Dynamics of Creating an International Disarmament Regime Banning Cluster Munitions: Power, Interest, and Knowledge

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This paper aims to explain the process of concluding the Convention on Cluster Munitions during 2007–2008 from three different theoretical perspectives: power-based realist, interest-based neoliberal, and knowledge-based cognitivist theories. The convention is a global disarmament regime that prohibits the use, stockpiling, production, and transfer of cluster munitions. Through such an account, the paper seeks to answer the following questions: Why did almost all of the participating countries in the negotiation process sign the convention? Why did major military powers, such as the United States, China, Russia, India, Pakistan, and South Korea, decline to participate in the treaty-making process and to join the convention? What was the role of NGOs and how crucial was their participation for the negotiation and conclusion of the convention? The realist theory does not provide us with a relevant explanation for why a majority of states in the world supported and joined the ban regime. Yet the theory has some validity in explaining why major military powers neither participated in the process, nor acceded to the treaty. The neoliberal theory provides a relevant explanation of how and why the common interests were formed and shared so widely among anti-cluster munition states as to move them toward the creation of a total ban treaty. The cognitivist theory provides a pertinent explanation for the roles of the CMC and the ICRC as epistemic communities in the process of the regime formation. The three theoretical perspectives are complementary to each other in fully understanding the process.

Keywords: Convention on Cluster Munitions, international disarmament regime, international regime theory, international security governance

Introduction

The Convention on Cluster Munitions (CCM) is an international treaty that prohibits the use, stockpiling, production and transfer of cluster munitions that have harmful humanitarian and socio-economic consequences. It also places obligations on states parties to clear the areas contaminated by cluster bomb remnants and destroy all

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**This work was supported by the National Research Foundation of Korea Grant funded by the South Korean government (NRF-2008-005-J01801).
stockpiles of the weapon. As an unprecedented feature of a disarmament treaty, states parties are also obligated to provide victims with assistance, such as medical care, rehabilitation, and social and economic inclusion.1 The convention was adopted in Dublin, Ireland, by 107 states on May 30, 2008, and signed in Oslo, Norway, on December 3 of the same year. It became a binding international law when it entered into force on August 1, 2010. As of October 8, 2012, there were 111 states that had signed the treaty and 77 states have become parties to the convention by ratifying it.2

A cluster munition is defined in Article 2 of the convention as “a conventional munition that is designed to disperse or release explosive submunitions, each weighing less than 20 kilograms, and includes those explosive submunitions.”3 Cluster munitions are a type of explosive weapon that is launched from the ground or dropped from the air, and which scatters tens or even hundreds of smaller submunitions. Cluster bombs have been known to bring about unacceptable harm to civilians during and after an armed conflict. First, since they spread tens or even hundreds of smaller submunitions indiscriminately over a wide area, cluster munitions inevitably cause civilian casualties when fired into populated areas. Second, cluster bombs leave a large number of unexploded submunitions that become de facto landmines, killing or maiming civilians long after the conflict ends.4

Because of these harmful effects, cluster bombs have aroused international concerns that their use may violate the principles of international humanitarian laws, especially those of distinction and proportionality.5 The two principles are codified in the Additional Protocol to the Geneva Conventions of June 1977. The principle of distinction requires that military attacks distinguish between combatants and civilians during hostilities so as to protect the latter. The principle of proportionality prohibits any attack that is likely to cause damage to civilians that exceeds the concrete and direct military advantage anticipated.6 Cluster munitions, due to their wide-area effects, fail to discriminate both during and after an attack when used in or near populated areas. In addition, they have been regarded as disproportionate because they have caused more harm to civilians than to military targets. A study by Handicap International, an international NGO based in Belgium, found that as many as 98 per cent of victims of cluster bombs over the past three decades have been civilians, one-third of them children.7 To make matters worse, cluster munitions have pernicious socio-economic effects for many years after their use because they “obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons.”8

The ban convention was an epoch-making and significant development for international disarmament governance for several reasons. First, the negotiation process leading toward the convention differed from previous treaty negotiations for international disarmament in that it involved nation-states, as well as numerous NGOs. Although states were primary actors in the negotiation process and the final signatories, they were certainly not the only influential actors. The roles of international NGOs, such as the International Committee of the Red Cross (ICRC), the Cluster Munition Coalition (CMC) as a global network of NGOs, and its key members, including Handicapped International, Human Rights Watch, and Landmine Action, were active participants as observers in the pre-negotiation and negotiation processes and crucial in the successful conclusion of the convention.9

Secondly, broad and effective cooperation among states, NGOs, and United Nations