

## 11 Changing History?: Innovation and Continuity in Contemporary Arms Control

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In 1997, a coalition of state and non-state actors concluded the Ottawa Treaty, a comprehensive ban on anti-personnel landmines (APL). Considered impossible less than a decade before, it passed with surprising speed and popularity. In doing so, lead campaigner Jody Williams argued in her Nobel Peace Prize Lecture that the landmine coalition had “changed history.”<sup>2</sup> It brought new actors into the center of arms control negotiations, established innovative diplomatic strategies, and produced a new standard of “good” arms control policy, all of which have since facilitated treaties on cluster munitions (CM) and conventional weapons transfers. These treaties mark a distinct break with the Cold War. Although some acknowledged the human costs of landmines, cluster munitions, and the arms trade in the 1970s, humanitarian arms control failed to overcome opposition both within and between states. Since the end of the Cold War, however, the primary focus of multilateral arms control agreements has been to ameliorate the adverse humanitarian effects of conventional weapons and protect human security.

Why were advocates successful in pushing humanitarian arms control only after the Cold War? Explanations that rely simply on the end of bipolarity miss out on the power interactions that have shaped post-Cold War security governance. I argue that the initial, radical uncertainty of the post-Cold War security environment provided the political space for smaller states and non-state actors to use diplomatic innovation to bypass institutional constraints, frame problems, and mobilize support to make new agreements possible. Advocates were intentional and strategic in seeking new treaties, but their success, speed, and widespread support in negotiating them was unexpected. The Ottawa Treaty created the model, strategies, and momentum to pursue humanitarian controls on other weapons. Nevertheless, advocates have had to adapt the landmine

<sup>1</sup> The author would like to thank Peter Katzenstein, Lucia Seybert, Jacquie Best, Noelle Brigden, Aida Hozic, Miles Kahler, and Len Seabrooke for their helpful comments.

<sup>2</sup> Williams 1997.

campaign's strategies to respond to larger skeptical states' efforts to tamp down – with some success – on the scope of subsequent agreements.

More than a decade after the APL ban, the CM Convention and Arms Trade Treaty (ATT) demonstrate both the lasting influence of the Ottawa Treaty and the limits of protean power as it interacts with control power in the complex post-September 11 security environment. Skeptical states with significant military capabilities have used their institutional, political, and economic resources to weaken post-APL agreements. In some cases, their technological resources have allowed them to work around (and therefore make acceptable) new regulations and prohibitions. In the absence of viable work-arounds, however, they have exerted their control power to weaken agreements. In turn, pro-control coalitions have adapted their strategies to the realities of control power, just as NGOs have had to do in the climate negotiations described by Jessica Green in Chapter 12. As a whole, these negotiations thus reflect a push and pull between control and protean power in global security governance, with important consequences for the design and effects of contemporary arms control agreements.

### **Risk, Uncertainty, and Complexity in International Security and Arms Control**

Conventional weapons restrictions tap directly into the heart of control power, limiting a key source of states' coercive capabilities. Humanitarian arms control agreements can therefore be a difficult sell to security-conscious states. Moreover, the states with greater military capabilities also tend to be the states with greater formal agenda-setting and voting privileges in international institutions. Thus, they possess a wide range of control power resources, which can allow them to block agreements they dislike from being adopted or even discussed. Not surprisingly, these states have typically been the most hesitant to negotiate conventional weapons restrictions. Instead, smaller states and NGOs have been the primary source of arms control initiatives seeking to promote humanitarian values and protect human security. Yet although big states' control power has largely persisted, the effects of protean power have altered its utility and strength in shaping post-Cold War arms control.

It is therefore not enough to argue that the end of bipolarity caused the shift in the focus of international arms control. Rather, Cold War bipolarity and its end are linked to changing experiences of risk and uncertainty in international security, which in turn provide changing opportunities and constraints for the interaction of power. In the radical uncertainty of early post-Cold War international politics, political space

opened for innovative state and non-state actors to pursue new strategies and policies. Of course, small states have often had to be more agile and creative in order to manage their vulnerability to changes in their external environments.<sup>3</sup> Yet the post-Cold War security environment enabled their partnerships with NGOs and other diplomatic innovations to create arms control agreements once thought impossible. At the same time, bigger states' control power has remained a force of resistance and placed limits on the extent to which other actors can push new agreements, especially in recent years as radical uncertainty has subsided in favor of operational uncertainty (see Chapters 1 and 2).

### *Cold War Security Environment*

The Cold War international security system was marked by clear leadership, an absence of major power war, and broad consensus over the nuclear threat as the predominant international security concern. Whether due to the bipolar distribution of material capabilities<sup>4</sup> or nuclear weapons,<sup>5</sup> the international security environment at this macro-level was seen as stable. To be sure, superpower war had the potential to end in mutually assured destruction. As a result, however, attacks "out of the blue" were seen as "so improbable for a nuclear age as to approach virtual certainty that it will not happen."<sup>6</sup> As Schelling and Halperin famously argued, war was seen as the result of decisions mitigated by the logic of deterrence theory.<sup>7</sup> This "risk-based understanding of chance," Katzenstein and Seybert note, has in turn "had a pervasive influence on the theory and practice of nuclear deterrence for the last half century" (Chapter 2, p. 42). Arms control thus served to "slow the tempo of decisions," improve communications, and provide assurances between adversaries to better assess risk and reaction.<sup>8</sup> Certainly, the Cold War was not without a keen sense of threat and insecurity, but it was generally viewed as a "known" threat in which risk could be calculated, managed, and even manipulated.

By the 1970s, this security environment had fostered an arms control culture led by the superpowers and focused on managing the risk of nuclear war. The superpowers (and sometimes the international community more broadly) reached agreements to limit nuclear arsenals, testing, and proliferation. By maintaining strong weapons programs and negotiating strong arms control agreements, argue McNamara and Bethe,

<sup>3</sup> Cooper and Shaw 2009; Ingebritsen 2006; Katzenstein 1985. <sup>4</sup> Waltz 1964.

<sup>5</sup> Gaddis 1986. <sup>6</sup> Brodie 1978: 69. <sup>7</sup> Schelling and Halperin 1961: 15–16.

<sup>8</sup> Schelling and Halperin 1961: 16.

“the risk of nuclear war will constantly recede and confidence that we are masters of our fate will be rebuilt.”<sup>9</sup> In the meantime, crisis scenarios could be laid out and responses planned (at least in theory). Thus, the superpowers used arms control as a tool to impose greater control over state security in a high-risk world.

In this control-power dominated world, the arms control agenda was set principally by the superpowers. Other states could choose between security relationships with one of two centers of power or independence through armed neutrality,<sup>10</sup> but they largely accepted the nuclear-focused agenda. For Soviet client states in Eastern Europe, threat of military intervention formed a clear-cut social system based on control power and policy acquiescence. United States’ domination of its clients’ security affairs was more varied in form but generally founded on promises of material assistance. Moreover, some former colonies were simply too new and ill equipped to exercise political leverage.<sup>11</sup> To the extent that non-superpowers attempted to deploy diplomatic innovation, resources focused on “[dissipating] conflict between the two blocks.”<sup>12</sup> As the case studies show, in this security environment, humanitarian weapons restrictions failed to gain broad political traction against superpower preferences.

### *Post-Cold War Security Environment*

The sudden collapse of the Soviet Union upended the established bipolar system and introduced radical uncertainty into the global security environment: what world order would replace the old order; who would take a leadership role; and what would be the primary threat to systemic stability? Scholars debated whether the system would be unipolar or multipolar; if multipolar, which state (or states) would lead; the prospects for international stability; and the security consequences for individual states and regions.<sup>13</sup> Threats became diffuse and connected to weak actors in regions previously seen as the periphery. Societal instability and internal conflict challenged traditional understandings of interstate security, the relevant actors in world politics, and the relevant policy tools to manage conflict. Scholars wrote about “the coming anarchy,” “the clash of civilizations,” the anti-democratic but conflicting trends of “Jihad vs McWorld,” “organized chaos,” “new wars,” and “the contest between forces of integration and fragmentation.”<sup>14</sup>

<sup>9</sup> McNamara and Bethe 1985: 44.   <sup>10</sup> Rickli 2008.   <sup>11</sup> Fox 1969.

<sup>12</sup> Ingebritsen 2006: 10.

<sup>13</sup> For example, Buzan 1991; Friedberg 1993–94; Hyde-Price 1991; Krauthammer 1990–91; Kupchan 1998; Layne 1993; Mearsheimer 1990; Waltz 1993.

<sup>14</sup> Kaplan 1994; Huntington 1993; Barber 1992; Keen 1996; Kaldor 1999; Gaddis 1991: 103, respectively.

Suddenly, the system was in flux and more open to small states and NGOs taking a prominent role, diplomatic innovation, and the generation of protean power.

With the post-9/11 focus on global terrorism, states' security environment has become more complex (Chapter 1, pp. 16–25), oriented toward operational uncertainty and the interaction of control and protean power. Threat is both known and unknown, connected to geographically diffused and often-fluid violent non-state groups with agile networks operating outside established diplomatic rules and norms (Chapter 9). Militarily strong states have confronted that growing complexity with a reassertion of control power and attempts to exert military means of domination. Militarily weaker states and NGOs, in turn, have had to respond to its control-power endowed opposition and improvise on their strategies of the 1990s.

As post-Cold War international security has undergone this evolution from uncertainty to complexity, protean and control power have increasingly interacted. Certainly, the scope of potential policy outcomes remains noticeably broader than in the 1970s. Yet the space for new actors to implement new strategies and comprehensive arms control policies against big-state wishes is somewhat more constricted relative to the 1990s. Bigger states continue to rely on control power resources as a means by which to grapple with complexity, advancing new defense technologies while downsizing military forces. They are therefore reluctant to limit their access to and development of new weapons. Smaller states continue to rely on cooperative military relationships to respond to their changing security needs and secure their own access to arms.<sup>15</sup> In doing so, however, they have been less beholden to superpower alliances in defining their foreign policy preferences than in the past.

As a result, small states and NGOs have been more willing and able to engage in creative policymaking<sup>16</sup> to achieve cooperative responses to security challenges relevant to their own interests and values. Reshaping arms control to focus on humanitarian goals has been one key way in which coalitions of “like-minded” small states and NGOs have innovated in response to the causes and consequences of local instability and international uncertainty. In addition, the radical uncertainty of the 1990s enabled these actors to apply information, resources, and mobilization strategies to pursue their arms control agendas. Bigger states have had to adapt to these policy initiatives and, in more recent years, have employed control power to limit them. In the process, their varying degrees of resistance also demonstrate the limits of protean power. Where possible,

<sup>15</sup> Rickli 2008: 308. <sup>16</sup> Buchanan 2010: 256; Cooper and Shaw 2009: 5.

they have harnessed technology to make new weapons restrictions either acceptable or inapplicable. Absent technological work-arounds, they have more directly sought to block or weaken humanitarian restraints to protect their own interests.

### **Case Studies**

Three key humanitarian arms control agreements demonstrate the evolving relationship between control and protean power in the post-Cold War international security environment: the 1997 Ottawa Landmine Treaty, the 2008 Cluster Munition Convention (CMC), and the 2013 ATT.<sup>17</sup> The first two agreements outlaw anti-personnel landmines and cluster munitions, respectively. The third, the ATT, outlines humanitarian criteria to guide states' transfers of small and major conventional arms.

Attempts to address all three during the Cold War failed as nuclear risk dominated the international security agenda. However, varying interactions of control power and protean power effects after the Cold War have shaped the campaigns, negotiations, and outcomes of each of these agreements. The experience of radical uncertainty enabled coalitions of smaller states and NGOs to develop innovative diplomatic strategies to win support for the historic Ottawa Treaty. Later, as radical uncertainty subsided, these coalitions improvised on their landmine strategies to pass the CMC and ATT. Although skeptical big states are no longer able to use their control power to keep humanitarian arms control initiatives off the table, they have used it to weaken negotiation results. Their success in doing so thus demonstrates the limited effects of protean power as it interacts with control power in a complex international security environment.

#### *Anti-Personnel Landmines: Diplomatic Innovation*

The 1997 ban on the production, use, stockpiling, and trade in APLs broke all past expectations of arms control rooted in Cold War nuclear risk management and came about with surprising rapidity after the International Campaign to Ban Landmines (ICBL) was formed in 1992. APLs are mines designed to kill or maim foot soldiers, and, until 1997, were commonly employed by military forces around the world as a low-cost means to protect territory from invasion. Landmine use dates back to the

<sup>17</sup> Carpenter (2011) attributes the selection of these issues to transnational advocacy networks' internal issue-vetting processes.

US Civil War, but concern over their effects on non-combatants first surfaced in the 1970s – but with little effect. It was the radical uncertainty experienced in the initial post-Cold War years, I argue, that opened up the political space to make the Ottawa Treaty possible and that allowed advocates to establish new diplomatic strategies that – in modified forms – would later facilitate the CMC and ATT negotiations.

Attention to landmines during the Cold War resulted from the efforts of a few state and non-state actors. From 1974 to 1977, the Swiss government convened a series of meetings to increase protections for non-combatants during armed conflict. In preparation, nineteen governments requested the International Committee of the Red Cross (ICRC) to “consult with specialists on the problem of conventional weapons which may cause suffering or have indiscriminate effects,” including APLs.<sup>18</sup> The ICRC’s 1973 meeting (which did not include a US representative) concluded that “certain uses of antipersonnel mines . . . can lead to indiscriminate effects and injuries far in excess of what is required to put combatants out of action,” and called for “intergovernmental discussions . . . with a view to possible restrictions upon their operational use or even prohibition.”<sup>19</sup> However, at meetings in 1974 and 1976, states disagreed about whether APLs should be banned as inherently indiscriminate, or whether built-in self-destruct mechanisms could resolve the problem. If there could be a technological fix, the logic went, the weapon need not be banned.

The political opportunities and interests for smaller powers to assert initiatives that contradicted superpower preferences were absent in Cold War multilateral institutions and alliances. In the end, the 1977 Additional Protocols to the Geneva Conventions did not include any weapons restrictions. The major powers argued that the APL problem was confined to the irresponsible practices of less-developed militaries and guerilla groups.<sup>20</sup> Evidence demonstrating the extent of the problem came only in the 1980s, after the Soviet invasion of Afghanistan and as Western aid organizations gained access to areas affected by the US war in Vietnam.<sup>21</sup> Although small states like Sweden had wanted prohibitions, they failed to attract broader support against superpower opposition. NGOs were also limited in number, and the primary organization, the ICRC, “[seemed] to have decided not to touch the law relating to different types of weapons.”<sup>22</sup> Even so, the 1977 meeting led to the 1980 UN Convention on Certain Conventional Weapons (CCW), prohibiting indiscriminate APL use and restricting mine placement to outside

<sup>18</sup> Maresca and Maslen 2000: 19, 20. <sup>19</sup> ICRC 1973: paras. 247, 248.

<sup>20</sup> McGrath 2000: 15–16. <sup>21</sup> *Ibid.*: 14. <sup>22</sup> Draper 1977: 10.

populated areas. However, the CCW has been considered ineffective, filled with loopholes, and too limited in its membership.<sup>23</sup>

Thus, the APL problem predates the end of the Cold War, but it did take the end of the Cold War to produce an international security environment conducive to concluding an APL ban against great power preferences. This time, the political space was more open to small states and NGOs reorienting discussions about international security and arms control to include human security, mobilizing public opinion, and leading diplomatic initiatives. The rapid success of the ICBL<sup>24</sup> in coalition with like-minded states in pushing through the Ottawa Treaty in 1997 is well known.<sup>25</sup> Advocates made up for their lack of traditional control power sources in international institutions by coordinating innovative diplomatic strategies. For example, the ICBL relied on victims' personal stories and celebrity advocacy to mobilize public opinion, and used information and expert testimony to counter skeptical governments' arguments against a new treaty. In doing so, these actors took advantage of the radical uncertainty surrounding threat and leadership in post-Cold War security politics, in which other threats and superpower interests did not overshadow attention to or discourage interest in the humanitarian side of arms control.

Importantly, unlike the 1970s, advocates were able to support arguments with extensive evidence that APLs were inherently indiscriminate and caused harm to civilians long after conflicts ended. They also strategically connected – or “grafted”<sup>26</sup> – that information to arguments that an APL ban would fall within states' existing obligations under international law. Finally, they brought in retired military leaders to argue that APLs were unreliable weapons of little strategic value. APLs did not need a technological work-around; they simply were not needed.

These arguments, however, only partially overcame big-state opposition. The United States in particular saw continued strategic value for APLs and refused to support a treaty without exceptions for its specific security interests. This time, however, advocates proceeded without bending to US demands. When the 1996 CCW review conference failed to achieve consensus on a total APL ban, Canada proposed a meeting of pro-ban states outside the UN framework, excluding opposing states and

<sup>23</sup> Mekata 2000: 144; Rutherford 2011: 19.

<sup>24</sup> None of the six ICBL-founding organizations came from the traditional disarmament community; they were humanitarian organizations working in mine-affected countries. Mekata 2000: 146.

<sup>25</sup> For example, Bower 2012; Bryden 2013; Maresca and Maslen 2000; McGrath 2000; Mekata 2000; Price 1998; Rutherford 2000, 2011; Tepe 2011.

<sup>26</sup> Price 1998.



shedding consensus requirements in order to create the strongest possible treaty. Canada also coordinated a group of eight small core states with the ICBL and ICRC.<sup>27</sup> In contrast, the United States failed to keep negotiations in its preferred venue, the UN Conference on Disarmament, where it could better control meeting outcomes. Russia and the United States attended the extra-UN meetings as observers only, and China stayed away from the process. Organizers refused to grant the United States any concessions, not wanting to water down the final treaty text. Nevertheless, given the initiative's popularity and the low overall strategic value of APLs, big opposing states seemed disinclined to actively block it. The final product – a full, legally-binding APL ban – quickly gained widespread support, with 122 states signing on in December 1997. As of 2017, it has 162 members. And although states with the most control power continue to refuse to join, many have generally complied with its provisions.<sup>28</sup>

#### *Cluster Munitions: Definitional Improvisation*

The Ottawa Treaty initially appeared to have changed the course of arms control history, introducing new actors and diplomatic strategies to achieve humanitarian arms control in the face of big-state opposition. In doing so, advocates believed that the landmine campaign had opened up a more certain way forward on small arms and cluster munition controls. However, the 2008 Cluster Munition Convention was negotiated in the more complex post-September 11 security environment. Advocates faced a need to compromise and alter their strategies in order to deal with opposing states' reassertion of their control power. A cluster munition is a conventional munition "designed to disperse or release explosive submunitions."<sup>29</sup> They have been in use since the Second World War and briefly came to international attention during the US war in Vietnam, once again with no policy response. While the success of the 1997 landmine ban did galvanize and shape the CM campaign, advocates had to contend with the more direct mobilization of control power in opposition to a comprehensive treaty. As a result, the CMC is a less far-reaching treaty in terms of scope and membership than the APL ban.

Cluster munitions were first discussed along with APLs in the 1970s. At this time, CM technology was limited to the United States, Britain, France, and Germany.<sup>30</sup> Experts at the 1973 ICRC meeting noted CM's

<sup>27</sup> Tepe 2011: 90. <sup>28</sup> See Bower 2012; Morley 2014.

<sup>29</sup> Full text of CMC available at: [www.clusterconvention.org/files/2011/01/Convention-ENG.pdf](http://www.clusterconvention.org/files/2011/01/Convention-ENG.pdf).

<sup>30</sup> Herthel 2001: 238.

“obvious and uncontrollable tendency toward indiscriminateness.”<sup>31</sup> At the 1974 meeting, seven states proposed a ban. The initiative was led by Sweden, which had convened its own domestic group of experts in the early 1970s, prompted by public concerns about the conduct of the Vietnam War.<sup>32</sup> Yet although fewer states were using CMs and there was more awareness of the CM problem, cluster munitions were not included in the CCW. The proposal managed to gain support from only thirteen states by the 1976 meeting, where it lacked the consensus to move forward.<sup>33</sup> By dropping it, Borrie argues, “pragmatism appears to have prevailed”: proponents decided to back other less ambitious CCW proposals seen as more likely to succeed.<sup>34</sup> The United States and the United Kingdom especially sought to downplay and deflect questions about CM use and effects.<sup>35</sup> Thus, more information about their effects did not save CM controls from failure in this period; like landmines, superpower interests got in the way.

After the Cold War, CMs eventually made their way back onto the international agenda, despite their more widespread possession and use. At least thirty-four countries produced cluster munitions, and at least seventy-seven stockpiled them.<sup>36</sup> But although Human Rights Watch began following CMs during the 1991 Gulf War, the ICBL feared that including them in the landmine campaign might prompt some states to withdraw.<sup>37</sup> It was not until 1999–2000 that NGOs began to organize more widely around CMs,<sup>38</sup> propelled both by landmine treaty success and by their widespread and sharply criticized use in Kosovo and Chechnya. Efforts gained further momentum in 2006 after Israel’s use of cluster munitions in its war with Lebanon,<sup>39</sup> again showcasing CM use as a persistent landmine-like problem. Importantly, the success of the landmine treaty now made additional humanitarian arms control initiatives appear politically possible, set a new reputational standard by which to pressure states to commit, and supplied proponents with proven strategies to generate public attention and governmental support.

Thus, the CM campaign was neither a case of innovation born of the effects of protean power nor of “habit” created by APLs, but rather one of deliberate decision-making built on learning from an important success. The campaign did not invent new strategies, using instead what had worked for landmines and improvising on those strategies when met

<sup>31</sup> ICRC 1973, para. 150. <sup>32</sup> Borrie 2009: 12–13.

<sup>33</sup> Hulme 2009: 220; Docherty 2009: 938; Borrie 2009: 14. <sup>34</sup> Borrie 2009: 15.

<sup>35</sup> Borrie 2009: 11; Breittegger 2012: 21. <sup>36</sup> Docherty 2009: 938. <sup>37</sup> Borrie 2009: 40.

<sup>38</sup> The formal “Cluster Munition Coalition” did not form until 2003.

<sup>39</sup> For example, Barry et al. 1999; ICRC 2000. US cluster munition use also drew criticism in the 2003 Iraq War.

with control-power opposition. Like landmines, advocates framed CMs as problematic under existing international law, due to imprecise and therefore potentially indiscriminate targeting and to unreliable detonation, which might allow explosives to remain dormant but hazardous for long periods of time. Some small states adopted domestic bans as an example for others,<sup>40</sup> and together with NGOs framed the problem in ways similar to APLs (including as “de facto landmines”). Also like landmines, small states and NGOs led the creation of the Oslo Process outside the UN in 2007 after attempts to create a comprehensive ban within the CCW stagnated due to opposition from bigger states.<sup>41</sup>

Skeptical states used control power to reassert their opposition in the CM case, however. The United States, Russia, and others actively used CMs in conflict, saw them as useful weapons (a narrative advocates found more difficult to change in this case), and were even more resistant to restrictions on their military capabilities in the post-September 11 world. Rather than a total ban, the United States and other skeptical states advocated for CCW regulations, pointing to possible “technological fixes” for the indiscriminacy problem.<sup>42</sup> Once again, the CCW presented institutional advantages for these states. First, its decision-making rules allowed them better control over negotiation outcomes. Second, the institution had a much more lenient approach to weapons regulations in general, “wherein even the hypothetical possibility that a certain weapon might be used in a manner appropriate under [international humanitarian law] had been enough to argue against attempts to establish prohibitions.”<sup>43</sup>

Although skeptical states’ control power was again insufficient to keep negotiations in the CCW, it was sufficient to convince negotiators that they needed to temper opposition (or even win support) through compromise with some influential states. Advocates made creative use of definitions in the treaty text to allow for the comprehensive ban they sought with a scope restricted enough to appease some of its opponents. The CMC thus lays out a comprehensive ban for weapons falling within a carefully specified definition of CMs, thereby excluding all other munitions from the ban. This concession left open the possibility of legally developing “smarter” CMs with electronic self-destruct mechanisms and more accurate targeting,<sup>44</sup> without sacrificing the underlying legal and normative foundations of the ban.

Control power thus played a more prominent role, interacting with the effects of protean power, in the CMs case. Compared with the landmine

<sup>40</sup> Petrova 2007. <sup>41</sup> Bolton and Nash 2010: 178. <sup>42</sup> Mull 2008.

<sup>43</sup> Rappert and Moyes 2009: 246. <sup>44</sup> Hulme 2009: 223.

treaty, support was not as widespread for the 2008 CMC, with its 107 original signatories and 100 state parties as of 2017. On the one hand, control power enabled skeptical states to push advocates to improvise on the Ottawa template and accept a less comprehensive agreement. On the other hand, control power made it possible for skeptical states to accept a compromise solution at all.<sup>45</sup> By providing the means to develop and integrate technological advances into their military arsenals, skeptical states could accept (and in some cases even sign) the CMC. Similar to APLs, the CMC has also further stigmatized CM-use, including by non-signatories, even as CMs have been recorded most recently in conflicts in Yemen, Syria, and elsewhere.<sup>46</sup> Yet, as the ATT case will show, without such technological alternatives, agreements may be even more restricted in scope.

### *The Conventional Arms Trade: Accommodating Control Power*

The process of creating the 2013 Arms Trade Treaty gained momentum in 2006, overlapping with CMC negotiations. Yet from the start, advocates had to do even more to accommodate the preferences of states seeking to protect their control power resources. Small and major conventional weapons are a broad category of weapon, including guns, tanks, ships, military aircraft, and many more. States have never entertained a blanket ban on the trade or use of *all* conventional weapons, and, unlike APLs and CMs, NGOs have largely accepted regulations rather than prohibitions as their policy goal in order to make some kind of agreement possible. The rare multilateral initiatives to regulate the arms trade before the late 1990s came from major powers seeking to control access to clients and strategic regions, but failed to take hold as their political interests clashed.<sup>47</sup> Like the CMC, “responsible” arms trade initiatives have built on the success of the Ottawa Treaty and the changed expectations for “good” policy it created.<sup>48</sup> Yet the general public has been less engaged in the ATT process, and major powers have been much more integrated and accommodated. As a result, treaty scope and strength have been more restricted, pointing once again to limits on the effects of protean power in the complex post-9/11 security environment.

During the Cold War, conventional arms transfers were seen as a tool of superpower foreign policy and an economic necessity for European

<sup>45</sup> It is also worth noting that the global unpopularity of the United States in the late 2000s perhaps made its opposition less of an obstacle than it might have been, a dynamic that also unfolded with the ATT. Instead of seeing the United States as an example to follow, it was seen as an example to avoid.

<sup>46</sup> For example, HRW 2015. <sup>47</sup> For an overview, see Erickson 2015. <sup>48</sup> *Ibid.*

producers. Most states were therefore reluctant to place limits on their arms transfers, a policy tool associated directly with control power. The only activity came under US leadership during the Carter Administration, in response to the 1976 US presidential election in which the American public voiced unusual opposition to what it saw as “out of control” US arms exports to unstable regions.<sup>49</sup> The Carter Administration established unilateral criteria, including human rights, to restrict US arms export decision-making. It also proposed multilateral Conventional Arms Transfer (CAT) talks with the aim of restricting the volume of arms transfers to specific world regions.

Yet while control power might have enabled the United States to bring conventional arms to the table during the Cold War, it was insufficient to overcome significant internal and external opposition – also backed by considerable control power – to grapple with the issue. European arms producers declined to participate, wanting the superpowers to accept restrictions first. US–Soviet talks were stymied by clashing strategic interests between the two countries, who still wanted to use arms transfers to manage their alliance and client relationships, and by bureaucratic opposition in the United States over policy disagreements. The CAT talks finally fell apart as the Soviet Union invaded Afghanistan. Carter’s unilateral attempt to link human rights performance to US arms transfers was also widely considered a failure, constantly sacrificed in order to use arms transfers to meet US security interests abroad.

Arms export controls returned to the international agenda after the end of the Cold War in two phases. First, the 1991 Gulf War shone an unexpected spotlight on “irresponsible” arms transfers to Iraq during the 1980s, which generated early – if less well-coordinated – momentum to identify and limit destabilizing arms transfers. The absence of the strategies and coalitions that would grow with the ICBL, however, meant that the first policy phase remained limited. In response to calls for arms trade transparency, the UN adopted a Register of Conventional Weapons in 1991, sponsored by Japan and the European Community. On the one hand, this was a path-breaking response to post-Gulf War public pressure: states had long considered confidentiality to be necessary for a smooth-functioning arms trade and their reputations as reliable arms suppliers. On the other hand, in order to encourage broad participation, transparency measures were voluntary, did not ask for information on price or type of weapon, and were not accompanied by any export control criteria. At first, they did not “even provide a precise definition of what constitutes an arms transfer or when a transfer takes place.”<sup>50</sup> Broader,

<sup>49</sup> Pierre 1982: 46.    <sup>50</sup> Pierre 1997: 384.

more innovative initiatives were stopped in their infancy. Canada suggested involving more exporting states and more importing world regions, but the United States quickly limited the idea to the P5 exports to the Middle East only. Even then, the P5 talks failed to overcome politics and competition between the major powers, leaving arms export regulations seeming as elusive as ever.<sup>51</sup>

The second post-Cold War phase began with the success of the Ottawa Treaty, which generated momentum for dealing with humanitarian arms export controls directly. NGOs highlighted the control of small arms and light weapons (SALW) as the next arms control target after landmines.<sup>52</sup> They also took advantage of growing arms trade transparency, which yielded more information about states' export practices. The issue proved much more difficult than landmines, however. Unlike APLs, SALW are a broad category of conventional weapons, a cornerstone of states' military and police forces, a more profitable market, and impossible to categorically characterize as inherently indiscriminate.<sup>53</sup> In addition, NGOs were more divided on message and strategy, and public attention was more difficult to attract on the bureaucratic nuances of regulations rather than a clear-cut absolute ban. States were therefore the primary advocates in this case – still in partnership with Control Arms campaign-affiliated NGOs – but less willing to push initiatives as far as pro-control NGOs might have been on their own. Lead states, like the United Kingdom, did unexpectedly expand the initiative from SALWs to include both small and major conventional arms in 2005. But – with the exception of bringing relevant non-state actors (NGOs and occasionally defense industry representatives) into their negotiating delegations, in a sense co-opting them for both political insight and political cover – they also tended to stand by more conventional diplomatic strategies and avoided breaking away from UN negotiation frameworks.

In this case, bigger states most overtly invoked control power to resist policy initiatives and protect their ability to transfer arms in support of their domestic and foreign policy goals. Their less accommodating stance stemmed from two interrelated causes: the complex post-2001 security environment, which exacerbated their perceived need to preserve their arms export flexibility; and the lack of technological alternatives to work around broad export restrictions. The United States was the primary opponent of a legally binding treaty until late 2009. It used its institutional control power and dominant arms market position to squash multilateral controls on licit SALW transfers in 2001 and 2006, hold up formal ATT

<sup>51</sup> On the 1991–92 talks among the P5, see Pierre 1997.

<sup>52</sup> Lumpe 1999; McRae 2001; Renner 1997. <sup>53</sup> Garcia 2006.

negotiations until late 2009, and delay finalizing the treaty in 2012. Yet proponents were reluctant to pursue a treaty without support from at least one of the world's top exporters (the United States or Russia), which they believed would have limited the ATT's support base, legitimacy, and potential effectiveness. ATT leaders therefore adapted their strategies in response to US opposition, delaying negotiations until US support could be acquired in late 2009. Later, to keep the United States on board, they modified treaty language in response to US preferences for flexibility, excluded provisions on non-state actors (a "red line" issue for the United States), and kept negotiations within UN consensus rules at US insistence.

Thus, ATT negotiations appear much more "traditional" and dominated by control power than its predecessors. Although the ATT owes its existence to changing policy expectations established by the landmine treaty, the process was more state-based and less NGO-driven. Leaders also deliberately held negotiations within the UN framework and left out provisions that might strengthen treaty content at the expense of its membership base and US support especially. As a result, the ATT excludes provisions on transfers to non-state actors, provides significant flexibility for national interpretation of its export criteria, and lacks enforcement mechanisms. Perhaps its most protean power moment was leaders' decision to move the final treaty vote from the consensus-based negotiation forum into the majoritarian UN General Assembly. Although the United States supported the ATT at the end of negotiations in March 2013, Iran, North Korea, and Syria blocked the consensus needed to open the treaty for signature. Institutional rules favored these weaker states in the context of consensus but were easily overridden in the April 2013 General Assembly vote, 154 to 3 (with 23 abstentions). The ATT came into effect in December 2014 and, in 2017, had 130 signatories (including the United States), with ninety ratifications/accessions.

### Conclusions

Post-Cold War arms control has reflected an evolving interaction of control power and the effects of protean power, as state and non-state actors have responded to changing experiences of uncertainty in the international security environment. In the 1990s, small states and NGOs unexpectedly captured and redefined the international arms control agenda to reflect their values and interests, which they had been unable to do in the risk-dominant, control power environment of the Cold War. NGOs initiated the Ottawa Treaty and used innovative diplomatic strategies to generate public and governmental support. The

outcome was both intentional in advocates' careful strategizing to make it possible and surprising in its rapid success. This success, in turn, has shaped subsequent arms control discussions, provided diplomatic strategies, and changed the standards by which "good" arms control policy is judged.

Yet the application of APL advocates' strategic innovation to later humanitarian arms control initiatives has been met, to varying degrees, by control power resistance. Advocates have had to adjust their strategies and compromise treaty contents in order to reach agreements. As a result, the competitive push and pull between control and protean power has had important consequences for the design and effects of humanitarian arms control agreements. When militarily strong states were able to rely on technological resources to work around CMC restrictions, those restrictions were less of an obstacle for negotiations, and the agreement was substantively stronger. When these states were unable to adapt to proposed ATT restrictions, however, they sought to weaken the agreement with more accommodating language and a further reduced scope. In this regard, the ATT case especially illustrates limits on the effects of protean power as it interacts with control power in complex security environments. Actors without control power may only be able to push so far against those that have it.

Moreover, while states and NGOs have been the primary players in the humanitarian arms control story, it is important to point out that defense companies have also played a significant, if quieter, part. Support from APL producers, for whom the expenses of landmine removal promised more profit than the sales of cheap landmines, helped to remove roadblocks to the Ottawa Treaty. In the ATT case, the defense industry worried first and foremost about its sales. Defense industry representatives therefore sought to have a say in treaty design and were more directly integrated into negotiations. Representatives from some lead states – who already faced national or regional "humanitarian" export criteria – also joined diplomatic delegations to promote similar criteria with defense industries in skeptical states and "level the playing field" for their own exports. While their support did not cause governments to commit to humanitarian arms control, the absence of their opposition made it politically and economically easier for many governments to do so.

What are the implications for pending arms control issues? In 2017, a group of non-nuclear weapons states and NGOs negotiated for a humanitarian ban on nuclear weapons, a popular proposal modeled on the APL and CM agreements. Nuclear weapons states and their allies opposed the treaty, however, and it seems unlikely that past strategies will produce similar effects on an issue they see as core to their national defense, especially



absent an obvious technological work-around. In addition, some non-state advocates have begun to campaign to ban lethal autonomous weapons systems, or “killer robots.” A ban would certainly tread new ground: it would be imposed on a weapon not yet in use, based on the presumed problem of assigning legal liability and responsibility for harmful effects they might cause,<sup>54</sup> rather than on established humanitarian consequences. This analysis suggests that NGO campaigning alone may be insufficient to move a ban forward without also acquiring substantial state support. Discussions have been introduced in the CCW, but states have been unwilling to do more than support a Group of Governmental Experts to study the issue. Many oppose outright a ban. Drones and cyber weapons also raise ethical and legal questions – but are weapons already in use. Norms may emerge in both cases.<sup>55</sup> Yet again, however, state support for formal prohibitions or regulations has so far appeared minimal. Indeed, the development of these weapons may partly be a response to pressures to regulate warfare more generally, reduce fatalities, and (in theory) improve targeting precision. In all cases, pro-control advocates will have to contend with opposition from big states and negotiate the interaction between control and protean power.

New and old weapons will continue to pose such problems, challenging the boundaries and agility of existing arms control laws and norms, and pitting the desires of some states to maximize their control power against the innovative tactics of those who seek to curb the destructive potential of violence. The outcomes will likely depend on the prevalence of risk and uncertainty in the international security environment and developments in defense technology. In this sense, history has changed more gradually than 1997 might have suggested at the time, as both sides continue to draw on and contribute to the circulation of power in world politics to resist, cope with, and promote change in international arms control policy.

<sup>54</sup> HRW and International Human Rights Clinic 2015.

<sup>55</sup> On cyber norm emergence, see Maurer 2011; on the need for drone norms, see Abizaid and Brooks 2014.