

## Myths and Realities about Cluster Munitions

### Myth: Cluster munitions are essential for fighting today's wars.

#### Reality:

- The vast majority of cluster munitions stockpiled today have limited, if any, utility in contemporary conflicts, which often involve asymmetric forms of warfare between parties of unequal strength. Cluster munitions were designed for use in the Cold War, specifically for the large-scale bombardment of massed tank and infantry formations.
- Conflicts increasingly take place in or near populated urban areas—an especially inappropriate environment for using cluster munitions.
- Military forces that use cluster munitions have not presented concrete evidence of the military effectiveness or decisive role of the weapon.
- Cluster munitions undermine military and political strategies by causing civilian casualties that are both foreseeable and avoidable.
- The military utility of cluster munitions is frequently outweighed by the humanitarian costs, including civilian casualties at the time of attack and long afterward, and the long-term social and economic impact of the hazardous submunition duds.

### Myth: Cluster munitions are vital for force protection and force multiplication.

#### Reality:

- Cluster munitions have limitations and liabilities that can hinder military operations. Most notably, the presence of hazardous duds can endanger a force's own troops and decrease their mobility. Reports after the Gulf War, Kosovo, Afghanistan and Iraq have cited the negative impact of cluster munitions on both friendly forces and peacekeepers.
- In the 1991 Gulf War, US forces found their mobility impeded and suffered casualties when operating in areas contaminated by their own submunition duds. At least 80 US casualties during the war were attributed to US submunition duds.
- A "lessons learned" report by the US Third Infantry Division after operations in Iraq in 2003 described cluster munitions as among the "losers" of the war. It singled out the dual-purpose improved conventional munition (DPICM), a submunition used in artillery and ground rocket cluster munitions. The report asked, "Is the DPICM munition a Cold War relic?" Commanders were "hesitant to use it . . . but had to" because alternative weapons were not on hand. The report specifically noted that

these weapons are “not for use in urban areas.” Field officers were particularly concerned about the dud rate of the DPICM, which was higher than expected.

- Many cluster munitions in stockpiles are nearing the end of their storage life and will become dangerous to use. Prolonged storage may also increase the number of hazardous, unexploded submunitions left after use.

#### **Myth: There are no viable alternatives to cluster munitions.**

##### **Reality:**

- The revolution in military technology has introduced unprecedented levels of guidance, precision and reliability in weaponry. It is untenable to insist on the need to use unguided cluster munitions with unguided submunitions with known high failure rates, especially in populated areas.
- Alternative technologies for attacking armor exist and are being further developed. Technological advances in sensors, fuzes and guidance are resulting in weapons that may fulfill the stated military objectives of cluster munitions without creating large amounts of unexploded ordnance and without the indiscriminate effect of cluster munitions over wide areas.
- The evolution of tactics, techniques and procedures for the use of other weapons continues to diminish the perceived military advantages of conducting attacks with cluster munitions.

#### **Myth: In populated areas, the only alternative to cluster munitions is extensive use of unitary warheads, which will cause even greater humanitarian harm.**

##### **Reality:**

- There should be a presumption that any cluster munition attack in a populated area is indiscriminate and therefore is illegal under international humanitarian law (IHL). While some attacks with unitary munitions in populated areas may be lawful, those that are indiscriminate and disproportionate are a violation of IHL. It is untenable to argue that the only alternative to an illegal cluster munition attack is an illegal attack with unitary weapons.
- If available, precision-guided weapons deployed in conformity with IHL should be used in place of non-precision-guided weapons when carrying out attacks against military targets in populated areas.

**Myth: Existing international humanitarian law (IHL) can adequately deal with cluster munitions.**

**Reality:**

- The existing rules of IHL have proven inadequate to provide protection to civilians from cluster munitions, which are clearly prone to indiscriminate use and effect. In every conflict where use of cluster munitions has been well-documented, they have been used in ways that violate existing IHL.
- Specific rules on cluster munitions will strengthen the standards and norms that prohibit indiscriminate attacks and that oblige users of weapons to deal with their post-conflict effects.
- IHL is always evolving. It is natural that states continue to develop and codify the rules of armed conflict.
- States' views on how to apply IHL to cluster munitions and their practice on how to implement IHL with respect to cluster munitions have been very inconsistent. Human Rights Watch has concluded that national measures to implement IHL with regard to cluster munitions have not been effective, and that specific new international law is needed to ensure protection for civilian populations.

**Myth: Technical solutions such as self-destruct devices can fix the cluster munition problem.**

**Reality:**

- Technical approaches to improve reliability only address the post-conflict problem and do not address the wide area effects of the weapon that make cluster munition attacks in populated areas indiscriminate.
- A purely technical solution for reliability ignores the impact of cluster munitions at the time of attack when used in environments where military targets, civilians and civilian objects are commingled.
- Self-destruct devices can give militaries a false impression that cluster munitions are safe to use in populated areas, and could lead to more instances of indiscriminate use in those areas. A British commander told Human Rights Watch that UK forces seemed more careless about using cluster munitions in populated areas in Iraq in 2003 because they believed self-destruct devices eliminated the danger to civilians.
- It is unlikely that even the most advanced militaries will be able to lower the failure rate sufficiently to offset the dangers posed by the release of hundreds, or even thousands, of submunitions at a time.
- Cluster munitions that have submunitions with self-destruct devices may still leave behind large numbers of hazardous duds. Self-destruct devices also fail to function. Even with a 1 percent failure rate, a single, typical cluster rocket strike would leave about 40 landmine-like duds.

- Failure rates in combat conditions are invariably higher than those established by production acceptance or surveillance testing regimes. High reliability rates achieved in testing are unlikely ever to be reproduced under battle conditions, or in operational environments.
- The failure rate of Israeli-manufactured M85 DPICMs in southern Lebanon in 2006 is estimated by clearance experts to be many times higher than the 1 to 2 percent previously claimed from test results. This illustrates that self-destruct devices are not the solution to the cluster munition problem.
- Explosive ordnance disposal personnel have noted that self-destruct equipped submunitions are more difficult to clear than non self-destructing ones.
- In practice, states that possess cluster munitions have not limited their use to those with self-destruct devices. Instead, they have used all models available to them, sometimes employing submunitions with high failure rates and versions with lower failure rates in the same area.
- There is reason to question whether a technical “fix” is truly feasible – and whether it is a valid approach on a global scale. Many states may take the position that they cannot afford technical improvements, and that any international instrument based on technical requirements only serves the interests of wealthier states.

**Myth: The Convention on Conventional Weapons (CCW) is the only effective forum for dealing with cluster munitions.**

**Reality:**

- There is almost no prospect of anything meaningful resulting from discussions in the CCW on cluster munitions in 2007 or beyond. The consensus approach of the CCW forum has stymied many positive humanitarian initiatives over the years.
- After five years of talks, the CCW in November 2006 was unable to reach agreement on a modest proposal to further regulate antivehicle landmines. This proposal was supported by some of the biggest users, producers and stockpilers of these mines, including the United States. Many CCW states have said that agreement on cluster munitions under the CCW would be much more difficult than antivehicle mines.
- In November 2006, states party to the CCW rejected a proposal to begin negotiations on cluster munitions, and instead only agreed to continue discussions on explosive remnants of war, with a focus on cluster munitions. The continuation of discussions in the CCW is at best a go-slow approach to a looming humanitarian disaster, and at worst a deliberate formula for another failure by the CCW to deal adequately with the threat posed to civilians by cluster munitions.
- It is not a surprise that the biggest users and producers of cluster munitions are the ones insisting that ongoing talks in the CCW are the right approach, not urgent negotiations.
- Of the 46 countries that have expressed support, as of February 2007, for a new international agreement by 2008 to prohibit cluster munitions that cause unacceptable harm, 27 have stockpiles of the weapon and 17 are producers

(representing 50 percent of all producing countries).

- The CCW, with 102 states parties (less than half the world's countries), is far from global in its acceptance. It has few adherents in the developing world, including many of the countries affected by cluster munitions.
- Any country serious about protecting civilians from the deadly effects of cluster munitions will join right away the new Norwegian-led initiative aimed at conclusion of a new international treaty on cluster munitions in 2008.
- Even if some users, producers and stockpilers do not immediately join the new process outside the CCW, the negotiation of a treaty will begin to build a new standard against the weapon. This will shape the practice of states outside the treaty in the same way the Mine Ban Treaty has shaped the practice of many states not yet party to the treaty.

**Myth: The CCW's Protocol V on Explosive Remnants of War addresses the main concern about cluster munitions: clearing the hazardous duds.**

**Reality:**

- CCW Protocol V on Explosive Remnants of War is not sufficient to deal with all of the humanitarian problems caused by cluster munitions. On the positive side, the protocol will reinforce the growing awareness that the detritus of war must be cleaned up as soon as possible, and that the users of weapons that become explosive remnants of war have special responsibilities, including on territory not under their control. However, the protocol only deals with post-conflict clearance issues. It does not specifically address cluster munitions, and is unlikely to have any effect on their use, production, trade or stockpiling.
- Protocol V does not address use and targeting issues – it does not address the wide area, time-of-attack effects on civilian populations of cluster munitions. Nor does it address technical requirements or reliability standards.
- The language of Protocol V is very weak and is replete with qualifiers and ambiguities—so much so that key provisions could be considered largely voluntary.