



Unexploded cluster munitions discovered on a hillside.
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Cluster Munitions: The Ban Process

Cluster munitions are a serious issue because of the lack of specialized restrictions on their use and the high volume of explosive remnants of war that the weapons can create. Although all weapons are governed by international law, the lack of a specific convention addressing these weapons led many nongovernmental organizations and countries to join together to create a ban in what has become known as the Oslo Process, with the most recent conference held in May 2008 in Dublin.

by Suzanne Tice [Mine Action Information Center]

The use of cluster munitions has become a topic of international concern, gaining widespread attention over the last year. The use of these munitions, and particularly the hazard posed by those that failed to explode during conflict, has in some countries such as the Lao People's Democratic Republic and Lebanon contributed to civilian

casualties over the last 40 years. Cluster munitions, commonly referred to as "cluster bombs" (even though many types are launched by artillery, tanks or from ships and not just dropped from aircraft), release smaller submunitions. These submunitions, sometimes described as *bomblets*, are released "over a wide area to destroy dispersed, moving



Special Commission Team verifies Iraq's destruction of chemical weapons.

and unseen targets.¹¹ When these submunitions reach the ground or intended target area, they are supposed to detonate. In some cases, as with all munitions such as unitary artillery shells, bombs and mortar shells, these submunitions do not explode and can remain a long-term hazard after conflict has ended. The failure rate of cluster bombs has been estimated at approximately 5 percent.²

There are many types of cluster munitions. The Geneva International Centre for Humanitarian Demining's publication, *A Guide to Cluster Munitions*, classified cluster munitions into "five categories, depending on:

- their means of delivery;
- their intended effects;
- the type of fuzing system they contain (including sensor fuzing systems);
- whether or not they have a target or guidance mechanism; and
- whether or not they have a self-destruct mechanism.¹³

The most widely used cluster munitions, however, are anti-personnel and anti-tank (anti-vehicle) weapons. The purpose of AP cluster munitions is to target unarmored

targets, specifically human beings, over a large area. The purpose of AT cluster munitions is to target heavily armored moving objects.

The overwhelming threat of these weapons is obvious: bomblets dropped by cluster munitions cause serious injury not only to military personnel, but also to civilians. These munitions function by releasing shrapnel over a large radius. The effect of shrapnel impact on the human body is severe, generally resulting in the loss of limbs or death. According to Landmine Action, "The blast from the high-explosive charge inside each bomblet or submunition can lead to blindness and internal complications."¹⁴

The threat from a cluster-munition attack is serious, but of equal importance is the effect of unexploded cluster munitions that remain on the ground. The use of cluster munitions cause instances of serious injury or death not only to military personnel and targets, but also to civilians who stumble upon unexploded cluster munitions canisters after the battle.

This problem has a severe effect on civilians. In many cases, farmers come in contact with these weapons when tending their land, and children fall victim to these ERW while playing in open fields. At times, children may even mistake cluster munitions canisters for toys.

There are over 30 countries affected by cluster munitions, including Afghanistan, Ethiopia, Iraq, Lebanon and Saudi Arabia.⁵ Unexploded cluster munitions became a serious problem in Lebanon after the July 2006 conflict between Hezbollah and

Israel, during which Israel used cluster munitions in abundance. As a result, there were reports in 2006 of over 180 casualties from cluster submunitions in Lebanon following the 33-day conflict.

Cluster munitions use was first discussed in the context of the Convention on Certain Conventional Weapons.⁶ In 1983, the CCW issued three annexed protocols concerning the weapons in question. The three protocols consisted of a ban on nondetectable fragments; the prohibition of mines, booby traps and other devices; and a ban on incendiary weapons. As later CCW meetings were held, two more protocols were created. Protocol V (2003), or the Protocol on Explosive Remnants of War, was the second of the two protocols and includes a regulation on the clearance of cluster munitions (as well as other unexploded ordnance). The protocol, however, does not encompass any type of preventive measure or regulation of cluster munitions. This obstacle and other factors caused strife with anti-cluster-munitions groups and activists. CCW have since discussed the issue again as part of ongoing negotiations; however, no restrictions on cluster munitions have yet been made. As a result of the decision by High Contracting Parties to the CCW to not include a restriction on cluster munitions, leaders and activists decided to take steps to create their own convention dedicated to these weapons.

Oslo Process

In addition to implementing a ban on cluster munitions, the Norwegian government held an anti-cluster munitions conference in Oslo, Norway, on 22–23 February 2007. The opening speech of the Oslo Conference was delivered by Steve Goose, Co-chair of the Cluster Munitions Coalition, the organization that is leading the fight against cluster munitions. Representatives from the CMC spoke at length about the threat and effects of cluster-munitions attacks and the subsequent ERW contamination. They also discussed the importance of international legislation against these weapons and urged conferees to heed countries like Austria, which had previously placed a moratorium on the use, transport and manufacture of cluster munitions. The CMC also urged attendees to commit to a more permanent solution: the development of a ban on cluster munitions.

During this conference, 46 countries agreed to declare a ban on cluster munitions. Some of the countries that took a more active role in the conference were Austria, Costa Rica, Ireland, Mexico, New Zealand, Norway and Peru; specifically, these countries agreed to develop a legally binding agreement that “prohibits the use ... of cluster munitions that cause unacceptable harm to civilians” and establishes “a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation to survivors and their communities.”⁷

The 46 countries also committed to taking national action against cluster munitions and continuing “to address the humanitarian challenges posed by cluster munitions within the framework of international humanitarian law.”⁸ Lastly, each of the countries promised to continue the fight against cluster munitions by attending future meetings. It was also decided that different countries would sponsor forthcoming conferences as a way of demonstrating their commitment to the cause. During this gathering, the CMC announced that Peru would hold the next conference in its capital, Lima. Other countries would then have the opportunity to participate, and additional conferences were planned for Vienna, Austria; Wellington, New Zealand; and Dublin, Ireland, throughout 2007 and 2008.

During the Oslo Conference, the CMC set specific guidelines for cluster-munitions conferences. The coalition created a set of 19 standards to ensure consistency throughout cluster munitions action. Some of the elements the CMC agreed should be included in the convention were “a prohibition on the use, production, transfer and stockpiling of

cluster munitions,” “an obligation by signatories to destroy their stockpiles of cluster munitions within a specified period of time,” “an acknowledgement of the responsibility to protect civilians from cluster munitions,” and “a provision prohibiting withdrawal from the treaty if engaged in armed conflict.”⁹

Results of the second conference. The next conference was held in Lima, Peru, on 23–25 May 2007. This time, representatives from 67 nations attended the event, including 27 new participants. Since the Oslo Conference, Costa Rica, Hungary and Peru had passed legislation creating initiatives against cluster munitions. During this conference, the topic of defining cluster munitions was of increased importance. A group of countries, which included Denmark, Finland, France, Germany, Italy, the Netherlands, Switzerland and the United Kingdom, spearheaded the issue of definition.¹⁰ According to the CMC’s report on the Lima Conference, additional issues addressed were victim assistance, clearance, stockpile destruction, and international cooperation and assistance.¹¹

Specifically, leaders wanted to address the lack of quality health care facilities and mental and physical rehabilitation centers in areas directly affected by cluster munitions. Members of the conference agreed that, in order to achieve greater success, they must adopt a more humanitarian approach to the issue. The leaders addressed the increased contamination of cluster munitions and strategies to clear contaminated areas. Also, in areas of high contamination, convention signatories agreed it would be appropriate to increase mine-risk education.

The leaders and nations involved also agreed that cluster munitions should be destroyed in their territories. The discussion of stockpile destruction sparked an intense debate between countries that stressed immediacy and countries that requested a transitional period or, in some cases, exceptions to a ban. The members also discussed assisting areas with high cluster-munitions use and contamination levels. Attendees specifically wanted to spearhead a system of international assistance for the cluster munitions crisis.

Lastly, and most importantly to some nations, the conference signatories discussed the definition of cluster munitions. Denmark, Germany, the Netherlands and others called for a wide-ranging definition that included self-destruct explosives, whereas countries such as Chad, Mexico and Peru disagreed with such an all-encompassing definition.

Defining cluster munitions. The next conference in the Oslo Process was the Vienna Conference. The Conference began on 4 December 2007. This time, representatives from only 50 countries appeared at the event; however, the conference resulted in much progress. According to a CMC press release, the Coalition was confident that, as a result of the Vienna Conference, a ban would be signed the following year.¹²

During the Vienna Conference, Austrian leaders discussed the country’s initiatives toward a ban on cluster munitions. According to the Austrian government, the country has adopted a comprehensive moratorium concerning cluster munitions and has, along with countries such as Ireland, Mexico and New Zealand, promoted an international convention. According to the Austrian Foreign Ministry’s report on the Vienna Conference, the goals of the conference were to create a “real mandate from the international community to pursue a legal ban on cluster munitions” and “a clear common understanding of all the elements of the future international treaty.”¹³ Although conferees did not completely succeed in accomplishing their goals, the conference was a stepping stone for the creation of a cluster-munitions ban.

The conference centered on the discussion of the definition of cluster munitions, which became a major debate among participants in the Oslo Process. Conference leaders who had hoped that Austria’s



A United Nations Interim Force in Lebanon soldier views undetonated cluster bombs not more than 10 meters from the home of Aleje Al-Dor, a Lebanese woman who stayed throughout the conflict. Al-Dor speaks about the cluster bombs, which are still strewn about.

moratorium on cluster munitions would be an example for conference participants found that some countries remained unconvinced. As a result, the debate raged on.

Discussing the ban and exceptions to it. After meeting in Vienna, CMC and governmental leaders met for the next conference in New Zealand; the Wellington Conference began 18 February 2008. Representatives from 136 countries and nine organizations attended

the historic event. The overarching theme for this conference was not definition (like the previous conference), but disarmament. Countries and representatives discussed the nature of the ban on cluster munitions. More specifically, some countries asked for exceptions to the ban or the creation of a transitional period. For the most part, the convention to ban cluster munitions did not change in any way; instead, minority states with concerns compiled a separate document to be

discussed and examined during the next conference in Dublin. In addition to creating this document, the dissenting states made a closing statement, declaring that their views were not properly considered in the conference and lobbied for more serious negotiations among states.

Victim testimonials were another major addition to the meeting. Many of the victims from the 38 states that attended gave vivid descriptions on how cluster bombs (either from the initial attacks or UXO that remained) caused physical or psychological harm. One survivor said, "I lost my eye, and my life was devastated when my uncle and brother were killed by a cluster bomb attack. We urgently need a treaty to ban these deadly weapons and to help survivors rebuild their lives."¹³

The major accomplishment of this conference was the drafting of a cluster-munitions ban, which was scheduled to be reviewed in Dublin. The text was ostensibly the same as that presented at the Lima meeting, but the material continued to be refined to address parties' concerns.

Agreeing to the ban. The Dublin Conference, held 19–30 May 2008, was attended by over 100 countries. The purpose was to review the draft of the ban on cluster munitions and further discuss some contested matters.

According to the Cluster Munitions Coalition's report on the Dublin Conference, the key areas of concern for the conference were "victim assistance, joint military operations, transition period, stockpiling, clearance and definitions."¹⁵ One particular area of debate that was resolved was the issue of transitional periods. After intense discussion, the 100 countries in attendance agreed

that stockpiles of cluster munitions must be destroyed within eight years. Another resolution of the conference was the creation of a concrete, all-encompassing definition of cluster munitions. The parties agreed that the ban should be placed on "all types of existing cluster munitions ... including M85s, BLU97s and MLRS weapons."¹⁵ However, due to changes in definition, certain types of weapons previously classified as cluster munitions, including the SMART 155 and BONUS systems, are not included in the ban. Also, Article 21 of the ban, which focuses on interoperability, allows states to participate in joint military operations with countries using cluster munitions.

After intense discussion, the Dublin Conference culminated in the formal adoption of a ban on cluster munitions by over 100 countries. According to Grethe Sthern of Norwegian People's Aid and the CMC, "As of today, ... [t]he world is a safer place thanks to the Oslo Process."¹⁶

Expected Success

Cluster munitions are a serious threat to military personnel as well as civilian populations. These weapons are known to cause extensive damage to human beings and property and have been rejected by a large number of nations and international organizations. Some countries, such as China, the United States and Russia, which are parties to the CCW, do not agree with a strict focus on cluster munitions and consequently have not signed the ban. Great international concern about the use of these weapons, however, resulted in a process to ban cluster munitions.

Despite international debates on the nature of the cluster-munitions ban, each conference

has brought the Oslo Process closer to reaching its goal. Whether or not countries agree on the extent of the threat of cluster munitions or the nature of the Oslo Process, the hard work and determination of the Oslo Process participants has resulted in a speedy agreement. Time will tell if it is a successful agreement.

Now that the ban has been formally adopted, leaders of the Oslo Process are closer to enacting a legal, explicit ban on cluster munitions. The signing of the convention is set to take place in Oslo, Norway, in December 2008. Once 30 countries ratify the convention, it will enter into force for the signatories.¹⁴ ♦

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Special Announcement

The next issue of the *Journal of Mine Action* will feature "Cluster Bombs: The Ongoing Debate." Watch for more articles detailing the cluster-munitions issue and discussing the controversy in Issue 12.2.