

Addressing the humanitarian impacts of cluster munitions: key issues

Background paper to the Oslo Conference on Cluster Munitions,

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Description of the problem

Cluster munitions have been used by States and a limited number of non-state armed groups in at least 23 countries. Globally, 34 States are known to have produced more than 200 different types of cluster munitions. Over 70 States stockpile cluster munitions, which contain submunitions that number in the billions worldwide. Cluster munitions pose severe risks to civilians' lives and livelihoods both at the time of their use and after hostilities have ended. This is due to the wide-area effect of cluster munitions and the large number of submunitions they leave unexploded. Unexploded submunitions have long-term impacts; hinder humanitarian assistance, peace operations, post-conflict reconstruction and development efforts. Unless practical international steps are taken, the hazards to civilians from cluster munitions will increase as cluster munitions continue to proliferate and the numbers being used rise globally.

To date there is no universally accepted definition of cluster munitions, but it is generally accepted that a cluster munition is a container from which explosive submunitions are scattered. Submunitions are the dangerous components of a cluster munitions, causing casualties and damage through blast, incendiary effects and fragmentation. Cluster munitions are often designed to be multipurpose weapons, effective against a range of targets including armour, materiel and personnel. They may be deployed from aircraft or ground-launchers, for instance by rocket or artillery shell.

Cluster munitions were originally developed to break up concentrations of armoured vehicles and infantry - battlefield environments devoid of civilians - during the Second World War, and were later refined during the Cold War. In practice, however, cluster munitions have very frequently been used in proximity to civilian populations, making use of the weapon highly indiscriminate. Thus, cluster munitions have killed and maimed civilians at the time of use in most armed conflicts the past four decades, including in Cambodia, Laos, The Balkans, Afghanistan, Iraq and Lebanon.

In areas where cluster munitions have been used, unexploded submunitions continue to cause humanitarian and socio-economic problems for years and even decades after the conflict has ended, as seen in for example in South-East Asia, posing a threat to people who come into contact with them, whether accidentally or deliberately. The toy-like appearance of some unexploded submunitions also make them particularly attractive to children. They can be highly unstable and likely to be lethal to those in their vicinity if they explode. Clearance of areas with mixed AP-mine and submunitions contamination are more complex to clear and increase costs compared to ordinary mine-clearance operations.

Humanitarian mine action programmes have for decades tried to cope with challenges posed by unexploded submunitions, as well as AP mines, because *all* forms of unexploded ordnance must be dealt with in order to transform contaminated land to safe use. Moreover, survivor assistance activities, or the design of mine risk education programs do not discriminate between those injured by landmines, cluster munitions or other types of explosive remnants of war (ERW). There has been little recognition from governments of these practical realities, and few targeted and effective steps have been taken by producers or users of cluster munitions to prevent their hazards to civilians.

A growing humanitarian problem in need of collective response

Efforts to address the humanitarian problems caused by cluster munitions have not, to date, resulted in significant or adequate responses at the international level. There are a number of reasons for this, including the following:

- The still relatively “limited” global use of cluster munitions (particularly when compared with the extensive use of anti-personnel mines) allows some to suggest there is little or no humanitarian impact.
- Constraints on the multilateral disarmament fora in which cluster munitions have been indirectly addressed, such as the requirement for consensus as a basis for decision and the lack of clearly focussed discussions.
- The nature of the weapon system; unlike an anti-personnel mine, cluster munitions are not *per se* designed as victim-activated area denial weapons, even if unexploded submunitions have this effect.

International concern about the threats cluster munitions pose to civilians is not new. It first emerged in the early 1970s in response to the use of large numbers of cluster munitions in South-East Asia. This, and related concerns about certain other weapon types, eventually lead to a new protocol to the Geneva Conventions of 1977 on the protection of victims of international armed conflicts, and to the later Convention on Certain Conventional Weapons (CCW) of 1980.

Cluster munitions were not explicitly dealt with in these treaties. In late 2003 States parties to the CCW agreed on a new protocol concerning Explosive Remnants of War (ERW) - Protocol V. This Protocol contains some generic measures on dealing with post-conflict aspects of unexploded submunitions such as information exchange, marking and fencing of hazardous areas, and assistance and cooperation between parties to the conflict. But Protocol V is not retroactive so it does not apply to areas that were, and still are, affected by unexploded submunitions and other ERW prior to its entry into force in November 2006. Nor does it address the humanitarian problems associated with cluster munitions at the time of their use, such as the fact that their wide area effect makes them indiscriminate when used in or near populated areas.

Since negotiations of Protocol V were concluded, it has proved very difficult to make tangible multilateral progress to address the humanitarian impact of cluster munitions. This lack of progress is not due to the lack of concern; there have been numerous calls for action including from the International Committee of the Red Cross (ICRC),

the UN Secretary-General, and a growing number of governments and various humanitarian actors, like the Cluster Munitions Coalition (CMC). Instead, the emphasis of talks has remained on the effectiveness of existing International Humanitarian Law (IHL) and on technical solutions such as measures to improve submunition reliability.

While the approaches taken to date concerns important technical aspects of the problem, they do not address the humanitarian and developmental problems caused by cluster munitions. One example may illustrate this; reliability issues with submunitions are not purely issues of design and manufacture. The *actual* reliability of an individual submunition depends on the context in which it is used, including factors such as age, storage and handling conditions, user competence, and terrain and weather at time of deployment. In practical terms it is impossible to create a 100% reliable weapon, and since some cluster munitions can release hundreds of submunitions even a very low failure rate can result in a high number of “duds” that can explode later. Technical solutions such as self-destruct and self-neutralising mechanisms are also not a guaranteed way of avoiding dangerous unexploded submunitions, as clearly illustrated in recent conflicts.

These discussions have also neglected to address other pressing issues, such as the need to destroy those types of cluster munitions that cannot be targeted discriminately or that have been proven consistently to leave large numbers of unexploded submunitions. Neither has these discussions taken into account that introduction of new designs could also fuel proliferation as older models of cluster munitions simply become surplus and more widely available for sale or other forms of transfer to new recipients, including armed non-state actors, unless destroyed instead. Or, the introduction of designs with new technological features may even tempt some cluster munitions stockpilers to dispose of their old stocks by using them in conflict, as a perceived cheaper or easier alternative to safe stockpile destruction.

Reframing the problem and responding more effectively

Diplomatic and political challenges are more effectively dealt with when evaluated in light of practical, collective steps toward a clearly identified and shared goal. On this issue, the goal is to address effectively the unacceptable humanitarian costs caused by the use of cluster munitions. In view of the complex humanitarian dimensions of the problems cluster munitions pose, international measures are urgently needed alongside the *national* commitments some States have already taken or are considering. These national measures include:

- *Recognizing that cluster munitions pose particular humanitarian and socio-economic problems to civilians both at the time of use and post-conflict, and that dealing with the humanitarian impacts of cluster munitions is of national interest; and*
- *Declaring national and, where possible, regional moratoria on the use, production and transfer of cluster munitions until an international agreement addressing their humanitarian impacts enters into force.*

Such actions are important steps to address the hazards cluster munitions pose to civilians. They would also reinforce the collective efforts towards a legally binding international humanitarian agreement on cluster munitions. Such an agreement should

be completed before the end of 2008 and should at least contain the following main elements:

- *Prohibiting the use of cluster munitions that are indiscriminate in area effect or which pose a foreseeable and unacceptable risk to civilians after use.*
- *Prohibiting the development, production and transfer of such cluster munitions, including their sale, design and production licensing, or giving them away as military aid, either to governments or to non-state actors.*
- *Destroying stockpiles of such cluster munitions within agreed timelines.*
- *Developing a framework for assistance and cooperation to help clear land of unexploded submunitions in and around affected communities, assist survivors and their families and ensure adequate education in affected communities about the risks of sub munitions.*

Agreeing on relevant definitions is not a prerequisite to, but a part of, coming negotiations.

The Oslo Conference on Cluster Munitions is intended to be a first step to develop a common understanding of what the elements and issues involved in such an agreement should be, and how to translate humanitarian concerns into practical international action.

Participants in Oslo are in a position to begin such work by taking part in the discussions on an agenda about field realities and adequate responses from a practical perspective, considering how to prevent future use of cluster munitions with unacceptable consequences for civilians, as well as how to assist survivors and affected communities effectively.

In particular, States and other participants need to focus on specific ways in which these practical concerns can be translated into further progress toward a legally binding international agreement to address the humanitarian impact of cluster munitions. Without prejudice to this discussion, several rounds of work would likely be required to develop, negotiate, and conclude an agreement before the end of 2008 and which should be open to any country sharing the motives and objectives of such a process, as well as to representatives from civil society, international organisations and the United Nations.