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**Landmines and Civilian Security in Eastern Burma:
Implications for Humanitarian Engagement**

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List of Acronyms

APM: Anti-Personnel Landmine

APMBT: Anti-Personnel Mine Ban Treaty (“Ottawa Treaty”)

BGF: Border Guard Force

CBO: Community-based organisation

CCW: 1980 Convention on Certain Conventional Weapons

CRSR: United Nations Convention Relating to the Status of Refugees

DKBA: Democratic Karen Buddhist Army

FBR: Free Burma Rangers

ICBL: International Campaign to Ban Landmines

ICISS: International Commission on Intervention and State Sovereignty

ICRC: International Committee of the Red Cross

IHL: International Humanitarian Law

KHRG: Karen Human Rights Group

KNU: Karen National Union

KNLA: Karen National Liberation Army

KNU/KNLA PC: “Peace Council” splinter group

NGO: Non-governmental organisation

NSAG: Non-state armed group

R2P: Responsibility to Protect

SPDC: State Peace and Development Council, the name of the former Burmese
military junta

UNHCR: United Nations High Commission for Refugees

UNSC: United Nations Security Council

Note: The names of certain individuals have been redacted for security concerns.

“Saw” and “Naw” are Karen-language honourifics for men and women, respectively.

Abstract

The emergence of the human security paradigm in international relations since the mid-1990s has successfully put a number of human-centric security concerns on the global agenda. The work of the International Campaign to Ban Landmines is a prominent example; its activism resulted in the 1998 Ottawa Treaty, which compels signatory states to cease manufacture, use, transfer, and stockpiling of anti-personnel landmines. However, the discourse it has promoted surrounding such devices overlooks the positive role landmines can play in protecting civilian populations from predatory national governments, as exemplified by their continued use in Eastern Burma by civilians and the non-state armed groups charged with protecting them. The use of landmines to protect civilians, while controversial and not without risks, serves to greatly improve security for populations in the context of pervasive militarisation in the region. The realities of the conflict have created a difficult situation for humanitarian practitioners, who are largely unable to provide services to extremely vulnerable internally displaced populations.

This paper gives a short overview of the actors in the conflict, discusses the politics of landmines and the ways they are used in Karen State, and addresses the shortcomings of international humanitarian law to protect civilians from predatory and abusive governments. It concludes with suggestions for policymakers on how to best engage non-state armed groups with promoting civilian security in the context of ongoing state-sponsored violence and landmine use in Karen State.

1. Introduction

The war between the Karen people and the Burmese government is part of a complicated pattern of internal conflict in the country. Now in its sixty-third year, it is the world's longest-running civil war.¹ Civilian populations throughout in Eastern Burma² have faced attacks by government forces for decades, and in response, civilians – and the non-state armed groups that protect them – have been forced to develop both armed and unarmed strategies for self-protection. At first glance, some of the methods they employ to this end may appear dubious. Non-state armed groups responsible for civilian protection – and, often, civilians themselves – controversially use anti-personnel landmines (APMs) to improve security in the contested, militarised spaces of Karen State³ and elsewhere in Eastern Burma. While antipersonnel mines have been rightly vilified as an indiscriminate threat to human security, such devices paradoxically serve to enhance civilian security in this context, a fact that contradicts commonly accepted narratives on the dangers of landmine use.

This paper explores the ways in which landmines are employed in civilian protection strategies in Karen State, and discusses how these strategies fit into the

¹ South 2011, 6

² For the purposes of this dissertation, I have chosen to refer to the country as Burma, in keeping with the preferences of many in Burmese civil society. “Burma” is arguably a more inclusive term than the official name “Myanmar,” which many ethnic minorities feel has Burman ethnic-supremacist connotations.

³ The term “Karen State,” as used in this paper, refers to a loosely defined area encompassing multiple states in Eastern Burma where Karen civilians are present. This includes the entirety of the official “Karen” (Kayin) State, part of Mon State, and areas on the fringes of Bago and Tenasserim divisions. This is common parlance among Karen communities in the Thai-Burma border region.

human security paradigm that has emerged in international relations theory and practice since the mid-1990s. Given that landmines are indiscriminate killers, it is worth asking why civilians and the armed groups that protect them feel that it is necessary to continue using them, and how the NGO sector and activist organisations can work with non-state armed groups to promote greater security for civilian populations under attack from government forces. If non-state actors were to cease using anti-personnel landmines overnight, civilian populations in Eastern Burma would invariably be less secure than they are now; non-state armed groups and civilians have no credible alternatives at their disposal to deter government forces and their allies from attacking.

Human security is a relatively new concept in international relations, and has proven difficult to define and operationalise. On a theoretical level, notions of 'human security' serve as a challenge to Westphalian norms that hold state sovereignty as inalienable, and locate 'sovereign rights' in individuals. In this paradigm, the security of individuals and communities supersedes notions of 'state' or 'national' security, especially if measures taken by states to ensure their own security compromise human welfare. By establishing individuals, rather than states, as the primary referents of international security, emerging human-centric norms, such as the Responsibility to Protect doctrine, deny states the right to uncontested sovereignty within their own borders if they commit atrocities against their own citizens.

Anti-landmine-proliferation initiatives, such as the International Campaign to Ban Landmines, are very much a product of this human security paradigm, yet the biases of organizations pushing for a total landmine ban fail to take into account the ways in which landmines can promote security for civilians in certain contexts, given the limited

options civilians have at their disposal for self-protection. The use of landmines to protect civilians is in keeping with emerging human security norms, as it is a defensive response to the Burmese state's enforcement of its own warped sense of 'national security' which, by its very nature, has a negative impact on civilian life. Landmines are of course dangerous, but their use to protect civilians should not be demonised outright. Aid agencies and non-governmental organisations (NGOs) need to take into account the reality of pervasive militarisation and the use of landmines in Karen State in order to promote positive human security outcomes on the ground.

The first two sections provide an overview of the ideologies and motivations of the various armed groups operating in Karen State, followed by a discussion of the international legal and normative frameworks surrounding anti-personnel landmine use. Section three addresses the ways in which landmines are used by armed actors in Karen State, and how these devices are used to protect civilians. The final section looks at the laws and norms surrounding civilian protection from an institutional perspective, and concludes with suggestions on how humanitarian practitioners can best engage non-state armed groups to promote civilian security.

2. Armed Actors in Karen State

Burma has been plagued with internecine violence for its entire independent existence. It is an extremely ethnically diverse country, with minorities predominantly concentrated on its borders. The fear that any one of these ethnic groups will secede from the state is the primary justification provided by the military for repressing

civilians in these areas⁴. The roots of ethnic discontent date to the colonial era, and an inability to adequately address the grievances of the country's ethnic minorities has, in no small part, created many of Burma's present-day travails.

The country's ethnic makeup, with its slight ethnic Burman majority (officially 68% of the population⁵), has made it vulnerable to internal conflict. An important 2004 study by Paul Collier and Anke Hoeffler found that states with slim ethnic majorities and a large proportion of ethnic minorities are nearly twice as likely to have experienced civil war than are states with either highly heterogeneous or highly homogenous populations⁶. Like many post-colonial states, contemporary Burma's ethnic mix is the result of borders imposed by colonial powers. Despite exhortations by military leaders, such as Senior-General Than Shwe's 2002 claim that "[Burma] has existed as a united and firm Union and not as separate small nations for over 2000 years,"⁷ the people of Burma's frontier regions were never fully incorporated into any of the Burmese kingdoms that preceded colonial rule. The government's desire to bring these 'spaces on the periphery' to heel is validated by its idiosyncratic interpretation of history, and provides justification for its actions in contemporary Karen State.

There are three major armed groups operating in Karen State today – the Burmese armed forces (*Tatmadaw*⁸ or SPDC⁹), the Karen National Liberation Army

⁴ Smith 2007, 23

⁵ Central Intelligence Agency

⁶ Collier & Hoeffler 2004, 581

⁷ Smith 2007, 10-11

⁸ The Burmese-language name for the armed forces, often used in English-language publications.

⁹ The State Peace and Development Council, or SPDC, was the official name of the ruling military junta from 1997 to 2011. It officially ceased to exist on March 30, when the "civilian" government led by Thein Sein assumed power. Although referring to

(KNLA, the armed wing of the Karen National Union), and the Democratic Karen Buddhist Army (DKBA). Within these three broad categories are myriad sub-divisions and local battalion groups, many of which have tenuous or even outright hostile relationships with other factions of their “own” military establishments¹⁰. As is often the case in complex emergencies, political control in Karen State is highly contested, and clear chains of command are often tenuous or broken.

Robert Rotberg (2007)’s typology of states, which serves to classify the world’s worst human rights abusers, is a useful analytical tool to help understand how the Burmese state operates. Burma is unquestionably a “repressive” state by Rotberg’s criteria: the military regularly uses force in the border regions to compel obedience, and arbitrary decisions made by local army commanders dominate in lieu of the rule of law. In the low-lying Burman-majority “heartland” of the country, in areas firmly under government control, an omnipresent security apparatus limits political participation, the right to free speech, and internal freedom of movement, although these restrictions have loosened somewhat recently¹¹. But it is not “aggressive” towards other states: aside from

the military as ‘the SPDC’ is technically incorrect in 2012, the KNLA and Karen civilians in the border regions continue to refer to the Burmese government by its former name.

¹⁰ Entire battalions defect, on both sides. The most prominent recent DKBA defection was that of Brigade 5 in November 2010, led by Col. Na Kham Mwe. After refusing to join the Border Guard Force (BGF), he joined forces with the KNLA and launched an offensive against the border town of Myawaddy, directly opposite the Thai city of Mae Sot on November 7, 2010 (see Naw Noreen, November 2010). Similarly, KNLA Brigade 7 under Brig. Gen Htein Maung, defected to the SPDC in January 2007, and formed the “KNU-KNLA Peace Council,” which retains a distinct identity outside of the Border Guard Force and the Burmese army but remains opposed to the mainline KNU (South 2008, 66-7).

¹¹ Rotberg 2007, 1-6

brief forays outside of its national borders to attack ‘domestic’ targets^{12 13}, the Burmese government has never threatened its neighbours and, indeed, enjoys generally good economic and political relations with them.

The Burmese military classifies the degree of state control over territory in Karen State into three categories. “Black zones” are one extreme; otherwise known as “free-fire” zones, these are the spaces entirely controlled by non-state armed groups (NSAGs). At the opposite end of the spectrum, “white zones” are areas that the government perceives to be fully under its control. “Brown zones” are the mixed areas on the fringes of the two, nominally under government control, in which there is an impermanent NSAG presence and strong undercurrents of civilian resistance to the military¹⁴. The military is extremely predatory and violent towards civilians in “black” and “brown” zones.

Respect for the “civilian ethic” in war, while not universal, is a concept as old as warfare itself, although it was only enshrined into international law with the passing of the fourth Geneva Convention in 1949¹⁵. Despite this, states and non-state armed groups routinely disregard the civilian ethic in war for a number of reasons. Since the beginning of the Ne Win era, displacing civilians has been the principal pillar of the military’s counterinsurgency doctrine. The *Tatmadaw* attempts to disrupt support networks and supply lines by making “four cuts” – intended to deny insurgents access to food, funds, recruits and intelligence¹⁶.

¹² Kachin News Group, January 2012

¹³ Lintner 1995

¹⁴ Karen Women’s Organisation 2007, 8-10

¹⁵ Slim 2008, 19-20

¹⁶ Adams and Saunders 2005, 8

Although many scholars and activists have referred to the atrocities perpetrated in Karen state as “genocide” against the Karen people, violence against civilians in Eastern Burma is primarily intended to control the population, not destroy it outright. As Stathis Kalyvas notes, “...although the methods used to achieve [the] compliance [of a population] and physical destruction [of an ethnic group] may be similar, these objectives differ.¹⁷” Hugo Slim defines genocidal behaviour as the total disregard of the civilian ethic in war, with the intent of destroying an entire ethnic group.¹⁸ The fact that displacement *en masse* of Karen civilians does not occur in the Irrawaddy Delta or in Yangon, where there is no KNLA presence, weakens the argument that the Burmese government’s policies are genocidal¹⁹. Suspending the civilian ethic in Karen State by employing heavy-handed policies of collective punishment is something that it regards as necessary to limit the KNLA’s ability to receive civilian support.

The Karen National Union was formed in February 1947, bringing together a number of Karen political and militant organizations under the leadership of nationalist leader Saw Ba U Gyi²⁰. To this day, it remains the largest Karen political entity, and its armed wing, the Karen National Liberation Army (KNLA), remains the principal non-state armed group hostile to the Burmese government in Karen State. Although the

¹⁷ Kalyvas 2006, 26

¹⁸ Slim 2008, 124-5

¹⁹ Atrocities committed against Karen civilians could, in theory, be interpreted as genocide under international law, as stipulated by the 1948 Genocide Convention and the 1998 Rome Statute of the International Criminal Court. Genocide is defined in both of the aforementioned legal documents, as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” However, as Gareth Evans notes, intent to destroy an ethnic group is extremely difficult to prove, and, as mentioned above, displacement patterns on the ground suggest that population control – as opposed to outright eradication – is the intended goal of the Burmese military’s policies in Karen State. For more information, see (Evans 2008, 12-13)

²⁰ Lintner 2000, 9-11

KNU's original goal was the establishment of an independent Karen homeland, it officially shifted its demands in 1984 to advocate for the establishment of an inclusive federal state, in conjunction with a number of other ethnic armed groups in other areas of Burma²¹. The KNU/KNLA enjoys widespread popular support inside Karen State, and a number of KNU-affiliated organizations provide essential services – such as healthcare and education – to vulnerable civilian populations inside the conflict zone.

But the KNU is not the only legitimate voice of the Karen people, as it claims to be²². Many early Karen political organizations were affiliated with the Church, and these groups later became subsumed into the KNU establishment. A large proportion of Karen, principally speakers of the *Pwo* dialect, are Buddhist; perhaps the KNU's biggest failing in its six-decade existence has been its inability or unwillingness to reconcile with the substantial Karen Buddhist minority, a failing that has had profound strategic ramifications on the KNU's capacities.

Frustrated with what they perceived to be a culture of “Christian chauvinism” within the KNU establishment, a large number of Buddhist KNLA cadres defected in 1994, forming the Democratic Karen Buddhist Army (DKBA), aligning themselves with the Burmese government. In January 1995, the DKBA led an assault on the KNU's headquarters at Manerplaw alongside government forces²³. The KNU was forced to flee to the hills, the territory under its control having been reduced substantially; its leadership was forced over the border to Thailand. The loss of Manerplaw dealt a severe blow to the KNU, and security for Karen civilians in areas formerly under its control

²¹ South 2011, 50

²² South 2008, 213-4

²³ Lintner 2000, 413

decreased markedly. It was only after 1995 that the KNLA began to make widespread use of antipersonnel landmines to secure territory and protect civilians under strain²⁴. The DKBA remains in armed opposition to the KNU/KNLA to this day, and are a major agent of civilian displacement throughout Karen State.

Burma's new "civilian" Prime Minister, Thein Sein, a former high-ranking general installed after the November 2010 general election, is keen to legitimate his government in the eyes of the international community, and to normalize relations with Western countries. Aung San Suu Kyi's resurgent role in political life, reduced restrictions on freedom of speech and the release of hundreds of political prisoners are testament to the fact that, at least in some respects, political life in Burma is changing for the better. In the same vein, however, the government has forcefully sought to reassert its control over the country's frontier regions by violently bringing the country's myriad ethnic insurgent groups to heel.

Prior to the election, the government demanded that all armed groups with which it has pre-existing ceasefire arrangements join a "Border Guard Force (BGF)," making them subservient to the government in Naypyidaw. Unsurprisingly, most ceasefire groups have rejected these demands²⁵, with the exception of the DKBA, which has always enjoyed close relations with the Burmese government²⁶. As a result, violence in Burma's borderlands has increased markedly since the elections. The government and its proxies have unilaterally broken ceasefire accords and ramped up offensives against

²⁴ Interview with Col. Nerdah Mya, KNLA 201 Battalion Headquarters, Oo Kray Khee village, Dooplaya district (KNLA Brigade 6), Karen State, Burma, December 25, 2011

²⁵ The KNLA was not party to a ceasefire with the government at the time.

²⁶ Naw Noreen, August 2010

both ceasefire and non-ceasefire armed groups across the country²⁷. Despite the fact that the majority of the DKBA has now been officially integrated into the state security apparatus, it functions in much the same way as it did before, although BGF soldiers now receive salaries commensurate to those given to regular troops²⁸. All armed groups in active in Karen State employ landmines, although the types of devices they use and how they are used differ greatly.

3. Landmines: How odious, how necessary?

The discourse promoted by transnational activist networks, most prominently the International Campaign to Ban Landmines, has eliminated the nuance of how landmines can be employed as tools of civilian protection and has, thus far, failed to take into account their legitimate humanitarian uses by NSAGs and civilians in low-intensity conflicts. Although the use of landmines is undoubtedly a “least-worst” solution given a lack of alternatives, ceasing to use them altogether, absent comprehensive peace in Karen State, would leave the security of Karen civilians unacceptably compromised.

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the “Ottawa Treaty”), drafted in 1997, has been ratified by 159 UN member states as of 2012. The Treaty’s success was largely due to the initiative of the International Campaign to Ban Landmines (ICBL), an umbrella organisation comprising roughly 1,000 NGOs from 60

²⁷ Wade, October 2011

²⁸ Lawi Weng, May 2010

countries²⁹. Under the treaty, states must to commit to not produce or develop anti-personnel mines, and destroy their existing stockpiles within four years of ratification, except for a small number for training purposes³⁰. The treaty outlaws all anti-personnel landmines³¹, even “smart” or self-destructing devices,³² and states party must commit to clearing all mined areas within their territory within ten years, even though this may be impossible in practice for many heavily-mined states.

The successes enjoyed by ICBL served as a watershed moment for ‘global civil society’ in the international security agenda-setting process, and affirmed the increasing importance of human-centric security on the global security agenda. Delegates from signatory states “cited the pressure exercised by NGOs, particularly as a presence at the table during the treaty negotiation process where they were able to influence policy decisions.”³³ The groundbreaking “track-two,” inclusive template provided by the Ottawa Process has been hailed by activists and policymakers as having applications for future arms-control treaties, a phenomenon which Max Cameron terms the “democratization of foreign policy.”³⁴ An international campaign to ban cluster munitions, led by many of the same actors instrumental in bringing about the Ottawa Treaty, led to the introduction of a similar Convention on Cluster Munitions, which went

²⁹ Cameron et al. 1998, 5

³⁰ Ottawa Treaty, 1997. Please refer to Appendix A.

³¹ The treaty permits anti-vehicle mines but prohibits ‘anti-handling devices,’ which are intended to make mine removal difficult. The only kinds of mines employed in Karen State by either side are anti-personnel devices, as well as “claymore” type directional mines, which are permitted under the Ottawa Treaty as they are usually manually detonated.

³² Morgan 2002, 99.

³³ Ibid, 10

³⁴ Cameron et al. 1998, 424-5

into force in August 2010.

The Ottawa Treaty is not the first international treaty on landmine use, although it is by far the most comprehensive. Protocol IIa of the 1980 Convention on Certain Conventional Weapons (CCW), amended in 1996, is the latest version of the first statute of international humanitarian law (IHL) restricting landmine production and use³⁵. It is not as comprehensive as the Ottawa Treaty, but it does limit the ability of states to produce certain types of devices, sell landmines or transfer landmine technology to other states, and limits how such devices can be used in battle³⁶. Most landmine-producing states are party to CCW Protocol IIa. Only 12 out of 39 ‘holdout’ states not party to the Ottawa Treaty produced antipersonnel landmines in 2011³⁷, and of these, only seven are not party to the amended CCW Protocol IIa – Cuba, Iran, North Korea, Libya, Singapore, Vietnam, and Burma³⁸. Only three states actually laid new landmines in 2011 – Israel, Libya and Burma³⁹.

The military value of antipersonnel landmines remains hotly debated. A panel of military experts convened in 1994 by the International Committee of the Red Cross, a

³⁵ Armed groups in Karen State do employ tripwire-activated claymores, however, which may be deemed illegal under Protocol II of the CCW, as that convention proscribes the use of such devices which are “designed or of a nature to cause superfluous injury or unnecessary suffering.” (CCW Protocol IIa, Article 3.3). The devices employed by both sides are not particularly technologically sophisticated; more advanced mine distribution technologies covered under the Ottawa Protocol, such as aerial scattering devices, are not used by either side.

³⁶ Key provisions of CCW Protocol IIa include a ban on non-detectable mines and non-self destructing mines; the protocol bans the transfer of non-compliant mines to other countries, and states party must not use landmines against civilian populations. Furthermore, states must remove landmines after hostilities cease, properly map out mined areas and inform civilian populations of the location of landmines.

³⁷ Landmine Monitor 2011, 1

³⁸ ICRC, March 2012

³⁹ Landmine Monitor 2011, 1

founding member of the ICBL, vehemently opposed any notion of an outright ban on antipersonnel landmines, claiming that such devices have saved the lives of American soldiers in various 20th century wars⁴⁰. During the North African campaigns of WWII, military strategists began to conceive of landmines as “force multipliers,” used to “reinforce the fighting capacity of an outnumbered force or, conversely, to improve the superiority of a stronger force”⁴¹. The United States, in particular, has cited a need to defend South Korea from a potential Northern incursion as its principal objection to ratifying the Ottawa Treaty.⁴² The principal strategic advantage created by antipersonnel landmines is “area-denial;” by placing landmines, armies can limit the mobility of their opposing armies (or civilians, as the Burmese army does), and in this way control space on the battlefield⁴³.

From a moral perspective, moves to ban antipersonnel landmines outright – except in specific circumstances - are laudable. Even the use of self-destructing

⁴⁰ ICRC 1996, 40

⁴¹ MacGrath 2000, 6

⁴² Gard 1998, 149-50

⁴³ The US Field Manual (FM) 20-32 defines four types of minefield employed by the US military, all of which are essentially defensive in nature: “Protective minefields are employed to protect soldiers, equipment, supplies, and facilities from enemy attacks or other threats. Tactical minefields directly effect the enemy's maneuver in a way that gives the defending force a positional advantage. Nuisance minefields impose caution on enemy forces and disrupt, delay, and sometimes weaken or destroy follow-on echelons. Phony minefields deceive the enemy about the exact location of real minefields.” (FM 20-32, 2-2). It is important to note that these classifications cannot necessarily be extended outside of the specific context of American military doctrine. Many uses of landmines in Karen State conform to the abovementioned categories, although landmines are also used in an offensive capacity against civilians by the Burmese military and affiliated para-statal organizations, uses which do not fit into any of the abovementioned categories. That said, understanding the role landmines play in American military doctrine can help elucidate some of the reasons as to why states disagree with a comprehensive ban absent workable alternatives to anti-personnel landmines.

landmines by state powers should be avoided. American ‘smart’ mines are programmed to deactivate after 15 days, in which civilian casualties may still occur. With a ‘deactivation accuracy’ of 90-95, some devices can remain active until months later, when their batteries die. Regardless, these numbers are a massive improvement over traditional, non-battery-powered persistent mines that can last for decades after hostilities cease⁴⁴. Technical arguments aside, the continued use of any kind of antipersonnel landmines by major powers undermines the normative framework established by the Ottawa Process, and sends a signal to weaker states that their use is acceptable. Poor states are unlikely to be able to develop particularly sophisticated devices, and would continue to use cheaply made, non-self-deactivating mines⁴⁵.

Despite the reluctance of some major powers to sign on to the Ottawa Treaty, the fact remains that landmines are very rarely used at present, even by non-signatory states. The stipulations of the CCW, in tandem with norms established by the Ottawa Process, have steered non-signatory states away from landmine use and prompted the exploration of alternative strategic options. The US, Russia and China have all expressed a willingness to ratify the Ottawa Treaty once acceptable alternatives are developed⁴⁶. Compared to previous arms-control treaties, the effect of the discourse promoted by ICBL has proven extremely persuasive, even over non-signatory states, and the norm forbidding the use of antipersonnel landmines appears to have become almost universally accepted.

⁴⁴ The biggest issue with such devices is how they would likely be distributed, via airdrops or artillery, which scatter huge quantities of mines over a large area with no ability to map out where exactly mines are laid. Moreover, delivering mines by air increases their deactivation failure rate (Gard 1998, 146-7).

⁴⁶ Price 1998, 636

Although the CCW had already established an incomplete legal and normative framework controlling landmine use, the activism of the ICBL and the successes of the Ottawa Process have helped steered global discourse towards making a total ban part of the normative agenda, even where non-party states are concerned. Expecting this norm to extend to non-state armed groups, however, is unrealistic and counterproductive. While states have the means at their disposal to develop or purchase alternative, more discriminate area-denial weapons, non-state armed groups do not. Faced as they are by a predatory and aggressive national government, civilians in Karen State and their KNLA protectors have few options for self-protection. While efforts to get non-state armed groups to stop using landmines are noble, they are unrealistic given the reality of pervasive insecurity and state-sponsored violence in Karen State.

Geneva Call, a NGO affiliated with the ICBL, attempts to convince non-state armed groups to cease using landmines through its Deed of Commitment, which “contains the same obligations as the APMBT (Anti-Personnel Mine Ban Treaty). It allows the leaders of rebel groups to assume formal obligations and to accept that their performance in implementing those obligations will be monitored by an international body.”⁴⁷ Six relatively minor NSAGs operating inside Burma have signed on to the Deed of Commitment since 2006⁴⁸, but Geneva Call has largely failed to persuade most NSAGs operating in the country to do the same. When asked about Geneva Call’s overtures, Col. Nerdah Mya, the commander of KNLA 201 Battalion, indicated to this researcher that, while he and the KNLA would rather not have to use landmines, they felt that they had no other reasonable option to provide security for civilian populations

⁴⁷ Geneva Call 2005, 1

⁴⁸ Geneva Call 2011, 23

in the war zone. “People need protection,” he elaborated. “We need to remind our troops of how to lay landmines properly, and inform villagers of what to do when they encounter them.”⁴⁹

Col. Nerdah’s assessment of the situation he and his people face indicates a disconnect between the stance taken by anti-mine activists and realities on the ground. For better or for worse, civilians in Karen State and the non-state armed groups that protect them are unlikely to stop using anti-personnel landmines so long as they remain threatened by the Burmese army and its allied paramilitary groups. With its focus on getting NSAGs like the KNLA to cease using landmines, Geneva Call has pushed away precisely the sort of actor it wants to engage. There remains a massive need for mine-related public goods in Karen State, including mine education and prosthetics. If NGOs remain myopic in their unwillingness to accept the reality of mine use in Karen State, their ability to have a positive effect on the ground will be limited. By looking at landmine use from a utilitarian perspective, the activist-NGO sector would likely be able to do greater good than it has by sticking to highly idealistic notions that do not take into account the dynamics of the conflict and landmine use in Karen State. NGOs that do not take this approach are not likely to enjoy much success in engaging non-state armed groups such as the KNLA. As Col. Nerdah expressed,

“I think that organizations and people that want to boycott groups that use landmines don’t really understand what’s going on. This is a war. Instead of attacking us for the fact that we use landmines, they have to understand the culture, the conflict, why people are using these things. The Burmese army keeps attacking us and China keeps selling them weapons. Scrutinize that before you scrutinize us.”⁵⁰

⁴⁹ Col. Nerdah Mya interview

⁵⁰ Col. Nerdah Mya interview

4. Uses and Abuses of Landmines in Karen State

In 2010, Burma ranked fifth highest in the world for landmine casualties, after Afghanistan, Colombia, Pakistan and Cambodia⁵¹. Protective value aside, landmines undoubtedly pose an ongoing threat to the security of civilian populations in Karen State. Burma is unique because its military continues to use anti-personnel mines, unlike other heavily mine-affected countries. Even in heavily-mined countries subject to ongoing internal conflict (such as Afghanistan, Pakistan and Colombia), most mine injuries are caused by ‘legacy’ devices, planted decades ago when the use of antipersonnel landmines by state militaries was widespread. Non-state armed groups continue to use APMs in Afghanistan, Colombia and Pakistan (even though the governments of those countries do not), but at present the use of such devices by both government forces and NSAGs is a situation unique to Burma⁵².

Landmines are used by both *Tatmadaw* and NSAG forces to achieve various strategic goals, and are used intentionally to displace civilians (by the government and BGF) as well as protect them from attack (by the KNLA and civilians themselves). Despite ostensible political reforms taking place inside Burma, the country’s frontier regions remain extremely militarised. Predation against Karen civilians remains rife due to the military’s policy of “self-reliance,” which compels government soldiers to extract resources and manpower from civilian populations throughout Karen State. In keeping with the ‘four cuts’ doctrine, the government has intentionally limited the amount of supplies that are sent to front-line troops in Karen State since 1997, forcing soldiers to

⁵¹ Saw Yan Naing, December 2011

⁵² Landmine Monitor 2011, 10

prey on local communities to meet their basic needs⁵³. Predation is seen as an effective way to subdue ‘disloyal’ populations and deter them from helping NSAGs, while simultaneously bringing down the material cost of counterinsurgency operations⁵⁴.

Control of territory and civilian populations is crucial for the Burmese army, dependent as it is on civilians for material support and labour⁵⁵. Government and DKBA forces routinely enter villages in ‘brown zones,’ demanding money, food and construction materials from villagers. Civilians are also forcibly recruited as labourers, porters and human minesweepers, and are interrogated about the activities of KNLA forces⁵⁶. The impunity afforded to the *Tatmadaw* and DKBA has created an environment of routinised violent punishment for non-compliance with these demands. Extrajudicial killings, sexual violence, torture, and the wholesale burning of villages occur throughout Karen State at the behest of local commanders⁵⁷.

It is a common misconception that civilians in war – in Burma and elsewhere - have no means of resisting predation by armed groups. This is not true, as civilians under strain cannot survive without developing ways to resist violence⁵⁸. Civilians are

⁵³ KHRG 2010, 18

⁵⁴ KHRG 2008, 7

⁵⁵ KHRG 2010, 18

⁵⁶ For a comprehensive collection of DKBA and Tatmadaw orders to civilians in Karen State, see *Civilian and Military order documents: March 2008 to July 2011*. Mae Sot, Thailand: Karen Human Rights Group, 2011.

⁵⁷ A comprehensive KHRG report published in December 2011 provides over 400 pages of survivor testimony and situation updates on patterns of abuse in Eastern Burma since November 2010. For more information on atrocities perpetrated by government and DKBA forces against civilians in Karen State, see *'All the Information I've Given You, I Faced It Myself': Rural testimony on abuse in eastern Burma since November 2010*. Mae Sot, Thailand: Karen Human Rights Group, 2011.

⁵⁸ KHRG 2008, 4-5

often as much agents of their own protection as they are passive victims⁵⁹. As Barry Buzan notes, “Individuals can do many things to enhance their security, both against threats from the state and against threats which the state has failed to alleviate.”⁶⁰ A 2008 report published by the Karen Human Rights Group (KHRG) identifies a number of these strategies, including preparing hiding sites in anticipation of government or DKBA attacks, availing themselves of services provided by cross-border organisations (often affiliated with the KNU), and “monitoring troop movements and employing advanced warning systems to alert villagers to approaching army patrols.”⁶¹

Regardless, flight is invariably the most common civilian response to predation. The *Tatmadaw* attacks Karen civilians located on the fringes of areas under their control because of their perceived loyalty to the KNU, and encourages those displaced to settle in ‘white zones’ under the watchful eye of the state security apparatus. Ethnic Burman civilians are then moved into areas vacated by Karen villagers as a way to extend the reach of ‘state space.’⁶² Displaced Karen civilians are wary to move to state-controlled areas, as in such areas they are even more vulnerable to the excesses of arbitrary military rule, including extortion and forced labour, and are often forced to porter for government forces in the conflict zone. Hiding in the jungle, while insecure, is considered to be a better option than submitting to government control. In seeking to improve their security, civilians migrate to areas with a greater KNU presence or over the border to Thailand, where their security is more assured.

⁵⁹ Barter 2011, 7

⁶⁰ Buzan 2007, 51

⁶¹ KHRG 2008, 6-7

⁶² Interview with Saw T____ S____, security officer, Ei Tu Hta IDP camp, Papun District, Karen State, Burma, January 2012

The mountainous terrain of Karen State and the lack of vehicular access to most areas where fighting takes place obviates the military utility of anti-vehicle mines; the only weapons used by both sides are small arms, mortars, portable artillery, and various types of anti-personnel devices. Notably, both sides use devices with minimal metal content, which poses problems for detection and clearance, although few landmines are truly completely undetectable⁶³. The Burmese government has not publicised the types of antipersonnel devices it has in stock, although it is known to have purchased mines from a number of foreign suppliers over the years⁶⁴. Most devices it uses are domestically built versions of Chinese and American mines, both blast and fragmentation type.

“Blast” type mines are triggered when stepped on and generally only cause injury to one person, whereas fragmentation mines are generally tripwire- or switch-activated and launch shrapnel over a wide area. As such, a fragmentation mine can potentially cause injury to multiple individuals within its blast radius. These types of devices are erroneously thought to be easier to clear and avoid than buried ‘blast’ mines as they are partially aboveground, however direct contact is unnecessary to set them off (unlike blast mines)⁶⁵. While trigger-activated fragmentation mines (such as the American-designed M-18 “claymore”) are permissible under the Ottawa Protocol, tripwire-activated “booby traps” are not.

Most *Tatmadaw* mines are produced by the government-run Myanmar Defense Industries (*Karkweye Pyitsu Setyoun*, or Ka Pa Sa). At least two types of blast-type

⁶³ King 2004, 142

⁶⁴ Landmine monitor 2011- Myanmar/Burma

⁶⁵ King 2004, 142-3

APMs are produced by Ka Pa Sa; the MM2, a copy of the Chinese Type 58 APM, and an unlicensed version of the American M-14 “toe popper”^{66 67}. Ka Pa Sa also produces the MM1, a tripwire-activated, stake-mounted fragmentation mine, which is also copied from a Chinese-Soviet design, as well as a copy of the American-designed M-18 ‘Claymore’. The KNLA produces crude blast- and fragmentation- type devices itself, as it is largely unable to source factory-built devices. The KNLA clandestinely sources explosives from Thailand, and builds devices from a wide variety of materials, including cans, glass bottles, PVC piping, and lengths of bamboo. It also provides civilians with materials and instruction on how to build such devices. KNLA blast mines are comprised of an explosive “body” and a separate battery pack, which is attached at the time the mine is buried to activate the device. The KNLA also produces crude claymore copies, which are deployed either manually or by tripwires. The KNLA also uses claymores for demining purposes, launching directional charges at government-laid minefields⁶⁸. The DKBA and BGF construct similar mines to the KNLA, and are also provided with factory-built mines by the government⁶⁹.

Battery-powered devices, such as those employed by the KNLA and its affiliates, have a limited shelf life. After roughly six months in the ground, their batteries die, rendering them inactive⁷⁰. Like other self-deactivating APMs, such improvised devices are, of course, not fail-proof. Because improvised devices do not pose the same long-term threat to civilians as do factory-built mines, however, the self-limiting nature of

⁶⁶ KHRG: Reports - Photo set 2005-A: Landmines

⁶⁷ KHRG: Photo Gallery 2008

⁶⁸ Col. Nerdah Mya interview

⁶⁹ KHRG: Photo Gallery 2008

⁷⁰ KHRG (2010), 40; corroborated by Col. Nerdah Mya

these devices serves to reduce the potential for long-term harm. Non-self-deactivating APMs, such as the devices used by the Burmese government, can claim victims decades after they are laid.

It is important to differentiate between legitimate and illegitimate uses of landmines in the contested and insecure spaces of Karen State. The KNLA and civilians use landmines out of necessity for protection; the same cannot be said for the *Tatmadaw* and its allies. The latter use landmines in to displace civilians, deterring them from returning to their villages. This is the case even when there is no large KNLA presence for government forces to contend with.

Testimony collected on the Thai-Burma border for this project serves to shed light on some of these dynamics of displacement. By way of example, large numbers of Karen civilians were ‘cleansed’ from lands confiscated for the construction of a six-lane highway to Naypyidaw, the new capital opened in 2005. The highway cuts through an area of northern Bago division adjacent to Karen State with a sizeable Karen population, albeit with a limited KNU/KNLA presence due to its distance from KNU-controlled ‘black zones’ close to the Thai-Burma border. Saw N___ T___, a resident of Ei Tu Hta IDP camp in Papun Division, was forced to flee his village near the current path of the highway in 1999 after SPDC troops attacked his village and forced out all of its inhabitants. He and his family attempted to return after soldiers had left in order to gather supplies, but were unable to do so as pathways into the village and gardens had been mined.

Naw C___, a primary school teacher at Ei Tu Hta, was forced from her village in the same district at around the same time. Her sister had earlier lost a leg to landmine

laid immediately adjacent to the highway itself, and her injuries were treated by KNLA medics. She was later told that SPDC soldiers had laid mines in the village's farming plots and rice paddies, and that they had even hidden mines in the kitchens of people's homes. The KNLA had earlier laid landmines around her village intended to keep out government soldiers, and SPDC forces rounded up villagers and forced them to walk on paths in front of them to clear these mines. Her brother was executed by SPDC soldiers for refusing to act as a human minesweeper. She indicated that the KNLA had informed villagers of where they had placed their mines, but noted that in the case of her village their defenses were not infallible as the SPDC was able to "go where there were no mines."⁷¹

While these anecdotes describe events that occurred more than a decade ago, the Burmese military and their allies continue to employ the same tactics; a December 2011 KHRG report documenting abuses in Karen State since November 2010 notes widespread use of landmines to displace civilians in four research areas in Dooplaya district, which represents a miniscule fraction of such incidents that have occurred in recent years⁷². It should be apparent that intentionally placing mines in villages is a tactic that expressly targets civilians. While government forces also lay mines around bases and near infrastructure to defend their interests, it is the *Tatmadaw's* offensive use of mines that poses the highest risk to civilians.

The KNLA's relative weakness, when compared to the Burmese army, has prompted it to make extensive use of landmines, as they offer the best 'value for money'

⁷¹ Interviews conducted at Ei Tu Hta IDP camp, KNLA Brigade 4, Papun District, Karen State, Burma, January 2012

⁷² KHRG 2011

deterrence available to them and the civilians they protect. A number of KNLA sources interviewed claim the organisation only began to use APMs after 1995, after the fall of Manerplaw⁷³. Landmines, even used defensively, are, of course, far from safe. The landmines planted by the KNLA, its affiliates and civilians often create insecurity in their own right. However, the deterrent value created by such devices undoubtedly improves the overall security situation for civilians caught in the conflict zone.

The KNLA uses landmines to secure humanitarian space and constrain the mobility of opposing forces. As such, it lays mines on the periphery of villages under its control to prevent government soldiers from entering, but also lays mines near *Tatmadaw* bases to encircle them and ‘box in’ soldiers⁷⁴. The KNLA also extensively mines vehicle roads to limit the mobility of government forces and disrupt supply lines. In conducting such operations, the KNLA seeks to leverage these constraints on government forces into more space for civilians to go about their daily activities unhindered.

The mining of vehicle roads, in particular, allows villagers to trade, communicate and travel in relative security⁷⁵. KNLA forces help villagers cross mined roads at specifically designated times; APMs are temporarily removed to ensure civilians can pass safely, and are subsequently replaced to maintain defenses. With landmines in place, freedom of mobility is constrained by necessity even though communities are protected. Civilians that attempt to cross vehicle roads at times other than those

⁷³ Interviews with former KNLA soldiers, Mae La refugee camp, Tak, Thailand, December 2011

⁷⁴ Interview with W____ K____, Backpack Health worker, Mae Sot, Tak, Thailand, December 2011; corroborated by Col. Nerdah Mya

⁷⁵ KHRG 2010, 37.

designated by the KNLA risk injury, and accidents regularly occur⁷⁶. However, freedom of movement would be constrained to an even greater degree if vehicle roads were left un-mined, as civilians would be less protected from government attacks. Occasional unintended civilian casualties are part of the price paid by communities to deter deadly attacks against them.

The KNLA generally informs civilians of where it places its mines, unlike government-aligned forces. In field interviews conducted on both sides of the Thai-Burma border in December 2011/January 2012, the *Tatmadaw* and its BGF allies were universally condemned by cross-border aid workers and displaced Karen civilians for indiscriminately placing large numbers of landmines in places where civilians would encounter them. However, the testimony of one army defector, collected by KHRG in January 2011, claims that the *Tatmadaw* do record where they place mines, at least in some instances, even if they do not share this information with civilians⁷⁷.

The KNLA is loath to divulge exact locations where mines have been laid for intelligence reasons; spies are a problem, and civilians are routinely tortured for information if they are captured by government soldiers⁷⁸. Minefields need not be “complete” in order to have a psychologically deterrent effect; if an enemy believes that an area may be mined, it will not attempt to breach it, regardless of whether or not APMs are actually present. The minefields laid by the KNLA are porous, and

⁷⁶ Ibid, 39

⁷⁷ KHRG 2011 Appendix 1, 105-6. Interestingly, the same defector (who was forcibly conscripted) indicated that rank-and-file soldiers in his battalion were not permitted by their superiors to carry or lay landmines themselves; such duties were the responsibility of a dedicated mining unit. Soldiers who disobeyed this order faced three years in prison.

⁷⁸ Col. Nerdah Mya interview

information about the location of openings is something the KNLA cannot have fall into enemy hands. Regardless, Col. Nerdah Mya claims that mining activities are meticulously documented by his troops; when the strategic purpose served by the landmines has expired, they are cleared. Indeed, the paucity of resources at the KNLA's disposal means that mines are often re-planted multiple times. Col. Nerdah's 201 Battalion allegedly keeps detailed records of the types of devices they lay, although this could not be independently verified; mines powered by quality AA batteries purchased in the United States are noted as lasting longer than those powered by cheap, Chinese-made batteries purchased in Thailand.

As the KNLA are relatively small in number – estimates range between 3,000 and 5,000 troops total – soldiers train civilians in self-protection techniques and provide them with weapons. In areas where there is no permanent KNLA presence, the KNU organises village-level 'home defense' units called *gher der*, which are armed by the KNLA but operate outside of the KNLA's command structure. Where KNLA and *gher der* protection is unavailable, civilians have been known to independently engage in armed resistance against government attacks, including placing landmines⁷⁹. *Gher der* units collect intelligence about government troop movements, manufacture landmines with KNLA assistance, and are trained in landmine placement, clearance and documentation practices. Although accidents do happen, the landmines laid by *gher der* units serve a vital protective function for civilian populations under strain. Testimony collected by KHRG from a displaced schoolteacher in January 2011 underscores their important deterrent effect:

⁷⁹ KHRG 2010, 88-96

“The [Tatmadaw] is still close to the place where we live. The SPDC Army occupies a camp in Htaw Mu Bplah Meh and it is one hour on foot from us. We do not have places to farm hill fields close to our village. At the place where we farm hill fields, the [Tatmadaw] can see us and can shoot at us with small weapons [guns]. But the *gher der* and Army [KNLA] take security. They plant hundreds of landmines to frighten and prevent the SPDC Army from coming here easily. We can do our own work year by year. In the past, in our village and wherever we fled and stayed, the SPDC Army came and burned down our village and our shelters. They ate our pigs and chickens. They shot our buffalos. They took our property, like shirts and blankets, if they saw them in our hiding places in the jungle”⁸⁰.

Despite the fact that the KNLA and its affiliates tend to use landmines in responsible and protective ways, there is still room for improvement. Col. Nerdah openly admits his troops re-plant government-manufactured M-14 mines, which undoubtedly pose an indiscriminate threat for much longer than homemade devices. Moreover, the ‘best practices’ promoted by KNLA leadership may not necessarily be followed down the chain of command. W___ K___, a ‘backpack medic’ who conducts cross-border relief work, once witnessed a single KNLA soldier lay over 100 landmines in a day, clearly not keeping track of where he was placing them⁸¹.

While the KNLA generally tries to inform civilians of where they lay mines, this becomes impossible to do effectively if local commanders do not insist their troops follow stringent documentation guidelines. Furthermore, the fact that private citizens and *gher der* units plant landmines without military oversight may hamper proper documentation practices. While *gher der* units place landmines on a long-term basis around strategic assets, such as food stores, they also strategically mine pathways and areas that would otherwise not be mined if they anticipate an immediate threat from

⁸⁰ KHRG 2011 Appendix III, 8

⁸¹ Interview with W___ K___, Backpack Health Worker, Mae Sot, Tak, Thailand, December 2011.

advancing hostile forces⁸². This mining is done in the “heat of the moment” as a way to deter advancing forces from attacking; after mines are laid, civilians subsequently retreat to hiding places near their villages or further afield to KNLA-protected space. Because such mines are hastily laid, it is doubtful much care is taken to record exactly where they are placed, and uncleared devices may pose a threat to civilians upon their return home.

Moreover, KNLA soldiers do not always handle landmines safely, and injuries are common. W__ K__ recounted a conversation with a KNLA soldier he had witnessed handing landmines improperly; asking him why he was being so careless, the soldier responded that it would be better to be killed instantly than permanently disabled. Demining is done with essentially no protective equipment, a fact that can be chalked up to the KNU’s shoestring budget, which also funds essential services - such as education and healthcare - alongside their armed activities. Ultimately, the KNU prioritises its spending based on what it perceives to be the greatest need, and receives little in the way of outside assistance due to the failings of international humanitarian law to protect large numbers of vulnerable people. By engaging the KNLA in humanitarian security, the NGO sector can help promote better security for vulnerable populations subject to government-sponsored predation, as opposed to sticking rigidly to international law and utopian ideologies as many do now.

⁸² KHRG 2010, 93-94

5. Civilian Protection and International Regimes

The range of options available to humanitarian organizations operating in conflict zones is inherently limited by legal, political and moral concerns. Consequently, such organizations are often unable or unwilling to explore alternatives promoting civilian security that lie outside of their narrow mandates or doctrines. Such alternatives are, admittedly, far from optimal in many cases, and might appear unpalatable at first glance, especially when they involve the use of anti-personnel landmines. For better or for worse, however, anti-personnel landmines are an integral tool of civilian protection in Karen State, despite their - deserved, in most circumstances - reputation as indiscriminate killers that persist long after hostilities have ceased.

The fact that the use of landmines in Eastern Burma is necessary at present must be contextualised as a function of the failings of international legal frameworks to protect civilians affected by war. International humanitarian organizations are wary to engage in large-scale cross-border humanitarian work inside Eastern Burma, and their reluctance to do so is understandable, as such activities would be against the wishes of both the Burmese and Thai governments and could be interpreted as violating the sovereignty of the Burmese state under international law. Because it is difficult to legally engage non-state actors in civilian-protection schemes under the current international humanitarian regime, non-state armed groups and the local aid organisations that do engage in cross-border work have largely been forced to fend for themselves, outside of “official” humanitarian channels.

Contemporary multilateral humanitarian institutions, such as the UN High Commission for Refugees (UNHCR), reflect the shared interests of the state governments that established them. When they were first conceived, states party had a vested interest in ensuring that these institutions would not prompt the violation of the Westphalian norm of non-interference in times of crisis. The state-centric concerns of the Westphalian world order have created institutions that are not granted much independent decision-making authority, and which limit the humanitarian obligations of individual states that are party to the regime⁸³. As a result, the 1951 United Nations Convention Relating to the Status of Refugees (CRSR) explicitly defines a refugee as an individual who is “outside the country of his nationality [who] is unable or, owing to [fear of persecution], is unwilling to avail himself of the protection of that country.”⁸⁴ Internally-displaced persons, or IDPs, vulnerable populations which are unable to leave their countries of origin like those in Eastern Burma, do not benefit from the same protections afforded to refugees under international law.

Extending such protections, against a national government’s wishes, would be in violation of that government’s right to uncontested sovereignty over affairs within its own territory. UN agencies have attempted in recent years to better address the needs of IDPs, and have launched numerous pilot projects around the globe since 2007 to provide essential services to these populations⁸⁵. However, these projects have been contingent on these agencies being granted permission to operate by host governments, which the

⁸³ Barnett 2001, 50-52

⁸⁴ Convention relating to the Status of Refugees, Chapter 1, Paragraph 2

⁸⁵ UNHCR 2006, 5

Burmese government is unlikely to extend as it is the primary agent of displacement itself.

Despite the continued primacy of state interests in international regimes, emerging norms in global governance are challenging the notion that states should have hegemonic control over their internal affairs if they fail to protect civilians living within their borders. Atrocities committed against civilians by their own governments are increasingly considered to be of concern to the to the international community at large. Mass killings of civilians in the 1990s, including the Rwandan genocide and the massacre at Srebrenica in Bosnia, prompted a re-evaluation of the impunity afforded to governments within their own borders; the Responsibility to Protect doctrine (R2P), formulated by the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS), was formally outlined in a December, 2001 report and was officially adopted by the UN at the 2005 World Summit⁸⁶. It is important to note that R2P is not international *law* as such, but is rather a moral-philosophical framework for UN operations, intended to provide guidelines for when armed intervention into the affairs of sovereign states is permissible⁸⁷.

The introduction of R2P serves as an unprecedented critique of the Westphalian norm of uncontested state sovereignty within national borders. R2P stipulates that a state's right to hegemonic sovereignty is now contingent on it upholding its responsibility to protect civilians residing in its territory from mass atrocities⁸⁸. In

⁸⁶ Evans 2008, 46-7

⁸⁷ ICISS 2001, 1-8

⁸⁸ Article 1.35 of the ICISS report: "The defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people. The Commission heard no such claim at any stage

practice, however, R2P has been unevenly applied due to the veto power of states on the UN security council that remain opposed in principle to the contingencies on sovereignty inherent to the R2P doctrine. As Martha Finnemore notes, armed humanitarian interventions conducted in the post-Cold War era must be multilateral and have the blessing of the UN Security Council to be widely considered legitimate⁸⁹. Armed interventions launched without the blessing of the UN Security Council, such as the 2003 US-led invasion of Iraq, do not qualify as such. Russia and China both have chequered human rights records and, in their position as permanent UNSC members, have been unwilling to support a norm that might open their own domestic actions up to scrutiny. Thus, R2P has been criticized for its subjectivity in practice, allowing for intervention in “weak and friendless” states (such as Libya), whereas “Permanent 5” member states of the UN Security Council and any state those powers choose to protect would not have their violations held to task⁹⁰.

Given the institutional barriers precluding the development of universally effective mechanisms for launching armed multilateral intervention against transgressor states (and, indeed, the undesirability of armed intervention as a first-line option in all cases), alternate, non-military ways of operationalizing the fundamental principles of R2P need to be developed⁹¹. In keeping with the limitations on national sovereignty

during our worldwide consultations. It is acknowledged that sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship.”

⁸⁹ Finnemore 2003, 73-4

⁹⁰ Evans 2008, 51

⁹¹ Wheeler 2004, 68

central to the R2P paradigm, abusive governments lose legitimacy through their actions against their own citizens. When a government is widely perceived to be illegitimate, both domestically and internationally, its right to have a “monopoly of the legitimate use of physical force within a given territory,” as Max Weber defined it, is no longer sacrosanct⁹². Because political control in the conflict-ridden parts of Karen State is highly contested, ignoring the highly complex political realities on the ground and sticking to a proscriptive rulebook makes humanitarian agencies largely incapable of addressing the needs of the highest-risk displaced populations.

In her influential 1999 book *New and Old Wars: Organized Violence in a Global Era*, Mary Kaldor elucidates the dynamics of what she terms the “new wars,” low-intensity conflicts driven by transnational economic linkages, crime and increasing global interconnectedness since the end of the Cold War⁹³. While the conflict in Karen State does not fit neatly into the “new wars” paradigm, as conflict there has been resilient for more than a half-century despite changes to the global economic and political order, the Karen conflict cannot necessarily be seen as strictly “internal.” Foreign investment – especially in the energy sector - and the mining of conflict minerals have been a major catalyst of displacement in Karen State, and provides funds for the government and NSAGs alike operating in the region⁹⁴. Who, then, wields legitimate authority in such a fractured political and economic environment?

In his 2001 book *Global Governance and the New Wars*, Mark Duffield expands on Kaldor’s ideas, and addresses the nature of governance and legitimacy in the

⁹² Weber 1919

⁹³ Kaldor 2007, 4-5

⁹⁴ EarthRights International 2010, 10-12

contested spaces on the fringes of the global economy. He argues that a lack of hegemonic state control, as seen in Eastern Burma, is a direct result of the alternative political opportunity structures afforded by the informal economy, a type of political order he terms the “emergent political complex.⁹⁵” In such areas,

“the non-formal economy embodies the systems of actual development that keep people alive and in so doing have forged new relations of protection and legitimacy. At the same time, however, through creating flexible and adaptive networks linking local and international actors, while not usurping the role of the state, transborder economies have proved effective in challenging its regulatory authority.⁹⁶”

In such a political environment, working only with “legitimate” state actors is often of negligible value, as evidenced by international organizations’ near-powerlessness to affect human security outcomes on the ground through “official” channels in Eastern Burma. Because of the state-centric nature of international humanitarian law, little has been done to engage non-state armed groups on the issue of civilian protection despite the increasing acceptance of R2P in recent years. Claude Bruderlein provides four reasons for why this is a serious failing: as is the case in much of Karen State, NSAGs are often the de-facto governments in their areas of operation; they are often responsible for providing security for humanitarian operations (and civilians themselves); they are military entities that conduct combat operations, and are political entities that may partake in peace negotiations⁹⁷.

The post-Cold War era has thrust new challenges upon humanitarian agencies, and bureaucracies and international frameworks have been slow to react to changing realities on the ground. Emerging norms of human security – which “[take] the

⁹⁵ Duffield 2001, 163-6

⁹⁶ Duffield 2001, 147

⁹⁷ Bruderlein 2001, 223-4

individual as the nexus of its concern, the life as lived, as the true lens through which we should view the political, economic, and social environment,”⁹⁸ come into conflict with the proscriptive guidelines humanitarian agencies are expected to follow, based as they are on international humanitarian conventions, which – as explained above – are rooted in antiquated Westphalian notions of state sovereignty. As Myron Weiner notes,

“With the end of the Cold War, an increase in the number of refugees and internally displaced persons, and some increase in the number of humanitarian emergencies, international humanitarian institutions have found themselves in situations in which they have had to make hard choices because the ethical norms which guided their actions in the past now clash with one another.”⁹⁹

Weiner claims that, when addressing the complex refugee issues created by conflicts in the 1990s, “UNHCR officials could not simply make decisions on the basis of the international legal norms that had been the principal guides to the organization in the past.¹⁰⁰” A new, morally ambiguous flexibility, which he terms *instrumental humanitarianism*, was required¹⁰¹. Instrumental humanitarians acknowledge that the rulebooks humanitarian agencies are expected to follow are “based upon normative preferences, not empirical reality¹⁰²,” as opposed to purists (whom he terms *monists*), who equate established practices with moral certitude. To instrumental humanitarians, pragmatism trumps the stipulations of established, idealistic norms, even if abandoning the principle of humanitarian neutrality is deemed necessary to improve security for vulnerable populations.

In the context of complex humanitarian emergencies, improving civilian security

⁹⁸ McRae 2001, 14

⁹⁹ Weiner 1998, 434

¹⁰⁰ Ibid, 442

¹⁰¹ Ibid, 442-3

¹⁰² Ibid, 442.

requires instrumental thinking. Engaging non-state armed groups, which are controversial and internationally unrecognized actors, serves as a clear example of an instrumental way to address complicated humanitarian issues. However, this approach is inherently fraught with uncertainty. Humanitarian agencies must be conscious that their engagements with NSAGs might serve catalyse conflict even further. That said, instrumental approaches take into account the complexities of conflict in a way that can allow for better solutions than utopian policy prescriptions. “UNHCR officials,” Weiner remarks, “now speak of choosing the 'least worst' option in many situations.”¹⁰³

The normative shift away from unconditional national sovereignty has not affected the letter of international humanitarian or human rights law, so UN agencies are still beholden to respect the wishes of states that fail to uphold their “responsibility to protect” the lives and right to security of their citizens. UN agencies’ operations in the context of the Thai-Burma border are especially difficult, because neither state has signed the CRSR or its 1967 addendum, the Protocol Relating to the Status of Refugees.

UNHCR has no presence on the ground in Burma, and its ability to operate in Thailand is entirely at the discretion of the Thai authorities, which, due to Thailand’s non-signatory status, has no legal obligation to permit UN agencies to operate in the country at all. Cross-border initiatives, conducted by small, border-based community-based organizations (CBOs), are by far the most effective way to get essential goods and services to displaced peoples in Karen State. However, what these organisations are able to accomplish is a drop in an ocean of need. None of these groups receive significant funds from state governments. The Free Burma Rangers (FBR), by far the best-equipped

¹⁰³ Ibid, 442

outfit providing primary healthcare on the Burmese side of the border, receives the bulk of its funding from American church groups, whose donations do not come with conditions stipulating that they must be used for operations consistent with the ‘letter of the law.’

The vast majority of foreign aid earmarked for initiatives in the Thai-Burma border region goes to projects on the Thai side, home to populations that are arguably less vulnerable by far than those that remain in Burma. State sovereignty issues have dissuaded foreign governments from funding cross-border initiatives, in part due to links between these CBOs and “illegitimate” non-state armed groups. Yet, under emerging norms on the nature of state sovereignty, the Burmese government’s treatment of civilian populations renders its claim to authority illegitimate.

As such, an instrumental approach to operationalizing human security is needed to safeguard the security of civilians affected by conflict, regardless of what country they are located in. The moral quandary NGOs and institutional donors face is compounded by the fact that landmines remain an important protective tool to secure territory for humanitarian purposes. Unless comprehensive peace is achieved, however, there are no workable alternatives available to cross-border aid groups to secure humanitarian space, and, for better or for worse, this reality needs to be accepted by institutional donors, transnational activist networks and humanitarian practitioners if they hope to be able to improve humanitarian outcomes for vulnerable populations in Karen State.

6. Conclusions

Eastern Burma has become a highly militarized space over the last half-century of internal conflict. This militarized environment, in and of itself, constitutes the single greatest threat civilians face, but it is important to distinguish between state-sponsored violence targeting civilians and militarized responses led by the KNLA, a distinction largely downplayed by anti-landmine activists. The discourse promoted by anti-landmine campaigners discounts the protective role that landmines can play, and fails to consider what life for civilians would be like without them. In its 2011 report on the humanitarian impact of landmines in Burma, Geneva Call acknowledges that civilians in Eastern Burma consider landmines essential tools to maintain their security. However, the report does not suggest alternative ways for civilians to protect themselves, and calls the use of landmines by private citizens who have no other means of securing themselves at their disposal “obviously worrying.”¹⁰⁴ The 2011 Landmine Monitor entry on Burma makes scant mention of the role played by landmines in securing humanitarian space, and instead focuses on instances where KNLA mines caused injuries to civilians¹⁰⁵.

Unfortunately, a myopic focus on the indiscriminate nature of landmines as weapons of war has precluded an objective analysis of the occasionally positive roles they can play in protecting civilians. In a March 2011 interview with Burmese-exile news service Mizzima, Yeshua Moser-Puangsuwan, a principal researcher for ICBL’s publications, rightly identified pervasive militarisation as the overriding security concern

¹⁰⁴ Geneva Call 2011, 12-14

¹⁰⁵ Landmine monitor 2011- Myanmar/Burma

in Eastern Burma, but reiterated his organisation's position "calling for an immediate halt in any new mine use by all actors"¹⁰⁶ to address the problem. Removing the agency of actors from the landmine debate fails to take into account that such uses of landmines by the KNLA and civilians themselves is strictly a response to government predation, and would cease if state-sponsored violence were to end.

The efforts of the ICBL to end the use of anti-personnel landmines altogether are laudable, and should continue. However, persuading the Burmese government to sign on to the Ottawa Treaty should be its sole focus, in tandem with demands that it end its predatory behaviour against civilians once and for all. Even if it does not ratify the treaty, the Burmese government's efforts to improve its international image would be bolstered by unilaterally adhering to the now almost-universally accepted international norm that precludes the laying of new mines.

The Burmese government's egregious violation of its responsibility to protect the safety and security of its own citizens should be the rallying cry to mobilise an instrumental humanitarian response from the NGO sector. As the letter of international humanitarian law prevents essential supplies and services from reaching vulnerable populations, the NGO sector has a moral imperative to disregard international humanitarian law when it comes into conflict with the norms established by R2P. Engaging in cross-border relief efforts to aid civilians subject to state-sponsored predation exemplifies the kind of operationalisation of the principles of R2P that is necessary to give the doctrine relevance in cases where multilateral military intervention is unwarranted.

¹⁰⁶ Mizzima, March 2011

As the onus to end the militarisation of Eastern Burma falls squarely on the shoulders of the Burmese government, it cannot be expected that the KNLA will serve as an ‘equal partner’ in reducing militarisation. Such moves will invariably have to come from the government first, and the activist/NGO sector needs to accept that the militarisation of civilian space in Eastern Burma is a reality that will not end unless the government makes a concerted effort to build peace. As such, NGOs have an obligation to make militarised spaces safer for affected populations in the interim. In cases where landmines – both indiscriminate weapons and necessary tools of protection – are used, this need becomes even more important.

While it may be difficult to persuade UN agencies to engage in cross-border operations that are illegal under international law, other agencies – especially ones that directly receive funding from government-led international development agencies - should disregard the moral and legal quandaries associated with working with allegedly ‘illegitimate’ non-state armed groups, and fund initiatives to make militarised spaces safer for civilians and combatants alike. Such initiatives could include training programs that go beyond mere risk education; the frequency of mine-related accidents in Eastern Burma indicates that civilians and combatants alike would benefit from training in safe and accountable mine placement, clearance and documentation techniques. Likewise, institutional donors and NGOs could fund important areas the KNU does not prioritise due to funding constraints, such as providing equipment for safe mine detection and clearance.

The KNLA will not stop using landmines so long as the Burmese government continues its predatory ways. In the context of the pervasive militarisation of Karen

State, landmines legitimately make civilians safer. It is only by recognising this reality that aid efforts can help make militarised spaces safer for civilians absent comprehensive peace. Combining activist pressure to convince the Burmese government to stop attacking civilians with practical programs to promote the safe use of landmines is the best strategy for NGOs and activist groups to pursue in the interests of improving civilian security in Karen State. While the human security issues faced by civilians in the region are manifold, such concrete actions can help promote civilians' rights to security and safety immediately, even in the face of ongoing state-sponsored predation and abuse.

WORD COUNT: 11,522

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Appendix A: Maps

1. States and divisions of Burma



2. Locally-defined Karen State



Maps courtesy Karen Human Rights Group Map Room:
<http://www.khrg.org/maps/index.html>

Appendix B: List of Interviews

1. Saw K____ S____, 40, former KNLA soldier and landmine victim, Mae La refugee camp, Tak, Thailand, December 2011
2. Saw D____, 35, former KNLA soldier and landmine victim, Mae La refugee camp, Tak, Thailand, December 2011
3. Saw M____ P____, 21, former KNLA soldier and landmine victim, Mae La refugee camp, Tak, Thailand, December 2011
4. Saw P____ K____, 36, former KNLA soldier and landmine victim, Mae La refugee camp, Tak, Thailand, December 2011
5. Saw H____ D____, 36, shopkeeper, Mae La refugee camp, Tak, Thailand, December 2011
6. Naw M____ C____, 27, landmine victim, Mae La refugee camp, Tak, Thailand, December 2011
7. Ko S____ N____, 23, medic, Mae Sot, Tak, Thailand, December 2011
8. Saw W____ K____, 40, medic, Mae Sot, Tak, Thailand, December 2011
9. Thai mineral broker, Kaw Hser village, Dooplaya district, Karen State, Burma, December 2011
10. Col. Nerdah Mya, Commander, KNLA 201 Battalion, Oo Kray Khee village, Dooplaya district, Karen State, Burma, December 2011
11. Franco Nerozzi, executive director, *Comunita Solidarista Popoli*, Oo Kray Khee village, Dooplaya district, Karen State, Burma, December 2011
12. Saw T____ S____, 36, security officer, Ei Tu Hta IDP camp, Papun District, Karen State, Burma, January 2012
13. Saw N____ T____, 43, camp leader, Ei Tu Hta IDP camp, Papun District, Karen State, Burma, January 2012
14. Naw C____, 44, schoolteacher, Ei Tu Hta IDP camp, Papun District, Karen State, Burma, January 2012

15. Naw H___ M___, 42, Ei Tu Hta IDP camp, Papun District, Karen State, Burma, January 2012

17. Saw K___, Ei Tu Hta IDP camp, Papun District, Karen State, Burma, January 2012

18. Saw M___ K___, medic, Mae Sariang, Mae Hong Son, Thailand, January 2012