



# Regulating Cluster Munitions

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On 20 March 2007, British Defence Secretary Des Browne announced that the UK will immediately cease all use of 'dumb' cluster munitions. In February, the government agreed to support talks toward an international treaty banning the use of cluster munitions which cause unacceptable harm.

The main elements of a proposed treaty are to:

- prohibit use and transfer of unacceptable cluster munitions
- strengthen existing international humanitarian law and improve compliance
- set narrower conditions for the acceptability of their use
- improve transparency among producers and stockpilers of the weapon
- strengthen and encourage state participation in post-conflict remedial measures

The ban does not cover so-called 'smart' cluster munitions. These still carry the risk of technical failure and pose a serious threat to civilians. UNA-UK is a member of the Cluster Munitions Coalition, a global network of 177 civil society organisations, which demands an immediate moratorium on the use of all cluster munitions.

## What are cluster munitions?

Each cluster munition consists of large numbers of submunitions, also called 'bomblets', and is either dropped by aircraft or fired from the ground. The submunitions are released over the target area with the intention of detonating on impact and dispersing shrapnel over a 50-metre radius; the total 'footprint' of each munition can reach up to one square kilometre. The military rationale for these weapons rests on their 'economy of fire', which reduces the financial, logistical and human burden of operations by enabling a relatively small force to engage and degrade a larger enemy.

## Civilian effects

Cluster munitions have both immediate and long-term consequences for civilians. In addition to the death and maiming caused during actual attacks, post-conflict effects include:

- Development: preventing the return of displaced civilians and hampering reconstruction
- Lingering threat: civilians returning to affected areas are at risk, especially children who are almost five times more likely to suffer casualties due to the brightly coloured, toy-like appearance of submunitions

- Humanitarian space: obstructing relief agencies, NGOs and peacekeepers from conducting humanitarian and security activities. (In the two weeks following the ceasefire that brought to an end the recent conflict in Lebanon, unexploded cluster submunitions killed 13 people and injured 46, and held back the delivery of aid and the return of civilians to areas of southern Lebanon.)

## Military utility

In war, humanitarian impact must be weighed up against military effectiveness. In the case of cluster munitions, the humanitarian effects are devastating and the military utility increasingly questionable. Warfare has changed in ways that reduce the effectiveness of cluster munitions. The latest armoured tanks can withstand the weapon's effects, and modern conflicts are frequently located in populated areas.

## Legal considerations

International humanitarian law prohibits the use of weapons and methods of warfare designed to cause superfluous injury. Additional Protocol I (1977) of the Geneva Conventions contains four rules that are of particular relevance to the use of cluster munitions in or near populated areas:

- Rule of proportionality: attacks must balance military advantage with civilian impact
- Rule of distinction: attacks must distinguish between military and civilian objects
- Rule against indiscriminate attacks: attacks unable to distinguish are prohibited
- Rule on feasible precautions: maximum care must be taken to avoid civilian injury

## 'Dumb' and 'smart' munitions

States that use the weapon assert that its humanitarian effects can be reduced by replacing 'dumb' models with the latest 'smart' models, which have a target discrimination or self-deactivation mechanism. But smart bombs still fail, so the move to smart bombs will not override the humanitarian problems caused. Nor will it regulate improper use of the weapon.

## Progress towards a treaty

Attempts in the mid-1970s to introduce a treaty regulating cluster munitions contributed to the establish-

ment in 1980 of the UN Convention on Conventional Weapons (CCW):

- The CCW is dedicated to restrictions against weapons with indiscriminate effects.
- In 2003, states negotiated CCW Protocol V on Explosive Remnants of War (ERW) – the first multilateral agreement aimed at minimising post-conflict effects of such weapons.
- States parties must remove their ERW from their territories and facilitate their removal from other territories; record and share information; and take all feasible precautions to protect humanitarian activities and civilians from ERW.
- It entered into force in November 2006 and has been ratified by 31 states, but only France out of the P5 is currently a state party.
- The CCW has failed so far to address specifically the particular problems associated with cluster munitions.

The shortcomings of the CCW have led to attempts to develop a prohibition regime outside of its framework. The most prominent of these attempts was launched at a conference in Oslo hosted by the Norwegian government from 21 to 23 February 2007.

## The Oslo process

- 46 out of 49 states committed to 'conclude by 2008 a legally binding international instrument' to 'prohibit cluster munitions that cause unacceptable harm'.
- The UK, France, Italy, Germany and Switzerland shifted their stance to a stronger position than held prior to the conference.
- Key states emphasised the continued UN role in developing a treaty, highlighting the complementary nature of the Oslo process and the CCW in their closing remarks.
- Future meetings will take place in Lima on 22-25 May 2007, at which a treaty text will be discussed, in Vienna in late 2007 and Dublin in early 2008.

To the disappointment of the NGO participants, explicit mention of a moratorium on the weapon's use was removed from the final text of the conference's declaration, and only cluster munitions that 'cause unacceptable harm' were included in the scope of the proposed treaty.

UNA-UK, with its partners in the Cluster Munitions Coalition, calls on the UK to cease immediately the use of all forms of cluster munitions.