

# The Role of Middle Power–NGO Coalitions in Global Policy: The Case of the Cluster Munitions Ban

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## Abstract

Medium-sized wealthy states – middle powers – and global civil society networks are increasingly joining forces to influence the global policy agenda on issues of international law, justice, humanitarianism and development. These middle power–NGO coalitions use the comparative advantages of both state and nonstate actors in synergistic partnerships. States represent the coalitions' interests in international negotiations and conferences, provide donor funding and offer diplomatic support. For their part, NGOs gather on-the-ground research, provide technical expertise, lobby governments, mobilise public opinion and generate media publicity. This article uses the case of the campaign to ban cluster munitions, culminating in the 2008 Convention on Cluster Munitions, to examine the organisation, efforts and impact of such middle power–NGO coalitions.

- Since these coalitions lack significant coercive hard – military and economic – power they are more likely to succeed in their global policy goals when they reframe the debate, gather and publicise credible data, shift the burden of proof and use both backroom and public media persuasion.
- NGOs contribute most to such coalitions when they are able to present a unified front across a diverse range of civil society actors, when they are inclusive of and driven by those directly affected by the problem they are seeking to address and when they maintain some independence from their government and other donors.

## Policy Implications

- In a globalised and privatised world, global policy making requires a mastery of 'network diplomacy' – the negotiation of a wide range of relationships with state, NGO and commercial actors.
- Within this context, coalitions between middle power states and international NGOs are becoming increasingly influential in the creation of international law and humanitarian norms.
- These coalitions are most effective when they create strong linkages and partnerships between these states and civil society actors at all levels (officials, parliamentarians, politicians, etc.) based on their comparative advantages.

Marginalised, respectively, by stultifying bloc politics and limited resources or access, both middle powers and NGOs had little impact on global policy during the cold war. Key issues of international concern – such as peace, security and disarmament – were tightly controlled by the superpowers, which coerced and cajoled smaller states to fall in line behind their respective protector. However, in the last two decades, medium-sized states and global civil society have had an increasingly vocal and influential role in shaping global public policy on landmines, international criminal justice, child soldiers, disability rights and conflict diamonds. Given middle powers' interest in a stable and predictable international arena, tying down belligerent great powers with international norms, laws and institutions, it is unsurprising that they have found common cause and productive partnership with international NGOs that are interested in the same things.

This article examines the increasing role of networks of middle powers and NGOs in influencing, shaping and setting the global policy agenda, by focusing on the Oslo Convention. This treaty, signed by some 100 countries in

December 2008, bans the production, stockpiling, transfer and use of cluster bombs – weapons that have had dire humanitarian consequences on civilians in war zones. The treaty was developed, drafted, negotiated and pushed for through a close collaboration between several key middle power states – led by Norway with support from Austria, Canada, Ireland, Mexico and New Zealand – and a network of NGOs called the Cluster Munition Coalition. They have, however, so far been unable to convince the world's superpowers – Russia, China and the US – to accede. As has been the case with the 1997 Landmine Ban, some commentators predict that the weapons' intensifying stigmatisation may lead to a de facto transfer ban, drastic reduction in production and little use in the future (Rappert, 2008).

This article is rooted in and draws on our intimate involvement in the cluster munitions campaign and ongoing research into the mine action sector (which works to alleviate, manage and neutralise the effects of explosive remnants of war). We start by reviewing the literature on and history of middle power–NGO coalitions, exploring their make-up, key successes and shortcomings. This will be followed by an explanation of cluster munitions, the development of the campaign to ban them and a brief overview of the Convention on Cluster Munitions. We then examine the respective roles of middle powers and NGOs in the campaign against cluster bombs, focusing in particular on Norway and the Cluster Munition Coalition. We conclude with some reflections on how the cluster bomb ban illustrates the role and nature of middle power–NGO coalitions in international policy making and implications for efforts to shape policy and practice on human security and armed violence, including the emerging issue of explosive weapons and ongoing efforts to negotiate an arms trade treaty that would stem the global flow of arms fuelling armed conflict and human rights abuses.

## Middle Power–NGO Coalitions

### The Rise of Middle Powers

Drawing on existing literature, we define middle powers as relatively wealthy, small to medium-sized states, with no nuclear weapons and no permanent seat on the UN Security Council. Examples include the Scandinavian countries, Austria, Australia, Belgium, Canada, Chile, Mexico, the Netherlands, New Zealand and South Africa. Traditionally, the study of international relations has neglected the role of middle powers in global politics, tending to focus on the machinations and interests of great powers (Goldstein, 2004). This was exacerbated during the cold war, when middle powers were often forced to toe the line of their respective superpower protectors and were thus considered somewhat irrelevant in the shaping of global policy.

Since middle powers have relatively little access to the instruments of coercive power, they have traditionally relied

on 'soft power' (Nye, 2004) – persuasion and attraction rather than coercion and force – to project themselves in the international arena. Moreover, they have an interest in developing international law and institutions to tie down great powers and potential belligerents to stable norms. As a result, scholars of middle powers have found they often play the role of innovating norms, providing third party mediation, advocating multilateralism and championing generous foreign aid appropriations.<sup>1</sup>

The end of the cold war has given middle powers more space to operate in the international arena as they are no longer forced to follow the lead of the superpowers. They have become both more active and vocal in the development of global policy, often, as we will show below, in close collaboration with global civil society. As one study put it:

middle powers are developing beyond their conflicted historic role as the lieutenants of the great powers and the selective champions of peace and justice, and entering creative high-impact partnerships with powerful coalitions of non-state actors that are having a significant effect on a set of important security issues in the arena of world politics (Matthew, 2003, p. 7).

### The Rise of NGOs

Middle powers have found important allies in the growing power and voice of global civil society, defined by Mary Kaldor as 'horizontal transnational global networks' demanding 'global rule of law, global justice and global empowerment' (Kaldor, 2003, pp. 6, 12). Such groups include large international NGOs, community-based grass-roots organisations, social movements and global issue-based coalitions. While such groups have existed for many years, and their strength has waxed and waned, the end of the cold war has empowered them significantly. This is partly due to concerns from across the political spectrum about the role of the state. Peace and human rights activists were concerned by the abuses of power by states in the 20th century and so looked to the 'third sector' to counterbalance the power of governments. Using NGO and civil society networks they have sought to constrain the state through exposing abuse, mobilising citizens and shaping the agenda in international conferences. At the same time, the growing neoliberal enthusiasm for privatisation meant that significant public services, including foreign aid, were contracted, or left, to NGOs, which were considered less bureaucratic and closer to beneficiary communities. By the end of the 1990s, NGOs were distributing more humanitarian and development aid than the UN (Duffield, 2001a, p. 53).

The growing prominence of NGOs has made them difficult to ignore when states convene to develop global policy. Certain NGOs and civil society have the capacity to generate political mobilisation among citizens, embarrass

government leaders in the press (thereby affecting their chance of being elected) and often have significant issue-based expertise that the state may actually lack. Therefore, it has become more common to find established NGOs seated with voice (though no vote) in international conferences on security, development and humanitarian issues.<sup>2</sup> NGO leaders are often asked to provide testimony in parliamentary hearings and are consulted by policy makers who often depend on the research and expertise found within NGOs. Indeed, governments often look to NGOs to shape the political dynamic within a particular process. NGOs can effectively create space for governments to disagree with each other and for diplomats to take risks outside the formal mandates provided by their capitals. NGOs and think tanks can even play a major role in the drafting and wording of policy documents, including international treaties. NGOs can in some cases be more agile and able to focus more intently on specific issues. In the case of the cluster munition ban, a single-issue campaign with a global reach arguably marshalled substantially more policy resources than any single government (Nash, forthcoming).

### The Coalition

Since they so often share common goals in the international arena – the development of international law, strengthening of global justice, respect for human rights, environmental conservation and expansion of access to development – it is unsurprising that middle powers and NGOs have formed high-impact partnerships following the end of the cold war (Cooper, 2005; Matthew, 2003, p. 7). They have formed complexes consisting of middle power governments, UN agencies and civil society networks, pushing for their shared norm-based vision of global politics. Working in partnership allows mobilisation on several different levels. They can operate both through the state-centric traditional diplomatic channels, as well as through the ‘second track’ by using NGOs to build links to citizens and society (Kelleher and Taulbee, 2006; Moolakkattu, 2005; Rutherford et al., 2003). They have aimed to constrain the actions of the great powers by building broadly supported international norms (Rappert, 2008) and also by appealing directly to their citizens through media campaigns and political mobilisation. While the partnership between middle powers and NGOs is related to the trends of privatisation and outsourcing, it is simultaneously an augmentation of the power of middle powers. Lacking the ability to project power through traditional military and diplomatic means, the global span of international NGOs enables middle powers to influence people, states, regions and institutions previously beyond their reach (cf. Duffield, 2001b, p. 309). Meanwhile, NGOs benefit both from the generous donation of aid and assistance given by middle powers and from having ‘like-minded’ state advocates in international forums. This mode of foreign policy, rooted in the negotiation of

norms by networks of state and nonstate actors, rather than competition and collusion among states around narrow strategic interests, was most prominently demonstrated through the ‘Ottawa Process’ that led to the signature of the 1997 Mine Ban Treaty and has variously been described as the ‘new model of diplomacy’ (Cave, 2006; see also McRae and Hubert, 2001), ‘Track 1½ diplomacy’ (Kelleher and Taulbee, 2006) or the ‘Norwegian model’ (Østerud, 2005, p. 714; Riste, 2001, p. 264).

### Examples of Global Policy Success

These middle power–NGO coalitions have had several global policy successes (defined as the achievement of their policy objectives in the international arena and, just as importantly, in concrete benefits to human lives and livelihoods) in the last two decades.

The most commonly cited example is the Ottawa Convention banning antipersonnel landmines, signed in 1997. Responding to a crisis of landmine contamination following the 1980s proxy wars and the 1990s ‘new wars’, a small group of NGOs formed the International Campaign to Ban Landmines (ICBL) in 1993. The ICBL, together with the International Committee of the Red Cross (ICRC), conducted a concerted global public awareness campaign, counteracted misinformation from governments with careful on-the-ground research and captured the imagination of the news media. However, the ICBL struggled to reach its goal of a complete ban, stymied by the traditional great power-dominated arms control process, represented through the Convention on Conventional Weapons, in which decisions were made by consensus, which consistently translated into the lowest common denominator (Myrdal, 1977).<sup>3</sup> Since NGOs had no direct control over the negotiation and creation of international treaties and institutions, their power diminished considerably at the door of the conference room.<sup>4</sup> The campaign was only able to get past this threshold when its goal was endorsed by Canada and subsequently several other middle powers, including South Africa, Austria, New Zealand and Norway. These states were able to create a completely new disarmament game with a different set of incentives by innovating the ‘Ottawa Process’, in which decisions were made by majority and NGOs and the ICRC were intimately involved in treaty drafting and negotiations (Kmentt, 2008, pp. 26–28). Together, middle powers and NGOs were able to achieve a complete ban, which now has some 156 states parties, and to stigmatise the weapon, which even nonsignatory great powers (like Russia, the US and China) now avoid using.<sup>5</sup>

Since the Ottawa Convention, middle power–NGO coalitions have achieved several additional international treaties aimed at humanising, stabilising and pacifying the international arena through regulation and codified policy.<sup>6</sup> They successfully campaigned for the Rome Statute

(setting up the International Criminal Court) (Glasius, 2006), the Kimberley Process (constricting the trade in conflict diamonds) (Grant and Taylor, 2004), the Disabilities Convention (Kayess and French, 2008) and the child soldiers ban (Rosen, 2008; Stohl, 2003). Middle powers and NGOs are also collaborating on less high-profile but equally influential efforts such as democratisation, peace-building, humanitarian and development programmes in transition and developing countries. For instance, Norway, in partnership with NGOs, has spent considerable resources on peace-building efforts in Guatemala, Sri Lanka and Sudan (Kelleher and Taulbee, 2006).

### Criticisms

However, middle power–NGO coalitions more broadly have not escaped criticism. For instance, some have questioned the common assumption that middle powers or NGOs are inherently high-minded. Indeed, Jan Egeland's 1989 comparative analysis of the US and Norwegian human rights policy found that when its core strategic or economic interests were threatened, Norway acted no more idealistically than any other state (Egeland, 1988, p. 14). For instance, Norwegian shipping interests hampered Norwegian sanctions against apartheid South Africa even while Norway was funding the African National Congress (ANC) (Egeland, 1988, pp. 87–104; Eriksen and Kroken, 2000). More recently, critics have pointed out the apparent contradiction between Norway's call for curbs on greenhouse gases and its economic reliance on oil exports.<sup>7</sup> However, Egeland pointed out that since it had fewer global strategic and economic interests than the US, it was able to take the moral high ground in more situations (Egeland, 1988). This has led some 'realist' commentators to argue that the moral superiority exuded by some western middle powers is hypocritical – they accept protection from the US while simultaneously trying to constrain its ability and freedom to act on the international scene. For instance, they might argue that it is all very well for Canada to take the high ground on mines and cluster munitions, but if it is ever attacked, it will rely on rescue by the US military.

NGOs have also been the target of considerable criticism, largely focusing on lack of accountability, confused mandates, poor management, amateurism and inefficient use of resources. Unlike democratic states they have no electoral mandate and so it is not always clear to whom they are accountable. Some critics thus question the legitimacy of NGOs having voice in the development of international law. The issue of accountability is exacerbated when NGOs conduct activities in one country that are funded by, and perhaps driven by the agenda of, another. For instance, US diplomats have occasionally complained about Norway funding US NGOs which then campaign against US landmine and cluster munitions policy – thereby influencing the American political process.<sup>8</sup> Of particular

concern is the use of inaccurate information in campaigns to influence public opinion, such as the ICBL's initially over-inflated claims of there being over 100 million landmines strewn across the world's war zones (Bottiglierio, 2000).

Whatever misgivings some may harbour regarding middle power–NGO coalitions, one thing is clear: they are an established and rising force within the international system and can have a significant impact on global policy making. In the rest of this article we focus on the particular issue of cluster munitions, the most recent issue to have resulted in new international law following the successful efforts of an NGO–middle power partnership.

## Cluster Munitions, the Ban Campaign and the Oslo Convention

### What are Cluster Munitions?

Cluster munitions are weapons designed to cover an area with explosive force. While early versions were used during the Second World War, the most widely used types were designed as 'force multipliers' against the background of the Korean War, where the US faced an opponent with superior troop numbers.<sup>9</sup> They were not widely deployed however until the Vietnam War, during which Cambodia, Lao PDR and Vietnam were carpeted in hundreds of millions of cluster munitions (Prokosch, 1995, pp. 81–125). The basic principle of a cluster munition is that instead of having a unitary munition with one large explosive charge, one can design a single projectile – air-dropped bomb, artillery shell, rocket – to carry a number of smaller explosive submunitions. Most explosive submunitions have a shaped explosive charge designed to penetrate armour and a fragmentation casing designed to spread shrapnel and kill people. So with one shot, a projectile produces many smaller explosions and spreads its fragmentation over a wider area, making it more likely to kill or injure personnel or destroy objects within this area. When the location of a target is uncertain or it is moving and where there are multiple targets, cluster munitions are supposed to give a particular advantage.

These properties of cluster munitions are precisely the same properties that cause concern from a humanitarian point of view. If a weapon saturates an entire area with explosive force, the user should be sure that no civilians are present in that area or that the advantage gained from the attack will be proportional to the expected damage to civilians. In addition, the unexploded ordnance effect of cluster munitions is qualitatively and quantitatively different from that of other weapons, precisely because of the large numbers of explosive items delivered in a single attack: ten unitary projectiles with a 10 per cent failure rate will leave one unexploded item whereas ten cluster munitions with 100 submunitions each and a 10 per cent failure rate will leave 100 unexploded items – ten times as many.

The further development of cluster munitions was bound up with preparations for conflicts that would involve large-scale battles between columns of armour and personnel: the scenario of the Warsaw Pact tanks rolling across the plains of Europe. This scenario did not happen. Instead they were used in the Vietnam War, including in a failed attempt to halt supply lines along the Ho Chi Minh trail. They were also used in the first Gulf War in Kuwait and Iraq, prompting one of the most expensive clearance operations in recent history (McGrath, 2000, pp. 33–35). The Balkans conflict in the 1990s saw several instances of use, both surface delivered by Yugoslav forces in Croatia and Bosnia and air dropped by NATO forces in Serbia and Kosovo (HRW, 1999; Wiebe, 2000). The weapons also proliferated during the 1970s and 1980s leading to use by Ethiopia and Eritrea against each other in 1998 and by Sudan against rebels around the same time. The US-led campaigns in Afghanistan in 2001–2002 and Iraq in 2003 saw significant use of cluster munitions, causing the same humanitarian problems identified in previous conflicts (HRW, 2003, pp. 56, 80).

The history of cluster munition use by Israel is of particular interest. The US had supplied large quantities of cluster munitions to Israel in the 1970s, following the Vietnam War. Israel first used them in Lebanon in 1978, both from the air and from rockets and artillery. Again, in 1982, Israel made use of cluster munitions, this time leading to a public outcry, including in the US, whose Congress decided to launch an inquiry into the issue that year. On the basis that Israel's use had violated the transfer agreement that placed specific (although secret) restrictions on the use of cluster munitions, the US suspended all transfers of this particular weapon to Israel. Israel was again in the spotlight over its use of cluster munitions in 2006 when its massive cluster bombardment of southern Lebanon caused serious civilian suffering and hit the headlines worldwide. As the casualties mounted from the hundreds of thousands of unexploded submunitions littering towns and villages south of the Litani river, so political pressure began to intensify on other states that continued to justify cluster munitions as legitimate weapons of war (Bolton, 2006; Landmine Action, 2006, p. 3; Reuters, 2006).

### The Campaign to Ban Cluster Munitions

Public disquiet over the suffering caused by cluster munitions first surfaced in the 1970s, following reports coming out from the Vietnam War (Prokosch, 1995, pp. 87–154; Shoemaker, 1994). Against the background of general concern over the conduct of warfare more broadly, two diplomatic conferences took place in Switzerland. They were convened by the ICRC in Lucerne in 1974 and Lugano in 1976. Many issues were on the agenda but one of the concrete proposals by 13 states read: 'anti-personnel cluster warheads or other devices with many bomblets which act through the ejection of a great number of

small-calibred fragments or pellets are prohibited for use' (ICRC, 1976). It is notable that it was the fragmentation – because of its area effect – that underpinned the concern over cluster munitions in the 1970s. The post-conflict problems associated with unexploded ordnance would only come to dominate the discourse on cluster munitions' humanitarian harm subsequently, in particular in the wake of the successful movement to ban antipersonnel landmines in the 1990s.

Despite the efforts of a number of states to respond to public disquiet after the Vietnam War, there was no traction on cluster munitions from these meetings in Switzerland. They did however lead directly to the establishment of the Convention on Certain Conventional Weapons (CCW), which did get traction on incendiary weapons (prohibited for use in populated areas) and would become the home for criticism of and discussions on both landmines and cluster munitions in the 1990s and 2000s, respectively.<sup>10</sup> Reflecting the 'arms control' rather than humanitarian agenda of the great powers, the CCW's restrictions on weapons gave 'the impression of having been written to satisfy the needs of military forces ... rather than to protect civilians' (Prokosch, 1995, p. 162). Indeed, one US negotiator said the US 'entered the CCW negotiations as a holding action' to prevent any major restrictions on the weaponry it felt was necessary for its national security (Roach, 1984, p. 4).

The CCW considered cluster munitions obliquely as part of its agenda for the first time at the Second Review Conference in December 2001. Although a major reason for the adoption of this mandate was the concern over cluster munition use in Kosovo in 1999, official consideration was confined to the examination of all explosive remnants of war, 'including submunitions'. Virtually no state would even use the term 'cluster munition' during the deliberations, let alone talk about any type of restriction on them. Discussions were quickly limited to 'post-conflict generic measures' to address concerns from explosive remnants of war, with NGOs sidelined to statements at the end of each session.<sup>11</sup>

Despite its shortcomings, the CCW offered a number of important elements to the campaign against cluster munitions. First, it provided a platform for criticism of the weapons on the formal agenda of virtually all stockpilers of the weapon. Second, it provided a place for NGOs to meet and strategise among themselves. Third, it kept the issue on the agenda of progressive governments and provided a useful forum for sharing strategy between these governments and the NGOs gathered with them. Fourth, and very importantly, the CCW had shown a possible path for the negotiation of a prohibition on a particular weapon: by allowing for the pressure to build on antipersonnel landmines in the early 1990s and then by failing to deal with the problem adequately in 1996, the CCW provided the diplomatic space for Canada to launch a stand-alone process to prohibit the weapons outright. The fact that this process had resulted in the successful 1997 treaty banning

the weapon was always in the minds of those involved in the CCW discussions (or nondiscussions) on cluster munitions from 2001 onwards. Ultimately, the CCW would provide a similar 'success through failure' at the 2006 Review Conference during which Norway took the role of Canada in inviting all states to join it at a meeting to be held in Oslo in a few months' time. This first Oslo Process meeting in February 2007 was the launch of a global effort to prohibit cluster munitions which culminated in the signing of the treaty in Oslo in December 2008.

If one thinks of the CCW's deliberations from 2001 to 2006 as a kind of gestation period for the Oslo Process, then the adoption of the 2003 CCW Protocol V on Explosive Remnants of War (ERW)<sup>12</sup> could be considered a kind of premature birth. The Protocol failed to address the issue of cluster munitions. Indeed, one could argue that it was specifically designed to relieve the pressure governments may have been feeling (or were able to predict given the Ottawa Process lessons) on cluster munitions, rather than actually to address it. The serious problems caused by cluster munitions in Kosovo were a particular point of reference for progressive governments, with the ICRC and NGOs seeking to promote specific action on the weapon and the UN Mine Action Service using the experience in Kosovo to single out cluster munitions as an especially problematic weapon.<sup>13</sup> States reluctantly agreed to a separate track on 'preventive measures' to address specific weapons issues, including their design, but this was never taken seriously and did not result in any firm outcome. States such as the US, Russia, China and others maintained that full implementation of Protocol V would deal with the whole range of problems from unexploded ordnance, including cluster munitions. This was part of an effort to confine the scope of the cluster munition problem to the post-conflict impact (rather than the area-effect problems identified in the 1970s) and to situate the problem as only one small part of this broader post-conflict ERW problem. It is to some extent ironic that these very same states have later been reluctant to talk about cluster munitions in the context of Protocol V, instead insisting on a separate track to achieve a new protocol specifically on cluster munitions. In Protocol V's favour, though, it contains important provisions on recording, retaining and transferring information. However, these are only important if they are properly implemented, something which is far from obvious in the wake of conflicts in Georgia and Gaza. Protocol V is also significant in the way that it recognises explosive weapons as a particular category of problematic weapons.

While the CCW deliberations from 2001 to 2006 made no progress in tackling the issue of cluster munitions, a number of external events took place that shaped the future global efforts to ban the weapon. In 2001 and 2002 the use of cluster munitions by US-led forces in Afghanistan raised awareness of the issue (HRW, 2002). Again in 2003 in Iraq, US and UK use of the weapon put a spotlight on the

problems, which were not being addressed – in the CCW or elsewhere (HRW, 2003). This led the NGOs active on the question to join forces and establish the Cluster Munition Coalition (CMC),<sup>14</sup> an NGO coalition campaign modelled on and including many members from the International Campaign to Ban Landmines, which won the Nobel Peace Prize in 1997 for its role in achieving the Ottawa Convention. Throughout 2004 and 2005, individuals within the CMC spent considerable effort developing an intellectual framework to justify a prohibition on cluster munitions. This work proved highly influential in determining the future strategy of the CMC, its partnership with governments and the process as a whole.<sup>15</sup> In 2005, a newly elected Norwegian government adopted a policy platform which included an objective on promoting an international ban on cluster munitions (Landmine Monitor, 2009, p. 134). In February 2006 Belgium's parliament banned the weapon, in response to a civil society campaign led by Handicap International and supported by the global CMC (Landmine Monitor, 2009, p. 39). Austria's parliament passed a unanimous decision in July 2006 to promote an international ban on the weapon (Landmine Monitor, 2009, p. 35).

Then, generating immense political pressure for a ban, television screens around the world conveyed the horrific aftermath of the Israeli bombardment of Lebanon with cluster munitions. In that hot August and September, as displaced people flocked back to their homes south of the Litani river they found the rubble of their homes infested with unexploded cluster bombs. There were dozens of casualties in the first few weeks alone (Landmine Action, 2006). According to a UN mine action official in Lebanon, 'The scope was extensive and unprecedented in any modern use of these types of cluster weapons' – some 26 per cent of arable land in Southern Lebanon was contaminated (Peterson, 2007).

The suffering in Lebanon occurred in the run-up to the Third Review Conference of the CCW and provided a poignant and highly charged atmosphere for that meeting in November 2006. Such a flagrant disregard for the laws of war dramatically demonstrated the indiscriminate effects these weapons could have on noncombatants, even long after the war had finished. As around 30 countries lined up in favour of negotiations on a strong cluster munition instrument, the US and others pushed back, with the UK providing a mandate that sought to be strong enough to deflect accusations of inaction in the face of Lebanon but weak enough to prevent a prohibition that many states did not want to contemplate (Borrie, 2008). The UK mandate could not stop the momentum behind the campaign, pushed by civil society and now supported by the media and a powerful collection of small and middle power states. Norway launched the Oslo Process on the last day of the Review Conference and the path to the Convention on Cluster Munitions had begun. After discussions at

international conferences in Oslo (February 2007), Lima (May 2007), Vienna (December 2007) and Wellington (February 2008), a draft treaty was forwarded to the Diplomatic Conference in Dublin as the basis for negotiations. This text was negotiated over two tough weeks and adopted unanimously by participating states. It was signed in Oslo by 94 states on 3–4 December.<sup>16</sup>

### Overview of the Convention on Cluster Munitions

There are many ways to analyse the Convention on Cluster Munitions. In many ways it is very similar to the 1997 Mine Ban Treaty. We will not attempt a detailed analysis of the Convention here. Instead, we will consider five key elements that characterise the treaty. For a more detailed analysis of the Convention, we recommend the forthcoming legal commentary on the Convention edited by Stuart Casey-Maslen and due to be published by Oxford University Press in 2010.

First, the treaty entails a comprehensive prohibition. It bans cluster munitions as a whole category of weapons. It bans the use, production, stockpiling and transfer. This comprehensive approach has been identified as a critical element in promoting the stigmatisation of the weapon and the norm-building power of the Convention. A weak regulation full of exceptions, it is argued, would not have resulted in the establishment of a norm that would curb the behaviour of those who remain outside it (Rappert, 2008).

Second, the treaty has a holistic approach. Not only does the treaty ban the weapon, but it provides for clearance, victim assistance, stockpile destruction and international cooperation and assistance to ensure that all affected countries receive the help and the funds they need to meet their obligations.

Third, the convention drew on lessons learned from the Mine Ban Treaty. The language on clearance and reporting has built on that of the Mine Ban, notably the comprehensive approach to national planning and extensions and provisions for victim assistance. The incorporation of the human rights approach based on the UN Convention on the Rights of Persons with Disabilities and the broad definition of a victim have been noted as some of the more groundbreaking aspects of the Convention (Survivor Corps, 2008).

Fourth, the treaty is largely preventive. Countries like Lao PDR have suffered considerably from cluster munitions, but only a very limited proportion of stockpiles worldwide have been used. These stocks reach into billions of submunitions. Many states, including those in Africa and Latin America, noted during the negotiations that it was important to act now, in order to prevent more countries from suffering the fate of the Lao people. Indeed, many participants in the process noted that it would prevent the problem from reaching a global scale that could eclipse the landmine problem.

Finally, the process itself was characterised by close partnerships between states, civil society, the UN, ICRC and other international organisations. It is this aspect that we will explore in the rest of this article.

### The Role of Middle Powers in the Campaign

Cluster munition campaigners generally found middle powers more sympathetic to their arguments than the great powers, given their general predilection towards innovating norms and seeking ways to tie great and regional powers down to stable and predictable international regulations. The enthusiasm of small and middle powers for the Convention on Cluster Munitions, compared with the lack of interest from great powers, can be statistically demonstrated. Fifty-six per cent of states with up to 50 million people signed the cluster bomb ban, compared with 36 per cent of states with over 100 million people. Similarly, 62 per cent of lower military spenders (ranked from 26 to 168 in the world) supported the treaty, compared with 48 per cent of the top-ranked 25.<sup>17</sup>

When middle powers like Norway, Austria, Ireland, Mexico, Peru and New Zealand opted out of the CCW and created their own Oslo Process, they lent legitimacy, resources and diplomatic clout to the campaign. For despite the power of the NGO campaign (described below), in the global system it is states that ultimately create international law. By endorsing the campaign, and creating an alternative diplomatic process, middle powers created both the possibility of a new treaty and a formal process in which to negotiate it. Moreover, as states, middle powers were better placed to negotiate and persuade other states than were NGOs. Through the structures of ministries of foreign affairs, embassies and foreign aid programmes, they have more established contacts and channels with other states than do NGOs. At the same time, they provided information, funding and diplomatic support to the NGO campaigners.

### The Role of Norway

The most important middle power to the cluster bomb ban process was Norway, which initiated the Oslo Process. Norway has been particularly adept at using NGOs in implementing its foreign policy. A classic middle power, with plenty of wealth and international goodwill but a small population and limited military might, Norway has long been a champion of international law, norms and institutions (Kelleher and Taulbee, 2006; Moolakkattu, 2005). However, in the last 20 years, its Ministry of Foreign Affairs (MFA) has developed especially close relationships with NGOs, funnelling more development aid through them than any other Organisation for Economic Cooperation and Development (OECD) country (NORAD, 2005). The MFA provides long-term grant funding (with little interference in day-to-day management), diplomatic

support and championing of their causes in the international arena. In return, NGOs feed information back to the MFA and implement priority programmes (see Bolton, forthcoming, ch. 3).

At the 1976 Lucerne conference, Norway had supported Sweden's proposal to ban fragmentation cluster munitions (Prokosch, 1995). It was thus among the first countries to call for a strong international regime governing conventional weapons. However, given the constraints of the cold war, Norway felt unable to challenge the hegemony of the superpowers on military matters.<sup>18</sup> This changed in the 1990s, when Norway played a key role in the negotiation of the ban on antipersonnel landmines, a process that seemed to have significant impact on the way Norwegian diplomats perceived foreign policy. A Norwegian foreign minister later observed how the 'strategic partnership' between middle powers, including Norway, had 'injected an internal dynamism' into the Ottawa Process that turned the incentive structure 'upside down'. Instead of a 'race to the bottom', the state participants found themselves in a process where they were continually challenged by civil society actors to take a maximalist position.<sup>19</sup>

Having learned this lesson, as the Norwegian Foreign Ministry began to tire of slow progress on cluster munitions in the CCW, it announced in November 2006, shortly after the war in Lebanon, that it would create an Ottawa-like process outside the CCW for states interested in a complete ban. Without this move from Norway, it is likely that the cluster munition negotiations would have languished in the tightly controlled proceedings of the CCW, where all states had an effective veto and compromises tended to adopt the lowest common denominator.

In February 2007, Norway hosted 49 states, plus numerous NGOs, the ICRC and UN agencies at the Oslo Conference on Cluster Munitions. The conference agreed on a statement calling on states to negotiate a ban. Norway also created a 'core group' of pro-ban, mostly middle power, states – Norway, Austria, Ireland, Mexico, New Zealand, Peru and the Holy See – to coordinate international diplomacy towards a ban. Finally, after supporting the series of negotiating and publicity conferences around the world, Norway hosted the treaty's signing ceremony in December 2008.<sup>20</sup>

Norway's main contribution, one that had to be made by a state, was to change the rules of the game. By adopting a maximalist position, gathering 'like-minded' states around it and funding NGOs to shame anti-ban or wavering states, it encouraged a much more comprehensive treaty than had previously been seriously envisioned. In essence, the crucial role of Norway in the cluster munition ban was providing the endorsement of a state and the creation of a negotiating process, without which the campaigners' aspirations would never have been translated into actual international law.

Norway also contributed by providing information and resources that states were better placed to give. Norway's

Ministry of Defence also conducted a variety of military tests on cluster munitions that could never have been done by an NGO. These tests demonstrated clearly the problems of unexploded bomblets, in a manner that would be understood by other militaries (Landmine Monitor, 2009, p. 135). The tests reportedly 'undermined confidence in submunition reliability figures commonly cited by cluster munition manufacturers and users and bore out others' criticisms about the military utility of cluster munitions' (Borrie, 2007).

Moreover, Norway funded Handicap International's groundbreaking study on the post-conflict socioeconomic impact of cluster munitions (Handicap International, 2007). Throughout the rest of the campaign, Norway coordinated its diplomacy and public relations messages very closely with the NGOs in the cluster munition campaign, even providing some of them with funding.

### The Role of NGOs in the Campaign

From the very early days of organised public concern on the issue of cluster munitions, NGOs played a critical role in responding to suffering caused by the weapon. Human Rights Watch, Landmine Action and the Mennonite Central Committee were vocal at an early stage, responding to the use of cluster munitions in the Kosovo conflict in the 1990s. The International Committee of the Red Cross was also an important voice on the cluster munitions issue following Kosovo.

NGOs, unlike middle powers, were not states, and thus could not actually create international law. However, the role of these NGOs was to reframe the agenda, put cluster munitions on the humanitarian map and pressure states to take the issue seriously.

### The Cluster Munition Coalition

The most important node in the network of NGOs pushing for a ban was the Cluster Munition Coalition. As noted above, the Cluster Munition Coalition grew out of frustration by the major NGOs driving the ICBL that the cluster munition issue was not being addressed. The Coalition launched in The Hague in November 2003, with the goals of achieving an immediate moratorium on the use of cluster munitions, a recognition of the responsibility of users to deal with the problems of unexploded ordnance and more resources to be provided for those affected. From 2003 to 2005 the CMC was largely focused on building a network of individuals and organisations committed to action on this issue and gathering the information and arguments necessary for action to be successful. During these years, the CMC lived in the shadow of its bigger, better-resourced and more mainstream sister campaign – the ICBL. However, in 2006 the external events outlined above began to propel the CMC into a full-scale mobilisation of civil

society organisations, parliamentarians and media outlets around the world. With coherent collaboration with a number of influential middle powers functioning by the middle of 2006, the CMC became the principal actor within the process to ban cluster munitions, along with the Norwegian Ministry of Foreign Affairs. This role continued throughout the 2007–2008 Oslo Process and the CMC appears set to remain a strong force in support of implementation, universalisation and monitoring of the Convention in the years to come. Some key areas of the CMC's engagement within the process can be summarised as follows:

- *Gathering information:* this was a crucial role for NGOs within the CMC, including Handicap International (which undertook a global study on the humanitarian impact of the weapon (2007)) and Human Rights Watch and Landmine Action (which published post-conflict studies on the impact of the weapons' use in places such as Kosovo (HRW, 1999), Afghanistan (HRW, 2002), Iraq (HRW, 2003) and Lebanon (Landmine Action, 2006)). NGOs had an advantage over many states in their ability to access data, analyse them quickly and publish them, in many cases, without cumbersome external constraints. Norwegian People's Aid co-authored an important analysis of the performance of the M85 submunition in Lebanon, substantially undermining efforts by certain states to carve out an exception for this weapon in the new treaty (King et al., 2007). The degree of rigour and caution used in NGO analysis of data could be posited as a key metric for NGO legitimacy, a question raised above.
- *Advocating common messages directly to governments:* NGOs, coordinated under the CMC umbrella, spent considerable time formulating, testing and communicating arguments to convince opponents and sceptics. The CMC coordinated lobbying efforts of the many NGOs involved in the process through a network-wide email server and daily briefings during conferences. This coordination was often complex and difficult, with varying levels of engagement in the process from a range of individuals with different backgrounds and divergent political views and interests. During the Dublin negotiations in particular the campaign coordination briefings were particularly tense and the CMC leadership expended considerable effort to keep the campaign united (see Borrie, 2009). While there was always a focus on using these common messages to change the minds and counter the arguments of those taking opposing positions, the CMC also focused on providing its allies (in government and in parliaments) with the information and arguments they needed in order to shape

the debate from the conference floor and in the corridor through their private conversations with other states. Indeed, a focus on the many proponents of a ban – as force multipliers – was arguably a more fruitful use of time in the period before the negotiations in Dublin than a focus on states such as the UK, France and Germany whose positions were at that stage increasingly entrenched and difficult to influence.

- *Understanding and working with political decision makers:* NGOs and the CMC helped to raise awareness in specific countries and communities but the global campaign was not characterised by widespread mass public communication – it was not a 'Make Poverty History'-type campaign. Instead, there was systematic targeting of decision makers in parliaments and cabinets, using the media and using public mobilisation only when it was considered necessary to influence a particular decision maker important at that time and on a specific issue. NGOs without the resources or the public base to undertake large-scale time-consuming and costly public awareness drives can rely on the 'potential energy' of negative public opinion, presenting politicians with the formula: 'if you don't ban these weapons, we will give you a grilling in the media'. It is notable that for a bold initiative such as the landmine or cluster bomb bans, one or more politicians have to assume significant personal risks. In the case of the 'Ottawa Process', Foreign Minister Axworthy took a substantial personal risk in launching the initiative. In the 'Oslo Process', Norwegian Foreign Minister Jonas Gahr Store took a similar risk. Senior diplomats central to the 'Oslo Process' also took personal risks.
- *Focusing on the humanitarian impact:* the CMC carefully crafted its messages and its approach to focus on the human side of the question (Borrie et al., 2009, p. 20). When states appealed to the 'military utility' of cluster munitions as a reason for keeping them, the CMC was able to question this, but did not allow itself to become stuck in a debate on military utility whose terms were set by the users of the weapon. Rather than trying to win the game on the terrain of military utility, where states would always have an abstract and hypothetical advantage, the response was to question and criticise military utility and to demand concrete examples of military benefit actually derived from use of cluster munitions and, in the absence of such examples, continually to gather evidence of humanitarian harm. This approach was also underpinned by the inclusion of survivors and other individuals from affected communities. By listening to and involving these individuals, the campaign – and therefore the process as

a whole – was able both to orient itself to more relevant solutions to the problem at hand and to benefit from the most powerful advocates of all: those directly affected by the problem the campaign was trying to solve.

- *The precautionary approach and shifting the burden of proof:* throughout the process the CMC employed an argumentative strategy that relied on an interpretation of the precautionary principle.<sup>21</sup> This was partly supported by the fact that while perhaps strictly legal arguments for the prohibition of cluster munitions could be challenged, the extent of humanitarian concerns over the weapons weighed heavily in favour of precaution and an end to their use. It was also supported by the recognition that the initiative to prohibit these weapons was largely a preventive one. While for many years in the CCW the structure of the debate relied on the CMC proving to states that their weapons needed to be banned, once the Oslo Process broke free of the CCW's rigid and military-dominated strictures, the CMC, with the help of Norway and others, was able to reframe the debate and place the burden of proof on states to prove that their weapons did not need to be banned. This interpretation of the precautionary approach proved key to the structure of the prohibition and the definition of cluster munition (Moyes and Rappert, 2009). This approach to reframing debates (Rutherford et al., 2003), rather than seeking to win arguments whose structure put the humanitarian case at a disadvantage, was a hallmark of the campaign throughout the process as a whole.

## Conclusions

The 'new diplomacy' involves action in multiple tracks, levels, institutions and forums. It is, as Jorge Heine has described it, a form of 'network diplomacy', requiring negotiation of a wide range of relationships with state, NGO and commercial actors (Heine, 2006, pp. 3–10). Successful foreign policy in this age of the 'hollowed-out state' and the proliferation of nonstate actors requires mastery of operation in and through such networks. The Cluster Munition Coalition is one such illustration of the power nonstate actors can have in setting the global policy agenda, a power that states ignore at their peril. However, states – and the traditional ministry of foreign affairs structures – are still an essential part of the process of developing global public policy – they are the signatories of international law, they have armed forces, they have the power and resources to enforce and fund implementation. Without the endorsement of Norway, Ireland and other states, the Convention on Cluster Munitions would never have come to fruition.

The cluster bomb ban suggests, then, that states still matter, but are embedded in networks including other powerful actors. This is not necessarily a threat to the power of the state. As middle powers have demonstrated, through joining forces with NGOs, they have actually succeeded in augmenting their power to project their interests into the international arena. This obviously sometimes comes at a price, with NGOs demanding policy changes, donor funding and diplomatic support in return. However, many middle powers consider their expanded global profile and power worth the cost. Middle powers have thus shown themselves particularly adept at this new, networked form of global policy making, by using the comparative advantages of both state and nonstate actors in synergistic partnerships.

A number of points can be identified from the cluster bomb ban process as particularly important contributions that are potentially relevant for future initiatives underpinned by a middle power–NGO coalition:

- the field-based perspective and the engagement of and leadership from those directly affected by the problem one is trying to solve;
- the effectiveness of 'problematising' the issue, that is, framing and setting the terms of the debate, including using precautionary approaches and shifting the burden of proof;
- the constant challenging of existing institutions, assumptions and practices and the reframing of agendas, questions and contexts;
- the importance of understanding the different roles of NGOs and states and of working to a common strategy with the two sets of actors creating space for each other to operate;
- the ability to have a common NGO message that is credible and unifying, while at the same time being able to operate from the NGO platform with agility, adapting to circumstances; and
- the ability to gather and use data responsibly and with a high degree of self-criticism and to communicate these data effectively with a range of partners in civil society, governments and the media.

As the model of 'citizen diplomacy' in partnership with governments continues to grow and develop, NGOs, for their part, must be wary of retaining their independence from the governmental backers and must in particular adopt a consistently robust and critical approach to their management and in particular their use of data and external and internal communications. As NGO involvement in international decision-making processes increases, so too will the level of scrutiny applied to their legitimacy and accountability. The way NGOs manage themselves and their data and communicate with their constituencies could be deciding factors in measuring their legitimacy and, thus, the legitimacy of the NGO–middle power coalition itself.

## Notes

- Behringer, 2005; Cooper, 1997; Cooper et al., 1993; Ingebritsen, 2002; Stokke, 1989.
- While it has become more common it is by no means the norm – NGO access to the Conference on Disarmament or the World Trade Organisation is still extremely limited.
- At the time of submission, the mandate to negotiate a legally binding 'Arms Trade Treaty' looked set to stipulate that decisions at the final negotiations must be taken by consensus, an alarming development that goes against recent trends rejecting the principle of each state holding a veto in international negotiations. In the 2008 diplomatic conference on cluster munitions, there was no consensus-based decision-making rule, although no votes actually occurred.
- NGOs (as well as the ICRC) were present at the 1995 Review Conference of the CCW in Vienna.
- For further information on the role of the middle power–NGO coalition in the landmine ban and demining efforts, see Bolton, forthcoming, chs 1–3; Rutherford, 2003, pp. 23–38.
- While this section outlines successful use of NGO coalitions it is worth noting that not all such coalitions have been universally viewed as successful; the UN Programme of Action on Small Arms, for example, was the outcome of a process promoted by the IANSA NGO alliance but it is considered by many to be weak, vague and impossible to implement.
- Anon., 24 January 2009, 'Binge and Purge', *The Economist*, pp. 26–28.
- Richard Kidd, US Director of the Office of Weapons Removal and Abatement, 'Is There a Strategy for Responsible US Engagement on Cluster Munitions?' Remarks at the Connect Us Fund Roundtable Dialogue at the Aspen Institute, Washington, DC, 28 April 2008.
- Simon Conway, presentation to ICRC experts meeting, Montreux, April 2008.
- For more information on the CCW, see Karlshoven and Zegveld, 2001, pp. 155–168.
- Second Review of the States Parties to the Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 11–21 December 2001, 'Final Document'. CCW/CONF.II/2, Geneva.
- 'Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention)', 28 November 2003'. <[http://www.mineaction.org/docs/1850\\_.asp](http://www.mineaction.org/docs/1850_.asp)>.
- Major John Flanagan, for UNMAS, 'ERW – Experience from Field Operations'. UN document: CCW/GGE/II/WP.13.
- The CMC was launched in November 2003 at a conference in The Hague.
- See Rappert, 2005; Rappert and Moyes, 2006. Both these reports were conceptualised during discussions on the margins of CCW meetings in Geneva in 2004 and 2005 with CMC coordinator Thomas Nash and others.
- 'Convention on Cluster Munitions', 18 March 2009. See <<http://www.clusterconvention.org>>. For more on the treaty, see Landmine Monitor, 2009, pp. 8–9.
- States Parties list from Cluster Munition Coalition, 30 May 2008, '107 Countries on Board', <<http://www.stopclustermunitions.org/the-solution/the-treaty/?id=84>>. Population statistics from Population Reference Bureau, 'World Population Data Sheet'. Military expenditure statistics from Nation Master, 'Military Expenditures'.
- Steffen Kongstad, personal interview with Matthew Bolton in Oslo, 3 September 2007.
- Jonas Gahr Støre, 17 September 2007, 'Norway's Commitment to Mine Action and Human Security', <<http://www.regjeringen.no/en/dep/ud/About-the-Ministry/Minister-of-Foreign-Affairs-Jonas-Gahr-S/Speeches-and-articles/2007/mineaction.html?id=481024>>.
- For more information on Norway's role in the cluster munition ban, see Landmine Monitor, 2009, pp. 3–4, 9, 134–140.
- For a discussion on the type of precautionary approach adopted by the CMC, see Moyes and Rappert, forthcoming.

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