

Stopping cluster munitions

Thomas NASH

Cluster munitions stand out as unacceptable weapons. This view has long been held by non-governmental organizations (NGOs) campaigning against them and increasingly by military figures, parliamentarians, explosive ordnance clearance operators and academic scholars. But governments have continued to use the weapon, contributing to immediate and long-term suffering in, for example, Lao People's Democratic Republic, Cambodia, Viet Nam, Kuwait, Croatia, Chechnya, Sudan, Kosovo, Afghanistan, Iraq and now again during the latest war in Lebanon.

The humanitarian problems posed by cluster munitions have been the subject of public opposition since the Viet Nam War. After the war various factors, including military secrecy, kept public outcry from reaching the level it is moving toward in 2006.¹ But once the humanitarian response to landmines got under way in the 1990s, the issue of cluster munitions started to gain more public attention. The extensive clearance effort in Kosovo provoked media coverage, public disquiet and, eventually, attention from governments. Contamination there was so severe that those responsible for dealing with it felt that cluster munitions warranted their own response at the international level, separate from other unexploded ordnance.²

Meanwhile, however, use has continued. At the time of writing, a crisis from cluster munitions is unfolding in Lebanon. In the first month following the ceasefire in Lebanon on 14 August 2006, the United Nations had recorded 87 civilians killed or injured from "dud" cluster munitions and identified 519 individual sites contaminated by cluster munitions; bomb disposal teams had located or destroyed more than 25,000 submunitions.

Until recently, the majority of civil society opposition to cluster munitions has been focused on the Convention on Certain Conventional Weapons (CCW), but the CCW has proved ineffective, and states have done little or nothing to evaluate the unnecessary civilian suffering that has resulted from the use of these weapons. Indeed, the Third Review Conference of the CCW in November 2006 looks set to skip over the problems of cluster munitions. At the national level, however, pressure from civil society has been more successful at putting cluster munitions onto the policy agenda of governments.

This article outlines the approaches that NGOs have taken to cluster munitions and offers some reflections on how these approaches have helped shaped progress to date. With a view to the forthcoming CCW Review Conference and beyond, the article offers some perspectives on where activism on cluster munitions is heading and how the international response may take shape.

Thomas Nash is currently the coordinator of the international Cluster Muniton Coalition. He has a background in research, policy and advocacy work on cluster munitions and explosive remnants of war and has worked for NGOs in Canada and the United Kingdom since leaving the New Zealand Mission to the United Nations in Geneva in 2002.

An international campaign

The Cluster Munition Coalition (CMC) was founded in The Hague in November 2003. Part of the CMC's founding call was for states to take special responsibility for the clearance of explosive remnants of war (ERW). Indeed, there was a perception early on that the CMC was to be an international "campaign against ERW"; the argument was that the CMC should fill a gap left when the International Campaign to Ban Landmines (ICBL) decided not to add submunitions to its mandate.³

The launch of the CMC was thus timed to precede the 2003 Meeting of States Parties to the Convention on Certain Conventional Weapons—a meeting at which states parties were expected to adopt a legally binding instrument on ERW. Protocol V was duly adopted and the call for special responsibility for ERW was thus met, albeit in a diluted fashion: the text of the protocol contained numerous caveats, the key technical annexes were not legally binding, the protocol was not retroactive and cluster munitions were not specifically dealt with. The CCW had grown out of diplomatic conferences that considered the prohibition of cluster munitions as part of their agenda, but neither the convention nor Protocol V addressed the weapon fully.

Following the adoption of Protocol V, CMC's approach began to change. The fact that states were willing to acknowledge the ERW problem while still maintaining stockpiles of cluster munitions and defending the right to use them made it clear that whatever the response to ERW, a separate response to cluster munitions was necessary. Research appeared on the extent of the ERW problem and appropriate responses, which highlighted that cluster-munition contamination was qualitatively different from other unexploded ordnance contamination in terms of density and wide-area effect.⁴ Moreover, cluster munitions were not just an ERW problem that Protocol V did not fully address; as NGOs continued to emphasize, there were also distinct concerns about cluster munitions at the time of use, and Protocol V only dealt with post-conflict aspects of explosive remnants of war.

Experience from other humanitarian advocacy campaigns also suggested that a clear focus and message—such as no use of cluster munitions—would be essential if campaigning and advocacy were to have the desired effect.⁵ Thus the CMC's focus was sharpened: it would address the weapon-specific problems of cluster munitions—both their wide-area effects and ERW. The CMC's statements from the end of 2004 show this clear emphasis on the need to stop the use of cluster munitions in order to prevent further civilian harm.⁶

The CMC now has 170 members in 48 countries. Membership is increasing steadily, with for instance a dozen members signing up at the Standing Committee meetings of the Mine Ban Treaty in May 2006. The number of visitors to the web site of the Cluster Munition Coalition is consistently increasing, and since the crisis in Lebanon there has been a significant spike in daily visits.⁷ All of this will lead to greater engagement and greater pressure on governments.

How to stop cluster munitions

NGO PERSPECTIVES AND A COMMON APPROACH TO CLUSTER MUNITIONS

All NGOs engaged in activism on cluster munitions agree that the use of this weapon should be stopped immediately. All NGOs agree that the destruction of existing stockpiles of cluster munitions must be undertaken. And all NGOs agree that the existing CCW processes are not adequately addressing the humanitarian problem of cluster munitions and that new international rules are required. The

differences between NGOs on cluster munitions, where they exist, mainly relate to the most effective way to stop the use of the weapon: by prohibiting it or by placing strict requirements on its use? The answer to this depends partly on one's assessment of whether governments will (or can) abide by strict regulations relating to cluster munitions. In the case of landmines, the detailed rules outlined in the CCW's Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices did not inspire confidence among campaigners that landmines would not continue to be used in a way that would lead to further humanitarian harm.

Human Rights Watch (HRW) has been advocating a moratorium on cluster munitions since 1999, when evidence from its research directly following the bombings in Kosovo and Serbia highlighted numerous problems with the use of cluster munitions.⁸ As well as the moratorium, HRW advocates a series of reforms that should be instituted should the moratorium be broken. Chiefly, these relate to no use in or near populated areas and no use of cluster munitions not equipped with self-destruct or self-neutralization mechanisms. The organization recently called for the prohibition of inaccurate and unreliable cluster munitions,⁹ but overall its position tacitly accepts that the use of some kinds of weapons currently referred to as cluster munitions may be legal. HRW's view is based on a rigorous reading of international humanitarian law (IHL), a framework that underpins the work of the organization.

Handicap International's view stems not from IHL but from the experience of its staff working in areas affected by cluster munitions. Handicap International (HI) decided that the most effective way to deal with the clear humanitarian problems its staff faced because of cluster munitions was to prohibit the use of this weapon. Stan Brabant, Head of Handicap International's Policy Unit in Belgium, has stated that some field staff threatened to resign if the organization adopted any policy on cluster munitions short of a ban.¹⁰ Of course, HI's policy position was the result of more than the prospect of staff resignations: there was a detailed and lengthy analysis of the issues related to cluster munitions. In HI's view, a series of limited reforms would not be enough to prevent more deaths and injuries. In essence, HI gave preference to preventing humanitarian harm over trust in governments to adhere to (or even to ever negotiate) new rules on cluster munitions.

This position has also been taken for many years by the Mennonite Central Committee. It came about through its advocacy work on the situation in Lao People's Democratic Republic, where deaths and injuries from unexploded cluster munitions are still a regular occurrence, and where work by UK landmine clearance organization Mines Advisory Group and others is turning up significant numbers of submunitions.

Some NGOs have altered their positions since the Belgian legislation banning cluster munitions,¹¹ which entered into force on 9 June 2006 and which has changed the terms of the debate on how governments should respond to the cluster-munition problem. Landmine Action, in the United Kingdom, had previously advocated a moratorium similar to that demanded by Human Rights Watch. Recently, however, in a letter to UK parliamentarians, Landmine Action highlighted the Belgian ban and called for a UK ban on cluster munitions.¹²

Like Landmine Action, Norwegian People's Aid is calling for a ban. Its call is somewhat different, though, because (like Human Rights Watch) it accepts that a definition of cluster munitions may exclude some types of submunition-based weapon systems if they do not pose a humanitarian concern, thus it accepts restrictions on the ban it seeks.¹³ After recruiting a full-time cluster munitions policy officer in 2006, Norwegian People's Aid joined the CMC Steering Committee. Together with the change in other NGOs' stance, this has culminated in a shift among the active members of the CMC, adding weight to the group of NGOs advocating a total ban of cluster munitions.

Opponents to new rules on cluster munitions have attempted to emphasize the differences between NGOs within the CMC as a reason for delaying national action or for not launching international negotiations.¹⁴ However, this is a cynical tactic and could be seen as characteristic of stockpiling

