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NEW PARTNERSHIPS FOR A NEW WORLD ORDER: NGOS, STATE ACTORS, AND INTERNATIONAL LAW IN THE POST-COLD WAR WORLD

*Robert O. Muller**

When the organization that I head co-founded the International Campaign to Ban Landmines with a German humanitarian group in 1991, I could not have imagined that just six years later the landmine movement would succeed in bringing to fruition the first major post-Cold War treaty stigmatizing a weapon, or that it would be named the recipient of the 1997 Nobel Peace Prize. None of us involved in the campaign imagined that our global effort would meet with such success so quickly. Nor could we have imagined that now, one year after the Nobel Committee's citation and the signing of the Ottawa Treaty,¹ so much would be left undone.

The world rightly celebrates our achievement. Commentators and pundits cite the triumph of "civil society," foreign policy experts speak of the emergence of a "global network" of activists, foundation presidents and political analysts hold forth on the value of the "new technologies" of the Internet, and politicians say that our campaign confirmed their call for "global interdependence." Even in the campaign

* President, Vietnam Veterans of America Foundation ("VVAFA") and a 1974 graduate of Hofstra University School of Law. VVAFA, which he founded in 1979, is an international humanitarian organization dedicated to providing assistance to the civilian victims of war. In 1991, VVAFA co-founded and served as the coordinator of the International Campaign to Ban Landmines, which received the 1997 Nobel Peace Prize. VVAFA runs a network of clinics that serve the rehabilitation needs of the civilian victims of war in Vietnam, Cambodia, Angola, and El Salvador. To aid the reader, footnotes have been added.

1. In December of 1997, representatives from 125 nations convened in Ottawa, Canada to sign a treaty prohibiting the use of antipersonnel land mines. See Warren E. Leary, *Better Weapons Emerge For War Against Mines*, N.Y. TIMES, Dec. 16, 1997, at F1. The Ottawa Treaty is also referred to as the Ottawa Convention. See Steven Lee Myers, *Clinton Agrees to Land-Mine Ban, but Not Yet*, N.Y. TIMES, May 22, 1998, at A3. It specifically bans the "manufacture, stockpiling and use of landmines . . . intended to kill or maim individuals." *Id.*

itself, prominent activists argue that the success of the landmine movement has opened new vistas for “revolutionary global action” that will, using the landmine campaign as a “model,” successfully resolve a number of humanitarian problems—the recruitment of child soldiers, the trade in light weapons, the spread of ethnic violence—a host of problems whose solution once seemed out of reach. After all, the Ottawa Treaty that banned antipersonnel landmines was, as campaigners themselves like to say, “the people’s treaty.”

I would like to join this chorus, and certainly our organization has considered doing so on a number of issues, but the truth of how the landmine campaign triumphed is far more complex than the analysts and pundits suppose. In fact, far from reflecting a model for a new world order, the International Campaign to Ban Landmines reconfirmed a number of salient lessons that are as old as the nation-state itself—that it takes hard-nosed action, the careful recruitment of political influence and power, and sheer doggedness to change official opinion. And it takes money—lots and lots of money. Instead of celebrating the rise of civil society, the usefulness of the Internet, and a global network of activists, we would do better to admit the truth of the modern post-Cold War era—that change is much less the result of a “hands across the world” strategy as it is an out-and-out political fistfight.

To be prepared for this world, non-governmental humanitarian organizations, like the Vietnam Veterans of America Foundation (“VVAFA”), must engage in difficult and relentless political work that involves building sophisticated political strategies, mounting expensive public awareness campaigns, and forging alliances with unlikely allies as well as friendly champions. And we should admit the obvious—the fall of the Berlin Wall might have changed the way the world *looks*, but it has not changed the way the world *works*. A review of our landmine movement shows just how true this is.

The credibility of the international movement to ban landmines was established at its inception. The campaign’s co-founders, VVAFA and Medico International of Germany (“MIG”), had experience with treating landmine victims in their overseas clinics and had firsthand knowledge of an antipersonnel weapon’s tragic effects.² The international campaign simply could not have gained the attention it did unless its founding organizations had a track record of service in providing as-

2. Those effects being the loss of an estimated 26,000 people worldwide that are killed or wounded by landmines each year. See Francis X. Clines, *28-Year Quest to Abolish Land Mines Pays Off for Veteran, Who Fights On*, N.Y. TIMES, Dec. 3, 1997, at A10.

sistance to the innocent victims of war. Both VVAF and MIG were careful to recruit similar organizations, non-governmental groups whose credibility was above question and whose staff and leadership could bring the requisite expertise of their own experience to bear on the problem. A core group of humanitarian, veterans, and human rights organizations led this campaign from the beginning. Their experience could not be ignored.

Putting together a core group of campaigners filled with good intentions, however, was not enough. We knew from the beginning of the campaign that political power and political influence, including the leadership of respected spokespersons whose own personal commitment and moral beliefs were above criticism, would provide the essential fuel to give our campaign "political life." Thankfully, our campaign was supported by Vermont Senator Patrick Leahy. More than any other single individual, Senator Patrick Leahy is responsible for the success of our worldwide movement.³ Without him the Ottawa Treaty and the Nobel Prize would not have been possible and the worldwide movement that we launched would have died an early death. His own personal commitment to banning the weapon, a natural result of visiting landmine clinics and seeing first-hand the unnecessary suffering of innocent men, women, and children, provided our campaign with the political impetus it needed.

In 1992, Senator Leahy proposed a moratorium on the export of United States antipersonnel landmines.⁴ One year later, that moratorium was extended for three years.⁵ Other nations followed the United States' lead. In 1994, Senator Leahy personally convinced President Clinton to announce his intention to lead a worldwide effort for a ban in a highly publicized speech at the United Nations, an unprecedented initiative that brought recalcitrant governments into our movement and made many of them partners in our effort. Unfortunately, while the Clinton Administration retreated from its preeminent role as the world leader on this is-

3. See *id.* (discussing the critical role that Senator Leahy played in insuring that the international ban on landmines became a reality).

4. See 138 CONG. REC. S12,723 (daily ed. Aug. 12, 1992) (statement of Sen. Leahy) (introducing legislation which would place a one year moratorium on the selling, transferring, or exporting of antipersonnel landmines by the United States); see also Clines, *supra* note 2, at A10 (explaining how, in 1992, Senator Leahy was able to engineer a ban on the exportation of landmines by the United States).

5. See 139 CONG. REC. S9290-91 (daily ed. July 22, 1993) (statement of Sen. Leahy) (introducing and discussing legislation which would extend the moratorium on landmines for another three years).

sue,⁶ Senator Leahy has continued to press his belief and retains his stature as the leading humanitarian voice on this and other issues affecting the innocent victims of war. He was, and remains, a relentless proponent of this ban.⁷ Our campaign owes him its success.

In 1996, VVAF took another step to give the landmine ban movement worldwide attention by recruiting senior United States retired military officers as advocates in our efforts. In a "Letter to President Clinton" printed as a full page advertisement in *The New York Times*, these military leaders, including Desert Storm commander Norman Schwarzkopf,⁸ Monterey Institute President and retired General Robert Gard, and former Joint Chiefs of Staff Chairman David Jones along with twelve others, urged the President to support a ban, arguing that it would be a militarily responsible step to take. The call to action by these generals was one of the most profoundly revolutionary steps that our campaign could take. Coupled with Senator Leahy's efforts, it removed our movement from the realm of the "radical" to the realm of the acceptable by confirming that progressive elements in our own society could make common cause with establishment figures on issues of consequence. The letter stunned the White House and the nation's military leadership and, I believe, forever changed the way that non-governmental organizations ("NGOs") should do business with the establishment.

Throughout these years, VVAF served as the coordinator of the campaign, dispatching its own staff and the campaign's coordinator on a series of global missions to recruit similarly minded organizations in our efforts. A series of international conferences in Great Britain, Mozambique, Cambodia, Belgium, and Norway helped build a network of country campaigns that pressed for a worldwide ban. In 1996, Canadian Foreign Minister Lloyd Axworthy announced that Canada would lead an effort to bring together pro-ban nations for a treaty signing in Ottawa

6. See Myers, *supra* note 1, at A3 (explaining that the United States is presently one of the few countries remaining that has not yet signed the Ottawa Treaty); see also Clines, *supra* note 2, at A10 (discussing how President Clinton indicated that "he simply cannot risk a breach with the Pentagon establishment by daring to sign the ban [on antipersonnel landmines]").

7. In fact, Senator Leahy has been so persistent in getting the United States to sign the Ottawa Treaty that on May 15, 1998, the Clinton Administration sent him a letter pledging that by 2006, the United States would agree to sign it. See Myers, *supra* note 1, at A3. Specifically, the President pledged that the United States would "unilaterally halt its use of anti-personnel land mines everywhere except in Korea by 2003 and altogether by 2006." *Id.* However, the Administration's pledge remains contingent on the ability of the Pentagon to develop an effective alternative to its landmines by such time. See *id.*

8. See Clines, *supra* note 2, at A10 (discussing how the retired military commander, in an open letter to the President, urged the nation to support a ban on antipersonnel landmines).

in 1997. The international campaign had focused for many years on recruiting United States allies in its efforts, but Axworthy's announcement was a surprise, despite the fact that campaign leaders had specifically targeted him in their recruiting efforts. It is fully understood now that Axworthy's move was both courageous and risky, as it called on the international community to act outside of the traditional and cumbersome United Nations system of treaty negotiation.⁹ At the time of Axworthy's announcement, the international campaign was in danger of seeing its efforts paralyzed by the international community, which had failed to act to ban landmines in the more traditional forum of the Conference on Disarmament, where member nations are only bound by decisions reached by consensus.

Just months before the Ottawa meeting, one of our campaign's staunchest supporters, Princess Diana, was tragically killed in a car accident.¹⁰ We should not underestimate the power that her personality had on this issue. But her death, tragic though it certainly was, put the landmine issue before the world public as few other events had. The pictures of Princess Diana in Bosnia and in Angola, making her way around minefields and compassionately seeing to the needs of landmine victims, highlighted the truly humanitarian grounding of our movement.

By the end of 1997, the Clinton Administration had decided against signing the landmine ban, in spite of Senator Leahy's efforts, Princess Diana's commitment, and Lloyd Axworthy's courage.¹¹ The Administration argued that banning the weapon would endanger American lives,¹² a view that we refuted by showing that antipersonnel landmines

9. Cf. Anthony DePalma, *Canada Peeved and Puzzled By Big Neighbor to the South*, N.Y. TIMES, Sept. 26, 1997, at A1 (explaining how securing the signing of a treaty to ban landmines was a favorite project of the Canadian Foreign Minister).

10. See generally Craig R. Whitney, *Diana Killed in a Car Accident in Paris: In Flight From Paparazzi—Friend Dies*, N.Y. TIMES, Aug. 31, 1997, at A1 (discussing the details of how the famed Princess of Wales met her tragic death).

11. See Leary, *supra* note 1, at F1 (explaining how, in the end, the United States refused to join the more than 125 nations that sent representatives to Ottawa for the purpose of signing a treaty to ban antipersonnel landmines).

12. See Steven Lee Myers, *Why Washington Likes Land Mines*, N.Y. TIMES, Aug. 24, 1997, at E5 (explaining how Pentagon strategists believe that antipersonnel landmines are necessary in order to protect forces stationed in South Korea from an invasion by the North Koreans). American military strategists contend that if American forces are not permitted to use mines in places such as South Korea, they will be unable to thwart a large-scale invasion by the more than 900,000 North Korean troops stationed along the demilitarized zone. See *id.* Pentagon officials also contend that the United States cannot presently sign the Ottawa Treaty because it would prevent them from continuing to deploy "smart" anti-tank mines. See *id.* Such mines not only destroy tanks, but also act as antipersonnel mines by preventing soldiers who are not heavy enough to trigger an anti-tank mine from lifting them out of a tank's path. See *id.*

were the leading cause of United States casualties in the Vietnam War. Despite widespread support for their "go slow" approach among the American public, the White House was feeling the pressure of our political moves in Washington. Specifically, over a period of two years, VVAF fought a running battle with the Administration in the press, on Capitol Hill, and among the electorate. Our efforts engaged some of Washington's most experienced political analysts, operatives, lobbyists, and researchers.

Our decision to retain expert political consultants brought us criticism from some campaign organizations that viewed their efforts as grounded in a grassroots movement that emphasized "people power." Our team of political consultants, they said, was an elitist, inside-the-beltway crowd of political fixers far removed from the ideals of the power-from-below strategy that had resulted in the campaign's early, broad-based, international appeal.

We agreed with our critics that the efforts of grassroots organizations are essential and that our efforts would have ended in failure were it not for those millions of people (including landmine victims and deminers) who supported our efforts. But the simple unalterable and undeniable truth of Washington is that it takes political power to effect political change.¹³ Our efforts in the United States, where we continue to coordinate the growing United States Campaign to Ban Landmines, were fueled by the conviction that an international treaty without United States support would lack the necessary credibility and substance to be adequately implemented and enforced.

Assuring that the United States signs this treaty has been and will continue to be one of the major focuses of this organization.¹⁴ We will press ahead on all fronts in a broad-based campaign aimed at getting the Administration to sign the treaty. Our program is aimed at the following: raising public awareness on the problem of landmines, pushing a legislative package that provides aid both to landmine victims and to organizations involved in demining, eliciting a pledge from every presidential candidate to sign the landmine treaty, and using our expanding network of senior military officers, to push the Pentagon to recognize that landmines are, in fact, a particularly insidious form of "friendly fire" and that its victims are very often American soldiers.

A number of key international powers have failed to sign the Ot-

13. See Clines, *supra* note 2, at A10 (explaining how it takes political strength bolstered by money in order to bring about change on issues such as the banning of antipersonnel landmines).

14. See *id.* (discussing how VVAF plans to put public pressure on potential candidates for the 2000 Presidential election who have not taken a strong enough stance on the landmine issue).

tawa Treaty; Russia, China, Iran, Egypt, and Israel are among them. Clearly, while America's failure to sign the treaty has had a lasting influence, so will its decision to do so in the future. We remain convinced that the United States' leadership can make a difference. It may well be that Russia or China will not sign this treaty in the near future, and perhaps neither nation will sign it in the next ten years. But eventually, and inevitably, they will—if the United States does so first.

The signing of the Ottawa Treaty does not mark an end to our efforts to end the suffering caused by landmines. The treaty itself, after all, is simply a piece of paper—albeit an important one—that needs to be given life and sustenance. Implementing the treaty will be our organization's goal in the months ahead. But just how we go about this is vitally important. While the international campaign depended on a wide array of NGOs to begin the campaign and to give it movement in its first years, that core group must now be expanded to include a wider array of institutes, organizations, and think tanks.

Our organization will do this by using the political model that we developed here in the United States to convince our government to support a ban. In the months ahead, we will engage senior retired and currently serving military officers of foreign governments to assure that this treaty is expanded to include those nations that have not signed, that it is ratified by governments that have not done so, and that it is enforced by those governments that have done both. This can only be accomplished by creating a global network that combines the skills and networks of NGOs, disarmament institutes, and established military think tanks—in other words, by expanding our reach globally in a way that the international campaign did not.

Just as our recruitment of United States military officers significantly shifted the political debate in the United States, so too we believe that recruiting senior retired military officers of foreign nations will have as significant a shift in the conduct of international affairs. Certainly the kind of model of worldwide activism that this kind of structure implies is more likely to meet with success now than at any other time in our nation's history. Prior to 1989, United States based humanitarian organizations steered clear of leading the charge on advocacy campaigns. VVAF broke that mold, combining our humanitarian programs with a call to activism. Other organizations here in the United States followed our lead. The fall of the Berlin Wall now means that organizations like ours can make common cause with traditional establishment institutions to solve worldwide problems.

I am suggesting nothing less than a new NGO-state covenant¹⁵ that recognizes the overwhelming humanitarian crisis that the world now faces as a result of the slaughter caused by the tens of millions of landmines and that combines the resources of both communities to meet it. Continuing to couple the financial resources of NGOs with governments is the one way to insure that the Ottawa Treaty becomes more than a symbol of good will. More importantly, however, by engaging the full array of individual and organizational research to deal with this problem, the world community will be creating an engine of change to deal with the root problem that landmines represent. It is in this area, in dealing with this root problem, that the new partnership I speak of could have the greatest impact.

Recently, I asked VVAF's research department to study the effects of conflict on civilian populations. Even though I have lived more than one-half of this century and been a participant in one of this nation's most controversial and bloody wars, I was still astounded and saddened by the series of reports that I received. Over the last ten decades, hundreds of millions of human beings have died in wars. In World War II, alone, nearly seventy million people died, fully one-third of them in the Soviet Union. The role of our nation in fighting the evil of Hitler was fundamental. But the truth is that while we proudly claim to have led the globe in that conflict, the Soviet Union lost more troops in the Battle of Berlin—the last battle of World War II in Europe—than the United States lost in the entire war.

I was particularly struck by the numbers of civilian casualties of the world's conflicts. At the beginning of this century, civilian deaths accounted for just ten percent of all casualties in war. In World War II that percentage skyrocketed.¹⁶ Now, at the end of this century, civilian

15. Examples of NGOs include groups such as the Cambodia Documentation Commission, Amnesty International, and the Lawyers Committee for Human Rights. See Stephen P. Marks, *Forgetting "The Policies And Practices Of The Past": Impunity In Cambodia*, 18 FLETCHER F. WORLD AFF. 17, 23 & n.28 (1994).

16. See Judith G. Gardam, *Noncombatant Immunity and the Gulf Conflict*, 32 VA. J. INT'L L. 813, 821 (1992) (explaining how it is estimated that aerial bombardment by itself accounted for at least 12 million civilian casualties during World War II); see also Judith Gail Gardam, *Proportionality and Force in International Law*, 87 AM. J. INT'L L. 391, 401 & n.59 (1993) (discussing how, by 1941, Britain's Chiefs of Staff changed its military strategy to include the direct targeting of civilian enemy populations in order to terrorize such groups and hopefully bring a swift end to the conflict); Matthew Lippman, *Conundrums of Armed Conflict: Criminal Defenses to Violations of the Humanitarian Law of War*, 15 DICK. J. INT'L L. 1, 60 (1996) (showing how the Allied Forces during World War II would launch attacks against enemy cities for the purpose of gaining a military advantage); Susan O'Rourke von Struensee, *Violence, Exploitation and Children: Highlights of the United Nations Children's Convention and International Response to Children's Hu-*

deaths account for over ninety percent of all deaths in conflict.¹⁷ This is a heart-rending, frightening, and simply breathtaking statistic. What this means is that some of the most important nations of our world, including the United States, have consistently followed a policy that targets women, children, the infirm, the elderly—in a phrase, the most vulnerable people on the planet.¹⁸

Worse yet, perhaps worst of all, my astonishment at this is not felt universally or by even most of the American people. The vast majority of Americans, our organization's research shows, simply believe that huge numbers of civilian deaths are a natural outcome of war because, most Americans argue, "that's what happens in war." It is no wonder that the United States was slow to react to genocide in Cambodia,¹⁹ Rwanda,²⁰ the Sudan,²¹ or even Bosnia.²² Our century (and Dresden, Tokyo, Hiroshima, and My Lai) has taught us to be immune to the sufferings of others, as if they have no effect on us.

Americans have a healthy respect for the rule of law, applying it even to our highest elected officials. We would never tolerate the murder of a child in Los Angeles, Washington, or New York. We are outraged by the passionless crimes that seem to infect our society and we expend billions of dollars to apprehend, try, and punish the perpetrators. But we feel no such outrage, and take no such actions when children are murdered in Rwanda or Bosnia. And yet, unless this nation and organizations like VVAF act now to enforce the rule of law internationally,

man Rights, 18 SUFFOLK TRANSNAT'L L. REV. 589, 621 (1995) (showing how 50 percent of the total casualties during World War II were civilians, as compared to the First World War, in which the total number was five percent).

17. See BUREAU OF POLITICAL-MILITARY AFFAIRS, U.S. DEP'T OF STATE, HIDDEN KILLERS 1998: THE GLOBAL LANDMINE CRISIS at iii (1998) (statement of Secretary of State Madeline K. Albright); von Struensee, *supra* note 16, at 621.

18. See Roger Normand & Chris af Jochnick, *The Legitimation of Violence: A Critical Analysis of the Gulf War*, 35 HARV. INT'L L.J. 387, 399-401 (1994) (discussing how attacks on Iraqi infrastructure during the Gulf War by United Nation forces led by the United States resulted in a sharp increase in Iraq's infant mortality rates).

19. See generally Marks, *supra* note 15, at 22-26 (explaining how slow the world has acted in seeking the prosecution of national Khmer Rouge leaders for acts of genocide committed from 1975 to 1979).

20. Cf. Donald G. McNeil, Jr., *Dancers Leap Past Death To Reclaim Life's Rhythm*, N.Y. TIMES, July 8, 1998, at E1 (discussing the grotesque genocide of nearly 500,000 out of eight million Rwandans during several months in 1994).

21. See *2,000 Reported Slain in Sudan*, N.Y. TIMES, Jan. 5, 1990, at A2 (explaining how the most recent "massacre" was linked to the conflict between the ruling forces in the Muslim north and the mainly Christian and animist minority in the south).

22. See Danielle Lachman, Comment, *Human Rights in Bosnia: Implementing An Effective Prosecution*, 8 FLA. J. INT'L L. 325, 325-30 (1993) (explaining how the United Nations has responded to acts of genocide committed in Bosnia-Herzegovina).

the murders in Rwanda and Bosnia not only *might*, but almost certainly *will*, come rolling down the street and into our own homes.

I was proud to serve as an Marine infantry lieutenant in Vietnam. Despite my later opposition to the war, I served honorably—which means that I made certain that the men under my command understood that shooting unarmed civilians or surrendered soldiers was not acceptable, nor would it be condoned because of some belief that “that is what happens in war.” The killing of unarmed civilians is murder and it is a war crime. It should be treated as such. It cannot be tolerated. To do so now, at this point in our history, when the world is armed with weapons of inestimable power, is to attack the foundations of civilization itself. Unless we begin to enforce the rule of law internationally, humanity itself will be placed in grave danger.

1999 marks the fiftieth anniversary of the Geneva Convention, which detailed the laws under which nations can go to war,²³ and the one hundredth anniversary of the Hague Convention,²⁴ the first international meeting of nations attempting to constrain and restrict the horrifying prospect of world destruction. It is truly fitting that the international movement that my organization founded will come into force in the same year that the International Committee of the Red Cross begins a worldwide effort to increase public awareness of these humanitarian covenants. It is our intention to use the opportunity afforded by this anniversary to form new and unique partnerships between humanitarian organizations, private institutes, and governments to engender a new found respect for the rule of law globally.

Admittedly, VVAF is committing itself to an ambitious program—not to outlaw war or even to assure that it will somehow magically cease, but rather to build a global consensus that war, when waged, must be conducted according to rules and laws that are instituted among nations for the good of all to insure that while soldiers may die in combat, the human race itself will not be placed in jeopardy. We seek nothing less than the reversal of the “well, that’s what happens in war” attitude of millions of Americans, a view that is shared, I am quite sure, by billions of people worldwide. I do not hold with those who shrug off our efforts on this next major campaign, who claim that the new NGO-

23. The Geneva Convention was actually a series of four conventions which were opened for signature on August 12, 1949. See 18 U.S.C. § 2441(c) (Supp. II 1997); Stephen R. Sarnoski, *The Status Under International Law of Civilian Persons Serving with or Accompanying Armed Forces in the Field*, ARMY LAW., July 1994, at 29, 29.

24. One of several landmark Hague Conventions on the laws and customs of war was signed in 1899. See von Struensee, *supra* note 16, at 619.

government partnership that we envision cannot actually reach the goal of dampening human conflict and alleviating human suffering. These same critics were present in 1991—when we began the International Campaign to Ban Landmines.

