

Norms without the great powers: international law, nested social structures, and the ban on antipersonnel mines

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The field of International Relations has long been concerned with how the unequal concentration of material power shapes the patterns and prospects of global governance (Foot et al. 2003; Ikenberry 2011; Ikenberry et al. 2011).¹ Amongst this diverse literature, however, less attention has been given to the similarly important issue of how the international community should address resistance from the United States and other great powers² to new governance initiatives (Price 2004b). Yet in the fields of security (bans on antipersonnel mines and cluster munitions), human rights (creation of a permanent International Criminal Court), and the environment (implementation mechanism for the Kyoto Protocol) coalitions of middle power states and their transnational civil society allies³ have successfully negotiated binding multilateral rules that were more stringent than the United States and others like China, India, and Russia were willing to accept (Price 1998; Brem and Stiles 2009; Fehl 2012). These instances of “non-great power” law making are interesting because they reflect a deliberate effort on the part of less materially powerful actors to use multilateral institutions to generate new standards of appropriate behaviour – in effect, to employ law to create social facts that could prospectively bear on all states regardless of their formal endorsement of the treaty. The decision to proceed without the great powers was thus the product of a calculation that global norms can be more effectively achieved via strong legal rules with incomplete membership that may be expanded over time, rather than by weaker agreements that from the outset include all of the allegedly most vital actors. Supporters of more rigorous treaties thus created ad-hoc diplomatic fora intended to blunt the traditional dominance of leading states and pushed ahead with negotiations even once it was clear that these actors would not support the resulting institutions.

This strategy poses an important puzzle for theories of IR, since it is widely held that successful global governance efforts must be directed by, or at least encompass, the most materially powerful states in the international system. A range of theories—especially realist and institutionalist variants—have assumed that predominant powers possess the military, economic, and diplomatic resources to manage and enforce international cooperation (Krasner 1976; Ikenberry and Kupchan 1990; Thompson 2006; de Nevers 2007). Critics therefore regarded efforts at law making without the great powers as politically naïve and likely to lead to weak institutions that would be unable to effectively address governance challenges; more seriously, by excluding key actors, these institutions could actually lead to worse outcomes than in the previous status quo (Morgan 2002; Goldsmith 2003). This raises an important question

concerning whether treaties can instantiate new international social standards—evidenced by changes in actor behaviour—when they fail to correspond to the wishes of the most powerful states. In other words, how (if at all) can non-great power law be said to matter, given its apparent limitations?

This article addresses the consequences of pursuing global institutions without the great powers in both theoretical and empirical terms. I first build on recent constructivist accounts of international law to explain how formal multilateral treaties may serve as effective instruments for the promotion of new norms in the absence of great power leadership (Reus-Smit 2003, 2004a; Brunnée and Toope 2010). International law is an especially authoritative means for organizing international affairs and generating meaning because “law now provides in large part the vocabulary for contemporary politics.” (Kratochwil 2014:1) Institutions are also embedded within a broader web of principles, norms, and rules that structure the international system and inform the development of more particular practices. International law is thus both situated within and contributes to processes of social construction in the international system by constituting actors and defining the boundaries of (un)acceptable action. This “nested” quality of law further explains how particular treaties may succeed without recourse to forms of enforcement emphasized in the extant literature.

My particular interest is not with the initial negotiation of multilateral institutions—a subject that has been well addressed already—but rather with their subsequent impact in shifting international expectations and resulting policies. I show that treaty proponents can build efficacious international legal institutions by harnessing the social power of law with respect to two distinct constituencies of state actors. First, because international legal obligation derives from the internal practices of law rather than external forms of coercion or instrumental advantages, treaties may generate communities of legal commitment among their members in the absence of agency from predominant actors. Second, treaties are tied to the wider universe of international legal and social practice, and for this reason may generate informal compliance and adaptation among non-party states even as these actors remain outside the formal legal agreement. In both respects, my account challenges sceptical assumptions regarding the prospective influence of institutions by refocusing attention away from law as constraint in favour of an emphasis on how treaties may generate changes in conceptions of appropriate action. The creation of institutions to counter the policy goals of dominant actors and promote

alternative standards of behaviour is thus a key way that less materially powerful states can influence global politics.

To unpack these effects, I examine an archetypal non-great power institution, the 1997 Antipersonnel Mine Ban Treaty (MBT). Important scholarly accounts have documented how the ban on antipersonnel (AP) mines emerged and was codified (Cameron et al. 1998; Price 1998), yet there has been less sustained consideration of whether and how the treaty has generated observable policy change as evidence of a strengthening global norm (Price 2004a; Herby and Lawand 2008; Bower and Price 2013). The mine ban also constitutes a hard case for international norm change since it aims to eliminate a weapon that was in widespread contemporary use—thus intervening in the security affairs of the state where rigorous obligations are thought to be least efficacious—without the enforcement capacity provided by the most powerful states. This is ultimately a structural account of legal impact that aims to provide an overview of global incorporation of mine ban norm. As a consequence, the present study does not delve deeply into mechanisms of socialization at the level of individual states, bureaucracies, or human beings, preferring instead to highlight patterns of adaptation and change across the international system. I do, however, briefly identify some key domestic processes, and reflect further on these in final section of the article. The focus on a single treaty case also naturally limits the explanatory breadth, though the trade-off in terms of empirical detail is warranted in my view. Indeed, evaluating state change under these challenging conditions offers the chance to develop rich data as a first step in addressing the conditions under which non-great power law making may be appropriate. In the conclusion, I outline a research agenda that builds on insights from the present study to better understand both the promise and perils of pursuing international legal rules and norms without the great powers.

THE ASSUMPTION OF GREAT POWER LEADERSHIP

The notion that the international system requires concerted management from a power or powers has a long pedigree in the academic study of international relations and resonates with a popular view of international politics. Prominent theories of IR thus expect that dominant states will leverage their material and diplomatic advantages to exert disproportionate influence over governance by deploying coercive threats and sanctions (Thompson 2006; de Nevers 2007),

providing collective goods (Krasner 1976; Norrlof 2010), and promoting particular conceptions of appropriate behaviour (Ikenberry and Kupchan 1990; Fordham and Asal 2007). Scholars have therefore emphasized US agency in underwriting the post-World War II liberal international order and its continuing leadership in areas as diverse as arms control, environmental protection, and global finance and trade (Foot et al. 2003; Brooks and Wohlforth 2008; Ikenberry 2011). More recently, the rise of the so-called “BRICS” countries has generated extensive debate concerning the existence, nature and extent of a shift in the global balance of power to encompass new great powers, and what this may mean for the future of global governance (Hurrell 2006; Destradi 2010). The coincidence of political power and governance comes at a price, however, as great powers frequently use their predominant status to entrench unequal rights and responsibilities in international law (Krisch 2005). As a consequence, the international community often incorporates a variety of concessions to great power demands, limiting the scope of legally binding rules to facilitate their participation in institutions. Yet in other instances the great powers—most especially the United States—have publicly rejected new international governance initiatives, presenting scholars and policymakers with a challenge concerning how to respond to intransigence in negotiations (Price 2004b).

On its face, the decision to proceed without the support of the great powers would seem unlikely to lead to broadly effective international institutions because it runs counter to the most common view of the sources of legal obligation and institutional efficacy. Rationalist IR theories—broadly encompassing realist and institutionalist approaches—presume states are self-interested, utility-maximizing actors that resort to cooperation only when it is valuable either in providing an additional means of exerting control in the international system (Mearsheimer 1994; Glennon 2001), or in facilitating mutual gain through collective action (Koremenos 2013). These theories also adopt a positivist view of legal obligation in which commitments may only accrue via voluntary consent. International law is thus regarded as a set of agreed constraints designed to address previously established cooperation challenges; processes of legal creation are a response to and reflection of existing goals and interests, rather than a source of new conceptions concerning appropriate actors or action in their own right (Abbott et al. 2000; Koremenos et al. 2001; Guzman 2008). While institutionalist scholars do acknowledge that engagement within institutional structures will change preferences over time—especially by

altering calculations of self-interest with respect to material pay-offs, reputation and the like—these interactions leave underlying identities unaltered.

An assessment of the prospects for non-great power law must therefore confront two more particular theoretical challenges. First, the autonomous power of such treaties is assumed to be proscribed by the voluntary nature of law. Von Stein (2005) has argued that since states self-select into joining treaties, this screening effect dramatically reduces the independent impact on subsequent behaviour that can be attributed to institutions. Treaties are thus expected to offer only a weak constraint on the practice of those states that do accept their dictates, since “most treaties require states to make only modest departures from what they would have done in the absence of an agreement,” (Downs et al. 1996:380). Moreover, treaties cannot formally bind non-parties and should consequently have little if any influence over the behaviour of third states. This is especially true for powerful states that possess the material and diplomatic resources to resist outside pressures (Glennon 2001; Brooks and Wohlforth 2008).

Second, such institutions fail to encompass dominant political actors with the greatest resources to facilitate cooperation. This is a problem because rationalist theories regard compliance as emanating from the ability of an institution to ensure a more or less consistent stream of goods—order or more diffuse gains from collective action—rather than an “internal” sense of obligation owing to the social legitimacy of the law (Reus-Smit 2003). Both realist and institutionalist accounts thus assume that agreements require some form of (often decentralized) monitoring and enforcement to deter cheating and maintain the smooth operation of transactions (Abbott et al. 2000:402–403, 418; Guzman 2008; Thompson 2009). The absence of key powers that might otherwise provide these functions is compounded by the fact that many regimes lack formal institutional enforcement provisions. Treaties concluded without great power support should therefore be particularly ineffectual since they will only ratify the existing goals of less important actors and thereby leave out the vital constituency of states that is allegedly most consequential to a treaty’s subsequent implementation.

LAW AND NORMS WITHOUT THE GREAT POWERS: A FRAMEWORK FOR ANALYSIS

Nested Social Structures and the Power of Law

Adopting insights from recent constructivist accounts can help to address the challenges noted above (Finnemore and Toope 2001; Reus-Smit 2003, 2004a; Brunnée and Toope 2010). For constructivists, international law is not defined by a set of formally promulgated binding rules backed by some means of enforcement—as per rationalist approaches—but rather by a particular mode of reasoned interaction based in precedent that generates categories of meaning and more specific permissive and prohibitory standards. International law's essence is rooted in a principled justificatory discourse in which actors debate the content, scope, and application of rules, in reference to previously articulated norms and procedures. These repertoires of ideas, behaviours, and language aggregate over time as precedents that structure international legal practice. In this sense, international law can be conceived as both a vocabulary and grammar for articulating forms of acceptable and unacceptable action in the international system: it provides a language for describing certain types of activities in relation to existing law—as “legal” or “illegal”—and defining criteria by which ideas and actions may be presented – in effect, “tell[ing] us which constructions are permissible.” (Borgen 2009:2)

Law is not only a collection of procedures and rules that serve to regulate and constrain, therefore, but is itself a fundamental means by which social life is created and re-created (Finnemore and Toope 2001:745–746). The manner in which in which this occurs is of key importance for the theoretical potential of law to transcend dominant configurations of material power to promote genuinely global standards of appropriate behaviour. A central insight of recent constructivist work is that “legal practices are embedded within, and constituted by, layers of nested social understandings.” (Reus-Smit 2011:344) Particular legal instruments do not float freely in the international system, but are necessarily connected to pre-existing and more foundational principles, norms, rules, and organizational forms, and gain impetus from these associations. The basic building blocks of this legal architecture are found in a set of historically specific fundamental institutions—in the contemporary era, territorially based sovereign statehood, contractual international law, the sanctity of commitments, and multilateral diplomacy—that act as ordering principles to define the proper form and purpose of political communities (Reus-Smit 1997). These are mirrored in the development of customary legal norms relating to (for example) the legal personality and consequent responsibilities of states and other actors, the notional inviolability of borders, human rights, and the use of force (Byers 1999). These constitutional features provide a basis for mutual recognition in identifying

legitimate social actors and developing more detailed criteria of acceptable behaviour manifested as legal rules. Hence, evolving norms concerning the scope of sovereignty and nature of fundamental human dignity have provided the fodder for international social change in areas as diverse as abolishing slavery, piracy, and territorial conquest, the decolonization and anti-apartheid movements, and the global promotion of democracy (Sandholtz and Stiles 2008).

This social density is key to the influence that international law can command. Constructivist scholars contend that states and other actors observe legal rules and norms because they regard the legal system as a whole as legitimately emerging from their own intersubjective practices. Rules are thus to be obeyed not simply because they are deemed valid or useful in isolation, but because legal structures are linked to the constitutive features of the international system and thereby precede and inform the rational pursuit of self-interest via law (Reus-Smit 2003:613). While compliance is driven in part by the desire of state actors to advance individualistic goals like improving organizational efficiency, bolstering their reputation or avoiding sanctions, these considerations are given meaning by a pre-existing belief that law is an *especially* legitimate means of social order, and consequently worthy of adherence. While politics and law are inextricably linked and necessarily interactive, actors regard the international legal realm (ideally) as a distinctive field in which outcomes are determined by the application of accepted principles, discourses, and practices of law rather than a purely political calculus driven by particularistic self-interest and the distribution of material power (Reus-Smit 2004b:36–37; Abbott and Snidal 2013:35). The transition to a legal form thus invests a norm with a particular rational-legal authority that is regarded as more legitimate and binding than non-legal standards. In this way, the resort to law is not just “cheap talk,” but profoundly influences the construction and conduct of international politics.

The Promise of Non-Great Power Treaties

This account helps explain how the strategic bet made by proponents of non-great power treaties—that authoritative social standards could be developed via rigorous rules without the initial endorsement of many powerful states—may be realized in practice. While not the only form that law can take, multilateral treaties offer an especially effective vehicle for generating new international norms. In the first case, multilateral negotiations serve as focal points in the

crystallization of emergent norms (Coleman 2013), redefining appropriate responses to global challenges. The creation of a formal legal text translates general standards of appropriate behaviour into a set of more specific prescriptive and proscriptive rules and associated legal procedures distinguished by their codification and characteristic form of creation and regeneration (Percy 2007:387; Sandholtz and Stiles 2008:1). Put differently, a treaty serves as a public declaration that further clarifies the content of a norm and specifies its application to a particular context (providing greater certainty in terms of the scope and limits of obligation), and provides an institutional context for subsequent discursive efforts aimed at implementing, contesting, or further refining the law (Abbott et al. 2000:412–413; Brunnée and Toope 2010:48).⁴ In this way, the legalization⁵ of norms matters to subsequent institutional efficacy by generating more authoritative—and hence socially powerful—cognitive and discursive resources for articulating and adjudicating debates over appropriate action.

Key to this account is the social power generated by iterative, intersubjective dialogue structured by legal criteria, and the dense connections that are built between new institutions and more established international structures. First, since international legal obligation is fundamentally predicated upon, and sustained by, conceptions of appropriateness rather than enforcement, a treaty may bind its members without resort to the agency typically associated with leading states. Parties to a treaty have agreed to a set of obligations underpinned by broader social expectations concerning the legitimacy of law and the observation of commitments. Exposure to diplomatic processes can thus exert social pressures on state actors to endorse new ways of thinking with respect to matters of cause-and-effect and acceptable behaviour in the international system so as to conform to a newly articulated component of “responsible” statehood. These distinctly social qualities hold the potential to raise the costs of violations and the benefits of adherence beyond what can be provided by material inducements or coercive sanctions alone.

This does not imply that treaty members must deeply identify with constituent obligations from the outset. States may initially join a treaty for self-interested reasons such as an attempt to diffuse criticism or gain material benefits. Yet in an environment governed by expectations of adherence and pro-social behaviour, continued participation in a treaty regime can generate pressures towards greater conformance and, gradually, the internalization of norms. The social processes that initially typified the negotiations carry over to the implementation phase and in

this way, institutions help coordinate successive efforts to generate compliance with and internalization of these new behavioural standards through the deployment of discursive claims concerning the status of the law, social rewards and punishments, and material resources (Risse, Ropp, and Sikkink 1999, 2013; Dai 2007; Smith-Cannoy 2012). Over time, these structured engagements can themselves generate greater affinity with legal norms and the re-construction of actor identities. I do not trace these processes in detail at the domestic level, but rather look for broad patterns and surprising results that suggest norm adoption across the system of states.

Second, the nested structure of international law means that treaties may generate social pressures towards compliance even among those states that reject their binding legal obligations. While materially powerful states possess greater latitude to selectively interpret and challenge new institutional developments, they are still deeply embedded within the wider international legal and social order and are thus implicated in the complex web of practices from which a treaty derives (Krisch 2005:374). The prior acceptance of logically connected institutions—such as the laws of war or human rights principles—places important constraints on their ability to effectively contest new legal developments not to their liking. Even overtly hostile states are therefore rarely able to entirely ignore new institutions, but rather seek to balance an endorsement of broad principles with a rejection of specific commitments. In effect, non-parties frequently attempt to selectively invoke the language of new legal norms and rules to pursue their own, often contrary, policy goals, often by claiming that new rules are unsuitable *in present circumstances*. Yet partial engagement carries its own perils, as it can serve to further reinforce the social legitimacy of the particular institution as the arbiter of acceptable behaviour. This, in turn, can open non-party states up to forms of rhetorical entrapment—via challenges linked to factual disputes concerning their interpretation of the law or claims of hypocrisy in selectively applying legal commitments—that generate unintended pressures to more fully adapt to new norms.

Hence formal membership does not exhaust the ways in which treaties and associated norms may bear on the formation and execution of state policy. Resistant states may partially comply with a treaty, even as they continue to resist its legal force. This can take the form of ending some prohibited behaviours; in such cases, legal norms have the effect of foreclosing previously unexceptional acts while simultaneously increasing their perceived importance, rendering any policy reversal a more substantial political issue than it would have been otherwise.

These behavioural adaptations may be mirrored in changes in state discourse that reflect an abandonment of certain rhetorical strategies due to a sensitivity to the social expectations fostered by a treaty. Under these conditions contestation is important precisely because it frequently reflects legal and normative reasoning and thus bolsters the legitimacy of the legal norm, in contrast to instances where a non-party succeeds in ignoring or rejecting a new institutional entirety. These processes may lead, over time, to further engagement by non-parties with the treaty and an incremental adoption of its standards; this can occur informally, initially by changing cost-benefit calculations with respect to informal compliance, and ultimately, perhaps, by altering underlying interests to correspond with treaty obligations.

These theorized dynamics point to a further concern with how institutional efficacy can be assessed. How, in other words, do we know when a treaty has successfully instantiated a widely respected international social standard influencing the conduct of world politics? Richard Price has previously suggested that the impact of a legal initiative is most clearly apparent when “an emergent international rule induces states to engage in practices they would not otherwise perform.” (Price 2004a:114) Hence any assessment must be set against an implicit counterfactual in which observed behaviours (both adherence and contestation) differ from those which would have occurred absent the given norm or rule, and where the most persuasive evidence is drawn from instances where actor change is most unlikely and surprising. This is particularly important since, as already noted, many IR theories assume that non-great power treaties will at most reflect a set of relatively unchallenging commitments among a sub-set of (typically less powerful) states for which the legal restraints do not impose substantial burdens. Effectively countering this view therefore requires not only evidence of substantial policy shifts, but equally an account of why—whether for formal parties or non-parties—the observed adherence was due to the impact of legal rules or norms rather than an unproblematic convergence of pre-existing interests.

Yet this must be conditioned by a recognition that, as social phenomena, the impact of norms is bound to vary with respect to the rate, breadth, and depth of internalization and policy change (Kirgis 1987; Price 2006). Most treaties do not enjoy perfect compliance, and the Mine Ban Treaty is no exception. Yet legal rules and norms can be “counterfactually valid,” in that they may continue to exert authority in the face of some contrary behaviours. Since norms are intersubjective social constructions, their power to shape outcomes can be partially assessed by

the way that alleged or proven transgressors explain their actions in order to maintain their status as legitimate members of the international community, and the response such claims receive from other relevant actors (Price 2006:261–263). States may seek to conceal violations, suggesting that the norm has gained sufficiently widespread support that non-adherence implies an unpalatable reputational cost. Alternatively, actors may seek to qualify their non-compliance as the product of special conditions that do not impede upon the general authority of the treaty, thereby reinforcing the collectively-held view that such actions are *normally* unacceptable. Even when detached from actual practice, therefore, such statements can “constitute legally relevant State practice *in support* of a rule prohibiting the actions in question.” (D’Amato 1988:469) Inversely, states may simply reject the authority of a legal instrument and assert that their own practices—whether involving explicit violations or not—are uncontroversial because the rules do not apply to them. These forms of direct challenge are the most damaging, as they weaken an emergent norm’s prospective claim to universality. Just as important in such scenarios are the responses from *other* states, civil society actors, and organizational bureaucracies, since they tell us whether violations are normalized as largely unremarkable or treated as aberrations that reinforce the social legitimacy and authoritative status of the law. Importantly, I do not contend that public discourse necessarily constitutes a faithful presentation of the private psychological dispositions of the myriad individual human actors that make up the state (Krebs and Jackson 2007:40–42). But since international law is created, reproduced, and modified through publicly expressed views, official discourse constitutes highly relevant evidence concerning the effect of legal institutions irrespective of any judgement concerning the underlying sincerity of a claim.

A CASE STUDY IN NON-GREAT POWER LAW: THE BAN ON ANTIPERSONNEL MINES

Overview

As the multilateral legal expression of the norm, the Antipersonnel Mine Ban Treaty seeks to eliminate an entire category of weapons by prohibiting the use, production, stockpiling, and transfer of antipersonnel (AP) mines, along with a entrenching a series of positive obligations concerning the clearance of existing minefields and the provision of care for mine survivors.⁶

The treaty draws inspiration from established international humanitarian law (IHL), particularly in reference to the notion that the right to choose the methods of warfare is not unlimited, prohibitions on superfluous injury and unnecessary suffering, and an articulation of the twin principles of distinction and discrimination (Maslen 2005:66–71). The rationale for a ban rests on a judgement that the inherent characteristics of AP mines—most especially concerning their persistence once deployed and inability to distinguish between legitimate military targets and civilians—mean that they cannot be employed in a way that would sufficiently respect existing legal principles (International Committee of the Red Cross 1997; Price 1998:627–631).

At its heart, therefore, the MBT seeks to overturn a well-established international social standard that has traditionally regarded AP mines as largely unproblematic tools of war, subject to the same forms of regulation as other conventional military technologies like artillery shells, rockets, and personal infantry weapons. This entailed a fundamental re-conception of the meaning and limits of military utility, especially as AP mines were in widespread use at the time of the proposed ban.⁷ Hence, contrary to the claim that treaties only reflect existing interests (Downs et al. 1996; von Stein 2005), I contend that the mine ban constitutes a dramatic change in the international status quo regarding the legitimate conduct of warfare.

Moreover, the treaty seeks to implement this new social expectation in the face of concerted resistance from major military powers. The United States, China, India, and Russia (among others) have long maintained that the deleterious humanitarian effects of AP mines stemmed from their irresponsible use by poorly trained armed forces and rebel groups and not from the legitimate operations of modern militaries (Morgan 2002). These states consequently supported an alternative legal framework that further regulated, but did not eliminate, the use AP mines, codified in Amended Protocol II (APII) to the Convention on Certain Conventional Weapons.⁸ It is particularly significant, then, that the process leading to the Mine Ban Treaty was precipitated by widespread dissatisfaction with the outcome of negotiations on APII, which was regarded by many states and civil society groups as “overly complex and insufficiently stringent to deal with the extent of the humanitarian crisis.” (Maslen 2005:22) In contrast to earlier diplomatic experiences, the negotiation of the MBT was animated by a calculation that a global stigmatization of AP mines would be most effectively achieved via an uncompromising prohibition that permitted no exceptions, rather than through a more modest agreement that included concessions to military powers (Cameron 1998). The United States in particular sought

to secure a series of exemptions that it claimed were a necessary precondition for formal US membership, since an absolute and immediate ban placed undue burdens on the exercise of its global military responsibilities (United States of America 1997).⁹ Despite intense pressure from the US and other military powers, the pro-ban coalition refused to weaken the treaty via amendments or the possibility of reservations. At the heart of our assessment, therefore, is the question of whether, and to what extent, the MBT has realized widespread adherence with its particular normative claim and set of obligations, in light of these substantial challenges.

Global Compliance with the Mine Ban

Available evidence is strongly indicative of a robust stigma engendered by the mine ban movement and resulting treaty. The MBT was initially signed by 122 states in December 1997, and became operational on March 1, 1999 in what is widely regarded as the most rapid entry into force for a major multilateral treaty (International Campaign to Ban Landmines 1999:3). As of October 2014, there are 162 State Parties to the Mine Ban Treaty and 35 non-parties. In this regard the MBT compares favourably against other multilateral initiatives: most notably, Amended Protocol II to the Convention on Certain Conventional Weapons has 100 members.¹⁰ But as noted already, this figure does not include many major military powers; this has led critics to charge that the treaty represents merely an unimportant commitment among states that would not have much use for AP mines in the first place, and excludes those actors that are most consequential to the employment—and regulation—of military violence in the international system. Yet prominent non-parties do not represent the only relevant constituency in judging the health of the mine ban norm. All of the 12 most mine-affected states are treaty members, as are the majority of those states with mine contamination; the treaty also encompasses the majority of the largest former AP mine producers (Vines 1998:124; International Campaign to Ban Landmines 2013a:18–22).

The principal metrics of compliance all point to a rapidly declining reliance on antipersonnel mines over the past two decades. Fifteen states deployed AP mines in 1998 (when annual civil society reporting began); this number has decreased steadily to an average of two per year most recently. And with the notable exception of Turkey and Yemen, all confirmed instances of mine use have occurred among non-party states.¹¹ A very similar pattern can be

discerned in respect to the production and transfer of AP mines. These are critical to the efficacy of the norm because they constitute the enabling conditions for mine use. At least 50 states produced AP mines in the decades preceding the creation of the MBT, including a number of prominent ban supporters such as Belgium, France, Italy, and the United Kingdom; yet the vast majority have abandoned the practice as part of their endorsement of the mine ban (Vines 1998:120; International Campaign to Ban Landmines 1999:5–6). Only 12 states retain a capacity to produce AP mines¹² and of that diminished group, most—including prominent treaty holdouts China, Russia, and the United States—have ceased active production (International Campaign to Ban Landmines 2013a:18). Finally, the mine ban has profoundly impacted the international market in the weapons. Since 1997 there have been no confirmed cases in which AP mines have been sold or transferred from one state to another state or rebel group. This contrasts with an estimated 34 states that were regular exporters of antipersonnel mines prior to the advent of the MBT (International Campaign to Ban Landmines 1999:7). To the extent that it endures at all, the “global trade in antipersonnel mines has consisted solely of a low-level of illicit and unacknowledged transfers,” (International Campaign to Ban Landmines 2013a:1) further reflecting the change in social expectations concerning the weapon’s legitimacy.

These measures of state change are evidence of a dramatic shift in the way in which the weapons are conceived in international society. The removal of AP mines as a tool of war is notable because it is not matched by a similarly substantial decline in the frequency of violent conflict in the international system: while the total number of armed conflicts has ebbed globally since the early 1990s, organized violence remains common. Moreover, intra-state conflicts—precisely those in which inexpensive weapons predominate—continue in significant numbers.¹³ Yet the use of AP mines has now become an aberration in international practice. Were it not for the effective stigmatization of the weapon initiated by the mine ban movement and treaty, we would expect AP mines to feature in a greater number of these conflicts, many of which had seen past use of the weapons. This suggests that something more than altered material conditions is responsible for this dramatic change in observed behaviour.

Constructing a Legal Community: State Parties and the Mine Ban Treaty

[C Head] *Hard Cases in the Adoption of the Mine Ban Treaty*

Contrary to sceptical assumptions that, as consensual agreements, treaties only consolidate largely uncontroversial policy positions, constructivist scholars have argued that legal institutions may themselves reshape notions of appropriate behaviour and thus contribute to the transformation of identities and subsequent preferences. Support from actors engaged in violent armed conflicts—especially those which featured past mine use—provides especially compelling examples of how the Mine Ban Treaty has influenced the conception of state interests, since we would expect restrictive social standards to be least resilient under such conditions. Twenty-four states, including Colombia, Iraq, the Philippines, and Uganda joined the MBT during internal armed conflicts, or while their armed forces were engaged in foreign military campaigns.¹⁴ A further 14 ratified or acceded shortly after the end of armed hostilities and/or a significant transition of government, and where domestic political conflicts and border disputes continued to generate instability.¹⁵ These developments challenge the expectation that states would avoid costly obligations that require they abandon a potentially useful weapon, or in instances where they lack the capacity to make the necessary political, legal, and military adaptations.

The adoption of a comprehensive ban on a previously prominent weapon was also challenging for many states subsequently identified as primary MBT supporters. Members of the Core Group of pro-ban states such as Belgium, Canada, France, Germany, Italy, and the United Kingdom were all formerly among the largest AP mine producers (Vines 1998:121 and 124), and have long experience operating as part of multinational military coalitions with the United States under the auspices of NATO and in conflicts like the 1990-1991 Gulf War. It was widely recognized at the time that the prohibition could have a significant impact on the future conduct of joint operations with the US (Jacobs 2004). Governments therefore faced substantial resistance from military officials fearful that the elimination of AP mines from their arsenals would weaken operational defences, imperil alliance commitments, and endanger soldiers' lives (Lawson et al. 1998:164–165; Warmington and Tuttle 1998:50). All of these states initially viewed a comprehensive ban with great suspicion. Their subsequent enthusiastic support is therefore much more puzzling than is often recognized, since the decision was costly and contentious rather than uncontroversial.

Explaining these changes is critical to understanding the role that international law can play in reshaping state identities and subsequent interests. Close attention to the wealth of discursive evidence demonstrates a powerful constitutive function of the Mine Ban Treaty through the introduction of a new legal norm that places AP mines outside the boundaries of legitimate state practice. In particular, the association with previously accepted legal principles of military necessity, proportionality, and discrimination, and more specific institutions like the Geneva Conventions and Additional Protocols has provided important impetus in shifting political conditions in favour of formal treaty membership. To that end, State Parties frequently cite the MBT's importance to the progressive development of international humanitarian law in explaining their decision to join the MBT; this is frequently the case in states that were previous mine users (Republic of Angola 1997; Republic of Croatia 2002; Republic of Turkey 2007).

The most fundamental effect of the Mine Ban Treaty has been to serve as a potent demonstration of responsible statehood, in which AP mines no longer feature as an acceptable means of pursuing national security objectives. The MBT was thus the first treaty adopted by the new state of South Sudan:

It has been more than four months since the declaration of our independence on 9 July 2011, in which my country has promised the world it would honor all the principles of international law by playing an active role in peace and world security.... Having seen the devastation including severe injury and environmental damage caused by landmines during the twenty-one years of fighting for freedom, the movement / army of liberation of the people of Sudan banned the use of landmines in all combat operations. We have defended the cause of the treaty before becoming a state. (Republic of South Sudan 2011)

In such cases, endorsement of the mine ban has been explicitly understood to signal a break with the previous political order and a consequent (re-)induction into the international community, as also happened with states like Serbia and Montenegro and South Africa.

This transformation in a core feature of state policy also occurred in states that came to be regarded as key supporters of the movement to ban AP mines – and hence allegedly easy cases for norm adoption. In his seminal article, Price (1998) argued that exposure to the normative claims of the ban movement—and especially the invocation of legal principles to portray the use of AP mines as inherently illegitimate in light of their humanitarian effects—was instrumental in

shifting elite opinion in a number of states such as Canada, France, and the United Kingdom, via mechanisms of persuasion and emulation. Italy, formerly one of the largest AP mine producers, therefore decided to join pro-ban constituency “not because anti-personnel mines have in our view become militarily redundant or obsolete, but because we have accorded priority status to the disarmament and humanitarian aspects of the issue.” (Italian Republic 2004) As Petrice Flowers points out, this constituted a radical departure even for an officially pacifist state like Japan, since the decision to join came in the face of extensive US pressure and cut against “the entrenched idea that land mines were an essential tool necessary to defend Japan in case of land invasion.” (Japan 2004; Flowers 2009:7) Yet here as with a number of other states concerns for status and legitimacy ultimately provided the permissive conditions for formal membership, as Japan joined the mine ban in order to reinforce its identity as an advocate of humanitarianism and role model for the Asian region (Japan 2004; Flowers 2009:139). The normative force of the mine ban movement and resulting treaty was thus instrumental in reshaping a basic expectation of state policy such that adherence to the prohibition of antipersonnel mines became the standard against which fundamental interests—including the conduct of military operations and the territorial defence of the state—are assessed.

Recognition of new social expectations has also created political space for the gradual transformation of state identities and interests even where immediate membership was regarded as impossible. A number of states have made a point of signalling their support for the humanitarian purpose of the Mine Ban Treaty, even while asserting that domestic conditions—most notably armed conflicts or the lack of technical capacity to meet treaty obligations—precluded earlier membership (Federal Democratic Republic of Ethiopia 2001; Republic of Sudan 2001; Ukraine 2003; The Transitional Federal Government of Somalia 2004; Republic of Turkey 2007). The adoption of pro-treaty discourse was not merely cost-free rhetoric, designed to placate mine ban proponents without meaningful consequences, as sceptics would expect. Instead, such efforts have signalled an important transition in the sensitivity of actors to social expectations anchored in specific legal obligations. It is first of all significant that non-members would seek to frame their policies in reference to a standard they had yet to officially join, suggesting its accruing legitimacy among the community of states. More substantively, general endorsement drew these states into dialogue with other concerned actors *on the terms of the mine ban itself*, and thus narrowed the range justifications for continued non-membership. Claims of

security conditions or technical incapacity thus provided the context for future discussions over the merits of the mine ban, provided a rhetorical opening that was exploited by the ICBL and other states to push these states to progressively close the gap between their stated aims and actual policies.

Finland and Poland exemplify this process. Both states were early and consistent supporters of the ban, and accepted the claims of the pro-ban constituency that AP mines presented an unacceptable humanitarian threat that could only be adequately addressed via the comprehensive prohibition. Yet both also long insisted that their elimination of AP mines and formal adoption of the MBT could only occur once alternative military systems were available to replace their operational functions in border security and the protection of military assets (Republic of Poland 2001; Republic of Finland 2002). But rather than hollow diplomatic overtures, the acknowledgement of the legal and normative merit of the mine ban position drew Finland and Poland into successive rounds of discussion within the diplomatic environment of the MBT, and generated a form of rhetorical dissonance wherein both states had to continually explain the divergence between their stated principles and actual behaviour. Initially this had the effect of stimulating forms of behavioural adaptation—including a pledge not to produce AP mines or maintain active minefields on their territory—that were intended as demonstrations of good faith to the mine ban norm (Republic of Finland 2002). More fully, the discursive context provided the conditions for effective social influence, as domestic constituencies, civil society actors, and other states were able to exert pressure on the respective governments to formalize their commitment via ratification. The European Union's unified support for the mine ban was particularly consequential, since it highlighted a prominent gap in both states' identity as modern European nations.

The desire to adhere to the mine ban as a marker of status then stimulated a search for alternative technologies to replace AP mines in military doctrine, efforts that interacted with a perceived improvement in the security challenges facing the two states.¹⁶ Yet such assessments were not driven by dispassionate judgements that changes in material conditions had rendered mines irrelevant, as a realist account would suggest, but rather relied to a substantial degree on shifting conceptions of the nature of military utility itself. The key here was the reciprocal dialogue between an external social stigma and domestically derived perception of interests, in which relevant policy actors came to accept that national security goals could be achieved

without antipersonnel mines, in light of a powerful new standard of appropriate behaviour. This further demonstrates the constructivist contention that material conditions are not stable properties, but are themselves fundamentally assessed through social processes of identity formation and change (Wendt 1992). Finland therefore ratified the MBT in January 2012 while Poland followed suit in December of the same year.

[C Head] *Exceptional Politics: Denials, Justifications, and the Status of the Mine Ban Norm*

The social power of the mine ban has been further reinforced in moments where the legal prohibition has come under threat from real or apparent violations. Allegations of non-compliance have, in the first instance, frequently been met with vigorous denials by the subject states, as was the case when Burundi, Cambodia, Ethiopia, Guinea-Bissau, Rwanda, Senegal, Sudan, Uganda, and Zimbabwe were accused of deploying AP mines (Bower 2012:134–137). In contrast, a few states have acknowledged violations of the MBT, yet at the same time sought to portray these actions as fundamentally unique situations that did not invalidate their general respect for treaty obligations. Thus at the Second Meeting of States Parties in September 2000, the Angolan Ambassador specifically identified the ongoing civil war—and the existential threat faced by the current government—as necessitating the use of AP mines while signatories to the Mine Ban Treaty (International Campaign to Ban Landmines 2001). More recently, Yemeni representatives have admitted deploying mines around a military base in 2011 during armed clashes with local tribes, on similar grounds of defending against the collapse of the state (Republic of Yemen, 2014). Finally, others have acknowledged potential non-compliance, and responded with promises of policy action including internal investigations and judicial processes, as has been undertaken by Cambodia, Sudan, Turkey, and Yemen (International Campaign to Ban Landmines 2013a:4–7).

Sceptics might understandably question the sincerity of such efforts. International Relations scholars have recognized that states often employ official discourse to deliberately obscure their actions and misrepresent their views or intentions (Krebs and Jackson 2007; Seymour 2014). Forms of denial and exceptional justification may therefore constitute genuine attempts to explain and address potential wrongdoing, or strategic responses to deflect social pressure. While the underlying motivations for actions would provide important information

concerning the internalization of norms, accessing the genuine psychological beliefs of actors is methodologically problematic (Krebs and Jackson 2007:40–41). Yet official statements are still highly relevant to the intersubjective status of norms and rules since these institutions ultimately rely on collective agreement concerning their legitimate authority, and are consequently promoted, contested, and modified via processes of endorsement and critique undertaken largely in public diplomatic settings. For this reason, strategic attempts to secure status or reputation through ostensible compliance with legal rules and norms presuppose a normative environment in which a community of actors both shares a conception of rightful action and possesses the capacity to bestow or remove these social benefits.

Discourse among MBT members demonstrates these potent conditioning effects of norms on political action. First, statements from targeted states reflect a profound awareness of the expectations of the treaty community and the social costs that stem from real or perceived transgressions. Rather than seeking to normalize non-compliance and the implicated states have instead pledged fidelity to legal obligations (Republic of Turkey 2013; Republic of Yemen 2013). In this sense, the denials or exceptional circumstances invoked by transgressors actually serve to uphold the authority of the prohibition under all but the most extreme conditions. Second, these discursive processes have taken place within a diplomatic environment in which State Parties and civil society actors frequently engage in public and private diplomacy with the aim of reinforcing the legal authority of the treaty. These iterative engagements are crucial to building a collective sense of community and with it a commitment to the treaty as legitimate and obligating. Price (1998:617) has previously noted that “violations provide the most opportune moments to define and discipline a particular practice as an aberration.” It is therefore significant that other MBT members have issued repeated, if often cautious, statements condemning violations and reiterating the absolute prohibition against mine use (e.g., States Parties to the Antipersonnel Mine Ban Treaty, 2014: 72). Just as importantly, interventions have employed both the specific legal criteria of the treaty and broader associated principles of international law—such as rules of IHL and expectations concerning the observation of legally binding commitments—as focal point for discussions over deviance and good practice.¹⁷

In sum, while a very few states have explained their use of AP mines under limited conditions, they have not deployed this claim as a means of systematically challenging the legitimacy of the Mine Ban Treaty. Equally, State Parties have recognized these as instances of

deviance rather than justifiable or routine exceptions. The threshold for violations remains exceedingly high, therefore, even if the prohibition has been breached in some discrete cases. This again is a substantial change from the prevailing pattern before the mine ban movement, in which AP mines were regarded as thoroughly unexceptional weapons. Hence contrary to the sceptical view, membership in the mine ban community does not merely reflect the formalization of pre-existing interests; rather, for a sizable number of states, engagement with the mine ban regime has helped recast what they regard as acceptable behaviour in the first place, in a core area of national policy.

Adherence Without Legal Endorsement: Non-Parties and Mine Ban Norm

Thinking of international law as a nested social structure also helps account for the reaction of states that remain outside of the Mine Ban Treaty. A central contention of my theoretical account is that embeddedness within the wider international legal and social system generates pressures to conform to more specific rules and norms despite official ambivalence. It is therefore significant that non-parties are deeply integrated in the operations of the mine ban regime, participating in meetings as official observer delegations.

[C Head] *Rhetorical Adaptation and Its Consequences*

Exposure to the mine ban norm has manifested itself first in the widespread adoption of general treaty claims in non-party discourse. Virtually every non-member state has expressed support for the humanitarian aims of the ban, and has identified AP mines as a significant and enduring threat to civilian populations (Bower 2012:128–132). In doing so, moreover, they have acknowledged a lineage between the MBT and prior international law—such as the St. Petersburg Declaration and the Geneva Conventions—aimed at ameliorating the effects of warfare (People’s Republic of China 2003). The linkage to existing standards of IHL is important, as it offers a point of reference in generating greater comfort with new obligations. Leading military powers including China, India, Israel, Russia, and the United States have consequently endorsed the objective of the global elimination of AP mines *at some (unspecified) future point* (Second Review Conference of the States Parties to the CCW 2001:11, para. 12).

Despite this, many prominent non-parties continue to envision a legitimate military role for AP mines in defending borders or forward-deployed military units (Israel 1999; Department of State, United States of America 2004; People's Republic of China 2014; Republic of India 2014). As noted already, these states have long argued that restrictions on the use of antipersonnel mines—most specifically concerning their use in defined areas with appropriate fencing and signage, their prompt removal after the end of hostilities, and where possible the utilization of self-destruct and self-deactivation technologies—are the most appropriate means of ameliorating the threat posed to civilian populations (Maslen 2005:18–22). In light of this disjuncture, public declarations of conditional support for an outright ban might be regarded as merely cynical efforts at avoiding international critique rather than the sincere engagement with new social expectations.

Yet such a view under-appreciates the political significance of the rhetorical shift occasioned by the mine ban movement. Prominent non-parties have now accepted a partial re-conception of responsible international behaviour that qualifies the value of AP mines against a principle of humanitarian protection. The Chinese observer delegation (echoing sentiments of many other non-parties) has repeatedly stated that

[a]s a responsible member of the international community, China has always been a constructive participant in the process of international conventional disarmament and a staunch supporter of international efforts to address humanitarian concerns caused by APLs. Given its national conditions and national defence needs, China still [can] not accede to the convention at this stage. However, China ascribes to the goal and principles of the convention and highly appreciates the humanitarian spirit embodied in the convention. (People's Republic of China 2014)

As previous authors have noted, forms of hypocrisy can generate unintended pressures to more fully adapt to new behavioural standards, since they provide discursive openings that can be exploited by other actors to push states to close the gap between their stated ambitions and particular (contrary) behaviours (Risse et al. 1999). By adopting this humanitarian discourse, therefore, non-parties have contributed to a narrowing of the acceptable scope for AP mine use that has imposed new limits on the range of publicly defensible policy positions. With the exception of Libya (under Gaddafi), Myanmar, Syria, and (until 2009) Russia, no states openly justify their use of AP mines. Instead, when faced with allegations non-parties seek to obfuscate

through silence, denial, or by blaming other states or rebel groups for violations (e.g., Georgia 2006). This in turn reflects a sensitivity to status considerations and provides important evidence for the social power of the norm. The fact that actors choose to conceal their behaviour, rather than openly declaring their non-compliance, suggests that they recognize a political cost associated with overt violation of the mine ban, albeit one they do not officially recognize as legally binding. Even apparently cynical attempts to invoke legal or normative standards to deflect criticism can therefore have lasting consequences for the development of norms, by further reinforcing the social legitimacy of the particular institution as the arbiter of acceptable behaviour.

These processes of rhetorical adaptation are reflected in behavioural changes involving a rapidly declining reliance on the weapons. As noted above, few states use, produce, or trade in AP mines; this includes non-party states, despite the fact that many remain engaged in internal armed conflicts or have ongoing challenges in securing their frontiers in which mines have historical featured.¹⁸ It is particularly notable that the United States has not used antipersonnel mines since the 1991 Gulf War, a period which includes intensive military operations in Afghanistan and Iraq (International Campaign to Ban Landmines 2013b). This experience is mirrored in the introduction of formal moratoria on the production¹⁹ and transfer²⁰ of the weapons by a number of major military powers (International Campaign to Ban Landmines 2013a: 18). These incremental changes have important compounding effects over time as previously unexceptional practices are removed from the menu of “normal” policy options. The international stigmatization of AP mines has thus increased the political salience of the issue such that any future decision to resume these behaviours would involve the most senior decision makers, further deemphasizing the role of AP mines in modern military arsenals.

[C Head] *(Informally) Tying Down Gulliver: The United States and the Mine Ban*

The United States provides a particularly vivid example of how the interaction with a new international social standard has served to progressively transform national policies. President Clinton was the first world leader to call for the eventual elimination of AP mines, and the US was consequently an active participant in early debates over a prospective mine ban (United States of America 1994). Yet the United States rejected the final negotiated treaty text when

middle power states leading the diplomacy refused to incorporate a series of demands modifying the scope of the legal prohibition to conform with US military requirements. The United States signed the treaty as a symbolic gesture, but did not seek ratification and largely withdrew from the mine ban regime.²¹ Though formally opposed to the mine ban, however, the United States has substantially altered its behaviour in line with the terms of MBT: in addition to its noted non-use, it has maintained moratoria on the export and production of AP mines since 1992 and 1997, respectively. And, in much the same fashion as many late-joining members, successive US administrations responded to the growing international support for the mine ban with a wide-ranging search for alternative technologies that could replace AP mines in military doctrine. In 2004 the Bush administration announced that it would eliminate all forms of “persistent” mines (those without self-destruct or deactivation features) from its arsenal, while retaining the right to develop and use so-called “smart” mines that in its view addressed the humanitarian threat posed by the weapons (Department of State, United States of America 2004).²²

While initially regarded as a strategic concession to appease critics, the employment of humanitarian discourse surrounding AP mines stimulated domestic political battles that led to further constraints on military procurement. The International Campaign to Ban Landmines and its US-based affiliate (USCBL) challenged the new policy on the grounds that it did not fully meet the standards of the Mine Ban Treaty, since certain types of AP mines would still be permitted. After extensive lobbying by the USCBL and with prominent support from long time ban advocate Senator Patrick Leahy, the United States Congress voted to withhold funding for Department of Defence research and procurement of mine systems with victim-activated features (that would be prohibited under the MBT). This injunction specifically included new weapons that would otherwise be permitted under the 2004 policy directive. Subsequent weapons development has consequently focused solely on systems that conform to the legal criteria of the Mine Ban Treaty (Malenic 2008; International Campaign to Ban Landmines 2009:1131–1132).

US participation in the mine ban regime has further deepened under current President Obama, and has served as a deliberate symbol of a wider reengagement with multilateral institutions and a generally more permissive view of international law. Once in office, the administration announced a comprehensive policy review to evaluate the continued necessity of AP mines in light of changing international conditions (International Campaign to Ban Landmines 2013b). This process has recently culminated in a pledge that the United States will

observe the obligations of the MBT—by abandoning the use of antipersonnel mines, refraining from assisting other states in acts that violate the treaty, and destroying mine stockpiles—in all circumstances *other* than with respect to the defence of South Korea. While still incomplete, this new position “represent[s] a further step to advance the humanitarian aims of the [Mine Ban Treaty] and to bring US practice in closer alignment with a global humanitarian movement that has had a demonstrated positive impact in reducing civilian casualties from [AP mines].” (United States of America 2014)

Despite official ambivalence, therefore, recent practice demonstrates a marginalization of AP mines in the military doctrine of the United States and other powerful non-parties. Hence new international institutions may influence domestic practice even before formal adherence to a legal instrument, a prospect that is insufficiently appreciated by positivist accounts of international legal obligation and efficacy. These findings more specifically challenge the contention of realist scholars that the US—as the preeminent global power—will be largely able to avoid new institutional constraints on its exercise of leadership and freedom of action (Glennon 2001; Wohlforth 2012). Instead, the participation of the US and other powers in an international legal and normative system that includes the mine ban has generated social pressures towards adaptation, through a linkage with more fundamental principles of international humanitarian law. This has forced these states to publicly articulate, and in many cases defend, their policies on the terms of a new institution they officially reject. And, in the same way that they have policed actions among formal members, State Parties have not recognized violations even by non-parties as constituting valid exceptions to the prohibition. For this reason, states that might otherwise serve as “spoilers”—by undercutting the interpretation and application of new norms through their practices—have been unable to weaken the treaty. These developments would have been inconceivable in the absence of the particular force enjoyed by the mine ban, and the social power accorded to international law more generally.

CONCLUSION: TOWARDS A RESEARCH AGENDA ON NON-GREAT POWER LAW

Understanding the possibility and potential limits of non-great power diplomacy adds an important dimension of our conception of international politics, but this subject has not been adequately addressed thus far. The case study of the Antipersonnel Mine Ban Treaty powerfully

demonstrates the potent role that legal institutions may play in altering state practice in the face of great power resistance. The most basic effect of the mine ban has been to introduce a new international social expectation concerning the special status of antipersonnel mines. As a consequence, the prohibition is now the accepted standard against which other national interests—including the fundamental defence of the state—are assessed, even among states not formally subject to the legal obligations of the treaty. The use of AP mines has therefore become a highly exceptional occurrence, in stark contrast to the prior international status quo in which the weapons were promiscuous features in warfare. This shift in international expectations—and the close temporal connection between the emergence of the ban and the scale of change—cannot be adequately explained in the absence of the Mine Ban Treaty and associated norm.

The present study was motivated by a fundamental question concerning when, and under what conditions, less powerful states and civil society actors should seek to promote international norms and rules without the great powers. To that end, it offered a detailed theoretical and empirical appraisal of an archetypal example, as the basis for a more holistic accounting of the promises and perils of this strategy. The assessment of a single—albeit important—case is necessarily limited in its explanatory scope. Here I briefly outline an agenda for future research on non-great power governance, identifying three core areas in need of further attention.

First, the above discussion largely brackets detailed consideration of domestic political factors in favour of a structural account of norm adoption across the system of states; additional work should assess variation in the internalization of norms and the processes through which international institutions are promoted, interpreted, and contested at the national level (Koremenos 2013:74). The IR literature has long been interested with how domestic characteristics like regime type and connections to the international system shape patterns of actor change and render states more or less susceptible to socialization (Hafner-Burton et al. 2012:69–72). Status considerations clearly loom large in the adoption of the mine ban, and this effect does not appear to be substantially limited to mature democracies. It would be worth systematically exploring whether political type is significantly connected to adoption of the MBT and indeed other international commitments, since some recent large-n statistical research has demonstrated that non-democratic states are much more impervious to international human rights norms (Hafner-Burton and Tsutsui 2007). Relatedly, the evidence provided above strongly suggests that engagement in the mine ban regime and wider international system is crucial to

prospects for norm adoption. Exposure to diplomatic processes has frequently generated change in state policies, while the discursive adoption of core institutional claims provides the rhetorical opening by which outside actors may draw states into dialogue and push for greater behavioural adaptation. However, the findings could be bolstered with detailed tracing in discrete state cases with the aim of understanding the mechanisms—including coercion, reputation, side payments, persuasion, and social pressure—through which legal rules and norms are internalized or challenged, and the relevant sub-state actors—such as bureaucrats, military officers, and political elites—involved in these processes, as numerous studies have done in other issue areas.

A wider scholarly agenda would also attend to the agency of non-state actors in two respects. On the one hand, the varying roles of transnational civil society in promoting non-great power norms needs detailed attention. Risse et al.'s influential "spiral model," for example, explains variation in the implementation of human rights norms by examining the linkages between transnational norm entrepreneurs and international organizations on the one hand, and domestic opposition groups and the national government of violating states on the other (Risse et al. 1999, 2013; similarly: Dai 2007; Smith-Cannoy 2012). TCS actors were crucial to the initial negotiation of treaties like the Mine Ban Treaty, and presumably are equally vital to subsequent implementation efforts in the absence of leading powers. I briefly drew attention to the International Campaign to Ban Landmines as the most prominent TCS actor in the mine ban case; yet this organization is itself composed of myriad sub-organizations and individuals spanning peace activists, religious and community groups, academics, former government officials, lawyers, and so on. In the future, particular attention should be paid to identifying these domestic and transnational actors, specifying the various roles and degrees of access they enjoy, and the potential impact this has on the rates and extent of state change.

On the other hand, a richer account of normative change must seek to account for the response to new international standards among entities like multinational corporations and armed non-state actors. There are particular methodological challenges in studying internalization and implementation in such entities, since the former are typically not directly involved in relevant diplomatic settings and the latter often exist on the periphery of international recognition and may lack a stable composition and leadership structure. Yet such actors play an important role in the reception of global norms, not least because they are frequently implicated in violations concerning armed violence, human rights, and environmental protection (among many issue

areas). Examining these processes systematically also offers an opportunity to compare how mechanisms for generating compliance operate in state and non-state contexts (Jo and Thomson 2014).

Finally, linking concerns for mechanisms and actors, future research on non-great power law must seek to situate the MBT within the wider universe of actual or potential cases (Brem and Stiles 2009; Fehl 2012). On the one hand, this requires a comparative examination of the relative efficacy of other successful examples, most notably the Kyoto Protocol, International Criminal Court, and Convention on Cluster Munitions. On the other hand, the detailed assessment of existing non-great power institutions must be set against negative cases drawn from two alternative governance scenarios where the international community (a) includes concessions to great powers in order to secure their inclusion in a formal treaty (as was the case with the recent Arms Trade Treaty); or (b) abandons multilateralism in the face of opposition and pursues informal arrangements or none at all (as with the proposed adoption in 2002 of a verification protocol for the Biological and Toxin Weapons Convention) (Price 2004b). Incorporating instances where the United States and others powers did successfully shape new institutions will provide greater analytic leverage in evaluating both the prospects and perils of the particular type of governance highlighted here.

Thinking of particular institutions as part of a nested international legal and social system offers important leverage in explaining these divergent outcomes. Actors promoting new legal institutions are not creating the world anew, but are rather tapping into a highly resonant shared legal heritage within the context of an international social system that already privileges law as a particularly legitimate mode of claim making. Yet these linkages are not automatic, but must be cultivated: emergent subjects that can be persuasively connected to existing norms are much more likely to become widely respected international standards (Price 1998:627–631, 2003:584; Finnemore and Toope 2001:749). Inversely, institutions that sharply diverge from past experience should be expected to face the greatest challenge at both the negotiation and implementation phases. But what types of norms are most amenable to codification in binding multilateral rules and subsequent widespread adoption? Previous research has suggested that issue characteristics matter, implying that certain subjects may be more or less suitable for effective governance. The content of a proposed norm may for instance bear on its prospective appeal, as “issues involving bodily harm to vulnerable individuals, and legal equality of

opportunity” are most likely to lead to successful development of new norms and (potentially) legal rules (Keck and Sikkink 1998:204). This was clearly the case in the most prominent examples of institutional development without the great powers: discourses of humanitarianism were central to the emergence and consolidation of the mine ban, as noted at length above. Yet similar logics propelled the development of the ICC and more recent Convention on Cluster Munitions and, in a broader sense of harm to human populations and the natural environment, the Kyoto Protocol.

While such discourses appear critical, they are not sufficient in isolation, since do not fully explain negative cases – the non-adoption of a comprehensive treaty banning child soldiers, for example, would also seem to fit the criteria of humanitarian impact that has pervaded successful cases. A variety of other potential factors may influence the prospects for legal and normative development, including the purported immediacy of the issue (itself partly a function of agenda-setting), the technical difficulty of proposed solutions, and the potential for self-enforcement via reciprocity (Price 2003:598–600; Hafner-Burton et al. 2012:60–69). Similarly, successful instances of non-great power diplomacy all share a fundamental coalitional structure combining geographically diverse middle power states and transnational civil society as leaders in norm development. Recent work applying social network analysis to TCS advocacy has further demonstrated that linkages between individuals and groups *within* a campaign profoundly shape what issues are adopted and the success with which they proliferate in the international system (Carpenter 2011). Systematic, comparative research can suggest whether certain issue areas—trade, disarmament, human rights, and environmental protection, among others—are more or less susceptible to the type of multilateralism discussed here, and whether alternative legal and non-legal approaches may be more appropriate. This would help scholars and policymakers alike better understand the conditions under which non-great power diplomacy may prove successful, and when such a strategy is to be avoided.

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Notes

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² By “great powers” I mean the limited group of states possessing the material resources and political interests to seriously influence the operation and order of the international system (Wight 2004:41–53; Hurrell 2006:1–2). For the present purposes, I am particularly concerned with current or (re)emerging powers that also reject the key institutional features in question, namely China, India, Russia and (most especially) the United States (Hurrell 2006; Destradi 2010).

³ Bolton and Nash (Bolton and Nash 2010:173) define middle powers as “relatively wealthy, small to medium-sized states, with no nuclear weapons and no permanent seat on the UN Security Council.” Prominent examples include Austria, Australia, Belgium, Canada, Chile, Denmark, Ireland, Mexico, the Netherlands, New Zealand, Norway, South Africa and Sweden. Following Price (Price 2003:580), I adopt a broad definition of transnational civil society as

“self-organized advocacy groups that undertake voluntary collective action across state borders in pursuit of what they deem the wider public interest.” In the context of this study this most especially encompasses non-governmental organizations, private individuals (such as lawyers, aid workers, and peace activists), and inter-governmental organizations such the International Committee of the Red Cross.

⁴ Of course, the transition to a legal form may not necessarily strengthen an underlying social norm. Sarah Percy (Percy 2007) has argued, for example, that the greater precision provided by international law concerning mercenaries generated loopholes that states could exploit in avoiding their binding commitments. Indeed, legal codification does not guarantee an obvious consensus over the meaning of rules, as international law frequently contains extensive ambiguity. However, the transition to a legal setting channels subsequent debates via particular argumentative forms that shape subsequent diplomacy and behaviour.

⁵ I understand “legalization” as “the dynamic process through which law changes and develops, whereas law consists of the rules and institutions that result from the cumulation of legalization at any point in time.” (Abbott and Snidal 2013:34)

⁶ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. Ottawa, December 3, 1997.

<http://www.icbl.org/index.php/icbl/Treaty/MBT/Treaty-Text-in-Many-Languages>. I focus principally on the prohibition concerning mine use; this is a pragmatic decision designed to retain the scope of inquiry within manageable limits, and does not imply a judgement regarding the relative merits of other treaty goals.

⁷ It is estimated that between two-and-a-half and four million antipersonnel mines were emplaced annually in the 1970s, 1980s, and 1990s. At the time of the MBT’s negotiation, over

70 countries were infested with a total of 60-70 million mines (Department of State, United States of America 1998; International Campaign to Ban Landmines 1999:4–5). Generally, see (Vines 1998).

⁸ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Amended Protocol II to the 1980 CCW).

<http://www.icrc.org/ihl/INTRO/575>. Article 5(2) of the treaty permits the use of AP landmines that contain self-destruct or self-deactivation mechanisms, or in instances where the minefields are fenced and actively patrolled.

⁹ US demands were “presented in a take-it-or-leave-it package consisting of five interlocking components: exception for landmine use in Korea; deferral of the treaty's entry-into-force date; changes in the definition of an anti-personnel landmine [to exclude anti-tampering devices on US anti-tank mines]; more intensive verification measures; and a withdrawal clause from the treaty in cases of national emergency.” (Rutherford 1999:40)

¹⁰ As of October 2014. See <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=575&ps=P>.

¹¹ The most frequent users of AP mines since 1998 are Myanmar, Nepal (until 2006), Russia (until 2009), and Syria. Angola, Ecuador, Ethiopia, Guinea-Bissau, and Senegal are known to have used AP mines as signatories to the MBT, but the actions in all cases ceased in advance of full membership.

¹² China, Cuba, India, Iran, Myanmar, North Korea, Pakistan, Russia, Singapore, South Korea, the United States, and Vietnam.

¹³ Data on inter-state and intra-state conflicts is summarized in (Human Security Report Project 2013).

¹⁴ Afghanistan, Algeria, Burundi, Central African Republic, Chad, Colombia, Cote d'Ivoire, Democratic Republic of Congo, Haiti, Iraq, Liberia, Namibia, Nigeria, the Philippines, Rwanda, Senegal, Solomon Islands, Somalia, South Sudan, Sudan, Turkey, Uganda, Ukraine, and Zimbabwe.

¹⁵ Angola, Bosnia and Herzegovina, Cambodia, Eritrea, Ethiopia, Guinea-Bissau, Indonesia, Mexico, Niger, Peru, Serbia and Montenegro, Sierra Leone, Tajikistan and Timor-Leste.

¹⁶ Interviews with Finnish and Polish diplomats, and representatives of the International Campaign to Ban Landmines and MBT Implementation Support Unit. Geneva, October 2009 and December 2010.

¹⁷ This is especially evident in recent debates concerning non-compliance in the use of AP mines and in missed deadlines for stockpile destruction. Records of statements at MBT meetings can be found at <http://www.apminebanconvention.org/>.

¹⁸ Including Armenia, Azerbaijan, China, Egypt, Georgia, India, Iran, Republic of Korea, Lebanon, Libya, Morocco, Pakistan, and the Russian Federation.

¹⁹ China, Egypt, Israel, United States.

²⁰ China, India, Israel, Pakistan, Republic of Korea, Russia, United States.

²¹ President Clinton signed the Mine Ban Treaty on his final day in office, but advised his successor not to seek Senate ratification unless fundamental US concerns were addressed.

²² As of January 2011, all persistent mines have been withdrawn from active inventories and transferred for destruction (Permanent Mission of the United States of America to the United Nations and Other International Organizations in Geneva 2012).