

# Changing Roles of NGOs in the Age of Globalization: A Case Study on Conventional Weapons Governance

Kenki Adachi\*

## Introduction

As globalization deepens, global issues are being frequently observed. Phenomena such as global environmental crises, global financial flows and information technology revolution are said to undermine state sovereignty, and attention is being drawn to the role of non-state actors both in international and domestic politics. The security policies of states represent a particularly difficult case for demonstrating the role of non-state actors. In the high politics of security policy, states are believed to be the most autonomous from society and are able to set their sights on military imperatives relatively independent of societal pressures, whether domestic or international.<sup>1)</sup>

However, international non-governmental organizations (NGOs) initiative successfully led to the conclusion of the Mine Ban Treaty in 1997. Subsequently, the United Nations Program of Action on Small Arms and Protocol V to the Convention on Certain Conventional Weapons were adopted in 2001 and 2003, respectively. Movements to form or strengthen international regimes have been increasingly visible over the last 10 years, even in international security issue areas, and the role of NGOs in such movements seems to be gaining importance. This article attempts to assess the development of conventional weapons governance by focusing on the changing roles of NGOs and consider its implication for global democracy.

## I. NGOs as Norm Entrepreneurs<sup>2)</sup> in conventional weapons governance

Conventional weapons is a comprehensive category, which includes a wide variety of

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\*Associate professor at Ritsumeikan University, Department of International Relations.

1) Richard Price (1998) 'Reversing the Gun Sights: Transnational Civil Society Targets Land Mines', *International Organization* Vol.52, No.3, p.613.

2) Norm Entrepreneurs call attention to issues or even 'create' issues by using language that names, interprets and dramatises them and thus plays critical roles for norm emergence. See Martha Finnemore ↗

weapons. There is no international law to restrict the use of conventional weapons as a whole. Certain conventional weapons, which are excessively injurious or have indiscriminate effects, have been considered illegal.<sup>3)</sup> However, it is not easy to tell whether a certain weapon is legal on this basis. As the destructive capability of conventional weapons increased, the International Committee of the Red Cross (ICRC) repeatedly insisted on the formation of a treaty that stipulates bans or limits the use of certain conventional weapons.<sup>4)</sup> Urged by the ICRC's repeated demands, the Diplomatic Conference, which was held on 9 June 1977 adopted Resolution 22 (IV), which recommended that a conference of governments be convened with a view to reach an agreement on the prohibition or restriction of the use of specific conventional weapons. After long and difficult negotiations, the Final Act of the United Nations Conference on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) was adopted in 1980.

CCW articulated restrictions on the use of mines, booby-traps and other devices, as well as incendiary weapons. It is worth pointing out that the call for the restriction on the use of such weapons, which are believed to be militarily effective rarely comes from their users. Thus, non-state actors' call for restriction on the use of certain weapons has been essential for the development of conventional weapons governance. Nevertheless, in most cases, non-state actors insisted on 'restrictions', not bans, on the use of mines and incendiary weapons during the Cold War era. It was extremely unlikely to expect them to call for a ban on a certain weapon that is believed to be militarily effective. In the harsh international environment of the Cold War era, calling for restrictions on certain weapons,

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\ and Kathryn Sikkink (1998) 'International Norm Dynamics and Political Change', *International Organization*, Vol.52, No.4; Ethan A. Nadelmann (1990) 'Global Prohibition Regimes: The Evolution of Norms in International Society', *International Organization*, Vol.44, No.4.

3) The Declaration of Saint Petersburg, adopted in 1868, is the first formal agreement prohibiting the use of certain weapons in war. In the Hague Regulations on land warfare of 1899, the prohibition of certain conventional weapons causing superfluous injury has become an express provision.

4) The ICRC emphasised the need for additional conventions prohibiting or limiting the use of certain methods and means of warfare in the resolutions of the International Red Cross Conference of 1965 and of the International Conference on Human Rights of 1968 as well as in Resolution 2444 (XXIII) of the United Nations General Assembly of 1968. At the conferences of government experts convened by the ICRC in 1971 and 1972 to prepare the protocols additional to the Geneva Conventions and at the Diplomatic Conference of 1974-1977, the opinion prevailed that an agreement on conventional weapons should be attempted, leaving aside weapons of mass destruction. Encouraged by the Diplomatic Conference, the ICRC convened two conferences of government experts on the use of certain conventional weapons, which met at Lucerne in 1974 and at Lugano in 1976.

insisting these weapons caused excessive injuries, even considering the war objective, might be the best that NGOs could do.

## II. NGOs as Agents of Co-Governance

With the end of the Cold War, the attention of governments and many NGOs shifted from a potential nuclear conflict to the actual wars on the ground and the weapons that were causing real destruction.<sup>5)</sup> Concerns about the effects of conventional weapons that were transferred, accumulated and used without substantial regulations increased with the proliferation of conflicts around the world. In 1992, the United Nations Register of Conventional Arms was established as a global instrument for transparency and confidence-building on major conventional weapons. Around that time, Anti-Personnel Landmines (APLs) became the object of a vigorous transnational campaign by international NGOs under an umbrella organization, the International Campaign to Ban Landmines (ICBL) as well as ICRC. Framing the APLs as a humanitarian issue not as a security issue, their call for a ban on APLs successfully attracted wide public attention.

Urged by widespread public support to the NGOs' call, a Review Conference of the CCW was convened in 1995. The ICBL had initially hoped to secure a comprehensive ban on APLs at the conference. However, a total ban was not achieved during the conference. Revised Protocol II to the CCW was adopted in May 1996, which sought to restrict how APLs were used, but it proved to be an ineffective instrument that had little effect on the tragedies caused by the use of landmines in subsequent years.

Stagnant negotiation at the Review Conference prompted the formation of a coalition between the NGOs and the pro-ban states around the beginning of 1996. This coalition worked in close cooperation to propagate public support to ban APLs. Along with their endeavours to arouse public backing for the ban on APLs, the Canadian government took an initiative to start unprecedented negotiations among the only nations consenting to eliminate landmines on a definite timetable, the so-called Ottawa Process.<sup>6)</sup> The United States and some other nations challenged the Ottawa Process during the early stage, insisting that arms control issues should be discussed at the Conference on Disarmament (CD). Even at the final conference to compose the treaty text in Oslo, the United States tried hard to include some exceptions. However, such challenges ended in failure. The

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5) Richard Price (1998) 'Reversing the Gun Sights: Transnational Civil Society Targets Land Mines', *International Organization* Vol.52, No.3, p.619.

6) Regarding the background to Canada's decision to start the Ottawa Process, see Kenki Adachi (2003) 'The Ottawa Treaty: An analysis of Canada's decision to lead the international movement to ban anti-personnel landmines', *The Annual Review of Canadian Studies*, No. 23.

Ottawa Process, which clearly set out to form a treaty to totally ban APLs with no exceptions and loopholes and excluded non pro-ban countries, had gathered great public support and momentum and culminated in the signing of a comprehensive APL ban treaty by 122 states in December 1997.<sup>7)</sup>

In March 1999, when 40 states had ratified the treaty, the Mine Ban Treaty became the most quickly effectuated treaty of all time in this field. This treaty's success is even more surprising when we take into account that virtually no country supported APL elimination when the landmine issue began to attract international attention in the early 1990s. NGOs, which played very important roles in starting the Ottawa Process, remain crucial players in maintaining the APL Ban Regime, monitoring the APL use all over the world.<sup>8)</sup>

### III. Containment of NGOs

According to the UN report, at least 500,000 people die every year as a result of small arms and light weapons (SALW). However, it was only during the 1990s that the problems concerning SALW became one of the 'micro disarmament' issues along with APLs. After the Mine Ban Treaty was successfully formed, NGOs involved in the Ottawa Process started to examine whether the success of the landmine campaign could be duplicated by promoting curbs on the use and transfer of SALW.<sup>9)</sup> In 1998, an International NGO consultation on small arms action was held in Canada, where it was agreed to form an international NGO network on SALW. Many NGO members who played important roles in the landmine campaign, such as Pieter van Rossem and David C. Atwood, were engaged in the preparation of establishing an NGO network on small arms.<sup>10)</sup> In 1999, the International Action Network on Small Arms (IANSA) was established by more than 200 NGOs from some 40 countries, many of which were also members of ICBL. The overlapping NGO membership between ICBL and IANSA greatly facilitated the use of the lessons learned in the landmine campaign.

Adopting a similar campaign structure and strategies, IANSA worked hard to attract

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7) Regarding the detail about the Ottawa Process, see Kenki Adachi (2004) *Ottawa Process: Formation of Landmine Ban Regime*, Yushindo, (written in Japanese).

8) ICBL have released the Landmine Monitor annually since 1999 to monitor and report on implementation of and compliance with the Mine Ban Treaty.

9) For example, see Thomas A. Cardamone (December 1997/January 1998) 'Landmines Victory: A Road Map for Small Arms?', *Arms Trade News*.

10) For details of this meeting, see *Report on an International NGO Consultation on Small Arms Action, 1998*.

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public attention to the SALW issue by focusing on the humanitarian disaster caused by SALW. In response to NGOs' appeal to regulate SALW urgently, the Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was held in New York from 9 to 20 July 2001. On 16 July, its eighth meeting was held, where statements by the representatives of NGOs were heard. On the other hand, apart from the eighth meeting, NGOs' participation in the conference was not permitted even as observers. After gathering information and ideas from NGOs, most of the government officials seemed reluctant to enlarge the role of NGOs in the conference.

The Programme of Action (PoA) on SALW was adopted by consensus on 20 July 2001, where practical steps for overcoming SALW problems were presented to states, regional and international organisations. In the PoA, grave concern about a wide range of 'humanitarian' and socio-economic consequences caused by SALW were expressed. The fact that the spread of SALW undermines respect for international 'humanitarian' law, impedes the provision of 'humanitarian' assistance to the victims of armed conflict and that it fuels crime and terrorism was recognized.<sup>11)</sup> As a result of NGOs' appeal, SALW came to be recognized as a humanitarian problem. However, what was perceived as a problem was not SALW themselves, but the illicit manufacture, transfer and circulation of SALW and their excessive accumulation and uncontrolled spread in many regions of the world. During the conference, major powers, stressing their own interests, rather than those of the international community,<sup>12)</sup> prevented the formation of a strict regime. This resulted in a politically binding instrument aiming at the control, rather than the elimination of use, transfer and production of SALW.

Adoption of the PoA added momentum to tackle the SALW issue and a variety of tangible programmes were started. NGOs are actively involved in the implementation of these programmes, such as weapons collection, making full use of their characteristics as 'non-governmental' organisations. Such activities have two sides: one being implementation of co-governance among states, international and regional organisations and NGOs; and the other being limiting NGOs as mere subcontractors who implement these programmes. Lesser the contribution of NGOs' in the formulation of these programmes, the more dominant the latter aspect becomes.

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11) Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Document A/CONF.192/15), Preamble, para2 and para5.

12) For example, the United States mainly opposed two points: the limitation of state supply of SALW only to governments in the recipient country; and the prohibition of the unrestricted trade in and private ownership of SALW. Another example of this was the delegation of the Russian Federation, who emphasised 'the legitimate needs of arms-receiving countries for their self-defense and national security'. UN Document DC/2787 (Press Release), 10 July, 2001.

#### IV. NGOs as catalysts

SALW became an international agenda due to the active campaign by NGO members, who were inspired by the landmine campaign. Although it is true that SALW causes inhumane scourge, SALW are essential for the army and police to maintain security. While the call for humanitarian considerations on the use of SALW became stronger, SALW themselves are also not considered as inhumane weapons like APLs. Hence, NGO members began to look towards applying the lessons learned in the Ottawa Process to other conventional weapons, which could be more straightforwardly regarded as inhumane weapons, such as cluster munitions or depleted uranium ammunitions.

Cluster munitions are containers designed to disperse or release multiple sub-munitions.<sup>13)</sup> Having been a focus of protest since the Vietnam War, it was proposed as early as 1974 to ban them.<sup>14)</sup> Although the restriction on cluster munitions were not realized then, the civil society's protest against cluster munitions that resurged after NATO used a large number of cluster munitions in Kosovo in 1999. In Kosovo, the territory of which is about one-third of the size of Belgium, NATO acknowledged dropping 1,392 cluster bombs, containing some 290,000 sub-munitions. According to NATO's own estimate of a 10% failure rate, some 29,000 unexploded sub-munitions remained in the area, many in or near populated areas. In response to this situation, Human Rights Watch (HRW), one of the leading NGOs in ICBL, called for a moratorium on the use of cluster munitions until the humanitarian problems associated with their use are resolved. Insisting that cluster munitions in effect become APLs, HRW tried to graft<sup>15)</sup>

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13) Cluster munitions have been singled out for criticism because of two areas of concern. Indiscriminateness at the time of use: Cluster munitions are 'area-effect' weapons; the target area of the cluster munitions strike can contain multiple objects - both military and civilian. High failure rates: Cluster munitions have been identified as resulting in a particularly high density of dangerous unexploded munitions that present a post-conflict threat to civilians.

14) Sweden and six other states presented a proposal to the Conference of Governmental Experts in Lucerne in 1974, later to be slightly amended and followed by 13 states in Lugano, in which it was stated that '[a]nti-personnel cluster warheads (...) are prohibited for use'. See Peter Herby and Anna R.Nuiten, 'Explosive remnants of war : Protecting civilians through an additional protocol to the 1980 Convention on Certain Conventional Weapons', *International Review of the Red Cross*, No. 841, pp.195-205.

15) An important factor in norm development is how well the new norm resonates with already established norms. The effort to delegitimise Cluster munitions has hinged crucially on the grafting of moral opprobrium from APLs. The term grafting refers to the mix of genealogical heritage and conscious manipulation involved in such normative rooting and branching. About norm grafting, see Richard Price, *op. cit.*

the cluster munitions to the APL ban norm.<sup>16)</sup>

In response to NGOs' call for a moratorium on the use of cluster munitions, Explosive Remnants of War (ERW), including cluster munitions, came up for discussion at the Second Review Conference of the CCW in December 2001. At the conference, the establishment of the Group of Governmental Experts (GGE) on ERW was decided and GGE was held six times from 2002 to 2003. Learning the lessons from the Ottawa Process, CCW took up the cluster munitions issue very quickly after NGOs started to address the issue. CCW tried to address the issue before the NGO network was established and public support for the NGOs' call became stronger.<sup>17)</sup> The discussion at the GGE paid more attention to military imperatives than humanitarian demands.

Prompting complaints about the negotiations, NGOs convened a meeting in Dublin to discuss the ERW issue in April 2003. These NGOs agreed to form an NGO network similar to the ICBL, to call for a moratorium on the use of cluster munitions. In November 2003, Cluster Munition Coalition (CMC) was formally established. Making full use of the ICBL network, CMC was able to gather as many as 92 NGOs from 43 countries in a very short time. However, CMC could have little or no influence on the discussion at the GGE since the GGE had almost reached its conclusion when CMC was established. On 27 November 2003, Protocol V to the CCW was adopted.

It is true that Protocol V to the CCW did not regulate the cluster munitions themselves and it was not a very stern-worded protocol, which included the word 'feasible' in almost every paragraph. Nevertheless, this protocol meant a significant step forward in dealing with the wide range of unexploded and abandoned ordnance that regularly threaten civilians, peacekeepers and humanitarian workers after the end of an armed conflict. If you look at the text carefully, you can see the CCW had been forced to change. The time scope of application of the CCW was initially limited to all cases of declared war or of any other armed conflict. However, most of the texts of Protocol V are assumed to be applied after the armed conflict ended. In particular, precautionary measures to protect civilians from ERW were expected to be taken constantly. Departure from the original time scope of application of the CCW was also observed in Revised Protocol II to the CCW, but the departure became much larger in Protocol V. This may be an indication that the

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16) Human Rights Watch (1999 June) *Ticking Time Bombs: NATO's Use of Cluster Munitions in Yugoslavia*.

17) Rosy Cave showed a similar analysis on why CCW took up the cluster munitions issue so swiftly. See Rosy Cave (2006) 'Disarmament as humanitarian action? Comparing negotiations on anti-personnel mines and explosive remnants of war', in John Borrie and Vanessa Martin Randin eds., *Disarmament as Humanitarian Action: From Perspective to Practice*, United Nations Publication.

importance of handling the post conflict situations is increasing.<sup>18)</sup> Louis Maresca of the ICRC, who advised government officials during the negotiation process, mentioned, 'It is obvious that humanitarian consideration becomes more important in the CCW, and adoption of Protocol V can be regarded as one of the milestones in the development of International Humanitarian Law.'<sup>19)</sup>

By grafting the cluster munitions problem onto the landmine ban norm, NGOs insisted on the gravity of the problem. Greater recognition of the cluster munitions problem due to the NGOs call spurred an international discussion on ERW, and Protocol V was adopted very swiftly for the CCW negotiation process. It is true that Protocol V did not focus on cluster munitions; and NGOs seemingly had only played a small role in the formation process of Protocol V to the CCW. It is partly because cluster munitions, unlike APLs, cause problems when they fail to work as they are designed to, and become ERW, whereas APLs cause problems when they work as they are designed to. Thus, it was not persuasive enough to discuss cluster munitions on the same footing as APLs, which are seen as inhumane weapons in themselves. When the relevance of the two norms is not convincing enough, it is natural that the effect of strategic norm grafting is quite limited.

Taking into account the fact that CCW is a forum to discuss a ban or restrictions on *certain* weapons, it seemed strange to discuss the ERW issue at the Review Conference of the CCW. As government officials became aware of the impact of NGO campaigns, they agreed to discuss the ERW issue as a whole at the conference without hesitation when NGOs started to denounce the cluster munitions. Addressing the issue very swiftly at CCW and avoiding focusing on certain weapons, that is cluster munitions, government officials tried to recapture the initiative from NGOs and avert the ban on cluster munitions. The influence of NGOs seems to be contained.

However, from a slightly different angle, NGOs' changing roles can be observed. Without the NGOs' call for a ban or a strong restriction on cluster munitions, government officials would not even have discussed the ERW issue very seriously. They feared that if they became bogged down in the debate on ERW and failed to deal with the problem effectively, the NGOs might establish another forum to discuss a ban on cluster munitions on a non-consensus basis like the so-called Ottawa Process.<sup>20)21)</sup> Protocol V certainly did

18) Akira Mayama (2006) 'Basic structure and problems of Protocol V to the CCW: evaluation of the unintended effect on civilian and civilian objects from jus in bello', in Masahiko Asada ed., *Agendas for international law in 21<sup>st</sup> century*, Yushindo (written in Japanese).

19) Interview with Louis Maresca, Legal Adviser, Mines-Arms Unit, ICRC, March 29, 2006, Geneva.

20) According to John Borrie, Project Leader of Disarmament as Humanitarian Action UNDIR, especially, Australia, the chair of Review Conference of the CCW, expressed such fear. Interview with John Borrie, 28 March 2006, Geneva. Non-consensus negotiation process, in which NGOs played important role, is sometimes called, 'New Diplomacy'. For more about 'New Diplomacy', see David Davenport, 'New Diplomacy', ↗



not focus on cluster munitions, but it tried desperately to incorporate the cluster munitions issue at the expense of departing from the original time scope of application of CCW. It could be said that NGOs' activities worked as catalysts for the change of CCW.

## V. Concluding Remarks

NGOs' influence was thought to be minimal in international security issues. It is true that ICRC have been playing an important role as a norm entrepreneur in conventional weapons governance. However, the influence of most other NGOs has been quite limited in this field. As global issues that cannot easily be solved by nation states alone, the attention towards the role of NGOs has started to increase. The drastic changes in the international security environment since the end of the Cold War altered the atmosphere surrounding NGOs in international security issues. As the attention of governments and many NGOs shifted from a potential nuclear conflict to the weapons that were wreaking real destruction, the information and knowledge of the NGOs that engage in post-war reconstruction became more precious. Based on such information and knowledge, NGOs, not limiting their role as a norm entrepreneur, sought to become more active participants in conventional weapons governance. When the Review Conference of the CCW stagnated, NGOs, together with supportive states, established another forum to discuss a total ban on APLs. NGOs continue to contribute to the maintenance of the APL Ban Regimes as important partners of co-governance.

Inspired by the conclusion of the Mine Ban Treaty, NGOs urged international society to deal with the SALW problem. As a result, it was recognized that SALW, which had been rarely considered as a problematic weapon, were having humanitarian socio-economic consequences. Although the international treaty to regulate SALW was not formed, PoA, around which actors' expectations and behaviours converge, was adopted. The expanding roles of NGOs in international security issues were not always taken favourably. In the case of SALW, while taking in NGOs' information and ideas, most of the government officials tried to contain the NGOs' role in the conference.

As SALW were not regarded as an inhumane weapon like the APLs, NGO members began to look at ways of applying the lessons learned in the Ottawa Process to cluster

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\ Policy Review, No.116, 2002.

21) Actually, in February 2007, Norwegian Government, in tandem with NGOs, declared to start a negotiation process to establish a treaty to ban cluster munitions outside CCW process. This so-called Oslo Process succeeded to form a treaty to ban almost all cluster munitions in May 2008. As this new treaty was concluded just after I finish writing this article, I could not include the detailed analysis on the NGOs role at the Oslo Process in this article.

munitions, which could be regarded as inhumane weapons. Addressing the issue before the NGO network was established and with increased public support for the NGOs' call, a moderate protocol to deal with the ERW, not the cluster munitions per se, was adopted. The influence of NGOs seems to have been contained again. But if you look at Protocol V more closely, it seems that the NGOs' activity influenced the negotiation process as a catalyst for departure from the original time scope of application of the CCW. As some NGOs saw this protocol as inadequate to deal with the problems caused by cluster munitions, they started the Oslo Process, inspired by the Ottawa Process, to discuss stronger regulation focusing on cluster munitions. This Oslo Process successfully concluded Convention on Cluster Munitions in December 2008.

The increased ability of NGOs to gather as well as transmit information has enabled NGOs to raise issues that have not been seen as problematic and to attract worldwide public attention. As NGOs' ability to arouse public opinion has been improved, the legitimacy or the *raison d'être* of the existing regimes becomes easily undermined if they fail to deal with the raised issues appropriately. This is one of the reasons why age-old problems, caused by APLs, SALW as well as cluster munitions, have become international agendas and have been addressed one after another recently.

NGOs' legitimacy, representativeness and accountability are often called into question. Some even denounce the growing influence of NGOs in global governance, insisting on their negative impact on global democracy.<sup>22)</sup> However, it has already become an undeniable fact that NGOs are playing important roles in global governance in virtually every issue area. As we have seen, they are even playing roles in international security issue areas. Taking the strengths and weaknesses of NGOs into account, it is important to examine how to divide labour and cooperate between the governments and the NGOs.<sup>23)</sup>

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22) For example, see John Bolton (2000) 'Should We Take Global Governance Seriously', *Chicago Journal of International Law*, Vol.1, No.2.

23) Earlier version of this article was published in *International Relations*, Vol. 148 (2007), pp. 104-117 in Japanese.