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Explosive Remnants of War

Working Group on Explosive Remnants of War

Reliability and Use of Cluster Munitions

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Introduction

1. Pursuant to the mandate of the Working Group on Explosive Remnants of War, States Parties will continue to consider the implementation of existing principles of international humanitarian law (IHL) and further study possible preventive measures aimed to improve the design of certain specific types of munitions, including submunitions. In doing so, States Parties endeavor to minimize the humanitarian risk of these munitions becoming explosive remnants of war.

Reliability

2. Cluster munitions are a legitimate means of defense permissible under international law. However, cluster munitions can cause considerable harm after cessation of an armed conflict, in particular in the form of dangerous duds, *i.e.* when they fail to detonate. Cluster munitions must, therefore, be technically reliable in order to reduce the occurrence of dangerous duds to the maximum extent possible.

3. Cluster munitions should be equipped with mechanisms to limit their operational time after deployment against targets. The term “limitation of operational time” includes self-destruction or self-neutralization mechanisms. Nonpersistence is the master key to balance humanitarian and military interests, and should be applied comprehensively on cluster munitions.

4. Germany aims to achieve a maximum rate of dangerous duds of one per cent. A functional reliability at this level has to be maintained throughout the entire effective life of the cluster munitions. To this end, stockpiled cluster munitions have to be tested at regular intervals in order to ensure proper function.

5. Against this background, the Federal Ministry of Defense has decided, primarily, to employ only those cluster munitions, which include a limitation of the operational time and which have a

maximum dud rate of less than one percent. Cluster munitions, which cannot be adapted to these standards, will, as a matter of principle, not be made available for use; furthermore, they are being, and will continue to be, phased out of the stocks of the Federal Armed Forces.

6. In implementing this decision, the BL-755 cluster munition previously commissioned in the Federal Air Force has continuously been phased out since the year 2001 as a consequence of its unacceptable dud rate.

7. A special type of munitions for the “Multiple Launch Rocket System” of the Federal Army—the M26 cluster munition—constitutes another example of the consequences of this policy: As the M26 cluster munition has not yet been provided with a mechanism to limit the operational phase, use of this type of munition is envisaged only after a modernization.

8. It goes without saying that future arms procurement decisions are based on this position.

Use

9. Cluster munitions are, as stated *supra*, a lawful means of defense pursuant to the rules of international law. However, general provisions and restrictions of international law apply on its use as on the use of any other type of conventional weapon.

10. These general provisions and restrictions of international law prohibit making the civilian population the object of the use of any conventional weaponry. Therefore, a distinction shall at all times be made so as to grant maximum protection to members of the civilian population.

11. Furthermore, it is prohibited to make any military objective located within a concentration of civilians the object of attack by means of cluster munitions, except when—

- such military objectives are clearly separated from the concentration of civilians *and*
- all feasible precautions are taken with a view to limiting the effect of the cluster munitions to the military objective and to avoiding, or in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

When a choice is possible between cluster munitions and other kinds of ordnance for obtaining a similar military advantage, the ordnance to be selected shall be that whose deployment may be expected to cause the least danger to civilian lives and civilian objects.

12. Moreover, it is prohibited to attack, with cluster munitions, objects indispensable to the survival of the civilian population, such as foodstuffs, drinking water installations and supplies or pharmaceutical installations. This shall also apply if these installations are not used solely for the sustenance of the civilian population but also for the sustenance of members of the armed forces.

13. With regard to the Federal Armed Forces, in planning the use of ammunition, the military commander shall do everything feasible to verify that the objectives to be attacked are military objects and that the civilian population, individual civilians and civilian objects are spared.

14. Any such attack shall be cancelled or suspended, if it becomes apparent before or during the deployment that the incidental loss of civilian life, injury to civilians or damage to civilian objects would be excessive in relation to the military advantage anticipated.

15. As to prohibitions or restrictions on the use of conventional weapons which may be deemed to be excessively injurious or have indiscriminate effects, pre-eminent importance ought to be attributed to the process on explosive remnants of war.
