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Cluster bombs – a taboo in the making?

Paper prepared for the
International Studies Association Convention 2009, New York, February 15-18
Panel „The Ethics of Disarmament“, February 18, 2009
(-First draft – thank you for not quoting without my permission-)

ABSTRACT After successful delegitimisations of WMD, similar developments can be observed for conventional arms, with the prohibition of cluster munitions being the second prominent example after the ban on anti-personnel landmines. This paper begins by arguing that the cluster munitions success is a puzzling case of weapon stigmatisation, because the negotiated outcome exceeded the expectations of all participating parties and because humanitarian concerns obviously outweighed military necessities. Unlike landmines, cluster munitions are weapons of undisputed military effectiveness, mainly employed by the major industrialised powers. To discuss why this success was possible, I utilise the theoretical framework developed by research on evolution and effects of international norms. After illustrating the taboo characteristics of cluster munitions, the empirical focus of this paper lays on the analysis of the process of stigmatisation, which has led to the adoption of the Oslo Convention on Cluster Munitions. The main theoretical point is that the dynamics of the prohibition of cluster munitions is an evidence for a cascade of norm prohibitions, since it illustrates how norm building itself becomes a normal practice and makes the delegitimisation of additional prohibitory norms easier to accomplish.

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Introduction: just another non-use norm?

The youngest milestone of humanitarian arms control is barely two months old: in December 2008, 94 countries signed the Convention on Cluster Munitions (CCM), announcing their intention to forgo the use, development, stockpiling and proliferation of these weapons, thereby concluding the Oslo process, which was launched in February 2007. This new norm marks another success in the line of qualitative arms control, which is usually dated back to the 19th century's developments in the field of international humanitarian law (IHL). After the first prohibitions restricted the use of some conventional weapons,¹ the international attention shifted to weapons of mass destruction (WMD), and powerful non-use norms on WMD emerged in the 20th century – legalised in international treaties, as in the case of biological and chemical weapons², and non-legalised as in the case of nuclear weapons.³ Although in the wake of the wars in Korea and Vietnam, some states had tried to push for regulations on conventional weapons, the first prominent success in this category – the Anti-Personnel Landmines Convention (in force since March 1999) – was only possible after the end of the Cold War. The document itself as well as the process leading to its adoption became important predecessors and models for the movement against cluster munitions: “like the Ottawa Process of the 1990s, a free-standing international process – a coalition of the willing including a wide range of states, international organizations and diverse civil society actors – developed a robust international legal norm to ban a weapon system of humanitarian concern” (Borrie 2008). The history of weapons prohibitions, the Ottawa analogy and the emphasised similarity between both kinds of weapons may suggest, that there is nothing surprising about another convention documenting the will of the states to give up voluntarily the option to achieve their military objectives by using all means available. The Oslo process is puzzling in several regards, though.

¹ The St. Petersburg Declaration of 1868 restricted the use of dum-dum bullets and projectiles containing an explosive or charged with fulminating or inflammable substances.

² Responding to the horrified reaction of the world public to the massive use of poisonous gases during World War I, the Geneva Protocol (Protocol For The Prohibition Of The Use In War Of Asphyxiating, Poisonous Or Other Gases, And Of Bacteriological Methods Of Warfare) was adopted in 1925. While the drafters of the Convention on Biological Weapons (in force since 1975) apparently regarded the non-use prohibition included in the Geneva Protocol as sufficient and saw no reason to restate it, the prohibition was reaffirmed in the Convention on Chemical Weapons (in force since 1997). Price (1995 and 1997) provides an analysis of the emergence of these norms.

³ While there is no legal norm explicitly prohibiting the use of nuclear weapons, the International Court of Justice argued in an Advisory Opinion published in 1996 that a nuclear use would violate several principles of international law very likely. However, the Court could not conclude that employing nuclear weapons would be illegal under all circumstances (Farrell/Lambert 2001: 309-310). Despite the unsettled legal status, several authors operate with the term “nuclear taboo” to argue that the behaviour of nuclear non-use can, at least partly, be explained by the existence of a global non-use norm (Paul 1995, Tannenwald 2007).

What is most striking is that the outcome of this process not only meets the expectations put into it, but even goes beyond them: Even organisations pursuing humanitarian aims, like Human Rights Watch or the International Committee of the Red Cross (ICRC), were not aiming at a total ban of cluster munitions at the beginning of their efforts, but rather advocated restrictions on a part of cluster munitions, namely such “that cause unacceptable harm to civilians”.⁴ Until the review process of these weapons would be conducted and international agreement would be achieved, they requested a moratorium (McGrath 2000: 54, Landmine Action 2002). This – compared to usual civil society positions – rather moderate demands can be attributed to two main factors: First, cluster munitions were considered as violating the principles of IHL not because of their *nature* but because of their *use*, so it did not seem that a general inconsistency of cluster munitions with international law could be attested (Justen 2008: 11). Second, technical solutions that would mitigate the problem, such as reducing the failure rates, and integrating self-destructive mechanisms into the bomblets, seemed at least possible (Hiznay 2006: 22-23).⁵ But the ban on cluster munitions is not only special because it is more than the humanitarian community dared to hope and to request for. It also deserves our attention because the constellation of actors in this case is different from previous prohibitions: Biological and chemical weapons as well as landmines were rather relevant for the poor and the weaker parties and in asymmetric conflicts.⁶ Therefore, the point could be made that the countries of the North could present themselves as civilised by passing prohibitions on weapons of marginal value for them and whose burdens would be carried by others. Conversely, cluster munitions are used by the highly modernised armies of the major industrial powers and mainly employed in interstate conflicts against developing countries.⁷

Moreover, the parallels drawn from the Ottawa Process lead to the overall assumption that cluster munitions have been banned because of their similarity to landmines. However, while the strategy of associating cluster munitions with landmines has been surely (and as the results show, successfully) pursued by the proponents of the ban, several important

⁴ <http://www.stopclustermunitions.org/the-problem/>, retrieved 10.02.2009.

⁵ Yet, they were viewed sceptically. One argument against too much optimism concerning technical fixes was the reluctance of governments to implement them due to high costs; allowing technologically advanced munitions and forbidding the old ones would disadvantage countries which could not afford the improvements (Borrie/Cave 2006: 10). Furthermore, the general feasibility was put in question – could the dud rates really be lowered to an acceptable scale and would the advanced versions also function reliably under battle conditions (Hiznay 2006: 23)?

⁶ Mainly used by and in developing countries, but also attractive for non-state actors like rebels, criminals or terrorists (McGrath 2000: 52, Hunger 2005: 89-91).

⁷ However, cluster munition use is documented for several conflicts in Africa including Democratic Republic of Congo, Eritrea, Ethiopia, Sierra Leone, Sudan, Uganda and Western Sahara. Nevertheless, the total numbers of cluster weapons used in these conflicts are marginal compared to those used by industrialised democracies. For an overview of uses see <http://www.stopclustermunitions.org/the-problem/history-harm/>, retrieved 10.02.2009.

differences between these two kinds of weapons need to be acknowledged. Whereas in the case of landmines, the pro-ban advocates succeeded in emphasising the military ineffectiveness of those weapons (Price 1998: 632), this argument could hardly be made for cluster bombs.⁸ The latter are weapons of “extraordinary military usefulness” (Krepon 1974: 599) because of their effectiveness in attacking area targets, and because of their efficiency, since an attack with cluster munitions “requires fewer platforms (aircraft, artillery tubes, etc.) to deliver fewer munitions to attack multiple targets, thus reducing the logistic burden and the exposure of forces to hostile fire” (Hiznay 2006: 16, Feickert 2007: 1). Hence, the prohibition will lead to a significant reduction of weapons available for area attacks (Justen 2008: 6). The scope of the landmine- and cluster munitions-related problems differs significantly, too. The landmine problem had a larger dimension both due to its geographical spread (about 75 countries are affected), and the numbers of victims (hundreds of thousands in total, about 15,000 new casualties per year).⁹ Compared to it, whereas the amount of *dropped* cluster munitions is enormous, the extent of the problem is smaller: 23 countries are known to be affected by cluster munitions and a total of about 12,000 victims have been confirmed¹⁰ (data: Handicap International 2006: 41). This is not meant to belittle the problem cluster munitions, especially, when taking into account that their lethality is considerably higher than of landmines. This higher rate is due to the explosive power of submunitions, causing not only more severe injuries to their victims, but also more likely affecting several persons in one accident. Nevertheless, most experts do not consider cluster bombs as being of *inherently* indiscriminate nature like anti-personnel mines (Borrie/Cave 2006: 7). This assessment results from the weapons’ different *purpose*: Whereas landmines are designed to be victim-activated and thus affect civilians by functioning as they should, cluster munitions “become a hazard only when they fail to operate as designed” (Beach 2001: 4).¹¹ Additionally, the user chooses the position where landmines are planted, but the positions of cluster munitions are mostly unknown, since it is not possible to trace the route of bomblets, which failed to land where they were supposed to (McDonnell 2002: 81). This means, that while it is possible in principle to protect civilians by marking an area contaminated with landmines, the “footprint” of submunitions is too large and less clear delimitable (Bryant 2006: 47). In brief, the civilian casualties are caused by the reliability of landmines and the unreliability of cluster munitions.

⁸ But a link has been drawn between military and humanitarian interests when arguing that improving the failure rates would not only protect civilians but increase the military effectiveness of the weapons as well (Wisotzki 2002: 10).

⁹ Data taken from the website of the International Campaign to Ban Landmines, <http://www.icbl.org/problem/what>, retrieved 10.02.2009.

¹⁰ Handicap International stresses that the real number reaches hundreds thousands.

¹¹ Some authors argue that also the clearance of unexploded cluster munitions is more dangerous than landmine clearance – the functioning of the latter is well known, while the uncertainty of clearing duds is much higher (Bryant 2006: 49).

To sum up, the ban on cluster munitions is neither a compromise based on the lowest common denominator, nor a treaty banning military irrelevant weapons without imposing any costs on its members. The signatories of the treaty, driven by both normative and instrumental motives, showed their willingness to bear the costs of destroying their current arsenals and of developing military alternatives. Hence, the ban is an interesting case of successful – and fast – weapon stigmatisation, where humanitarian concerns outweighed military necessities. Thus in the following, I will pursue the question, why the Ottawa Process could be replicated, despite the different characteristics of the weapons, a different constellation of actors, and their different cost structures? Or to put it in a more general way: Why and how could the norm on cluster munitions succeed now – and why did the efforts to prohibit cluster munitions fail thirty years ago? Fortunately, the question is not posed in a research vacuum, but can draw on a considerable amount of research on the evolution of international norms. After giving an overview of this research in the following part of my paper and concluding with a proposition of a theoretical modification, I will use the theoretical framework to take a closer look at the evolution of this particular international norm. An overview of the historical process is followed by a discussion of the strategies applied by the relevant actors and by an outline of the norm promoting mechanisms. In the conclusion, I will discuss my findings against the background of theoretical approaches dealing with international norms.

State of the art: norms, taboos and self-perpetuating normative evolution

Defining norms and their effects

The question, how we know an international norm when we see it, how norms evolve and how they become accepted or enforced by the actors, has gained much attention in the discipline of International Relations during the two recent decades. The increasing use of the term “norms” led to the common phenomenon in scientific practice that the spectrum of the meanings attached to the term increased as well (Thomson 1993: 67). Moreover, existing definitions are criticised for grasping norms “by what they do – their consequences for social life – rather than by what they are” (Elster 1989: 100). Indeed, it is not easy to determine the *nature* of norms independently from their effects on behaviour, and to extract those characteristics, which distinguish the norm from a rule, a convention or a value. Generally, two general notions of norms – both connecting explicitly norms and behaviour – can be distinguished: Cognitivist approaches conceptualise *attitudes towards* and *expectations of* a certain behaviour, that is, *standards of behaviour* as norms, whereas behaviourist approaches refer to existent *behavioural practices*, claiming that a “norm exists in a given social setting to the extent that individuals usually act in a certain way” (Axelrod 1986: 1097). Accordingly, the latter stress the *normality* of norms as “self-enforcing behavioral regularities” (Epstein 2001: 9), and the former their *normativity*, as expressed in the standard constructivist definition of norms provided by Ronald Jepperson, Alexander Wendt and Peter Katzenstein

(1996: 54): “Norms are collective expectations about proper behavior for a given identity“. This definition encompasses three dimensions of norms, which 1) include an imperative component, 2) define appropriate behaviour and 3) express “collectively shared understandings of reality” by a group of actors (Elgström 1998: 459; similarly Finnemore 1996a: 160 and Payne 2001: 37). The normative expectations are translated into systems of proscriptions and prohibitions opening a spectrum of required and allowed actions, thereby regulating behaviour.¹² To be normative, behavioural standards do not necessarily include a *moral* message, as argued by Audie Klotz (1996: 14) and others, conceiving moral norms as one of several possible types of norms.¹³ However, other authors criticise the neglect of moral aspects, emphasising that “oughtness“ contains a moral component (Goertz/Diehl 1992: 638-639, Nadelmann 1990: 481-582). Drawing on psychological and ethnological concepts, components of mysticism and fear are added to the moral and normative aspects by constructivist writings to invoke *taboos* as a special sub-category of norms (seminal: Tannenwald 1999, 2005) . This “particularly forceful kind of normative prohibition” refers to “something that is not done, said, or touched” (Tannenwald 1999: 436) and usually covers all objects belonging to a certain category (Freud 1940: 7) with the purpose to protect the society from threats (Freud 1940: 28).¹⁴

To explain the mechanisms how norms influence behaviour, two logics of action are distinguished: The logic of consequences based on the conception of actors as *homo oeconomicus* and the logic of appropriateness based on the conception of actors as *homo sociologicus*. Actor-centered, rationalist approaches assume actors aiming at profit maximisation, whose decisions depend on individual cost-benefit calculations and fixed preferences. Accordingly, the purpose of norms is to help individual actors – or groups of actors – to choose the optimal strategy to achieve the best possible result at the lowest possible costs. This result can be achieved due to reduced transaction costs, since norms enable actors to coordinate their actions and increase their willingness to cooperate by stabilising expectations.¹⁵ While norms cannot change the actors’ preferences, they can

¹² While Jon Elster (1989: 101) speaks of “obligations and interdictions, from which permissions can be derived“, Paul Kowert and Jeffrey Legro (1996: 452-453) use the term “social prescriptions (...) [which, ER] regulate behavior“ and are necessary “for the proper enactment of (...) identities“.

¹³ For example Hedley Bull (1997: 53): “These rules may have the status of law, of morality, of custom or etiquette, or simply operating procedures or ,rules of the game“.

¹⁴ Beyond their protective purpose, taboos also express and consolidate hierarchical structures creating different rights and obligations for members of a community, as Christopher Daase (2003: 23) points out in order to explain, why the nuclear taboo should be conceptualised as a non-use and a non-possession norm.

¹⁵ Especially the neoinstitutionalist regime theory which emerged at the beginning of the 1980s, has applied different game theoretical models to deal with the question, why states are willing to cooperate under the condition of international anarchy and how they manage to overcome inhibiting conditions like limited information and mistrust; seminal are the edited volumes of Krasner (1983) and Oye (1986).

influence their cost-benefit structures by functioning as systems of incentives and sanctions and hence, increase the probability that a certain behavioural option will be chosen. This concept is termed *logic of consequences*, since actors weigh up their alternatives, estimating their consequences and acknowledging that other actors calculate in the same way: Thus, the “behavior of individuals or states is influenced by providing consequentialist incentives” (March/Olsen 1998: 949-950). According to the concept of the *logic of appropriateness*, the guiding question behind the behaviour of actors is not “How do I get what I want?” but “What kind of situation is this?” and “What am I supposed to do now?” (Finnemore 1996b: 29). The reason behind such considerations is the objective of being accepted as a member of a social community by using norm-compliant behaviour as a confirmation of one’s identity for oneself and as a signal for “relevant others” (Jepperson/Wendt/Katzenstein 1996: 54, Cancian 1975: 137). James March and Johan Olsen (1998: 951) put the relationship between norms, identities and action as follows:

“...actors are imagined to follow rules that associate particular identities to particular situations, approaching individual opportunities for action by assessing similarities between current identities and choice dilemmas and more general concepts of self and situations. (...) Appropriateness need (sic!) not to attend to consequences, but it involves cognitive and ethical dimensions, targets and aspirations. As a cognitive matter, appropriate action is action that is essential to a particular conception of self.”

Whereas both logics explain individual behaviour, they draw on different factors to do so: the rationalist explanation assumes structure-independent, unitary motives for action, originating in the actor itself; the constructivist explanation, contrarily, stresses the meaning of social structure to understand individual behaviour. However, both logics are not to be conceived as either-or concepts. Rather, constructivist authors argue that actors may follow a different logic in different situations (Finnemore/Sikkink 1998: 888) and that the actors may be influenced both by cost-benefit calculations and normative considerations in the same situation, concluding with the compromise that “any particular action probably involves elements of each [logic, ER]” (March/Olsen 1998: 952). This applies perfectly for taboos, with fear being a perfect consequentialist motive stirring the desire for appropriate action.

While Sigmund Freud (1940: 87) claimed the tension between the desire to do something and the fear of the consequences of fulfilling this desire to activate the mechanism of suppression and thus, to be the origin of taboos, the challenge of reconstructing the origins of norms is recognised – but not solved – in the literature. Yet, norms tend to be treated as “unexplained sources of the exogenously given preferences of actors” (Florini 1996: 363). Large parts of the research concentrate either on the effectiveness of norms and on norm enforcing mechanisms, or the conditions favourable for their diffusion and institutionalisation. The synonymous use of “norm evolution” and “norm emergence” might

result from the notion that the emergence of norms does not refer to the emergence of the core idea of a norm, but to the norm's career, meaning the diffusion of individual, subjective understandings and their translation into collective beliefs and intersubjective behavioural standards. Paul Kowert and Jeffrey Legro (1996: 470-475) suggest that norms derive from other norms or emerge as a result of interaction between actors. The behaviourist argument assumes that "rules regulating human action can evolve without conscious human design" (Sugden 1989: 89, 95); thus, norms can be a contingent phenomenon resulting from simple habits creating expectations and thus turning to norms (Kratochwil 1991: 82-83). By constructing an analogy between norms and genes, Ann Florini (1996: 369) takes the term "evolution" seriously and stresses the nonteleological character of norm development which might occur incrementally and by small mutations, not necessarily striving towards a certain aim or being developed consciously to serve a specific function.

Norm entrepreneurs and mechanisms of norm evolution

To answer the question why norms evolve, a functionalist understanding suggests that norms fulfil certain functions, usually by offering solutions to certain problems (Kratochwil 1991: 69). While rationalist approaches assume evident problems demanding solutions as trigger of norm building processes, constructivists stress the necessity of raising problem awareness by influencing the highly selective public perception. The latter part is accomplished by so-called moral or norm entrepreneurs (Nadelmann 1990: 482), who shape public and diplomatic discourse and may act out of motives resulting from altruism, idealism and empathy. To cope with the problem that "new norms never enter a normative vacuum but instead emerge in a highly contested normative space, where they must compete with other norms and perceptions of interest" (Finnemore/Sikkink 1998: 897), norm entrepreneurs engage in practices of strategic social construction and framing, thereby providing new interpretations of a problem and suggesting appropriate solutions (Payne 2001: 39). An important factor for the promotion of norms is the existence of so-called organisational platforms, which might be networks created with the purpose of norm building, but also already existent international or transnational organisations (Finnemore/Sikkink 1998: 899). In short, norms constitute a reaction to necessities recognised and communicated by norm entrepreneurs and accepted by norm addressees.

How can the processes of communication and rising norm acceptance – in other words, the diffusion of norms – be explained? The central reproductive mechanism is imitation. Actors tend to imitate the behaviour of other actors for several reasons, uncertainty being one of them, rendering imitation to "a perfect rational strategy to adopt" (Finnemore 1996b: 11). Since uncertainty results from lack of information, actors tend to adopt the behaviour of those actors whom they consider to be better informed, hoping for a "primary benefit", that is material gains resulting from the action; beyond this, the desire for "secondary benefit" – namely positive social response and esteem as reactions to conformant behaviour – may

render imitation attractive as well (Bernheim 1994: 842). According to Martha Finnemore and Kathryn Sikkink (1998: 902-904), imitation, as soon as it occurs within a critical mass of states responsive for the efforts of norm entrepreneurs, is supposed to reach a tipping point that activates a norm cascade. While domestic pressure is considered to be crucial during the previous stage of norm evolution, in the cascade stage, the motor for norm diffusion are international socialisation processes to which states are susceptible because of their identity as members of the civilised international community.¹⁶

The idea of the norm cascade adapts the rationalist model of an informational cascade developed by Sushil Bikchandani, David Hirshleifer and Ivo Welch (1992). The authors try to explain imitation by assuming that actors make their decisions not only on the basis of their own impressions, but also based on available information concerning previous decisions of other actors. Hence, the more actors chose a certain option in the past, the higher the probability that an actor – aware of the previous decisions – chooses the same option (believing that so many people cannot be wrong). To put it differently: an idea gains attractiveness just due to the fact that an increasing number of others share it. A similar argument is made in some works of historical institutionalism (albeit seeking to explain institutional stability and not normative change), pointing out that “[o]nce established, patterns of political mobilization, the institutional rules of the game, and even citizens’ basic ways of thinking about the political world will often generate self-reinforcing dynamics” (Pierson/Skocpol 2002: 700). Such self-reinforcing dynamics constitute path dependence that is understood as

“the probability of further steps along the same path increases with each move down that path. This is because the *relative* benefits of the current activity compared with other possible options increase over time. To put it in a different way, the costs of exit – of switching to some previously plausible alternative – rise. Increasing returns processes can also be described as self-reinforcing or positive feedback processes” (Pierson 2000: 252).

Two crucial effects are identified behind such positive feedback processes: the coordination effect points to the phenomenon that a behavioural option, chosen by a number of actors, increases its benefits for other actors as well and will be chosen more often, consequently. The complementarity effect occurs not between actors, but between different options, when the choice of one options increases the probability of choice for the other (Beyer 2005: 18). The latter is linked to the main assumption that “[i]n path-dependent processes, the order of events may make a fundamental difference” (Pierson/Skocpol 2002: 700). These effects are implied in the idea, that a norm’s advancement depends on coherence with other norms: It will be easier for a norm to evolve, if other similar norms have made their way already and the new norm can attach to them (Florini 1996: 376-377).

¹⁶ See Alderson (2001) for a detailed discussion of socialisation processes.

Summary and theoretical proposition: cascade of norm prohibitions

Mechanisms like imitation, contagion, norm cascades and bandwaggoning focusing on the *interaction between the involved actors* have been shown to work during the evolution of single norms (Finnemore/Sikkink 1998, for an application of their model “norm-life cycle” see Kelley 2008). The *interaction between different norms* has received attention, too, and the “fitting” of new norms into the existing normative environment has been identified as a further significant factor (Keck/Sikkink 1998: 204). This argument stresses the responsiveness of the established normative network with regard to its *substantial* dimension, as a structure providing the possibility of “employing the already accepted arguments in support of the new norm” (Petrova 2008: 76), or providing precedents showing that norm building is “not only desirable but possible” (Price 1998: 629). Since the “cascade argument” and the “fitting argument” are meant to be complementary explanations, I would like to take this complementarity as a starting point and to suggest a minor theoretical addition to the idea of normative networks by considering their *quantitative* dimension as well. To be more precise, I argue that the tipping point of normative cascades does not only occur with regard to a critical mass of norm-adherent actors but the same effect is possible with regard to a critical mass of adopted norms. In a nutshell: the more norm building processes have succeeded in the past, the easier and faster new norm setting processes will be. This is not only plausible because lessons learnt from previous processes can be applied and, as has been argued already, a dense normative framework offers more concrete links for new norms, thus making it easier for them to be captured in the normative web. Following the cascade argument, the bare number of previous normative successes has an abstract persuasiveness and norm building itself becomes a normal practice – both in its habitual and normative sense.

In the following section, I will examine the conditions, which rendered possible the adoption of the convention on cluster munitions, considering both specific properties of the norm and the norm setting process as well as the general normative context.

Taboo aspects of the prohibition on cluster munitions*Definition*

As defined by Article 2 of the Convention on Cluster Munitions, a “cluster munition means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions.” A cluster munition may contain several hundreds of submunitions, which are also commonly referred to as bomblets. Contrary to what the term “cluster munition” might suggest, the weapons “work” by dispersion and fragmentation – “cluster” probably refers to their original purpose which was to destroy concentrations (=clusters) of heavy armour like tanks, artillery or infantry in the battlefield. Thus, cluster munitions belong to the so-called area weapons

which are not designed to be directed against specific targets but to cover large territories – up to five football fields. Cluster munitions can be both delivered by air attacks and launched via artillery from the ground (Krepon 1974: 595, Borrie/Cave 2006: 5).

Inhumanity

According to the view that the “sense of abhorrence of a particular weapon” constitutes a necessary condition to its prohibition (Meron 2000: 83), the main argument for a ban on cluster munitions is their characterisation as inhumane weapons, primarily based on their impact on the civilian population, but also on the kind of injuries inflicted by the weapons. Their harmful humanitarian consequences are twofold: Bomblets may kill, maim, or wound civilians *during an area strike* against a military object; either because military and civilian objects are commingled or because some misguided submunitions land in populated areas.¹⁷ Secondly, they may fail to explode and these so-called “duds” remain in the affected area *after the strike*, ready to detonate when activated by a touch or vibration.¹⁸ Thus, like landmines, cluster bombs duds are victim-activated weapons detonating on contact – one reason to consider them as taboo objects that should not be touched.

Secondly, the submunitions’ mechanisms of action are blast and incendiary effects as well as fragmentation; these explosions are lethal, both to civilians and to combatants, cause losses of limbs or inflict terrible wounds leaving scars: “If you have an accident with a landmine you would hope to live ... if you have an accident with a submunition and survive, you will probably wish you hadn’t” (Bryant 2006: 49). Thus, while now that the norm exists, it might be expected for the future that its violators will be stigmatised, but the survivors of incidents with cluster munitions may become subject to social exclusion due to their injuries and appearance as well: “individuals already burdened with physical and psychological trauma often, as a result, confront social and economic exclusion” (UNIDIR 2008: 13).¹⁹ Categorising cluster munitions as weapons causing superfluous injuries leads some authors to the conclusion that: “Outside of nuclear weapons, biological weapons, or poison gas, it is hard to imagine a weapon more harmful to human beings than cluster bombs” (McDonnell 2002: 70).

¹⁷ This can happen because the bomblets are equipped with braking mechanisms like parachutes, which make them susceptible to environmental conditions – they may simply be blown away from their original target and land far away from it (Maresca 2006: 28).

¹⁸ http://www.handicap-international.org.uk/page_347.php, 10.02.2009.

¹⁹ This is a parallel to the survivors of the nuclear bombings of Hiroshima and Nagasaki, who are named *hibakusha* (literally translation: persons damaged by explosion). About 250.000 *hibakusha* still live in Japan today, facing decades of exclusion and stigmatisation in the Japanese society (Tatara 1998: 143-144).

Fear

Given the dangers created by cluster munitions, their ability to create fear – being the basis of taboos – is evident. Not only civilian population feels terrified, either during an attack or after accidents with duds, but also the reports of soldiers who have experienced a cluster munitions attack suggest that these weapons affected them in a special way: Troops feel demoralised by “steel rain”, as they characterise cluster munition attacks (Beach 2001: 4) which are said to “undermin[e] the morale of enemy forces through fear of the weapons’ effects and being exposed to large numbers of casualties horrifically injured by bomb fragments” (McGrath 2000: 7).

Beyond these physical and psychological traumas on civilian population and troops, the remedy of cluster munitions creates a long lasting general “climate of insecurity” complicating any efforts for post-conflict rehabilitation (UNIDIR 2008: 12). The danger of being killed or injured by a dud bomblet has severe socioeconomic and environmental consequences for the affected populations: In regions contaminated by explosive remnants of war (ERW) inaccessible – taboo – areas emerge. Agricultural activities become risky, what in turn, means income losses; the way to school may be a threat to life, so children stay at home; refugees cannot return to their homes; humanitarian organisations are hampered in their work; and resources needed for reconstruction are absorbed by clearing activities (Docherty 2002: 28-31, Hunger 2003, UNIDIR 2008: 15-19).

Illegality

Prior to the Convention on cluster munitions, which rendered their use illegal to its parties (and possibly even to its non-parties, as soon as the norm will be deemed as part of the customary law),²⁰ proponents of a prohibition of cluster munitions have referred to provisions of international humanitarian law to justify the delegitimisation of cluster munitions. Whereas originally, the focus of the debate lay on wide-area cluster attacks as belonging to the category of the forbidden carpet-bombing, in the recent discussion preceding the ban, it shifted to the landmine-like effects of unexploded bomblets (Wiebe 2003: 95). The legal foundation of the prohibition will be presented in the following.

Generally, bans on weapons are grounded in international humanitarian law, which regulates the practice of warfare. Although “attempts to regulate war are as old as war itself” (af Jochnick/Normand 1994: 55), it might seem paradoxical that the majority of the norms of warfare has been codified after war as such had been declared illegal state practice by the

²⁰ Richard Price (2004: 107) argues that while a treaty ratification obviously demonstrates that a party is bound by its provisions, obligations may derive also from “more informal sources such as custom”. Customary legal norms on the one hand are constituted by the *general state practice* (widespread norm-conforming behaviour) and *opinio juris* (the belief, that this behaviour complies with international law).

Kellogg-Briand Pact in 1929 (Côté 2004: 154). The law of armed conflict – originally the *law of war* and since the 1949 Geneva Conventions *international humanitarian law* – constitutes such a precautionary measure for the case that a breach of the prohibition of force occurs (Greenwood 1994: 8). It encompasses all international norms applying to the conduct of hostilities, including norms protecting the civilian population and prohibiting certain means and methods of warfare. The motivations behind international humanitarian law are diverse: “At the heart of such rules lies the ‘overriding consideration of humanity’” (Shaw 2003: 1066) aiming at humanising warfare and minimising human suffering if war itself could not be prevented; furthermore, limitation of damage and compliance with the rules should encourage ceasing the hostilities. Accordingly, one function of IHL is the promotion of peace (Bothe 2001: 642-644). The objectives of IHL have been incorporated in two strands of international law: the so-called Geneva Law, formulated from the perspective of victims of armed conflict and regulating the protection of individuals (combatants and civilians), and the Hague Law, formulated from the perspective of the combatants and regulating the conduct of warfare (Bothe 2001: 642, Ipsen 2004: 1211-1212). The latter acknowledges the interest of the parties to damage the enemy and determines acceptable *methods, means* and *targets* of military actions. Since the adoption of the Additional Protocols I and II to the Geneva Conventions in 1977, the strands are no longer co-existing, but have been merged into one regime of international humanitarian law; thereby, the “somewhat artificial” distinction has been given up (Blix 1988: 135).

Originating in the Hague tradition and included in Additional Protocol I of the Geneva Conventions,²¹ the principle of discrimination and the principle of proportionality are the two critical proscriptions to justify military non-use norms in general and a prohibition of cluster munitions in particular. These rules imply three conclusions: 1) the only legitimate purpose of violence is subduing the enemy, 2) his defeat is to be achieved with the lowest damage possible, and 3) no persons who are defenceless or surrender shall be targeted (Blix 1988: 136, Bothe 2001: 654, Greenwood 1994: 26). Proportionality means that when deciding how to conduct an attack, the weapon assuring a minimum of suffering, injuries, victims and damages should be chosen, while the principle of discrimination includes an obligation to distinguish between military and non-military targets. Accordingly weapons, which cannot be targeted against a specific target or whose effects cannot be restricted to a specific area, are illegal (Ipsen 2004: 1252-1252).

²¹ Relevant articles are article 35, 48, 51, 52, 54 prohibiting attacking civilians and civilian objects, article 57 proscribing precautionary measures and article 58 obliging the parties to avoid targets located near densely populated areas.

	Proportionality	Discrimination
During a strike	Collateral damage	Indiscriminate targeting Misguided submunitions
Post-strike	Victims of duds Clearance costs	Victims of duds

How cluster munitions possibly violate principles of IHL

As can be recognized easily, cluster munitions violate the principle of distinction by being used against *areas including military targets*, but not restrictively against *specific military targets* (McDonnell 2002: 98). Indiscriminate effects cannot be deemed as unintended consequences of their use, but correspond to the very purpose of these weapons and “were entirely intended by their designers” (Wiebe 2008: 31). So, even though cluster munitions have surely not been used with the objective to cause civilian casualties, the latter were knowingly accepted and can therefore be still interpreted as intentional action.²² Indiscriminate effects of cluster munitions occur in two ways: through inaccurate targeting (against military areas where coincidentally, civilians may be hit, or against military objects located near to civilian areas, or through bomblets which missed their target) and through submunition duds exploding after a strike – in any case injuring or killing non-combatants.

The extent of civilian losses due to indiscriminate effects of the munition plays a role when deciding upon the maintenance of the principle of proportionality. Some experts and international organisations argue, that with regard to cluster munitions, the proportionality test should be “interpreted as encompassing more than immediate loss” (Docherty 2002: 15). The argument means that casualties caused by cluster munitions that failed to explode during a strike should be taken into account as well, which would likely result in a characterisation of cluster munitions as disproportionate weapons (Maresca 2006: 29).

In a nutshell: While cluster munitions are not inherently – but potentially – problematic under the principles of proportionality and discrimination during a military strike (since the risks could be reduced), the humanitarian concerns attached to them are exacerbated by their long-term consequences. Even if a sole attack may meet the IHL requirements, the effects of unexploded bomblets will not.

²² As Thomas McDonnell (2002: 82) puts it: “Under general principles of criminal law, however, an actor may still be considered to have acted intentionally when he or she hopes that an injury will not occur yet knows to a practical certainty that it will. Thus, even though neither the designers who made the bomblets, nor the Generals who ordered their use, nor the pilots who delivered these bombs may have intended the harm, they would still be acting intentionally because they knew that it is practically certain that a deadly device made to look like a toy will be picked up by children.”

Norm evolution: the process of outlawing cluster munitions

First try in the 1970s: effective weapons, ineffective framing

After World War II, especially the allied powers were rather reluctant towards strengthening the regime of international humanitarian law, concerned that this might provoke criticism of their warfare practices, especially the massive air strikes against cities with enormous numbers of civilian victims (Würkner-Theis 1990: 11). Yet, conflicts in Southeast Asia, in particular the use of napalm bombs during the war in Vietnam, generated a public moral outcry demanding further regulations of conduct of warfare. The fact that public attention was absorbed by the terrifying consequences of the use of napalm, was one reason that the US Air Force perceived it as a right moment to begin using cluster bombs at a large scale in Vietnam (also targeting cities), keen to maintain the image of cluster bombs as absolutely conventional, standard weapons (McDonnell 2002: 41, Krepon 1974: 600-604).

They did not manage to keep the weapons off the international agenda, though: The use of cluster bombs in Vietnam and Laos was publicised by humanitarian organisations (like the Mennonites and Quakers). The International Committee of the Red Cross initiated a series of conferences (beginning 1971 in Istanbul) aiming 1) at the adoption of Additional Protocols to the Geneva Conventions, which would reaffirm and further develop limitations on warfare practices and 2), at limiting the use of certain weapons. In this context, an ICRC-led working group issued a report with the title “Weapons that May Cause Unnecessary Sufferings or Have Indiscriminate Effects” which served as a basis for about a dozen states to formulate requests to prohibit certain conventional weapons. At the “Diplomatic Conference on the Reaffirmation and the Development of International Humanitarian Law Applicable in Armed Conflicts”, convened by the Swiss government in four sessions in Geneva between 1974 and 1977, an ad hoc Committee on Conventional Weapons was installed. This committee was supported by two conferences of governmental experts, held in the Swiss cities of Lucerne (1974) and Lugano (1976). Cluster munitions came under scrutiny there, and, pointing at the wide-area nature of the weapons and their devastating and unavoidable effects on civilian population, seven countries²³ presented a draft document suggesting a prohibition of cluster bombs to serve as basis for discussion. While a ban seemed illusionary – due to the resistance of major military powers both on the side of NATO and the Warsaw Pact – the decision was made to hand over the issue to the UN. In 1977, by adoption of the resolution A/RES/32/152, the UN General Assembly decided to convene a conference in order to explore at least restrictions on the use of certain conventional weapons that were suspected to have indiscriminate and injurious effects (Matthews 2001: 993-995, Wiebe 2003: 96; Würkner-Theis 1990: 14-21). The result of the 1979 meeting was a framework document – the

²³ Egypt, Finland, Mexico, Norway, Sweden, Switzerland and Yugoslavia.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (briefly Convention on Certain Conventional Weapons, CCW).²⁴ The CCW, while banning weapons with non-detectable fragments, included no provisions on fragmentation weapons in general. This meant that the efforts to ban cluster munitions failed at that time.²⁵

One reason for this failure was that the framing of cluster munitions as problematic weapons was not sufficient to create enough political will and to sustain public attention. Concluding from the standards that were set by later prohibitory campaigns, the message chosen by the norm entrepreneurs was too complex, since it focused both on the weapons' effects on combatants (by emphasising that these *fragmentation* weapons caused unnecessary suffering) and on civilians (by emphasising that these *wide-area* weapons were indiscriminate). This argumentation implies a somewhat contradictory and overloaded statement: If the weapons cause superfluous injuries to combatants, their *nature* is unlawful, notwithstanding the possibly indiscriminate effects in turn of their *use*. If their ability to distinguish between combatants and civilians is discussed, this implies, that their nature is not the problem, but the inaccurate use. Furthermore, the public focus on cluster munitions vanished soon because of two factors: First, compared to incendiary weapons, the "public outcry over cluster bombs was neither as sustained nor were there equally graphic images in the press showing the effects of cluster bombs" (Wiebe 2003: 96). Secondly, due to the lacking problem awareness for the long-term effects of cluster munitions, the problem seemed over as soon as the (Vietnam) war ended and thus, could easily be forgotten.

My hypothesis, derived from the considerations above, is that first efforts of stigmatising cluster munitions failed because 1) apart from biological weapons, several norm setting processes – outlawing chemical weapons, outlawing landmines, establishing the regime on explosive remnants of war – had not happened yet, so the self-enforcing dynamics of weapons prohibitions could not occur; 2) the normative network of norms of warfare lacked density with the Additional Protocols on Geneva Conventions freshly adopted; and 3) cluster

²⁴ The CCW, consisting of then three (since 1996 of four and since 2003 of five) protocols, was opened for signature in 1981 and entered into force in 1983. Protocol I prohibits weapons producing fragments non-detectable with x-ray (e.g. plastic); Protocol II laid ground for the Anti-Personnel Landmines Convention, but itself was of limited reach; Protocol III prohibits the use of incendiary weapons (but only against civilian population); Protocol IV prohibits the use of laser weapons capable of causing permanent blinding; and Protocol V imposes the obligation on users of weapons leaving explosive remnants to mark and clear the affected areas (Lang/Kumin 2001: 139).

²⁵ Also other very limited achievements (no complete ban on anti-personnel landmines and booby traps, no complete ban on incendiary weapons, no provisions to prohibit or regulate the use of other weapons including fuel-air explosives and small calibre bullets, no mechanisms to monitor and verify compliance or to sanction violations) underlined the impression that military considerations prevailed over humanitarian concerns (Mathews 2001: 996-997).

munitions lost the competition for public attention, and thus, regulation against other weapons (namely napalm).

Second try: landmine precedent and Kosovo intervention

After the disappointment with the weak CCW, regulation efforts on conventional weapons were dormant in the 1980s, but gained new momentum, when in 1992, in the wake of the massive landmine uses of the past decades, the International Campaign to Ban Landmines (ICBL) was launched by civil society organisations. The anti-landmine movement directed its efforts on the First Review Conference of the CCW (held in 1995), where they hoped to amend the insufficient regulations of the CCW and to pass a total ban on landmines. While this issue proved too controversial to achieve agreement within the CCW, cluster munitions did not make it on the agenda at all – despite their extensive uses against Iraq during the second Gulf War in 1991. Even though the humanitarian community had tried to draw parallels between cluster munitions and landmines, they soon recognised that this strategy might put success in the landmine case at risk, since the opposition to restrictions on cluster munitions was much stronger (Wiebe 2003: 97). Thus, the ICBL concentrated on landmines and succeeded in 1997, when the Ottawa Convention banning anti-personnel landmines was opened for signature.²⁶

By the end of the decade, however, the NATO war against Serbia brought cluster munitions back to the international agenda. The fact that the intervention itself was highly controversial, since it was undertaken without an authorisation of the Security Council, surely contributed to the fact that its methods, targets and means became objects of public attention and, in turn, public criticism as well – hence, the perception of one norm violation increased the attentiveness for possible further violations. In this aerial war, the US, British and Dutch forces employed about 1,800 cluster munitions containing 300,000 submunitions, flying at high altitudes and attacking a number of dual use targets like bridges and power plants. The air strike strategy served the protection of NATO forces, but led to 150 dead and hundreds injured and maimed civilians, either hit by cluster bombs during the strikes and or being victims of the remedy of estimated 30,000 unexploded submunitions (ICRC 2001: 36).

After Kosovo, norm entrepreneurs used the window of opportunity to initiate consciousness-raising activities: Human Rights Watch requested a moratorium on cluster munitions and the Swiss government asked to consider a ban within a framework of the CCW. Further uses of cluster munitions in the war between Eritrea and Ethiopia in 2000, against Afghanistan (since 2001), again against Iraq (2003) and against Lebanon (2006) underscored the urgency behind these demands. Ban requests were supported by the instrument of spreading information about the dimensions of the problem; several reports on the impact of

²⁶ For details of the norm setting process see Price (1998).

cluster munitions and unexploded ordnance in general were published. Finally, during the preparatory meetings for the second review conference of the CCW, the issue of explosive remnants of war was brought to discussion. In November before the 2003 review conference, the Cluster Munitions Coalition (CMC) was founded to increase the pressure on the governments to deal with the ERW problem. While, as expected, Protocol V on Explosive Remnants of War was adopted by the end of 2003, it was not perceived to sufficiently cover the problems of cluster munitions – whose urgency and prevalence had been underlined by research pointing out both their effects as area weapons and the dud problem (Nash 2006: 36). Therefore, the CMC decided to campaign for a separate approach to cluster munitions, aiming on a breakthrough at the third Review Conference in 2006.

The success did not materialise, though, since the declaration proposing a legal instrument to regulate the use of cluster munitions did not receive the required majority of CCW members (Justen 2007: 12-13). Once again, the notion that the primary purpose of this organ was meeting the military necessities of the parties was confirmed. The reaction of the regulation proponents was the same as it had been ten years ago when the CCW failed to achieve agreement on landmines: This time, Norway took the initiative to create an organisational platform, when its Foreign Minister Jonas Gahr Støre announced that an agreement on cluster munitions will be sought outside the framework of the Convention and invited all interested parties to take part at the first meeting in Oslo in February 2007.²⁷ The Oslo Process started there and included further four conferences convened in capitals of the core group of countries leading the process, namely Lima (May 2007), Vienna (December 2007), Wellington (February 2008), and finally, Dublin (May 2008). Expert meetings hosted by the ICRC and the CCW accompanied the process, as well as a conference of states affected by cluster munitions, hosted by the Serbian government and the UNDP. Following steps have been made at the main stations: Oslo and Lima served to demonstrate the general political will to achieve a success on the one hand, and, on the other hand, made obvious the willingness of developing countries to participate actively in the process. The main task for Vienna was to agree on a definition of cluster munitions; its major success was that the previous restrictive phrase “that cause unacceptable harm to civilians“ could be eliminated, opening the way for a total ban. Moreover, the claim that advanced munitions containing mechanisms for self-deactivation would be less harmful was disproved by a report presented by Norwegian NGOs and a British expert. The meeting in Wellington was supposed to work out the mechanism for the concluding textual negotiations in Dublin, where finally, a draft treaty was adopted. This was solemnly signed in Oslo in December 2008 by almost 100 countries and will enter into force six months after having reached 30 ratifications.

²⁷ The remainder of this paragraph is based on Borrie (2008) and Justen (2008).

Norm entrepreneurs and their strategies

As to the actors relevant for this process, three features have been critical for the development of the norm: the cooperation of ban-supporting governments and the humanitarian community (the so-called “new multilateralism”); the individual initiatives of some countries; and – marking an important difference to the Ottawa process – the intensive participation of developing countries, which underlined that cluster munitions pose a global threat requiring joint action.

Although civil society has surely played a major role in a norm setting process again, the role of humanitarian-motivated governments should not be underestimated as well. On the governmental side, the perception that cluster munitions were highly problematic weapons because of their impact on the civilian population had emerged very early after first documentations publicised their effects, without intensive lobbying from transnational actors (Maresca 2006: 27). However, it is the emergence of the new multilateralism, based on the convergence of societal and governmental interests, which was crucial for humanitarian concerns to be translated in concrete action. The civil society directed its lobbying efforts at different levels: On the domestic level, it was the advocacy of Handicap International that convinced the Belgian government to announce unilaterally a moratorium on cluster munitions in 2006, even before the launch of the Oslo process (Nash 2006: 40). Furthermore, some countries, which originally supported longer transition periods and exemptions of certain versions of cluster munitions, changed their positions during the negotiations in Dublin. In case of United Kingdom, this step-by-step change is attributed to a domestic discourse opposing cluster munitions, which began in the wake of Kosovo, taken up echoing the Afghanistan and Iraq wars and intensified during the negotiations of the Oslo Process (Petrova 2008: 88-90). On the international level, beyond being engaged in activities aiming at sharpening public awareness (like the organisation of the Global Day of Action), the CMC was acting well organised and strategically during the negotiations. It succeeded in formulating clear messages for different stages of the process and in convincing the governments that the proposed technical solutions were inadequate. Additionally, NGOs concentrated their lobbying efforts on governmental delegations without a clear position, by providing information and helping them to formulate their statements (Justen 2008: 16).

Governmental actors contributed to the norm-setting in three main ways: Without the initiative of the core group to launch the Oslo process, determined to develop a legally binding international instrument on cluster munitions and willing to host the negotiation process, the success would have been impossible. Furthermore, pioneer acts of national legislation suspending the use of cluster munitions – as passed in Belgium (in June 2006), in Norway (June 2006), in Austria (February 2007) and Hungary (May 2007) – created points of reference and offered an option suitable for imitation. Such signals were also submitted by individuals from the governmental side, namely the Presidents of the five conferences, who

made their decisiveness clear to conclude negotiations successfully and facilitated this success by admitting civil society observers to the negotiations, thereby assuring transparency of the process and increasing pressure on the delegations.

The norm entrepreneurs managed to create an atmosphere that stigmatised both cluster munitions users and governments showing reluctance to join the treaty. Prominent users like Russia and the USA, though demonstratively keeping out from the Oslo process, successively modified their positions. Originally, both had opposed any kind of restrictions on the munitions, but finally, they seemed open to consider a regulation within the CCW (Borrie 2008). The governments of UK, France and Germany (quite surprisingly) gave up their strategy to create loopholes like transition periods and defining acceptable dud rates, which were supposed to save some parts of their arsenal, and finally declared to support a total ban. Interestingly, although the newly emerging norm has not led to overall compliance yet, the stigma on cluster munitions has showed its socialisation effects even on norm-breakers and non-supporters of Oslo: During the conflict in late summer 2008, Russia and Georgia exploited the stigma to discredit each other before the international community by accusations of cluster munitions use (Justen 2008: 6).

Settling the norm in a normative environment

Price (1998: 628-630) uses the term “grafting” to explain how the already established normative environment fosters the development of new norms by providing precedents and points of reference actors can draw on to strengthen their arguments. The elements of this normative environment, which were used argumentatively to provide a framing for the stigmatisation of cluster munitions can be categorised based on their degree of generality: At a higher level, the ideal of human security – standing for a shift of the focus from security of states to security of individuals – was critical for the general progress of humanitarian arms control after the Cold War (Wisotzki 2008: 177-179). Thus, the decision to consequently frame the debate on cluster munitions in humanitarian and developmental terms and less in the vocabulary of disarmament and military effectiveness proved effective. At the middle level, the norms of International Humanitarian Law have been supported by the sharpened focus on the protection of civilians (especially children) in armed conflict.²⁸ Further, the goal to minimise civilian casualties that was used by democracies to add more legitimacy to military interventions against Kosovo, Iraq and Afghanistan has functioned as a mechanism of self-entrapment,²⁹ since the use of cluster munitions could no longer be justified without

²⁸ By adopting resolutions 1261 on the situation of children during armed conflict and 1265 on the protection of civilian population during armed conflict in 1999, the UN Security Council not only acknowledged the problem at a top political level, but also adopted first thematic resolutions dealing with human rights problems (Weiss/Forsythe/Coate 2001: 173).

²⁹ See Schimmelfennig (2001: 72-76) for the mechanism.

getting caught up in contradictions. Whereas the prohibition of anti-personnel mines surely was the most powerful concrete norm building the core of cluster munitions stigmatisation strategy, it was not the only one, though: Cluster munitions could also be linked to the prohibition of carpet bombing and to the broader problem of unexploded ordnance with its humanitarian and developmental impact, already addressed by the ERW Protocol. This associative and analogising strategy was accompanied by a strategy of dissociation: Cluster munitions needed, at the one hand, to be constructed as different from other conventional weapons and on, the other hand, to be delinked from the discussions on smart, clean warfare by pointing out their indiscriminate effects and characterising them as “dumb” (McDonnell 2002: 50, Nixon 2007: 163).

Conclusions: slippery slope of banned weapons?

This paper started from the point that the norm on cluster munitions is puzzling, since it prohibits very effective weapons mainly (but not only) employed by western countries and considerably different from landmines regarding their purpose and the scope of the problem. While admitting that the framing of these weapons as “de facto landmines”, which constituted the core of the demands for prohibition and supported the construction of cluster munitions as weapons of particular cruelty had its effects, I nevertheless argued that a focus on this strategy alone can neither account for the fact that even governments relying on cluster munitions during their military operations were receptive for it, nor for the fact that the process produced an outcome which was above all expectations. I approached these questions against the theoretical background on the evolution of international norms and taboos, proposing an extension of the idea of a norm cascade: once the international community breaks the path of normative change and a tipping point of successful normative processes is reached, norm building itself becomes a normal practice.

The findings from the case of cluster munitions support the state of the art by showing that mechanisms like framing, socialisation and persuasion have been important factors for a successful process. Like the model of a norm life cycle indicates, the domestic pressures on certain actors were of greater importance at the beginning of the norm setting process while at later stages, international socialisation gained momentum. However, more than previous cases, the cluster munitions stigmatisation process highlights the importance of a conducive normative framework, since it is its existence that explains why these effects could emerge now and failed to do so thirty years ago, as the first efforts to prohibit these weapons were attempted. First, this normative network provided imitable models for how stigmatisation processes can be organised and filled with substance. Second, it provided “docking stations” which enabled associative processes necessary to follow the pro-ban argumentation. Thirdly, it provided the ground for the perception that imposing prohibitions on certain weapons is normal, since it happened several times in the past. The last argument is exactly what some

governments fear when they try to avoid any further steps on the “slippery slope of banned weapons”³⁰ or what I suggest to be called a cascade of prohibitory norms of warfare.

References

- Alderson, Kai 2001: Making sense of state socialization, in: *Review of International Studies* 27: 3, 415-433.
- Axelrod, Robert 1986: An Evolutionary Approach to Norms, in: *American Political Science Review* 80: 4, 1095-1111.
- Beach, Hugh 2001: Cluster Bombs: the Case for New Controls, *International Security Information Service*, Briefing Paper No. 25, May 2001.
- Bernheim, Douglas B. 1994: A Theory of Conformity, in: *The Journal of Political Economy* 102: 5, 841-877.
- Beyer, Jürgen 2005: Pfadabhängigkeit ist nicht gleich Pfadabhängigkeit! Wider den impliziten Konservatismus eines gängigen Konzepts, in: *Zeitschrift für Soziologie* 34: 1, 5-21.
- Bikchandani, Sushil/Hirshleifer, David/Welch Ivo 1992: A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades, in: *The Journal of Political Economy* 100: 5, 992-1026.
- Blix, Hans 1988: Means and Methods of Combat, in: UNESCO (ed.): *International dimensions of humanitarian law*. Dordrecht: Nijhoff, 135-151.
- Borrie, John 2008: How The Cluster Munition Ban Was Won: Oslo Treaty Negotiations Conclude in Dublin, in: *Disarmament Diplomacy*, Issue No. 88: Summer 2008.
- Borrie, John/Cave, Rosy 2006: The humanitarian effects of cluster munitions: why should we worry?, in: *Disarmament Forum* 2006: 4, 5 - 14.
- Bothe, Michael 2001: *Friedenssicherung und Kriegsrecht*, in: Vitzthum, Wolfgang Graf (ed.): *Völkerrecht*. Berlin: Walter de Gruyter, 603-679.
- Bryant, Kevin 2006: Cluster munitions and their submunitions--a personal view, in: *Disarmament Forum* 2006: 4, 45 - 50.
- Bull, Hedley 1977: *The Anarchical Society: A Study of Order in World Politics*. London/Basingstoke: Macmillan.
- Cancian, Francesca M. 1975: *What are norms? A Study of Beliefs and Action in a Maya Community*. Cambridge: Cambridge University Press.
- Côté, Luc 2004: Compliance with the Laws of War: The Role of the International Criminal Tribunal for Rwanda, in: Luck, Edward C./Doyle, Michael W. (ed.): *International law and organization: closing the compliance gap*. Lanham: Rowman & Littlefield, 153-183.
- Daase, Christopher 2003: Der Anfang vom Ende des nuklearen Tabus. Zur Legitimitätskrise der Weltnuklearordnung, in: *Zeitschrift für Internationale Beziehungen* 2003: 1, 7-41.
- Docherty, Bonnie 2002: *Fatally Flawed: Cluster Bombs and their use by the United States in Afghanistan*, Human Rights Watch Report, 18.12.2002.
- Elgström, Ole 1998: Norm negotiations. The construction of new norms regarding gender and development in EU foreign aid policy, in: *Journal of European Public Policy* 7: 3, 457-76.
- Elster, Jon 1989: *The Cement of Society. A Study of Social Order*. Cambridge: Cambridge University Press.

³⁰ The expression was used by Bobby Muller, President of the Vietnam Veterans for America Federation to explain the Pentagon's reluctance to adhere to the Anti-Personnel Landmines Convention (quoted in: *The Lancet* 2002: 273).

- Epstein, Joshua 2001: Learning to be Thoughtless: Social Norms and Individual Computation, in: *Computational Economics* 18: 1, 9-24.
- Farrell, Theo/Lambert, Hélène 2001: Courting Controversy: international law, national norms and American nuclear use, in: *Review of International Studies* 27: 3, 309-326.
- Feickert, Andrew 2007: Cluster Munitions: Background and Issues for Congress, CRS Report for Congress, June 27, 2008.
- Finnemore, Martha 1996a: Constructing Norms of Humanitarian Intervention, in: Katzenstein, Peter J. (ed.): *The Culture of National Security: Norms and Identity in World Politics*. New York: Columbia University Press, 153-185.
- Finnemore, Martha 1996b: *National Interests in International Society*. Ithaca/London: Cornell University Press.
- Finnemore, Martha/Sikkink, Kathryn 1998: International Norm Dynamics and Political Change, in: *International Organization* 52: 4, 887-917.
- Florini, Ann 1996: The Evolution of International Norms, in: *International Studies Quarterly* 40: 3, 363-389.
- Freud, Sigmund 1940: *Totem und Tabu. Einige Übereinstimmungen im Seelenleben der Wilden und der Neurotiker*. London.
- Goertz, Gary/Diehl, Paul F. 1992: Toward a Theory of International Norms: Some Conceptual and Measurement Issues, in: *Journal of Conflict Resolution*, 634-664.
- Greenwood, Christopher 1994: Geschichtliche Entwicklung und Rechtsgrundlagen, in: Fleck, Dieter (ed.): *Handbuch des humanitären Völkerrechts in bewaffneten Konflikten*. München: Beck, 1-33.
- Handicap International 2006: *Fatal Footprint. The Global Human Impact of Cluster Munitions*.
- Hiznay, Mark 2006: Operational and technical aspects of cluster munitions, in: *Disarmament Forum* 2006: 4, 15 - 26.
- Hunger, Roman 2003: Explosive Remnants of War: The Problem, Center for Contemporary Conflict, Strategic Insight April 2, 2003.
- Hunger, Roman 2003: The Convention on Certain Conventional Weapons, Center for Contemporary Conflict, Strategic Insight March 5, 2003.
- Ipsen, Knut 2004: Bewaffneter Konflikt und Neutralität, in: Ipsen, Knut (ed.): *Völkerrecht*. München: C. H. Beck, 1195-1290.
- Jepperson, Ronald R./Wendt, Alexander/Katzenstein, Peter 1996: Norms, Identity and Culture in National Security, in: Katzenstein, Peter J. (ed.): *The Culture of National Security: Norms and Identity in World Politics*. New York: Columbia University Press, 33-75.
- Justen, Detlev 2007: Streumunition im Visier des Völkerrechts. Die politischen Prozesse zum Erreichen eines Abkommens zu Streumunition, SWP-Aktuell 51, Oktober 2007.
- Justen, Detlev 2008: Der Oslo-Prozess zum Verbot von Streumunition. Die Stigmatisierung von "Cluster Bombs" hat begonnen, SWP-Studie S 30, Oktober 2008, Berlin.
- International Committee of the Red Cross 2001: *Explosive Remnants of War*, Geneva.
- Keck, Margaret E./Sikkink, Kathryn 1998: *Activists Beyond Borders. Advocacy Networks in International Politics*. Ithaca: Cornell University Press.
- Kelley, Judith 2008: Assessing the Complex Evolution of Norms: The Rise of International Election Monitoring, in: *International Organization* 62: 2, 221-255.
- Klotz, Audie 1996: *Norms in International Relations. The Struggle Against Apartheid*. Ithaca: Cornell University Press.
- Kowert, Paul/Legro, Jeffrey 1996: Norms, Identity and Their Limits, in: Katzenstein, Peter J. (ed.): *The Culture of National Security: Norms and Identity in World Politics*. New York: Columbia University Press, 451-479.

- Krasner, Stephen (ed.) 1983: *International Regimes*. Ithaca/London: Cornell University Press.
- Kratochwil, Friedrich V. 1991: *Rules, norms, and decisions. On the conditions of practical and legal reasoning in international relations and domestic affairs*. Cambridge: Cambridge University Press.
- Krepon, Michael 1974: *Weapons potentially inhumane: the case of cluster bombs*, in: *Foreign Affairs* 52: 3, 595-611.
- Lancet, The 2002: *Landmines and cluster bombs – picking up the pieces*, in: *The Lancet* 359: 9303, 273.
- Landmine Action 2002: *UXO - a global legacy as lethal as landmines*, Landmine Action Campaign, Issue 5, Spring 2002.
- Lang, Winfried/Kumin, Andreas 2001: *Disarmament Issues*, in: Cede, Franz/Sucharipa-Behrmann, Lilly (ed.): *The United Nations – Law and Practice*. The Hague: Kluwer, 127-141.
- March, James G./Olsen, Johan P. 1998: *The Institutional Dynamics of International Political Orders*, in: *International Organization* 52: 4, 943-969.
- Maresca, Louis 2006: *Cluster munitions: moving toward specific regulation*, in: *Disarmament Forum* 2006: 4, 27 - 34.
- Mathews, Robert J. 2001: *The 1980 Convention on Certain Conventional Weapons: A useful framework despite earlier disappointments*, in: *IRRC* 83: 844, 991-1012.
- McDonnell, Thomas Michael 2002: *Cluster Bombs Over Kosovo: A Violation Of International Law?*, in: *Arizona Law Review* 44: 1, 31-131.
- McGrath, Rae 2000: *Cluster Bombs: The Military Effectiveness and Impact on Civilians of Cluster Munitions*, UK Working Group on Landmines, August 2000.
- Meron, Theodor 2000: *The Martens Clause, Principles of Humanity, and Dictates of Public Conscience*, in: *American Journal of International Law* 94: 1, 78-89
- Nadelmann, Ethan 1990: *Global Prohibition Regimes: The Evolution of Norms in International Society*, in: *International Organization* 44: 4, 479-526
- Nash, Thomas 2006: *Stopping cluster munitions*, in: *Disarmament Forum* 2006: 4, 35 - 44
- Nixon, Rob 2007: *Of Land Mines and Cluster Bombs*, in: *Cultural Critique* 67, 160-174
- Oye, Kenneth A. (ed.) 1986: *Cooperation Under Anarchy*. Princeton: Princeton University Press.
- Paul, Thazha V. 1995: *Nuclear Taboo and War Initiation in Regional Conflicts*, in: *Journal of Conflict Resolution* 39: 4, 696-717
- Payne, Rodger A. 2001: *Persuasion, Frames and Norm Construction*, in: *European Journal of International Relations* 7: 1, 37-61
- Petrova, Margarita H. 2008: *Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies*, in: Evangelista, Matthew/Müller, Harald/Schörning, Niklas (ed.): *Democracy and Security. Preferences, Norms and Policy-Making*. London/New York: Routledge, 72-101.
- Pierson, Paul 2000: *Increasing Returns, Path Dependence, and the Study of Politics*, in: *The American Political Science Review* 94: 2, 251-267
- Pierson, Paul/Skocpol, Theda 2002: *Historical Institutionalism in Contemporary Political Science*, in: Katznelson, Ira/Milner, Helen V. (ed.): *Political Science: State of the Discipline*. New York/London: W. W. Norton & Company, 693-721.
- Price, Richard 1995: *A Genealogy of the Chemical Weapons Taboo*, in: *International Organization* 49: 1, 73-103
- Price, Richard M. 1997: *The chemical weapons taboo*. Ithaca: Cornell University Press.
- Price, Richard 1998: *Reversing the Gun Sights: Transnational Civil Society Targets Land Mines*, in: *International Organization* 52: 3, 613-644
- Price, Richard 2004: *Emerging Customary Norms and Anti-Personnel Landmines*, in: Reus-Smit, Christian (ed.): *The Politics of International Law*. Cambridge: Cambridge University Press, 106-130.

- Schimmelfennig, Frank 2001: The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union, in: *International Organization* 55: 1, 47-80
- Shaw, Malcolm N. 2003: *International law*. Cambridge: Cambridge University Press.
- Sugden, Robert 1989: Spontaneous Order, in: *Journal of Economic Perspectives* 3: 4, 85-97
- Tannenwald, Nina 2007: *The Nuclear Taboo: The United States and the Non-Use of Nuclear Weapons since 1945*. Cambridge, UK: Cambridge University Press.
- Tannenwald, Nina 1999: The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-Use, in: *International Organization* 53: 3, 433 –468
- Tannenwald, Nina 2005: Stigmatizing the Bomb: Origins of the Nuclear Taboo, in: *International Security* 29: 4, 5–49
- Tatara, Mikihiro 1998: The Second Generation of Hibakusha, Atomic Bomb Survivors. A Psychologist's View, in: Danieli, Yael (ed.): *International Handbook of Multigenerational Legacies of Trauma*. New York: Plenum Press, 141-146.
- Thomson, Janice E. 1993: Norms in International Relations: A Conceptual Analysis, in: *International Journal of Group Tensions* 23: 1, 67-83
- UNIDIR 2008: *The Humanitarian Impact of Cluster Munitions*, Geneva: UNIDIR/2008/1.
- Weiss, Thomas G./Forsythe, David P./Coate Roger A. 2001: *The United Nations and Changing World Politics*. Boulder/Oxford: Westview Press.
- Wiebe, Virgil 2003: Cluster Bombs and Explosive Remnants of War: Cooperation and Conflict Between Non-Government Organizations and Middle-Power States, in: Rutherford, Kenneth R./Brem, Stefan/Matthew, Richard A. (ed.): *Reframing the Agenda: The Impact of NGO and Middle Power Cooperation in International Security Policy*. Westport: Praeger Publishers, 91-112.
- Wiebe, Virgil 2008: For Whom the Little Bells Toll: Recent Judgments by International Tribunals on the Legality of Cluster Munitions, in: *Pepperdine Law Review* 35.
- Wisotzki, Simone 2002: *Menschliches Leid durch überlegene Feuerkraft: Demokratien und der Einsatz von Streubomben im Krieg*, HSK Standpunkte 3/2002. Frankfurt am Main.
- Wisotzki, Simone 2008: Humanitäre Rüstungskontrolle im 21. Jahrhundert, in: *Friedens-Warte* 83: 2-3, 177-198.
- Würkner-Theis, Gerold 1990: *Fernverlegte Minen und humanitäres Völkerrecht*. Frankfurt am Main: Lang.