Canada, New Zealand and Australia, states have carefully kept from adopting a stance that would go against the broad direction of their partners.

A state’s perception of its place in the world will shape the partnerships it commits to, which in turn can limit, extend and alter how states engage in processes that lead to codification of international rules. All three states examined sit on the periphery of their closest continents. This has led all three to forge strong military alliances and strategic partnerships to secure their borders. Military alliances are underpinned by the arms trade, as is the case for Canada and Australia with the US, and indeed for New Zealand and Australia.

When adopting negotiating positions, each will consider how it aligns with those of their key partners and the terms of their partnerships. The decision to oppose

an ally will be carefully weighed up and, in most cases, rejected. The interests of allies within an alliance such as NATO and ANZUS are very similar. What makes sense for Washington, tends to make sense for Canberra and Ottawa given they often deploy together and cooperate very closely in joint operations.

This overlap in interests extends to the international regulation of weapons. Rules that impinge on the US's ability to make operational decisions about its arsenal will by extension impinge on Australian forces who are often jointly deployed with them. Even in the case of New Zealand's progressive stance on cluster munitions, Washington and Wellington were in contact with a clear understanding that certain issues needed to be resolved in the final instrument, notably interoperability and the obligations that it imposes on signatories of the Convention on Cluster Munitions in their relations with their strategic partners.

2. How do states shape treaty-making processes?

Turning to the internal negotiating context, this thesis has identified three negotiating strategies pursued by Canada, New Zealand and Australia. Each state championed, blocked or sidelined through different forms of diplomatic activity over three phases of negotiations, from commitment to substance and agreement. These strategies were pursued at the table, in the room and in the corridors of diplomatic venues. This thesis has identified common features across states and cycles of treaty-making. These features are outlined in the following section through a typology of championing, blocking and sidelining in conventional weapons diplomacy by Canada, New Zealand and Australia. The phases are illustrated below.

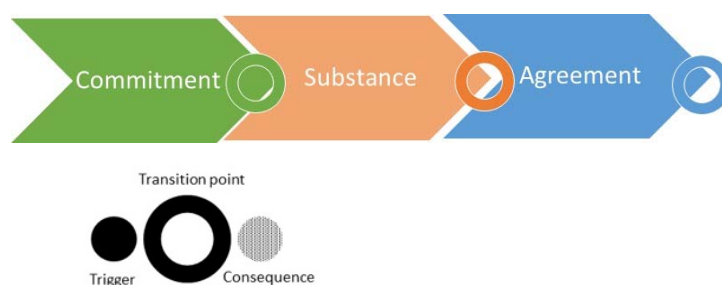


Figure 34 Three phase sequential model

2.1. Strategies of negotiations

The following section outlines three strategies of negotiations, championing, blocking and sidelining, examining each at different phases in talks.

2.1.1.Championing

Ottawa, Wellington and Canberra have championed treaty-making processes in similar ways across three negotiating cycles. The patterns observed highlight how capitals adopt a central role within core groups of states to influence procedures and shape the substance of negotiated outcomes while garnering support from a majority of UN states and against the backdrop of legacy negotiating forums and the opportunities they offer. These elements of championing– who, how, what, where and when, vary across negotiation phase, from commitment to substance and agreement, as outlined below.

2.1.1.1. *Championing in coalition*

Championing during the commitment phase involves drawing together a core group of champion states and outspoken advocates from civil society who collectively exert influence over a critical mass of states to commit to putting an issue on the negotiating agenda. Effective core group dynamics require trust and predictability, generated over time and through the personal networks of state diplomats and activists. The core group keeps close contact throughout processes via a de facto coordinating committee, which communicates daily, or even hourly, in the intense days and weeks of the endgame. Members of the core group focus mainly on building numerical momentum in the commitment phase.

During the substance phase, while continuing to grow the potential coverage of future signatory states, core group members also engage on substantive work through a division of labour to reflect their different comparative advantages in terms of resources, competencies and geographic spheres of influence.

During the second phase, the substance phase, the core group balances two parallel tracks of diplomatic activity aiming to narrow the gaps of disagreement between states while broadening the coverage of potential signatories.

During the agreement phase, while the core group will carefully manage specific issues that could jeopardise a negotiated outcome through strategic appointments of Friends of the Chair or Vice-Presidents of diplomatic conferences, on other issues, they are able to pursue a more independent direction to those of their fellow champions. Nuances between positions often emerge in the final phase as details are ironed out.

2.1.1.2. *Championing through procedural design*

Procedural design was a common championing strategy across the Ottawa, Oslo and ATT Processes. The core group crafted rules of procedure to circumvent loopholes and hurdles that could prevent progress towards negotiated outcomes.

The ad-hoc nature of the Ottawa and Oslo Processes made procedural design possible, while in the case of the ATT, the core group was equally effective even though they were operating within the narrower confines of UN procedures.

In the commitment phase, the core group's rules of procedure specified, first, that the price of entry to talks was an upfront commitment by states to a specified future outcome. Rather than having the outcome dependent on process, which could lead to continuous cycles of talks without concrete outputs, states committed to a predetermined endpoint, either a ban or an arms trade treaty. In the case of the Oslo and Ottawa Processes, an end date was set from the first transition point, while the ATT Process specified dates against each future milestone. These commitments were made in the first phase of talks through the signature of public declarations or the endorsement of UN Resolutions. Each process made explicit the steps to reach the next phase, tracking against a blueprint for progress which maintained momentum while creating predictability for all negotiating parties.

The substance phase involved seeking agreement on the rules of procedure for the final diplomatic conferences. The core group incorporated creative procedural approaches in these rules to circumvent decision-making obstacles while ensuring the legitimacy of the future treaty. The tyranny of consensus decision-making, an entrenched practice of disarmament diplomacy, had stymied progress and led to lowest-common denominator outcomes in forums such as the Conference on Disarmament and the CCW. A small number of states could impose conditions on negotiating states at large. In all three processes, majority decision-making was a feature of the commitment and substance phase. While this flowed through to the decision-making phase on landmines and cluster munitions, for the ATT this was a more delicate matter as the US had set as a pre-condition of their participation that decision-making on the final treaty would require consensus. A plan B, or "Exit ramp", had been anticipated in the resolution that set up the second and final diplomatic conference, namely a fixed UNGA agenda item which could lead the way to the adoption of the Treaty through the UNGA. A further element of procedural creativity by the core groups in all three processes was the observer status allocated to members of civil society, granting access to public sessions. This extended the de facto membership of core groups and added strategic resources for the core group to draw on, from public engagement to research and advocacy.

2.1.1.3. Championing to achieve ambitious substantive outcomes

Given the complexities of the different areas of international law, from weapons law and disarmament law to international humanitarian and human rights law, championing strategies in all three processes required significant diplomatic, technical and legal expertise and resources from core group champions.

All three phases required different approaches to substance. Initially, during the commitment phase, core group champions opened up the substantive terrain that the future international treaties could occupy. While the endpoint was specified, legal and technical solutions were left open to encourage broad participation from states and particularly states that had specific concerns that could have stopped them from joining negotiations. This was most apparent in the case of cluster munitions, with the constructive ambiguity of the formulation of a ban against “weapons that cause unacceptable harm” as the future outcome of the process. This accommodated not only states who held that all cluster munitions caused unacceptable harm but also states that held that only some did (and who saw scope to protect their interests from a future ban).

Moving into substance phases, core group champions had to progress beyond the wide substantive scope required to kick-start talks and to narrow the gaps for a workable area of territory to cover during negotiations. During this phase, intensive work sessions over months are dedicated to the painstaking task of setting the direction, scope and content of the future treaty and making definitive steps towards inclusions, exclusions and applicability. During this phase, research reports, technical submissions and expert testimony are used to shape talks and present states with workable options grounded in empirics rather than political interests. Core groups have successfully focused talks in this phase by proposing drafting solutions and finding formulas that accommodate divergent views, such as the reversal of burden of proof on cluster munitions, and the use of the 7+1 weapons categories on the ATT. Entering the agreement phase, core group champions dedicate time, resources and high level political capital to ensure that negotiated outcomes satisfy the original ambitions of the commitment phase.

2.1.1.4. Championing, change and continuity

It is important to note that championing strategies by core group states in all three processes were often shaped by the failure of previous talks in pre-existing forums to achieve strong regulations. All three processes sought to break the mould of the past and overcome historical precedents to avoid the structural negotiating weaknesses that had hampered progress until then.

The contrast between previous approaches and current processes was reinforced throughout each phase by the core group to safeguard against a weak outcome. This break with the past was most visible in the commitment phase, which saw core champions explicitly depart from existing approaches by inviting states to “leave the building” and negotiate outside the UN’s existing disarmament machinery. In both the Ottawa and Oslo Processes, core group champions issued their invitations in the very forums that had failed to achieve progress, during closing sessions on landmines and cluster munitions in the CCW. For the ATT, the impetus for change came from the failure of the UN’s politically binding PoA Review Conference to set an ambitious course on arms regulations.

Each process set its own path, carefully avoiding the pitfalls of procedural and political constraints of procedures in Geneva and New York by instigating their own work schedules and methods of work, as articulated and adopted through public declarations and UN resolutions (for the ATT). During the substance phase on landmines and cluster munitions, meetings took place in capitals of core group state champions and not in the well-known corridors of the UN in Geneva or New York. The financial costs were borne by core group champions and not the UN.

The ATT was grounded in the UN, with its progress traced through UN Resolutions and significant steps subject to UN decision making processes in the UNGA. However, established negotiating forums in Geneva were eschewed for New York. Significant autonomy was exercised by the core group diplomats who led the ATT Process, Ambassadors Moritan of Argentina and briefly Woolcott of Australia. Both determined to a large extent how they would work, such as the pace and direction of preparatory processes, and who would make up their staff, preferring their own national experts to UN ODA staff.

These examples of breaking with precedence are indicative of the larger dynamic that carried through the agreement phase. Here, core group champions demonstrated how processes had broken with the past through the speed with which agreement was reached, in each process setting new records for negotiation of treaties and entry into force. In the endgame, each treaty was adopted through majority and not by consensus. This was possible in the case of the ATT after two failed attempts at consensus adoption, circumvented through a vote in the UNGA. Each treaty also contained novel substantive elements that had not been included in agreements reached in previous forums, with hybrid approaches that blended weapons law and humanitarian law to address the human impact of weapons.

Having explored the multiple facets of championing, this section now turns to a different strategy, blocking. As this section will show, similar features emerge between both, although they differ significantly on the outcome being pursued.

2.1.2. Blocking

Three examples of blocking strategies emerged from chapter six, Australia on the Ottawa and Oslo Processes, and Canada during the Oslo Process. In contrast with championing strategies, which seeks to achieve a strong outcome with broad membership and a wide reach, blocking strategies aim instead to limit the scope of the outcome and restrict its potential reach through diversionary tactics such as attempting to shift talks to other, earlier established, forums such as the CCW or the CD, and slow the pace of negotiations.

Aside from contrasting desired outcomes, blocking and championing strategies share comparable features and require similar levels of investment in expertise and resources. Similarities include coalition-building, procedural manoeuvring and using substantive expertise to shape processes. Precedence, too, underpins blocking – not as a point of difference, however, as is the case for championing, but rather to reinforce why standard approaches should remain unchanged.

2.1.2.1. *Blocking in coalition*

States pursuing a blocking strategy require the combined diplomatic firepower of a coalition to match the efforts of the progressive group of core states and provide a force multiplier for the case for blocking. Coalitions are a prominent feature of the substance phase rather than the first and last phases.

During the initial commitment phase, blocking states tend to underestimate the potential of ad hoc processes and take time to constitute their membership. In the final agreement phase, states often switch streams and deviate from a blocking strategy once a negotiated outcome appears certain so that they can position themselves ‘on the right side of history’. It is mainly during the substance phase that blocking coalitions are at their strongest and most impactful as a force multiplier to advance their agenda. This requires a substantial commitment in numbers and resources to ensure coverage of multiple venues.

Monitoring progress in the process that is being blocked is required so that reactive strategies can be deployed in a timely fashion before talks progress too far. Equally, blocking states need to drive progress in other forums to provide a viable alternative for states committed to action on an issue. Blocking coalitions are generally heterogeneous, with different members pursuing different interests.

The transactional nature of blocking coalitions, brought together by a tactical goal rather than an agenda for change, predisposes coalitions to fragment when tactical benefits arise, for example when they can achieve an exemption in a treaty that will safeguard the specific interest that they were seeking to advance.

2.1.2.2. Blocking through procedural shifting

In the cases examined, blocking strategies aimed to introduce alternative avenues for action that better served the interests of blocking states. The objective of blockers was to shift the focus of negotiations to different forums, whose membership included weapons producing states. Here, these states would have a much greater role in shaping a future instrument of law and would be more likely to sign on to any agreement. These forums would likely lead to weaker outcomes and also extend the geographic scope of future regulations. For talks to shift away from the processes set in train by champion states, blocking states would need to ensure that the negotiating agendas in alternative forums were sufficiently ambitious to assuage the progressive demands of champion states.

Blockers pursued hedging tactics by straddling both diplomatic tracks to leverage progress in one to slow down or pick up the pace in the other. While each state had a permanent presence in Geneva, at the CD and in the CCW, participation in the Ottawa and Oslo Processes required an intense workload and travel, with meetings around the world in short periods of time. Blocking had a cost impact.

As the blocking states' preferred avenues failed to adopt negotiating agendas on APLMs and cluster munitions, these states were unable to prevent the shift to newer venues. Blocking states had publicly committed to action, as the pre-condition to participate in the ad hoc processes. They were therefore forced into following through to avoid losing international credibility when the alternatives did not eventuate. In consequence, blocking states doubled their efforts during the substance phase on limiting the future treaty through procedural means. This included requesting that the progressive voices of civil society not be granted full observer status at the Dublin Negotiating Conference on cluster munitions.

2.1.2.3. Blocking by providing alternatives

In tandem with efforts to shift negotiations to different forums, blocking states also sought to limit the scope of weapons covered by the treaty, as well as limit the reach of provisions under negotiation to protect strategic partnerships, as discussed in earlier sections. This form of diplomatic activity, providing alternatives, was most prominent during the substance phase. Blockers provided alternative approaches to treaty design that could counteract the more progressive

and far-reaching proposals in negotiation. Blocker states committed significant diplomatic input through technical experts to argue the case for a middle ground, where the protection of civilians would not unduly limit the choice of weapons during deployments. This was a recurrent argument, namely that balance was needed between humanitarian concerns and military objectives. This substantive framing set the scene for the alternative legal and technical options proposed, underpinned by research and circulated to negotiating parties through working papers, official submissions and public statements and declarations.

This resource-intensive form of diplomatic activity required sustained commitment from diplomats in the field and from officials based in capital with expertise in relevant areas such as weapons systems and export controls. In the case of landmines and cluster munitions, this input continued for several years after the conclusion of the Ottawa Treaty and the Convention on Cluster Munitions with talks pursued in the CCW to negotiate additional protocols in these forums and draw in weapons producing states to stronger regulations on both forms of weapons. These ultimately did not lead anywhere on either file.

2.1.2.4. Blocking to maintain precedence

At their core, blocking strategies were anchored in a strongly-held position that UN frameworks, the CD and the CCW, should remain the diplomatic venue for weapons treaty-making. These frameworks brought with them working practices and customs, the legacy of many decades of codified disarmament diplomacy. These included consensus decision-making and lowest common denominator approach, where broad coverage is privileged over progressive rules. Weapons producers belong to both forums, while states affected by the humanitarian consequences of explosive remnants of war are mainly absent, from the CD in particular.

Blocking strategies sought to perpetuate the procedural legacies through attempts at forum shifting and procedural design, in order to maintain the traditional power structures of disarmament diplomacy where major producers and users set and slowed the pace of codification of rules at every opportunity. The 'new' precedent introduced in the Ottawa Process was a threat to the traditional approach to disarmament diplomacy, with some blocking states in the Oslo Process refusing to attend the first turning point in Oslo because they feared this would further weaken traditional disarmament diplomacy. This did not lead to renewed focus with the CD and the CCW to push for strong rules to counteract the emergence of new precedents and new ways of working, with the last attempt to revitalise talks on an additional protocol on cluster munitions in the CCW failing

after CCM-signatories did not endorse the agenda item, a telling example of the tyranny of consensus at play.

2.1.3. Sidelining

Three cases of states engaging in a sidelining strategy were examined, New Zealand in the Ottawa Process and ATT Processes, and Canada in the ATT Process.

In the case of New Zealand, a sidelining strategy reflected the limitations on small states when it comes to multilateral diplomacy and the choices that determine where limited resources will be invested. In the Ottawa Process, Wellington's focus was on the nuclear file.

In the case of the ATT, for both New Zealand and Canada, their capitals were focussed on bilateral trade. Ottawa was also seeking to distance itself from multilateralism more broadly, which was to a certain extent also the case for Wellington. However New Zealand's small delegation included at post in Geneva a seasoned and well-regarded disarmament ambassador, while Canada's delegations were made up of largely quiet diplomats on the one hand and vocal gun advocates from civil society on the other.

Drawing from these cases, this thesis draws a clear distinction between sidelining in multilateral negotiations and championing and blocking strategies. States engaging in sidelining are aiming to 'keep the seat warm'. This low-risk, low-maintenance approach kept states present among peers on the multilateral stage while requiring little commitment of resources from state officials. This is a departure from championing and blocking, which involve sustained diplomatic and substantive investment over the duration of negotiations and a strong preference for a given negotiated outcome.

This thesis also finds that sidelining strategies see states partner with civil society, who are included as national delegates and whose positions are at times adopted by states. This can be seen as a form of legitimation by capitals with domestic audiences in mind. It could also be seen as a way to fill gaps opened by budgetary cuts to diplomatic staff.

During the commitment phase, sidelining states opt to be in the room without seeking to promote a specific negotiated outcome. As the contours of the future treaty become clearer over the substance phase, sidelining strategies can evolve into a more active posture in coordination with other voices in the room. In all three cases, Canada and New Zealand were closely aligned during the substance phase with civil society, including NGO representatives in their national delegations and closely aligning national positions with their organisations. For Canada, this was the

gun advocacy organisation the National Firearms Association (NFA), while New Zealand was more closely aligned with disarmament NGOs on landmines and the progressive voice of Control Arms on the ATT.

During the agreement phase, sidelining drops to a more low-ley presence in the room, although as the case of Wellington's Ambassador Higginson has shown, an individual with legal and technical expertise can engage and influence debates in the endgame. In both cases with the ATT Process, neither state was committed to a treaty at all costs. Both preferred no treaty, to a treaty at all costs. Canada did not want to jeopardise the interests of the domestic gun lobby group with a strong treaty, while Wellington's ambassador was pursuing a maximalist, far-reaching treaty in the belief that weak rules would do more harm than no rules at all. Both sidelining strategies reflected the fact that neither state had high stakes in reaching a negotiated outcome. This meant a low allocation of diplomatic resources and expertise from Ottawa, and from Wellington, a wide scope for the disarmament ambassador to pursue a wide-ranging agenda so long as it did not endanger relations with Washington or Canberra.

3. Methodological contribution

Three treaty cycles were mapped out using process tracing for this thesis. The data points traced for each case study were the transition points that marked the passage between different phases in negotiations. Informed by desktop research and over 50 interviews, the resulting case studies yielded findings about Canada, New Zealand and Australia as detailed above. These case studies also led to two methodological breakthroughs. First, a six-layered contextual model of diplomatic activity was developed to enable comparative analysis of state behaviour across time and treaty cycle. Second, a common pattern emerged across all three treaties, pointing to a three-phase 'pathway' for treaty-making in conventional weapons. The phases and transition points are illustrated in Figure 35.

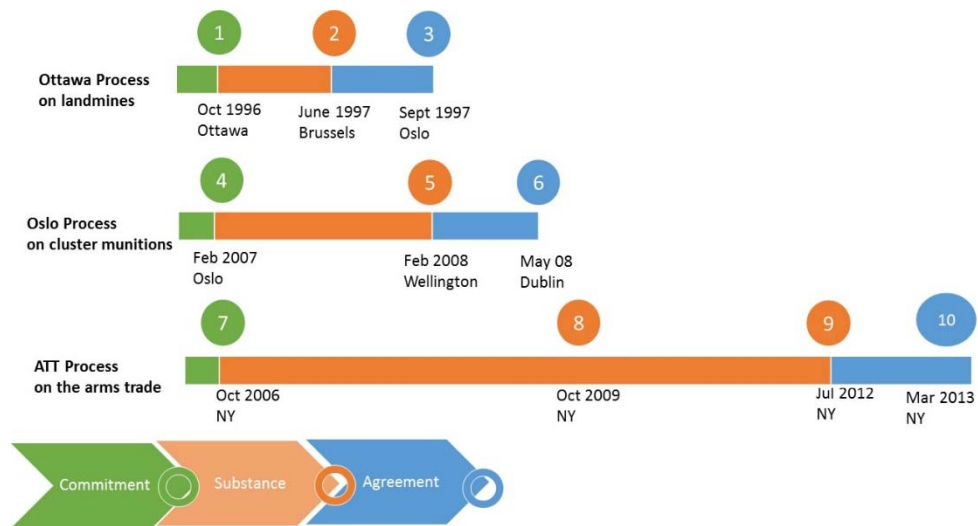


Figure 35 Phases and transition points

3.1. 'Contexts of diplomacy' model

The 'contexts of diplomacy' model identifies six different spaces where diplomatic activity occurs. It distinguishes between the external and internal contexts of negotiations. The external negotiating context captures local level activism in the streets of the world, through to the work of state diplomats on the multilateral stage and crucially the context in capital cities. The internal negotiating context traces interactions in negotiation venues, from the corridors, through to the negotiating rooms and importantly at the table. This is captured in Figure 36.

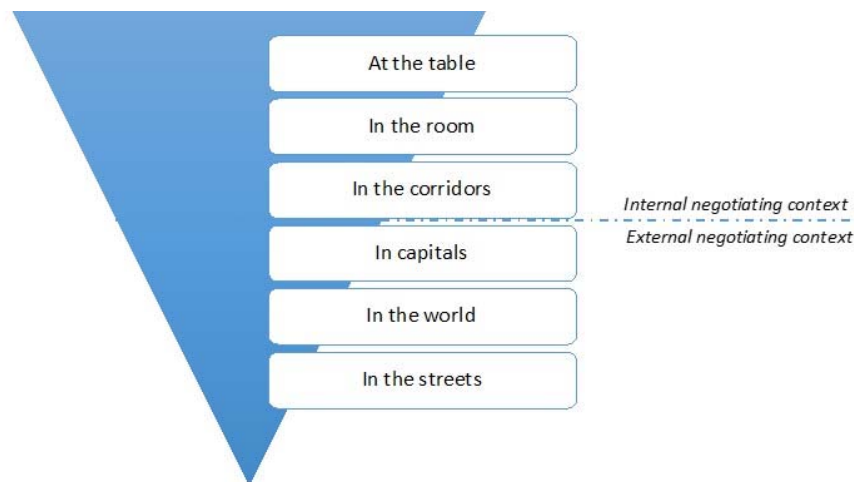


Figure 36 Contexts of diplomacy

This model is a useful methodological tool to 'untangle' multiple layers of complexity and understand when and how states engage in treaty-making. This approach led to the identification of the 'capital' layer of the external context as the most important in influencing Canada, New Zealand and Australian diplomatic engagement. Having identified the capital level as crucial, analysis then drilled

down further to probe which elements within this layer shaped state engagement. Politics, policy and partnerships emerged as the three drivers in capital.

While the 'contexts of diplomacy' model provided the analytical pathway to addressing the first research question, it also added elements of response to the second research question by shining a spotlight on interactions occurring in multiple different spaces within the negotiating context. Widening the analytical lens to include not just the formal negotiations at the table but also the dynamics of the rooms and corridors of diplomatic venues also yielded rich insights on how civil society shapes and influences negotiated outcomes.

This model therefore reflects patterns of diplomatic activity for Canada, New Zealand and Australia in humanitarian arms control treaty-making. It contributes to an understanding of how multilateral negotiations in disarmament have adjusted in mixed ways to increasingly salient demands of humanitarian protection. More broadly, the model contributes to the methodologies of diplomacy and negotiation by proposing a framework that can be adapted to different states and different areas of multilateral negotiations.

3.2. Transition points and phases

The data points examined for this thesis were ten transition points that marked the passage between different phases of negotiations. These points were identified first by searching for artefacts such as public declarations or UN Resolutions as indicators or traces of significant moves in negotiating cycles. This mosaic of artefacts was then tested in interview with first-hand negotiators and observers to filter out secondary events.

Following this approach, ten transition points were identified across three cycles. Once identified, each transition point was then investigated by exploring the triggers that led to them, and the consequences that then flowed on from them. Here, the focus was on each state included in this thesis and their interactions within different coalitions of actors.

This approach led to the emergence of an unexpected pattern, namely a three-phase model across each cycle. The endpoint for the first phase was commitment to a negotiating process, while for the second one the focus was on delineating the substance of the future treaty. In the final and third phase, agreement was the end objective, namely treaty adoption.

These analytical steps laid the groundwork to conduct comparative analysis across all three states and negotiating cycles across time. Drawing in the six-level contextual model, fine-grained analysis of diplomatic activity was conducted for

each state at each turning point, from trigger to departure to consequences, against the backdrop of the different dynamics of each phase of each process.

This led to the categorisation of state diplomatic strategies into three types, championing, blocking and sidelining, as in the first section above.

This thesis has therefore made two novel methodological contributions to the analysis of multilateral negotiations. The first is a conceptual model to capture the complex dynamics of negotiations and the multiplicity of levels of activity which shape how states behave. The second is a framework to compare and contrast diplomatic behaviour of states across time and between comparable states.

4. Reflections on the literature

Chapter 1 of this thesis presented core insights from the literature of international relations, diplomatic studies and negotiation analysis that address three questions, why do states negotiate treaties? Who negotiates treaties? And how are negotiated outcomes arrived at? The next section connects the findings of this thesis with these questions to enrich and help elucidate some of them.

4.1. Insights for international relations

Five perspectives within the international relations literature offer different explanations to understand why states engage in treaty-making. The findings in this thesis shed light on all five by arguing that treaty-making emerges through diplomatic activity at three levels, from civil society in the streets to diplomats on the world stage to capital-led engagement. This thesis further finds that at the capital level, in the cases of Canada, New Zealand and Australia, engagement was contingent on three elements aligning with the future negotiated outcome, namely politics, policy and strategic partnerships. While alignment can lead to championing, lack of alignment can lead to blocking or sitting on the sidelines. The implications of these findings for realism, liberalism, constructivism, middle power theories and critical approaches are examined below.

These findings first challenge realist perspectives that see treaty-making as an imposition of great powers over smaller ones. This thesis has shown that at the individual state level, power relations, through the prism of partnerships with larger allies, is one of three pillars in capitals (along with politics and policy) which determine how states engage and whether they adopt championing, blocking or sidelining strategies. However, multilateral treaty-making goes beyond individual states. It draws in multiple states and multiple levels, from the streets to the world stage. The influence of great powers and their allies is diluted through civil society

activism in the streets and concerted diplomatic activity in multilateral forums by diplomats. Blocking strategies motivated by alliance considerations can be overcome by championing strategies. The three case studies have shown that treaty-making emerges despite, and not because of, great power preferences.

Second, turning now to liberal views which see treaty-making as a cooperative problem-solving exercise between states, the findings of this thesis challenge this rational viewpoint by demonstrating that multiple considerations shape state behaviour at the negotiating table. Policy as the second driver of state engagement in treaty-making sits alongside political interests and partnership considerations. States pursue negotiated outcomes to address different problems, some of which are purely domestic. Contrasting the political considerations of Canada in the Ottawa, Oslo and ATT Processes, while stronger regulations were a desired outcome in the first case, weaker regulations were optimal in the second and no treaty at all was an acceptable outcome in the third. In each case, while cooperative problem-solving to address a global concern through a multilateral solution motivated championing states, blocking states were pursuing other considerations. This varied over time with the same set of states. The rational choice explanation for treaty-making holds true in some but not all processes.

Turning now to treaty-making as a 'mirror' which both reflects and shapes state identity, while the findings of this thesis indicate that this dynamic holds true for historical preferences towards (or away from) multilateralism or negotiating forums, this thesis has also found that the patterns of irregularities between states over time are closely associated with political changes between governments in power. On identity formation, the findings of this thesis shed more light on how political parties and leaders approach and internalise treaty-making rather than illuminating the behaviour of states. In other words, how political parties and leaders approach treaty making is more important than the 'identity' of a state.

The fourth perspective on treaty-making sees it as an act of principled pragmatism by middle powers seeking to assert their status in the world. Leaving to one side the ambiguities within theoretical approaches to middle power, the proposition that middle power states opt for multilateralism as both a force multiplier to project their presence on the world stage and a springboard for normative progress holds true when examining the cases of championing in this thesis, yet does not fully explain the cases of blocking or sidelining. An interesting future direction for middle power theorising would be to examine how Canada and Australia, and New Zealand if a compelling case is made that it too is a middle

power, have integrated past successes in treaty-making to promote campaigns to seek temporary membership of UNSC, and indeed whether this has directed state behaviour to bolster their chances of campaign success.

A fifth angle of analysis holds that treaty-making fits into a broader picture of society in the world. While some see treaty-making as a normative exercise that strengthens the bonds of human community globally by defining the rules of good behaviour, others instead see treaty-making as another example of inequity where the imbalance between the developed and the developing world are further reinforced, or as a means to mute the voices of women in a male-dominated world. Reflecting on these critical viewpoints, it is important to situate the three case studies examined in this thesis in the longer chronology of conventional weapons treaty-making. This new wave of humanitarian arms control treaties has enshrined the enmeshing of humanitarian concerns in how weapons are regulated, integrating IHL and human rights law into its core provisions. While this tends to suggest that world society is on the rise, driven by normative concerns, these three case studies also hint that the implementation of these three treaties has not necessarily followed a normative trajectory. Electoral and financial interests can emerge once the performative rituals of treaty signing have been conducted. Blocking strategies can continue past the entry into force of treaties, with parallel efforts continued in traditional arms control forums that could have undermined previous treaties had they been successful.

The findings in this thesis thus add texture to the broader corpus of international relations. This section now turns to diplomatic studies to address how this thesis adds to its theoretical tapestry, in particular when it comes to questions that relate to diplomatic actors and their activities.

4.2. Insights for diplomatic studies

While traditional diplomacy theorists sees treaty-making as a state monopoly, new diplomacy theorists argue that states and non state actors equally influence what plays out on centre stage in multilateral settings. Situated within this spectrum, hybrid approaches still see states at the core of diplomacy but surrounded by a myriad of types of actors from technical experts to civil society. A fourth category takes a worldview and sees diplomacy as a language, which strengthens the normative fabric of the world to help build a cosmopolitan, transnational society.

This thesis argues that a hybrid model of diplomacy best fits the three case studies and three states examined in the context of conventional weapons regulation. While state diplomats authored and signed the public declarations that

led to treaty adoption, civil society built and maintained momentum at each stage by contributing ideas, frontlines testimony and awareness-raising through global networks. State diplomats were supported both upstream and downstream of negotiating processes, through experts in national capitals who made compelling cases for policies to be adopted in initial stages and who contributed to strengthening national negotiating positions during negotiation cycles.

This thesis finds that while the negotiation of treaties remains an act of statehood, this state-led form of diplomatic activity originates outside national borders at the global and street level and is driven by a mix of state-level diplomats, civil servants and experts who sit within national diplomatic systems writ large. Horizontal networks of scientists, advocates, survivors and front-line practitioners all contribute at multiple levels of diplomatic context to achieving negotiated outcomes. This model adds to diplomatic studies theory by situating this form of diplomacy by these actors within the category of hybrid diplomacy. This thesis has shone light on the mixed motives of states as seen in irregular behaviour over time while also demonstrating the role of civil society in coalitions at each phase of negotiating cycles. What also emerges clearly is that states remain the motor of change, even if the trigger for championing originates from civil society.

Noting the multiplicity of locations of diplomatic activity in conventional weapons diplomacy as practiced by Canada, New Zealand and Australia, this thesis provides a systematic framework with which to understand how multilateral solutions emerge through negotiation. The thesis has demonstrated that negotiations should be analysed within multi-layered internal and external contexts, from the streets to the world to capitals and over the threshold into diplomatic venues and the corridors, rooms and tables. Each layer adds meaning and understanding to how treaties are born. The links between layers provide a complete picture that accurately reflects when and how championing, blocking and sidelining strategies are adopted by these three states.

This is significant for diplomatic studies as it firmly points to the horizontal, networked and transnational relationships and interactions that are a daily fixture in how states 'do' multilateral diplomacy on conventional weapons in Canada, New Zealand and Australia. Building on this, the future impact of these states lies in investing in and retaining practitioners who can navigate multiple sites of diplomacy to tap into resources, expertise and innovative approaches to circumvent hurdles and identify windows of opportunity where all six levels align to create a conducive environment for treaty processes. Nurturing the institutional

memory of past negotiation cycles is crucial, as it can indicate future pathways to follow, or not follow, and more broadly can reveal to future practitioners the full spectrum of strategies and tactics that have proven successful, or not, in the past.

4.3. Insights for negotiation analysis

This thesis has demonstrated that the inherent complexity of multilateral processes can be 'untangled' by breaking down negotiations into sequenced phases of activity, defined by their outcomes – commitment, substance and agreement. These sequenced phases can then be analysed at discrete points in time, namely transition points, as developed by Druckman. After simplifying long chains of events into chunks that can be compared across state and cycle, this thesis has added multiple dimensions at each point by introducing six levels of context where diplomatic activity takes place, as applied to transition points.

This approach proposes a systematic analysis that draws in under the analytical microscope the elements of complexity first identified by Zartman, namely multiple actors, multiple issues, diversity of roles, consensus, rules coalitions of interests and positions. This thesis has found that these features continue to shape the contours of multilateral negotiations today. A further aspect, linkage, also looms large in the initial stages of new negotiating cycles, where 'the shadow of the past' links precedents, processes and actors to future negotiated outcomes.

This thesis also reveals three types of negotiating strategy in action during conventional weapons disarmament negotiations that relate to Canada, New Zealand and Australia. Each state has oscillated between contrasting positions over time. While it is unsurprising that championing requires alignment between multiple variables and a sustained diplomatic commitment over time, surprisingly the same can be applied to blocking strategies. While sitting at the opposite end of the spectrum in terms of desired outcomes, where one aims to achieve a treaty and other does not, both strategies require coalitions of diverse actors, creative procedural approaches and deep engagement with complex and technical substantive solutions, underpinned by alignment with politics, policy and partnerships in capitals towards the desired outcome (treaty or not). A third strategy, sidelining, also emerged from the three case studies. This strategy is one of presence rather than influence with modest investment over time and no top-down political or policy support from capitals. States engage in sidelining, low-key participating to 'keep the seat warm', for diverse reasons, such as protecting domestic electoral objectives or simply through prioritisation of limited resources on other issues. Civil society is brought in here, where their participation in

delegations can be for legitimisation purposes or to plug gaps in knowledge. States can have their voices heard from the margins if their representatives can demonstrate dexterity in merging subject matter expertise with procedural finesse. In the absence of such individuals, sidelining strategies can at best promote a specific issue or interest, while ensuring that states are on the right side of history if negotiated outcomes emerge.

On policy implications, the final section turns to how these findings apply to Canada, New Zealand and Australia on conventional weapons and beyond.

5. Policy implications

This thesis has argued that Canada, New Zealand and Australia engage in conventional weapons diplomacy when their politics, policies and partnerships align with the future negotiated outcome. How they then behave, adopting championing, blocking or sidelining strategies, is also contingent on these three elements. While championing and blocking require a sustained investment in resources and expertise over different phases of talks, sidelining has only modest implications in cost and time. Building on these findings, this section addresses the implications for future regulatory development. First, these findings have direct bearing on future rounds of negotiations in conventional weapons and how Ottawa, Wellington and Canberra engage in them. More broadly, these findings can provide pathways for how these states might engage in future treaty-making in other multilateral issue areas. Finally, these findings also point to future research directions for similar states in the UN system.

5.1. Implications for CANZ and conventional weapons negotiations

This thesis has found that the alignment between future negotiated outcomes and the politics, policy and partnerships in capitals determines when and how Ottawa, Wellington and Canberra engage in conventional weapons treaty-making. While the concerted efforts of civil society and diplomats in international forums is a necessary condition for treaty-making processes to start, state engagement requires a three-way alignment in capital where the political environment, the policy setting and the preferences of military and strategic partners all point in the direction of a future legal instrument. Equally, how states then engage – as champions, blockers or sideliners, is a function of these three features too.

On politics, the political stripes, electoral platform and dynamics between ministers and Prime Minister of the government in power is one of three fundamental elements that determines and how whether Canada, New Zealand

and Australia engage in treaty-making processes on conventional weapons. The preferences of the government on arms control and on multilateralism can predispose towards one type of negotiating forum over another, such as “new vs old” forums, and towards one form of treaty over another, such as a weapons treaty over a hybrid form which also incorporates humanitarian law. Against this backdrop, the dynamics of elections can also shape state behaviour. Domestic electoral politics can also have a bearing on multilateral negotiations, through the preferences of voters in marginal seats, the positions of dominant interest groups and the tactics of differentiation between incumbents and challengers. In addition, the latitude accorded to the ministers with carriage of negotiating files can also shape championing strategies.

On policy, the second foundational element of a state’s engagement and subsequent strategy, a state’s negotiating history on specific issues or types of instruments has an enduring legacy on future engagement and strategy. The legacy of previous engagement on issues such as nuclear disarmament or weapons control systems can incline a state to continue to engage in that area, or it can push a state to mark a break with the past for political reasons such as differentiation with former governments. Historical skills and expertise also leaves institutional traces with the continuation of experts in capital and at post who can be drawn in to negotiate similar instruments. Access to resources and human capital is vital for both championing and blocking stances, where the ability to draw in experts from a standing pool of public servants at short notice and over long periods of time will determine the influence of each state. Previous experience goes a long way in shaping negotiating cycles as conventional weapons is a complex and highly technical field. Conversely, if a state lacks resources and an experienced team and adopts a sidelining strategy, this does not preclude that state from influencing talks at a point in time.

Partnerships, predominantly military alliances, are the third element that influences how and when states engage in weapons treaty-making. The preferences of allies and strategic partners are significant for two reasons above all others. First, partnerships are underwritten by arms trade between producers and recipients. Restricting or curtailing the import and export of weapons can jeopardise future relations between the major powers that sell weapons and the smaller powers that buy them, as a counterpart to the security guarantees that the larger power brings to the partnership. Second, military allies frequently deploy in joint operations with their partners. At an operational level, if members of a

strategic partnership adopt regulations on the use of weapons, this can have an immediate impact on their ability to work in tandem with members who have not adopted the same regulations. On day-to-day operations in the field, any restrictions that apply to armed forces through international regulation can affect the ability of all members of an alliance to participate fully in missions.

For future championing of multilateral processes in conventional weapons to emerge from Canada, New Zealand and Australia, this crucial alignment of politics, policy and partnerships is a pre-condition for engagement in the first phase of treaty-making and across all subsequent phases until treaty signature. This tripartite alignment can point towards championing strategies as well as blocking strategies. Without all three factors, other strategies emerge, such as sidelining.

5.2. Implications for CANZ and multilateral diplomacy

Beyond conventional weapons, the findings of this thesis could have wider bearing on how Ottawa, Canberra and Wellington engage in multilateral treaty-making on other issues, such as on the nuclear file or climate change.

The case of the 2017 Nuclear Weapons Ban presents a promising avenue to test the findings of this thesis. Both Australia and Canada were involved in the commitment phase of the negotiations, attending preparatory meetings in Geneva, yet were absent from the substance and agreements phases that led to the adoption of the 2017 Nuclear Weapons Ban. A helicopter assessment indicates that both cases might constitute a new form of diplomatic strategy –boycotting – that could plausibly be linked to a misalignment between anticipated negotiated outcomes and politics, policy and partnerships in both capitals. In both cases, it is possible that strategic military partnerships with the US would have had a particularly strong bearing. This requires further systematic investigation, through process tracing at transition points during different phases of negotiation. The change in political stripes of the government in Ottawa requires careful treatment in establishing a strong comparative approach. Equally, interviews conducted as part of this thesis raised further avenues of investigation on the blocking coalition that included Canada and Australia during the nuclear ban talks and led to interesting developments at the negotiating table in early phases of talks, including the calling of a vote by Canberra that would have blocked further progress.

Beyond weapons diplomacy, a further area for investigation is on climate change. Should testings of these findings in a very different multilateral issue area such as climate change reinforce the findings of this thesis, this would provide a strong base for extending these findings to multilateral diplomacy writ large for all

three states. One form of testing could be to compare and contrast two Conferences of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), COP 15 in Copenhagen in 2009, which ended without an agreement on climate, and COP 21 in Paris in 2015 which led to the Paris agreement. Comparing each state across time, and then each state with each other, could yield interesting results on the alignment of politics, policy and partnerships.

5.3. Implications beyond Canada, Australia and New Zealand

Looking beyond Canada, New Zealand and Australia, the findings of this thesis are relevant from two angles.

First, states and civil society looking to engage with all three as champions, blockers or even sideliners can gauge each state's potential stance by examining all three 'in capital' elements. These findings also provide an in-depth view of each state's comparative advantages across different phases of talks and in light of different 'in capital' contexts. These findings can therefore enhance the planning process for different actors seeking to engage with these three states.

Second, while these findings relate primarily to these three states on conventional weapons treaty-making, testing could be done to extend these findings to other states that are also Westminster parliamentary democracies. Other Commonwealth states could be examined. Caution would be required to extend this out to the UK as a P5 member, particularly given that EU states have tended to reflect a common position on many multilateral decisions, such as on landmines and cluster munitions. Another angle could include other states that are often identified as middle powers. While this thesis did not set out to investigate middle powers as a category of state actor, two out of the three states examined are the archetypal middle powers.

This chapter has synthesized the findings of this thesis to underpin the core arguments developed over previous chapters in response to the two research questions in the introduction, namely when and how do states engage in treaty-making. This thesis argues that Canada, New Zealand and Australia engage in treaty-making processes when three "in capital" elements point towards the future negotiated outcome. These elements are the politics of the government in power, the policy setting on arms control and disarmament and the strategic partnerships in play. How states engage is also determined in capital.

This thesis has found that tracing these strategies over the course of negotiation processes requires analysis at six different levels of diplomatic activity, following the "contexts of diplomacy" framework established by this thesis. Patterns of

diplomatic strategies change depending on the different phases of negotiations, from commitment to substance and then agreement. These findings contribute to the literature on state behaviour, diplomacy as practice and negotiation analysis. These findings can also contribute to a deeper understanding of how Canada, New Zealand and Australia negotiate multilaterally beyond conventional weapons and could have broader implications beyond these states.

Appendix A *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*

The States Parties,

Determined to put an end to the suffering and casualties caused by anti personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

Believing it necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

Wishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

Recognizing that a total ban of anti-personnel mines would also be an important measure, *Welcoming* the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and calling for the early ratification of this Protocol by all States which have not yet done so,

Welcoming also United Nations General Assembly Resolution 51/45 S of 10 December 1996 urging all States to pursue vigorously an effective, legally-binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

Welcoming furthermore the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world,

Recalling the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and *determined* to work strenuously towards the promotion of its universalization in all relevant fora including, inter alia, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,

Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

Article 1 General obligations

1. Each State Party undertakes never under any circumstances:

- a) To use anti-personnel mines;
- b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
- c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Article 2 Definitions

1. "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

2. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

3. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.

4. "Transfer" involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.

5. "Mined area" means an area which is dangerous due to the presence or suspected presence of mines.

Article 3 Exceptions

1. Notwithstanding the general obligations under Article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.

2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

Article 4 Destruction of stockpiled anti-personnel mines

Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines 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.

Article 5 Destruction of anti-personnel mines in mined areas

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.

2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are 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. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.

4. Each request shall contain: a) The duration of the proposed extension;

b) A detailed explanation of the reasons for the proposed extension, including:

(i) The preparation and status of work conducted under national demining programs;

(ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and

(iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;

c) The humanitarian, social, economic, and environmental implications of the extension; and

d) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 6 International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, inter alia, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.

6. Each State Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

7. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia:

- a) The extent and scope of the anti-personnel mine problem;
- b) The financial, technological and human resources that are required for the implementation of the program;
- c) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;
- d) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;
- e) Assistance to mine victims;
- f) The relationship between the Government of the concerned State Party and the relevant governmental, inter-governmental or non-governmental entities that will work in the implementation of the program.

8. Each State Party giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programs.

Article 7 Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

- a) The national implementation measures referred to in Article 9;
- b) The total of all stockpiled anti-personnel mines owned or possessed by it, or under its jurisdiction or control, to include a breakdown of the type, quantity and, if possible, lot numbers of each type of anti-personnel mine stockpiled;

- c) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were emplaced;
- d) The types, quantities and, if possible, lot numbers of all anti-personnel mines retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques, or transferred for the purpose of destruction, as well as the institutions authorized by a State Party to retain or transfer anti-personnel mines, in accordance with Article 3;
- e) The status of programs for the conversion or de-commissioning of anti-personnel mine production facilities;
- f) The status of programs for the destruction of anti-personnel mines in accordance with Articles 4 and 5, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
- g) The types and quantities of all anti-personnel mines destroyed after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of anti-personnel mine destroyed, in accordance with Articles 4 and 5, respectively, along with, if possible, the lot numbers of each type of anti-personnel mine in the case of destruction in accordance with Article 4;
- h) The technical characteristics of each type of anti-personnel mine produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of anti-personnel mines; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate mine clearance; and
- i) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of Article 5.

2. The information provided in accordance with this Article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8 Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The

Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one-third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.

6. The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.

7. All States Parties shall cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorized in accordance with paragraph 8.

8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorize such a mission. The mission, consisting of up to 9 experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

9. The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.

10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.

11. Upon at least 72 hours notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.

12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilize in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

a) The protection of sensitive equipment, information and areas;

b) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
c) The physical protection and safety of the members of the fact-finding mission. In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than 7 days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6.

20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

Article 9 National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10 Settlement of disputes

1. The States Parties shall consult and cooperate with each other to settle any dispute That may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

3. This Article is without prejudice to the provisions of this Convention on facilitation and clarification of compliance.

Article 11 Meetings of the States Parties

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:

- a) The operation and status of this Convention;
- b) Matters arising from the reports submitted under the provisions of this Convention;
- c) International cooperation and assistance in accordance with Article 6;
- d) The development of technologies to clear anti-personnel mines;
- e) Submissions of States Parties under Article 8; and
- f) Decisions relating to submissions of States Parties as provided for in Article 5.

2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. Under the conditions set out in Article 8, the Secretary-General of the United Nations shall convene a Special Meeting of the States Parties.

4. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

Article 12 Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

- a) To review the operation and status of this Convention;
- b) To consider the need for and the interval between further Meetings of the States Parties referred to in paragraph 2 of Article 11;
- c) To take decisions on submissions of States Parties as provided for in Article 5; and
- d) To adopt, if necessary, in its final report conclusions related to the implementation of this Convention.

3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

Article 13 Amendments

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Depositary no later than 30 days after its circulation that they support further consideration of the proposal, the Depositary shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental Organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.

3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.

4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.

5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14 Costs

1. The costs of the Meetings of the States Parties, the Special Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 and the costs of any fact-finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

Article 15 Signature

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 until 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

Article 16 Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval of the Signatories.
2. It shall be open for accession by any State which has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17 Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.

2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18 Provisional application

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

Article 19 Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20 Duration and withdrawal

1. This Convention shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.

3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

Article 21 Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 22 Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Appendix B *Convention on Cluster Munitions*

The States Parties to this Convention,
Deeply concerned that civilian populations and individual civilians continue to bear the brunt of armed conflict,
Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned,
Concerned that cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years after use,
Deeply concerned also at the dangers presented by the large national stockpiles of cluster munitions retained for operational use and *determined* to ensure their rapid destruction,
Believing it necessary to contribute effectively in an efficient, coordinated manner to resolving the challenge of removing cluster munition remnants located throughout the world, and to ensure their destruction,
Determined also to ensure the full realisation of the rights of all cluster munition victims and recognising their inherent dignity,
Resolved to do their utmost in providing assistance to cluster munition victims, including medical care, rehabilitation and psychological support, as well as providing for their social and economic inclusion,
Recognising the need to provide age- and gender-sensitive assistance to cluster munition victims and to address the special needs of vulnerable groups,
Bearing in mind the Convention on the Rights of Persons with Disabilities which, inter alia, requires that States Parties to that Convention undertake to ensure and promote the full realisation of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability, Mindful of the need to coordinate adequately efforts undertaken in various fora to address the rights and needs of victims of various types of weapons, and resolved to avoid discrimination among victims of various types of weapons,
Reaffirming that in cases not covered by this Convention or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law, derived from established custom, from the principles of humanity and from the dictates of public conscience,
Resolved also that armed groups distinct from the armed forces of a State shall not, under any circumstances, be permitted to engage in any activity prohibited to a State Party to this Convention,
Welcoming the very broad international support for the international norm prohibiting anti-personnel mines, enshrined in the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,
Welcoming also the adoption of the Protocol on Explosive Remnants of War, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its entry into force on 12 November 2006, and wishing to enhance the protection of civilians from the effects of cluster munition remnants in post-conflict environments,
Bearing in mind also United Nations Security Council Resolution 1325 on women, peace and security and United Nations Security Council Resolution 1612 on children in armed conflict,
Welcoming further the steps taken nationally, regionally and globally in recent years aimed at prohibiting, restricting or suspending the use, stockpiling, production and transfer of cluster munitions,
Stressing the role of public conscience in furthering the principles of humanity as evidenced by the global call for an end to civilian suffering caused by cluster munitions and *recognising* the efforts to that end undertaken by the United Nations, the International Committee of the Red Cross, the Cluster Munition Coalition and numerous other non-governmental organisations around the world,

Reaffirming the Declaration of the Oslo Conference on Cluster Munitions, by which, *inter alia*, States recognised the grave consequences caused by the use of cluster munitions and committed themselves to conclude by 2008 a legally binding instrument that would prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and would establish a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation for victims, clearance of contaminated areas, risk reduction education and destruction of stockpiles, *Emphasising* the desirability of attracting the adherence of all States to this Convention, and *determined* to work strenuously towards the promotion of its universalisation and its full implementation,

Basing themselves on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, and the rules that the parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations against military objectives only, that in the conduct of military operations constant care shall be taken to spare the civilian population, civilians and civilian objects and that the civilian population and individual civilians enjoy general protection against dangers arising from military operations,

HAVE AGREED as follows:

Article 1 General obligations and scope of application

1. Each State Party undertakes never under any circumstances to:

- (a) Use cluster munitions;
- (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;
- (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.

2. Paragraph 1 of this Article applies, *mutatis mutandis*, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.

6. This Convention does not apply to mines.

Article 2 Definitions

For the purposes of this Convention:

1. "Cluster munition victims" means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities;

2. "Cluster munition" means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:

- (a) A munition or submunition designed to disperse flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
- (b) A munition or submunition designed to produce electrical or electronic effects;
- (c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:
 - (i) Each munition contains fewer than ten explosive submunitions;
 - (ii) Each explosive submunition weighs more than four kilograms;
 - (iii) Each explosive submunition is designed to detect and engage a single target object;
 - (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (v) Each explosive submunition is equipped with an electronic self-deactivating feature;

3. "Explosive submunition" means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact;

4. "Failed cluster munition" means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive submunitions but failed to do so;

5. "Unexploded submunition" means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended;
6. "Abandoned cluster munitions" means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use;
7. "Cluster munition remnants" means failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets;
8. "Transfer" involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over cluster munitions, but does not involve the transfer of territory containing cluster munition remnants;
9. "Self-destruction mechanism" means an incorporated automatically- functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated;
10. "Self-deactivating" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example a battery, that is essential to the operation of the munition;
11. "Cluster munition contaminated area" means an area known or suspected to contain cluster munition remnants;
12. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;
13. "Explosive bomblet" means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact;
14. "Dispenser" means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release;
15. "Unexploded bomblet" means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.

Article 3 Storage and stockpile destruction

1. Each State Party shall, in accordance with national regulations, separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction.
2. Each State Party undertakes to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article as soon as possible but not later than eight years after the entry into force of this Convention for that State Party. Each State Party undertakes to ensure that destruction methods comply with applicable international standards for protecting public health and the environment.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article within eight years of entry into force of this Convention for that State Party it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munitions by a period of up to four years. A State Party may, in exceptional circumstances, request additional extensions of up to four years. The requested extensions shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 2 of this Article.
4. Each request for an extension shall set out:
 - (a) The duration of the proposed extension;
 - (b) A detailed explanation of the proposed extension, including the financial and technical means available to or required by the State Party for the destruction of all cluster munitions referred to in paragraph 1 of this Article and, where applicable, the exceptional circumstances justifying it;
 - (c) A plan for how and when stockpile destruction will be completed;
 - (d) The quantity and type of cluster munitions and explosive submunitions held at the entry into force of this Convention for that State Party and any additional cluster munitions or explosive submunitions discovered after such entry into force;

(e) The quantity and type of cluster munitions and explosive submunitions destroyed during the period referred to in paragraph 2 of this Article; and

(f) The quantity and type of cluster munitions and explosive submunitions remaining to be destroyed during the proposed extension and the annual destruction rate expected to be achieved.

5. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 4 of this Article, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate. A request for an extension shall be submitted a minimum of nine months prior to the Meeting of States Parties or the Review Conference at which it is to be considered.

6. Notwithstanding the provisions of Article 1 of this Convention, the retention or acquisition of a limited number of cluster munitions and explosive submunitions for the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques, or for the development of cluster munition counter-measures, is permitted. The amount of explosive submunitions retained or acquired shall not exceed the minimum number absolutely necessary for these purposes.

7. Notwithstanding the provisions of Article 1 of this Convention, the transfer of cluster munitions to another State Party for the purpose of destruction, as well as for the purposes described in paragraph 6 of this Article, is permitted.

8. States Parties retaining, acquiring or transferring cluster munitions or explosive submunitions for the purposes described in paragraphs 6 and 7 of this Article shall submit a detailed report on the planned and actual use of these cluster munitions and explosive submunitions and their type, quantity and lot numbers. If cluster munitions or explosive submunitions are transferred to another State Party for these purposes, the report shall include reference to the receiving party. Such a report shall be prepared for each year during which a State Party retained, acquired or transferred cluster munitions or explosive submunitions and shall be submitted to the Secretary-General of the United Nations no later than 30 April of the following year.

Article 4 Clearance and destruction of cluster munition remnants and risk reduction education

1. Each State Party undertakes to clear and destroy, or ensure the clearance and destruction of, cluster munition remnants located in cluster munition contaminated areas under its jurisdiction or control, as follows:

(a) Where cluster munition remnants are located in areas under its jurisdiction or control at the date of entry into force of this Convention

for that State Party, such clearance and destruction shall be completed as soon as possible but not later than ten years from that date;

(b) Where, after entry into force of this Convention for that State Party, cluster munitions have become cluster munition remnants located in areas under its jurisdiction or control, such clearance and destruction must be completed as soon as possible but not later than ten years after the end of the active hostilities during which such cluster munitions became cluster munition remnants; and

(c) Upon fulfilling either of its obligations set out in sub-paragraphs (a) and (b) of this paragraph, that State Party shall make a declaration of compliance to the next Meeting of States Parties.

2. In fulfilling its obligations under paragraph 1 of this Article, each State Party shall take the following measures as soon as possible, taking into consideration the provisions of Article 6 of this Convention regarding international cooperation and assistance:

(a) Survey, assess and record the threat posed by cluster munition remnants, making every effort to identify all cluster munition contaminated areas under its jurisdiction or control;

(b) Assess and prioritise needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilise resources and develop a national plan to carry out these activities, building, where appropriate, upon existing structures, experiences and methodologies;

(c) Take all feasible steps to ensure that all cluster munition contaminated areas under its jurisdiction or control are perimeter-marked, monitored and protected by

fencing or other means to ensure the effective exclusion of civilians. Warning signs based on methods of marking readily recognisable by the affected community should be utilised in the marking of suspected hazardous areas. Signs and other hazardous area boundary markers should, as far as possible, be visible, legible, durable and resistant to environmental effects and should clearly identify which side of the marked boundary is considered to be within the cluster munition contaminated areas and which side is considered to be safe;

- (d) Clear and destroy all cluster munition remnants located in areas under its jurisdiction or control; and
- (e) Conduct risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.

3. In conducting the activities referred to in paragraph 2 of this Article, each State Party shall take into account international standards, including the International Mine Action Standards (IMAS).

4. This paragraph shall apply in cases in which cluster munitions have been used or abandoned by one State Party prior to entry into force of this Convention for that State Party and have become cluster munition remnants that are located in areas under the jurisdiction or control of another State Party at the time of entry into force of this Convention for the latter.

- (a) In such cases, upon entry into force of this Convention for both States Parties, the former State Party is strongly encouraged to provide, inter alia, technical, financial, material or human resources assistance to the latter State Party, either bilaterally or through a mutually agreed third party, including through the United Nations system or other relevant organisations, to facilitate the marking, clearance and destruction of such cluster munition remnants.
- (b) Such assistance shall include, where available, information on types and quantities of the cluster munitions used, precise locations of cluster munition strikes and areas in which cluster munition remnants are known to be located.

5. If a State Party believes that it will be unable to clear and destroy or ensure the clearance and destruction of all cluster munition remnants referred to in paragraph 1 of this Article within ten years of the entry into force of this Convention for that State Party, it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the clearance and destruction of such cluster munition remnants by a period of up to five years. The requested extension shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 1 of this Article.

6. A request for an extension shall be submitted to a Meeting of States Parties or a Review Conference prior to the expiry of the time period referred to in paragraph 1 of this Article for that State Party. Each request shall be submitted a minimum of nine months prior to the Meeting of States Parties or Review Conference at which it is to be considered.

Each request shall set out:

- (a) The duration of the proposed extension;
- (b) A detailed explanation of the reasons for the proposed extension, including the financial and technical means available to and required by the State Party for the clearance and destruction of all cluster munition remnants during the proposed extension;
- (c) The preparation of future work and the status of work already conducted under national clearance and demining programmes during the initial ten year period referred to in paragraph 1 of this Article and any subsequent extensions;
- (d) The total area containing cluster munition remnants at the time of entry into force of this Convention for that State Party and any additional areas containing cluster munition remnants discovered after such entry into force;
- (e) The total area containing cluster munition remnants cleared since entry into force of this Convention;
- (f) The total area containing cluster munition remnants remaining to be cleared during the proposed extension;
- (g) The circumstances that have impeded the ability of the State Party to destroy all cluster munition remnants located in areas under its jurisdiction or control during

the initial ten year period referred to in paragraph 1 of this Article, and those that may impede this ability during the proposed extension;

(h) The humanitarian, social, economic and environmental implications of the proposed extension; and

(i) Any other information relevant to the request for the proposed extension.

7. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 6 of this Article, including, inter alia, the quantities of cluster munition remnants reported, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate.

8. Such an extension may be renewed by a period of up to five years upon the submission of a new request, in accordance with paragraphs 5, 6 and 7 of this Article. In requesting a further extension a State Party shall submit relevant additional information on what has been undertaken during the previous extension granted pursuant to this Article.

Article 5 Victim assistance

1. Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.

2. In fulfilling its obligations under paragraph 1 of this Article each State Party shall:

(a) Assess the needs of cluster munition victims;

(b) Develop, implement and enforce any necessary national laws and policies;

(c) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;

(d) Take steps to mobilise national and international resources;

(e) Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;

(f) Closely consult with and actively involve cluster munition victims and their representative organisations;

(g) Designate a focal point within the government for coordination of

(h) matters relating to the implementation of this Article; and

(i) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Article 6 International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance.

2. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by cluster munitions, aimed at the implementation of the obligations of this Convention. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organisations or institutions, non-governmental organisations or institutions, or on a bilateral basis.

3. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision and receipt of clearance and other such equipment and related technological information for humanitarian purposes.

4. In addition to any obligations it may have pursuant to paragraph 4 of Article 4 of this Convention, each State Party in a position to do so shall provide assistance for clearance and destruction of cluster munition remnants and information concerning various means and technologies related to clearance of cluster munitions, as well as lists of experts, expert

agencies or national points of contact on clearance and destruction of cluster munition remnants and related activities.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled cluster munitions, and shall also provide assistance to identify, assess and prioritise needs and practical measures in terms of marking, risk reduction education, protection of civilians and clearance and destruction as provided in Article 4 of this Convention.

6. Where, after entry into force of this Convention, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a State Party, each State Party in a position to do so shall urgently provide emergency assistance to the affected State Party.

7. Each State Party in a position to do so shall provide assistance for the implementation of the obligations referred to in Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent Societies and their International Federation, non-governmental organisations or on a bilateral basis.

8. Each State Party in a position to do so shall provide assistance to contribute to the economic and social recovery needed as a result of cluster munition use in affected States Parties.

9. Each State Party in a position to do so may contribute to relevant trust funds in order to facilitate the provision of assistance under this Article.

10. Each State Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Convention, including facilitation of the entry and exit of personnel, materiel and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.

11. Each State Party may, with the purpose of developing a national action plan, request the United Nations system, regional organisations, other States Parties or other competent intergovernmental or non-governmental institutions to assist its authorities to determine, inter alia:

- (a) The nature and extent of cluster munition remnants located in areas under its jurisdiction or control;
- (b) The financial, technological and human resources required for the implementation of the plan;
- (c) The time estimated as necessary to clear and destroy all cluster munition remnants located in areas under its jurisdiction or control;
- (d) Risk reduction education programmes and awareness activities to reduce the incidence of injuries or deaths caused by cluster munition remnants;
- (e) Assistance to cluster munition victims; and
- (f) The coordination relationship between the government of the State Party concerned and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the plan.

12. States Parties giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programmes.

Article 7 Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party, on:

- (a) The national implementation measures referred to in Article 9 of this Convention;
- (b) The total of all cluster munitions, including explosive submunitions, referred to in paragraph 1 of Article 3 of this Convention, to include a breakdown of their type, quantity and, if possible, lot numbers of each type;
- (c) The technical characteristics of each type of cluster munition produced by that State Party prior to entry into force of this Convention for it, to the extent known, and those currently owned or possessed by it, giving, where reasonably possible,

such categories of information as may facilitate identification and clearance of cluster munitions; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information that may facilitate the clearance of cluster munition remnants;

- (d) The status and progress of programmes for the conversion or decommissioning of production facilities for cluster munitions;
- (e) The status and progress of programmes for the destruction, in accordance with Article 3 of this Convention, of cluster munitions, including explosive submunitions, with details of the methods that will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
- (f) The types and quantities of cluster munitions, including explosive submunitions, destroyed in accordance with Article 3 of this Convention, including details of the methods of destruction used, the location of the destruction sites and the applicable safety and environmental standards observed;
- (g) Stockpiles of cluster munitions, including explosive submunitions, discovered after reported completion of the programme referred to in sub-paragraph (e) of this paragraph, and plans for their destruction in accordance with Article 3 of this Convention;
- (h) To the extent possible, the size and location of all cluster munition contaminated areas under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of cluster munition remnant in each such area and when they were used;
- (i) The status and progress of programmes for the clearance and destruction of all types and quantities of cluster munition remnants cleared and destroyed in accordance with Article 4 of this Convention, to include the size and location of the cluster munition contaminated area cleared and a breakdown of the quantity of each type of cluster munition remnant cleared and destroyed;
- (j) The measures taken to provide risk reduction education and, in particular, an immediate and effective warning to civilians living in cluster munition contaminated areas under its jurisdiction or control;
- (k) The status and progress of implementation of its obligations under Article 5 of this Convention to adequately provide age- and gender- sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims and to collect reliable relevant data with respect to cluster munition victims;
- (l) The name and contact details of the institutions mandated to provide information and to carry out the measures described in this paragraph;
- (m) The amount of national resources, including financial, material or in kind, allocated to the implementation of Articles 3, 4 and 5 of this Convention; and
- (n) The amounts, types and destinations of international cooperation and assistance provided under Article 6 of this Convention.

2. The information provided in accordance with paragraph 1 of this Article shall be updated by the States Parties annually, covering the previous calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8 Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to a matter of compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall

provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information that would assist in clarifying the matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any Meeting of States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. Where a matter has been submitted to it pursuant to paragraph 3 of this Article, the Meeting of States Parties shall first determine whether to consider that matter further, taking into account all information submitted by the States Parties concerned. If it does so determine, the Meeting of States Parties may suggest to the States Parties concerned ways and means further to clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6 of this Convention.

6. In addition to the procedures provided for in paragraphs 2 to 5 of this Article, the Meeting of States Parties may decide to adopt such other general procedures or specific mechanisms for clarification of compliance, including facts, and resolution of instances of non-compliance with the provisions of this Convention as it deems appropriate.

Article 9 National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10 Settlement of disputes

1. When a dispute arises between two or more States Parties relating to the interpretation or application of this Convention, the States Parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of their choice, including recourse to the Meeting of States Parties and referral to the International Court of Justice in conformity with the Statute of the Court.

2. The Meeting of States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties concerned to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

Article 11 Meetings of States Parties

1. The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention, including:

- (a) The operation and status of this Convention;
- (b) Matters arising from the reports submitted under the provisions of this Convention;
- (c) International cooperation and assistance in accordance with Article 6 of this Convention;
- (d) The development of technologies to clear cluster munition remnants;
- (e) Submissions of States Parties under Articles 8 and 10 of this Convention; and
- (f) Submissions of States Parties as provided for in Articles 3 and 4 of this Convention.

2. The first Meeting of States Parties shall be convened by the Secretary-General of the United Nations within one year of entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. States not party to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International

Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organisations may be invited to attend these meetings as observers in accordance with the agreed rules of procedure.

Article 12 Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

- (a) To review the operation and status of this Convention;
- (b) To consider the need for and the interval between further Meetings of States Parties referred to in paragraph 2 of Article 11 of this Convention; and
- (c) To take decisions on submissions of States Parties as provided for in Articles 3 and 4 of this Convention.

3. States not party to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organisations may be invited to attend each Review Conference as observers in accordance with the agreed rules of procedure.

Article 13 Amendments

1. At any time after its entry into force any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Secretary-General of the United Nations, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Secretary-General of the United Nations no later than 90 days after its circulation that they support further consideration of the proposal, the Secretary-General of the United Nations shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not party to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organisations may be invited to attend each Amendment Conference as observers in accordance with the agreed rules of procedure.

3. The Amendment Conference shall be held immediately following a Meeting of States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.

4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to all States.

5. An amendment to this Convention shall enter into force for States Parties that have accepted the amendment on the date of deposit of acceptances by a majority of the States which were Parties at the date of adoption of the amendment. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14 Costs and administrative tasks

1. The costs of the Meetings of States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not party to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 of this Convention shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

3. The performance by the Secretary-General of the United Nations of administrative tasks assigned to him or her under this Convention is subject to an appropriate United Nations mandate.

Article 15 Signature

This Convention, done at Dublin on 30 May 2008, shall be open for signature at Oslo by all States on 3 December 2008 and thereafter at United Nations Headquarters in New York until its entry into force.

Article 16 Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval by the Signatories.
2. It shall be open for accession by any State that has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17 Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the thirtieth instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18 Provisional application

Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally Article 1 of this Convention pending its entry into force for that State.

Article 19 Reservations

The Articles of this Convention shall not be subject to reservations. Article 20
Duration and withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

Article 21 Relations with States not party to this Convention

1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.
2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions.
3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.
4. Nothing in paragraph 3 of this Article shall authorise a State Party:
 - (a) To develop, produce or otherwise acquire cluster munitions;
 - (b) To itself stockpile or transfer cluster munitions;
 - (c) To itself use cluster munitions; or
 - (d) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

Article 22 Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 23 Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention shall be equally authentic.

Appendix C Arms Trade Treaty

Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations, Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including non- governmental organizations, and industry, can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Emphasizing the desirability of achieving universal adherence to this Treaty, Determined to act in accordance with the following principles;

Principles

– The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;

– The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;

– Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;

- Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;
- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;
- The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;
- The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;
- Implementing this Treaty in a consistent, objective and non-discriminatory manner,

Have agreed as follows:

Article 1 Object and Purpose

The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion; for the purpose of:
 - Contributing to international and regional peace, security and stability;
 - Reducing human suffering;
 - Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

Article 2 Scope

1. This Treaty shall apply to all conventional arms within the following categories:

- (a) Battle tanks;
- (b) Armoured combat vehicles;
- (c) Large-calibre artillery systems;
- (d) Combat aircraft;
- (e) Attack helicopters;
- (f) Warships;
- (g) Missiles and missile launchers; and
- (h) Small arms and light weapons.

2. For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as “transfer”.

3. This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership.

Article 3 Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4 Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.

Article 5 General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.

2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.

3. Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered

under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.

4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.

5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.

6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 6 Prohibitions

1. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.

3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Article 7 Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security;

(b) could be used to:

(i) commit or facilitate a serious violation of international humanitarian law;

(ii) commit or facilitate a serious violation of international human rights law;

(iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party;
or

(iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.

3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.

4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.

6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.

7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 8 Import

1. Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation.

2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.

3. Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

Article 9

Transit or trans-shipment

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.

Article 10 Brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

Article 11 Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.

2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.

3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).

4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.

5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 12 Record keeping

1. Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).

2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.

3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.

4. Records shall be kept for a minimum of ten years.

Article 13 Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.

2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).

3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 14 Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

Article 15 International Cooperation

1. States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.

2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.

3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.

4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).

5. States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.

6. States Parties are encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2 (1) becoming subject to corrupt practices.

7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Article 16 International Assistance

1. In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.

2. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.

3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

Article 17 Conference of States Parties

1. A Conference of States Parties shall be convened by the provisional Secretariat, established under Article 18, no later than one year following the entry into force of this Treaty and thereafter at such other times as may be decided by the Conference of States Parties.

2. The Conference of States Parties shall adopt by consensus its rules of procedure at its first session.

3. The Conference of States Parties shall adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.

4. The Conference of States Parties shall:

(a) Review the implementation of this Treaty, including developments in the field of conventional arms;

(b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;

(c) Consider amendments to this Treaty in accordance with Article 20;

(d) Consider issues arising from the interpretation of this Treaty;

(e) Consider and decide the tasks and budget of the Secretariat;

(f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and

(g) Perform any other function consistent with this Treaty.

5. Extraordinary meetings of the Conference of States Parties shall be held at such other times as may be deemed necessary by the Conference of States Parties, or at the written request of any State Party provided that this request is supported by at least two-thirds of the States Parties.

Article 18 Secretariat

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.

2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.

3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:

(a) Receive, make available and distribute the reports as mandated by this Treaty;

(b) Maintain and make available to States Parties the list of national points of contact;

(c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;

(d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and

(e) Perform other duties as decided by the Conferences of States Parties.

Article 19 Dispute Settlement

1. States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute that may arise between them with regard to the interpretation or application

of this Treaty including through negotiations, mediation, conciliation, judicial settlement or other peaceful means.

2. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the interpretation or application of this Treaty.

Article 20 Amendments

1. Six years after the entry into force of this Treaty, any State Party may propose an amendment to this Treaty. Thereafter, proposed amendments may only be considered by the Conference of States Parties every three years.

2. Any proposal to amend this Treaty shall be submitted in writing to the Secretariat, which shall circulate the proposal to all States Parties, not less than 180 days before the next meeting of the Conference of States Parties at which amendments may be considered pursuant to paragraph 1. The amendment shall be considered at the next Conference of States Parties at which amendments may be considered pursuant to paragraph 1 if, no later than 120 days after its circulation by the Secretariat, a majority of States Parties notify the Secretariat that they support consideration of the proposal.

3. The States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this Article, States Parties present and voting means States Parties present and casting an affirmative or negative vote. The Depositary shall communicate any adopted amendment to all States Parties.

4. An amendment adopted in accordance with paragraph 3 shall enter into force for each State Party that has deposited its instrument of acceptance for that amendment, ninety days following the date of deposit with the Depositary of the instruments of acceptance by a majority of the number of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party ninety days following the date of deposit of its instrument of acceptance for that amendment.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

1. This Treaty shall be open for signature at the United Nations Headquarters in New York by all States from 3 June 2013 until its entry into force.

2. This Treaty is subject to ratification, acceptance or approval by each signatory State.

3. Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.

4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 22 Entry into Force

1. This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.

2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 23 Provisional Application

Any State may at the time of signature or the deposit of instrument of its of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

Article 24 Duration and Withdrawal

1. This Treaty shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties. The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depositary, unless the notification of withdrawal specifies a later date.

3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.

Article 25 Reservations

1. At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.

2. A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

Article 26 Relationship with other international agreements

1. The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.

2. This Treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between States Parties to this Treaty.

Article 27 Depositary

The Secretary-General of the United Nations shall be the Depositary of this Treaty.

Article 28 Authentic Texts

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Appendix D *List of interviews*

P#	Date	Contact	Case study
P01	2014-04-12	WM, Australian observer	Ottawa
P02	2014-04-28	NP, former Australian Department of Foreign Affairs and Trade (DFAT)	ATT
P03	2014-04-29	JB, former New Zealand Ministry of Foreign Affairs and Trade (MFAT)	Oslo
P04	2014-05-02	DA, former Quakers Office of the United Nations (QUNY)	Ottawa
P05	2015-02-25	HB, former DFAT	Ottawa
P06	2015-03-02	PW, former DFAT	ATT
P07	2015-03-03	WF, former DFAT	Ottawa
P08	2015-03-04	RC, former Australian government	ATT
P09	2015-03-04	BM, former Oxfam	ATT
P10	2015-03-11	CL, former DFAT	Ottawa
P11	2015-03-18	MP, former Australian government	ATT
P12	2015-03-24	BA, Canadian observer	Ottawa, Oslo, ATT
P13	2015-03-26	PP, former DFAT	Ottawa
P14	2015-03-30	JR, International Campaign to Ban Landmines (ICBL)	Ottawa
P15	2015-03-31	NG, former Australian Department of the Attorney-General (AGs)	ATT
P16	2015-04-14	KE, former Project Ploughshares	ATT
P17	2015-04-16	DW, Canadian observer	Ottawa
P18	2015-04-14	AE, Canadian observer	Oslo, ATT
P19	2015-04-29	AP, Oxfam	ATT
P20	2015-04-29	AM, Oxfam	ATT
P21	2015-04-29	RL, former DFAT	Ottawa
P22	2015-04-29	LB, former MFAT	ATT
P23	2015-04-30	GP, former United Kingdom Foreign and Commonwealth Office (FCO)	ATT
P24	2015-05-01	MW, Human Rights Watch	Ottawa, Oslo
P25	2015-05-01	RS, former United Nations Office of Disarmament (UNODA)	ATT
P26	2015-05-01	JV, US government	ATT
P27	2015-05-01	Anonymous, US State Department	ATT
P28	2015-05-04	Anonymous, US State Department	ATT
P29	2015-05-05	TK, UNODA	ATT
P30	2015-05-05	TC, former MFAT	Oslo
P31	2015-05-05	SR, former UNODA	Ottawa
P32	2015-05-11	BD, Human Rights Watch	Oslo
P33	2015-05-11	TF, former DFAT	Ottawa
P34	2015-05-13	AC, Canadian observer	Ottawa, Oslo, ATT
P35	2015-05-14	PH, former Canadian Department of Foreign Affairs and International Trade (DFAIT)	Ottawa
P36	2015-05-14	KN, Canadian observer	Ottawa, Oslo, ATT
P37	2015-05-16	PN, ATT observer	ATT

P#	Date	Contact	Case study
P38	2015-05-21	DP, UNODA	ATT
P39	2015-05-21	KH, Canadian observer	Ottawa, Oslo, ATT
P40	2015-05-22	JE, former DFAIT	Ottawa
P41	2015-05-26	DP, former US State Department	Ottawa
P42	2015-05-28	GN, former Cluster Munitions Coalition (CMC)	Oslo
P43	2015-05-31	LA, former Canadian government	Ottawa
A15	2015-06-02	EN, former US State Department	Ottawa
P44	2015-06-02	BR, Canadian observer	Ottawa
P45	2015-06-04	DL, former DFAIT	Ottawa
P46	2015-06-05	PH, Mines Action Canada	Ottawa, Oslo, ATT
P47	2015-06-05	EB, former ICBL	Ottawa
P48	2015-06-05	FOH, Canadian observer	Ottawa, ATT
P49	2015-06-08	RL, DFAIT	Ottawa
P50	2015-06-08	JS, former DFAIT	Ottawa
P51	2015-08-10	AD, former Australian government	Ottawa
P52	2015-09-02	BT, Canadian observer	Ottawa
P53	2015-09-04	RM, former ICBL	Ottawa, Oslo, ATT
P54	2015-09-27	NH, Canadian observer	Ottawa, Oslo, ATT
P55	2015-10-29	JL, Mexican Foreign Ministry	ATT
P56	2015-10-30	HW, DFAT	ATT
P57	2015-11-04	SK, Norwegian Foreign Ministry	Ottawa, Oslo
P58	2015-11-10	CS, former Internal Committee of the Red Cross and Red Crescent (ICRC)	Ottawa
P59	2015-11-11	LM, ICRC	Oslo
P60	2015-11-13	AG, DFAT	ATT
P61	2015-11-17	TH, Austrian foreign ministry	Oslo
P62	2015-11-17	KK, Small Arms Survey (SAS)	ATT
P63	2015-11-17	MF, Geneva Centre for Security Policy	ATT
P64	2015-11-17	CU, former DSAT	ATT
P65	2015-11-20	HL, former MFAT	Oslo
P66	2015-11-23	SP, former SAS	ATT
P67	2015-11-24	SM, former Zambian foreign ministry	Oslo
P68	2015-11-25	EU, former Costa Rican foreign ministry	ATT
P69	2015-11-27	HG, ICBL	Ottawa, Oslo, ATT
P70	2015-11-27	DM, former MFAT	Oslo
P71	2015-11-30	RM, former Argentinian foreign ministry	ATT
P72	2015-12-02	SM, Swiss observer	Oslo, ATT
P73	2015-12-03	JM, ICBL	ATT
P74	2015-12-03	JA, former ICBL	Oslo, ATT
P75	2015-12-04	OS, Amnesty International	ATT
P76	2015-12-04	JD, former FCO	ATT
P77	2015-12-07	TN, former MFAT	Oslo
P78	2015-12-10	PL, UK observer	Ottawa, Oslo

P#	Date	Contact	Case study
P79	2015-12-10	JG, DFAT	ATT
P80	2015-12-10	KL, ICRC	ATT
P81	2015-12-10	KD, MFAT	ATT
P82	2015-12-10	DN, Swedish Foreign Ministry	ATT
P83	2015-12-11	JF, World Council of Churches	Ottawa, Oslo, ATT
P84	2016-01-16	AG, Holy See	Oslo
P85	2016-12-16	KM, Pax Christi	Oslo, ATT
P86	2016-12-16	TD, New Zealand observer	Oslo
P86	2016-12-20	KR, former MFAT	Oslo
P87	2016-12-20	RA, New Zealand observer	Ottawa, Oslo, ATT
P88	2016-12-21	CK, MFAT	Ottawa, Oslo, ATT
P89	2016-12-22	DH, MFAT	ATT
P90	2016-12-22	CD, MFAT	Oslo

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