MIDDLE POWER LEADERSHIP ON HUMAN SECURITY

By

RONALD MARTIN BEHRINGER

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I dedicate this dissertation to my mother, Helen Mina Ahl, and to my father, Ingemar Ahl. Thank you for your love and support in helping me to achieve my goals.

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By

Ronald Martin Behringer

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This dissertation illustrates how middle power states—such as Canada, Denmark, the Netherlands, and Norway—have exercised leadership on the human security agenda, and thus challenges the realist view of middle powers as mere followers of the great powers on global security issues. As the hegemon in the contemporary international system, the United States is likely to counter any initiative that threatens its core national interest: the security of the American territory, institutions, and citizenry. Therefore, it is hypothesized that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution.

The hypothesis is tested through a qualitative analysis of four cases of human security initiatives where the middle powers have played leadership roles. The cases include the endeavor to create a United Nations peacekeeping force that is rapidly deployable, which led to the formation of the Stand-by High Readiness Brigade for

United Nations Operations (SHIRBRIG) in 1996; the campaign to ban anti-personnel landmines (APLs), which resulted in the 1997 Ottawa Convention; the struggle to establish the International Criminal Court (ICC), which came into existence in 2002; and the unsuccessful attempt to adopt stricter regulations on the legal trade in small arms and light weapons (SALW) at the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. The evidence from the case studies provides support for the hypothesis, since the U.S. opposed both the ICC and SALW initiatives because they challenged specific constitutional rights of American citizens, but acquiesced to the SHIRBRIG and APL initiatives, which did not pose a threat to any constitutional rights.

In order to discover why middle power leadership was unable to achieve the SALW initiative, it is hypothesized that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy. The case studies support the hypothesis, by demonstrating that the middle powers succeeded when they used fast-track diplomacy on the SHIRBRIG, APL, and ICC initiatives, but failed when they relied on consensus-based diplomacy on the SALW initiative.

CHAPTER 1
MIDDLE POWER STATES AND HUMAN SECURITY

Introduction

Since the end of the Second World War, the realist paradigm has been the dominant approach for the study of international relations (Holsti 1995; Lynn-Jones 1999; Pettiford and Curley 1999). Realists conceptualize the dynamics of international security as a zero-sum struggle between nation-states in an anarchic international system (Morgenthau 1948). The great power states are considered to be the primary actors in the global system. International peace is maintained either through a balance of military power between the great powers (Waltz 1979), or through the actions of a globally hegemonic state which possesses preponderant military power and the will to exercise it (Gilpin 1981).

But the events of the post-Cold War era have demonstrated the limitations of the state-centric realist approach. Unlike earlier periods, when the main security concern for national governments was to prevent the outbreak of warfare between nation-states, there has been a proliferation of intra-state conflicts since the Cold War ended. National militaries, warlords, guerrillas, secessionist groups, and terrorist organizations have used deadly force against both military and civilian targets in pursuit of their objectives. The realist perspective, which prioritizes the security of nation-states from military threats, has been incapable of dealing with the post-Cold War conflicts, where the combatants are often non-state actors, and the primary victims are civilian populations. The world became painfully aware of this fact on September 11, 2001, when members of the Al-

Qaeda terrorist network attacked the World Trade Center and the Pentagon in the United States (U.S.), killing around 2,800 people.

Realism has proven to be a deficient paradigm not only for its neglect of the impact of non-state actors on global security, but also for its failure to recognize that smaller states may exercise leadership on security issues. The realist view of middle and small powers is summarized concisely in Robert Gilpin's argument that "both power and prestige function to ensure that the lesser states in the system will obey the commands of the dominant state or states" (Gilpin 1981, 30). But by concentrating overwhelmingly on the activities of great power states, realists have ignored the contributions of the middle powers to global security. In 1996, the Canadian Minister for Foreign Affairs Lloyd Axworthy brought to the attention of the international community an alternative conceptualization of security, "human security," which emphasizes the security of people rather than the security of nation-states (Axworthy 1997). In recent years, human security issues have been promoted worldwide by the "like-minded" middle power countries, such as Canada, Denmark, the Netherlands, and Norway. These states have played leadership roles on the human security agenda, by launching initiatives in multilateral forums and brokering global coalitions of the willing that work for the achievement of these initiatives.

This study challenges the realist view of middle powers as mere followers of the great powers on global security issues, by demonstrating how the middle powers have exercised leadership on the human security agenda. There may be limits to the success of middle power leadership, however. If the United States, the hegemon in the contemporary international system, would perceive a human security initiative as a threat

to its core national interest—the security of the American territory, institutions, and citizenry—it is likely that the superpower would mount a fierce campaign to thwart the initiative. It can be safely asserted that the like-minded middle powers would never take any action that would endanger the territory or population of the United States, a fellow democracy and close ally. But it is still possible for a human security initiative to contravene the primary national interest of the United States, by proposing the establishment of international laws or organizations that conflict with the constitutional rights of American citizens. In this scenario, Washington would defend the U.S. Constitution by countering the human security initiative. Therefore, the first hypothesis that is investigated in this study is that *the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution.*

The middle powers may be able to overcome U.S. opposition to an initiative, however, through their choice of an appropriate diplomatic strategy. On some human security campaigns, the middle power states have chosen not to rely on the consensus-based diplomacy of traditional forums of negotiation, which often produces lowest common denominator agreements that have wide acceptance, but less substance. Instead, the middle powers have utilized "fast-track" diplomacy (Lawson 1998; Axworthy 2003). In this "take it or leave it" approach, the middle powers organize a coalition of like-minded states, international humanitarian organizations, and non-governmental organizations (NGOs), who have come to an agreement on a treaty or plan of action that is effective for addressing a particular human security problem. The coalition then uses the "soft power" of persuasion, through both state-led diplomacy and NGO-led advocacy,

to convince as many holdout states as possible to accept the human security proposal. Despite their lack of universal approval, agreements which have been reached via fast-track diplomacy tend to make tangible progress in resolving issues that affect human security. Thus, this study examines a second hypothesis, that *a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy*.

In order to test the two hypotheses, a qualitative analysis of four human security initiatives that were led by the like-minded middle powers is conducted. The first initiative is the endeavor to create a United Nations (UN) peacekeeping force that is rapidly deployable, which led to the formation of the Stand-by High Readiness Brigade for United Nations Operations (SHIRBRIG) in 1996. The second initiative that is discussed is the campaign to ban anti-personnel landmines (APLs), which resulted in the 1997 Ottawa Convention. The third initiative is the struggle to establish the International Criminal Court (ICC), which came into existence in 2002. Finally, the study examines the unsuccessful initiative to adopt international restrictions on the legal trade in small arms and light weapons (SALW) at the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

This chapter provides an overview of the study. It begins with a review of the academic literature on the dynamics of *middlepowermanship*, the emergence of the human security agenda, and the relationship between the core national interest of the United States and U.S. constitutional rights. This is followed by an explanation of the methodology of the study. The chapter then turns to a summary of the four case studies of

human security initiatives. In the final section, the contents of the other chapters are described in brief.

Theoretical Background

Middle Powers and Middlepowermanship

The foreign policies of middle power states have received little attention from international relations scholars. The main reason for this is the long predominance of the realist paradigm, which has influenced the perceptions of scholars as to which issues and actors are worthy of study. In the realists' conceptualization of an anarchic, self-help, international system, the states which command preponderant military power are the most significant actors. In his seminal work *Politics Among Nations*, the classical realist Hans Morgenthau (1948) provided only a brief mention of small states and ignored middle powers completely. The only discussion of small states by structural realists (or neorealists) is in their debate on whether the international system induces small states to balance or to bandwagon when they are threatened by a more powerful country (Waltz 1979; Walt 1987).

Although some scholars have conducted research on middle power states, most of their works have been single country studies. Furthermore, middle power scholars have tended to focus on their country of nationality. Only a handful of studies have engaged in a comparative analysis of middle power foreign policies. One of the earliest efforts was made by the Western Middle Powers and Global Poverty Project, which produced four edited volumes on various aspects of middle power internationalism, including the international development and foreign aid policies of five Western middle powers (Pratt 1989; Stokke 1989; Helleiner 1990; Pratt 1990). Subsequent studies (Cooper, Higgott, and Nossal 1993; Cooper 1997b; Hurrell et al. 2000) have examined the foreign policies

of diverse middle powers such as Argentina, Australia, Brazil, Canada, India, Malaysia, Mexico, Norway, South Africa, Sweden, and Turkey.

One of the reasons why so little comparative work on middle power foreign policies has been conducted may be the lack of consensus on the criteria for classifying states as middle powers. Four definitions of middle powers have been used in the academic literature (Cooper, Higgott, and Nossal 1993). The first definition is geographic: middle powers are states which are situated between two great powers. Examples of middle powers under this definition include Poland, which is located between the traditional great power rivals Germany and Russia, and Turkey, which has served as the bridge between the Western culture of Europe and the Islamic culture of the Middle East. The second definition is normative: middle powers are perceived as more virtuous, trustworthy, and wiser than either great powers or small states, due to their tendency to rely on diplomatic mechanisms to resolve conflicts, rather than the use of force. The problem with this definition is that it can be easily challenged whenever the actions of the middle powers do not live up to their moral rhetoric.

The third, and most commonly used, definition is positional. Under this definition, middle powers are categorized in terms of their national power relative to great powers and small states. Scholars have reached different conclusions as to which states qualify as middle powers, based on alternative rankings of national power (Cox and Jacobson 1973; Handel 1981; Holbraad 1984; Wood 1990). These rankings have been calculated using assorted combinations of factors, including Gross National Product (GNP), GNP per capita, population, nuclear capability, and prestige. Despite its popularity, the positional definition has been criticized for generating “few, if any, common patterns of behavior as

to how a particular group of middle or intermediate powers will behave internationally, because the variation in the types of states involved, the categories of power that they possess, and the arenas within which they operate are all so various" (Hurrell 2000, 1).

The geographic, normative, and positional definitions of middle powers have been supplanted in recent years by a fourth definition that is based on behavior. According to this definition, middle power states are characterized by their performance of middle power diplomacy (Neack 2000), or middlepowermanship: "[the] tendency to pursue multilateral solutions to international problems, [the] tendency to embrace compromise positions in international disputes, and [the] tendency to embrace notions of 'good international citizenship' to guide . . . diplomacy" (Cooper, Higgott, and Nossal 1993, 19).[1] The "like-minded" middle powers—including Canada, Denmark, the Netherlands, Norway, and Sweden—also share a "humane internationalist" outlook in their foreign policies. Humane internationalism features "an acceptance that the citizens and governments of the industrialized world have ethical responsibilities towards those beyond their borders who are suffering severely and who live in abject poverty" (Pratt 1990, 5). In this study, the behavioral definition of middle powers is adopted.

Gareth Evans, the former Australian Minister for Foreign Affairs and Trade (1988-96), argued that middle powers perform "niche diplomacy," which involves "concentrating resources in specific areas best able to generate returns worth having, rather than trying to cover the field" (Cooper, Higgott, and Nossal 1993, 25). Some middle powers have become renowned for their technical expertise in niche areas, such as

[1] The term *middlepowermanship* appears to have first been used by John Holmes (1965), and Paul Painchaud (1965), in papers given at the Third Annual Banff Conference on World Development in August 1965.

Canada in the domain of peacekeeping (Hayes 1997), and Sweden on the issue of foreign aid (Elgström 1992). Middle power states exercise leadership by acting as "catalysts" in launching diplomatic initiatives, "facilitators" in setting agendas and building coalitions of support, and "managers" in aiding the establishment of regulatory institutions (Cooper 1997a).[2] Multilateral institutions, such as the United Nations and regional organizations, are conducive forums for effective middlepowermanship (Cooper 1992; Keating 1993; Henrikson 1997).

The "soft power" resources possessed by middle powers, such as their capacity to inform and persuade through the use of multilateral diplomacy and communications technologies, are becoming essential for competent leadership in a post-Cold War world which features greater interdependence and transnational cooperation (Nye 1990; Sikkink 2002). Tim Martin, the Director of the Peacebuilding and Human Security Division of the Canadian Department of Foreign Affairs and International Trade, mentioned a few possible conditions for effective middle power leadership: "policy analysis capability, credibility, predictability, communications, consistency, and diplomatic capacity."[3]

A study by Andrew Cooper, Richard Higgott, and Kim Richard Nossal (1993) claimed that the middle powers have opportunities to exercise leadership on international economic and social issues, due to a diminishing capacity and will of the United States to lead in these areas. In another work, Higgott suggested that middle powers "with the

[2] Andrew Cooper's conception of "catalysts" is similar to John Kingdon's "policy entrepreneurs," whom the latter defined as "advocates who are willing to invest their resources—time, energy, reputation, money—to promote a position in return for anticipated future gain in the form of material, purposive, or solidary benefits" (Kingdon 1984, 188).

[3] Personal interview of Mr. Tim Martin, the Director of the Peacebuilding and Human Security Division of the Canadian Department of Foreign Affairs and International Trade, Ottawa, Ontario, Canada, December 2, 2003.

technical and entrepreneurial skills to build coalitions and advance and manage initiatives must show leadership when it is not forthcoming from the major actors" (Higgott 1997, 33). Gary Goertz argued that middle power-led coalitions are frequently successful in achieving their objectives even when faced with great power opposition, because "the major impetus [for an initiative] comes from smaller countries with larger ones coming in once they see that [the initiative] cannot be prevented" (Goertz 2003, 179).

But Cooper, Higgott, and Nossal emphasized that since security concerns predominate in Washington, the middle powers have far less scope for international leadership in this domain. Instead, the middle powers tend to be supportive followers of great power leadership on the global security agenda. Cooper, Higgott, and Nossal stressed that the passive role of follower is as important as the active role of leader, in that "multilateralism and coalition-building can only work if there are more states willing [to] agree to join coalitions as followers than there are states seeking to play a leadership role" (Cooper, Higgott, and Nossal 1993, 118).

Thus, even some scholars of middlepowermanship have joined the realists in perceiving the middle powers as passive followers of great power leadership in the realm of international security. This view of the middle powers is challenged in this study, through an illustration of how the middle powers have played leadership roles in promoting human security initiatives. The middle powers have initiated campaigns to resolve particular issues that affect human security, and have organized coalitions of like-minded states, humanitarian international organizations, and NGOs that have achieved their human security objectives. The chapter will now turn to an explanation of the term "human security," as well as a discussion of how the human security agenda emerged.

The Human Security Agenda

The concept of human security was first elaborated by the United Nations Development Program (UNDP) in the 1994 edition of its annual *Human Development Report* (UNDP 1994; Hay 1999).[4] The report called for a reconceptualization of security, where the emphasis would shift from securing the nation-state from the threat of a nuclear attack, to protecting the human security of people. The goal of the UNDP was to improve the quality of human life, by ensuring that people may live their lives in free and safe environments. This objective corresponded with the vision of former United Nations Secretary-General Boutros Boutros-Ghali, who claimed that threats to global security extend beyond the military sphere, and include phenomena such as environmental degradation, drought, and disease (United Nations Secretary-General 1992).

The UNDP's recommendations reflected the perspective of the "widening" school of security studies (Buzan 1997; Buzan, Wæver, and de Wilde 1998; Mutimer 1999; Lamy 2002; Brown 2003). The widening school recognizes, first, that actors other than the state, such as individuals or nations, may also serve as referent objects of security; and second, that threats to security may appear in non-military as well as military forms. This approach challenged the view of the "traditionalists," dominant during the Cold War, that the security of the state from military threats should be prioritized (Walt 1991).[5]

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[4] According to Rosalind Irwin (2001), the concept of human security dates back to the adoption of the United Nations Charter and the Universal Declaration of Human Rights in 1945.

[5] The emergence of the widening school was triggered by dissatisfaction with security studies' narrow focus on military and nuclear threats, particularly following the rise of the economic and environmental agendas in international relations during the 1970s and 1980s, and the increased attention given to issues of identity and transnational crime in the post-Cold War era. The traditionalists have criticized the widening school in return, arguing that an expansion in the scope of security studies to include issues unrelated to the threat or use of force would destroy the intellectual coherence of the discipline. For this critique, see Walt 1991, and Buzan, Wæver, and de Wilde 1998. Steven Lamy made an interesting argument that "the traditionalists are not opposed to discussions about human security. However, they embrace a more

Barry Buzan (1983; 1991), who is regarded as a trailblazer for the widening school, emphasized that the security of human collectivities is affected by military, political, economic, societal, and environmental factors. Jessica Tuchman Mathews (1989) argued that the scope of security concerns has broadened to include resource, environmental, and demographic issues. The wideners also acknowledge that, in many countries, the state itself may pose a security threat to citizens (Buzan 1983; Buzan 1991; Kolodziej 1992; Irwin 2001). While some states carry out institutionalized repression, other states are too weak to prevent domestic groups from engaging in bloody armed conflict.

Fen Osler Hampson and his colleagues (2002) have described three different conceptions of human security that are currently in use. The first perspective is the "rights-based" approach to human security. The objective of this approach is to bolster normative legal frameworks at the global and regional levels, while simultaneously strengthening both human rights law, and legal and judicial systems, within nation-states. International institutions are viewed as essential for the development of new human rights norms, and for ensuring the harmonization of national standards and practices.

The second conception of human security is the "safety of peoples" or "freedom from fear" perspective (McRae 2001; Hampson et al. 2002). In this view, a clear distinction is made between combatants and non-combatants in war, and it is believed that the international community has a moral obligation to intervene in conflicts in order to protect non-combatants from endangerment. Furthermore, advocates of the safety of peoples approach argue that international interventions should go beyond the provision of

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particularistic position that assumes that states have an obligation to provide human security for their own citizens, but no obligation to provide security for noncitizens" (Lamy 2002, 170).

emergency humanitarian relief, to include efforts at addressing the underlying causes of conflicts.

The third, and broadest, view of human security is the "sustainable human development" or "freedom from want" approach. The concept of sustainable development dates back to the 1987 Brundtland Report, which claimed that environmental stress may produce, as well as result from, political tensions and armed conflict (World Commission on Environment and Development 1987; Hay 1999; Page and Redclift 2002).[6] According to the sustainable human development perspective, the process of development should cater to the needs of people.[7] Proponents believe that in order to address the numerous types of human security threats, humanity must first resolve fundamental problems of inequality and social injustice. As Jessica Tuchman Mathews argued, human security should be "viewed as emerging from the conditions of daily life—food, shelter, employment, health, public safety—rather than flowing downward from a country's foreign relations and military strength" (Mathews 1997, 51). The 1994 *Human Development Report* described seven areas in which human security could be threatened: economic, health, environmental, personal, community, political, and food security (UNDP 1994). Studies have examined the impact of environmental issues on human security, such as climate change (Stripple 2002), food security (Turner, Brownhill, and Kaara 2001; Sage 2002), and water scarcity (Cocklin 2002). Some radical

[6] The official title of the Brundtland Report is *Our Common Future*, and it was produced by the World Commission on Environment and Development (also known as the Brundtland Commission, named after its Chairperson, the former Norwegian Prime Minister Gro Harlem Brundtland).

[7] Robin Hay added that the sustainable human development perspective "branched off to include sustainable human security, which also places people squarely at the center of its concerns" (Hay 1999, 218).

scholars have called for drastic reforms in global institutions, and a new North-South partnership, in order to guarantee human security (Mayor 1995; Ul Haq 1995).

The human security agenda received global attention in 1996, with the Canadian government's appointment of Lloyd Axworthy as Minister for Foreign Affairs (Hay 1999). In his address to the fifty-first United Nations General Assembly in September 1996, Axworthy explained that human security includes "security against economic privation, an acceptable quality of life, and a guarantee of fundamental human rights" (Axworthy 1997, 184). Moreover, Axworthy added that human security "acknowledges that sustained economic development, human rights and fundamental freedoms, the rule of law, good governance, sustainable development, and social equity are as important to global peace as arms control and disarmament" (Axworthy 1997, 184).

Middle power states have embraced human security issues as "niche" areas of their foreign policies.[8] Contrary to the expectations of both realists and middle power scholars that the middle powers would follow the great powers' lead on global security issues (Gilpin 1981; Cooper, Higgott, and Nossal 1993), the middle powers have exercised strong leadership in promoting the human security agenda. In accordance with the practice of middlepowermanship, multilateral cooperation has been the means by which the middle powers have played leadership roles. While much of this collaboration has taken place within the institutions of the United Nations, the middle powers have also been active through other channels.

[8] Canada's human security policy is based on the freedom from fear approach (Canada 2000; 2002). Rosalind Irwin indicated that "much of the human security agenda in Canada and elsewhere has downplayed economic and social concerns, focusing instead on the protection of individual security from violence" (Irwin 2001, 6).

In May 1998, Canada and Norway signed the Lysøen Declaration, a bilateral partnership for action on human security (Canada 2000; Small 2001; Canada 2002; Lamy 2002). The Lysøen Declaration outlined an agenda of nine human security issues, and specified a framework for consultation and cooperation.[9] This bilateral agreement was expanded into a multilateral arrangement with the creation of the Human Security Network in September 1998, through which thirteen middle powers and small states, as well as numerous NGOs, work together on human security issues.[10] Tim Martin, the Director of the Peacebuilding and Human Security Division of the Canadian Department of Foreign Affairs and International Trade, described the Human Security Network as "an advocacy and policy dialogue or mechanism."[11] According to Steven Lamy, the Human Security Network perceives itself as "a potential lobby group within existing international institutions" (Lamy 2002, 172). The objective of the network is to build coalitions of like-minded states within multilateral institutions, in order to promote issues of human security.

Whether or not a human security campaign is ultimately successful may depend to a certain degree on how the United States, the global hegemon in the contemporary era, reacts to the initiative. Since the primary national interest of the United States is the security of its territory, institutions, and citizenry, it is probable that the U.S. would mount a fierce opposition to any initiative from the international community that it

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[9] The nine human security issues were: landmines, the International Criminal Court, human rights, international humanitarian law, gender dimensions in peacebuilding, small arms proliferation, children in armed conflict (including child soldiers), child labor, and Arctic and northern cooperation. See Small 2001.

[10] The members of the Human Security Network are Austria, Canada, Chile, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Slovenia, Switzerland, and Thailand, while South Africa participates as an observer.

perceives as a potential threat to the constitutional rights of American citizens. The relationship between the core national interest of the United States and U.S. constitutional rights will be explained in the following section.

The Core National Interest and U.S. Constitutional Rights

The idea that the defense of the homeland is the principal national interest of a state is a conception that has endured since the birth of the modern states system in the seventeenth century (Beard [1934] 1966; Johansen 1980). Realists emphasize that the primary national interest of a state is its national security, and that a state can maintain its security by maximizing its power. According to the eminent realist scholar Hans Morgenthau, "the national interest of a peace-loving nation can only be defined in terms of national security, and national security must be defined as integrity of the national territory and of its institutions" (Morgenthau 1978, 553). Although Stephen Krasner agreed that the core objective of a state is the protection of its territorial and political integrity, he made a bolder claim that for a hegemonic state, "political and territorial integrity is completely secure" (Krasner 1978, 35).

Since the like-minded middle powers share a democratic political culture with the United States—and most of these countries participate in a military alliance with the superpower as well—it is certain that they would never engage in any actions that would threaten the territorial integrity of the U.S. or cause physical harm to the American populace. But a middle power-led initiative could still pose a challenge to the U.S. core national interest. Donald Nuechterlein claimed that "the fundamental national interest of the United States is the defense and well-being of its citizens, its territory, *and the U.S.*

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[11] Personal interview of Mr. Tim Martin, December 2, 2003.

constitutional system" (Nuechterlein 2001, 15 [emphasis added]). There is a possibility that the international laws or institutions which a particular human security initiative seeks to establish may conflict with the constitutional rights of American citizens. Since the preservation of the integrity of the United States Constitution is a primary national interest of the U.S., Washington would probably take action to defeat the human security initiative.

The most important institution in the United States is the constitutional system, because it protects the principles of liberty, political equality, and self-government on which the country was founded (Spalding 2002). John Hall and Charles Lindholm argued that Americans have an "aura of sacredness" about the Declaration of Independence, the Constitution, and the Bill of Rights (Hall and Lindholm 1999, 92). In the words of John McElroy, the Constitution "declared the people's rights as the sovereign power, which the government was forbidden to infringe" (McElroy 1999, 166).

But post-Cold War developments in the field of international law may pose a threat to the sanctity of American constitutional rights. Lee Casey and David Rivkin (2003) indicated that the "traditional international law" (or the "law of nations"), which prohibits any violation of the sovereignty principle, is being displaced by the "new international law," which asserts that the domestic practices of states must conform with the emergent global norms of conduct. Casey and Rivkin are wary of the consequences of the new international law for the United States:

> As a philosophical matter, any attack upon the principle of sovereignty threatens the very foundation of American democracy. Sovereignty is the necessary predicate of self-government. . . . Any limitation on sovereignty as an organizing principle . . . is an abdication of the right of the citizens of the United States to be governed solely in accordance with their Constitution, and by individuals whom they have elected and who are ultimately accountable to them. To the extent that international

> law allows supranational, or extra-national, institutions to determine whether the actions of the United States are lawful, ultimate authority will no longer be vested in the American people, but in these institutions (Casey and Rivkin 2003, 6-7).

In short, it is probable that an initiative which aims to improve the security of populations through the establishment of new international laws or institutions will infringe on the sovereignty principle. These infringements are justified, as states should not be permitted to use sovereignty as a shield while they engage in genocide and human rights violations within their borders. But the new international laws and institutions may also clash with domestic laws that protect the rights of citizens in democratic states. As the global hegemon, the United States is unlikely to accept any human security initiative that conflicts with the constitutional rights of American citizens. Thus, this study hypothesizes that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution. In the next section, the methodology that was used for testing this hypothesis, as well as the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy, will be described.

Methodology

The study was conducted using a qualitative research design. The novel topic of middle power leadership on human security is well suited for a qualitative design, because the latter facilitates exploratory research and theoretical development (Creswell 1994). Furthermore, since the data that I collected is mostly descriptive, a qualitative research design enabled me to conduct an interpretative analysis of the data. The drawback of using a qualitative design is that my biases and values may have influenced my interpretation of the data to a certain degree. I am a Canadian citizen, and quite proud

of my country's achievements on the international stage. But the effects of my biases and values may have been reduced by my decision to analyze middle power leadership from a systemic viewpoint, rather than focus solely on the foreign policy of my country of nationality.

My study entailed more than two years of research in Canada and the United States. Most of the research was carried out at the libraries of McGill University and Concordia University in Montreal, and the University of Florida in Gainesville, Florida. I also obtained documents from the websites of supranational organizations, governmental agencies, and non-governmental organizations, including the Human Security Network, the Stand-by High Readiness Brigade for United Nations Operations (SHIRBRIG), the United Nations Dag Hammarskjöld Library, the United Nations Department for Disarmament Affairs, the United Nations Department of Peacekeeping Operations, the Canadian Department of Foreign Affairs and International Trade (DFAIT), the United States Department of State, Human Rights Watch, the International Action Network on Small Arms (IANSA), and the International Campaign to Ban Landmines (ICBL).

I conducted personal and e-mail interviews of government officials and academics who are either experts on the human security agenda, or specialists on one of the human security initiatives discussed in my study. In Ottawa, I carried out personal interviews of Mr. Tim Martin, the Director of the Peacebuilding and Human Security Division of DFAIT, and Dr. Hélène Laverdière, the Deputy Director of the division. Due to limited research funding, I was restricted in terms of my capacity to travel in order to conduct interviews. But my limitations did not prevent me from interviewing people who were located abroad. I used e-mail to send the interview questionnaire (see Appendix) to each

participant whom I could not interview in person. The participants then returned the completed questionnaires to me by e-mail. Using this method, I conducted an e-mail interview of Ms. Mette Kjuel Nielsen, the Head of the Department for Russia, CIS, OSCE, and the Balkans at the Danish Ministry of Foreign Affairs. Ms. Nielsen is the former Danish Deputy Permanent Secretary of Defense (1998 – 2001), and the former Chairman of the SHIRBRIG Steering Committee. I also carried out an e-mail interview of Dr. Peter Viggo Jakobsen, the Head of the Department of Conflict and Security Studies at the Danish Institute for International Studies in Copenhagen.

In order to test the two hypotheses, I analyzed four cases of human security initiatives (see Table 1-1). The cases included the formation of SHIRBRIG, the establishment of a ban on anti-personnel landmines (APLs), the creation of the International Criminal Court (ICC), and the unsuccessful campaign to derive international restrictions on the legal trade in small arms and light weapons (SALW) at the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

Table 1-1. The Human Security Initiatives

Initiative	Challenge to U.S. Constitutional Rights	U.S. Position	Diplomatic Strategy	Success/Failure
SHIRBRIG	No	Acquiescence	Fast-Track Diplomacy	Success
APL Ban	No	Acquiescence	Fast-Track Diplomacy	Success
ICC	Yes	Opposition	Fast-Track Diplomacy	Success
Restrictions on the Legal SALW Trade	Yes	Opposition	Consensus-Based Diplomacy	Failure

In two of the cases, the SHIRBRIG initiative and the campaign to ban APLs, there were no threats posed to U.S. constitutional rights. The response of the United States to both initiatives was acquiescence. In contrast, the initiative to establish the ICC, and the campaign to adopt international regulations on the legal SALW trade, both challenged particular rights of American citizens that are protected under the United States Constitution. The proposed ICC was perceived by Washington as a threat to American citizens' rights, under the Fifth and Sixth Amendments, to a jury trial and other procedural guarantees. The U.S. feared that the SALW initiative would jeopardize the right of American citizens to bear arms, which is protected under the Second Amendment. Therefore, the United States mounted a determined opposition to both the ICC initiative and the SALW campaign. The evidence from the case studies provided support for the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution.

The SHIRBRIG and APL ban campaigns, both of which featured U.S. acquiescence, managed to accomplish their objectives. But while U.S. opposition prevented the realization of the SALW initiative, the United States was unable to foil the ICC campaign. In order to gain some insight as to why middle power leadership was successful on the SHIRBRIG, APL, and ICC initiatives, but failed to achieve international restrictions on the legal SALW trade, I examined the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy.

The case studies supported this hypothesis as well. The middle powers used fast-track diplomacy to create SHIRBRIG, establish the ban on APLs, and launch the ICC. But the middle powers did not engage in fast-track diplomacy at the 2001 UN conference on the illicit SALW trade. Instead, the middle powers relied on the consensus-based diplomatic negotiations of the conference, which made it easy for the United States to block their initiative to derive stricter international regulations on the legal SALW trade.

The chapter will now summarize briefly the four human security initiatives which are discussed in greater detail in subsequent chapters of this book.

The Human Security Initiatives

The SHIRBRIG Peacekeeping Initiative

The lack of a permanent force for rapid deployment in times of crisis has consistently hampered United Nations peacekeeping operations (Johansen 1998). To address the problem, the governments of Canada and the Netherlands organized the "Friends of Rapid Deployment" (FORD) coalition, with the aim of promoting the idea of a UN rapid response brigade among the major power states (Langille 2000). In December 1996, seven middle powers established the Stand-by High Readiness Brigade for United Nations Operations (SHIRBRIG). Headquartered in Denmark, SHIRBRIG can deploy, at a short notice of only fifteen to thirty days, four to five thousand troops on peacekeeping missions lasting up to six months (United Nations Stand-by High Readiness Brigade 2001a; 2001b [hereafter UNSHIRBRIG]). SHIRBRIG was deployed successfully as part of the United Nations Mission in Ethiopia and Eritrea (UNMEE) in 2000-2001. At present, twenty-one middle powers and small states participate in SHIRBRIG at four different levels of membership.

The United States has not participated in SHIRBRIG, and has never issued any official statements regarding the establishment and deployment of the brigade. But it can be safely assumed that SHIRBRIG corresponds to U.S. interests, since American foreign policy has consistently favored the development of a rapid response capability for United Nations peacekeeping without the creation of a standing UN army (Taylor, Daws, and Adamczick-Gerteis 1997; Langille 2000). Hence, the SHIRBRIG initiative is a case where fast-track diplomacy by the middle powers fulfilled a human security initiative with the acquiescence of the United States.

The Ottawa Process to Ban Anti-Personnel Landmines

The scourge of anti-personnel landmines (APLs) claims thousands of victims annually. In response to this crisis, the International Campaign to Ban Landmines (ICBL), an umbrella group of NGOs, issued a call for a global ban on the use, production, stockpiling, and transfer of APLs (Williams and Goose 1998). The Canadian government decided to exercise leadership on the landmines issue by co-hosting, together with the NGO Mines Action Canada, a conference on October 3-5, 1996, titled "Towards a Global Ban on Anti-Personnel Mines" (Lawson et al. 1998; Lenarcic 1998). At the conference, Canadian Foreign Minister Lloyd Axworthy invited the participants to work with Canada to negotiate and sign an APL ban treaty by December 1997, a mere fourteen months after the Ottawa conference. Throughout 1997, the Ottawa Process core group, consisting of like-minded states, international humanitarian organizations, and NGOs, engaged in fast-track negotiations on an APL ban treaty, and cultivated global political support for an APL ban. At the second Ottawa landmines conference held on December 3-4, 1997, titled "A Global Ban on Landmines: Treaty Signing Conference and Mine Action Forum," one

hundred and twenty-two states signed the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

Although the United States was an early leader in the campaign to ban landmines, it failed to support the Ottawa Process. The U.S. perceived the Ottawa Convention as detrimental to vital American military interests in Korea and Guantanamo Bay, Cuba, where the U.S. military uses APLs for the protection of American soldiers who are stationed there (Matthew and Rutherford 1999). Believing that Lloyd Axworthy's appeal for a ban treaty to be negotiated and signed within fourteen months was an unrealistic goal, the U.S. made an unsuccessful attempt to launch negotiations on an APL ban treaty in the United Nations Conference on Disarmament (UNCD), a forum characterized by consensus-based diplomacy (Lenarcic 1998; Price 1998).

Following the failure of its APL initiative, the Clinton administration reversed its stance in August 1997, and announced that the U.S. would join the Ottawa Process. At the "Diplomatic Conference on an International Total Ban on Anti-personnel Landmines," held in Oslo in September 1997, the American delegation proposed critical, non-negotiable changes to the ban treaty that would have weakened it considerably had the changes been accepted (Wareham 1998; Kirkey 2001). But the American recommendations were rejected by the other conference participants, hence the U.S. refused to sign the Ottawa Convention in December 1997. Nevertheless, the Ottawa Convention entered into force in March 1999, and had an immediate impact in curtailing the global production and transfer of APLs. In short, fast-track diplomacy by the middle powers produced the APL ban. The United States disagreed with the technicalities of the

Ottawa Convention, but acquiesced to the human security initiative to ban anti-personnel landmines.

The International Criminal Court

The idea of creating a permanent institution that would try individuals who are accused of crimes against humanity has been discussed for decades. In 1994, the Like-Minded Group of Countries was formed, with the objective of campaigning for the establishment of an International Criminal Court that would try cases of genocide, crimes against humanity, war crimes, and the crime of aggression (Pace and Schense 2001). The Like-Minded Group developed a close working relationship with the NGO Coalition for an International Criminal Court (CICC), which professed its faith that the leadership and negotiating capabilities of the Like-Minded Group would produce a strong ICC. Instead of settling for a lowest common denominator agreement, the Like-Minded Group adopted a fast-track diplomatic strategy and campaigned for an effective treaty, even though a few major powers expressed their opposition (Pace 1999; Robinson 2001). At the 1998 Rome Conference, skilled diplomacy by delegates from the Like-Minded Group managed to persuade holdout governments to vote in favor of the Rome Statute, which established an independent ICC with the power to initiate its own investigations and prosecutions of crimes.

The Rome Statute was adopted despite attempts by the United States to block it. Washington feared that the ICC would not grant American military personnel the right to a jury trial and the other procedural guarantees protected under the Fifth and Sixth Amendments to the U.S. Constitution (Everett 2000). In addition, the U.S. was concerned that the ICC would become a forum for politically-motivated trials of American military personnel who serve abroad (Omestad 1998). Thus, the United States campaigned for the

introduction of UN Security Council controls over ICC activities. When the American proposal failed to win support, the U.S. joined six other states—most of them international pariahs—in voting against the Rome Statute. Although the Bill Clinton administration would later sign the statute, with the objective of ensuring that the U.S. would be invited to future ICC negotiations where it could exert American influence, the George W. Bush administration assumed a more belligerent position and "unsigned" the treaty in May 2002 (Anderson 2002; Meyer 2002). The Bush administration withdrew from all ICC negotiations, threatened to veto extensions of UN peacekeeping operations unless peacekeepers were granted a permanent immunity from ICC prosecution, and terminated military aid to approximately three dozen states who refused to exempt U.S. soldiers from the ICC's jurisdiction (Lobe 2003). But despite American antagonism, the ICC came into effect on July 1, 2002, following the sixtieth ratification of the Rome Statute. The fast-track diplomacy of the middle powers was successful in accomplishing the ICC initiative, despite the opposition of the United States on the grounds that the initiative challenged the constitutional rights of American citizens.

The Campaign to Regulate the Legal Trade in Small Arms and Light Weapons

Small arms and light weapons (SALW) have been responsible for the deaths of millions of people in intrastate conflicts in the post-Cold War era. But due to a preoccupation with major weapons systems during the Cold War, the global community failed to adopt international norms regarding the production, transfer, and possession of SALW (Renner 1999). It was not until 1993 that the SALW issue was placed on the international agenda, when Mali asked the United Nations for assistance with the uncontrolled proliferation of SALW in West Africa (Smaldone 1999). In August 1997, a

UN Panel of Governmental Experts issued a report calling for the convening of an international conference on the illicit trade in SALW in all its aspects (Lozano 1999).

At the meetings of the Preparatory Committee prior to the conference, Canada submitted a working paper which recommended that an action plan on SALW should examine the relationship between the licit and the illicit aspects of the SALW problem, and that states should exercise maximum restraint on the legal manufacture and trade of SALW (United Nations Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2000). But the Bill Clinton administration warned that while the U.S. is committed to curbing the illicit SALW trade, it would not accept any legally binding international treaty that either constrains the legitimate trade in SALW by U.S. nationals, or infringes on the constitutional right of American citizens, under the Second Amendment, to own firearms legally ("UN Conference on Illicit Trade in Small Arms" 2001 [hereafter "UN Conference"]). The George W. Bush administration has adopted the same position.

The middle powers established a close working relationship with the NGO community, including the International Action Network on Small Arms (IANSA), and co-hosted a series of seminars and workshops that were designed to foster the global political will to address the problem of the SALW trade. At the July 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York City, the anti-SALW coalition pushed for a prohibition on the sale of SALW to non-state actors, and emphasized that the eradication of the illegal trade in SALW could not be accomplished without first establishing stronger regulations on the legal trade (NGO Committee on Disarmament 2001c). But the anti-SALW coalition was

countered by the United States government and the National Rifle Association of America (NRA), who insisted that they would oppose any initiative that would threaten the constitutional right of American citizens to own and use firearms ("UN Conference" 2001). Because negotiations at the conference were characterized by consensus-based diplomacy, where the adoption of a plan of action required the unanimous agreement of the participants, pressure from the American delegation succeeded in eliminating all references to the regulation of private gun ownership, as well as a ban on transfers to non-state actors, from the final text. The conference ended with the participants adopting a politically, but not legally, binding Program of Action that addresses solely the illicit aspects of the SALW trade. The failure of the anti-SALW coalition to use fast-track diplomacy, rather than rely on the consensus-based diplomacy of the UN conference, permitted U.S. opposition to derail the initiative to derive stricter regulations on the legal trade in SALW.

The Structure of the Dissertation

In this introductory chapter, I provided a synopsis of my dissertation research on middle power leadership and the human security agenda. The theoretical background and the methodology of the study were discussed, and the four cases of human security initiatives were described. I engage in a deeper analysis of the human security initiatives in the subsequent chapters. Chapter 2 covers the SHIRBRIG initiative in rapidly deployable peacekeeping. In Chapter 3, I demonstrate how the Ottawa Process succeeded in achieving a ban on anti-personnel landmines. Chapter 4 looks at how middle power cooperation resulted in the creation of the International Criminal Court. In Chapter 5, I explain why the middle powers were unsuccessful in their attempt to derive international restrictions on the legal trade in small arms and light weapons at the 2001 New York

conference. Finally, Chapter 6 illustrates the lessons learned from these four human security initiatives, and offers some suggestions for foreign policy-makers in middle power states as to how they could exercise leadership more effectively on future human security campaigns.

CHAPTER 2
THE SHIRBRIG INITIATIVE IN RAPIDLY DEPLOYABLE PEACEKEEPING

Introduction

Peacekeeping has been one of the most heralded activities of the United Nations over the past half-century. Thousands of military and civilian personnel have been deployed by the UN in more than fifty different peacekeeping missions around the world. Peacekeeping operations have experienced both considerable successes and dismal failures, and have been followed by an endless stream of criticism and calls for reform. But the considerable role that peacekeeping missions have played in the preservation of human security is indisputable. The presence of the "blue helmets" in a zone of conflict frequently deters armed militias from both attacking military targets and slaughtering civilian populations. The post-conflict desire for retribution may fuel the murderous rampages of ex-soldiers and street thugs, and the innocent become victims on the mere basis of ascriptive differences, such as ethnicity, language, or religion. The proliferation of bloody intra-state conflicts in the post-Cold War era necessitates that the United Nations be capable of intervening quickly enough to prevent and redress violations of human security.

It has been recognized that, in order to make United Nations peacekeeping operations more effective, a standby peacekeeping force that is rapidly deployable to areas of conflict should be established (United Nations Secretary-General 1992 [hereafter UNSG]; Urquhart 1993; Johansen 1998). The middle powers took the initiative to address this issue of human security. In 1996, seven middle power states created the

Stand-by High Readiness Brigade for United Nations Operations (SHIRBRIG). Four years later, SHIRBRIG was deployed with great success as part of the United Nations Mission in Ethiopia and Eritrea (UNMEE). The fact that the formation of SHIRBRIG can be credited to middle power leadership counters the beliefs of both realists and scholars of middlepowermanship that, in the domain of international security, the middle powers are confined to being mere followers of the superpower's lead (Gilpin 1981; Cooper, Higgott, and Nossal 1993). Drawing on the dynamics of middlepowermanship, this study tests the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy.

As the hegemon in the contemporary international system, the United States wields a substantial influence on issues related to global security. It should be expected that Washington would oppose vehemently any initiative from the international community that it perceives as a threat to its core national interest, which realists have defined as the security of its territory, institutions, and citizenry (Morgenthau 1948; Krasner 1978). Although a human security initiative would never threaten the U.S. territory or population, it is possible that the international laws or organizations proposed by the initiative may conflict with the constitutional rights of American citizens. The U.S. constitutional system is a sacred institution for Americans, in that it guarantees the basic principles of the country—liberty, political equality, and self-government (Hall and Lindholm 1999; Spalding 2002). Thus, this study also investigates the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the

initiative challenges the rights of American citizens protected under the U.S. Constitution.

The chapter begins with an explanation of the practice of peacekeeping. This is followed by a discussion of the initiative to create a standby United Nations peacekeeping force that is rapidly deployable. The origins of the idea of a rapid response brigade for UN peacekeeping, the process by which the middle powers worked together to create SHIRBRIG, and the reaction of the United States to the initiative are described. The implications of the case study for the two hypotheses are presented in the conclusion.

The Practice of Peacekeeping

Peacekeeping has been defined in various ways by scholars. According to John Hillen, "peacekeeping is a military technique for controlling armed conflict and promoting conflict resolution" (Hillen 1998, 79). Paul Diehl provided a more detailed definition:

> Peacekeeping is . . . the imposition of neutral and lightly armed interposition forces following a cessation of armed hostilities, and with the permission of the state on whose territory these forces are deployed, in order to discourage a renewal of military conflict and promote an environment under which the underlying dispute can be resolved (Diehl 1993, 13).

Although Claus Heje insisted that peacekeeping did not originate with the United Nations, and that the UN is not the sole international organization to engage in peacekeeping, his definition centered on UN peacekeeping operations:

> As the United Nations practice has evolved over the years, a peacekeeping operation has come to be defined as an operation involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict (Heje 1998, 2).

Steven Ratner's definition of peacekeeping was also restricted to United Nations missions:

> Peacekeeping is . . . the stationing of UN military personnel, with the consent of warring states, to monitor ceasefires and dissuade violations through interposition between armies, pending a political settlement (Ratner 1995, 17).

Peacekeepers are responsible for both observing the peace, through monitoring cease-fires and reporting breaches, as well as keeping the peace, by interposing between belligerents and creating buffer zones of disengagement (Weiss, Forsythe, and Coate 1997). Although there are no concrete rules for United Nations peacekeeping operations, there are a few principles which guide the practice of peacekeeping (Heje 1998). First, the parties in conflict must provide their consent to the establishment and continued operation of a peacekeeping mission, as well as to its mandate, composition, and commanding officer. Second, a peacekeeping mission may not violate the sovereignty of a host state. Third, peacekeepers must remain impartial between the conflicting parties. Fourth, peacekeepers may not use force except as a last resort in self-defense. Fifth, all peacekeeping operations must receive a clear mandate from the UN Security Council. Sixth, each peacekeeping mission requires a multinational deployment under the operational command and control of the UN Secretary-General. Finally, the participants in a peacekeeping mission must be willing to provide troops, financial aid, and logistical support to the operation.

The authorization for UN peacekeeping missions comes from Chapter VI (Articles 33 through 38) of the Charter of the United Nations, which is concerned with the pacific settlement of disputes that are likely to endanger peace (Pirnie and Simons 1996). Under Chapter VI, the UN Security Council sanctions the use of lethal force in self-defense while fulfilling a UN mandate. But the UN Charter does not mention peacekeeping specifically, hence UN Secretary-General Dag Hammarskjöld coined the term “Chapter

six-and-a-half," which refers to peacekeeping operations as an expansion of Chapter VI (Weiss, Forsythe, and Coate 1997).

Traditional peacekeeping operations have usually involved the deployment of multinational military contingents, consisting of a few thousand lightly-armed soldiers grouped in light infantry battalions, in buffer areas between belligerent parties (Hillen 1998). The majority of infantry battalions have been donated either by middle power states such as Canada, Finland, Ireland, Norway, and Sweden, or by countries that are neutral to a conflict, as Ghana and Nepal have done (Huldt 1995).

According to the United Nations, the first UN peacekeeping mission was the United Nations Truce Supervision Organization (UNTSO), which was deployed in the Middle East in June 1948 following the first Arab-Israeli War, and is still in operation more than fifty years later (Goulding 1993). But some scholars have argued that UNTSO should not be labeled as a peacekeeping operation, since only military observers, who were either unarmed or equipped solely with side arms, participated in the mission (Hillen 1998; Macdonald 1998). They claimed that UN peacekeeping began with the United Nations Emergency Force (UNEF I), which was deployed from November 1956 until June 1967 in the Suez Canal, the Sinai, and the Gaza Strip to maintain peace between the Arab states and Israel. UNEF I, much heralded as a model peacekeeping operation which established the principles and standards for future missions, was the brainchild of an exemplary diplomat from a middle power state. John Hillen suggested that the Canadian Secretary of External Affairs Lester Pearson's idea of sending an armed UN emergency force to interpose between the belligerent parties in Egypt "was a compromise of sorts between a small unarmed observation force such as that in Palestine

[UNTSO] and a large and coercive collective security action such as the UN Command in Korea" (Hillen 1998, 82). In the words of Patricia Fortier:

> The 1956 Suez model of peacekeeping for which Lester B. Pearson won a Nobel Prize was built on the concept of the neutral observation of agreed behavior, and military resources in support of diplomatic agreements. The aim was to stall conflict between nation-states, thereby avoiding direct involvement by Great Powers. The basic premise for all peacekeeping operations was that states were the forces to be dealt with, and that the insertion of a recognized global authority backed by neutral military was acceptable to them (Fortier 2001, 42).

Until the end of the Cold War, United Nations peace support operations engaged in the traditional peacekeeping described above. But with the proliferation of intra-state conflicts in the 1990s, it became evident that war criminals were using the inviolability of the sovereignty principle as a shield from justice while they carried out tortures, rapes, and murders of civilians. Traditional UN peacekeeping operations cannot protect populations if their governments do not consent to the deployment of peacekeepers on their soil.

In response, the United Nations widened the mandates of its peace support operations in the post-Cold War era. New doctrines were formulated and implemented. "Peace-enforcement" has been defined as "the deployment by the UN's political organs of military personnel to engage in non-consensual action, which may include the use of force, to restore international peace and security" (Ratner 1995, 19). Peace-enforcement operations fall under Chapter VII (Articles 39 through 51) of the UN Charter (Pirnie and Simons 1996).[1] Chapter VII missions have the authorization of the Security Council to use lethal force beyond self-defense in order to accomplish a mandate. Article 39 describes three situations where the Security Council may authorize peace-enforcement: a

[1] David Cox expressed a different view that "peace-enforcement units [are] a mid-point between traditional UN peace-keeping and Chapter VII-style enforcement actions" (Cox 1993, 10).

threat to the peace, a breach of the peace, and an act of aggression (Asada 1995). Peace-enforcement necessitates that the UN surrender its impartiality, in order to authorize coercive measures that would compel a state to halt its violations of international law (Daniel and Hayes with Oudraat 1999). During the Cold War, the United Nations engaged in peace-enforcement on a single occasion: the UN intervention in Korea (1950-53). Since the Cold War ended, the UN has enforced the peace in numerous cases, either by sanctioning the use of force by member states, such as during the 1991 Persian Gulf War against Iraq, or by authorizing an existing peacekeeping mission to employ force, as the United Nations Operation in Somalia (UNOSOM) was permitted to do in November 1992 (Ratner 1995).

Former UN Secretary-General Boutros Boutros-Ghali emphasized that, following the resolution of a conflict, peacekeeping must be complemented by "peace-building," which he defined as "comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people" (UNSG 1992, para. 55). Boutros-Ghali also described the various actions which comprise his vision of peace-building:

> These may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation (UNSG 1992, para. 55).

Peace-building addresses the criticism of traditional peacekeeping operations that they have been "essentially passive and were meant only to defend the status quo by interposing a buffer between hostile parties" (Asada 1995, 36). Some peacekeeping missions, such as the United Nations Peacekeeping Force in Cyprus (UNFICYP) and the

United Nations Interim Force in Lebanon (UNIFIL), have been deployed for decades without demonstrating any potential for resolving the underlying causes of the conflicts.[2] The newer peace-building missions, however, have deployed peacekeeping forces only after a final settlement of the dispute has been reached. In contrast to the traditional peacekeeping of "Chapter VI ½," peace-building missions have been described by Masahiko Asada as "operations in 'Chapter VI ¼,' as they are approaching Chapter VI by encompassing more conflict resolution/prevention elements" (Asada 1995, 38). The United Nations Transition Assistance Group (UNTAG), which was established in April 1989 to ensure the successful implementation of the UN plan for Namibian independence, is considered to be the first UN peace-building operation.[3] Other examples of peace-building missions include the United Nations Angola Verification Mission II (UNAVEM II), the United Nations Observer Mission in El Salvador (ONUSAL), and the United Nations Operation in Mozambique (ONUMOZ). In short, peace-building is concerned with consolidating the peace, even through nation-building, in order to prevent a recurrence of violence.

As illustrated in Table 2-1, there are fifteen United Nations peace support operations deployed on four continents at the present time. Five missions that were deployed during the Cold War are still in the field. While six operations are carrying out traditional peacekeeping, five missions are authorized to enforce the peace when

[2] UNFICYP has been active since March 1964, while UNIFIL has been deployed since March 1978. See the appendix in Moxon-Browne (1998, 202-10).

[3] The combined activities of the United Nations Temporary Executive Authority (UNTEA) and the United Nations Security Force (UNSF) in assisting the transfer of West New Guinea (West Irian) from Dutch to Indonesian administration, from October 1962 until April 1963, resembled a peace-building mission, although UNTEA and UNSF existed as two separate operations in West Irian. See Asada 1995.

necessary. The United Nations is also involved in peace-building activities in nine of its missions. One of these operations, the United Nations Interim Administration Mission in Kosovo (UNMIK), is engaged in nation-building as well.

Table 2-1. United Nations Peace Support Operations (2004)

MISSION	DATE FIRST DEPLOYED	LOCATION	CURRENT PERSONNEL	MANDATE
UN Truce Supervision Organization (UNTSO)	June 1948	Egypt, Israel, Jordan, Lebanon, Syria	154 MILOBS[a], 93 ICP[b], 112 LCS[c]	Traditional peacekeeping
UN Military Observer Group in India and Pakistan (UNMOGIP)	January 1949	Jammu/Kashmir	44 MILOBS, 22 ICP, 43 LCS	Traditional peacekeeping
UN Peacekeeping Force in Cyprus (UNFICYP)	March 1964	Cyprus	1,202 troops, 45 CIVPOL[d], 41 ICP, 106 LCS	Traditional peacekeeping
UN Disengagement Observer Force (UNDOF)	June 1974	Syrian Golan Heights	1,029 troops, 38 ICP, 91 LCS; assisted by 80 MILOBS from UNTSO	Traditional peacekeeping
UN Interim Force in Lebanon (UNIFIL)	March 1978	Southern Lebanon	1,994 troops, 112 ICP, 295 LCS; assisted by 50 MILOBS from UNTSO	Traditional peacekeeping
UN Mission for the Referendum in Western Sahara (MINURSO)	September 1991	Western Sahara	27 troops, 203 MILOBS, 4 CIVPOL, 135 ICP, 107 LCS	Peacekeeping, peace-building
UN Observer Mission in Georgia (UNOMIG)	August 1993	Georgia	118 MILOBS, 11 CIVPOL, 102 ICP, 176 LCS	Traditional peacekeeping

Table 2-1. Continued

MISSION	DATE FIRST DEPLOYED	LOCATION	CURRENT PERSONNEL	MANDATE
UN Interim Administration Mission in Kosovo (UNMIK)	June 1999	Kosovo	N/A[e]	Peace-building, nation-building
UN Mission in Sierra Leone (UNAMSIL)	October 1999	Sierra Leone	11,286 troops, 253 MILOBS, 116 CIVPOL, 305 ICP, 526 LCS	Peacekeeping, peace-enforcement, peace-building
UN Organization Mission in the Democratic Republic of the Congo (MONUC)	November 1999	Democratic Republic of the Congo and the subregion	10,012 troops, 564 MILOBS, 139 CIVPOL, 692 ICP, 940 LCS	Peacekeeping, peace-enforcement, peace-building
UN Mission in Ethiopia and Eritrea (UNMEE)	July 2000	Ethiopia, Eritrea	3,788 troops, 218 MILOBS, 241 ICP, 256 LCS	Peacekeeping, peace-building
UN Mission of Support in East Timor (UNMISET)	May 2002	East Timor (Timor-Leste)	1,549 troops, 60 MILOBS, 129 CIVPOL, 265 ICP, 629 LCS	Peacekeeping, peace-building
UN Operation in Côte d'Ivoire (UNOCI)	April 2004	Côte d'Ivoire	2,915 troops, 121 MILOBS, 60 CIVPOL, 93 ICP, 17 LCS	Peacekeeping, peace-enforcement, peace-building
UN Stabilization Mission in Haiti (MINUSTAH)	June 2004	Haiti	240 troops, 7 CIVPOL, 85 ICP, 38 LCS	Peacekeeping, peace-enforcement, peace-building

Table 2-1. Continued

MISSION	DATE FIRST DEPLOYED	LOCATION	CURRENT PERSONNEL	MANDATE
UN Operation in Burundi (ONUB)	June 2004	Burundi	4,280 troops, 200 MILOBS, 120 CIVPOL, 434 ICP, 170 UNV[f], 446 LCS[g]	Peacekeeping, peace-enforcement, peace-building

Source: United Nations Department of Public Information. Peace and Security Section. 2004. "United Nations Peacekeeping." <www.un.org/Depts/dpko/dpko/index.asp> (Last accessed 9 July 2004).
Note: Current personnel levels are as of May 2004.
[a] MILOBS = Military Observers.
[b] ICP = International Civilian Personnel.
[c] LCS = Local Civilian Staff.
[d] CIVPOL = Civilian Police.
[e] The data on current personnel in UNMIK were not available.
[f] UNV = United Nations Volunteers.
[g] The data for ONUB are for total authorized strength rather than current personnel levels.

Creating a Rapidly Deployable United Nations Peacekeeping Force

The Debate on Rapid Deployment

The lack of a permanent brigade that is capable of responding rapidly to crisis situations has been a major problem for United Nations peacekeeping operations (Johansen 1998). In his June 1992 report, titled *An Agenda for Peace*, UN Secretary-General Boutros Boutros-Ghali recommended that the United Nations should create a rapid reaction force which, under Article 40 of the UN Charter (provisional measures), could be used in peace-enforcement operations (UNSG 1992). The publication of *An Agenda for Peace* sparked a considerable amount of debate on the need for a United Nations peacekeeping brigade. Peter Langille (2000) distinguished between the "practitioners," who called for the strengthening of the existing peacekeeping arrangements, and the "visionaries," who promoted the idea of establishing a United Nations standing brigade or rapid response capability.

The dialogue between Sir Brian Urquhart and François Heisbourg reflects the debate between the visionaries and the practitioners (Urquhart and Heisbourg 1998). Urquhart, the former UN Under-Secretary-General for Special Political Affairs (1974-1986), reiterated the argument, first enunciated by UN Secretary-General Trygve Lie in 1954, for the creation of a standing, volunteer, rapid response brigade of around ten thousand troops under the control of the UN Secretariat (Lie 1954). In Urquhart's view, a rapid reaction brigade would not take the place of traditional peacekeeping forces nor of peace-enforcement missions, but would be deployed as "an immediate practical response to conflict or potential conflict at a point where quite a small effort might achieve disproportionately large results" (Urquhart and Heisbourg 1998, 192). The rapid reaction force would only remain in the field for as long as the acute phase of the crisis, and would be replaced by a regular peacekeeping mission as soon as the UN could organize one. The tasks of a rapid response brigade would include establishing a UN presence in the zone of crisis; preventing an escalation in violence; assisting and monitoring a cease-fire; providing the emergency framework for UN efforts at conflict resolution; securing a base and infrastructure for a subsequent UN peacekeeping operation; ensuring safe areas for persons and groups who are threatened by the conflict; securing humanitarian relief operations; and furnishing the Security Council with primary assessments of the conflict. Furthermore, a rapid reaction force would need sufficient logistical support and arms to ensure its own mobility and security, but would never be assigned military objectives under Chapter VII of the UN Charter.

In response to Brian Urquhart, François Heisbourg concurred on the desirability of a UN rapid response capability, but questioned its feasibility from a military standpoint

(Urquhart and Heisbourg 1998). The UN force would be expected to perform, in an effective manner, a wider array of tasks than national militaries do. The nature of rapid response activities, such as securing safe havens, make it impossible to maintain the United Nations' impartiality with regards to a conflict. The UN would also have to deal with the consequences of pursuing coercive and partial objectives. In addition, rapid deployment would depend on the prompt adoption of resolutions by the Security Council, a dubious assumption given the Council's track record. Since a rapid response capability does not correspond neatly to either Chapter VI or Chapter VI½, establishing such a capability would necessitate redefinitions of UN peace support operations. Moreover, Heisbourg estimated that the annual cost of maintaining a rapid reaction brigade consisting of ten-thousand personnel would exceed $300 million.[4] This figure does not include logistical expenses, nor the costs related to the multinational participation in the brigade. Finally, while Heisbourg admitted that creating a rapid reaction group is better than maintaining the status quo, he argued that improving standby peacekeeping arrangements may be a more realistic option.

A 1993 article by Brian Urquhart on the need for a United Nations volunteer military force has also received considerable criticism (Urquhart 1993; Urquhart et al. 1997). The former Chairman of the United States House of Representatives Committee on Foreign Affairs, Lee Hamilton, suggested that while Urquhart's proposal merits a lengthy consideration, the present UN peacekeeping system should be reformed in the meantime. Hamilton insisted that the United States could assist the UN in ensuring

[4] This figure contrasted sharply with Brian Urquhart's estimate that a light infantry, rapid response brigade consisting of five thousand troops would cost around $380 million per year to maintain and equip. See Urquhart et al. 1997.

collective security by negotiating an Article 43 special agreement to provide military units to the UN on short notice, contributing surplus material to the UN stock of peacekeeping equipment, sharing information, and paying dues on time. Another critique came from Gareth Evans, the former Foreign Minister of Australia, who questioned the capability of a five thousand troop brigade to make a significant impact when much larger interventions have failed.[5] Moreover, Field-Marshall Lord Carver warned that a rapid response force may serve merely as a reinforcement for the weaker side in a conflict, thereby prolonging the fighting and discouraging the parties from deriving an enduring political settlement. Finally, Stanley Hoffmann cautioned that the composition of a rapid reaction brigade "would have to be carefully balanced so as not to allow for any suspicion of great power predominance or of manipulation by an interested regional power" (Urquhart et al. 1997, 149).

There is strong empirical evidence to support the argument that the United Nations should develop a rapid response capability. Johansen (1998) mentioned two cases where the failure to respond promptly had disastrous consequences. First, if the UN had possessed a rapid reaction brigade in July 1990, it could have been deployed at the Kuwaiti border before Iraqi forces invaded. A preventive deployment may have deterred Saddam Hussein from attacking Kuwait, by indicating the resolve of the international community to stand up to acts of aggression. Second, if a UN rapid response force had been available when the fighting began in Rwanda in April 1994, the genocidal

[5] In his 1998 article with François Heisbourg, Brian Urquhart recommended that the rapid response brigade should consist of ten thousand soldiers rather than the five thousand he originally suggested. Robert Johansen advised that a rapidly deployable police or constabulary force consisting of ten to twenty thousand volunteers should be established, and allowed to grow "to ten times that size if demands for UN peace-keeping continue to rise" (Johansen 1998, 106).

massacres of thousands of people may have been prevented by the swift creation of safe havens for refugees.

The United Nations Standby Arrangement System (UNSAS)

In 1993, UN Secretary-General Boutros Boutros-Ghali called for the creation of a system of standby arrangements which would furnish the personnel and equipment needed for the rapid deployment of peacekeeping operations (Langille 2000). The United Nations Standby Arrangements System (UNSAS) is based on each member state making a conditional commitment, under Article 43, to provide a specified amount of resources for UN peacekeeping operations within a predetermined response time. These resources include soldiers, police, and civilian personnel, as well as equipment and specialized services. Participating states maintain their pledged resources on standby mode, and provide the necessary training and preparations in accordance with UN guidelines. The national contingents are expected to deploy within thirty days of a Security Council mandate for a traditional peacekeeping mission, and within ninety days for a complex mission (United Nations Military Division 2001 [hereafter UNMD]).

According to Peter Langille (2000), UNSAS serves four objectives. First, it furnishes the UN with information about the capabilities of member states to contribute to peacekeeping missions at particular points in time. Second, it aids the planning, preparation, and training for peacekeeping operations. Third, the UN is provided with a set of options in the event that certain member states choose not to participate in a mission. Finally, standby arrangements may encourage member states to maintain their commitments to peacekeeping operations.

UN Secretary-General Boutros-Ghali emphasized that not only would UNSAS enable the UN to respond with greater speed and cost-effectiveness, it would assist the

member states in planning and budgeting for their UN peacekeeping contributions (UNSG 1994a). Boutros-Ghali established a Standby Arrangements Management Team within the United Nations Department of Peacekeeping Operations (UNDPKO) in 1994, that would clarify the UN requirements in peacekeeping missions, negotiate with those member states who wished to participate, derive readiness standards, create a peacekeeping resource database, help with mission planning, and formulate new procedures for determining the reimbursement of the member states' equipment that is used in peacekeeping operations (Langille 2000).

By June 1994, twenty-one member states had already pledged a total of thirty thousand personnel as standby resources, and another twenty-seven states had commitments pending (UNSG 1994b). As of 2002, seventy-four states are participating in UNSAS, while another twenty-two states have expressed an interest in joining the system (United Nations Military Adviser 2001; 2002 [hereafter UNMA]). In July 2002, the new "Rapid Deployment Level" in UNSAS came into effect, which is a level of commitment where states pledge resources that can be deployed to a UN mission within thirty to ninety days of the adoption of a Security Council mandate. But so far only two states, Jordan and Uruguay, have agreed to this level of commitment, and between them they have placed a mere six units on standby for UN peacekeeping operations. Thus, UNSAS does not yet provide a rapid deployment capability for United Nations peacekeeping operations.

The Middle Powers Take the Initiative

The middle power states assumed leadership on the issue of enhancing the rapid response capability of UN peacekeeping missions. In 1994, the Dutch government conducted a study on the prospects for establishing a standing, rapid response UN

brigade, and an international conference was held to discuss the study's results (Langille 2000). The Dutch government then released *A UN Rapid Deployment Brigade: 'A Preliminary Study'* in April 1995 (The Netherlands 1995). The report argued that, instead of focusing its attention on strengthening UNSAS, the United Nations should set up a permanent, rapidly deployable force. The recommendations for a standing brigade were similar to those made by Brian Urquhart (1993) and Robert Johansen (1998). The brigade would engage in either preventive action, emergency relief during a humanitarian crisis, or interim peacekeeping during the period between a Security Council decision to deploy a peacekeeping mission, and the arrival of the mission in the field. The report estimated that a brigade numbering five thousand personnel would cost around $300 million annually, and that $500-550 million would be needed for the initial purchasing of equipment. In order to reduce the expenses of equipment procurement, basing, and transportation, the report suggested that the brigade should be "adopted" by an international organization, such as the North Atlantic Treaty Organization (NATO), or by one or more member states. Although the Dutch proposal received some support, most states rejected the idea of a standing UN brigade, and refused to pay even the modest expenses suggested by the Dutch. In the words of Peter Langille, "it was clear . . . that only a less binding, less ambitious arrangement would be acceptable, at least for the immediate future" (Langille 2000, 223).

In September 1995, the Canadian government presented the United Nations with a report titled *Towards a Rapid Reaction Capability for the United Nations* (Canada 1995). The study provided twenty-one recommendations for enhancing the United Nations' peacekeeping mechanisms in the short to medium term, and five suggestions for

peacekeeping innovations in the long term. The Canadian report advised that the UN should develop a rapid reaction capacity, and highlighted the requirements for such a capability: "an early warning mechanism, an effective decision-making process, reliable transportation and infrastructure, logistical support, sufficient finances, and well-trained and equipped personnel" (Langille 2000, 223). The study identified the need for a permanent, multinational, rapid response headquarters, consisting of thirty to fifty personnel, that would manage the prompt deployment of peacekeepers. It was suggested that the UN should create multinational groups, and give each group the responsibility for a different function related to peace support operations. In order to do so, the UN would need to persuade member states to place specialized "vanguard" units on standby in their home countries, and link them, through UNSAS, to the rapid response headquarters. In contrast to the Dutch study, the Canadian initiative supported the improvement of the existing peacekeeping system, including UNSAS. The intention of the Canadian proposal was to launch a cooperative, pragmatic, low-cost effort at reforming United Nations peacekeeping.

A third proposal came from the government of Denmark, which announced, in January 1995, that it would seek the support of other states in creating a multinational working group to study the feasibility of establishing a UN rapid reaction force (Denmark 1995a). The proposal was the brainchild of Hans Hækkerup, the Danish Minister of Defence, whose leadership would prove to be instrumental for the creation of a UN rapid deployment capability.[6] Between May and August 1995, Denmark hosted four international seminars in which twelve middle power states and the UNDPKO

[6] E-mail interview of Dr. Peter Viggo Jakobsen, the Head of the Department of Conflict and Security Studies at the Danish Institute for International Studies, Copenhagen, Denmark, September 29, 2003.

participated (Langille 2000).[7] The *Report by the Working Group on a Multinational UN Standby Forces High Readiness Brigade*, which was issued in August 1995, argued that it was possible for a group of member states to combine their contributions to UNSAS in order to create a Stand-by High Readiness Brigade for United Nations Operations (SHIRBRIG), that would be deployable, at a short notice of only fifteen to thirty days, on peacekeeping operations for up to 180 days (Denmark 1995b; United Nations Stand-by High Readiness Brigade 2001a [hereafter UNSHIRBRIG]). The brigade would be responsible for carrying out peacekeeping and humanitarian tasks under Chapter VI of the UN Charter, and would be required to protect UN agencies and personnel, as well as NGOs, in the field.

The Danish-led multinational study called on participants to adopt standardized training and equipment, as well as hold joint exercises, in order to facilitate the deployment of the brigade (Denmark 1995b; UNSHIRBRIG 2001a). Since participation in peacekeeping operations would be voluntary for member states, the multinational report emphasized that a "brigade pool" should be established, which would consist of a surplus of units beyond the force requirement for the brigade when it is deployed. The brigade pool would ensure that the brigade could be deployed with sufficient resources even if some member states abstained from participating in a mission. The report also stressed that the brigade would need to be self-sufficient for a period of sixty days. Furthermore, the participating states would need to cooperate in providing logistics to the brigade, including forward supply bases, because the brigade would have to be capable of

[7] The middle power participants were Argentina, Belgium, Canada, the Czech Republic, Denmark, Finland, Ireland, the Netherlands, New Zealand, Norway, Poland, and Sweden. See Langille 2000, fn.24.

operating in an environment where support from the host state is lacking, or where the infrastructure is either in poor condition or non-existent.

The foreign ministers of the Netherlands, Canada, and Denmark viewed these three studies as making a mutual contribution to the development of a United Nations rapid response capability (Langille 2000). During the commemoration of the United Nations' fiftieth anniversary, Canadian Foreign Minister André Ouellet and Dutch Foreign Minister Hans Van Mierlo organized a meeting of ministers from nine middle powers and small states in order to rally support for a UN rapid reaction force.[8] Canada and the Netherlands then set up an informal group called the "Friends of Rapid Deployment" (FORD), which was co-chaired by the Canadian and Dutch permanent representatives to the UN. The objective of FORD was to promote the idea of a UN rapid deployment brigade among the major powers, and it used the Canadian report as the starting point for discussion. By the autumn of 1996, FORD had expanded to include twenty-six states, but only two members, Germany and Japan, were major powers.[9] FORD had also begun cooperating with the United Nations Secretariat and the UNDPKO. The UN Secretary-General Boutros Boutros-Ghali had expressed in his 1995 *Supplement to An Agenda for Peace* that he had "come to the conclusion that the United Nations does need to give serious thought to the idea of a rapid reaction force" (UNSG 1995, para. 44).

FORD's original focus was on generating support for the proposals of the 1995 Canadian study, namely, the creation of a rapidly deployable headquarters, the

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[8] Ministers from Australia, Canada, Denmark, Jamaica, the Netherlands, New Zealand, Nicaragua, Senegal, and Ukraine participated in the meeting. See Langille 2000, fn.33.

[9] The members of FORD were Argentina, Australia, Bangladesh, Brazil, Canada, Chile, Denmark, Egypt, Finland, Germany, Indonesia, Ireland, Jamaica, Japan, Jordan, Malaysia, the Netherlands, New Zealand, Nicaragua, Norway, Poland, Senegal, South Korea, Sweden, Ukraine, and Zambia. See Langille 2000.

improvement of UNSAS, and the elaboration of the concept of "vanguard" units (Langille 2000). But since the SHIRBRIG model described in the Danish-led multinational report also incorporated elements of the vanguard concept, FORD soon switched its emphasis toward promoting the Danish initiative. Dr. Peter Viggo Jakobsen, the Head of the Department of Conflict and Security Studies at the Danish Institute for International Studies, indicated that, while the Dutch proposal for a UN standing army would have been preferable to a standby brigade, it was not a politically feasible plan like SHIRBRIG.[10] FORD assisted in the enhancement of UNSAS, and helped the UNDPKO set up a Rapidly Deployable Mission Headquarters (RDMHQ), consisting of military and civilian personnel, as proposed in the Canadian study. The rapid deployment initiative of FORD encountered some roadblocks, however. Several of the non-aligned states expressed their displeasure that they were not included in FORD, and accused the latter of being an illegitimate group. The non-aligned states also raised the question of equitable representation in both SHIRBRIG and the RDMHQ, and were particularly vocal at the annual spring meetings of the UN Special Committee on Peacekeeping Operations (also known as the Committee of 34).

Despite the criticism from the non-aligned states, the like-minded middle powers carried on full steam with the SHIRBRIG initiative. The process of setting up SHIRBRIG involved the signing of four documents (UNSHIRBRIG 2001a; 2001b; 2001c). On December 15, 1996, Austria, Canada, Denmark, the Netherlands, Norway, Poland, and Sweden signed the first document, the Letter of Intent (LOI) to cooperate on establishing a framework for SHIRBRIG that would be based on the recommendations of the Danish-

[10] E-mail interview of Dr. Peter Viggo Jakobsen, September 29, 2003.

led multinational study. By signing the LOI, a state becomes an "Observer Nation" in the Steering Committee, the executive body of SHIRBRIG. The second document that was signed was the Memorandum of Understanding on the Steering Committee (MOU/SC). The states which signed this document were permitted to participate in the development of SHIRBRIG policies in the Steering Committee.

The third document was the Memorandum of Understanding on SHIRBRIG (MOU/SB). In signing this document, a state agrees to commit troops to the brigade pool. The final document was the Memorandum of Understanding on the Planning Element (MOU/PLANELM). The planning element (PLANELM), located in Høvelte Kaserne, Denmark, is a permanent staff of thirteen military officers drawn from ten states. Each state which has signed the MOU/PLANELM agrees to station one or two staff officers in the PLANELM. In its pre-deployment stage, the PLANELM is responsible for deriving standard operating procedures for SHIRBRIG, working on concepts of operations, and organizing and conducting joint exercises. During deployment, the PLANELM is expanded to include eighty-five officers and non-commissioned officers, and it serves as the hub of the brigade headquarters staff numbering 150 personnel. At full deployment, SHIRBRIG may mobilize four to five thousand soldiers, who are assigned to either a headquarters unit with communication facilities, infantry battalions, reconnaissance units, medical units, engineering units, logistical support, helicopters, or military police (UNSHIRBRIG 2001c).

At present, twenty-one states are participating in SHIRBRIG at four different levels of membership (UNSHIRBRIG 2001b). Most of these countries may be classified as middle powers, though some of them are small states. Ten countries have signed all four

SHIRBRIG documents, and are considered to be full members: Argentina, Austria, Canada, Denmark, Italy, the Netherlands, Norway, Poland, Romania, and Sweden. Finland has signed all documents except the MOU/PLANELM. Lithuania and Spain have signed the LOI and the MOU/SC. Two states, Portugal and Slovenia, have signed the LOI solely, and thus serve as observer nations in the Steering Committee. Although they have not yet signed the LOI, Chile, the Czech Republic, Hungary, Ireland, Jordan, and Senegal are also designated as observer nations because they have expressed interest in the SHIRBRIG initiative, and may sign one or more SHIRBRIG documents in the future.

The Steering Committee has determined six criteria for participation in SHIRBRIG which must be met by future members (UNSHIRBRIG 2001c). First, SHIRBRIG members must be small or middle powers. According to Mette Kjuel Nielsen, the former Chairman of the Steering Committee, "SHIRBRIG is the perfect vehicle for smaller and middle-sized, like-minded nations. Deploying with countries you know in advance enhances the security."[11] The Steering Committee does not expect the permanent members of the UN Security Council to express any interest in joining SHIRBRIG, since they are capable of deploying brigade-size units on their own. But the Steering Committee does view the political and military support of the great powers as essential for the successful deployment of SHIRBRIG. For example, Nielsen argued that SHIRBRIG would benefit if a strategic transportation agreement with the United States could be arranged.[12]

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[11] E-mail interview of Ms. Mette Kjuel Nielsen, the Head of the Department for Russia, CIS, OSCE and the Balkans at the Danish Ministry of Foreign Affairs, and the former Danish Deputy Permanent Secretary of Defence (1998 – 2001), Copenhagen, Denmark, October 11, 2003.

[12] Ibid.

Second, members of SHIRBRIG must also participate in UNSAS and have peacekeeping experience. Third, SHIRBRIG members must be able to pay for their participation in the brigade. The costs of participation are minimal. Members pay for the training and preparation for deployment of their own national units, but once deployment begins, the UN pays for all of SHIRBRIG's expenses. The SHIRBRIG members share the costs of the PLANELM and the Steering Committee. The budget of the PLANELM was projected to be $440,000 in 2002, and the costs were shared by the ten full members (UNSHIRBRIG 2001c). Fourth, members need to make capable units available to SHIRBRIG at the required level of readiness. Fifth, the Steering Committee encourages diversity in SHIRBRIG's membership, hence new members should represent different regions of the world. Finally, prospective members must be willing to accept each of the four documents which constitute the framework of SHIRBRIG.

SHIRBRIG in Action

During the ninth meeting of the Steering Committee in Stockholm on October 7-8, 1999, the member states decided that SHIRBRIG had reached the necessary level of readiness for UN deployment (UNSHIRBRIG 2001c). On December 17, 1999, the Steering Committee informed UN Secretary-General Kofi Annan that SHIRBRIG would be made available to the United Nations as of the end of January 2000. The UN made immediate use of SHIRBRIG's services. On April 26, 2000, the UN inquired informally if SHIRBRIG would be available for a possible deployment as part of the United Nations Interim Force in Lebanon (UNIFIL), which had been stationed in Southern Lebanon since March 1978. SHIRBRIG conducted a fact-finding mission in the UNIFIL area of operations on May 16-17, 2000, and then issued a declaration on June 13 that it was available for deployment in Southern Lebanon.

But on June 16, SHIRBRIG received another informal inquiry from the UN if the brigade would be available for a mission in Ethiopia and Eritrea. The two countries, which had engaged in warfare in 1998-99 due to a border dispute, had resumed fighting on May 12, 2000 (United Nations Department of Public Information 2001a [hereafter UNDPI]). The Organization of African Unity (OAU), with the assistance of the European Union and the United States, had brokered the Agreement on Cessation of Hostilities between Ethiopia and Eritrea, which was signed by both parties to the conflict in Algiers on June 18.

In order to preserve the peace, the parties called on the United Nations and the OAU to establish a peacekeeping operation. On June 30, UN Secretary-General Annan informed the Security Council that he was going to send liaison officers to Addis Ababa and Asmara, to be followed by the gradual deployment of one hundred military observers to each country over the next two months, until a peacekeeping operation could be assembled (UNSG 2000b). The Security Council then issued Resolution 1312 (United Nations Security Council 2000a [hereafter UNSC]) on July 31, announcing the creation of the United Nations Mission in Ethiopia and Eritrea (UNMEE). UNMEE was authorized to deploy one hundred military observers and a civilian support staff until a peacekeeping force could be established. Its mandate was to perform a liaison function with the parties to the conflict, visit the parties' military headquarters and other units in the mission's area of operations, implement the mechanism for verifying the cessation of hostilities, prepare for the creation of a Military Coordination Commission as stipulated in the Agreement on Cessation of Hostilities, and participate in planning for a future peacekeeping mission.

The Security Council asked Secretary-General Annan to proceed with preparations for a peacekeeping mission. In his report to the Security Council on August 9, 2000, the Secretary-General described the mandate of an expanded UNMEE, and recommended that 4,200 military personnel, including 220 military observers, three infantry battalions, and support units, be deployed to monitor the ceasefire and the border delineation between Ethiopia and Eritrea (UNSG 2000c). On September 15, in response to the Secretary-General's report, the Security Council issued Resolution 1320 authorizing UNMEE to deploy up to 4,300 troops until March 15, 2001 (UNSC 2000b).

Upon receiving authorization from the Security Council, SHIRBRIG sprung into action (UNSHIRBRIG 2001c). The SHIRBRIG Commander's conference, held in Norway on September 25-29, 2000, focused on the Horn of Africa. On October 10, the PLANELM provided the Commander with a mission analysis briefing. In November and December, SHIRBRIG units were deployed to Ethiopia and Eritrea. The SHIRBRIG Commander was appointed as UNMEE Force Commander (UNSHIRBRIG 2001a). In the meantime, the parties in conflict were engaged in peace talks brokered by President Abdelaziz Bouteflika of Algeria. On December 12, 2000, Ethiopia and Eritrea signed a comprehensive Peace Agreement in which they promised to terminate military hostilities permanently, and to refrain from threatening or using force against each other (UNDPI 2001a). In May and June of 2001, SHIRBRIG pulled out of Ethiopia and Eritrea, having completed its peacekeeping tasks successfully during the six-month deployment. A series of Security Council resolutions have extended UNMEE's mandate until the present time, as the delineation and demarcation of the Ethiopia-Eritrea border is still ongoing. There

are presently more than 4,100 military personnel deployed with UNMEE, coming from over three dozen countries (UNDPI 2001b).

Following its withdrawal from Ethiopia and Eritrea, SHIRBRIG entered a reconstitution phase which lasted around seven months. In this phase, the Steering Committee of SHIRBRIG evaluated the lessons that were learned from the UNMEE mission (UNSHIRBRIG 2001c). First, SHIRBRIG must increase the size of its brigade pool in order to provide for greater redundancy and geographic representation. Second, SHIRBRIG members need to ensure that their units are available for potential deployments. Third, SHIRBRIG should improve its direct liaison and early integration with the United Nations. Fourth, SHIRBRIG must adjust its force structure in order to improve its headquarters unit in the mission area. Finally, SHIRBRIG concepts and key documents need to be updated, and should incorporate the lessons learned from the UNMEE experience. In a September 2003 e-mail interview, Dr. Peter Viggo Jakobsen suggested that SHIRBRIG "should be expanded to include operations beyond traditional peacekeeping. The full spectrum of peace operations should be included and [SHIRBRIG] should have a strategic lift capacity."[13]

On October 15, 2001, the Presidency of the SHIRBRIG Steering Committee informed the Security Council that SHIRBRIG would once again be made available to the United Nations as of January 1, 2002 (UNSHIRBRIG 2001c). SHIRBRIG is currently in a non-deployment mode. It is surprising that SHIRBRIG has not been redeployed since its successful participation in UNMEE. According to Dr. Jakobsen, the main reason for SHIRBRIG's inactivity may be due to the fact that "it is very difficult to find suitable

[13] E-mail interview of Dr. Peter Viggo Jakobsen, September 29, 2003.

'traditional peacekeeping [operations]'."[14] Mette Kjuel Nielsen concurred that there has been a lack of appropriate missions for SHIRBRIG participation, but also added that the UN Security Council has shown little interest in engaging in traditional peacekeeping operations over the past few years, and that the key SHIRBRIG members—Canada, Denmark, and the Netherlands—have been deeply involved in other missions.[15]

The U.S. Reaction to the SHIRBRIG Initiative

The United States acquiesced to the formation and deployment of SHIRBRIG. Since the end of the Cold War, the U.S. has encouraged the efforts of the United Nations to reform its peacekeeping operations. Even former President Ronald Reagan, who was an ardent opponent of the United Nations during his presidency, supported the reform of UN peacekeeping. In a December 1992 speech, Reagan called for the creation of a standing UN "army of conscience," that would be capable of using force to establish humanitarian sanctuaries (Albright 1993).

The Democrats have also perceived the need for reforms in UN peacekeeping missions. In August 1992, U.S. presidential candidate Bill Clinton expressed his support for the establishment of a voluntary UN rapid deployment brigade (Langille 2000). After the Clinton administration came into power, U.S. Secretary of State Warren Christopher notified UN Secretary-General Boutros Boutros-Ghali, in February 1993, that the United States would back the development of a UN rapid response force. It should be noted that the Clinton administration did not support the formation of a standing United Nations army. This policy position echoed the sentiments of the U.S. Congress and past

[14] Ibid.

[15] E-mail interview of Ms. Mette Kjuel Nielsen, October 11, 2003.

presidential administrations. Instead, the Clinton administration proposed that the UN should set up a rapidly deployable headquarters team, a logistics support unit, a database of national military units that would be available for deployment, a trained civilian reserve corps, and a modest airlift capability. The Clinton administration believed that, by establishing a capability for rapid reaction, the United Nations would be able to prevent the massive violations of human security that could result from delays in deployment after the authorization of a mission (Taylor, Daws, and Adamczick-Gerteis 1997).

The United States is a member of UNSAS, and has backed the recommendations of the "Brahimi Report" on UN peacekeeping reform (United States Department of State 2000). The "Brahimi Report" was issued on August 23, 2000, by the independent Panel on United Nations Peace Operations, which was chaired by Ambassador Lakhdar Brahimi of Algeria, and consisted of ten peacekeeping experts appointed by UN Secretary-General Kofi Annan. Among the report's many recommendations was a call for UN peacekeeping missions to become rapidly deployable (Panel on United Nations Peace Operations 2000). The United States has also participated in UNMEE, albeit in a token manner by contributing a total of seven military observers (United States Department of State 2001). The U.S. government has not issued any official statements regarding the establishment and deployment of SHIRBRIG. But one can conclude that Washington acquiesced to the SHIRBRIG initiative because the brigade corresponds to American preferences, by enhancing the rapid response capability of the United Nations without being a standing army.

Conclusion

The SHIRBRIG initiative demonstrates how the middle powers were able to exercise strong leadership on an issue of human security. The middle powers addressed

the need for a United Nations rapid response capability, the lack of which has had dire consequences for the security of people in numerous conflicts around the globe. This human security initiative illustrates the effectiveness of fast-track diplomacy. Canada, Denmark, and the Netherlands used their technical expertise in the area of peacekeeping to launch an initiative to create a UN rapid deployment brigade, and employed their entrepreneurial skills to build a coalition—the Friends of Rapid Deployment—that would support and promote their proposal. A Stand-by High Readiness Brigade for United Nations Operations was created, and was deployed successfully in the UN Mission in Ethiopia and Eritrea. Mette Kjuel Nielsen emphasized the essential contributions of middle power leadership for the creation of a UN rapid response capability:

> In my opinion, Denmark and Canada have been the core [leaders], together with Holland. Without the driving force and total commitment of the Danish Defense Minister Hans Haekkerup (who fostered the idea), SHIRBRIG would not have been a reality. He convinced the UN Secretary General Kofi Annan of the idea, he pushed for the letters of intent to be signed, and when it came to all out difficulties over the first deployment, he spoke on the phone and held a number of meetings with his colleagues to make it happen.[16]

A thorough evaluation of whether SHIRBRIG will be a significant guarantor of human security in the future requires further deployments of the brigade. Nevertheless, fast-track diplomacy by the middle powers established a rapid response capability for United Nations peacekeeping, which supported the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy. The SHIRBRIG initiative did not threaten the core national interest of the United States. In fact, the U.S. acquiesced to the formation of SHRIBRIG, since the initiative created a standby brigade

[16] Ibid.

rather than a standing army. Thus, the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution was also upheld. The hypotheses will be tested further in the next chapter, through an analysis of the initiative to ban anti-personnel landmines.

CHAPTER 3
BANNING ANTI-PERSONNEL LANDMINES: THE OTTAWA PROCESS

Introduction

The success of the "Ottawa Process" in achieving a swift ban on the use, stockpiling, production, and transfer of anti-personnel landmines (APLs) was astonishing. Starting in October 1996, with Canadian Foreign Minister Lloyd Axworthy's call for an international convention banning APLs, it took less than two-and-a-half years for the Ottawa Convention to come into force in March 1999. The results of the Ottawa Convention were also amazing. By June 2000, the number of states that produce APLs had dropped by two-thirds, and thirty-three out of thirty-four APL exporting countries had issued either a ban or a moratorium on exports (Gwozdecky and Sinclair 2001). Moreover, APLs had become discredited as weapons of war.

The worldwide ban on anti-personnel landmines would have never been achieved without the skilled leadership of the middle powers. This study investigates the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy. The APL ban initiative demonstrates that the middle powers are not confined to being mere followers of the superpower's lead in the realm of global security, as some scholars argue. But as the hegemon of the post-Cold War international system, the United States is capable of wielding considerable influence on the outcome of a human security initiative. It is certain that Washington would never acquiesce to any security proposal that would conflict with the core national interest of the U.S.: the

security of the American territory, institutions, and citizenry. Therefore, this study tests an additional hypothesis: that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution.

The first section of this chapter discusses the international trade in anti-personnel landmines, the usefulness of APLs for national militaries, and the horrible consequences of the global proliferation of APLs for civilian populations. This is followed by an analysis of the campaign to ban APLs. The dynamics of the Ottawa Process, the reaction of the United States, and the results of the initiative are explored. The chapter concludes with an examination of whether the two hypotheses are supported by the findings of the case study.

The Proliferation of Anti-Personnel Landmines

The International Trade in Landmines

The Arms Project of Human Rights Watch estimated that five to ten million APLs have been manufactured in recent decades (Arms Project of Human Rights Watch and Physicians for Human Rights 1993 [hereafter HRW/PHR]). The global production of APLs, excluding delivery systems and accessories, has been assessed by the Arms Project to be worth $50-$200 million annually. Evidence suggests that China, Italy, and the former Soviet Union have been the largest producers of APLs, based on the numbers of their mines found around the world. If anti-personnel submunitions are included, the United States would probably rank as the largest or second-largest producer.

More than 340 types of landmines have been developed by over one hundred companies and government agencies in fifty-two countries (Vines 1998). The Arms Project ranked the leading APL developers over the past quarter-century in terms of the

number of APL models they have created. With thirty-seven APL models, the United States has been the leading innovator in the landmine industry, followed closely by Italy (thirty-six models) and the former Soviet Union (thirty-one). Other major players in the landmine industry have been Sweden (twenty-one models), Vietnam (eighteen), East and West Germany combined (eighteen), Austria (sixteen), the former Yugoslavia (fifteen), France (fourteen), China (twelve), and the United Kingdom (nine).

The international landmine trade has tended to be a confidential affair, with few states releasing import, export, and procurement data. Since direct sources of data have been limited, the Arms Project drew on landmine deployment data in order to discern which states produce and export APLs. At least forty-one companies and government agencies in twenty-nine countries have exported APLs (HRW/PHR 1993). Most experts have concurred that China, Italy, and the former Soviet republics have been leading exporters, although there have been disagreements about each country's individual ranking. A report by the U.S. Defense Intelligence Agency and the U.S. Army Foreign Science and Technology Center (1992) claimed that the former East Germany, Italy, the former Soviet Union, and the former Czechoslovakia have been the sources of the majority of landmines purchased by developing countries in the past fifteen to twenty years. The report also highlighted China, Egypt, Pakistan, and South Africa as new players on the APL export market. According to the Arms Project, Belgium, Chile, Greece, Israel, Portugal, Singapore, Spain, and the former Yugoslavia have also become significant APL exporters in recent years (HRW/PHR 1993).

The U.S. State Department downplayed the importance of American APL exports, arguing both that the United States was a selective exporter of limited quantities of

landmines, and that less than fifteen percent of the APLs in countries plagued with uncleared landmines originated in the U.S. (United States Department of State 1993). But the Arms Project claimed that there was American complicity, by indicating that a figure of fifteen percent would still rank the U.S. among the top five exporters of landmines worldwide (HRW/PHR 1993). Since 1969, the United States has exported over 4.3 million APLs, with the most exports, 1.4 million APLs, occurring in 1975 (Vines 1998). Exports of APLs to Cambodia, Chile, and Iran in 1975 made up one-third of all reported APL sales to foreign militaries in the twenty-four year period from 1969 to 1993. Other major purchasers of U.S. landmines were Thailand, El Salvador, Malaysia, and Saudi Arabia. American sales to foreign militaries were considerably less in the 1980s, numbering around seventy thousand APLs. Half of these mines were sold to El Salvador, while Lebanon and Thailand were other leading customers.

Alex Vines (1998) cautioned that the U.S. government data provide no information about the licensed production of American APL models abroad, the unauthorized copying of American APL models in other states, the covert shipments of APLs during the Cold War to insurgent groups, and the deployment of APLs by the U.S. military in conflicts such as the Vietnam War and the Persian Gulf War. The Arms Project recognized that the United States has not been a significant APL exporter since the 1970s (HRW/PHR 1993). Furthermore, there are alternative explanations why contemporary mine clearers encounter so many American-made APLs, such as the possibility that many of those mines have been deployed since the 1970s, some of the mines are copies of American models that are produced by other states, countries which originally purchased American APLs may have resold them to other states, and numerous APLs were shipped covertly

by the U.S. government to rebel groups in countries like Afghanistan, Angola, Cambodia, and Nicaragua. Nevertheless, the American landmine industry has remained a profitable business in the post-Cold War era. Between 1985 and 1995, Alliant Techsystems, the largest manufacturer of APLs in the U.S., made $350 million in landmine sales, while its subsidiary Accudyne, the third largest producer, raked in $150 million (Capellaro and Cusac 1997).[1]

The Military Use of Landmines

Military forces hail the efficacy of landmines as defensive weapons. Minefields provide a semi-permanent barrier that can be used to protect national borders, military and economic assets, and soldiers (Roberts and Williams 1995). In an era when conventional warfare requires speedy maneuvers, landmines can hinder the movement of an enemy and deny it access to key tactical positions (HRW/PHR 1993). Landmines may also be used to direct enemy soldiers to move into a vulnerable area, where they can be defeated more easily in battle. In order to breach a minefield, soldiers must engage in the perilous and time-consuming task of mine clearance, thus, the deployment of APLs and anti-tank mines can slow down the advance of an enemy army. Some landmines, such as the Swedish L1-11 and the U.S. M14, are designed to maim victims without killing them, so that high casualty rates will burden an enemy's medical facilities as well as reduce the morale of the troops. Landmines have been referred to as a "force-multiplier," because their effects enhance the usefulness of other weapons (Roberts and Williams 1995). Proponents of landmines tend to emphasize their utility and cost-effectiveness as a

[1] Hughes Aircraft, a subsidiary of General Motors, is the second largest landmine manufacturer in the U.S. after Alliant Techsystems. See Capellaro and Cusac 1997.

weapon. They argue that if landmines are directed toward military targets, civilian casualties can be limited.

But military forces have increasingly been using landmines as offensive weapons. In order to disrupt an enemy's logistics, scatterable mines may be dropped by aircraft between an advancing army and its supply base. Landmines can also be used by an attacking army in order to force a defending army to fight from a tactically-inferior position. An advancing army may use landmines to secure its flanks, seal off approach routes, strengthen a temporary defense, or halt a counter-attack (HRW/PHR 1993). In contrast to the defensive use of landmines as tactical weapons in support of other weapon systems, the offensive deployment of landmines turns them into strategic weapons that can overcome the low force-to-space ratio that characterizes guerrilla warfare. Shawn Roberts and Jody Williams summarized the dreadful purposes for which landmines have been utilized as offensive weapons:

> Just as landmines have been used to deny access of terrain to enemy troops, they have been deployed to depopulate whole sections of countries, to disrupt agriculture, to interrupt transportation, to damage economic infrastructure, and to kill and maim thousands of innocent civilians. Landmines have been used by both regular and irregular armies to undermine the social and economic fabric of society. They have been deployed to make vital economic assets useless and cripple the economic and social redevelopment of these countries after the wars are over (Roberts and Williams 1995, 5).

A Global Contamination

It has been estimated that more than one hundred million landmines are deployed worldwide at present (Morrison and Tsipis 1997). Moreover, between two and five million new landmines are laid each year (American Medical Association 1997 [hereafter AMA]). Most countries have been affected by the scourge of APLs, whether they have experienced landmine incidents on their own soil, or have had peacekeepers and civilian

aid workers killed by landmines abroad. The most adversely affected region is Southern Africa. According to Alex Vines (1998), there are at least twenty million mines in the region today, and eleven of the fourteen member states of the Southern Africa Development Community (SADC) have reported landmine incidents. Since the first mine casualty was recorded in Angola in 1961, there have been over 250,000 victims of landmines in Southern Africa. The whole region of Sub-Saharan Africa has up to thirty million mines laid in eighteen countries (HRW/PHR 1993). The most severely mined countries are Angola, Djibouti, Eritrea, Ethiopia, Malawi, Mozambique, Somalia, and Sudan.[2]

Eight Middle Eastern countries have a total of seventeen to twenty-four million landmines. Kuwait, Iran, and Iraq are the most heavily mined countries. There are between fifteen and twenty-three million landmines in eight states in East Asia, of which Cambodia and Vietnam are the most severely affected.[3] South Asia has between thirteen and twenty-five million landmines. The vast majority of these mines are in Afghanistan, and along the borders between Afghanistan, China, India, and Pakistan. Although Europe has relatively less of a landmine crisis, with three to seven million mines laid in thirteen countries, it is the region that has experienced the most rapid increase in the number of mines. This was due mainly to the conflicts in the Balkans, as the landmine problem is most severe in the former Yugoslav states of Bosnia-Herzegovina and Croatia. There are also between three hundred thousand and one million landmines in eight countries in

[2] For a discussion of the landmine problem in Angola, see Winslow 1997. For an analysis of the landmine situation in Mozambique, see the Human Rights Watch Arms Project and Human Rights Watch/Africa 1994. To read about the difficulties of demining in Mozambique, see Purves 2001.

[3] Paul Davies and Nic Dunlop (1994) provided an illustrated description of the impact of landmine warfare on communities in Cambodia.

Latin America. The worst trouble spots are in Nicaragua and El Salvador (HRW/PHR 1993).

The Devastating Effects of Anti-Personnel Landmines

Anti-personnel landmines are also known as "weapons of indiscriminate mass destruction," due to the deadly consequences they have for both combatants and non-combatants (Capellaro and Cusac 1997). Up to two thousand people around the world are maimed or killed by landmines every month (Garner 1997). This rate of landmine-related casualties has doubled since 1980 (AMA 1997). According to the International Committee of the Red Cross (ICRC), landmines have claimed more victims than either chemical or nuclear weapons (Garner 1997).

Landmines leave a significant psychological impact on their victims, and place tremendous demands on a state's health care system. Amputation or blindness resulting from an APL may very well end the working life of a peasant. The victim's children are often forced to leave school so that they can work full-time in order to supplement the family income. Most medical facilities in mine-contaminated countries are poorly-equipped to deal with landmine casualties, which results in a higher rate of amputations and deaths (Roberts and Williams 1995). Prostheses are prohibitively expensive for many victims. The ICRC recommended that a prosthesis should be replaced every six months for a child, and every three to five years for an adult. Former United Nations Secretary-General Boutros Boutros-Ghali (1994) calculated that a ten-year-old victim with a life expectancy between fifty to sixty years would need around twenty-five prostheses in their lifetime. With each artificial limb costing approximately $125, the victim would need to spend around $3,125 in their lifetime on prostheses.

In addition to the tragic losses in human lives, landmines have economic and social costs. The presence of APLs hinders a country's efforts to rebuild following a war, since mine clearance is a dangerous and time-consuming process. Roads, bridges, power lines, schoolyards, and farmlands are popular targets of mine-layers (Fields 2001). The most severe proliferation of landmines is in less-developed countries, which also tend to be the most dependent on the use of land for the purpose of economic development (Faulkner 1997). The random and unmapped placement of APLs renders prime agricultural land unusable and uninhabitable. The grazing of livestock becomes hazardous because herds, and the people who tend them, may wander onto unmarked minefields in search of better feeding grounds. The collection of drinking water and firewood is especially perilous when water sources and forests are mined. Women and children are the ones who often perform these tasks, and thus become victims of APLs.

Countries with a limited infrastructure may be the most affected by the deployment of APLs (Roberts and Williams 1995). The mining of dams and electrical installations may hamper the ability of a country to generate enough power for reconstruction after a conflict. Markets are disrupted because people find it too dangerous to transport goods and services on roads that have been mined. These disruptions have a negative impact on employment, and produce inflation due to scarcities in goods and services. Furthermore, the presence of landmines amplifies the effects of droughts, because humanitarian relief agencies find it too treacherous to deliver food aid over mine-infested roads. In fact, countries with acute landmine problems tend to become an economic burden on the international community; of the sixteen countries who received United Nations humanitarian assistance in 1993, thirteen were contaminated with landmines (Roberts and

Williams 1995). With the exception of Kuwait, states with severe landmine problems have relied on financial assistance from the global community to fund demining programs.

The heavy deployment of landmines has harsh effects on the environment (Roberts and Williams 1995). Wherever the placement of landmines has reduced the amount of available agricultural land, populations are forced to over-utilize the remaining land, thereby hastening its degradation. Populations may also turn from mined agricultural lands to the forests for their livelihood, thus causing an accelerated rate of deforestation that impacts the ecological balance of flora and fauna. Moreover, landmines cause the displacement of populations, as people flee heavily-mined areas. These refugees often head to over-crowded cities, where they live in miserable conditions without finding employment. The resettlement of refugees after the end of a conflict may produce many APL casualties, as people return to their villages and lands unaware that these locations have been mined in their absence. Landmines also kill many wild animals, some of which are rare species. In addition, the mining of agricultural lands may force people to turn to hunting in order to ensure their food supply, further endangering the survival of animal species (National Wildlife Federation 2000).

Post-conflict demining activities are extremely dangerous. In Kuwait, where around seven million mines were laid during the Gulf War, more than eighty mine clearers have been killed or injured. More than thirty deminers have lost their lives in Afghanistan. Humanitarian mine clearance requires the removal of every mine in a minefield. In order to be deemed successful, the mine clearance rate must be over ninety-nine percent, and preferably over 99.9 percent (Boutros-Ghali 1994). There has been little improvement in

mine clearance techniques since the 1940s, as more money has been spent instead on devising new means for militaries to breach minefields. As a result, armed forces possess the wrong equipment and lack the necessary training for humanitarian demining. The removal of APLs is done by hand, with one specialist using a metal detector, and another specialist down on their knees probing the ground with a stick. Instead of achieving a ninety-nine percent clearance rate, the detection equipment that is currently used is only sixty to ninety percent effective in locating APLs that are made with a minimum of metal. Mines that are manufactured from plastic cannot be detected with this equipment. Furthermore, mine clearance is often hampered by booby traps that were set for the purpose of preventing demining. Locating APLs is even more difficult when minefields have not been mapped, as required under the 1980 Convention on Certain Conventional Weapons (CCW). Even if maps have been made, the exchange of territory during battle may result in the unrecorded placement of new mines on the minefields by enemy soldiers. In addition, changes in weather conditions, such as floods, may move mines around (Roberts and Williams 1995).

The primary responsibility for demining lies with the country affected (Boutros-Ghali 1994). The United Nations encourages the training of local civilians as deminers. Funding for many of the mine clearance programs around the world is provided by the UN, under two conditions: first, national governments must grant their consent; and second, security arrangements must be made for UN personnel who remove APLs in militarily-sensitive areas. Demining is a very expensive activity because it is labor-intensive. For example, the UN-managed mine clearance program in Afghanistan, which has deployed around two thousand deminers, costs approximately twelve million dollars

annually. It is estimated that the cost of any mine clearance program, including training, support, and logistics, ranges from three hundred to one thousand dollars per mine (Boutros-Ghali 1994). This is an exorbitant amount when compared with the actual cost of an APL. Most APLs are priced less than twenty-five dollars, while some are even cheaper than three dollars.

The Campaign to Ban Anti-Personnel Landmines

Earlier Legal Restrictions on Landmines

The legal foundations for the international regulation of APLs date to the nineteenth century. In 1868, seventeen countries signed the Declaration of St. Petersburg, which established three principles (Baxter 1977). The first principle made a distinction between combatants and non-combatants during war, and stipulated that the latter may not become the targets of attack. The second principle stated that force should only be applied to the point that enemy troops are disabled, and that weapons should not be used to aggravate the suffering of the wounded or render their death inevitable. Finally, the third principle prohibited the anti-personnel use of any explosive or inflammable projectile of less than four hundred grams by the military. Although only the states parties were legally bound by the Declaration of St. Petersburg, it is widely viewed as international law, and therefore obligatory for all states.

The 1899 Hague Peace Conference adopted the Convention with respect to the Laws and Customs of Warfare on Land. The convention established the principle that belligerents have a limited right when choosing weapons to injure the enemy, and proscribed the use of poison and arms, projectiles, or material that may cause superfluous injury. The convention also prohibited the treacherous killing of individuals belonging to the hostile country or military. While treacherous killing was initially viewed as the

deceitful use of a flag of truce or the feigning of disablement in order to kill, some have claimed that it includes the deployment of mines and booby traps (Baxter 1977). At the Second Hague Peace Conference of 1907, the inaccurate English translation of the original French text changed the reference from weapons causing "superfluous injury" to weapons producing "unnecessary suffering." Nevertheless, the objective of the Hague Peace Conferences was "to confirm the standard of St. Petersburg and to reaffirm the principle that in the employment of weapons humanitarian considerations and military necessity shall be balanced" (Bring 1987, 277).

Following the horrors of the Vietnam War, the ICRC and a few NGOs began to pressure governments to examine the issue of weapons that are indiscriminate or cause unnecessary suffering, such as landmines (Williams and Goose 1998). The 1973-1977 Geneva Diplomatic Conference on Humanitarian Law produced two Additional Protocols to the 1949 Geneva Conventions, of which Protocol I reiterated the prohibition on weapons and methods of warfare that may cause superfluous injury or unnecessary suffering.[4] But Ove Bring (1987), a legal adviser for the Swedish Ministry of Foreign Affairs, argued that general proscriptions, such as those expressed in Protocol I, are not very useful, because states will often consider a particular weapon as not prohibited unless it is named explicitly. The United Nations Conference on Prohibitions or

[4] The full titles of the Geneva Conventions, with their dates of signature in parentheses, are: Convention Relative to the Treatment of Prisoners of War (27 July 1949); Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949); Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (12 August 1949); Convention (III) Relative to the Treatment of Prisoners of War (12 August 1949); and Convention (IV) Relative to the Protection of Civilian Persons in Time of War (12 August 1949). The full titles of the two Additional Protocols, with their dates of signature in parentheses, are: Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of the Victims of International Armed Conflicts (Protocol I, adopted on 1 June 1977), and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of the Victims of Non-International Armed Conflicts (Protocol II, adopted on 1 June 1977).

Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects was held in September 1979 and September 1980 (Szasz 1980; Bring 1987; Maresca and Maslen 2000). On October 10, 1980, the conference adopted the Convention on Certain Conventional Weapons (CCW).[5] The CCW contains three annexed protocols, each of which is concerned with a particular type of weapon. Protocol I bans the use of weapons which injure by fragments that are not detectable by X-rays. Protocol II, also known as the Mines Protocol, restricts the use of mines and booby-traps. Protocol III limits the use of napalm and other incendiary weapons.

Both anti-personnel and anti-tank mines are regulated under Protocol II. The indiscriminate use of mines is proscribed, as is the manual placement of mines in populated areas unless there is active or imminent combat, or the minefields are clearly marked. Protocol II bans the deployment of mines that are remotely deliverable, with the exception of situations where these mines are used in the vicinity of a military target, and either the locations of the mines are recorded accurately or the mines possess a neutralizing mechanism. Moreover, Protocol II requires the mapping of minefields. As of May 1, 2000, seventy-eight states had ratified the CCW, and seventy states had ratified Protocol II (Maresca and Maslen 2000).

Ove Bring criticized Protocol II as being "insufficient in the sense that it does not effectively deal with the question of 'material remnants of war'" (Bring 1987, 278). Article 9 of the Protocol stipulates that after hostilities have ceased, states shall cooperate

[5] The full title of the convention is the United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. It is also known as the United Nations Convention on Inhumane Weapons.

with each other, and with international organizations, in an attempt to derive an agreement on assistance to remove or disable mines and booby traps that were laid during the conflict. But this does not guarantee that postwar mine clearance will remove all the APLs that were deployed during the conflict. Michael Matheson argued that the Mines Protocol has considerable shortcomings, and that it is "a Western proposal and basically codified the practices already being observed by U.S. and other Western military forces in the use of these weapons" (Matheson 1997, 159). Furthermore, despite the inclusion of Protocol II in the Convention on Certain Conventional Weapons, landmines received relatively little attention during the negotiation of the CCW (Maresca and Maslen 2000). The international community was more troubled at the time by the problem of incendiary weapons, hence Sweden and other middle powers devoted their energies towards achieving prohibitions on the use of incendiaries (Baxter 1977).

But by the end of the Cold War, the global community switched its focus to the issue of landmines, as it had become clear that the conflicts of the 1980s had produced a great number of civilian casualties from the indiscriminate use of APLs (Matheson 1997). The ICRC and the NGOs that worked in mine-infested countries were the first to draw attention to the humanitarian crisis. In response to the increasing number of casualties from landmines, the ICRC held a symposium on anti-personnel mines in Montreux, Switzerland on April 21-23, 1993. The purpose of the meeting was to assess the scope of the APL problem, evaluate possible courses of action to reduce APL use, and review the means of caring for mine victims. Participation in the symposium was broad, and included APL specialists, manufacturers, military strategists, doctors, rehabilitation specialists, legal advisers, deminers, and representatives of NGOs. Copies of the report

that was produced by the symposium were sent to all governments in August 1993. According to Louis Maresca and Stuart Maslen, “the report on the Montreux Symposium became an important source of reference for the ICRC, non-governmental organizations and governments in their future activities in pursuit of a ban treaty” (Maresca and Maslen 2000, 129).

In February 1993, the government of France requested that UN Secretary-General Boutros Boutros-Ghali convene a conference of the parties to the CCW, under the auspices of the United Nations Conference on Disarmament (UNCD), in order to review the provisions of the convention (Matheson 1997). The parties endorsed this request in December 1993, and called on the Secretary-General to establish a group of governmental experts to prepare for the conference. The group of governmental specialists was set up, and held four sessions in Geneva between February 1994 and January 1995. The recommendations of the group for a revision of the CCW were then discussed in a Review Conference that spanned three sessions. The first session was held in Vienna in September and October 1995, the second session in Geneva in January 1996, and the third session once again in Geneva in April and May 1996. Although there was a widespread agreement among states that the Mines Protocol of the CCW should be strengthened to prevent the indiscriminate use of APLs, governments remained divided on a further course of action. Some countries championed the idea of an APL ban, but the Review Conference featured consensus-based diplomacy, where the objections of a single state would have been enough to prevent the adoption of an APL ban. Thus, the conference participants chose to focus on bolstering the Mines Protocol, in order to reduce civilian casualties and the use of civilian lands as minefields.

The revised Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, adopted by consensus at the final session of the Review Conference on May 3, 1996, had several improvements over the 1980 Mines Protocol (Matheson 1997). First, the scope of the 1980 Protocol was expanded to cover domestic as well as international conflicts. Moreover, it was recognized that some sections of the revised Protocol would also apply during peacetime, such as the provisions on the recording and monitoring of minefields, the transfer of mines, and consultations and compliance. Second, it was agreed that all APLs which are remotely deliverable should be equipped with a self-destruct (SD) device, that would activate within thirty days of the mine's placement with an accuracy rate of ninety percent. The APLs would be outfitted with a backup self-deactivation (SDA) mechanism as well, that would be initiated within 120 days with a combined reliability of 99.9 percent. Third, the conference participants concurred that those APLs which are not remotely deliverable must either be fitted with SD and SDA devices, or be confined to minefields that are protected by special measures to prevent civilian casualties, such as fencing and clearly visible markings. Fourth, the participants decided that all APLs should contain at least eight grams of iron in order to make them detectable by mine detection equipment.

Fifth, mines that were designed to be detonated by the operation of mine detection equipment were banned. Sixth, the Review Conference agreed that mines may not possess an anti-handling device with a longer lifetime than the SDA mechanism. Seventh, it was accepted that the responsibility for mine maintenance and clearance lies with the party that deployed the mines. In addition, once a conflict has ended, mine clearance must begin without delay. Eighth, the Review Conference decided that annual meetings

would be held to review the Protocol and discuss compliance with it. People who willfully kill or injure civilians by violating the Protocol would be prosecuted. Ninth, the revised Protocol proscribed the transfer of prohibited mines to any recipient, and banned the transfer of mines to states and non-state actors who have not signed the revised Protocol or agreed to respect its provisions. Tenth, the requirements for recording the location of mines were made tougher. Eleventh, the conference added provisions for the protection of peacekeeping forces and humanitarian missions from APLs that were deployed in their areas of operation. Finally, the revised Protocol encouraged mutual assistance and technology transfer for demining activities, as well as to ensure compliance with the requirements of the Protocol.

Despite the considerable amount of changes to the 1980 Mines Protocol that were adopted by the Review Conference, advocates of a total ban on APLs, such as the ICRC and the International Campaign to Ban Landmines (ICBL), were disappointed (Williams and Goose 1998; Maresca and Maslen 2000). In the words of ICBL members Jody Williams and Stephen Goose, “from beginning to end, the preparatory sessions and the negotiations fell victim to an incremental approach that limited progress to adjustments within the existing framework of the [CCW]” (Williams and Goose 1998, 31). The ICRC was unsuccessful in its calls for a redefinition of “anti-personnel landmine” to include munitions that were originally designed for another purpose, but may be used as an APL (Elwell 1998; Maresca and Maslen 2000). Weapons that have the same effects as APLs, but are not classified as such, may escape the restrictions that were included in the revised Protocol, and thus cause more civilian casualties. Furthermore, the weaker,

revised Protocol was adopted despite public opinion surveys in twenty-one countries which showed tremendous support for a total ban on APLs.

Non-Governmental Organizations Mobilize Against Landmines

The International Campaign to Ban Landmines was formed in October 1992, following a meeting in the New York office of Human Rights Watch. Six NGOs banded together and issued a "Joint Call to Ban Anti-Personnel Landmines," thereby launching an international campaign. These NGOs, which became the steering committee of the ICBL, included Handicap International (France), Medico International (Germany), Mines Advisory Group (UK), Human Rights Watch (U.S.), Physicians for Human Rights (U.S.), and the Vietnam Veterans of America Foundation (VVAF, U.S.). Jody Williams of the VVAF was appointed as the coordinator of the ICBL. Since May 1993, when the ICBL hosted the first ever NGO-sponsored international landmine conference, more than 1,200 NGOs in around sixty countries have joined the coalition. The ICBL emphasized two objectives. First, there was a need for a global ban on the use, production, stockpiling, and transfer of APLs. Second, the resources devoted to humanitarian demining and the assistance of landmine victims had to be increased (Williams and Goose 1998).

Key to the ICBL's success was the decentralized nature of its operations. The ICBL was not organized hierarchically, with a central office and bureaucracy. Instead, member organizations were free to pressure their own governments for an APL ban the way they saw fit. According to Jody Williams and Stephen Goose, "much of the unity and success of the coalition can be traced to a commitment to a constant exchange of information—both internally among members of the ICBL as well as with governments, the media, and the general public" (Williams and Goose 1998, 23). The ICBL members proved to be adept at cultivating close relationships with media outlets, which began to endorse the

idea of a global APL ban. With the growing media campaign of shame, it became very difficult for militaries to justify publicly their need for APLs.

The ICBL also flourished through the development of personal relationships between its members, government agents, and military officials. International conferences sponsored by the ICBL, such as those held in Cambodia in 1995 and in Mozambique in 1997, presented opportunities for members to share information, attend training workshops, and develop plans for action at the regional and international levels. Moreover, the ICBL recognized that the first positive steps toward a ban would probably be taken in countries with a democratic political culture, where political activism by NGOs is permitted. Hence, the ICBL concentrated its campaign on North America, Europe, Australia, and New Zealand during the first few years. Once its network had become established in the North, the ICBL expanded its activities throughout Asia and Africa. Maxwell Cameron (2002) suggested that the ICBL felt more comfortable cooperating with the like-minded middle powers like Austria, Belgium, and Canada, rather than with the governments of major powers like France, Japan, and the United Kingdom. The partnership that was formed between the ICBL and the middle powers would be instrumental in achieving the APL ban.

Unilateral State Action on Landmines

In 1992, the United States became the first country to take unilateral action on the landmine issue. The year before, the Women's Commission for Refugee Women and Children had testified before the U.S. Congress on the necessity of a landmine ban (Price 1998). Following consultations with ICBL coordinator Jody Williams, the VVAF, and other NGOs, Senator Patrick Leahy (D-Vermont) and Representative Lane Evans (D-Illinois) wrote legislation for a one-year moratorium on the export of APLs by the United

States, which President George Bush signed into law in 1992 (Leahy 1997; Williams and Goose 1998). France then responded in February 1993, making its voluntary abstention from exporting APLs, in place since the mid-1980s, into official policy. Later that month, after experiencing pressure from Handicap International and the French anti-landmine campaign, the French government called for a Review Conference of the CCW. Shortly afterwards, more than a dozen states announced export moratoria of their own.

In June 1994, under pressure from the Swedish anti-landmine campaign led by *Rädda Barnen* (Save the Children), the Swedish parliament voted for the government to work towards achieving a global ban on APLs. Sweden would later table an amendment to the Mines Protocol of the CCW that would have banned APLs, but it was not adopted due to insufficient support from other states at the time. On August 2, 1994, the Italian Senate ordered the government to ratify the Mines Protocol immediately, adopt a moratorium on the export of APLs, cease the production of APLs in Italy and by Italian companies abroad, and promote mine clearance in APL-infested countries. In the words of Jody Williams and Stephen Goose, "this was a critical move on the part of a country that was considered to be one of the three most significant producers and exporters of [APLs] in the world" (Williams and Goose 1998, 27).

In his address to the UN General Assembly on September 26, 1994, U.S. President Bill Clinton called on the international community to eliminate APLs. The U.S. then sponsored a General Assembly resolution which urged states to adopt export moratoria, and also encouraged international cooperation to achieve the goal of eradicating APLs. But Jody Williams and Stephen Goose indicated that "the combination of Clinton's remarks and the resolution erroneously led many to believe that the U.S. administration

was finally following the lead on the issue shown in the U.S. Congress and was signaling its willingness to move rapidly towards a ban" (Williams and Goose 1998, 27). Two countries did make hasty progress, however. In March 1995, Belgium became the first state to ban the use, production, trade, and stockpiling of APLs, while Norway did the same three months later. Representatives from both governments have admitted that pressure from NGOs was the deciding factor to enact their bans.[6] By mid-1997, around thirty countries had unilaterally prohibited the use of APLs, twenty had banned production, fifteen had either begun or finished destroying their stockpiles, and more than fifty had made APL export illegal (Lenarcic 1998). But of the major powers which had announced their support for a comprehensive global ban, such as France, Germany, Japan, the United Kingdom, and the United States, only Germany had made a unilateral renunciation of the use of APLs (Price 1998).

The Ottawa Process

The Ottawa Process was born from the feelings of frustration of the like-minded states, international organizations, and NGOs that the UN Conference on Disarmament was unwilling to derive a total ban on APLs (Lawson et al. 1998). The European Union (EU), the Organization of American States (OAS), and the Organization of African Unity (OAU) had each endorsed the idea of an APL ban (Lenarcic 1998). In October 1996, the EU introduced a common moratorium on APL exports to all destinations.[7] A UN General

[6] For a discussion of how NGOs influenced the government of Norway to pursue an APL ban, see Neumann 2002. To read about the role of NGOs and other middle powers in convincing the Australian government to support the Ottawa Process, see Maley 2002.

[7] Some regional organizations went so far as to declare themselves "mine-free zones." This was done by the Central American Common Market (CACM) in September 1996, the Caribbean Community and Common Market (CARICOM) in December 1996, the OAS in 1996 and 1997, and the OAU in May 1997. See Lenarcic 1998.

Assembly resolution passed in December 1996 called on states to negotiate a legally binding international ban on the use, stockpiling, production, and transfer of APLs as quickly as possible.

The Canadian government decided to exercise leadership on the landmine issue by co-hosting, together with the NGO Mines Action Canada, a conference on October 3-5, 1996, titled "Towards a Global Ban on Anti-Personnel Mines." Prior to the Ottawa conference, Canadian officials discussed with other pro-ban actors the issue of whom to invite to the talks, since the participation of skeptical parties may have impeded progress at the conference (Lawson et al. 1998). A decision was made to invite states to participate on the basis of self-selection. A draft Final Declaration of the Ottawa conference was drawn up before the conference and circulated. Those states who were willing to support the Declaration were invited to attend as participants, while those who did not were welcomed as observers. International organizations and NGOs who supported an APL ban, such as the ICBL, the ICRC, and the United Nations Children's Fund (UNICEF), were invited to participate in the Ottawa conference. In total, fifty states who pledged support for the Ottawa Declaration attended the conference, as well as twenty-four observer countries and dozens of NGOs (Elwell 1998).

The fifty states who signed the Ottawa Declaration, including France, the United Kingdom, and the United States, made a commitment to cooperate in order to ensure that a legally binding international agreement banning APLs would come into force as soon as possible (Lenarcic 1998). An "Agenda for Action on Anti-Personnel Mines" was also adopted, which described a series of activities to be carried out by the conference participants in order to generate the political will for an APL ban (Lawson et al. 1998).

But the most surprising event occurred on the last day of the conference. In his final speech, Canadian Foreign Minister Lloyd Axworthy invited the conference participants to work with Canada to negotiate and sign an APL ban treaty by December 1997, and, furthermore, implement the treaty by the year 2000.[8] With the setting of a deadline for action on the landmine ban, the Ottawa Process was launched.

The Ottawa Process consisted of two tracks (Lenarcic 1998). Track one involved fast-track diplomatic negotiations on a ban treaty. Maxwell Cameron (2002) emphasized that the primary reason why the Ottawa Process would ultimately be successful was because it did not adopt the cumbersome, slow, consensus-based diplomacy of the UN Conference on Disarmament. Instead, a fast-track diplomatic approach was utilized, which would generate a treaty with few exemptions. This would be no easy task, as Robert Lawson and his co-authors indicated, "getting dozens of countries from all regions of the world to a single negotiating table to develop a ban convention in less than a year would require an almost unprecedented degree of diplomatic choreography" (Lawson et al. 1998, 166). Therefore, in order to achieve the objective of an APL ban, Canada worked closely with the other members of the Ottawa Process core group. This group originated from a meeting in early 1996 between Austria, Belgium, Canada, Denmark, Ireland, Mexico, Norway, Switzerland, the ICBL, and the ICRC, to derive a strategy for achieving the APL ban that the UNCD was unwilling to address. In February 1997, the Ottawa Process core group met formally for the first time, and with the addition

[8] Apparently, Lloyd Axworthy's bold speech setting a deadline for action on an APL ban even caught Canadian Prime Minister Jean Chretien by surprise.

of Germany, the Netherlands, the Philippines, and South Africa, the group became more representative of different regions of the world.[9]

Each of the like-minded states assisted the campaign in significant ways (Lawson et al. 1998; Lenarcic 1998). Discussions between Austria and Canada in early 1997 generated a draft plan for putting the diplomatic process into motion. Austria wrote a rough draft of an APL ban convention, which it presented at the Ottawa conference, and hosted an international meeting of landmine specialists from 111 states in Vienna in February 1997, in order to discuss the draft convention. In April 1997, a technical meeting of landmine experts from 120 countries was held in Bonn, Germany, to deliberate on the verification and compliance mechanisms that would be included in the ban treaty. Belgium hosted an APL conference in Brussels in June 1997, which was attended by 155 states. The conference ended with ninety-seven countries signing the Brussels Declaration, which called for a total ban on APLs, the destruction of APLs which had been stockpiled or removed, and international cooperation and assistance for the enormous task of mine clearance. Switzerland played host in Geneva to several meetings of the core group. The formal negotiations on the APL ban convention were hosted by Norway in the fall of 1997. The core group also promoted the idea of an APL ban at both the UNCD in Geneva, and the UN in New York City. The sharing of information and close coordination between members made the core group more cohesive over time. Membership in the core group broadened some more as the Ottawa Process evolved, to eventually include Brazil, France, Malaysia, Slovenia, the United

[9] Not all of the middle powers were enthusiastic supporters of the Ottawa Process. Australia preferred the more inclusive diplomatic process of the UNCD, even though its objectives were less extensive. In fact, Australian officials were upset with Canadian Foreign Minister Lloyd Axworthy's call for states to negotiate a ban treaty within one year's time, as it took them by surprise. See Maley 2002.

Kingdom, and Zimbabwe. But in order to ensure that fast-track diplomacy would produce an effective APL ban, only like-minded states were invited to join the core group. As Maxwell Cameron explained:

> Since the clarity of the goal—a total ban on [APLs]—was essential to maintaining core group unity, when faced with the trade-off between increasing the number of supporters of a ban treaty and avoiding exceptions, the core group opted for a clean convention that would establish an unequivocal norm (Cameron 2002, 81).

Following the February 1997 Vienna conference, Canada produced a paper detailing the procedures for formal negotiations on a ban treaty, which it presented at a meeting of the core group in Vienna in early March. During the meeting, Canada approached Norway about hosting a future conference on APLs, which Norway had expressed interest in doing at the October 1996 Ottawa conference. According to Robert Lawson and his colleagues, "the generosity and rapidity with which Norway responded to the enormous diplomatic and organizational challenge of hosting an international negotiation were key to the ultimate success of the Ottawa Process" (Lawson et al. 1998, 171). Since the Ottawa Process was receiving considerable criticism for the unorthodox way in which it was initiated outside normal diplomatic channels, it was felt that the holding of a traditional diplomatic conference would help convince skeptical countries to join the APL ban campaign. The core group decided to invite Ambassador Jacob Selebi, a widely respected South African diplomat and senior official of the African National Congress, to chair the Oslo conference.

While the diplomatic negotiations of track one were underway, the Ottawa Process was simultaneously embarking on track two: the development of political support for an APL ban through the implementation of the Ottawa conference's "Agenda for Action on Anti-Personnel Mines" (Lawson et al. 1998; Lenarcic 1998). The momentum for a ban

was generated through a series of regional conferences. The core group calculated that by getting the Southern, mine-infested states aboard the campaign, the Ottawa Process could avoid being stalled by a North-South split on issues related to the APL ban. The ICBL held the Fourth International NGO Conference on Landmines in Maputo, Mozambique on February 25-28, 1997. Four hundred and fifty NGO representatives from sixty countries attended the Maputo conference, where over eight hundred NGOs that were members of the ICBL announced their support for the Ottawa Process, and South Africa declared a unilateral ban on APLs. Canada, South Africa, the OAU, the ICBL, and the ICRC then organized a pan-African landmine conference in Kempton Park, South Africa on May 19-22, 1997. By the end of the conference, forty-three out of the fifty-three OAU members had pledged their support for the Ottawa Process. That same month, Sweden hosted a meeting of governments and NGOs from Central and Eastern Europe. In June, Turkmenistan played host to the first APL ban conference ever held in Central Asia. This was followed in July by an ICBL-sponsored regional colloquium in Sydney, Australia, and a three-day seminar organized by the Philippines and the ICRC that was intended to generate more support for an APL ban in the Asia-Pacific region.

Around ten multilateral meetings at the global, regional, and subregional levels were held during the eleven-month period prior to the Oslo conference. The meetings were intended to pressure national decision-makers, through both state-led diplomacy and NGO-led advocacy, to adopt an APL ban. In regions such as Latin America and Asia, where NGOs were less capable of promoting the APL ban effectively, diplomats and political leaders from the core group countries made the rounds in order to convince governments to support the Ottawa Process, even if they were faced with opposition from

military establishments which dismissed the idea of a ban. The anti-landmine campaign gained many important supporters, including Princess Diana, Archbishop Desmond Tutu, Jimmy Carter, Gracia Machel, Kofi Annan, and Queen Noor (Lawson et al. 1998; Manley 1998). The regional strategies of the Ottawa Process began to pay off when the Central American Common Market (CACM) and the Caribbean Community and Common Market (CARICOM) became the first regional organizations to announce their support for the Ottawa Process.

On September 1-18, 1997, the Diplomatic Conference on an International Total Ban on Anti-personnel Landmines met in Oslo (Lawson et al. 1998; Maresca and Maslen 2000). The mood was somber as Princess Diana, one of the most prominent advocates of an APL ban, was killed in a car crash in Paris the day before the conference opened. The conference attracted eighty-seven full participants and thirty-three observer states, and discussions focused on the third Austrian draft of the treaty. In contrast to the consensus-based decision-making procedure of the UN Conference on Disarmament, the Oslo conference permitted decisions to be taken by two-thirds vote if consensus could not be reached. The first two days of the Oslo conference were devoted toward identifying issues of contention, which were then divided among the delegations from Austria, Brazil, Canada, Ireland, Mexico, and South Africa for more consultation and problem-solving.[10] The skilled leadership of the conference Chair, Ambassador Jacob Selebi, and the strong commitment to the ban treaty that was expressed by many governments ensured that no compromises were accepted that would have severely weakened the

[10] These six middle powers held influential positions at the Oslo conference. The conference Chair, Ambassador Jacob Selebi, was from South Africa, while the other five states were the "Friends of the Chair," according to Robert Lawson et al. (1998, 177).

treaty. On the final day of the conference, the participants adopted the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

On December 3-4, 1997, 2,400 participants, including more than five hundred members of the international media, attended the second Ottawa landmines conference, titled "A Global Ban on Landmines: Treaty Signing Conference and Mine Action Forum" (Faulkner 1998; Lawson et al. 1998; Maresca and Maslen 2000). One hundred and twenty-two states signed the APL ban convention, and three countries—Canada, Ireland, and Mauritius—ratified it immediately. The conference featured twenty "Mine Action Roundtables," where the world's leading landmine experts discussed future mine action efforts. Their recommendations were published in the final report of the conference, *An Agenda for Mine Action*. Canada and the rest of the Ottawa Process core group used the conference as an opportunity to launch the "Ottawa Process II." This new phase of the anti-landmine campaign would involve the mobilization of countries, international organizations, and NGOs, in order to achieve the objectives of deriving a global action plan to convince all states to sign the treaty, clearing the millions of mines remaining in the ground, and providing assistance to landmine victims (Lenarcic 1998). The participating states pledged more than $500 million for mine action programs globally.

The key members of the Ottawa Process coalition attended the one-day "Ottawa Process Forum" immediately after the conference ended, where they examined the lessons learned from the campaign (Lenarcic 1998). In addition, on December 6-7, Mines Action Canada hosted a two-day seminar where NGO members could consult and plan for the Ottawa Process II. The success of the Ottawa Process was underscored by the

awarding of the Nobel Peace Prize to Jody Williams and the ICBL in Oslo on December 10, 1997, just a few days after the signature of the treaty.

The United States and the Ottawa Process

Although the United States was an early leader in the campaign to ban landmines, it refused to support the Ottawa Process, because the proposed ban treaty did not include exemptions for American anti-personnel landmines.[11] In the spring of 1996, the U.S. conducted an internal policy review to determine the military utility of landmines (Kirkey 2001). The results were made public in May 1996. According to the Public Affairs Office of the United States Department of Defense, the U.S. requires APLs for the protection of American forces in Korea and Guantanamo Bay, Cuba, as well as for training exercises (Matthew and Rutherford 1999). APLs are regarded as particularly useful for enhancing the effectiveness of anti-tank landmines (ATLs). On May 16, 1996, President Bill Clinton clarified the landmine policy of the United States (Kirkey 2001). First, the U.S. was committed to the adoption of an international treaty that would eliminate all landmines. Second, the U.S. intended to dispose of all landmines that were not self-detonating or self-deactivating (i.e., "dumb mines"), with the exception of the more than one million landmines being used to protect American and South Korean military forces from a North Korean attack. Finally, the U.S. would continue to use self-detonating or self-deactivating landmines (i.e., "smart mines") until either effective alternatives to replace them would be derived, or an international landmine ban treaty would come into force. The objective was to eliminate APLs by 2006-2010 (Matthew and Rutherford 1999).

[11] The U.S. landmine export moratorium, proposed by Senator Patrick Leahy and Representative Lane Evans, and signed into law on October 23, 1992, by President George H. W. Bush, was the first of its kind in the world. See Wareham 1998.

The United States was also wary of the fast-track diplomacy of the Ottawa Process. The U.S. attended the first Ottawa conference in October 1996, but believed that Canadian Foreign Minister Lloyd Axworthy's appeal for a ban treaty to be negotiated and signed within one year was an unrealistic goal (Lenarcic 1998). On November 4, 1996, the U.S. introduced a resolution in the UN General Assembly, originally drafted by Canada and co-sponsored by eighty-four states, calling on countries to derive a comprehensive APL ban treaty as soon as possible. The resolution passed by a vote of 156-0 on December 10, but ten major users and producers of APLs abstained from voting.[12] These ten states criticized the resolution for not recognizing that APLs have a legitimate role to play in the defense policy of a state, not discussing alternatives to APLs, and not considering the use of APLs by terrorists. The pro-APL states voted instead in favor of another UN resolution calling for the strengthening of the CCW, which was adopted by consensus.

In January 1997, the U.S. announced that while it welcomed the efforts of the Ottawa Process, it had made the decision to begin negotiations on an APL ban treaty within the UN Conference on Disarmament. The U.S. preferred to launch the initiative in this forum for two reasons. First, the UNCD was considering the adoption of a more holistic arms control approach, and second, China and Russia were members of the UNCD (Williamson 2000). The U.S. believed that the major producers of APLs would not participate in the Ottawa Process, hence the UNCD would be the appropriate forum for discussing the landmine issue with the Chinese, Russians, Indians, and Pakistanis

[12] The ten countries were Belarus, China, Cuba, Israel, North Korea, Pakistan, Russia, South Korea, Syria, and Turkey.

(Lenarcic 1998; Price 1998).[13] Faced with strong domestic pressures from the U.S. Campaign to Ban Landmines (USCBL), the Clinton administration also decided to turn the 1992 export moratorium into a permanent ban in January 1997, and capped the American stockpile of APLs at its existing level, which was later discovered to be around fourteen million mines (Wareham 1998).

But in February 1997, the UNCD adopted an agenda which did not include APLs (Lenarcic 1998; Wareham 1998). Throughout 1997, the U.S. and other states attempted to place landmines on the UNCD agenda, but with no success. Despite American insistence that the UNCD delve promptly into the issue of landmines, a proposal to create an ad hoc committee on landmines within the UNCD was blocked by non-aligned states who wanted to discuss nuclear disarmament first. Some states opposed the placement of an APL ban on the UNCD agenda because they wanted to avoid jeopardizing the Ottawa Process, while other states argued that precedence should be given to implementation of the revised Mines Protocol, and to ongoing negotiations in the CCW, before discussing an APL ban in the UNCD. Frustrated with the lack of progress in the UNCD, the U.S. declared that it would pursue other channels if the UNCD did not place an APL ban on its agenda by the end of June 1997.[14]

In July 1997, the Landmine Elimination Act was introduced in both Houses of the United States Congress, with fifty-nine senators and 190 representatives as co-sponsors

[13] Australia, France, and the United Kingdom also promoted the UNCD process initially. In fact, France was uncomfortable with the involvement of NGOs in the Ottawa Process. It took changes of government in each of these states before they hopped on to the Ottawa Process bandwagon. See Elwell 1998 and Price 1998.

[14] The UNCD did follow an Australian proposal, and appointed a special coordinator on landmines in late June, which met the approval of the U.S., as well as France, Germany, and the United Kingdom. But progress on the landmine issue remained slow. See Lenarcic 1998.

(Wareham 1998). The bill, which banned new American deployments of APLs after January 1, 2000, never came to a vote, as Senator Patrick Leahy (D-Vermont) and Senator Charles Hagel (R-Nebraska) withheld action on the bill, in order to give the Clinton administration an opportunity to participate in the Ottawa Process. A letter signed by 164 U.S. House Representatives also indicated that the Congress was backing American participation in the Ottawa Process. There was significant domestic opposition to both the Landmine Elimination Act and the Ottawa Process, however, particularly from the Pentagon, the Joint Chiefs of Staff, and Senator Jesse Helms (R-North Carolina), the Chairman of the Senate Armed Services Committee.

Nevertheless, the Clinton administration reversed its stance in August 1997, and announced that the United States would join the Ottawa Process. The U.S. signed the Brussels Declaration, a prerequisite for attending the Oslo Conference. Although the U.S. claimed that other states would follow the American lead and attend the conference, Japan and Poland proved to be the only significant countries to follow suit. At Oslo, the American delegation proposed critical, non-negotiable changes to the treaty that would have weakened it considerably had the changes been accepted. The U.S. demands included an exemption for the continued use of APLs in Korea; a redefinition of APLs so that the U.S. could keep its dual anti-tank and anti-personnel landmine systems; a tougher treaty ratification process, and a nine-year deferral period for compliance with certain provisions; stronger verification procedures; and an option for a state to withdraw from the treaty if it perceives that its supreme national interests are threatened (Kirkey 2001; Wareham 1998).

But with the exception of the stronger verification measures, the United States failed to get its proposals included in the treaty. Hence, the U.S. refused to sign the Ottawa Convention in December 1997. The Clinton administration did adopt some unilateral initiatives, however. The administration announced that the U.S. would develop APL alternatives that would end American reliance on both self-destruct APLs by 2003, and its mines in Korea by 2006. Moreover, American funding for mine clearance programs would be increased by twenty-five percent, beginning in 1998 (Lenarcic 1998). In a May 15, 1998, letter to Senator Patrick Leahy, the Assistant to the President for National Security Affairs, Samuel Berger, stated that the U.S. would sign the Ottawa Convention by 2006, if suitable alternatives to American APLs and mixed anti-tank systems would be derived by then (Kirkey 2001). President Clinton made this timetable official with the Presidential Decision Directive Number 64 of June 23, 1998.

But in November 2001, the Department of Defense recommended that the U.S. should both abandon its commitment to join the Ottawa Convention, and discard some parts of the American program to develop alternatives to APLs (ICBL 2002). On February 29, 2004, the George W. Bush administration unveiled its landmine policy. Although the Bush administration announced a fifty percent increase in spending on mine action programs in 2005, the administration's decisions to continue using self-destructing landmines indefinitely, to extend the use of long-lived landmines until 2010, and to break President Clinton's promise to sign the Ottawa Convention by 2006, were condemned by the ICBL (Wixley 2004).

The Results of the Ottawa Process

With the fortieth ratification of the Ottawa Convention by Burkina Faso in September 1998, the treaty entered into force in March 1999 ("World Watch:

Ouagadougou" 1998). As of May 2004, 151 states had either signed or acceded to the treaty, and 142 had ratified it (ICBL 2004c). By the year 2001, the number of known producers of APLs had fallen dramatically, from fifty-four to fourteen states (Economist Newspaper 2001). Furthermore, the trade in APLs had been effectively halted.

Each party to the Ottawa Convention is required to destroy all of their stockpiles of APLs no later than four years after the entry into force of the treaty for the country, and remove all APLs from their territory within ten years. By February 2004, fifty-five states parties had completed the destruction of their stockpiles of APLs, thirteen were in the process of destroying their stockpiles, and forty-nine states parties had declared that they do not possess a stockpile. A total of fifteen states parties had not yet officially declared the presence or absence of APL stockpiles (ICBL 2004a).

But on the negative side, only thirty-five states parties to the Ottawa Convention have passed domestic laws to prevent, suppress, or punish activities prohibited by the treaty (Human Rights Watch 2003c). Fifty-five of the states parties have exercised the option, under Article 3 of the Ottawa Convention, of retaining some APLs for training and development purposes (Human Rights Watch 2003b). The countries which have retained the most APLs are Chile (28,647 mines), Brazil (16,550), Bangladesh (15,000), Sweden (13,948), and Japan (11,223).

Furthermore, as of May 2004, forty-three states had still not signed the Ottawa Convention (ICBL 2004b). Included on this list are the United States (eleven million mines stockpiled), major mine producers such as China (110 million mines stockpiled, nearly half the world's total) and Russia (sixty-five million mines stockpiled), nuclear rivals India and Pakistan, perennial adversaries North and South Korea, and several

Middle Eastern states, including Egypt, Iraq, Israel, Kuwait, Lebanon, Saudi Arabia, Syria, and the United Arab Emirates ("Curbing Horror; Landmines" 2001). Moreover, in the period 1999-2000, shortly after the Ottawa Convention entered into force, eleven governments began new use of APLs in twenty conflicts, and at least thirty rebel groups deployed APLs (Kingman 2000).

Since most of the world's landmines are possessed by countries which are not parties to the APL ban treaty, the problem of APLs will not be resolved until all landmine producers and users have signed and ratified the Ottawa Convention, and have implemented its provisions. The Ottawa Process can be applauded, however, for the considerable success it has had in moving the world much closer to the point where APLs may become history, especially when compared to the lack of progress in the UN Conference on Disarmament. In addition, the countries which have had the majority of landmine casualties have signed the Ottawa Convention, hence the most mine-contaminated states are covered by the treaty (Price 1998). Most important, the Ottawa Process has succeeded in generating a new international norm that stigmatizes the use of APLs. As more states sign the Ottawa Convention, greater pressure to emulate is placed on the remaining holdout countries.

Conclusion

The case of the Ottawa Process demonstrates how the middle powers can exercise skilled leadership on an issue of human security. Starting with Canadian Foreign Minister Lloyd Axworthy's bold call for the quick realization of a ban on anti-personnel landmines within fourteen months, the Ottawa Process core group employed fast-track diplomacy in order to ensure that an effective ban treaty with few exemptions would be produced. The like-minded states, international humanitarian organizations, and NGOs

which comprised the Ottawa Process core group drafted a treaty that would ban the use, stockpiling, production, and transfer of APLs. The core group then persuaded other states to join the campaign by emphasizing the humanitarian toll of anti-personnel landmines. By December 1997, the core group had succeeded in generating the global political will for the adoption of the Ottawa Convention. The results of this initiative corroborated the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy.

The United States was an early leader in the campaign to ban APLs, but refused to support the Ottawa Process for two reasons. First, Washington objected to the fast-track diplomatic strategy used by the core group. The U.S. preferred to rely on the consensus-based diplomacy of the UN Conference on Disarmament, but was disappointed when the UNCD failed to take action on APLs. Second, the U.S. disapproved of the draft treaty that was negotiated by the Ottawa Process core group, because there were no exemptions in the treaty for the American landmines in Korea and Guantanamo Bay, Cuba. The core group was steadfast in resisting U.S. pressures for the inclusion of exemptions that would have favored American interests, but would have also weakened the APL ban treaty. The U.S. acquiesced to the establishment of the Ottawa Convention, however, despite its displeasure with the treaty. Although the Ottawa Convention prohibited the U.S. military's deployment of APLs, the adoption of the convention only threatened peripheral American military interests in Korea and Cuba. The Ottawa Convention did not jeopardize the core national interest of the U.S., which is the security of the American territory, institutions, and citizenry. Thus, the case of the APL ban initiative provided

support for the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution. In the following chapter, the study will turn to an analysis of a human security initiative that did infringe on the constitutional rights of American citizens: the campaign to create the International Criminal Court.

CHAPTER 4
ESTABLISHING THE INTERNATIONAL CRIMINAL COURT

Introduction

On July 1, 2002, the Rome Statute of the International Criminal Court (ICC) entered into force. The creation of the ICC fulfilled a decades-old dream of establishing a permanent mechanism for trying individuals who are accused of crimes against humanity. At the forefront of this successful human security initiative were the like-minded middle powers, whose skilled leadership was instrumental for ensuring the adoption of an effective mechanism that could achieve justice for genocide, crimes against humanity, war crimes, and the crime of aggression.

The fact that the ICC initiative attained its objectives is remarkable, considering that it encountered a strong opposition from the United States. As the hegemon in the contemporary international system, the U.S. frequently needs to engage in military operations abroad. Washington was concerned that U.S. military personnel serving overseas would become targets for politically-motivated prosecutions by the ICC. Furthermore, the United States doubted that the ICC would grant American defendants their rights to a jury trial and due process, which are protected under the Fifth and Sixth Amendments to the U.S. Constitution. It should be expected that the U.S. would act to protect its primary national interest: the security of the American territory, institutions, and citizenry.

This chapter analyzes the case of the ICC initiative, in order to test the hypothesis that the United States is more likely to oppose a middle power-led human security

initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution. The chapter also examines how strong leadership by the middle powers at the helm of the Like-Minded Group of Countries managed to overcome U.S. attempts to weaken and defeat the Rome Statute. Therefore, a second hypothesis is explored as well: that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy.

The chapter commences with a discussion of how the idea of an international criminal court evolved historically. The next section describes the ICC that was created. The chapter then turns to an analysis of how the like-minded middle powers exercised leadership on the ICC initiative. This is followed by an investigation of why the United States objected to the Rome Statute, and how Washington tried to weaken the treaty. The chapter concludes with a look at the ramifications of the ICC case study for the two hypotheses.

An International Criminal Court: The History of the Concept

The Origins of International Criminal Tribunals

According to Reza Islami Some'a (1994), the first ever international tribunal was held in Breisach, Germany, in 1474. The governor of Breisach, Peter Von Hagenbach, was convicted by twenty-seven judges of the Holy Roman Empire for permitting his soldiers to rape, murder, and steal property from the innocent civilians of Breisach. During the nineteenth century, treaties between Great Britain and other states led to the formation of international tribunals which were empowered to confiscate or destroy ships that were engaged in the slave trade. The crews of these ships were not tried in the tribunals, but were returned to their home countries for punishment under domestic law.

The concept of a standing, international, adjudicating institution was born during the First Hague Peace Conference in 1899. Article 2 of the First Hague Convention for the Pacific Settlement of International Disputes required signatory states to use the good offices or mediation of a third party before resorting to conflict. Article 9 authorized commissions of inquiry that could investigate facts. The conference participants also agreed to set up a "permanent" court of arbitration, but only created a list of non-professional people who would sit as a court if and when the parties to a dispute requested their intervention (Islami Some'a 1994).

The Second Hague Peace Conference in 1907 produced the Hague Convention (XII) Relative to the Creation of an International Prize Court, which was concerned with the wartime practice of seizing ships and cargoes as prizes of war. The convention, which was signed but never entered into force, stipulated that the rulings of national prize courts on disputes related to the capture of property from neutral states or innocent civilian owners could be appealed to the International Prize Court (Islami Some'a 1994).[1] The Hague Convention (IV) Respecting the Laws and Customs of War on Land enunciated the rules of war for the states parties to the convention, and required that violators of the convention provide compensation to the injured parties (Sadat 2000). The Martens Clause to the Hague Convention IV stated that in cases where one or more of the belligerents are not parties to the convention, these countries and their inhabitants are protected by the "principles of the law of nations, as they result from the usages established among

[1] According to Benjamin Ferencz (1980), the plan to set up an International Prize Court was ultimately rejected due to the apprehension of several major powers about the uncertainty of the rules of international law. The Naval Conference in London (December 1908-February 1909) produced a Code of Naval Law covering blockade, contraband, the limits of permissible search, and the destruction of prizes from neutral parties. But the Prize Court bill was rejected by the British House of Lords because food imports were

civilized peoples, from the laws of humanity, and the dictates of the public conscience" (Sadat 2000, 33). But the idea of criminal prosecution for those who violate the convention was not considered at the Hague Conference.

The Aftermath of World War I

The next attempt to establish an International Criminal Tribunal occurred following the massive slaughter of World War I. Despite objections from the U.S., the 1919 Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties for Violation of the Laws and Customs of War proposed that an international high tribunal be created to hold trials for all enemy persons accused of violating the laws of war and humanity. Articles 227, 228, and 229 of the Treaty of Versailles authorized a special tribunal to try Kaiser Wilhelm II of Germany for the "supreme offence against international morality and the sanctity of treaties" (Sadat 2000, 34). But the trial was never held, as the neutral Netherlands refused to extradite the Kaiser after he had sought refuge there. The Allies refused to push for the prosecution of the Kaiser and others accused of war crimes, due to a fear that the trials would either provoke an armed revolt in Germany or start another war with the Allies (Islami Some'a 1994). German officers were prosecuted instead by the German Supreme Court in Leipzig. The trials were criticized by German citizens, since no Allied personnel who committed war crimes were prosecuted.

The Commission also recommended the prosecution of Turkish officials who carried out the Armenian genocide, where around 600,000 to one million Armenians in Turkey were killed. For the first time, the concept of "crime against humanity" was given

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listed as "contraband" items, and thus subject to seizure by an adversary (e.g., Germany) during war. Since the Code was not accepted, not a single state ratified the Hague Convention XII.

a legal backing (Islami Some'a 1994). But since crimes against humanity did not exist under positive international law at that time, the Commission's report failed to designate such crimes for prosecution by an ICC. The Treaty of Sevres (1923), which called for Turkish prosecutions, was never ratified, and it was substituted by the Treaty of Lausanne (1927), which gave amnesty to the Turks. Hence, the Allies failed to seek justice for the first genocide of the twentieth century.

The first interwar discussion on the necessity of an ICC occurred in the League of Nations (Ferencz 1980; Von Hebel 1999). From June 16 until July 24, 1920, the Advisory Committee of Jurists met to draft a Statute for a Permanent Court of International Justice (PCIJ). The Committee also examined a proposal for creating a High Court of International Justice that would try crimes against the "international public order and the universal law of nations," but ultimately rejected this issue as being outside of the Committee's mandate (Von Hebel 1999, 17). In the end, the Legal Committee of the League did not accept the Jurists' recommendation that the Court have compulsory jurisdiction, and gave member states the option of choosing whether to accept the decisions of the Court, as well as the freedom to determine the degree of their compliance. In the words of Benjamin Ferencz:

> The failure of the League to accept an International Court with compulsory jurisdiction over those disputes which might lead to war meant that it was doomed to be a Court with limited authority, power or influence. . . . The new edifice for international society was being built on pillars made of sand (Ferencz 1980, 36).

The issue of an ICC was discussed in various forums throughout the interwar period (Von Hebel 1999). In 1925, the Inter-Parliamentary Union declared that violations of the international order and the law of states should be defined, and that a chamber of the PCIJ should exercise jurisdiction over such offenses. The following year, the

International Association of Penal Law made a similar argument. The International Law Association examined the subject of an ICC at three conferences, and decided at its 1926 Vienna meeting that the creation of an ICC was practical and feasible. Following the assassination of King Alexander of Yugoslavia and the French Foreign Minister in Marseilles on October 9, 1934, France introduced an initiative in the League of Nations to derive both an International Terrorism Convention and an ICC. Although the Diplomatic Conference on the Repression of Terrorism adopted both conventions and opened them for signature in November 1937, the Convention for the Prevention and Punishment of Terrorism was ratified solely by India, whereas the Convention for the Creation of an International Criminal Court received no ratifications whatsoever.

World War II and the International Military Tribunals

The unbelievable atrocities of the Second World War sparked a new interest in the issue of establishing an ICC (Sadat 2000). But political pressures resulted in the postwar creation of the Nuremberg and Tokyo tribunals rather than the formation of an ICC as proposed by jurists. The International Military Tribunal (IMT) for the Far East has been criticized for its unfair treatment of many defendants, and has been mentioned as a model for "what a credible international criminal justice system ought not to look like" (Sadat 2000, 34). In contrast, the earlier IMT at Nuremberg made some major contributions to international criminal law. First, the Tribunal rejected the defendants' arguments that were based on state sovereignty, and emphasized that individuals could be held criminally responsible under international law. Heads of state and individuals acting under orders were deemed to not be exempt from criminal charges. Second, the Nuremberg IMT stressed that the international duties of individuals transcend their obligations to obey the national laws of a state. Thus, international law has primacy over

national law. Third, the Tribunal established that aggression is a crime, by ruling that individuals may be liable for both initiating a war, and the methods used for conducting the war. As a result, the act of war, as well as transgressions against the laws of war, were criminalized.

The United Nations and the International Law Commission

On December 11, 1946, the United Nations General Assembly adopted three resolutions, 1/94, 1/95, and 1/96. The first resolution created the Committee on the Progressive Development of International Law and its Codification. The second resolution issued a mandate for the Committee to prioritize the formulation of an International Criminal Code, that would be based on the principles recognized in the charter of the IMT at Nuremberg, as well as in its judgments. The third resolution emphasized that genocide was a crime under international law, and called on the United Nations Economic and Social Council (ECOSOC) to begin deriving a draft convention on the crime of genocide. The General Assembly adopted the Genocide Convention less than two years later (Von Hebel 1999).

The Committee discussed the idea of a permanent ICC, but was unsure whether this issue fell within the Committee's mandate. In its report to the General Assembly, the Committee suggested that the formation of an ICC may be desirable. The General Assembly debated the ICC issue, but only reached the conclusion that persons charged with genocide may be tried by either a tribunal in the state where the act was committed, or an international penal tribunal whose jurisdiction has been accepted by all states involved (Von Hebel 1999).

In 1949, the International Law Commission (ILC) held its first ever meeting, and discussed the codification of the Nuremberg principles as well as the creation of an ICC

(Von Hebel 1999). The ILC appointed two Rapporteurs to analyze the ICC issue. The following year, the Rapporteurs issued conflicting recommendations, one in favor of an ICC, and the other arguing that the time was not yet right for an ICC. Since a majority within the ILC wanted to establish an ICC, they created a Committee on International Criminal Jurisdiction. The Committee submitted a draft statute to the General Assembly in 1951, which was then referred to the member states for observations. In 1952, the General Assembly reviewed the draft statute as well as the feedback from the member states. Opinions on the necessity of an ICC varied considerably, therefore, the General Assembly created two more committees, one responsible for writing a new draft statute and the other for developing a definition of aggression. The Committee on International Criminal Jurisdiction presented a report in 1953, but the General Assembly decided to pass Resolution 9/898 on December 14, 1954, delaying discussion on an ICC until the definition of aggression had been clarified, and a draft Code of Offences had been derived.[2] The political consensus on the necessity of an ICC had not yet developed.

The initiative to create an ICC stalled in the United Nations over the next thirty-five years (Von Hebel 1999; Sadat 2000). The Cold War resulted in a period of inertia. It took twenty years for the General Assembly to adopt, by consensus, a definition of aggression, which it finally did with Resolution 29/3314 on December 14, 1974. But the definition has been criticized for not being exhaustive, for not binding the Security Council, and for permitting the Security Council to consider acts unmentioned in the definition as acts of aggression (Von Hebel 1999). In 1973, General Assembly Resolution

[2] According to Herman Von Hebel (1999), the General Assembly merely postponed issues. On December 4, 1954, General Assembly Resolution 9/895 set up a second Committee to Define Aggression, which was mandated to issue a report in 1956. That same day, General Assembly Resolution 9/897 delayed further discussion of the draft Code of Offences until a decision could be reached on the definition of aggression.

28/3068 adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid, which allowed for the possibility of trial by an international penal tribunal. On February 26, 1980, the United Nations Commission on Human Rights requested, through Resolution 36/12, that an Ad Hoc Working Group study the feasibility of establishing an international criminal jurisdiction. But although the study was conducted, there was still insufficient political will to generate momentum for the ICC initiative. Indeed, a decade passed from the proclamation of General Assembly Resolution 36/106 in 1981—which requested that the ILC resume its work on a draft Code of Offences—until the ILC adopted the Code of Crimes against the Peace and Security of Mankind in 1991.

It took the thawing of East-West relations with the end of the Cold War for significant progress to be made towards an ICC (Von Hebel 1999; Sadat 2000). In 1989, Trinidad and Tobago sponsored General Assembly Resolution 44/39 requesting that the ILC place the ICC issue on the agenda of its next session. The ILC examined the issue only briefly in its 1990 session, but reached the conclusion that there was significant support for a permanent international criminal court. In 1992, the ILC created a Working Group to analyze the issue of establishing an ICC. The Working Group's report outlined the necessary conditions for the development of an ICC, but the group's consensus-based decision-making was criticized by some ILC members for generating lowest common denominator recommendations. The Working Group also concluded that it had completed its analysis of the feasibility of an ICC, and that a renewed mandate from the General Assembly was required before negotiations on a draft ICC statute could commence. Although the General Assembly was divided with regards to the necessity and feasibility

of an ICC, on November 25, 1992, the Assembly responded to the ILC's request for a clear mandate by adopting Resolution 47/33, asking the ILC to prioritize the drafting of an ICC statute.

The Post-Cold War International Criminal Tribunals

The post-Cold War era saw a return to the use of international criminal tribunals to prosecute war crimes, nearly forty-five years after the International Military Tribunal at Nuremberg. UN Security Council Resolution 827 of May 25, 1993, established the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, with the aim of prosecuting war crimes, crimes against humanity, and acts of genocide in the former Yugoslavia since the start of the war in 1991 (Colwill 1995). The tribunal consisted of eleven judges, supported by a staff of around three hundred persons (Morton 2000). The first plenary session was held in The Hague in November 1993, and the tribunal began operating as a judicial body exactly two years later. The ICTY set a precedence in that sexual assaults, categorized under the general heading of torture and enslavement, were investigated for prosecution as a crime against humanity for the first time (Cordner and McKelvie 1998). But the ICTY could only try individuals brought before it, which differed from the Nuremberg IMT, where trials in absentia were permitted. Furthermore, the ICTY was plagued by acts of noncompliance and defiance, particularly by the Yugoslav government of Slobodan Milosevic, which violated UN Security Council resolutions by delaying the issuing of visas for court investigators, and refusing to hand over documentation or carry out search warrants (Pisik 1998).

Beginning on the night of April 6, 1994, the Rwandan genocide claimed the lives of between five hundred thousand and one million people in less than two hundred days (Goldstone 2000). In July 1994, the Security Council adopted Resolution 935, which

created a Commission of Experts to investigate the violation of human rights in Rwanda (Morton 2000). The Security Council then established the United Nations International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, in November 1994. Modeled after the ICTY, the ICTR shared the same chief prosecutor, Louise Arbour from Canada. At least three hundred people were tried by the ICTR on charges of genocide, and more than one hundred were convicted and sentenced to death. The ICTR was more successful than the ICTY in terms of prosecuting offenders, but less active than the Rwandan national courts.

Human rights groups have applauded the creation of the ICTY and the ICTR for several reasons (Morton 2000). First, the investigations that were conducted prior to the establishment of the tribunals compiled a historical record of the events in each conflict. Second, there is a possibility that the investigations of war crimes may help moderate ethnic tension in these regions. By demonstrating that certain individuals are guilty of war crimes, the tribunals could educate the populations that solely the perpetrators are to be blamed, not entire ethnic groups. Third, the indictments handed down by the tribunals will help punish the guilty individuals by turning them into political pariahs. But the two tribunals' efforts at prosecuting accused war criminals revealed a weakness with the process regarding jurisdiction over suspects who are not in the custody of the court. In contrast to the Nuremberg IMT, which took place following the total defeat of Germany by the Allied Powers, the ICTY and the ICTR were set up in contexts where the conflicts were in a relative stalemate. Consequently, the accused war criminals were difficult to find and arrest, because they received shelter and support from their own ethnic groups. In the words of Jeffrey Morton:

> The inability of both tribunals to effectively arrest those indicted for genocide and war crimes, certainly most profound in the tribunal for the former Yugoslavia, undermines public confidence in the legal proceedings and keeps the possibility of future atrocities alive (Morton 2000, 62).

Building an ICC: The Path Towards Rome

Drafting a Statute

The creation of the ICTY and the ICTR gave a considerable boost to the campaign to establish an international criminal court. Sufficient political will for setting up an ICC had finally been generated in the international community. The problems faced by the two tribunals in recruiting first-rate judges and prosecutors, providing adequate funding, and gaining custody over war crimes suspects demonstrated the need for a permanent ICC (Sadat 2000). The ILC met again in June 1993, one month after the Security Council had created the ICTY (Von Hebel 1999). The Working Group then wrote a series of draft articles, which the ILC presented to the General Assembly and national governments for written comments. On December 9, 1993, the General Assembly expressed its support for the activities of the ILC through Resolution 48/31, requesting that the ILC prioritize the completion of a draft statute in 1994.

The ILC evaluated two draft statutes in 1994, before deciding on a sixty-article statute (Sadat 2000). Concerned with the political pressures from states, the ILC avoided contentious issues, such as the definition of crimes and the funding of the ICC. On certain issues, including jurisdictional regimes and the ICC's organizational structure, the ILC decided to place primacy on the principle of state sovereignty. The basic premise of the draft statute was that the ILC should complement the proceedings in the national courts, rather than replace them. Moreover, the ICC would only prosecute the most serious cases of international criminal law violations, in situations where national trials would either be

ineffective or not be held at all. After some debate within the ILC, it was decided that the ICC would not be responsible for unifying or creating international law, hence the ICC would not be given any advisory jurisdiction. The draft statute specified that the Court would have jurisdiction with regards to both treaty crimes and violations of international humanitarian law. The ICC would only hear cases that were submitted to it by either state parties to the treaty or the UN Security Council. Leila Sadat remarked that "the proposed State consent regime and system of jurisdictional reservations probably would have completely crippled the proposed Court, except in cases involving affirmative action by the Security Council" (Sadat 2000, 39).

The draft statute also described the structure of the ICC. The Court would be composed of four organs: a Judiciary with a pretrial and an appellate division, a Registry, a Procuracy, and a Presidency. The ILC envisioned that, with the exception of the Registry, the ICC's organs would function on a periodic basis. Rather than the permanent court lobbied for by human rights activists and certain states, the ILC's draft statute proposed merely a standby court (Sadat 2000).

Upon presenting the draft statute to the General Assembly, the ILC recommended that the Assembly organize an international conference of plenipotentiaries to study the statute, and to produce a convention on the establishment of an ICC (Von Hebel 1999). Despite the continued reservations of some states on the necessity of an ICC, most of the participants in the Sixth Committee expressed their approval of the draft statute's objective of creating an ICC while simultaneously respecting the principle of state sovereignty. The majority of states concurred that more preparatory work was needed before a diplomatic conference on an ICC could be held. On December 9, 1994, General

Assembly Resolution 49/53 set up an Ad Hoc Committee on the Establishment of an International Criminal Court. The Ad Hoc Committee was given the mandate of reviewing the substantive and administrative issues that arose from the ILC's draft statute, and of planning for an international conference of plenipotentiaries.

Around sixty delegations participated in two meetings of the Ad Hoc Committee in 1995. The Committee became divided over the necessary steps to take. On the one hand, some delegations argued that more general discussions were still needed before a decision on a diplomatic conference could be made, while on the other hand, the like-minded states believed that quick progress could be made, by both setting up a Preparatory Committee that would prepare a new draft statute, and holding a conference of plenipotentiaries as soon as 1997. A compromise was then reached within the Ad Hoc Committee, where the members would engage in further debate while simultaneously drafting an ICC convention that would be reviewed by a conference of plenipotentiaries at a later date.

The General Assembly followed up on the report of the Ad Hoc Committee, by setting up a Preparatory Committee that was responsible for preparing draft texts (Von Hebel 1999; Sadat 2000). But the General Assembly also postponed any decision on the date and organization of a future conference of plenipotentiaries. The Preparatory Committee was open to all UN member states as well as members of specialized agencies, and was mandated to formulate a widely acceptable draft of an ICC convention, for future consideration by a conference of plenipotentiaries. The Preparatory Committee held three, two-week sessions in 1996, during which it collected the various draft proposals. But, according to Herman Von Hebel, "in terms of taking stock of all

problems involved, the PrepCom in 1996 could be considered rather productive; in terms of substantive negotiations, that PrepCom only provided a modest first step" (Von Hebel 1999, 34). The divide between the committee participants became evident once again during the final session of 1996, as the like-minded group of states pressed for the holding of a diplomatic conference as soon as 1997, while other countries either proposed 1998 as the earliest possible date for the conference, or argued that the time was not yet right for setting a date. Negotiations produced a compromise between the parties, where it was agreed that the Preparatory Committee would convene three or four times for a total of nine weeks during 1997 and the spring of 1998, and that a diplomatic conference of plenipotentiaries would be held later in 1998.

The General Assembly passed Resolution 51/207 on December 17, 1996, declaring that the diplomatic conference would take place in Italy sometime during the summer of 1998 (Von Hebel 1999). Beginning in 1997, the Preparatory Committee decided to no longer record the proceedings of its meetings, in the belief that privacy would facilitate the negotiation of deals between committee members. The sole documentation that was produced by the three meetings were the draft articles. On December 15, 1997, General Assembly Resolution 52/160 announced that the conference of plenipotentiaries would be held in Rome from June 15 till July 17, 1998. The Chairman of the Preparatory Committee, Adriaan Bos, who was the Legal Adviser of the Ministry of Foreign Affairs of the Netherlands, organized a January 1998 intersessional meeting in Zutphen, the Netherlands. The meeting included the Bureau of the Committee of the Whole, the chairs of the working groups, the coordinators, and the UN Secretariat. The objective of the meeting was to deal with technical issues, such as the structure and placement of the

articles, the amount of detail in the text, inconsistent points, and overlapping material. By the end of the meeting, the draft statute had been completely reworked. The Preparatory Committee then decided to abandon the ILC's draft statute, and refine its own version. On April 3, 1998, during its final session, the Preparatory Committee adopted a draft statute that would be presented at the Rome Conference in June.

The Rome Conference

The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court was held in Rome, at the headquarters of the Food and Agricultural Organization, from June 15 till July 17, 1998. One hundred and sixty states, thirty-three intergovernmental organizations, and a coalition of two hundred and thirty-six non-governmental organizations participated. The various parts of the Preparatory Committee's draft statute were divided among the different working groups of the Committee of the Whole, the latter of which was given the responsibility of negotiating the statute in its entirety. The negotiations were directed by two competent and effective chairpersons from middle power countries. Adriaan Bos of the Netherlands chaired the Ad Hoc and Preparatory Committees, but fell ill a few weeks before the Rome Conference was to begin. Bos was replaced by Philippe Kirsch, the Legal Adviser of the Canadian Department of Foreign Affairs and International Trade, who assumed the chairmanship of the Committee of the Whole. Mahnoush Arsanjani described how the ICC initiative was facilitated by the leadership of these two men:

> Bos's style, incorporating the most detailed understanding of the positions of various governments and the political dynamics behind them, was reassuring and deliberate, a technique that was useful in keeping all sides engaged during the early phases of the negotiations. Kirsch is a consummate international parliamentarian, and his style is swift and creative in the formation of consensus. He was animated by a determination to assemble a final package by maintaining a consistent focus

> and negotiating both bilaterally and multilaterally. This style proved to be crucial in forging compromise texts for the statute (Arsanjani 1999, 24).

The Rome Statute

The draft statute that was presented by the Preparatory Committee consisted of a preamble and thirteen parts, including one hundred and twenty-eight articles. The structure of the statute had been set at the January 1998 Zutphen meeting; the Rome Conference did not address the statute's structure whatsoever. Three principles provided the foundation for the statute (Arsanjani 1999). First, under the principle of complementarity, the ICC may assume jurisdiction only when national legal systems are either unable or unwilling to exercise jurisdiction. In cases where jurisdiction is shared between the ICC and national courts, the latter have primary jurisdiction. The ICC will only act when national courts do not. Second, the statute limits the ICC's jurisdiction to the most serious crimes of concern to the international community. By restricting the caseload of the ICC, it was hoped that the court would not become overburdened by cases that national courts could handle, that the costs of the ICC for the international community would be reduced, and that the court would gain in credibility, effectiveness, and moral authority by earning the acceptance of states. Third, the statute is rooted in customary international law, in order to make it more widely acceptable. While this approach was applied mainly to the definition of crimes, the statute's provisions dealing with the general principles of criminal law and the rules of procedure drew on both common and civil law.

The most important part of the statute, in terms of substantive humanitarian law, is Articles 6 to 8 dealing with genocide, crimes against humanity, and war crimes (Meron 1999). Article 5(d), covering the crime of aggression, was included in the statute due to a

compromise between those parties who insisted that aggression should be treated the same way as the other crimes, and others who stressed that aggression should be excluded because it has not been adequately defined, and also due to the fact that it is a crime committed more frequently by states than individuals. The inclusion of the crime of aggression in the ICC's jurisdiction was made tentative on both the adoption of a definition of the crime, in accordance with Articles 121 and 123, as well as the establishment of conditions under which the ICC would exercise such jurisdiction.

With regards to the crime of genocide, Article 6 is a restatement of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, passed by the UN General Assembly on December 9, 1948 (Meron 1999). Acts of genocide include killing or seriously harming members of a national, ethnic, racial, or religious group; deliberately inflicting harsh life conditions on the group with the intent of destroying it; imposing measures that will prevent births within the group; and forcibly transferring the children of the group to another group (*The Rome Statute of the International Criminal Court* 2002 [hereafter *The Rome Statute*]). Furthermore, under Article 25(3)(e) of the Rome Statute, a person may be tried by the ICC for directly and publicly inciting others to commit genocide.

Article 7 of the Rome Statute provides "the first comprehensive multilateral treaty definition of crimes against humanity" (Meron 1999, 49). Eleven categories of crimes against humanity are listed: murder, extermination, enslavement, deportation or forcible transfer of a population, imprisonment in violation of fundamental rules of international law, torture, acts of sexual violence, persecution against groups on the basis of ascribed characteristics, enforced disappearance of persons, the crime of apartheid, and other

inhumane acts that intentionally cause great suffering or serious injury (*The Rome Statute* 2002). The inclusion of crimes against women in the Rome Statute redresses a major void in international humanitarian law (Meron 1999).

Article 8 of the statute covers war crimes. The ICC is given jurisdiction when war crimes are committed as part of a policy or plan, or as part of a large-scale commission of these crimes. The Rome Statute provides a long list of acts that may be classified as war crimes. To begin with, grave breaches of the 1949 Geneva Conventions are considered to be war crimes, such as willful killing, torture, the intentional causing of suffering or injury, extensive destruction and appropriation of property, compelling a prisoner of war to serve in the hostile military forces, willfully depriving a prisoner of war of the right to a fair trial, unlawful deportation, transfer, or confinement, and the taking of hostages (*The Rome Statute* 2002). Other examples of war crimes include intentional attacks on civilians and civilian objects, willful attacks on humanitarian personnel, the direct or indirect transfer by an occupying power of parts of its own civilian population onto the territory it occupies, the killing or wounding of individuals in a treacherous manner, the use of poison or poisoned weapons, the utilization of weapons, materials, and methods which may cause superfluous injury or unnecessary suffering, the starvation of citizens as a method of warfare, and the conscription or enlistment of children under fifteen years of age into the military.

Paragraph 2(c) of Article 8 also includes a shorter list of war crimes for armed conflicts not of an international character. These include situations of protracted conflict between governmental authorities and organized armed groups, or between the latter solely. According to Theodor Meron, “the recognition that war crimes under customary

law are pertinent to non-international armed conflicts represents a significant advance" (Meron 1999, 53). Paragraph 2(c) does not apply, however, to situations of internal disturbances and tensions, such as riots and sporadic acts of violence. Meron indicated that there are some shortcomings with the definition of war crimes. Specific references to bacteriological and biological agents and toxins, as well as to chemical weapons, have been deleted from the Rome Statute. Furthermore, the statute does not criminalize the use of any particular weapon in non-international armed conflicts. Finally, the reference to "protracted armed conflict" in the statute's definition of "non-international armed conflict" implies that the ICC cannot prosecute war crimes that have been committed in situations that fall short of this high benchmark, such as repressive military crackdowns on outbreaks of anti-government street violence.

The majority of the states which participated in the Rome Conference wanted the ICC to have automatic jurisdiction with regards to genocide, crimes against humanity, war crimes, and the crime of aggression (Arsanjani 1999). But some countries, including the United States, wanted to establish automatic jurisdiction solely for the crime of genocide. They proposed that a consent regime be instituted for the other crimes, where states could agree to either opt in or opt out, or could decide to give their consent on individual cases. In the end, it was decided that the ICC may exercise jurisdiction concerning the crimes enumerated in the Rome Statute, provided that it obtains either the consent of the state on whose territory the crime was committed, or the consent of the state of which the accused is a national. But in situations where a case is referred to the ICC by the Security Council, the ICC will have jurisdiction, even if the crime was committed in a state that is a non-signatory of the Rome Statute, or the accused is a

national of a non-signatory state. Moreover, in these scenarios, the ICC will exercise jurisdiction even without the consent of the state where the crime was committed, or the consent of the state where the accused is a national.

The United States promoted vigorously the idea that the ICC's jurisdiction requires the consent of the state of nationality of the accused, due to a concern that American military personnel overseas would be prosecuted by the ICC, even if the U.S. is not a party to the Rome Statute (Arsanjani 1999). The U.S. delegation argued that an overextension of the ICC's jurisdiction would force the United States to reconsider the deployment of its military abroad, including the performance of alliance obligations and humanitarian interventions. But the majority of states believed that the ICC would become paralyzed if it required the consent of the accused's state of nationality. On the final day of the Rome Conference, the United States proposed that the ICC should not have jurisdiction in cases where the state of nationality of the accused declares that the crime was committed while the accused was fulfilling an official duty. If so, responsibility for the criminal act would shift from the individual to the state, where general international law rather than the Statute of Rome would be applicable. The other conference participants did not accept this proposal either. The United States also insisted at the Rome Conference that the Security Council's authorization should be required for each ICC prosecution (Brown 2000). Thus, each of the Security Council's five permanent members—China, France, Russia, the United Kingdom, and the United States—would be able to use the veto to prevent an ICC prosecution. This proposal was also rejected, as other states felt that the independence and effectiveness of the ICC would be sharply reduced if it required the prior consent of the Security Council.

The city of The Hague in the Netherlands will serve as the home of the court. The ICC differs from the International Court of Justice (ICJ), in that the former will try individuals while the latter can only decide disputes between states (Brown 2000). At first, the ICC will have eighteen full-time judges divided into separate chambers which handle trials, pretrial matters, and appeals. The number and status of the judges may be adjusted later depending on the caseload. The judges will be elected by the Assembly of States Parties to a single nine-year term. The selection of judges will take into account equitable geographical representation, representation of the world's major legal systems, a fair representation based on gender, and a consideration of the need for expertise on specific issues. The judges must be nationals of states parties to the treaty (although no two judges may be nationals of the same state), and fluent in either English or French.

The Rome Statute specified that the ICC would come into existence once sixty states had signed and ratified the treaty (Brown 2000). States parties are obligated to cooperate with the ICC to facilitate the investigation and prosecution of crimes within its jurisdiction. Cooperation includes the arrest and transfer of suspects to the ICC, and the provision of evidence. Since states parties must ensure that national laws allow for cooperation with the ICC, most states need to adjust their domestic legislation before ratifying the statute. If a state party denies a request from the ICC for cooperation, it must furnish the ICC with reasons for the denial. A state party may refuse to provide the ICC with evidence that it considers adverse to national security interests, and it may even refuse to provide reasons for a denial of cooperation if the reasons would also threaten national security. If the ICC views a state party's refusal to cooperate as a violation of the statute, it may refer the matter to the Assembly of States Parties, or to the Security

Council if the case is based on a referral from that body. But the Rome Statute does not specify what measures may be taken to punish noncompliance.

ICC investigations may be initiated either by a referral from a state party or the Security Council to the ICC Prosecutor, or by the Prosecutor on their own authority based on information that crimes have been committed (Brown 2000). The Prosecutor may obtain additional information from states, international organizations, and NGOs. If an investigation is initiated by the ICC Prosecutor, it must be authorized subsequently by a majority vote of the three judges in the Pre-Trial Chamber. Any orders or warrants requested by the Prosecutor for the purpose of the investigation must also be authorized by these judges. Victims are permitted to submit their views and information to the Pre-Trial Chamber. The Security Council may suspend any ICC investigation or prosecution for a renewable period of twelve months, by adopting a resolution under Chapter VII of the UN Charter.

Under the Rome Statute, a three-judge Trial Chamber presides over the trial, which is held in the presence of the accused. International human rights law provides the accused with certain rights, including “the presumption of innocence, the right to a public hearing, the right to counsel, the right to a speedy trial, and the right to compel the attendance of witnesses on the same terms as the prosecution” (Brown 2000, 76-77). The statute does make some new contributions to international criminal law, such as the provision of special measures to ensure the protection of victims and witnesses whose testimony before the ICC may endanger them, and the ability of the ICC to order that reparations be made to the victims of a person who is convicted. During the trial, the Prosecutor is responsible for proving that the accused is guilty beyond a reasonable

doubt. The decisions of the Trial Chamber are made by a majority of the three judges who preside. According to the ICC appeals process, either a conviction or an acquittal may be appealed to the five-judge Appeals Chamber. The latter body may either reverse or amend the verdicts of the Trial Chamber, or it can order that a new trial should be conducted before a new Trial Chamber. The convicted may be sentenced to imprisonment for up to thirty years, or to a term of life imprisonment. A convicted criminal would be imprisoned in a country chosen by the ICC from a list of states who have agreed to accept prisoners. The ICC may impose a fine or a forfeiture of assets which were obtained from a crime, and may order that such assets be transferred to a trust fund which benefits the victims of the crime and their families.

The primary source of financing for the ICC is contributions from states parties, which are based on the scale of assessments used for the United Nations regular budget (Brown 2000). The United States made the case during the Rome Conference that non-parties to the treaty should not be forced to finance the ICC through their contributions to the United Nations. The Rome Statute addresses this point by stating that the ICC may receive UN funds to cover its expenses in situations where a case is referred to the ICC by the Security Council. The ICC may also accept donations from national governments, international organizations, corporations, individuals, and other sources. The criteria for voluntary funding are to be decided by the Assembly of States Parties.

Fast-Track Diplomacy and the ICC Initiative

Non-Governmental Organizations Campaign for an ICC

In February 1995, the NGO Coalition for an International Criminal Court (CICC) was established, in order to coordinate NGO action on the ICC initiative, and to disseminate information on the progress of the negotiations (Berg 1997; Pace 1999; Pace

and Schense 2001). The CICC consisted of approximately two dozen organizations at first, but expanded to include more than eight hundred NGOs worldwide by the start of the Rome Conference, and over a thousand NGOs by June 2000. Around 450 representatives from 235 NGOs were accredited by the UN General Assembly to participate in the Rome Conference. According to the Convener of the CICC, William Pace, nearly all of these NGOs were members of the CICC (Pace 1999). William Pace and Jennifer Schense (2001) indicated that approximately five hundred NGOs may have been represented at the Rome Conference, if the individual members of umbrella groups of NGOs, such as the World Federalist Movement (WFM) and the Women's Caucus for Gender Justice, are counted. In fact, the CICC was the largest delegation overall at the Rome Conference. The WFM delegation, which served as the Secretariat of the CICC, exceeded even the largest delegations from national governments (Pace 1999). Most of the NGOs, however, sent merely one or two representatives, who were able to attend only a portion of the five-week conference.

An informal Steering Committee coordinates the activities of the CICC.[3] The engine of the coalition is its vast web of national and regional networks.[4] The NGOs which make up the CICC are located all over the world, and are concerned with diverse

[3] As of June 2000, the Steering Committee consisted of Amnesty International, *Asociacion pro Derechos Humanos* (Association for Human Rights, APRODEH), the European Law Students Association, *Fédération International des Ligues des Droits de l'Homme* (International Federation of Leagues of Human Rights, FIDH), Human Rights Watch, the International Center for Human Rights and Democratic Development (Rights and Democracy), the International Commission of Jurists, the Lawyers Committee for Human Rights, No Peace Without Justice, Parliamentarians for Global Action (PGA), the Women's Caucus for Gender Justice, and the World Federalist Movement (WFM). See Pace and Schense 2001, fn.7.

[4] According to William Pace and Jennifer Schense, the CICC had established national networks in twenty-six countries by June 2000, including Argentina, Bangladesh, Belgium, Brazil, Burundi, Cameroon, Canada, Chile, Colombia, Egypt, France, Germany, Ghana, Japan, Kenya, Mexico, Peru, Poland, the Russian Federation, Senegal, South Africa, Spain, Thailand, the United Kingdom, the United States, and Venezuela (Pace and Schense 2001, fn.8).

issues, including the environment, the rights of women and children, indigenous peoples, religion, ethics, peace, disarmament, and humanitarian and international law (Berg 1997; Pace and Schense 2001). This broad coalition of NGOs is united under a mandate to cooperate in order to support the establishment of an effective and just ICC. Accolades for the successful efforts of the CICC have come from national governments, United Nations Secretary-General Kofi Annan, and media experts.

The CICC engaged in numerous activities during the Rome Conference (Pace 1999). The coalition created thirteen working groups which reviewed the 128 articles of the statute, and assisted NGO experts from less developed countries to attend the conference. The CICC organized regional caucuses, including the tri-continental alliance established by groups from Africa, Asia, and Latin America, and convened sectoral caucuses which dealt with the link between justice and issues like gender, children, and religion. Reports and documents were written and translated by the CICC for the use of NGOs and national governments. The coalition also organized three separate news teams to furnish the conference participants with two daily newspapers and an on-line bulletin. The CICC provided experts and interns to assist government delegations, and helped coordinate between the conference proceedings and national NGO networks. Furthermore, the CICC briefed the international and regional press on a regular basis, conducted daily strategy sessions, held weekly meetings with the Chair of the Rome Conference, Philippe Kirsch from Canada, and convened regular meetings with national governments, particularly the sixty members of the Like-Minded Group of Countries. In addition, the coalition produced statistical analyses of the degree of support of

government delegations for particular elements of the ICC, which assisted the Rome Statute negotiations considerably.

According to William Pace, "the highly publicized and praised contributions of NGOs at the Rome Conference represented a small fraction of the work done by the Coalition during the previous three and a half years of preparatory meetings" (Pace 1999, 204). Prior to Rome, the CICC conducted an information campaign, met with national governments, prepared background reports, assisted with translations, provided the media with briefings, created regional and sectoral working and support groups, and convened intersessional meetings. The NGOs Amnesty International, Human Rights Watch, Lawyers Committee for Human Rights, and the Women's Caucus for Gender Justice in the ICC were particularly adept in preparing documentation and campaign materials for every preparatory meeting leading up to the Rome Conference. The CICC also benefited from the astute leadership of its Convener, William Pace. Two other figures deserve a special mention. Professor Cherif Bassiouni headed the International Superior Institute of Criminal Science in Italy, which helped convene unofficial intersessional meetings during the preparatory period. The Italian politician Emma Bonino led the Transnational Radical Party and the NGO No Peace Without Justice, two groups whose international campaign helped secure a commitment from Italy to host the ICC conference, and who organized a series of meetings with politicians and governments around the world in order to drum up support for the ICC.

The Like-Minded Group of Countries and the ICC

In 1994, the Like-Minded Group of Countries (LMG) was formed by around a dozen states, who wished to campaign for the convening of a diplomatic conference of plenipotentiaries in 1998. The LMG is an informal association, without a fixed

composition. By the time of the Rome Conference, approximately sixty countries, most of them middle powers and small states, had joined the group. By June 2000, sixty-seven states were members.[5]

During the meetings of the Preparatory Committee prior to the 1998 Rome Conference, key members of the CICC believed that the outcome of the negotiations on an ICC would depend on the leadership and negotiating capabilities of the Like-Minded Group (Pace 1999). The LMG managed to assume significant leadership positions at the Preparatory Committee meetings, with the aid of the chairmen of the committee, who represented middle power governments. The first Chairman of the Preparatory Committee, Adriaan Bos from the Netherlands, appointed mainly leaders from the LMG as "issue coordinators." Bos's replacement, Philippe Kirsch from Canada, would continue this strategy of consolidating the influence of the like-minded states in the negotiations.

In 1997, the CICC requested that the Like-Minded Group identify guiding principles that would serve as the foundation for the pro-ICC bloc during the negotiations. At the penultimate session of the Preparatory Committee in December 1997, the LMG reached a consensus on six main principles: the ICC should not be subjected to the oversight of the UN Security Council; the ICC Prosecutor should be independent; the ICC jurisdiction should be extended to cover the crime of genocide,

[5] The members were Andorra, Argentina, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Canada, Chile, Congo, Costa Rica, Croatia, the Czech Republic, Denmark, Egypt, Estonia, Fiji, Finland, Gabon, Georgia, Germany, Ghana, Greece, Hungary, Iceland, Ireland, Italy, the Ivory Coast, Jordan, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Malawi, Malta, Namibia, the Netherlands, New Zealand, Norway, the Philippines, Poland, Portugal, the Republic of Korea, Romania, Samoa, San Marino, Senegal, Sierra Leone, Slovakia, Slovenia, the Solomon Islands, South Africa, Spain, Swaziland, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom, Venezuela, Zambia, and Zimbabwe. See Pace and Schense 2001, fn.5.

crimes against humanity, war crimes, and the crime of aggression; states should cooperate fully with the ICC; the ICC should make the final decision on issues of admissibility; and a diplomatic conference of plenipotentiaries should be convened in Rome (Pace 1999).

Scholars argue that the alliance between the Coalition for an International Criminal Court and the Like-Minded Group demonstrated the efficacy of the "new diplomacy" and "soft power" (Pace 1999; Robinson 2001). Instead of relying on consensus-based diplomacy, which usually produces lowest common denominator agreements, the LMG engaged in fast-track diplomatic negotiations, with the objective of deriving an effective treaty. With the Canadian government at the helm, the members of the LMG were urged to coordinate their positions on both issues of substance and strategy.[6] The Like-Minded Group had to remain cohesive in order to overcome the antagonism of certain countries—including China, France, India, Mexico, the United Kingdom (prior to the emergence of the Labour government in 1997), and the United States—who were either opposed to or indecisive about the ICC initiative, and refused to set a date for a diplomatic conference.

The Convener of the CICC, William Pace, and other NGO leaders approached the Canadian Minister of Foreign Affairs Lloyd Axworthy for his support on the ICC initiative (Robinson 2001). Axworthy, who had been overwhelmingly successful in achieving the Ottawa Convention banning anti-personnel landmines in 1997, used his bilateral and multilateral contacts, as well as public statements, to spread the word on the necessity of an ICC. The Canadian foreign minister would be an active participant at the Rome Conference, where he lobbied states to remain firm in their will to establish an

[6] Another middle power, Australia, would later succeed Canada as the leader of the LMG in Rome. See Pace 1999.

effective and worthwhile ICC, and contacted other foreign ministers to discuss particular issues at critical stages of the negotiations.

Pressure from the Like-Minded Group resulted in the Rome Statute's recognition of war crimes in internal armed conflicts, despite the initial, vocal opposition of a few states (Robinson and Oosterveld 2001). Canada campaigned, with success, for the criminalization of sexual and gender-based offenses, including rape, sexual slavery, enforced prostitution, and persecution on the basis of gender. Furthermore, after fierce negotiations, the conference participants finally accepted a Canadian-proposed definition of crimes against humanity, which stated that these crimes are not only punishable when committed during armed conflict, but also when they are committed during incidents of societal disturbance (e.g., riots) or in times of peace.

After the Rome Conference's five weeks of negotiations, there were still stalemates with regards to the scope of the ICC's jurisdiction, the degree of the ICC's independence, the extent to which ratification would automatically provide the court with competence over all the crimes in the statute, and whether the ICC Prosecutor would be allowed to initiate an investigation without a referral from a state party (Robinson 2001). To bridge the divide, the Bureau of Coordinators drafted a final proposal which reflected the Like-Minded Group's wish for a strong ICC, but also accommodated the concerns of the minority of detractors at the conference. This package deal was widely endorsed by the delegations on the final day of the conference, despite a couple of last minute attempts to sabotage the treaty. First, India proposed that the use of, or threat to use, nuclear weapons should be considered as a war crime (Anbarasan 1998; Weschler 2000). But Norway

moved to table the motion, which was seconded by Malawi and Chile, and India lost the resulting vote with 114 states against, sixteen for, and twenty abstentions.

Second, the United States objected to the Rome Statute, because it gives the ICC the authority to exercise jurisdiction over American nationals even without the consent of the U.S. (Leigh 2001). At the final meeting of the Committee of the Whole on July 17, 1998, the U.S. Ambassador-At-Large for War Crimes Issues, David Scheffer, who headed the American delegation at the Rome Conference, proposed an amendment to the treaty, where the consent of both the state on whose territory the crime was committed, and the state of which the accused is a national, would be required in order for the ICC to exercise its jurisdiction (Weschler 2000, 107). But Norway immediately tabled the motion, which Sweden and Denmark seconded. A vote was then held, and the American proposal was soundly defeated, with 113 states voting against, seventeen for, and twenty-five abstentions ("The Birth of a New World Court" 1998).

The conference participants proceeded to adopt the Rome Statute on July 17, 1998, with 120 states voting in favor, seven against, and twenty-one states abstaining (Robinson 2001). At the request of the United States, the vote was not recorded ("Permanent International Criminal Court Established" 1998). There is some disagreement over which seven states voted against the Rome Statute. Although it is widely accepted that the United States, China, Israel, and Libya cast negative votes, David Bosco (1998) claimed that Algeria, Qatar and Yemen also opposed the statute. William Nash (2000) singled out Iraq, Qatar, and Yemen, while Monroe Leigh (2001) identified Iran, Iraq, and Sudan as the three remaining dissenters. Ironically, the U.S. joined the company of a few pariah states in voting against the ICC.

The Preparatory Committee for the ICC held an additional five meetings over the following two years. States which opposed the Rome Statute tried repeatedly to have the treaty amended. But spurred by a fear that any renegotiations would weaken the Rome Statute, the Like-Minded Group and the CICC succeeded in preserving the statute in its present form (Pace and Schense 2001). Skilled diplomacy by the pro-ICC bloc helped get the draft *Rules of Procedure and Evidence and the Elements of Crimes* adopted by consensus on June 30, 2000. The CICC launched a promotional campaign to encourage national governments to enact domestic legislation that would implement the ICC. The campaign bore fruit, as the sixtieth ratification of the Rome Statute was deposited with the United Nations on April 11, 2002, and the ICC came into effect on July 1 of that year ("International Criminal Court Statute Becomes Effective" 2002). As of July 2004, ninety-four states had ratified the Rome Statute (Aldinger 2004).

The first conference of the states parties to the Rome Statute was held in September 2002, and the inaugural session of the ICC, featuring the swearing in of the eighteen judges, was held on March 11, 2003 (Deutsch 2003; Levene 2003). The Canadian Philippe Kirsch, who had served astutely as the chair of the Rome Conference, was appointed as the ICC's first president for a term of six years. Since 1998, when the Rome Statute was signed, more than two hundred complaints of war crimes have been filed with the ICC. Through their competent leadership on the initiative to establish the ICC, the middle powers have addressed the global demand for justice, and have filled a void in the realm of human security.

The United States and the International Criminal Court

The United States called initially for the creation of an ICC (Pfaff 1998). Secretary of State Madeleine Albright emphasized that, by prosecuting individuals who carry out

atrocities, an ICC would deter war crimes from occurring in the future. The Bill Clinton administration adopted the position that the United States would support the court, but only if the U.S. were exempt from its jurisdiction. The administration pursued three main objectives in the ICC negotiations (Scheffer 1999). First, it was desired that the negotiations would result in a treaty. Second, the Clinton administration argued that the ICC had to take into account American responsibility for maintaining international peace and security. Third, the administration opposed the establishment of an independent ICC Prosecutor. Ambassador David Scheffer, the head of the American delegation at the Rome Conference, summarized the Clinton administration's position succinctly:

> Since 1995, the question for the Clinton administration has never been whether there should be an international criminal court, but rather what kind of court it should be in order to operate efficiently, effectively and appropriately within a global system that also requires our constant vigilance to protect international peace and security. At the same time, the United States has special responsibilities and special exposure to political controversy over our actions. This factor cannot be taken lightly when issues of international peace and security are at stake. We are called upon to act, sometimes at great risk, far more than any other nation. This is a reality in the international system (Scheffer 1999, 12).

In early 1993, the Clinton administration launched a review of the draft proposal for an ICC which the International Law Commission had been discussing since 1992. The American suggestions for the proposed ICC included a considerable role for the UN Security Council in referring cases to the ICC, the elaboration of an adequate definition of war crimes in the Rome Statute, the exclusion of drug trafficking and the crime of aggression—which was difficult to define—from the statute, and the further study of U.S. concerns about the inclusion of crimes of international terrorism in the statute (Scheffer 1999).

Washington was concerned that the ICC would be used as a forum for prosecuting U.S. military personnel who serve abroad. Critics of the ICC pointed to the statements

made by some Russian and Serbian leaders, who had suggested that the United States should be tried for its aerial bombing during the Kosovo intervention ("International Justice" 2001). The U.S. was also worried that the ICC would not guarantee American military personnel their constitutional rights to a jury trial and due process, protected under the Fifth and Sixth Amendments to the U.S. Constitution (Everett 2000). According to the Fifth Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation ("The Constitution of the United States of America" [1787] 2002, 261-62).

The Sixth Amendment states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence ("The Constitution of the United States of America" [1787] 2002, 262).

Determined to prevent any politically motivated trials of American soldiers, as well as to protect their constitutional rights, the U.S. insisted that the ICC should be subjected to UN Security Council controls over which cases it may pursue (Omestad 1998). As a permanent member of the Security Council, the U.S. would thereby retain a veto on the activities of the ICC.

It has been argued by some scholars that the ICC does not pose a genuine threat to American constitutional rights. Since the Fifth Amendment of the U.S. Bill of Rights excludes servicemembers from the guarantee of a jury trial in a time of war or public

danger, the fact that the Rome Statute does not provide the accused with the right of a trial by jury becomes less of an issue (Leigh 2001; "U.S. Signing" 2001). Furthermore, under the complementarity regime of the ICC, the court may assume jurisdiction only when a national legal system is either unable or unwilling to launch an investigation (Tepperman 2000; Leigh 2001; Carter 2002). This scenario should never occur in the case of the U.S. and other democracies with effective judicial systems. But Ambassador David Scheffer emphasized that the complementarity regime does not offer sufficient protection for American citizens:

> Even if the United States has conducted an investigation, again as a nonparty to the treaty, the court could decide there was no genuine investigation by a 2-to-1 vote and then launch its own investigation of U.S. citizens, notwithstanding that the U.S. Government is not obligated to cooperate with the ICC because the United States has not ratified the treaty (Scheffer 1999, 19).

The United States was therefore committed to ensuring that the ICC would not threaten the constitutional rights of the American citizenry. The final draft treaty produced by the ILC fulfilled the objectives of the U.S. to some degree (Scheffer 1999). The draft statute acknowledged that cases which concern the Security Council's functions under Chapter VII of the UN Charter should only be addressed by the ICC after a Security Council referral, that the prosecution of crimes of aggression should require the prior approval of the Security Council, and that the ICC Prosecutor should only act when a case is referred by either a state party or the Security Council. Furthermore, the draft statute included a provision allowing a state party to opt out of one or more of the categories of crimes when ratifying the treaty, thereby restricting the ICC's jurisdiction over the state party's citizens for these particular offenses.

During the meetings of the Preparatory Committee, the U.S. delegation helped draft the trial procedures of the ICC, as well as define the rights of defendants (Roth 1998).

The Rome Statute includes numerous provisions which guarantee due process, such as the right of confrontation and cross-examination, the right to remain silent, the presumption of innocence, the right to assistance of counsel, protection against double jeopardy, privilege against self-incrimination, the right to be present at trial, the prohibition of trials in absentia, and the exclusion of evidence that was obtained illegally. The inclusion of these protections for the accused may be credited in part to determined negotiating by the U.S. delegation at the meetings of the Preparatory Committee. In the words of Ambassador Scheffer:

> Due process protections occupied an enormous amount of the U.S. delegation's efforts. We had to satisfy ourselves that U.S. constitutional requirements would be met with respect to the rights of defendants before the court. Parts 5-8 of the treaty contain provisions advocated by the U.S. delegation to preserve the rights of the defendant and establish the limits of the prosecutor's authority (Scheffer 1999, 17).

The American delegation also succeeded in getting the procedures of the ICC restructured, and pushed for the broadening of the complementarity regime, to include a deferral to national jurisdiction as soon as a case has been referred to the ICC (Scheffer 1999). The U.S. worked with the other permanent members of the Security Council to derive an acceptable definition of the crime of aggression, where only a person who could direct or control the political and military actions of a state may be investigated for such a crime. The American delegation also joined the Like-Minded Group in revising the definition of crimes against humanity, to include crimes committed during intrastate wars and in the absence of armed conflict.

But to the dismay of the American delegation at the Rome Conference, the LMG used its influence in the Bureau of Coordinators—bolstered by the appointment of LMG officials as issue coordinators—to secure the establishment of an independent ICC Prosecutor, who is authorized to initiate investigations and prosecutions of crimes

without requiring a referral from a state party or the Security Council. Thus, the U.S. was unsuccessful both in preventing the ICC Prosecutor from being empowered to launch investigations independently, and in ensuring an authoritative position for the Security Council with regards to the selection of the criminal cases that the ICC would investigate.

In addition, the United States was upset with the Like-Minded Group's use of fast-track diplomacy at the Rome Conference. Ambassador Scheffer complained that "the process launched in the final forty-eight hours of the Rome Conference minimized the chances that [the] proposals and amendments to the text that the U.S. delegation had submitted in good faith could be seriously considered by delegations" (Scheffer 1999, 20). During this period, the draft statute was revised, behind closed doors, by a small number of delegates, most of whom were from the LMG. These delegates brokered deals with holdout governments in order to convince them to support a draft that was finalized at 2:00 a.m. on July 17, the last day of the conference. The LMG's "take it or leave it" approach involved the rewriting of significant portions of the statute, without subjecting the text to review by either the Drafting Committee or the Committee of the Whole. Ambassador Scheffer acknowledged that the U.S. delegation was at a disadvantage compared to the LMG at the Rome Conference, because "the United States usually had to build support for its positions through time-consuming bilateral diplomacy" (Scheffer 1999, 15).

The final draft of the Rome Statute included a provision, unacceptable to the United States, whereby if the treaty were amended in the future to include a new crime or a redefinition of an existing crime, then states parties would be permitted to immunize their nationals from prosecution for this new crime, but the nationals of non-states parties

would remain subject to potential prosecution (Scheffer 1999). Moreover, the Rome Statute included the crime of aggression, despite the fact that no consensus on a definition of this crime had been reached at the conference. But the last-minute attempt by the U.S. delegation to weaken the treaty—through Ambassador Scheffer's proposed amendment that the ICC jurisdiction should require the consent of both the state where the crime was committed, and the state of nationality of the accused—was rejected by the conference participants, who then proceeded to adopt the Rome Statute establishing the ICC.

On July 23, 1998, less than a week after the conclusion of the Rome Conference, Ambassador Scheffer presented the U.S. Senate Committee on Foreign Relations with a summary of the American delegation's objections to the Rome Statute (Frye 1999). First, the U.S. delegation disagreed with the parameters of the ICC's jurisdiction. Under Article 12 of the statute, the ICC has jurisdiction when either a crime is committed on the territory of a state party, or when the accused is a national of a state party. But citizens of non-states parties to the Rome Statute, such as the United States, could still be prosecuted by the ICC. In a possible scenario, if a non-state party participated in a peacekeeping mission on a state party's territory, the peacekeeping personnel could fall under ICC jurisdiction. Ambassador Scheffer made the additional argument that non-states parties may actually be more vulnerable to the ICC war crimes jurisdiction than states parties, since the former cannot opt out of the war crimes jurisdiction for a seven-year period like states parties are permitted.

Second, the U.S. and the four other permanent members of the Security Council—China, France, Russia, and the United Kingdom, also known as the P-5—were unable to

convince the rest of the conference participants to adopt their proposal allowing states to opt out of the ICC jurisdiction on crimes against humanity or war crimes for up to ten years (Frye 1999). The American delegation felt that such a lengthy opt-out period would give states time to evaluate if the ICC was operating in an effective and impartial manner. Article 124 of the Rome Statute allows a seven-year opt-out period, but only on the issue of war crimes. The P-5 proposal would also have protected non-signatory states from the ICC's jurisdiction, unless the Security Council would decide otherwise on a particular case. Unfortunately for the P-5, their proposal was rejected by the dominant bloc at the Rome Conference, the Like-Minded Group of States (Scheffer 1999).

Third, the U.S. objected to the establishment of an independent ICC Prosecutor. Fourth, the American delegation was dissatisfied that the Rome Conference participants included the crime of aggression in the statute, but set aside the definition of the crime for future negotiations. The U.S. preferred that the Security Council would determine when an incident of aggression has occurred, and if the case should be referred to the ICC. Finally, the U.S. delegation was disappointed with the adoption of a provision which prohibits reservations to the Rome Statute.

Despite its opposition to the Rome Statute, Washington still sought a means by which it could influence the future development of the ICC. On December 31, 2000, just hours before the deadline, the United States reversed course and signed the Rome Statute ("Sign On, Opt Out; What? A World Criminal Court!" 2001). President Clinton explained that by signing the treaty, the U.S. was demonstrating its moral leadership on the ICC issue. But there was a greater calculation behind the American signature: the United States would receive an invitation to participate in the subsequent technical

meetings that would be convened to work out the Rome Statute's details. The American delegation would then be able to push for the adoption of provisions which correspond with U.S. interests. Chief among these clauses would be an exemption for states which do not ratify the statute. President Clinton emphasized that he would not ask the U.S. Senate to ratify the Rome Statute in its present form. Moreover, Clinton knew that U.S. ratification would have been impossible, as the Chairman of the Senate Armed Services Committee, Senator Jesse Helms (R-North Carolina), had declared that any treaty for an ICC that could prosecute U.S. citizens would be "dead on arrival" in the Senate (Cassel 2001, 14).

Senator Helms, Representative Henry Hyde (R-Illinois), and House Majority Whip Tom DeLay (R-Texas) introduced the American Servicemembers Protection Act (ASPA) of 2000 in Congress, as an amendment to the Department of Defense Appropriations Act (Eviatar 2001; "U.S. Signing of the Statute of the International Criminal Court" 2001 [hereafter "U.S. Signing"]). The ASPA was intended to prohibit any U.S. court or government from cooperating with the ICC, prevent American forces from participating in UN-sponsored military operations unless they are granted immunity from criminal prosecution by the ICC, and cut off U.S. aid to all states parties to the Rome Statute, with the exception of NATO members, key non-NATO allies, and states which agree not to transfer U.S. personnel to the ICC. Under the legislation, the president would be authorized to use whatever means necessary to free American personnel from ICC captivity. On September 25, 2001, the George W. Bush administration announced its support of the ASPA, after a provision was included which permitted the president to

provide military assistance to a state party to the Rome Statute, if he considers it to be in the national interest.[7]

The ASPA received considerable criticism for its intent to subvert multilateral cooperation by promoting unilateralism in U.S. foreign policy. Doug Cassel indicated that the Republicans have a strong motivation for the legislation: "if [the ASPA] seems calculated to offend other nations and to thwart U.S. participation in international peacekeeping, so much the better" (Cassel 2001, 14). Daniel Benjamin remarked that, "in the ICC project, American right-wingers hear the whir of black helicopters, the approach of world government and the loss of U.S. sovereignty" (Benjamin 2001, 31).

The George W. Bush administration has adopted a belligerent position vis-à-vis the ICC. In May 2002, Bush "unsigned" the Rome Statute, the first time a U.S. president has ever decided to revoke the signature of a former chief executive on a treaty (Anderson 2002; Meyer 2002). The United States surprised many in the international community when it threatened to veto the routine renewal of all United Nations peacekeeping operations, starting with the mission in Bosnia, if the Security Council did not grant a permanent immunity from ICC prosecution to all UN peacekeepers ("Both Sides Lose; The International Criminal Court" 2002). But each of the other Security Council members, including both ICC supporters and states like China and Russia which have been unwilling to join the court, refused to pass such a resolution. The U.S. then pressed, unsuccessfully, for a twelve-month exemption from prosecution for UN peacekeepers, that would be automatically and perpetually renewable. The United Kingdom finally

[7] The U.S. House and Senate decided to drop the controversial act when it adopted a final version of the Defense Appropriations Act on December 20, 2001. But the ASPA was reintroduced as part of the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States. See Human Rights Watch 2001 and 2002.

brokered a compromise Security Council resolution, where immunity was extended, for a period of twelve months that is renewable annually, to all participants in either UN or UN-authorized operations who are from countries which are not states parties to the Rome Statute. The United States had to settle for an exemption that is not permanent, and may be vetoed by any of the P-5 when it comes time for its annual renewal.[8]

On August 3, 2002, President Bush signed the ASPA into law (Human Rights Watch 2002). Furthermore, the Bush administration withdrew from all negotiations to establish the ICC, negotiated bilateral treaties with over sixty-five countries who agreed not to transfer any American citizens to the custody of the ICC, and cut off military aid to around thirty-five states who refused to exempt U.S. soldiers from the ICC's jurisdiction (Lobe 2003a; Lobe 2003b). But despite American antagonism, the ICC came into effect in July 2002.

Conclusion

The initiative to create an international criminal court demonstrates that middle powers are capable of skilled leadership on issues of human security. With considerable guidance from the Canadian government and support from the Coalition for an International Criminal Court, the Like-Minded Group of Countries campaigned successfully for the establishment of an ICC that is both strong and effective in theory. If the ICC will truly function as its architects intended it to is a question that will be answered in the future. Nevertheless, the case of the ICC initiative provided support for the hypothesis that the United States is more likely to oppose a middle power-led human

[8] On June 23, 2004, the Bush administration withdrew a Security Council resolution to renew the exemption, after it realized that the other Security Council members would not vote in favor, due to anger over the abuse of Iraqi prisoners by American soldiers following the 2003 war in Iraq. See Aldinger 2004.

security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution. Fearing that the ICC would conduct politically motivated trials of United States military personnel without regard for their constitutional rights as American citizens, the U.S. attempted to submit the ICC to UN Security Council oversight, where any of the five permanent members would have been able to veto an ICC investigation which conflicts with their interests. When this plan failed, the U.S. tried to thwart the adoption of the Rome Statute.

But fast-track diplomacy by the LMG ensured that the International Criminal Court would see the light of day. Thus, this case study also corroborated the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy. The middle powers brokered the strong and cohesive Like-Minded Group of Countries, an amazing task in that the coalition included nearly one-third of all countries in the world. Middle power officials assumed influential positions at the meetings of the Preparatory Committee and at the Rome Conference. Adriaan Bos from the Netherlands and Philippe Kirsch from Canada were astute chairmen, especially in their appointment of middle power officials as issue coordinators. The LMG cultivated a close relationship with the CICC, thus forming a powerful, pro-ICC lobby at the Rome Conference. Most important, the LMG held firm when the U.S. and other members of the P-5 sought to weaken certain provisions of the Rome Statute. The LMG did not let the objections of a few states get in the way of making progress on the ICC issue.

Fast-track diplomacy was most evident on the last two days of the Rome Conference, when members of the LMG revised the statute on their own, and then

persuaded most of the other conference participants to support their draft treaty, thereby creating an effective ICC with an independent Prosecutor. Had the LMG relied on the consensus-based diplomacy of traditional channels of negotiation, it would have been possible for any of the P-5 states to block the achievement of the Rome Statute. The next chapter tests the two hypotheses through another case study of middle power leadership on a human security issue: the initiative to adopt international restrictions on the legal trade in small arms and light weapons.

CHAPTER 5
REGULATING THE LEGAL TRADE IN SMALL ARMS AND LIGHT WEAPONS

Introduction

The previous chapters described three cases where middle power leadership has been successful in achieving human security initiatives. To address the United Nations' need for a rapid response capability for peacekeeping operations, the middle powers formed the Stand-by High Readiness Brigade for United Nations Operations. Although the United States did not participate in the creation of SHIRBRIG, it did approve of the establishment of a standby brigade for UN peacekeeping missions. Inspired by the tragic stories of innocent victims worldwide, the middle powers brokered a global ban on the use, stockpiling, production, and transfer of anti-personnel landmines. The United States objected to the Ottawa Process, but acquiesced to the idea of an APL ban. Finally, the middle powers were instrumental in designing an International Criminal Court that is intended to bring war criminals to justice. This time, the human security campaign overcame U.S. opposition, based on a belief that the ICC initiative posed a threat to the constitutional rights of American citizens to a jury trial and due process.

The evidence which has been analyzed in the study thus far provided support for the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution. In this chapter, the hypothesis is tested further, through another case study of middle power leadership on human security: the attempt by the middle powers to achieve international restrictions on the legal trade in small arms and

light weapons (SALW) at the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. But in sharp contrast to the three cases of successful human security campaigns that were examined, the SALW initiative failed to fulfill its objectives. In order to shed light on why regulations on the licit SALW trade were not adopted, a second hypothesis is investigated: that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy.

This chapter begins with an examination of alternative definitions of "small arms and light weapons," the impact of the global proliferation of SALW, and an overview of the SALW industry. This is followed by an analysis of the United States' position on the issue of regulating the legal SALW trade, which is based on a need to defend the constitutional right of American citizens, under the Second Amendment, to bear arms. The discussion then focuses on the middle power-led campaign to adopt restrictions on the licit trade in SALW. In the conclusion, the consequences of the results of this initiative for the two hypotheses are explained.

The Problematic Proliferation of Small Arms and Light Weapons

What are Small Arms and Light Weapons?

There is considerable disagreement as to which weapons may be classified as SALW. Andrew Latham (1996) described four different definitions of light weapons which are in current use. First, light weapons have been defined as those weapons which are not covered in existing data collections on major weapons, such as the UN Register of Conventional Arms, and the annual register of major weapons transfers published by the Stockholm International Peace Research Institute (SIPRI). A second definition of light weapons refers to weapons carried by infantry, such as pistols, grenade launchers, and

light rocket launchers. But this definition excludes many weapons which are not covered by the UN and SIPRI registers, such as anti-aircraft artillery and heavy machine guns.

A third definition considers light weapons as those transportable by animals or light vehicles, including heavy machine guns, rifles, mortars, and some artillery. The problem with this definition is that it does not distinguish clearly enough between light weapons and major conventional weapons systems. Nevertheless, in 1983, the North Atlantic Treaty Organization (NATO) adopted a similar definition of light weapons as "all crew-portable direct fire weapons of a caliber less than 50mm [with] a secondary capability to defeat light armor and helicopters" (Latham 1996, 2). Finally, light weapons have been defined as the weapons used in intrastate conflict, a broad definition which may encompass anything from firearms to aircraft. Taking the shortcomings of these definitions into consideration, Andrew Latham adopted a broad conceptualization of light weapons as:

> All armaments that fall below the threshold of major conventional weapons systems (which are understood to include those weapons encompassed by the seven categories of the United Nations Register of Conventional Arms: battle tanks, armored combat vehicles, large caliber artillery, combat aircraft, attack helicopters, warships, and missiles/launchers) (Latham 1996, 3).

This definition includes such weapons as assault rifles, machine guns, light anti-tank weapons, light mortars, shoulder fired anti-aircraft missiles, and landmines. The United States' definition of SALW has been expressed by Under-Secretary of State John R. Bolton as:

> The strictly military arms—automatic rifles, machine guns, shoulder-fired missile and rocket systems, light mortars—that are contributing to continued violence and suffering in regions of conflict around the world. We separate these military arms from firearms such as hunting rifles and pistols, which are commonly owned and used by citizens in many countries ("UN Conference on Illicit Trade in Small Arms" 2001, 902 [hereafter "UN Conference"]).

In a 1997 report, the United Nations Panel of Governmental Experts on Small Arms presented its own classification of SALW (Garcia 2002). According to the Panel, "small arms" include revolvers, self-loading pistols, rifles, carbines, sub-machine guns, light machine guns, and assault rifles. The category of "light weapons" comprises heavy machine guns, portable anti-aircraft and anti-tank guns, recoilless rifles, hand-held under-barrel and mounted grenade launchers, portable launchers of anti-aircraft and anti-tank missile and rocket systems, and mortars of less than 100 mm caliber. Cartridges for small arms, shells and missiles for light weapons, landmines, anti-tank and anti-personnel grenades are classified under a third category of "ammunition and explosives."

One of the main reasons why the issue of regulating the trade in small arms and light weapons has been contentious is because there is no consensus as to which types of weapons should be classified as SALW. According to the broadest definition, SALW includes not only firearms and portable weapons, but landmines, armor, and aircraft as well. A minimalist definition of SALW is the one held by the United States government, which excludes firearms that are not designed for military purposes (even though they could be used for killing people).

The Devastating Impact of SALW

Since the Cold War ended, approximately four million people have been killed by small arms and light weapons in armed conflicts ("Under the Gun" 2001). Around ninety percent of these victims were civilians, and eighty percent were women and children. At least half a million people each year die from SALW, including around 300,000 from armed conflict and approximately 200,000 from homicides and suicides (Dhanapala 2002). The use of SALW in intrastate conflicts has also wounded and displaced millions of people. Twenty-two million people have become refugees due to the use of SALW in

civil wars, including eight million in Africa (Klare and Rotberg 1999). The proliferation of SALW has clearly been detrimental for human security.

According to Michael Klare and Robert Rotberg, "more people have been killed by small arms and light weapons in recent wars than by major weapons systems" (Klare and Rotberg 1999, 7). But, as Michael Renner indicated, "small arms are the orphans of arms control" (Renner 1999, 22). During the Cold War, arms control negotiations focused on major weapons systems, hence the global community failed to adopt international norms regarding the production, transfer, and possession of SALW. The 1990s witnessed a major transformation in the nature of conflict, however, as traditional warfare between nation-states was largely supplanted by intrastate conflict between ethnic and sectarian groups (Boutwell and Klare 1999). Due to their accessibility, low cost, and portability, SALW are the preferred weapons of combatants in intrastate conflicts. It is far easier for guerrillas, militias, drug traffickers, and terrorist groups to acquire and use SALW than major weapons systems (Klare 1999).

The adverse consequences of the proliferation of SALW have been expressed eloquently by Michael Klare and Robert Rotberg:

> Not every massacre has resulted from the easy availability of small arms. Cause and effect is impossible to establish. But in every recent case of large-scale mayhem, intercommunal conflict, ethnic or religious hostility, and racial violence in the developing world, small arms have been used to increase the scale and carnage of the fighting. Absent AK-47s or Uzis, inexpensive and universally accessible, intercommunal combat would have been harder to mount, genocidal instincts more difficult to fuel, and conflicts over perceived differences and competition for resources much less destructive. The impoverishment and immiseration of much of the developing world cannot be ascribed solely either to war or to the ease of acquiring small arms. But the destructive quality of small arms, and their ubiquity, has hardly eased efforts of economic development (Klare and Rotberg 1999, 7-8).

Jayantha Dhanapala, the United Nations Under-Secretary-General for Disarmament Affairs, concurred that the proliferation of small arms and light weapons has been culpable for the rise in violence in many countries:

> Although the widespread availability of these weapons alone does not cause war, in many situations their accumulation becomes excessive and destabilizing. According to the highly debated "accessibility thesis," the widespread availability of small arms and light weapons leads to increased levels of violence. Although there is no conclusive proof that guns cause violence—gun-owner advocates argue against it—there is ample evidence that the proliferation of weapons is closely associated with levels of violence (Dhanapala 2002, 163-164).

According to Andrew Latham (1996), there are five interrelated problems due to the diffusion of light weapons. First, both traditional and modern institutions of human security are undermined by easy access to light weapons. Sub-national groups with grievances may use SALW against persons, communities, or institutions of governance, public order, or national defense. Second, the accumulation of light weapons helps generate a culture of violence. Societies that are awash in SALW and suffer protracted conflict may become culturally militarized, where violent strategies for resolving societal problems become routine. Third, facilitating the acquisition of these weapons helps prop up authoritarian regimes and hinders the development of democratic institutions. Elite groups which control the state may use SALW to prevent the emergence of more pluralist or representative politics. Fourth, some types of light weapons, such as anti-personnel landmines and fuel-air explosives, are particularly inhumane, because they strike both military targets and civilians without discrimination. Finally, the use of certain types of light weapons can be detrimental for post-conflict efforts at peace-building and economic reconstruction. A good example is the unrecorded laying of anti-personnel landmines, which poses severe hazards for the post-war task of mine clearance, and prevents the cultivation of arable land for agriculture.

Michael Klare (1999) summarized the major findings of several studies on the basic dynamics of the SALW trade, and their implications for global peace and security. First, there is a close and symbiotic relationship between trafficking in SALW and contemporary forms of violent conflict. The intrastate conflicts of the post-Cold War era tend to be fought primarily with SALW, since these weapons are easy to procure and operate. Second, the initiation of ethnic and internal conflict in weak and divided societies often generates a SALW arms race between sub-national groups. While government forces have access to legitimate suppliers of SALW, insurgent groups often obtain these weapons through illicit channels. Third, outbreaks of intrastate conflict and internal arms races are fostered by an overabundance of SALW worldwide. During the Cold War, the superpowers produced and distributed vast quantities of SALW to their allies. These surplus weapons are now being redistributed globally through both licit and illicit markets. In addition, new supplies of SALW are being manufactured in dozens of countries, as the SALW technology has spread to developing states. Fourth, even relatively small amounts of SALW can have highly destabilizing effects in societies that are divided along sectarian lines. The acquisition of SALW by extremist groups, ethnic militias, and criminal gangs has triggered massacres in vulnerable societies. Finally, there are multiple channels, public and private, licit and illicit, through which parties in conflict can obtain SALW, a subject which shall be discussed in the next section.

The Global SALW Industry

Unfortunately, there is a scarcity of data on the worldwide production and stockpiling of SALW. The United Nations has estimated that there are at least five hundred million small arms and light weapons in global circulation at present, which amounts to approximately one for every twelve people (“Under the Gun” 2001). Michael

Klare and Robert Rotberg (1999) claimed that by the end of the 1990s, there were one to five hundred million military-style small arms in the developing world, a significant increase from the figure of forty million in 1990. There were also hundreds of millions of civilian-type small arms, including handguns and rifles, around the world. Based on data gathered from thirty-three participating countries, the *United Nations International Study on Firearm Regulation* (1998) reported that around thirty-four million firearms were owned by civilians. Michael Renner (1999) cautioned that this is a very conservative figure, considering that the number of registered firearms may be a minority of the total amount. For instance, there are 3.5 million registered civilian small arms in South Africa, but perhaps as many as five to eight million unregistered weapons. In another example, Canada has a grand total of twenty-one to twenty-five million firearms, of which only seven million are registered.

Small arms and light weapons are manufactured in seventy countries, including nineteen in the developing world. The major producers and exporters of SALW include Austria, Belgium, Brazil, Bulgaria, China, the Czech Republic, Egypt, France, Germany, Israel, Italy, Russia, Singapore, South Africa, South Korea, Switzerland, the United Kingdom, and the United States (Klare and Rotberg 1999; Renner 1999). Some of the leading firms in the military and civilian small arms industry are Beretta (Italy), Fabrique Nationale Herstal (Belgium), Heckler & Koch (Germany), Israeli Military Industries, Schweizerische Industrie Gesellschaft (Switzerland), and Steyr-Daimler-Puch (Austria). The SALW industry is quite lucrative; in 1996 alone, the U.S. State and Commerce Departments approved $530 million worth of small arms exports by private firms (Renner 1999). Data on U.S. production and exports of small arms and light weapons

may be the best available measures of the profitability of the global SALW industry. Lora Lumpe of the International Peace Research Institute in Oslo made the point that:

> because other governments are not open about their light weapons shipments, it is not possible to rank the leading sellers in the global small arms trade; however, given the sheer magnitude of U.S. licenses and sales . . . it is reasonable to assume that the United States dominates the small arms market just as it dominates the market for larger weapons systems (Lumpe 1999, 27).

In fact, the United States is the only country to issue annual statistics on SALW exports, through reports to Congress. Michael Klare and Robert Rotberg highlighted the fact that "even those countries, like Belgium, that are officially anxious to reduce the spread of small arms, shield their own manufacturing industries by refusing to release information on numbers and destinations. That is a common pattern" (Klare and Rotberg 1999, 9).

There is also little data on the global trade in SALW, estimated to be worth around seven billion dollars annually (Klare and Rotberg 1999). As Michael Renner argued, "many analysts . . . believe that the demand for and trade in small weapons continues to be robust and may even be accelerating—in marked contrast to the plummeting trade in major weapons systems since the late 1980s" (Renner 1999, 22). According to figures from the United States Arms Control and Disarmament Agency (ACDA), the international trade in small arms and ammunitions accounts for around thirteen percent of the total conventional arms trade, or around three billion dollars per year (Renner 1999). But small arms expert Michael Klare argued that ACDA's estimate is too low because it excludes transfers of machine guns, light artillery, and anti-tank weapons, all of which may be considered as light weapons. The Small Arms Survey, a research group based in Geneva, has calculated that between ten and twenty percent of the worldwide trade in SALW, valued at approximately one billion dollars per year, is made up of illegal

transactions ("Big Damage; Small Arms" 2001). But the situation may be even worse, according to the United Nations' estimates that only fifty to sixty percent of the SALW trade is legal ("Under the Gun" 2001).

Many of the weapons that are originally sold through legal channels eventually end up on the black market. Supplies of SALW are frequently stolen or captured from national military forces by insurgent, terrorist, or criminal groups. With the denouement of the Cold War era, and the proxy wars fought between the United States and the Soviet Union in less developed countries, much of the developing world was left with huge stockpiles of SALW, including Afghanistan (around ten million weapons), West Africa (seven million), and Central America (two million). These stockpiles may be particularly vulnerable to theft by criminal and insurgent groups, who could then sell the stolen SALW on the black market.

Michael Klare (1999) discussed various means through which actors may acquire SALW. The first is government-to-government transfers, where one government either sells or donates SALW to another government via overt, legal channels. These sorts of transfers were far more common during the Cold War than the present era. The second, and most common, means of transferring SALW is through government-sanctioned commercial sales. Private firms adhere to government export regulations in selling SALW to a state or commercial entity that is approved by their government.

A third way in which SALW is diffused is through covert or "gray-market" operations. Government agencies or government-backed private firms may sell or donate SALW to illicit recipients in another country in order to achieve political or strategic objectives. These types of transactions were quite common during the Cold War, when

the United States and the Soviet Union provided SALW to insurgent groups that were seeking to overthrow regimes that were allies of the other superpower. Transfers of this nature still occur in the contemporary period, as some governments continue to aid insurgent groups. Furthermore, government agencies may engage in the covert transfer of SALW to domestic militias or death squads who serve the interests of the government. Finally, SALW may be transferred through black-market transactions or theft. Private actors engineer the covert sale of SALW which have been procured illicitly, in clear violation of national laws. Insurgent groups, ethnic militias, terrorist organizations, and warlords usually acquire SALW through the black market, since legal trade channels are closed for them. These actors also rely on theft from government stockpiles, or clandestine collaborations with corrupt military officials, who are willing to risk incarceration in order to make high profits from selling SALW to enemies of the state.

The U.S. Position on the Legal Trade in Small Arms and Light Weapons

The Second Amendment of the U.S. Constitution

According to the Second Amendment to the United States Constitution, "a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed" ("The Constitution of the United States of America." [1787] 2002). Sanford Levinson remarked that this amendment is "perhaps one of the worst drafted" of all the provisions in the constitution (Levinson 1989, 643). Karen O'Connor and Graham Barron (1998) added that the Second Amendment has had little judicial interpretation, leaving the question open as to whether or not the right to bear arms is tied to or based on membership in a militia. Lee Kennett and James LaVerne Anderson suggested that the constitutional right to bear arms stems from the need to maintain a militia for national defense:

> The judicial interpretations of the Second Amendment do not clearly define the meaning of the phrase "the right to bear arms." There are no decisions supporting the unlimited right of the people to bear arms. The right has usually been viewed in terms of maintenance of the militia and the responsibility of citizens to defend the country (Kennett and Anderson 1975, 78).

Moreover, it is debatable whether the term "well-regulated militia" restricts the right to bear arms solely to members of government-sponsored militia, or permits members of informal militia groups to bear arms as well (O'Connor and Barron 1998). William Weir (1997) argued that the meaning of "militia" has changed only slightly over two centuries. While the militia included all male citizens between the ages of sixteen and sixty at the time the Bill of Rights was written, under the current United States Code, the militia consists of all able-bodied males at least seventeen and under forty-five years of age. Nevertheless, the intent of the Second Amendment is timeless: "because the militia . . . have weapons, they are the greatest bulwark against foreign invasion or domestic usurpation. Therefore they shall not be disarmed" (Weir 1997, 34).

In order to understand the logic behind the Second Amendment, some knowledge of early American history is useful. In England, political philosophers challenged the concept of a standing army, because it could be used to crack down on the liberties of the citizenry, and endorsed the idea of citizen-soldiers instead. According to Lee Kennett and James LaVerne Anderson, "reliance on citizen-soldiers, as opposed to a professional army, became the hallmark of the emerging American national conscience" (Kennett and Anderson 1975, 61). The original settlers in America also distrusted the English standing armies, which they felt were infringing upon their personal liberties (O'Connor and Barron 1998). Thomas Jefferson included in the Declaration of Independence protests against the maintenance of a standing army in times of peace, the quartering of troops, the use of mercenaries, and the removal of civilian control of the military. Most of the

colonies required by law that nearly all white men must carry arms in local militia, and the American Revolution was fought by men in state militias, which were mobilized with the objective of defending the colonies (O'Connor and Barron 1998).

Following the Revolutionary War, the Federalists tried to convince the Anti-Federalists that a standing army of twenty-five to thirty thousand soldiers, controlled by the federal government, would not be able to suppress the liberties of people, due to the presence of a citizen militia numbering nearly half a million armed men (Weir 1997). During the ratification conventions for the new Constitution, there were many demands for the inclusion of an amendment in the future Bill of Rights which would guarantee the right of citizens to bear arms. Karen O'Connor and Graham Barron suggested that these calls "were more numerous than demands for explicit protection of the right to free speech or assembly" (O'Connor and Barron 1998, 76). In response, James Madison wrote the Second Amendment, with the intention of protecting the arms of the citizenry so that they would not fear the creation of a new national government.

The American Gun Culture

It can be argued that, in the contemporary era, there is no longer a need for armed civilian militias. American national defense is firmly in the hands of the overwhelmingly powerful United States military. Furthermore, the record of the past two centuries has shown that the U.S. military is not a threat to the liberties of American citizens. It should also be noted that, contrary to the vision of Madison, it would be a futile task nowadays for citizen militias to attempt to mount a resistance to the U.S. military. Thus, the traditional justification for the right of American citizens to bear arms is no longer valid. But Americans still remain adamant about defending their Second Amendment rights in the twenty-first century.

The explanation for this behavior lies in the American gun culture. Robert Spitzer (1995) argued that many Americans have a deep sentimental attachment to firearms, based on three factors: the presence and proliferation of firearms in the United States since the colonial period, the connection between personal ownership of weapons and the United States' frontier legacy, and the cultural mythology about guns which is diffused through the media. Spitzer suggested that the American gun culture contains at least two elements which have persisted since the colonial era. First, the "hunting/sporting ethos" dates back to when the U.S. was an agrarian, subsistence nation. American settlers needed to hunt game for their very survival. Moreover, the fur market encouraged hunting and trapping as a source of income. The acquisition of shooting skills was seen as a rite of passage for teenage boys. Competitive shooting was a popular sport at that time, as such competitions helped sharpshooters hone their skills. Due to the hunting heritage, around fourteen million Americans identify themselves as hunters in the present period.

Second, a "militia/frontier ethos" developed early in American history. Able-bodied male settlers had the responsibility of being citizen-soldiers, since no full-time army existed. The young colonies were vulnerable to attacks from foreign armies and Native American tribes, and their survival depended on the manpower and weaponry of the citizen militias. According to Robert Spitzer, "the death knell of the citizen militia was its abysmal performance in the War of 1812, after which time it ceased to play any active role in national defense. Despite this fact, the militia tradition has survived" (Spitzer 1995, 10). As the settlers moved westward, a frontier legacy grew. Settlers armed themselves with Winchesters, Remingtons, Colts, and Smith and Wessons, in order to deal with outlaws and Native American warriors. Tragically, the spread of

firearms triggered many massacres of Native Americans as white settlements spread in the Western U.S.

But the image of the United States as a "gunfighter nation" is a myth. Robert Spitzer argued that "the so-called taming of the West was in fact an agricultural and commercial movement, attributable primarily to ranchers and farmers, not gun-slinging cowboys" (Spitzer 1995, 10). Hollywood films, and the entertainment industry in general, have romanticized the frontier legacy and exaggerated the contribution of firearms for the settling of the West. As Gregg Lee Carter stated:

> In reality, though stories of frontier violence were so popular, the level of violence—especially gun violence—in non-frontier America was but a fraction of that actually occurring on the frontier, which itself was considerably less than that depicted in the Wild West shows and dime novels (Carter 1997, 42).

In summary, the gun culture in the United States, fueled by both a hunting/sporting ethos and a militia/frontier ethos, has influenced American citizens to defend their constitutional right, under the Second Amendment, to bear arms. Their belief in the necessity of the Second Amendment has outlived the original justifications for the amendment: the need to form citizen militia for the defense of the nation and the protection of personal liberties. The Second Amendment is still regarded as sacred in the contemporary period. This was demonstrated when the United States government blocked an attempt by the international community to adopt restrictions on the legal trade in small arms and light weapons, by invoking the need to protect the constitutional right of American citizens to bear arms. The chapter will now turn to a discussion of this initiative, and the U.S. reaction to it, in the following section.

The Initiative to Regulate the Legal Trade in Small Arms and Light Weapons

The Campaign is Launched

The issue of small arms and light weapons was first placed on the international agenda in October 1993, when President Alpha Oumar Konare of Mali, a country severely affected by the illicit influx of small arms, made a request to the United Nations Secretary-General for assistance with the problem of SALW proliferation in West Africa (Smaldone 1999; NGO Committee on Disarmament 2001d). A UN Advisory Mission visited Mali in August 1994, as well as Burkina Faso, Chad, the Ivory Coast, Mauritania, Niger, and Senegal in February and March of 1995. The mission reported that insecurity at the levels of the individual, locality, nation, and subregion was hindering the socioeconomic development of these countries, and fueling the demand for firearms. Furthermore, the mission advised that in order to curb the spread of SALW, the United Nations Development Program (UNDP) should adopt a subregional approach for cultivating human security and good governance.

In response to the mission's recommendations, Mali hosted a UN-organized international Conference on Conflict Prevention, Disarmament, and Development in West Africa from November 25-29, 1996. At the conference, Mali's foreign minister proposed a subregional moratorium on the import, export, and manufacture of light weapons. Nearly two years later, in October 1998, the sixteen members of the Economic Community of West African States (ECOWAS) signed a Moratorium on the Exportation, Importation, and Manufacture of Light Weapons. The moratorium has some shortcomings: it is a politically, not legally, binding agreement that is renewable for periods of three years, and it was implemented with few operational guidelines and

limited technical and financial support (Meek 2000). But the moratorium was the first regional initiative to curtail the proliferation of SALW in West Africa.

Other regional organizations have also taken action. During its presidency of the European Union (EU) in June 1997, the Netherlands negotiated the adoption of a Program for Preventing and Combating Illicit Trafficking in Conventional Arms. On May 25, 1998, the EU agreed to a Code of Conduct on Arms Exports, which requires member states to halt arms transfers that would likely be used for internal repression in states with dubious human rights records, as well as arms transfers that may provoke or prolong conflict in a particular area of tension (Klare and Rotberg 1999). But Paul Eavis and William Benson indicated that, despite these initiatives on both the illicit trafficking and the licit sales of SALW, "relatively little has been done in practice to specifically target and prevent the export (both legal and illicit) of light weapons from the EU" (Eavis and Benson 1999, 99).

On November 14, 1997, the members of the Organization of American States (OAS) signed the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials. The convention, which entered into force in 1998, requires states parties to implement national legislation making the illicit production and transfer of firearms criminal offenses, and necessitates that firearms be marked so as to make them traceable if they are diverted into illicit channels (Klare and Rotberg 1999). So far, ten of the thirty-one signatories have ratified the treaty, but two major supporters of the convention, the Canada and the United States, have yet to ratify it.

The United States also endorsed the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, adopted in December 1995 by thirty-five industrialized countries. The arrangement prohibits participating states from selling arms to areas of instability where conflict may ensue. But the Wassenaar Arrangement serves only as a forum for the exchange of information on weapons sales, with no enforcement capability (Klare and Rotberg 1999). Moreover, the arrangement does not include small arms explicitly.

The Middle Powers and the United Nations SALW Conference

Apprehensive about the growing risk to United Nations peacekeepers from the spread of SALW, the UN General Assembly passed its first resolution on *Assistance to States for curbing the illicit traffic in small arms and collecting them* in 1994, which invited member states to adopt national control measures, and requested international support for their efforts (NGO Committee on Disarmament 2001d). The following year, based on the recommendations of a UN report, Japan sponsored a General Assembly resolution which called for the creation of a Panel of Governmental Experts to study the nature of the SALW problem and possible solutions (Lozano 1999). On August 27, 1997, the Panel issued its report, which made suggestions concerning the safeguarding of SALW, as well as measures to prevent and reduce the destabilizing effects from the excessive stockpiling and transfers of these weapons. The Panel also called for the convening of an international conference on the illicit trade in SALW in all its aspects. In response, on December 9, 1997, General Assembly Resolution 52/38J, *Small Arms*, endorsed the Panel's recommendations. The resolution also authorized the Secretary-General to begin planning for an international conference on SALW, and to set up a new,

twenty-three member Group of Governmental Experts, that would report on progress in the implementation of the Panel's recommendations.

A parallel initiative to combat the illegal trade in firearms was underway within the Commission on Crime Prevention and Criminal Justice (CCPCJ), a subsidiary body of the UN Economic and Social Council (ECOSOC). Following the release of a study of international firearms regulations that was commissioned by the CCPCJ three years earlier, the CCPCJ passed a resolution on April 28, 1998, which requested that the UN General Assembly produce an international instrument to combat the illicit production and trade in firearms, their components, and ammunition, and suggested that such an instrument could be modeled on the Inter-American Firearms Convention (Lozano 1999).

On May 31, 2001, the General Assembly adopted the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (United Nations General Assembly 2001). The Firearms Protocol requires states parties to ensure that firearms are marked for identification at their time of manufacture so as to render them traceable; maintain records of their international sales of firearms, components, and ammunition for at least ten years; and cooperate with other states parties and international organizations by sharing the information, training, and technical assistance necessary for the eradication of the illegal manufacturing of and trade in firearms. The protocol will enter into force ninety days after its fortieth ratification. As of May 2004, fifty-two states had signed the protocol, but only eighteen states had ratified it. The United States had done neither.

In its September 1999 report, the Group of Governmental Experts recommended that an international conference on the illicit SALW trade should focus on those small arms and light weapons which are manufactured to military specifications, thus, rifles and firearms used for hunting and sports should be excluded from consideration. In December 1999, the General Assembly called for the convening of a UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and created a Preparatory Committee, which began work in February 2001 (NGO Committee on Disarmament 2001d).

Canada expressed its view that both the Preparatory Committee and the international conference should address all issues related to the excessive accumulation and uncontrolled proliferation of SALW, not merely the problem of illicit transfers (United Nations Secretary-General 1999; 2000a). On July 21, 2001, Canada submitted a working paper to the Preparatory Committee, which offered suggestions regarding the format and contents of an action plan on SALW. Among its many recommendations, Canada proposed that the plan should examine the relationship between the licit and the illicit aspects of the SALW problem, and suggested that states should make a commitment "to exercise the maximum practicable restraint on the legal manufacture and transfer of small arms and to enhance efforts to prevent the illicit manufacture and transfer of such weapons" (United Nations Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2000, 3 [hereafter UN Preparatory Committee]). Canada also stressed that the work of the Preparatory Committee should complement, not duplicate, the contents of the UN Firearms Protocol.

But from the first session of the Preparatory Committee, the Bill Clinton administration warned that it would not accept any legally binding international treaty that either constrains the legitimate trade in SALW by U.S. nationals (including sales to non-state actors), or infringes on the constitutional right of American citizens, under the Second Amendment, to own firearms ("UN Conference" 2001). The United States is committed, however, to the elimination of the illicit trade in military-type SALW. The objectives of U.S. arms transfer policy include both the prevention of arms transfers which may destabilize or threaten regional peace and security, and the promotion of national and multilateral responsibility, restraint, and transparency in the arms trade (United States Department of State 1998). The Clinton administration did make it clear during the meetings of the Preparatory Committee that it would accept the establishment of a program of action designed to curb the illicit SALW trade across international borders, a position which the George W. Bush administration has also adopted ("UN Conference" 2001).

As with the initiatives to ban anti-personnel landmines and to create the International Criminal Court, the like-minded states have had a close working relationship with NGOs on the SALW campaign. The International Action Network on Small Arms (IANSA), a coalition of pro-regulation NGOs around the world, was created following meetings of NGO representatives in Orillia, Ontario, Canada in August 1998, and Brussels, Belgium in October 1998 (Klare and Rotberg 1999). The objectives of IANSA extend beyond the regulation of the licit SALW trade and the eradication of illicit transfers, to include the elimination of cultures of violence and the removal of SALW from post-conflict societies (Clegg 1999). But the NGOs realized from the start that they

would be unable to push for a total ban on SALW in the same manner as they helped achieve a ban on anti-personnel landmines, for two reasons. First, the fact that civilian ownership of small arms is legal in countries worldwide means that there is no universal acceptance of the need to ban such weapons. Second, most people would concur that light weapons do have some legitimate uses, such as for peacekeeping operations.

Since many states are manufacturers and exporters of small arms and light weapons, pro-regulation NGOs are concerned that governmental action on any SALW initiative would be overly cautious and incremental. While pro-regulation NGOs have emphasized the need to regulate the legal trade in SALW, most governments have only been willing to address the illicit trade. Liz Clegg (1999) described why national governments have been hesitant to take action on the licit SALW trade. First, sales and direct transfers of SALW to allies have been influential foreign policy tools for the governments of SALW-exporting countries, and have considerable domestic economic benefits as well. Second, in order to remain competitive in the global SALW market, domestic arms manufacturers campaign against the implementation of national and international restrictions on the legal trade. Finally, powerful gun lobbies, such as the National Rifle Association of America, mobilize against any legislation that would restrict firearms ownership.

The middle powers organized several meetings and workshops leading up to the UN Conference on the illicit trade in SALW (United Nations 2001). In July 1998, Norway hosted the Oslo Meeting on Small Arms, which produced “Elements of a Common Understanding” on the need for both immediate action to prevent the illicit transfer of SALW, as well as tighter controls on legal transfers (The Oslo Meeting on

Small Arms 1998; Clegg 1999). A follow-up meeting (Oslo II) was held in December 1999. At the "Sustainable Disarmament for Sustainable Development" Brussels conference in October 1998 (which coincided with the NGO meeting), ninety-eight governments announced a "Brussels Call for Action" on light weapons.

The government of Canada co-organized regional SALW conferences and seminars together with Sri Lanka (June 2000), Poland (September 2000 and September 2001), Bulgaria (October 2000), Cambodia and Japan (February 2001), Hungary (April 2001), and the European Union (May 2001, under the Swedish Presidency of the EU). On November 7, 2000, the Canadian Joint Delegation to the North Atlantic Treaty Organization (NATO) and the Center for European Security and Disarmament convened a roundtable on Small Arms and Europe-Atlantic Security at the NATO headquarters in Brussels. Canada also hosted an OAS seminar on the illicit SALW trade, in Ottawa in May 2001.

The governments of the Netherlands and Hungary cooperated in organizing an expert workshop on the destruction of SALW, as an aspect of stockpile management and weapons collection in post-conflict situations, which was held in The Hague in September 2000. That same year, the London-based NGO Saferworld co-hosted three different seminars on SALW, together with the foreign affairs ministries of Poland, the Czech Republic, and Hungary, respectively. In addition, the Human Security Network discussed the topic of the SALW trade at its Second Ministerial Meeting in Lucerne, Switzerland, in May 2000.

The New York Conference on SALW

The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was held in New York City from July 9 to 20, 2001

(Humanitarian Coalition on Small Arms 2001; Klare 2001; NGO Committee on Disarmament 2001a; NGO Committee on Disarmament 2001c; "UN Conference" 2001; United Nations 2001). Representatives from more than 140 states and over forty NGOs participated in ten plenary meetings and twenty-three informal meetings at the conference. Sharp political divisions became apparent. Many African and Latin American states, as well as EU members, wanted the conference to adopt legally binding measures, including a prohibition on the sale of SALW to non-state actors. Since African countries are the most severely affected by the illicit small arms trade, they were concerned about preventing the transfer of SALW to terrorists and insurgent groups. Several like-minded states—including Canada, Finland, the Netherlands and Norway—and humanitarian NGOs, such as Amnesty International and Human Rights Watch, argued that the eradication of the illegal trade in SALW could not be accomplished without first establishing stronger regulations on the legal trade. They emphasized that states should accept responsibility for the uncontrolled proliferation of SALW, and should refrain from providing SALW to regimes with dubious human rights records.

Amnesty International and Human Rights Watch were particularly vocal in warning that the New York conference would produce woeful results if it focused solely on illicit transfers, and if it did not derive binding agreements. These NGOs also complained that the human rights and humanitarian elements of the SALW problem had been left off the conference agenda, and that the conference had neglected to address the culpability of governments in supplying the SALW which has been used to commit war crimes. But most states at the conference were more interested in the problem of preventing the destabilizing accumulation of SALW, rather than in the humanitarian

consequences of the SALW trade. This is a very divisive issue, because a situation which one state may perceive as a destabilizing accumulation of SALW, another state may view as a necessary acquisition of SALW for the purpose of national security.

In addition, the efforts of the humanitarian NGOs were countered by a minority of NGO activists representing the "firearms community" in seven countries. While most of the pro-gun NGOs preached the need for the responsible and safe ownership of firearms, the 4.5 million member National Rifle Association of America expressed its deep concerns that the conference would adopt a plan of action that would threaten the legitimate domestic rights of American citizens to own and use firearms. In contrast to the extensive participation of NGOs in both the Ottawa Process banning anti-personnel landmines, and the 1998 Rome Conference establishing the International Criminal Court, NGOs were excluded from important meetings and given limited time to present their viewpoints at the SALW conference. Lloyd Axworthy, the former Canadian Minister of Foreign Affairs, expressed his frustration with the marginalization of the humanitarian NGOs at the conference:

> As preparations for the UN conference progressed, it became obvious that there was a concerted effort by the UN bureaucracy and the diplomatic disarmament establishment to avoid adopting any of the methodology or lessons of the land-mine experience. This was apparently to be a traditional meeting of nation-states. NGOs would be on the margin (Axworthy 2003, 348).

In his address to the conference, the United States Under-Secretary of State for Arms Control, John R. Bolton, argued that the responsible use of firearms for hunting and sport shooting is an important element of American culture ("UN Conference" 2001). He emphasized that while the U.S. supports actions to stem the illicit trade in military-type SALW, it opposes any initiative that would challenge the Second Amendment of the U.S. Constitution, and limit the use of hunting rifles and pistols by American citizens. The

U.S. delegation mounted a fierce resistance to the proposal to establish a ban on the transfer of SALW to non-state actors. Although the United States was widely viewed as standing alone on this issue, other states who professed the legitimacy of armed struggle by subnational groups for the achievement of independence and self-determination, also believed in the legitimacy of supplying such groups with SALW.

Since the negotiations at the New York conference were conducted via consensus-based diplomacy, the U.S. delegation succeeded in eliminating references to the regulation of private gun ownership, and a ban on SALW transfers to non-state actors, from the draft Program of Action. The United States did accept a requirement for governments to implement strict national laws and procedures on SALW, in order to minimize the diversion of SALW to illegal channels. But other major SALW exporters, such as China and Russia, joined the U.S. in rejecting any legally binding instrument that would enable the tracing of the lines of supply of SALW. Instead, these states approved weaker measures, including the strengthening of the capacity of states to cooperate in tracing illicit flows of SALW, and the launching of a UN study on the feasibility of developing an international instrument that would facilitate the tracing by states of illicit SALW transfers. The U.S. objected, initially, to the setting of a sequence of follow-up activities to the conference, but finally agreed to biennial meetings of states and another global conference by 2006 in order to monitor progress.

On the final day of the conference, the participants adopted a Program of Action, which represents the first global commitment made by states to prevent and eliminate the illicit SALW trade. The Program of Action commits states to pass national laws criminalizing the illicit trade in SALW; regulate the activities of SALW brokers; require

licensed SALW manufacturers to place traceable markings on each weapon produced; establish strict criteria for the export of SALW; prosecute violators; keep accurate records on the manufacture, possession, and transfer of SALW; and cooperate with other SALW initiatives at the global, regional, and national levels (NGO Committee on Disarmament 2001b). But the Program of Action is a voluntary agreement which is politically, but not legally, binding ("UN Conference" 2001). The like-minded states and humanitarian NGOs who had campaigned for more significant action on the SALW issue were deeply disappointed (NGO Committee on Disarmament 2001c). The African states were particularly upset with the failure to proclaim a ban on the transfer of SALW to terrorists and guerrillas.

But the need to reach a consensus agreement at the conference, in order to take some action on the illicit SALW trade, forced the like-minded states and humanitarian NGOs to accept a less ambitious Program of Action. In his final statement, the President of the Conference, Ambassador Camilo Reyes of Colombia, expressed his frustration with "the conference's inability to agree, due to the concerns of one state, on language recognizing the need to establish and maintain controls over private ownership of these deadly weapons and the need for preventing sales of such arms to non-state groups" (United Nations 2001, 23). Reyes also emphasized that the problem of the illicit trade in SALW must be addressed in all its aspects.

In November 2001, the UN General Assembly adopted Resolution 56/24V, *The illicit trade in small arms and light weapons in all its aspects*. The resolution welcomed the adoption of the Program of Action by consensus, expressed the support of the member states for action to halt the illicit trade in SALW, and called for the convening of

a review conference in 2006, as well as biennial meetings beginning in 2003 (Dhanapala 2002; United Nations Department for Disarmament Affairs 2003). One year later, General Assembly Resolution 57/72, passed on November 22, 2002, stressed the importance of an early and complete implementation of the Program of Action, and decided to convene the first biennial meeting in New York City in July 2003. The United Nations First Biennial Meeting of States to Consider the Implementation of the UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects at the National, Regional and Global levels was held in New York City from July 7 to 11, 2003. The purpose of the meeting was to discuss the successes and difficulties experienced by states, international organizations, and NGOs during the first two years of implementation of the Program of Action. But the meeting did not have a mandate to take action on the two issues which were not included in the Program of Action: controls over private ownership of SALW, and a ban on transfers of SALW to non-state actors.

Jayantha Dhanapala (2002), the United Nations Under-Secretary-General for Disarmament Affairs, emphasized that although the 2001 New York conference failed to address key issues related to the legal SALW trade, the conference should be measured by its contributions toward resolving the SALW proliferation crisis. First, the fact that a major UN conference was held on the issue of SALW a mere eight years after the issue was brought to the attention of the international community by Mali is remarkable. Dhanapala made the argument that “global norms are not built overnight” (Dhanapala 2002, 168). It should be noted that Dhanapala expressed his approval of the consensus-based diplomacy of the New York conference, the benefits of which may have actually

been outweighed by its costs, because the need to derive a consensus agreement allowed a small minority of detractor states the opportunity to prevent any significant action from being taken on the issue of the licit SALW trade.

Second, Dhanapala indicated that since the New York conference was the first UN conference on the SALW issue, it should have not been a surprise that most states were not yet ready to consider the issue of the legal trade in SALW. Tim Martin, the Director of the Peacebuilding and Human Security Division of the Canadian Department of Foreign Affairs and International Trade, emphasized that "the presence of arms is more of a minus to human security than a positive to national security."[1] But a November 2001 conference organized in Nairobi by the Humanitarian Coalition on Small Arms concluded that the Rome Conference "came too early at a time when political will to seriously tackle the human cost of small arms proliferation and misuse is not fully developed. Clearly most states are not prepared to put human security before national security" (Humanitarian Coalition on Small Arms 2001). Dhanapala reassured that "the door, however, is still open for such an instrument and the subject will surely be discussed within the upcoming review meetings" (Dhanapala 2002, 168). Unfortunately, this prediction has not come true so far.

Third, Dhanapala argued that the Program of Action, even as a non-legally binding agreement, does not condemn states to inaction on the issue of the licit SALW trade. Instead, the agreement encourages states, international organizations, and NGOs to exercise leadership and develop more substantive arrangements. The Program of Action

[1] Personal interview of Mr. Tim Martin, the Director of the Peacebuilding and Human Security Division of the Canadian Department of Foreign Affairs and International Trade, Ottawa, Ontario, Canada, December 2, 2003.

may be viewed as merely the first step in a sequence of steps toward the adoption of stricter measures on the SALW trade.

Conclusion

The initiative to adopt restrictions on the legal trade in small arms and light weapons at the 2001 New York conference was not successful, despite the significant efforts of the like-minded middle powers and humanitarian NGOs. The United States mounted a fierce opposition to the initiative, because Washington perceived any attempt to restrict the licit SALW trade as a threat to the constitutional right of American citizens, under the Second Amendment, to bear arms. The results of this case study supported the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution.

The analysis of the initiative sustained the second hypothesis as well: that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy. The middle powers used fast-track diplomacy in their campaigns to establish SHIRBRIG, ban anti-personnel landmines, and create the ICC, each of which were successful initiatives. In contrast, the negotiations at the SALW conference were driven by consensus-based diplomacy. The need to reach a unanimous agreement on a lowest common denominator accord made it easy for the United States to block any significant progress on the licit SALW trade. As Lloyd Axworthy, the former Canadian Minister of Foreign Affairs, argued, “a global treaty incorporating all the competing interests, working through the consensus-based UN system where big states have a virtual veto, is bound to be limited” (Axworthy 2003, 349).

To conclude, the initiative to adopt stricter regulations on the licit trade in small arms and light weapons was a valiant attempt by the middle powers to improve the human security of populations around the world. One hopes that they will learn from their setbacks at the New York conference, and continue to exercise much needed leadership on this issue. As Jayantha Dhanapala suggested, the conference on the illicit SALW trade may have been only the first step toward making real progress in curbing the global proliferation of small arms and light weapons, and in reducing the numbers of victims of these weapons of human insecurity.

CHAPTER 6
RECOMMENDATIONS FOR MIDDLE POWER FOREIGN POLICY-MAKERS

This study has illustrated that it is possible for smaller states to exercise effective leadership on global security issues. Middle power leadership has achieved human security objectives in the post-Cold War era, which contradicts the arguments made by realists that "lesser states" should automatically heed the dictates of the great powers when it comes to matters of international security. Moreover, it challenges the belief, held by some scholars of middlepowermanship, that the only role left for middle powers to play in the domain of global security is as followers of great power leadership. To the contrary, the study demonstrated that the middle powers have been adept at using their technical and entrepreneurial skills to forge coalitions of like-minded states, which have made significant progress in resolving problems which afflict human security.

The middle powers addressed the need for a United Nations rapid response capability for peacekeeping missions by creating the Stand-by High Readiness Brigade for United Nations Operations (SHIRBRIG). The brigade was deployed successfully as part of the United Nations Mission in Ethiopia and Eritrea (UNMEE). SHIRBRIG is presently in a non-deployment mode, and is available to the United Nations for quick deployment in a crisis situation.

The Ottawa Process, which produced a total ban on the use, production, stockpiling, and trade in anti-personnel landmines (APLs), was driven by middlepowermanship. The middle powers negotiated an effective treaty with few exemptions. Despite the refusal by some of the major mine-producing states to sign the

treaty—including China, Russia, and the United States—the Ottawa Convention had an immediate impact in generating an international norm which stigmatizes these "weapons of indiscriminate destruction."

The middle power states also exercised leadership in organizing the Like-Minded Group of Countries (LMG), which campaigned for the establishment of the International Criminal Court (ICC). The initiative resulted in the creation of an independent ICC which is empowered to carry out investigations and prosecutions of crimes against humanity, war crimes, genocide, and the crime of aggression. The Rome Statute was approved by an overwhelming majority of the conference participants. It now remains to be seen if the ICC will be as effective in practice as it is in theory.

The initiative to derive stricter regulations on the legal trade in small arms and light weapons (SALW) at the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was also launched by the middle powers. But unlike the three other initiatives discussed in the study, the anti-SALW campaign failed to achieve its objectives. The United States, which opposed any attempts by the international community to restrict the licit trade in SALW, managed to prevent the participants at the UN conference from taking any substantial action on the issue.

Nevertheless, these four cases of human security initiatives were characterized by significant efforts at leadership by the middle powers. In each of these campaigns, the middle powers sought out like-minded states with whom they could form a coalition that would work for the fulfillment of the initiative. With the exception of the SHIRBRIG project, these coalitions included the participation of NGOs which could harness the energies of a mobilized civil society in support of a human security goal. Whether or not

they have been successful in achieving their objectives, it is clear that the middle powers have exercised considerable influence on issues of global security.

In the contemporary world, where the bipolarity of the Cold War era has been replaced by the hegemony of the United States, it should be expected that the sole superpower would have a substantial leverage over any proposal by the international community that deals with a security issue. In particular, Washington would be unlikely to permit an initiative which poses a challenge to the core national interest of the U.S.: the security of the American territory, institutions, and citizenry. Thus, the study investigated the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution.

The evidence which was analyzed in the four case studies provided support for the hypothesis. The United States issued no official statements of its position on the formation of SHIRBRIG, nor on the brigade's successful deployment under UNMEE. But Washington was in favor of the establishment of a rapid response capability for United Nations peacekeeping that would be based on a standby brigade, rather than a standing army. At full deployment, SHIRBRIG may mobilize four to five thousand soldiers from a brigade pool which is supplied by eleven member states. The only permanent feature of SHIRBRIG is its planning element (PLANELM), which is stationed in Høvelte Kaserne, Denmark, and consists of a small staff of thirteen military officers. Hence, it may be concluded that the United States acquiesced to the creation of SHIRBRIG, since the standby brigade corresponded to U.S. interests.

The United States approved of the idea of a ban on anti-personnel landmines, and pushed unsuccessfully for the inclusion of the ban issue on the agenda of the UN Conference on Disarmament. The U.S. did not support the Ottawa Process initiative, however, for two practical reasons. First, the U.S. wanted to ensure that any ban treaty would include an exemption for American APLs in Korea and Guantanamo Bay, Cuba. The U.S. Department of Defense insisted that it needs to maintain an arsenal of APLs for the defense of these territories and the protection of U.S. soldiers stationed there, as well as for training exercises. The United States did not sign the Ottawa Convention because American demands for the inclusion of particular exemptions were not heeded.

Second, the U.S. was wary of the fast-track diplomacy employed by the Ottawa Process core group. Washington never believed that Lloyd Axworthy's call for a ban treaty to be negotiated and signed within fourteen months would be answered. The U.S. chose to rely instead on the traditional forum of the UN Conference on Disarmament, in the belief that the world's largest producers of APLs, China and Russia, would never cooperate with the Ottawa Process. Sadly, this has proven so far to be true.

But the United States failed to envision the bigger picture. The Ottawa Process managed to attract enough adherents to generate an international norm against the use, stockpiling, production, and trade in anti-personnel landmines. Although China, Russia and the U.S. did not sign on to the initiative, the countries which had the most APL-related casualties did. Furthermore, the Ottawa Convention curbed the APL trade, convinced at least forty states to stop producing anti-personnel landmines, and encouraged more than three dozen states to destroy their APL stockpiles. These are end results which the United States would be pleased with. The U.S. may not have supported

the technicalities of the Ottawa Process, but it certainly approved of the general objectives of the initiative, which were fulfilled.

Neither SHIRBRIG nor the Ottawa Process threatened the core national interest of the United States. In both of these cases, the U.S. acquiesced to the initiative. But the American response was significantly different in the other two case studies. The campaign to create the International Criminal Court encountered stiff U.S. resistance. Washington was concerned that the ICC would bend to anti-American sentiments in the developing world, and would permit politically motivated charges to be levied against U.S. military personnel who serve abroad. Furthermore, the U.S. believed that the ICC would not grant American servicemembers their rights, protected under the Fifth and Sixth Amendments of the U.S. Constitution, to a jury trial and due process.

During the meetings of the Preparatory Committee for the 1998 Rome Conference, the U.S. argued that the ICC should be subjected to the oversight of the UN Security Council, which would have given Washington a veto on the activities of the ICC. But lobbying by the Like-Minded Group of Countries led to the establishment of an independent ICC Prosecutor. On the final day of the Rome Conference, American attempts to scuttle the Rome Statute failed, and a strong majority of the conference participants voted in favor of the ICC. Since it assumed power in 2001, the George W. Bush administration has been particularly hostile towards the ICC and its supporters, and has pursued a policy of punishing states who refuse to grant American soldiers an exemption from the court's jurisdiction. But despite American antagonism, the ICC came into effect in July 2002.

The United States also opposed the initiative to derive stricter regulations on the legal trade in small arms and light weapons. In July 2001, Canada presented an action plan on SALW to the Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. The Canadian plan proposed that the link between the licit and illicit aspects of the SALW problem should be examined, and recommended that states should limit as much as possible the legal manufacture and trade of SALW. The United States was firm, however, in expressing its position that it would not accept any international treaty which either restricts the legal trade in SALW by U.S. nationals, or infringes on the constitutional right of American citizens, under the Second Amendment, to own firearms. At the 2001 UN conference, the U.S. reaffirmed its opposition to restrictions on the legal SALW trade, when the like-minded states and humanitarian NGOs argued that the international community could not halt the illicit SALW trade without first establishing stronger regulations on the legal trade. But pressure from the American delegation prevented the conference participants from taking action to regulate the private ownership of SALW, and blocked a proposed ban on SALW transfers to non-state actors. The conference ended with the adoption of a Program of Action which is politically, but not legally, binding, and is concerned solely with curbing the illicit SALW trade.

In short, the analysis of the four human security initiatives indicated that there is strong support for the hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution. Both the SHIRBRIG initiative and the campaign to ban anti-personnel landmines were non-threatening to the core national

interest of the United States. In fact, the U.S. was in favor of the establishment of a rapid response capability for United Nations peacekeeping, as well as a ban on APLs. Although Washington did not participate in the formation of SHIRBRIG, and did not join the Ottawa Process for technical reasons, it may be argued that the U.S. acquiesced to these two initiatives. In contrast, both the ICC and anti-SALW campaigns posed challenges to specific rights of the American citizenry which are protected under the U.S. Constitution. The United States responded by waging spirited battles with the intention of defeating these initiatives.

The U.S. was only triumphant in foiling the campaign to regulate the legal SALW trade, however. The Like-Minded Group of Countries was able to circumvent U.S. hostility to the International Criminal Court, and managed to establish an ICC which is free from superpower manipulation. The different results of these two cases illustrate that the stance of the United States is not the primary determinant of the success of a middle power-led human security initiative. In the belief that the key factor lies in the dynamics of middlepowermanship, this study hypothesized that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy.

In a fast-track diplomatic strategy, the middle powers use their technical and entrepreneurial skills to organize a coalition of like-minded states which concentrates on negotiating an effective treaty, then devotes its efforts toward persuading holdout states to sign on. Fast-track diplomacy is a far more rapid negotiation strategy than consensus-based diplomacy. In the latter strategy, the objections of a single state may prevent the fulfillment of an initiative. Negotiations tend to be slow and cumbersome, as each

participant expresses the conditions under which it would support the initiative. The need for unanimity in decision-making compels the participants to adopt a lowest common denominator treaty. While such a treaty may receive the approval of all participants, it will often be suboptimal for achieving the objectives of the initiative. In contrast, fast-track diplomacy is more likely to generate an effectual treaty, since the treaty is derived and approved by like-minded states who concur on the objectives and methods of an initiative. States which do not share the views of the like-minded group are simply not invited to the negotiation table. Once the like-minded states have approved a treaty, they attempt to make the treaty as universal as possible, by persuading and pressuring non-signatories to follow their lead and sign the treaty. Human security issues are, by their very nature, conducive for a fast-track diplomatic approach. Because human security initiatives are concerned with enhancing the security of civilian populations, many national governments may be extra sensitive to accusations from the international community that they are unwilling to act for the welfare of their citizens. Shaming states who do not comply with a treaty may be as useful a method as persuading them of the benefits for humanity of universal adherence.

An examination of the two cases where the United States opposed the human security initiative illustrates the importance of choosing an appropriate diplomatic strategy. The middle power states used fast-track diplomacy in the campaign to establish the International Criminal Court. In 1994, around a dozen states banded together as the Like-Minded Group of Countries, in order to push for the convening of an international conference that would adopt a convention on the establishment of an ICC. Within a period of six years, the LMG attracted an additional fifty-five members. The LMG

conferred with the NGO Coalition for an International Criminal Court (CICC) as to the necessary elements for an effective ICC treaty. Middle power officials chaired the meetings of the Preparatory Committee for the 1998 Rome Conference, and members of the like-minded delegations assumed the leadership positions of "issue coordinators." During the final forty-eight hours of the Rome Conference, a number of delegates from the LMG revised the draft statute in private, and then persuaded holdout states to support the revised draft. When the United States submitted a proposal on the final day of the conference that would have weakened the statute considerably if it had been accepted, the Scandinavian middle powers tabled the American motion, and the like-minded states voted to defeat the U.S. plan. One hundred and twenty of the one hundred and forty-eight conference participants then voted to adopt the Rome Statute, thereby establishing the ICC.

In contrast to the ICC initiative, the campaign to derive tougher regulations on the licit trade in SALW did not feature the use of fast-track diplomacy by the middle powers. They relied instead on the consensus-based diplomacy of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. The anti-SALW group of like-minded states and humanitarian NGOs believed that an effective agreement on the legal SALW trade would require the participation of the major SALW producers, including the United States. Furthermore, the anti-SALW delegations did not want to risk the possibility that, by pushing too forcefully for an accord on the licit SALW trade, they would endanger any progress that would be made in addressing the illicit trade in SALW. Since the negotiations were carried out within the parameters of the UN conference, where consensus-based diplomacy was the norm, the United States had an opportunity to

enforce its position that it would never accept a treaty which would establish controls on the private ownership of SALW, or ban the transfer of SALW to non-state actors. The conference ended up producing a Program of Action which is restricted to illicit aspects of the SALW trade, and does not impose any legal obligations on the states parties. The willingness of the anti-SALW delegations to accept a compromise ultimately doomed their initiative to regulate the legal SALW trade.

Therefore, the evidence from the case studies supported the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy. The findings of the study may have considerable relevance for foreign policy-makers in middle power states. Foreign policy officials who work on issues related to human security may have a particular interest in learning more about how they may improve their tactics in order to achieve their objectives. It was demonstrated in the study that middle powers are significant players in the domain of global security. While the findings may surprise many international relations scholars who have been raised on a diet of realism and great power politics, they should provide support and encouragement for foreign policy officials in middle power countries, who have designed and implemented initiatives which make the lives of civilians around the world more secure. It is possible for them to build a safer and better world after all.

The remainder of this chapter is dedicated to the description of a blueprint for successful leadership on human security issues, which foreign policy-makers in middle power and like-minded states may find of use in future campaigns. As was explained in the introductory chapter, the advantage of a qualitative research design is that it facilitates

exploratory research and theoretical development. Based on my qualitative analysis of the four case studies, I was able to discern a few factors which may have aided the middle powers in achieving their human security objectives. The chapter will now present some recommendations for effective middle power leadership which take these factors into account. The discussion begins with two recommendations which have been derived from the hypotheses that were tested in the study, and then turns to four additional recommendations which are based on my observation of some commonalities between the case studies.

Recommendations for Effective Leadership on Human Security Issues

Recommendation No. 1: Engage in Fast-Track Diplomacy

The diplomatic strategy which is adopted will have a significant impact on whether a human security initiative will achieve its goals. This study investigated the hypothesis that a middle power-led human security initiative is more likely to be successful if the middle powers engage in fast-track diplomacy rather than consensus-based diplomacy. The evidence in the case studies supported the hypothesis. The middle powers used fast-track diplomacy to establish SHIRBRIG, achieve the ban on anti-personnel landmines, and create the International Criminal Court. In each of these human security campaigns, the aim of the middle powers was to derive an effective agreement between like-minded states, who concur on the goals and methods of the initiative. Once a proposal had been produced, the like-minded states turned their attention toward persuading other states to sign on. The like-minded states believed that a combination of persistent coaxing and shaming of holdout states would eventually convince them to support the initiative. The establishment of new international norms and institutions which are supported by a majority of states may place significant pressure over time on recalcitrant states, causing

them to reconsider their positions and emulate the like-minded group. This has certainly occurred in the case of the APL ban, as an additional twenty-five countries either signed or acceded to the Ottawa Convention in the six-year period following the December 1997 Ottawa conference.

In contrast, the negotiations at the SALW conference were driven by consensus-based diplomacy. The need to reach a lowest common denominator agreement made it easy for the United States to block any significant progress. The results of the licit SALW trade initiative could have been different if the like-minded countries had utilized fast-track diplomacy. A group of like-minded states could have negotiated a draft treaty which is concerned with the licit aspects of the SALW problem. The like-minded countries could have then used their entrepreneurial skills to sell the draft treaty to a strong majority of states at the New York conference. Once the treaty has been approved, pressures to comply with the new international restrictions on the legal SALW trade would be felt by non-states parties, many of whom would probably sign the treaty in later years.

Recommendation No. 2: Do Not Fear Superpower Opposition to the Initiative

The hypothesis that the United States is more likely to oppose a middle power-led human security initiative if the initiative challenges the rights of American citizens protected under the U.S. Constitution was sustained by evidence from the four human security initiatives. The U.S. opposed the ICC and the SALW campaigns because they infringed on specific constitutional rights of American citizens, but acquiesced to the SHIRBRIG and APL ban initiatives which did not pose a threat.

But even if Washington decides to counter a particular human security initiative which interferes with American constitutional rights, the middle powers should not

hesitate to promote the initiative. If the middle powers adopt a fast-track diplomatic strategy, they may be able to circumvent the objections of the superpower, and achieve their objectives. If they choose to abide by the consensus-based diplomacy which characterizes United Nations conferences, the middle powers take a risk that a single, obstinate state may block their initiative from being realized. Rest assured that the United States would oppose any project which is incompatible with its core national interest, which includes the security of the American constitutional system. The best advice for the middle powers is not to shy away from pursuing an initiative which improves the condition of humanity as a whole, just because some states feel threatened by it. Instead, use the methods which will ensure the achievement of the initiative.

Recommendation No. 3: Multilateral Cooperation is the Key to Power

No middle power is capable of fulfilling an initiative on its own. The tendency to resort to multilateralism is a key feature of middlepowermanship. Each of the successful human security campaigns featured a coalition of like-minded states working closely together. The Friends of Rapid Deployment promoted the formation of SHIRBRIG, the Ottawa Process core group campaigned for the adoption of a ban on anti-personnel landmines, and the Like-Minded Group of Countries negotiated the establishment of the International Criminal Court. The middle powers deserve the credit for organizing and coordinating each of these coalitions. But coalition-building was far more difficult in the case of the initiative to regulate the licit trade in small arms and light weapons. There were sharp divisions between a minority of progressive governments who prioritized human security, and the vast majority of governments who argued that the protection of national security requires the easy purchasing and transfer of SALW through legal channels. On the issue of the licit SALW trade, there were simply not enough like-

minded states to build a powerful and influential coalition which could fulfill the initiative.

Recommendation No. 4: Form Coalitions with Non-Governmental Organizations

The middle power states benefit considerably from their close working relationship with NGOs. Due to both their humane internationalist orientations, and the fact that their histories of foreign relations have been characterized by less exploitation, the middle powers are frequently viewed by NGOs as more trustworthy partners with whom to do business than major power governments. A middle power-led campaign will be much stronger, and will receive considerable legitimacy, if it has the vociferous will of civil society behind it. The International Campaign to Ban Landmines, the Coalition for an International Criminal Court, and the International Action Network on Small Arms are umbrella organizations which brought together NGOs from around the world in order to demonstrate the support of civil society for their initiatives.

But equal in importance to cultivating relations with NGOs is ensuring that these NGOs have a forum where they may express their opinions. Unfortunately, NGOs were relegated to the back-burner at the New York conference on the illicit SALW trade, as they were excluded from important meetings and given limited time to present their viewpoints. Furthermore, the NGO community was divided on the issue of SALW. While most NGOs at the conference were in alliance with the like-minded states, a few NGOs represented the firearms community, and lobbied against the adoption of any restrictions on the licit SALW trade. Nevertheless, with the exception of NGOs which represent special interest groups, most NGOs work for the resolution of problems which afflict civil society. Since the intentions of the middle power-led human security initiatives are

to improve the security of civilian populations, it should come as no surprise that many NGOs tend to be willing and active participants in human security campaigns.

Recommendation No. 5: Harness the Energy of Skilled and Devoted Individuals

The contributions of dedicated individuals may be instrumental for ensuring that human security campaigns will be successful. Foreign ministers from the middle power states have been skilled leaders on the human security agenda. The efforts of the Canadian Foreign Minister Lloyd Axworthy on both the APL ban campaign and the ICC initiative stood out in particular. The close cooperation of the foreign ministers of Canada, Denmark, and the Netherlands was critical for the establishment of SHIRBRIG. A key decision was the organizing of the Friends of Rapid Deployment coalition by Canadian Foreign Minister André Ouellet and Dutch Foreign Minister Hans Van Mierlo. Effective leadership may come not only from government officials. NGO leaders, like the Coordinator of the International Campaign to Ban Landmines, Jody Williams, and the Convener of the Coalition for an International Criminal Court, William Pace, played crucial roles in uniting civil society organizations around the world into single, powerful movements. In addition, it may be very useful to attract celebrities and public opinion leaders to the cause. For example, the anti-landmine campaign received much publicized support from notable figures like Princess Diana, Archbishop Desmond Tutu, Jimmy Carter, Gracia Machel, Kofi Annan, and Queen Noor, which served the purpose of rallying public opinion in favor of an APL ban.

Recommendation No. 6: Cultivate Global Political Support for an Initiative

A final recommendation for effective leadership on human security issues is that the middle powers should engage in a public relations campaign to foster the global political support that is necessary for an initiative to succeed. It was undeniable that the

United Nations required a rapid deployment capability to enhance the efficacy of peacekeeping operations, that anti-personnel landmines which kill and maim scores of people each year needed to be banned, and that an International Criminal Court which could bring war criminals to justice was essential. The political will for all three of these initiatives was clearly present.

But the global community remains divided on whether restrictions on the licit trade in small arms and light weapons would be favorable for human security. The pro-regulation side includes progressive states and humanitarian NGOs, who argue that any plan to eliminate the illicit SALW trade must first address how weapons which are sold legally may end up in the hands of criminals and human rights abusers. The anti-regulation side consists of most national governments as well as NGOs which represent the firearms community. This group believes that attempts to place restrictions on the legal trade would be adverse for national security, as militaries require easy access to supplies of SALW. Without sufficient SALW, national defense forces may become weaker relative to insurgent and terrorist groups which obtain SALW through illegal channels. The resulting increase in violence and bloodshed would have a detrimental impact on human security as well as national security. As the Humanitarian Coalition on Small Arms (2001) remarked, the political will to deal with the humanitarian consequences of the proliferation of SALW has not fully developed. The middle powers need to wage an effective public relations campaign to inform politicians and civil society about the dangerous implications for human security of both the legal and the illegal aspects of the SALW trade, if they are to make significant progress on the SALW issue in the future.

To conclude, this study has demonstrated that the middle power states are leaders when it comes to global security issues. Without middle power leadership, the human security agenda may have never seen the light of day. But there is still a lot which must be done to improve the quality and effectiveness of this leadership. Based on my analysis of the four human security initiatives, I have made recommendations which may help foreign policy-makers in middle power countries fine-tune their strategies. One can only hope that they will enjoy many more successful campaigns in the decades to come, for their victories are victories for humanity.

APPENDIX
INTERVIEW: MIDDLE POWER LEADERSHIP ON HUMAN SECURITY

Name:

Occupational Position:

Date:

Geographic Location:

Instructions: This interview is part of the "Middle Power Leadership on Human Security" doctoral dissertation research being conducted by Ronald Behringer, a doctoral candidate in the Department of Political Science at the University of Florida. The purpose of the study is to discover the conditions under which middle power states, such as Canada, Denmark, the Netherlands, and Norway, may exercise effective leadership on human security issues.

Please fill in your name, occupational position, the date when you completed the interview, and your geographic location at the top. The interview will ask you questions about (fill in the initiative that the participant is specialized in). Please answer the questions as thoroughly as possible. It will take approximately thirty minutes to complete the questionnaire. You do not have to answer any question that you do not wish to answer. You may use as much space as needed. Save your answers in this file, and rename the file as "yourlastname.doc." Upon completion, please send the file by e-mail to rony_behringer@yahoo.com.

Your responses are not confidential, and I may quote from your responses in my dissertation at my discretion while citing you as the source. Your completed questionnaire will be kept in a secure location, and I will be the only person who will read the questionnaire. There are no anticipated risks, compensation or other direct benefits to you as a participant in this interview. Your participation is voluntary. You are free to withdraw your consent to participate and may discontinue your participation in the interview at any time without consequence.

Thank you very much for participating in this interview.

Section 1 – Human Security

The term 'human security' was first elaborated in 1994, when the United Nations Development Program's *Human Development Report* called for a post-Cold War change in focus from the security of nation-states to the security of people. This reconceptualization of security is based on the fact that intrastate conflicts have predominated in the post-Cold War era rather than traditional warfare between nation-states. While national security involves the defense of the nation-state from infringements of its sovereignty, human security is concerned with the protection of people's lives from both military and non-military threats. Canadian foreign policy has embraced the human security agenda, and Canada has cooperated with like-minded countries (such as Denmark, the Netherlands, and Norway) on various human security initiatives, including the creation of a Standby High Readiness Brigade for United Nations Operations (SHIRBRIG), the adoption of a global anti-personnel landmine ban, the establishment of the International Criminal Court, and a campaign to produce stricter regulations on the legal international trade in small arms and light weapons.

H-1) Do you think that your country's foreign policy should include human security issues?

H-2) Which of the following do you think should be prioritized in your country's foreign policy: human security issues or national security issues?

H-3) What is your opinion of your country's foreign policy with regards to human security issues? Does your country devote a sufficient amount of resources for human security initiatives? Would you suggest any improvements that your country should make with regards to its participation in human security initiatives?

H-4) Do you think that a human security initiative that is led by middle powers and small states can be successful without the assistance of the United States? Could the initiative be successful even if the United States opposes it?

Section 2 – The SHIRBRIG Initiative in Rapidly Deployable Peacekeeping

United Nations peacekeeping operations have frequently been hindered by a lack of a rapid response capability for crisis situations. In 1996, seven middle power states created the Stand-by High Readiness Brigade for United Nations Operations (SHIRBRIG). The brigade was deployed successfully on peacekeeping duties as part of the United Nations Mission in Ethiopia and Eritrea (UNMEE) from November 2000 until May 2001. At present, SHIRBRIG is in a non-deployment mode and available for future United Nations operations.

S-1) What is your opinion on the creation of SHIRBRIG? What do you think about your country's participation in the SHIRBRIG initiative?

S-2) Would you have preferred it if a United Nations standing army had been formed rather than a standby brigade?

S-3) Do you believe that an effective SHIRBRIG can be established by middle power states even without the participation of the United States?

S-4) In your opinion, why has SHIRBRIG not been redeployed since its successful participation in the United Nations Mission in Ethiopia and Eritrea?

S-5) Have you participated in the negotiations to establish SHIRBRIG and/or in any SHIRBRIG meetings? In what capacity have you participated?

S-6) Have you worked closely with any government officials from your country or another country on the SHIRBRIG initiative?

S-7) In your opinion, did the contributions of any particular governments or individuals stand out as indispensable for the successful establishment of SHIRBRIG?

S-8) Do you have any personal thoughts on the SHIRBRIG initiative that you would like to share?

Section 3 – The Campaign to Ban Anti-Personnel Landmines

The Ottawa Process was launched when the Canadian Minister of Foreign Affairs Lloyd Axworthy urged the participants at an October 1996 landmines conference to negotiate and sign a treaty banning anti-personnel landmines within a period of fourteen months. Canada worked closely with the like-minded members of the Ottawa Process core group to achieve a ban treaty. At the December 1997 Ottawa conference, 122 states signed the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction. Since the Ottawa Convention entered into force in March 1999, the global trade in anti-personnel landmines has been effectively halted.

L-1) What is your opinion on the results of the campaign to ban anti-personnel landmines?

L-2) What do you think about the "fast-track, take it or leave it" diplomatic approach adopted by the Ottawa Process core group, which featured rapid and decisive decision-making that produced the Ottawa Convention, but was exclusionary of states which do not share the views of the like-minded states?

L-3) Do you think that the Ottawa Convention can still have a major impact in curtailing the global use, stockpiling, production, and transfer of anti-personnel landmines without the participation of China, Russia, and the United States, who have the world's largest stockpiles of anti-personnel landmines, in the ban?

L-4) What is your evaluation of global efforts at mine clearance, as well as the degree to which states have complied with the Ottawa Convention?

L-5) What is your evaluation of your country's efforts to eliminate anti-personnel landmines globally? Are there any ways in which your country could improve its mine action policy?

L-6) Have you participated in any international conferences on anti-personnel landmines, including the October 1996 Ottawa conference, the September 1997 Oslo conference, and/or the December 1997 Ottawa conference? In what capacity have you participated?

L-7) Have you worked closely with any particular government officials or members of non-governmental organizations from your country or another country on the landmine ban issue?

L-8) In your opinion, did the contributions of any particular governments, non-governmental organizations, or individuals stand out as indispensable for the establishment of the anti-personnel landmine ban?

L-9) Do you have any personal thoughts on the initiative to ban anti-personnel landmines that you would like to share?

Section 4 – The International Criminal Court

In 1994, the Like-Minded Group of Countries was formed with the aim of campaigning for the establishment of an International Criminal Court (ICC). Working closely with the non-governmental organization Coalition for an International Criminal Court, the Like-Minded Group led the negotiations on a draft statute during the 1998 Rome Conference. Despite opposition from the United States, the Rome Statute was adopted by the conference participants. The ICC came into effect in July 2002.

C-1) What is your opinion on the establishment of the International Criminal Court?

C-2) The United States is concerned that the International Criminal Court will become merely a forum for politically-motivated trials of American military personnel serving abroad, and has therefore adopted an antagonistic position with regards to the ICC. But the ICC is designed to investigate solely alleged criminals from countries that are either unable or unwilling to conduct their own investigations, not from the United States and other democracies with effective judicial systems. In your opinion, does the United States have legitimate reasons for opposing the establishment of the ICC?

C-3) Do you think that the ICC will be able to work effectively without the participation of the United States?

C-4) What do you think about the “take it or leave it” decision-making approach adopted by the Like-Minded Group of Countries, where a few delegates revised the draft statute behind closed doors on the last day of the Rome Conference, in order to produce a more effective treaty?

C-5) Have you participated in the 1998 Rome Conference, the meetings of the Preparatory Committee, or any other meetings related to the issue of the International Criminal Court? In what capacity have you participated?

C-6) Have you worked closely with any government officials or members of non-governmental organizations from your country or another country on the initiative to create the International Criminal Court?

C-7) In your opinion, did the contributions of any particular governments, non-governmental organizations, or individuals stand out as indispensable for the establishment of the ICC?

C-8) Do you have any personal thoughts on the ICC initiative that you would like to share?

Section 5 – Regulating the Legal International Trade in Small Arms and Light Weapons

The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was held in New York City in July 2001. At the conference, as well as during the meetings of the Preparatory Committee, several progressive states (including Canada) and non-governmental organizations argued that the elimination of the illegal trade in small arms and light weapons could not be accomplished without first establishing stronger regulations on the legal trade. But due to a concern that the constitutional right of American citizens to own firearms would be jeopardized, the United States prevented the conference from taking action on both the regulation of private ownership of small arms and light weapons, and the introduction of a ban on transfers of these weapons to non-state actors. The conference participants settled for a less ambitious Program of Action concerning the illicit trade in small arms and light weapons that is politically, but not legally, binding.

A-1) What is your opinion on the issue of regulating the legal international trade in small arms and light weapons?

A-2) In your opinion, can the illicit trade in small arms and light weapons be eliminated without first establishing stronger regulations on the legal trade?

A-3) At the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, several delegations pushed for a prohibition on the sale of small arms and light weapons to non-state actors. What is your opinion on this?

A-4) The United States government has insisted that it will oppose any international agreement that either constrains the legitimate trade in small arms and light weapons by U.S. nationals, or infringes on the constitutional right of Americans to own firearms. Taking U.S. opposition into consideration, do you think that any initiative by the international community to regulate the legal international trade in small arms and light weapons can be successful?

A-5) In your opinion, do American fears about a possible infringement of the constitutional right of United States citizens to bear arms constitute a legitimate reason for the United States to oppose any initiative to regulate the legal international trade in small arms and light weapons?

A-6) It has been argued that the adoption of restrictions on the legal international trade in small arms and light weapons may be detrimental for the national security of states, since militaries need easy channels for the legal acquisition of these weapons in order to combat terrorist and insurgent groups who may obtain weapons through the illegal market. What is your opinion on this?

A-7) Have you participated in either the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the meetings of the Preparatory Committee prior to the conference, or any other meetings related to the issues of the licit or illicit trade in small arms and light weapons? In what capacity have you participated?

A-8) Have you worked closely with any government officials or members of non-governmental organizations from your country or another country on the issues of the licit and illicit trade in small arms and light weapons?

A-9) In your opinion, which governments, non-governmental organizations, or individuals deserve recognition for their leadership on the issues of the licit and illicit international trade in small arms and light weapons?

A-10) Do you have any personal thoughts on the small arms and light weapons initiatives that you would like to share?

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BIOGRAPHICAL SKETCH

Ronald Martin Behringer was born in Montreal, Quebec, Canada, on February 27, 1972. Raised in a multicultural family, he developed a curiosity about foreign countries and languages from an early age. Behringer became fluent in four languages, and traveled widely through North America, Europe, Africa, and Latin America. He spent his formative years in Montreal, Stockholm, Sweden, and Vancouver, before his family settled in Brossard, Quebec. Behringer attended McGill University in Montreal, where he earned a Bachelor of Arts (Honors) degree in political science, with a minor in economics, in June 1995. He then pursued graduate studies at McGill University, and received a Master of Arts degree in political science in October 1997. Behringer's Master of Arts thesis was titled "Democratization Through Intimidation: U.S. Foreign Policy Toward Nicaragua and Cuba."

In August 1997, Behringer enrolled in the doctoral program in political science at the University of Florida. He specialized in international relations, political behavior, and comparative politics. Behringer was awarded the Grand Prize in the Graduate Student Paper Competition at the 2003 meeting of the International Studies Association-South in Gainesville, Florida, for his paper titled "Middle Power Leadership on Human Security." Following his graduation from the University of Florida with a Doctor of Philosophy, Behringer intends to teach and pursue further research on issues that affect human security.