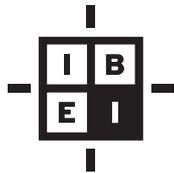


**BANNING OBSOLETE
WEAPONS OR RESHAPING
PERCEPTIONS OF
MILITARY UTILITY:**

Discursive Dynamics in
Weapons Prohibitions

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2010/31



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BANNING OBSOLETE WEAPONS OR RESHAPING PERCEPTIONS OF MILITARY UTILITY: DISCURSIVE DYNAMICS IN WEAPONS PROHIBITIONS

Margarita H. Petrova

Abstract: The paper focuses on the argumentative process through which new international norms prohibiting the use of weapons causing severe civilian harm emerge. It examines the debate surrounding the use and usefulness of landmines and cluster munitions and traces the process through which NGOs change conceptions of military utility and effectiveness of certain weapons by highlighting their humanitarian problems and questioning their military value. By challenging military thinking on these issues, NGOs redefine the terms of the debate – from a commonplace practice, the use of such weapons becomes controversial and military decisions need to be justified. The argument-counterargument dynamic shifts the burden of proof of the necessity and safety of the weapons to the users. The process witnesses the ability of NGOs to influence debates on military issues despite their disadvantaged position in hard security issue areas. It also challenges realist assumptions that only weapons that are obsolete or low-cost force equalizers for weak actors can be banned. To the contrary, the paper shows that in the case of landmines and cluster munitions, defining the military (in)effectiveness of the weapons is part and parcel of the struggle for their prohibition.

Key words: Weapons Prohibitions, Humanitarian Norms, Framing, Arguing, Laws of War

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1. Introduction

The landmine is a weapon of great utility to the military, both to the high-level strategists, the planners of war, and to the individual soldier, who sees the mine as personal protection and a flexible offensive weapon (McGrath 1994)

AP mines have never been a weapon of strategic importance in the arsenal of states, and have little impact on the distribution of capabilities among states: they rarely confer a long-term advantage on any military force; they have never caused a country to win or lose a war (Cameron 2002: 71)

The landmine has often been referred to as the weapon of poor countries, of guerilla forces...Cluster munitions are virtually the opposite — weapons of the major powers (McGrath 2000: 52)

In reality cluster munitions are mainly outdated weapons with limited military utility in modern combat” (Cluster Munition Coalition 2007). They are “outdated relics of the cold war (General Lord Ramsbotham in Landmine Action 2008c).

One often encounters arguments that the prohibition of landmines was made possible at least in part by the fact that they were weapons of no strategic importance, low-cost equalizers against the powers of advanced military forces (Cameron 2002; Price 1998b). Indeed, nowadays there is a widespread perception that landmines are a weapon of the past with no or very limited military utility. On the other hand, several years ago there was a commonly accepted recognition that cluster munitions were highly effective military weapons. Nevertheless, they were banned in 2008. And yet again today one could hear that the reason for their prohibition was the fact that they were weapons overtaken by technological developments. Whereas there are differences between the two types of weapons and debates about their military utility are ongoing, I argue that a similar discursive process, which has been a part of the campaign for their prohibition has reframed both landmines and cluster munitions from being “highly effective” into being “obsolete” weapons. This shift in the perception of their military utility resulted from two intertwined processes carried out by NGOs – on the one hand, the highlighting of the humanitarian cost of the weapons, and on the other, the downplaying of their military effectiveness. The latter was achieved both by focusing on instances where the weapons had delivered sub-optimal effects and by raising the bar of military utility that the weapons had to meet from mere military necessity and usefulness under specific tactical conditions to importance on the strategic and even balance of power level. In turn, this has not only changed commonly held perceptions of their military utility, but to some extent also supplanted the reasons behind the adoption of the prohibitions. Thus by trying to legitimize the new prohibitions on military grounds by convincing the military that they didn’t encroach upon their key capabilities and interests, the NGOs gave rise to the notion that the lack of military utility per se was one of the factors that made the prohibition possible, while in fact it was born out of the discursive processes of deligitimizing the respective weapons.

I proceed as follows. First, I will situate the paper within the constructivist approach in International Relations and link it to the social movement literature on framing. Second, I provide a brief overview of the military uses and humanitarian problems of cluster munitions and antipersonnel landmines, followed by an examination of the perceptions among state and military officials, munition experts, and NGO members of their military utility at the time when the NGO campaigns for the weapons' prohibition were at their early stages. Then I focus on the two discursive strategies employed by NGOs that led to a transformation in perceptions of military utility – highlighting the humanitarian costs of the weapons and questioning their military benefits. Finally, I evaluate the explanatory potential of an alternative perspective that discourse and the prohibitions were driven by the objective falling military utility of the weapons, and conclude by summing up the implications of the discursive processes for the development of international humanitarian law.

2. Framing and the Social Construction of Meaning

The point of departure for this paper is the core constructivist argument that material factors don't have a direct and unmediated effect on social actors. Constructivism posits that international relations consist of social facts that become meaningful by way of agreement among social actors. It emphasizes "*the manner in which the material world shapes and is shaped by human action and interaction and depends on dynamic normative and epistemic interpretations of the material world*" (Adler 1997: 322, emphasis in original), and hence, "material resources only acquire meaning for human action through the structure of shared knowledge in which they are embedded" (Wendt 1995: 73).¹ Thus, I argue that perceptions of material factors, and specifically, perceptions of technical features of weapons systems and their military utility in combat are not given, objective facts insusceptible to interpretation. Instead, I trace the processes through which these perceptions are modified in light of changing normative understandings about the permissibility and humanitarian impact of weapons. However, this is not an argument reifying discourse and language. Material factors, and in this case, specific design and functional features of weapons do matter, but they also allow for a range of different positions regarding military effectiveness and use. Whereas perceptions of military utility are not indefinitely malleable, in the cases of antipersonnel landmines and cluster munitions, they have nevertheless undergone a change from widely held assumptions about their military necessity and effectiveness to a view that they are outdated weapons of limited military utility. By demonstrating the discursive dynamics through which perceptions of military utility changed, I challenge realist arguments that only useless weapons or weapons of the weak have ever been banned.

1. For overviews of the constructivist approach and its contributions, see for example, Wendt 1987, 1992, 1999; Katzenstein 1996; Checkel 1998; Hopf 1998; Ruggie 1998; Adler 2002.

I argue that the shift in the perceptions of military utility of these weapons was to a large degree the result of the campaigns for their prohibition and the ability of NGOs to strategically frame the debates regarding their humanitarian impact and military effectiveness. Thus the paper also contributes to the literature on social movements, and in particular, the work focused on framing processes and their effects (Snow et al. 1986; Snow and Benford 1988, 1992).² From this perspective, social movements and NGOs are “signifying agents actively engaged in the production and maintenance of meaning” – a process referred to as “framing” that results in the production of “collective action frames” that help render events meaningful and hence “organize experience and guide action” (Benford and Snow 2000: 613-14).³ Thus framing performs an interpretive function, but it does so strategically by simplifying complex phenomena or focusing on some of their aspects with a view to mobilizing constituents, gaining bystander support, or demobilizing opponents (Snow and Benford 1988: 198).

Snow and Benford (1988) identify three core framing tasks: “diagnostic framing” (identification of a problem in need of change and attribution of blame), “prognostic framing” (prescription of a solution to the problem), and “motivational framing” (urging others to act in order to effect change). A number of tactics can be employed in performing these framing tasks. At the stage of “diagnostic framing,” I pay particular attention to “frame amplification”⁴ – highlighting the humanitarian costs of the weapons and focusing on the victims and their suffering. At the stage of “prognostic framing,” I examine the NGO tactics of issue simplification by advocating a ban as a solution to the identified humanitarian problems and placing all types of antipersonnel landmines and cluster munitions under the same category irrespective of their design and functional differences. Finally, most of the paper concentrates on tactics related to “motivational framing” including frames targeted at the general public that highlighted the severity and urgency of the humanitarian problems, but particularly the NGO tactics aimed at their opponents that addressed the issue of military utility in an attempt to make their goals resonate with the military establishment. In doing so the NGOs employed what I will call “counterframe deflation” – countering and downplaying the arguments of opponents⁵ – in this case, the military arguments about the necessity and utility of landmines and cluster munitions. These tactics included questioning the credibility of the military regarding the evidential substantiation of their claims about the military effectiveness of the weapons and enhancing the NGOs’ credibility by drawing the support of military officers. I argue that NGO framing attempts at these different stages are closely intertwined and their success depended to a large degree on the coupling of the humanitarian frame amplification and the military frame deflation.

2. For an overview of the rich literature on social movements and framing, see, Benford and Snow 2000.

3. Framing denotes “an active, processual phenomenon that implies agency and contention at the level of reality construction” (Benford and Snow 2000: 614).

4. “Frame amplification” represents “the connection and alignment of events and experiences so that they hang together in a relatively unified and compelling fashion” and involves “highlighting some issues, events, or beliefs as being more salient than others” (Snow and Benford 2000: 623).

5. “Counterframing” is defined as attempts “to rebut, undermine, or neutralize a person’s or group’s myths, versions of reality, or interpretive framework” (Benford 1987:75, quoted in Snow and Benford 2000: 626).

3. Military Uses and Humanitarian Problems of Cluster Munitions and Landmines

Cluster munitions can generally be defined as munitions designed to disperse or release submunitions.⁶ The munitions could be air-dropped cluster bombs or ground-launched rockets. These weapons have been used against a large set of targets – troops, soft-skinned vehicles and heavy armor, anti-aircraft missile sites, enemy artillery, or airfields. Their ability to strike numerous targets dispersed over large areas makes them particularly useful against moving targets or targets whose exact location cannot be determined. Basically, cluster munitions are area weapons designed to strike anything that comes within their footprint perimeter. Their great numbers and large footprint patterns compensate for the lack of precision or impossibility to positively identify targets under cover. The possibility to drop great numbers of bomblets in one single pass over the target area makes cluster bombs very cost-efficient and reduces the risk to pilots exposed to enemy fire. The early versions of cluster bombs were used as antipersonnel weapons in the Korean War. In the Vietnam War, they were employed against anti-aircraft weapons and over wooded territory. Later versions were designed as anti-tank weapons for use in case of a Soviet land invasion of Europe during the Cold War (Hiznay 2006, Conway 2007, King 2000).⁷

The first problem with cluster munitions is that they pose immediate dangers to civilians during attacks due to their inaccuracy, large numbers, and wide dispersal patterns. Second, a significant percentage of cluster submunitions fail to detonate upon impact as designed and leave numerous unexploded duds, which function as de facto landmines when disturbed later. Thus cluster munition use could violate the basic rule of civilian immunity in international humanitarian law, the prohibition against indiscriminate attacks, and under certain conditions the rule of proportionality, postulating that the civilian damage should not outweigh the concrete and direct military advantage expected from an attack.

An antipersonnel landmine (APL) denotes a mine designed to be exploded by the presence, proximity or contact of a person.⁸ The main traditional uses of APLs have been the creation of protective obstacles in defensive operations “designed to delay the enemy advance by breaking up its attack formations and canalizing them into areas where they can be attacked by other weapons” (ICRC 1996). Mines, in particular antitank mines in combination with APLs, have also been used in offensive

6. For the purposes of a ban, the 2008 Convention on Cluster Munitions defines a CM more restrictively as “a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions” (Art. 2) and then excludes from its coverage munitions meeting a number of cumulative criteria aimed at avoiding the indiscriminate area effects and unexploded munition problems of CMs.

7. There is a range of different models of submunitions that produce different effects. Early types of cluster munitions were designed to have fragmentation and incendiary anti-personnel and anti-materiel effects – upon explosion, the bomblets burst into hundreds or thousands of steel pieces and incendiary fragments that fly at very high velocities and can kill or injure people and destroy weaponry at different ranges reaching hundreds of meters. The newer types of cluster bombs are combined effects munitions that in addition to fragmentation and incendiary effects have anti-armor effects. This is achieved by incorporating a copper cone in the bottom of the submunition that upon explosion “turns into a molten slug that can penetrate five inches (thirteen centimeters) into tanks and other armored vehicles” (HRW 2002: Ch. 2).

8. There are two general types: “blast mines, which are surface or sub-surface laid and explode when trodden on; and fragmentation mines, which are usually activated by tripwires, and on bursting project fragments of metal over a wide area” (ICRC 1996).

operations to prevent counterattacks or outflanking of the attacking forces – a use that has been facilitated by the introduction of remotely delivered mines, which also made possible their use in strategic attacks against targets in the rear areas of the enemy.⁹ Apart from these conventional types of employment, landmines have also been used in internal and low-intensity conflicts, including for harassment of the civilian population, which has in large part created a humanitarian crisis in the 1980s. The main humanitarian problem of landmines is their long-lasting and indiscriminate effect – they continue to kill and maim civilians long after the end of conflicts.

4. The Presumption of Military Necessity: Common Views on the Military Utility of Cluster Munitions and Landmines

Until recently there has been an agreement among the military, state representatives, technical experts, and even NGO members about the significant military utility of cluster munitions, which was perceived as an obstacle to achieving restrictions on their use, let alone a ban even a few months prior to the launch of a negotiation process for their prohibition (interviews 20031210; 20060330; 20060511).

For example, the military has often evaluated highly the military efficiency of cluster munitions. According to an US military officer, in Vietnam the expectation was that “these weapons could give us a quantum leap on the enemy,” in particular, by solving the problem of flak suppression (Krepon 1974: 599). During the Gulf War in 1991 ground-launched cluster munitions were seen as “the decisive battle winner ...because the rockets from each launcher [could] take out a square kilometer of the map.”¹⁰ Battle damage assessments of the 1999 Kosovo campaign claimed that “experience in Operation Allied Force also demonstrated the importance of Combined Effects Munitions [cluster bombs CBU-87]” despite the unexploded-ordnance hazard associated with the weapons (US DoD 2000: 90). The newest sensor-fuzed, anti-armor cluster bombs were equally praised after their debut in 2003 – “[t]hose two weapons decimated, stopped dead, the entire tank column” (quoted in Stockton 2003: 6). And yet, all of those weapons were banned in 2008.

Similarly, state officials have maintained the indispensability and high effectiveness of cluster munitions. For example, in 2005 UK representatives at talks of the Convention on Certain Conventional Weapons (CCW) argued:

9. For details, see for example, ICRC 1996 and Biddle et al. 1994.

10. LTC Peter Williams, Commander of Britain’s 39th Heavy Artillery Regiment in Saudi Arabia, quoted in “M26 Multiple Launch Rocket System,” <http://www.globalsecurity.org/military/systems/munitions/m26.htm>. Similarly, King (2000: 17) reports regarding the use of submunitions that “Iraqi prisoners tell of the terror instilled by what they referred to as ‘steel rain’, and widespread damage to installations and equipment was clearly visible after the Iraqi withdrawal.”

Cluster munitions are still the most appropriate air-delivered weapons in many situations because of their ability to destroy enemy assets dispersed over an area... The area effect capability of air-dropped cluster munitions is not matched by current precision weapons, or by large unguided unitary bombs... Artillery-launched cluster munitions will maintain a crucial capacity in the suppression of area targets for a long time to come (UK 2005)

Throughout the period, US state and military officials have insisted that cluster munitions “serve indispensable military purposes” and “provide distinct advantages against a range of targets and can result in less collateral damage than unitary bombs” (USA 2001; US DoD 2005: 11; Gates 2008). Similarly, French officials have argued that cluster munitions are “peerless in their efficiency” for the neutralization of ground targets (such as vehicles, artillery batteries, temporary battlefield supply points) (France 2002) and to decide “to do without them would mean to accept an important reduction of the national defense capabilities of states, and of France, in particular” (Scellos 2005).¹¹

An independent expert advising both NGOs and governments on the use and technical aspects of munitions, concluded in a 2000 study of the use and aftereffects of cluster munitions since WWII that, “[t]he trend towards increasing use of submunitions seems unlikely to change in the foreseeable future. From a military point of view, they offer unmatched cost-effectiveness in their ability to dispense a payload over a broad area and attack multiple targets” (King 2000: 37).¹² In 2003, another expert even claimed that cluster weapons were a “battle winning munition.”¹³

Early on, challenging the military utility of the weapons was not part of the NGO strategy. Rather, NGOs perceived this issue as a roadblock on the way to any future use restrictions. While there were a couple of NGO reports questioning the military effectiveness of cluster munitions, even those were circumscribed in their conclusions. For example, a Landmine Action report argued that cluster munitions had not been a “critical positive combat factor for the user force” in a number of examined conflicts, but still acknowledged that “[w]hen the cluster munition works, it works. If it were possible to manufacture a variant with no propensity for failure and causing long-term danger, the military effectiveness of cluster munitions would not be in question” (McGrath 2000: 52). Similarly, another NGO report posing questions about the battle effects of the weapons admitted that, “[t]here is no doubt about the military utility of cluster weapons against large mechanized forces, especially those attacking or on the move” and “cluster weapons are cer-

11. My translation; original reads: “Décider de s’en passer impliquerait d’accepter une réduction importante des capacités de défense terrestre des Etats en général et de la France en particulier.” Similarly, representatives of the Polish Ministry of Defense argued in 2005 that “[f]rom a military perspective they offer unmatched cost-effectiveness in their ability to dispense carried submunitions/ bomblets over a broad area and attack multiple targets,” quoted in Pax Christi Netherlands (2005: 22). Russian officials have maintained that cluster munitions “ensure highly effective strikes against a very wide range of targets” (Russia 2007).

12. Whereas the assessment of cluster munition effectiveness in different conflicts varied, King asserted that in the 1991 Gulf War their military utility was “clear” and there was “clear evidence that submunitions effectively reduced the Iraqi stock of fighting equipment, denied access to supplies and substantially lowered morale” (King 2000: 17).

13. Threat Resolution Ltd, “The Case for Cluster Bombs - The military advantage,” May 2003, quoted in Pax Christi Netherlands (2005: 20).

tainly not 'out of fashion' even in advanced Western forces" (Pax Christi Netherlands 2005: 22, 25). Even in 2006 when the campaign to ban cluster munitions was gathering force internationally, it was accepted by representatives of NGOs and independent organizations that, "unlike anti-personnel mines, the military utility of these weapons is more readily and widely recognized" (Cave 2006: 62).

However, this statement reads the past from the point of view of the present. At the time when the landmine campaign was launched the perceived military utility of the weapons was much higher than it is nowadays. As I argue, common views about the low military utility of landmines today are in a large measure the result of the campaign for their prohibition itself. For example, in January 1994, about a year after the establishment of the International Campaign to Ban Landmines (ICBL),¹⁴ the International Committee of the Red Cross (ICRC) convened an expert meeting on antipersonnel landmines that concluded that the predominant feeling was that the military utility of antipersonnel mines warranted their continued use and the military did not regard alternative systems to be viable (ICRC 1994; Maslen 2004: 19; Maresca and Maslen 2000: 257-63). Similarly, in February 1994, a NGO representative underlined that, "[t]he landmine is a weapon of great utility to the military, both to the high-level strategists, the planners of war, and to the individual soldier, who sees the mine as personal protection and a flexible offensive weapon" (McGrath 1994). In 1995, state discussions on restricting landmines at the CCW Review Conference were still dominated by military considerations (CCW 1995: 4). The US military, for example, extolled the contribution of mines to the US victory in the 1991 Gulf War, insisting that the weapons were an "indispensable" element of maneuver warfare and "will be required by US forces for safe defense in the foreseeable future" (Shalikhvili 1995). However, not only the US military was holding such views. The defense ministries of Scandinavian countries such as Sweden and Finland also insisted that landmines were an essential element of their land defenses. In 1996, the ICRC still admitted that there was "the assumption that [antipersonnel mines] are an essential weapon of high military value and that their military value outweighs their human cost," which hindered progress toward a prohibition despite concern over the humanitarian crisis caused by the weapons (ICRC 1996).

14. Individual NGOs had started working on the landmine problem in 1990-91 with the first report focusing on the issue published in September 1991 by HRW and Physicians for Human Rights, "Landmines in Cambodia: The Coward's War." In October 1992, six NGOs (Handicap International, HRW, Medico International, Mines Advisory Group, Physicians for Human Rights, and Vietnam Veterans of America Foundation) joined to create the ICBL and the Vietnam Veterans of America Foundation appointed Jody Williams as a campaign coordinator. In May 1993, the first NGO conference on landmines was held in London.

5. From Military Utility to Humanitarian Impact: Reframing the Debate on Weapons Use

Thus, I argue that at their inception both the landmine and the cluster munition campaigners were facing a formidable opposition grounded in entrenched perceptions about the military utility and necessity of the weapons. As has been widely recognized, the main NGO strategy to overcome this opposition has been to create a counter discourse highlighting the enormous civilian suffering those weapons cause years after the end of conflicts (e.g. Williams and Goose 1998; Price 1998a; Larrinaga and Sjolander 1998; Rutherford 2000; Hubert 2000; Cameron 2002) – the so-called humanitarian “frame amplification” in the social movements vocabulary that also approximates an attempt to desecuritize the issue by moving it from the field of state security where the military has the upper hand into the field of human security, humanitarian aid and development where it can be publicly discussed and NGOs become key players.¹⁵

The first step in this direction was awareness-raising by gathering evidence on the magnitude of the problems these weapons caused to civilians. In the case of landmines, NGOs started documenting the scale of landmine contamination in different part of the world and its impact on civilians and their way of living, which resulted in a series of influential reports.¹⁶ The narrative that emerged from these accounts was one of a “humanitarian crisis,” “global epidemic of landmines,” and portrayals of landmines as “weapons of mass destruction into slow motion” (see also Larrinaga and Sjolander 1998: 374-6). The image was a powerful one and even the US State Department agreed that, “landmines may be the most toxic and widespread pollution facing mankind”.¹⁷

Given that the permissibility of the use of military force under international humanitarian law depends on a balance between military advantages and negative side effects on innocent bystanders,¹⁸ the NGOs argument was that whatever the military utility of landmines, it was far outweighed by their grave humanitarian effects on civilians.¹⁹

Similarly, in the case of cluster munitions NGOs gathered data on the humanitarian cost of the weapons, documented the numbers of civilian casualties, as well as the socio-economic problems resulting from their use in all conflicts

15. On securitization and desecuritization, see Buzan et al. 1998.

16. HRW was the organization that contributed most to this effort. After publishing together with PHR *The Coward's War* in September 1991, in October 1992 Rae McGrath of Mines Advisory Group wrote for it another report on the landmine situation in Iraqi Kurdistan, *Hidden Death*, followed by reports on Angola in 1993 and Mozambique in 1994, as well as by another publication together with PHR on the global landmine crisis in 1993, *Landmines: A Deadly Legacy*. Other reports were issued by PHR, *Hidden Enemies* (1992), MAG and African Rights, *Violent Deeds Live On* (1993), and VVAE, *After the Guns Fall Silent* (1995).

17. Quoted by Senator Leahy in a speech to the Senate (Congressional Record, February 28, 1994).

18. For example, Article 57(2a,iii) of Additional Protocol I to the Geneva Conventions reads that the military should “refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

19. In addition, NGOs argued that landmines were indiscriminate weapons because they could not distinguish between civilians and soldiers, which violated the principle of distinction and civilian immunity establishing that those who plan or decide upon attack shall “do everything possible to verify that the objectives to be attacked are neither civilians nor civilian objects” and “the civilian population as such, as well as individual civilians, shall not be the object of attack” (Additional Protocol I to the Geneva Conventions, Article 57(2a,i) and 51(2)).

after the NATO intervention in Kosovo in 1999.²⁰ They also concentrated their efforts at gathering information about the rate of submunition failure in actual battle use. This information supported their arguments that manufacturer data on failure rates were misleading and the large percentage of submunitions remaining post-conflict turned the weapons into de facto landmines. Although the scale of the cluster munition problem was more limited than that with landmines, NGOs managed to convey its severity, as well as a sense of urgency by alluding to a “humanitarian crisis in the waiting” and a “looming disaster” unless timely measures were taken to deal with it (e.g. HRW 2006; also Landmine Action 2006b).

In addition to piling up statistics about the numbers of landmines or unexploded submunitions lying on the ground, the failure rates of the weapons, and the numbers of casualties around the world, the NGOs also sought to present the human face of the victims and make visible the immediate impact of the weapons on their lives and bodies (Rutherford 2000). The publications portrayed stories of horrific suffering of innocent victims (most often women and children) and impediments to reconstruction efforts in war-torn societies inflicted by landmines and cluster munitions.²¹ And they also made sure that the people affected by the weapons would be present at the negotiations of the new treaties to remind state delegates of the human lives behind the statistics.²² This brought an effective emotional power to the NGOs arguments and helped single out the weapons by associating them directly with the suffering and mutilation they had caused.

These tactics of amplifying the humanitarian problems of the weapons, the sense of crisis and urgency, and the suffering of victims were targeted at the media and the public, but also at state negotiators involved in the CCW talks and served the vital purpose of initial framing of the issues. This, together with issue simplification – calling for a total ban on landmines and subsuming all types of cluster munitions within the same category to be banned – contributed to NGO and public mobilization behind the campaigns. From the point of view of negotiations and international humanitarian law, zooming in on the humanitarian impact of the weapons changed the postulated balance between military interests and humanitarian costs, even if we could assume that perceptions of military utility per se might not have been affected in the process. However, in the case of cluster munitions, for example, the whole negotiation process was based on the understanding that states had gathered to ban those cluster munitions that cause “unacceptable harm on civilians”. By providing the evidence that even advanced submunitions that touted a reliability rate of 1-2%, had failed to function properly and led to civilian casualties in recent conflict, such as the war in Lebanon in 2006, the NGOs were effectively showing that such weapons were causing “unacceptable harm.” By framing the debate in humanitarian terms, the NGOs shifted the burden of proof that certain

20. See, for example, HRW 1999, 2000, 2002, 2003, 2008; Mennonite Central Committee 1999, 2000; McGrath 2000; ICRC 2000; Landmine Action 2006a; Moyes 2007; Handicap International 2007; Norwegian People's Aid 2007a.

21. Even though the estimates were that women and children comprised about 30, maximum 40% of the landmine victims, the NGOs always placed the emphasis on them and occasionally claimed that they made 90% of the victims (Larrinaga and Sjolander 1998: 376-7).

22. See, for example, Handicap International's project “Ban Advocates” that aimed at providing a voice for the victims of cluster munitions and actively engaged them in lobbying activities during the negotiations of the Convention on Cluster Munitions (www.banadvocates.org).

weapons systems work properly and provide a high military utility to those who were claiming so (e.g. Price 1998a; Rappert 2005; Rappert and Moyes 2009).

However, not only have NGOs managed to reframe the debate from security into humanitarian terms as most authors have noticed. Also, I argue, they have consciously sought to undermine arguments about the military utility of the weapons in a process I call “counterframe deflation” – challenging and downplaying military arguments. NGO members have noticed that the “armed forces will not respond to the emotional issue” of humanitarian suffering (ICBL 1994: 82) and thus have deemed it necessary to address issues of military use per se, especially in cases where they encountered stiff military opposition to the prohibitions. It is to these processes of challenging and redefining the existing perceptions of the military utility of weapons that I now turn.

6. From Military Utility to Disutility and Obsolescence

6.1 Antipersonnel Landmines

Early on in the landmine campaign, NGOs realized that they had better chances of success if they didn’t limit themselves to the humanitarian cost of the weapons, but also engaged the military in a debate about the effectiveness and necessity of antipersonnel landmines. Although this remained a secondary approach in the campaign, NGO representatives argued that they “should make a serious effort to question the military usefulness of landmines” (ICBL 1994: 82). At that point opinions still diverged: while some suggested that landmines were of “decreasing utility in the post-Cold War situation,” others perceived an increasing importance for the weapons in offensive operations due to new technological developments and the introduction of scatterable mines. There was consensus, however, that a more “serious and analytical study of the present day military utility of mines” was needed and that they had to “challenge the claim of military necessity, and distinguish between military necessity and more limited military utility” (ICBL 1994: 83). The tactic itself was based on the notion that “no weapons program has ever been halted without first countering the arguments about its military usefulness.”²³

Incidentally, the NGO campaign was helped in this respect by a report on the military utility of landmines and its implications for arms control that was is-

23. Steven Goose of Human Rights Watch, quoted in ICBL 1995b.

sued by the Institute for Defense Analysis in June 1994. The report cast doubt on arguments about the high military need for landmines by concluding, first, that the military utility of landmines was higher in defensive operations, whereas the US was most likely to be engaged in offensive campaigns in the future,²⁴ and second, in order for antipersonnel landmines to have an effect, very stringent conditions had to obtain.²⁵ The overall conclusion of the report was that “military utility in high intensity conflict need not preclude consideration of landmine arms control” (Biddle et al. 1994: 68).

While the report’s actual impact on military thinking and the Pentagon remained unclear,²⁶ it provided substantive grounds for NGOs to claim that the military utility of landmines had been highly exaggerated and in practice they had delivered a much smaller effect than believed (CCW News 1995: 6; CCW 1995: 6) and point out differences of military opinion on the matter. NGO arguments focused on the point that while mines might have some military utility, they were neither “essential” nor “indispensable” (ICBL 1995b: 56). From there some activists went on arguing that mines were “just another form of old-fashioned ill-conceived weapon[s] set to disappear from regular warfare, like dum-dum bullets or poison gas” (Van Gerwen 1995), invoking once again the idea that only weapons of compromised military utility could be prohibited.

The ICRC, in particular played an important role in examining seriously the military utility of the weapons. In line with its role as a guardian of international humanitarian law, it paid attention to military arguments and sought to establish a balance between military and humanitarian considerations. To that end, in 1996 the ICRC commissioned a study of the military use and effectiveness of antipersonnel landmines in 26 conflicts starting with WWII and later convened a meeting with senior military experts to discuss its findings. The unanimous conclusion was that, “[t]he limited military utility of AP mines is far outweighed by the appalling humanitarian consequences of their use in actual conflicts” (ICRC 1996) – a position that subsequently was endorsed by 55 senior military commanders from 19 countries in their personal capacity.

Thus, by garnering the support of military officers for their cause, NGOs tried to enhance their credibility as experts in military matters.²⁷ Importantly, highlighting the divergent opinions within the military establishment on the utility of

24. The military generally envisaged a Korean type scenario, or even relied on old Cold War plans of fighting a defensive war in Europe, while the report noticed that combat of the offensive type waged in the 1991 Gulf War would be more probable. In addition, since pure defense without counterattack is rare, even in a defensive scenario, the net effect of removing landmines on US materiel and combatant losses would be less significant than the one under pure defense conditions; For example, if mines were altogether removed from a scenario featuring a US mechanized brigade in defense on desert terrain that includes a counterattack and use of scatterable antitank mines by the US, there would be a 20% increase in US vehicle losses, in contrast to previous assertions in the arms control debate that giving up mines will double US losses (Biddle et al. 1994: 44).

25. “For AP mines to have a decisive effect, a number of important preconditions must be met, among these being: (1) that the attacker reach the close-in positions where US doctrine places most AP mines; (2) that the attacker’s infantry dismounts and conducts the assault on foot; and (3) that the attacker maneuvers this dismounted infantry and its accompanying armored vehicles independently” (Biddle et al, 1994: 70).

26. The report was commissioned to the Institute by the Office of Special Operations and Low Intensity Conflict (SOLIC). Even though among SOLIC’s chief civilian officials were two political appointees of the Clinton Administration who were in favor of a total landmine ban – Deputy Assistant Secretary of Defense for Humanitarian and Refugee Affairs, Patricia Irvin and Principal Deputy Assistant Secretary of Defense for Special Operations, Timothy Connolly – the ability of SOLIC to influence the DoD policy on the matter was limited and both ban proponents left their posts in 1996, the time when the debate on landmines started in earnest.

27. The nuclear disarmament movement has also employed a similar tactics of enhancing their credibility as frame articulators by enlisting the support of former members of the military establishment (Benford and Snow 2000: 621).

landmines opened a window of opportunity for NGOs to shift the burden of proof to the military. Whereas prior to the NGO campaign the military necessity of the weapons was accepted as a matter of fact, as the issue became the focus of public debate the military was forced to justify the need of using landmines (Price 1998a: 632-33).

The NGO approach included questioning the usefulness of landmines in particular instances of armed conflict or future war scenarios, but also zooming out from the narrow combat utility of the weapons to their importance for overall military doctrine and strategy, and eventually for the global balance of power. Arguably, at such a high level of abstraction only a few weapons systems could be proven of utmost importance. However, as has been argued, “to the extent that a category of weapons technology carries the burden of extra political, legal, and moral baggage, the ordinary criteria of mere utility will just not do” (Price 1998: 633). Nevertheless, it has become commonly accepted that one of the reasons for the success of the prohibition was “the fact that the use or abolition of mines would have little impact on the global military balance” (Cameron 2002: 83; also Gard 1998) and even scholars who do not buy into the military disutility argument refer to landmines as weapons of “dubious military utility” (Rutherford 2000: 76, 111, 114). As I argue, this particular representation of landmines was not necessarily a given fact, but largely the result of conscious NGO efforts.

The tactic of questioning the military use of weapons became salient in particular in the US campaign to ban landmines where NGOs faced stern military opposition and in an attempt to overcome it focused a lot of their energies on showing that a ban would not undermine the US military capabilities. In what is considered a particularly successful campaign strategy (Wareham 1998: 224; interview 20060514), the US campaign managed to convince 15 high-ranking retired generals to sign an open letter to President Clinton assuring him that banning antipersonnel landmines was “not only humane, but also militarily responsible” and would not “undermine the military effectiveness or safety of [US] forces” as it would leave “unimpaired the use of... undeniably militarily useful weapons.” The Vietnam Veterans of America Foundation (VVAF) leading the landmine campaign in the US made proving the lack of military effectiveness of landmines the pinnacle of its efforts in a bid to provide President Clinton with the military credentials that he lacked, but also to convince the US military itself that the ban would not affect negatively its capabilities.²⁸ An additional representation of landmines in the US media portrayed them as cheap weapons for poor countries that did not yield any relative advantage to US forces that often times fell victim to these weapons in war and peace operations (e.g. New York Times 1997a,b; Washington Post 1996, 1997).

Whereas enlisting military support for the NGO cause and highlighting the split in military opinion about the utility of the weapons was an effective strategy,

28. See for example, two reports challenging military claims that landmines were needed for the protection of Korea – Demilitarization for Democracy (1997) and HRW (1997).

shifting back the debate predominantly on military grounds had also its counter-productive effects. The tactic provoked a backlash from retired and active military officials organized around the conservative Center for Security Policy.²⁹ Within this discursive setting focused on military utility divorced from humanitarian considerations, if a decision had to be made based on military arguments, it was only natural to heed the advice of the uniformed military in charge of planning and fighting wars rather than the opinion of the retired generals supporting the NGO cause.

Nevertheless, even after its failure to convince the US to join the Ottawa Convention in 1997 on military grounds, the main focus of the VVAF campaign to make the US sign the treaty after its adoption remained demonstrating that landmines had a limited military utility and it tirelessly commissioned several studies for the purpose.³⁰ After president Bush took office in 2001, another eight generals and admirals sent him a letter arguing that antipersonnel landmines “are outmoded weapons that have, time and again, proved to be a liability to our own troops... We believe that the military, diplomatic, and humanitarian advantages of speedy US accession [to the Mine Ban Treaty] far outweigh the minimal military utility of these weapons” (USCBL 2003).³¹ In November 2001, as information about the Pentagon recommendations for the Administration’s landmine policy review became available, Human Rights Watch (HRW) also sounded the alarm and urged policy-makers to consider what was the real military utility of landmines.³² Legislators mobilized as well and in December 2001, a letter from 124 members of the House of Representatives was sent to Bush urging him to “redirect the landmine policy review to reflect the need for the elimination of this outmoded, indiscriminate weapon from the U.S. arsenal” (quoted in FCNL undated).³³

Even if the concrete objective of the campaign in the US to win the debate on military utility may not have been achieved yet, the attempts to show that landmines had limited uses in military operations have contributed to the process of their delegitimation and portrayal as obsolete weapons. In that sense, it was the prohibition itself and the efforts to sell it to the military that redefined general perceptions of military utility, rather than the other way around.

6.2 Cluster Munitions

A similar process took place in the case of cluster munitions although there was a nuance in the NGO arguments compared to landmines. Whereas there was

29. See for example, Center for Security Policy 1997a,b,c,d.

30. See Dupuy Institute 2000a,b,c.

31. In March 2001, VVAF commissioned yet another study of the consequences of banning, this time, antitank mines. The study concluded that a total ban on all “dumb” mines (antipersonnel and anti-tank), including those in Korea, was a sensible option, but defended the usefulness of “smart” antitank mines (Dupuy 2001).

32. The focus was almost entirely on the military arguments about landmine use. HRW brought to the attention of policy-makers questions such as, “Do Mines have a Role on the Modern Battlefield? How Much Time Do Antipersonnel Mines Buy? What is the benefit that antipersonnel mines provide in “protecting” antitank mines?” that were then subdivided into numerous detailed technical and operational questions (HRW 2001).

33. Whereas in the US the debate shifted primarily on military grounds, the main approach followed by NGOs, and the ICRC in particular, was to refer to military utility always in relation to the weapons’ humanitarian effects.

a direct challenge to the military effectiveness of the weapons, in many cases this was linked to the argument that their use undermined the larger political goals of today's military campaigns to "win the hearts and minds" of the local population. Hence, the high political cost of cluster munitions made them weapons of limited military utility as well. NGOs repeatedly argued that cluster munitions were relics of the past designed for the battlefields of the Cold War rather than today's conflicts that often times take place in urban environments. As in the case of landmines, they also highlighted the heavy toll unexploded cluster submunitions took on friendly forces (HRW 2007).³⁴ More directly, they questioned the penetration effects of some cluster submunition types against contemporary tank armor (McGrath 2000; Rappert 2005; Conway 2007) and finally, pointed out the lack of studies of the military utility of cluster munitions, which made the balancing of military advantages versus humanitarian costs impossible (Rappert 2005).³⁵

Challenging the military utility of the weapons became a campaign strategy to delegitimize them. But it came only after the NGOs had shown convincingly the humanitarian cost of the weapons. Under the scrutiny of NGOs and international organizations perceptions about the political costs and admissibility of these weapons changed. At this stage when momentum behind a prohibition has gathered force, studies of the weapons' military utility were undertaken with a view to making a ban, justified on humanitarian grounds, palatable to the military as well. As in the US campaign to ban landmines (Price 1998a: 632), this step was also made in order to portray the ban proponents as responsible statesmen taking into account military requirements and not just pacifists on a crusade to disarm their militaries and abolish all weapons. Again, this campaign tactic was most visible in countries where military opposition was an obstacle to achieving a ban, which underlines the argument that the absence of military utility was not an established fact in military circles and even less was it a moving force behind efforts for weapons prohibitions.

Once the Oslo Process to negotiate a treaty banning cluster munitions was launched in early 2007, it was deemed necessary to show that the prohibition of cluster munitions would not critically undermine military capabilities. Whereas campaign efforts on cluster munitions in the US were for the most part weak, challenging the military utility of these weapons came to the fore in the UK, the major military force reluctantly participating in the negotiation process. Landmine Action was particularly active on the issue and worked with parliamentarians to raise the visibility of the problem and put pressure on the government to support the international ban process. In debates in the UK House of Lords it was persistently argued that cluster munitions had no military utility in the post-Cold War conflicts where protecting the civilian population and winning its support were of utmost importance (e.g. UK House of Lords 2007a,b). However, the arguments in this case focused not so much on challenging the military utility of the weapons in itself,

34. For example, HRW (2003: 114) emphasized that due to their high failure rate DPICM submunitions used by US artillery in the 2003 Iraq War, were called "losers" and "a Cold war relic" in a lessons learned presentation of the 3rd Infantry division.

35. The Geneva International Centre for Humanitarian Demining (2007: 27) also noted that, "no detailed military study of the military utility of these weapons – if one has been conducted – has ever been made public".

but rather on refuting their utility after weighing it against their humanitarian and political costs.

In a reprise of the generals' letter published in support of the landmine ban in the US, on the eve of the final negotiations of the Convention on Cluster Munitions in May 2008, nine senior British military leaders published an open letter in *The Times* to the Secretary of State for Defense under the title "Cluster Bombs Don't Work and Must be Banned". In it they argued that cluster munitions caused casualties both among the civilian population and soldiers, were "battlefield losers," and their prohibition would "establish a new benchmark for the responsible projection of force in the modern world." Instead of letting soldiers use these indiscriminate weapons, the UK government should better equip them with the "right" weapons, such as precision-guided munitions (*Times*, 19 May 2008). And campaigners from Landmine Action and their parliamentary allies continued portraying cluster munitions as "outdated relics of the Cold War" of "no real military gain" (Landmine Action 2008a,c; *Guardian* 28 May 2008; Oxfam 2008).³⁶

The Cluster Munition Coalition (CMC) also questioned the military effectiveness of the weapons and started referring to them as "outdated" and "obsolete". Again, the approach was to challenge the "unique" military utility of cluster munitions and place doubt on military claims about their effectiveness. CMC argued that in recent conflicts they had been used as "a weapon of convenience against a wide range of targets" rather than for delivering specific advantages against particular target sets as argued by the military. At the same time, the tasks performed by cluster munitions could well be fulfilled by other conventional weapons (CMC 2007). Similarly, NGO members argued that, "the soldiers ... know these weapons are outdated" and "good soldiers should have good weapons" (Paul Hannon, Director Mines Action Canada quoted in Burtinshaw 2007) and accused some states reluctant to support full-heartedly the Oslo Process of being "more interested in protecting their obsolete cluster munitions than protecting civilians" (CMC co-chair Simon Conway, quoted in Pax Christi Netherlands 2007).

In a further attempt to clarify the issue of military utility, in April 2007 the ICRC organized an expert meeting to discuss the humanitarian, military, technical, and legal aspects of cluster munitions (ICRC 2007). At the meeting, NGO representatives continued their charge that if militaries had no reliable data on the failure rate of submunitions, it was not possible to assess either their humanitarian cost or military utility (Borrie 2007). In contrast to the 1996 ICRC meeting on landmines, the expert meeting on cluster munitions did not issue a concrete position on the military utility of the weapons, but it did indicate the lack of reliable information and the need for further study of this aspect, once again casting doubt on military assertions and credibility on the issue.

36. To the extent that the same trend surfaced in the US, it could be detected in arguments by Congressman Jim Moran who has argued that "The US military doesn't need outdated cluster munitions, the dumbest of dumb weapons... [t]oo many innocent lives are being lost because of these outmoded, Cold War-era munitions" (quoted in Handicap International USA 2007).

Finally, in an attempt both to provide the missing military analysis of cluster munitions and show that banning them would not be an irresponsible act, the Norwegian Ministry of Foreign Affairs tasked the Norwegian Defense Research Establishment to undertake a concrete study of the weapons' military utility. The subsequent report was based on case studies, and predominantly, computer simulations. Whereas its conclusions debunked assertions about the high efficiency of cluster munitions, it was not a sweeping statement that cluster munitions had no utility at all. Instead, it argued that:

Cluster weapons do have a satisfactory or adequate effect against most targets. Under certain conditions the effect is quite good. However, no evidence has been found to claim that such weapons are far better than their alternatives to the extent that they are indispensable (Dullum 2008: 3).

Cluster weapons do not constitute an irreplaceable capability on the battlefield. Alternatives exist, although in some cases they may be less effective than cluster weapons... Thus a prohibition of cluster weapons will not mean that a set of unique capabilities is lost (Dullum 2008: 143).

Thus, the conclusion was that although cluster munitions had better military effectiveness than unguided unitary bombs, a combination of precision-guided bombs and advanced types of cluster munitions such as sensor-fuzed weapons delivered higher military utility despite their much higher economic cost (Dullum 2008: 143).³⁷ The study undermined exaggerated or unsubstantiated claims about the "unrivaled" military effectiveness of cluster munitions against certain types of targets. However, it should be remembered that very few weapons in military arsenals could pass the test of being "indispensable" and "unique".³⁸ If that were a criterion for "obsolescence," and hence prohibition, the military would find itself with very few weapons left at its disposal.³⁹ But the report's conclusions strengthened the position of states advocating a ban by showing it to be backed by military analysis and enjoying the support of the military establishment. Importantly, it demonstrated that cluster munitions were neither "indispensable" nor "unique," thus opening the door for arguments that they were dispensable and outdated. Thus once again we witness the same strategy of challenging unsubstantiated military assertions and raising the standards of military utility cluster munitions had to meet – from being useful under certain circumstances to being "unique" in their capabilities.

37. A couple of months earlier, a leading munition expert, consulted in the project claimed that, "there is clearly a military role for cluster munitions and one could not ask the military to carry out missions with one hand tied behind its back" (Colin King quoted in ICRC 2007: 19).

38. For example, there were wide-ranging debates about the success of NATO forces to destroy tanks and other mobile targets during the Kosovo bombing campaign with some estimates putting the number of destroyed tanks only at 14, while NATO's final assessment at 93. See for example, Newsweek 15 May 1999; Cordesman 2001: 155-62; Leurdijk and Zandee 2001: 77-83. Even though the low rate of strike success against tanks in Kosovo has been given as evidence of the ineffectiveness of UK cluster bombs RBL 755 (e.g. McGrath 2000), in the NATO campaign tanks were also targeted with PGMs, and hence the lack of success could be attributed to this type of weapon as well and to the overall military tactics, such as high altitude bombing. For example, Gen. Short, the air force commander in Allied Force bemoaned the use of PGMs against tanks and other tactical targets in Kosovo as "tank plinking," preferring instead attacks against strategic targets in Serbia (Tirpak 1999).

39. From a different perspective, Price (1997: 5) has argued that "the lack of decisive utility" initially has never precluded the entry of new weapons in the military arsenals, and similarly, the prohibition of chemical weapons could not be explained by their low military effectiveness.

7. An Alternative Explanation - Discourse as a Reflection of the “Real” Diminishing Military Utility of Weapons

Eventually, even UK delegates that fought long during the Oslo Process against a comprehensive prohibition on cluster munitions because of UK’s military requirements bought into the “obsolete weapons” frame. Despite having argued in December 2007 that M85 cluster submunitions were deployed and needed in operations (interview 20071206), after the adoption of the Convention on Cluster Munitions, delegates insisted that no one liked to use “obsolete and unreliable weapons,” while admitting that evaluating the military utility of the weapons was a “justification, something to make us able to sell [the ban] to the military” (interview 20090526).

Examining further the evolution of the British position on cluster munitions one could evaluate the explanatory potential of the alternative, realist take – that the weapons were banned simply because they were indeed becoming obsolete and due for replacement and thus the discursive change reflected that reality. While I argue that the military utility of weapons cannot be assessed in isolation from the process aimed at their banning, a quick look at the changes in the UK position over a relatively short period of time, during which the country was involved in ongoing military operations and no major changes in strategy were adopted, makes the alternative explanation questionable. In 2003, cluster munitions were seen as “extraordinarily effective” (Defense Secretary Hoon quoted in Rappert 2005) and in 2003-04 the UK had just stocked on advanced, self-destruct M85 submunitions to use in the Iraq war (HRW 2009: 179). Fast forward, in November 2006 the UK Minister of State for the Armed Forces argued that, “United Kingdom believes that cluster munitions are legal weapons” and although the humanitarian problems of its old RBL755 submunitions were already acknowledged, ministers only envisioned to phase them out by 2015 when replacement systems would be available arguing that to do otherwise would “risk leaving our armed forces with a capability gap” (UK House of Commons 2006a, 2006b). Just a few months later, in March 2007 the UK agreed under strong domestic pressure to ban its old munitions immediately only at “a very small but acceptable risk” to British troops (Norton-Taylor 2007). Still, it insisted that its two remaining submunitions were “legitimate weapons with significant military value” (UK House of Commons 2007). And till the end of the international negotiations, the UK fought to exclude its remaining munitions from prohibition, declaring the retention of its M73 submunitions a “red line” for joining the treaty (interview 20090525). Yet, in May 2008 it adopted the Convention on Cluster Munitions that banned its entire stock of cluster munitions. A change in the “objective” military utility of cluster munitions in a period of less than a year and a half (or even just a couple of months separating changes in the UK positions) could hardly drive the discursive changes and even less so explain why the weapons were banned.

The success of the discursive shift in the presentation of cluster munitions from “highly effective” to “obsolete” is also witnessed by the fact that US military officials at the CCW meetings deemed it necessary to argue against “common misconceptions” that cluster munitions are “outdated weapons” and claim once again that “cluster munitions will continue to be the most efficient weapons to address numerous targets and target combinations when employed correctly.”⁴⁰ But under the circumstances, emphasizing the military utility of the weapons was not enough to stem the drive towards a prohibition. The US, which opposed a comprehensive ban, realized that but too late after the agenda-setting stage of “diagnostic framing” at which NGOs had established the severe, humanitarian effects of the weapons that stood out in comparisons with any other weapons system. In 2007 and 2008, US officials tried to reengage the NGOs on their own turf questioning their assertions about the degree of humanitarian harm caused by unexploded cluster submunitions relative to the problems of other unexploded ordnance and mines (US Department of State 2008, USA 2007, 2008). While the approach addressed the right issue, it came too late when cluster munitions had already been singled out for regulation due to their unacceptable humanitarian impact. The time when the political contest over the definition of cluster munitions as a humanitarian problem has already passed and it was difficult to amalgamate them back into the category of commonly accepted and unremarkable weapons. Not only were cluster munitions established as indiscriminate weapons and worst offenders of humanitarian principles, but they were also on their way to becoming “obsolete weapons” as landmines have before them.

8. Conclusion: Turning the Scales of Military and Humanitarian Considerations Guiding the Laws of War

I have argued that the success of the NGO campaigns to ban landmines and cluster munitions was premised on the ability of NGOs to change the balance between military benefits and humanitarian costs that is at the heart of international humanitarian law. They have done so by both highlighting the negative impact of the weapons on civilians and undermining military claims about their military utility, especially in those cases where NGOs faced strong military opposition. While the first aspect of the NGO campaigning has been largely emphasized (e.g. Price 1998a; Hubert 2000; Rutherford 2000), the latter has not received particular attention.⁴¹ I have argued that through their framing tactics, NGOs have managed to both influence perceptions about the humanitarian effects of the weapons and their military effectiveness. Thus current perceptions of the limited utility of landmines and evolving perceptions about the usefulness of cluster munitions have originat-

40. Colonel Gary S. Kinne, “The Ongoing Military Utility and Role of Cluster Munitions,” Presentation to the CCW, Geneva, 19 June 2007, quoted in Goose (2008).

41. The only exception is Price (1998a: 632-33).

ed in the conscious NGO efforts to achieve a prohibition on those weapons. Hence, perceptions of the military effectiveness or ineffectiveness of the weapons were not something given, but part and parcel of the struggle for their prohibition.

However, the double strategy of highlighting the humanitarian costs and downplaying the military utility of weapons made it difficult to sustain claims that a prohibition is pursued for humanitarian reasons and at the same time deflect allegations that the bans are simply playing to the interests of the arms industry and the military that are bound to benefit from new technology replacement.⁴² This balancing act is reflected in statements by one of the engineers of the Oslo Process:

[o]ver the last couple of years there has been growing recognition of the fact that, from a military point of view, cluster munitions do not perform as expected. In addition to the humanitarian effects that are unacceptable, the military utility is seriously questioned (Kongstad 2008).

This process is not about military utility of an outdated weapon system, but a political process driven by humanitarian concerns (Kongstad 2007).

The need to always balance the humanitarian versus the military aspects remains and the danger of “re-securitizing” the debate on weapons prohibitions by engaging in discussions of military utility is ever present, as the case of the US landmine campaign showed. Opening up the question of military utility only makes sense after the humanitarian problems of the weapons are well established and always in the context of their humanitarian impact. While the accepted wisdom even among NGOs has been that no weapons of high military value have ever been banned, it is equally true that no weapon has been banned just because it performed sub-optimally in battle. Indeed, in both the landmine and the cluster munition case, in the face of the evidence about their humanitarian impact on civilians, considerations of military utility began to fade away. It still remains to be seen to what extent humanitarian considerations alone would be enough to put a weapon out of use irrespective of its military utility, but at least in the examined cases the trend has been toward increasing civilian protection in war.

In the process of banning landmines and cluster munitions not only were they “humanitarianized” – brought out of the field of security into the realm of humanitarian action (Larrinaga and Sjolander 1998: 374), but they were also “obsoletized” – gradually redefined as “obsolete” weapons. The discursive strategies involved in the process of prohibiting the weapons literally “made them obsolete” and “consigned them to the dustbin of history” by changing perceptions of their military utility along the way.⁴³ Indeed, invoking military uselessness as a reason

42. For a critique of the landmine ban along these lines, see for example, Beier and Crosby (1998).

43. For example, the statement of the South African Minister of Defense upon signing the Convention on Cluster Munitions is revealing of the dialectical process of defining the weapons as “obsolete” and making them obsolete by virtue of their prohibition: “we have come to the belief that these weapons have ... become obsolete as weapons of modern warfare,” and at the same time assert that, “we will succeed in rendering cluster munitions obsolete as weapons of war” (Nqakula 2008). Also, Landmine Action (2008c).

for the prohibition of the weapons nowadays is a sign of successful norm making – the norm is acknowledged even if the rationale behind it is misrepresented or forgotten.⁴⁴ Paradoxically, the very success of NGOs to redefine the weapons as being of limited military utility could backfire and diminish the degree of their achievement by contributing to beliefs that only militarily useless weapons ever get banned.

⁴⁴ See Price (1997) for a genealogical study of norm creation regarding chemical weapons that also points that discounting the military necessity for the weapons has been a strategy to legitimize the chemical weapons taboo (p. 174).

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