

**INTER-AGENCY STANDING COMMITTEE WORKING GROUP
55th MEETING**

12-13 November 2003

**IFRC Headquarters, Geneva
Auditorium (Basement)**

Explosive Remnants of War: Background Note

Circulated: 5 November 2003

In December 2000, the ICRC proposed, to the First Preparatory Meeting for the Convention on Certain Conventional Weapons (CCW), an International Instrument on Explosive Remnants of War¹. A Group of Government Experts (GGE) established in 2001 is now ready to submit a draft proposal for a protocol on ERW to the Meeting of States Parties on 27-28 November 2003. This draft is regarded by the humanitarian community as weak and of little, if any, added value to existing IHL. It covers subjects such as user responsibility to ensure clearance, improvements in munitions reliability, and the provision of data on usage and technical specifications. Cluster munitions, which were specifically cited in the ICRC proposal, have not been dealt with explicitly. Within the context of the CCW, it is the issue of cluster munitions that the IASC is now asked to focus on.

CLUSTER MUNITIONS: THE PROBLEM

Cluster munitions are canisters that open in mid-air, scattering numerous small explosive devices (sub munitions or bomblets) over a wide area. These sub munitions may be delivered by aircraft, rocket or artillery, and are 'area weapons', as the munitions are dispersed widely in a single attack.

Cluster munitions were originally conceived as a cheap, effective weapon, capable of saturating an area (or 'footprint') with metal fragments, killing or incapacitating humans and destroying vehicles. In 1966, a journalist flying with US pilots during the Vietnam war reported that '*... the deadliest weapon of all, at least against personnel, were cluster bombs....if a pilot used cluster bombs properly he could lawnmower for considerable distances, killing or maiming anybody on a path several hundred feet wide and many yards long*²'.

These weapons pose a grave threat to civilian populations, both during and long after the



Photo : BBC

¹ The Governmental Group of Experts to the CCW have produced a draft definition of ERW: "Explosive Remnants of War are defined as unexploded ordnance and abandoned explosive ordnance with the exception of anti-personnel mines, booby-traps, other devices and mines other than anti-personnel mines as defined in Protocol II as amended on 3 May 1996".

² PROKOSCH Eric. "The Technology of Killing; a military and political history of anti personnel weapons" Zed books ltd 1995

peace is declared. There are two main reasons for this:

Firstly - if fired or dropped incorrectly, the size of the footprint can change, effectively targeting any civilians in proximity to the intended impact area. During the Kosovo conflict, Human Rights Watch believes “there were nine to fourteen cluster bomb attacks that resulted in the death of 90 to 150 civilians - 15% to 26% of all civilian deaths, even though cluster bombs represented just 6% of the weapons expended during the air war”.

Secondly - the failure rate of cluster munitions is relatively high. According to Landmine Monitor, in Kosovo, “estimates of the “dud rate” of cluster bombs, that is, the percentage that fail to explode on contact as intended and thus become de facto antipersonnel mines, run from a conservative 5% to as high as 30%”. Human Rights Watch estimates that more than 1,600 Iraqi and Kuwaiti civilians were killed and another 2,500 injured by unexploded cluster munitions following the 1991 Gulf War, and in 2000, Landmine Monitor reported that, in Kosovo, “As of June 2000, about 80 children had been killed or injured by [unexploded cluster munitions] compared to about 60 child victims from antipersonnel mines”.

Cluster munitions contaminate countries as diverse as Angola, Ethiopia, Eritrea, Bosnia, Kosovo, Croatia, Serbia, Montenegro, Chechnya, Afghanistan, Iraq, Kuwait, Cambodia, Laos, Vietnam, Lebanon, Syria, Sierra Leone, Sudan and Chad. Apart from killing and maiming, cluster munitions hinder post conflict recovery and long term development. Thirty years after the end of the Indochina conflict, farmers in Laos, Cambodia and Vietnam are still killed and maimed collecting wood, sowing or harvesting crops and digging foundations, wells and irrigation ditches. Grazing land is contaminated, livestock killed as they bite or kick unexploded sub munitions, and potentially productive agricultural land lies fallow because of fear. The development of infrastructure is constrained as expensive and time consuming clearance work is required prior to project commencement.

INTERNATIONAL HUMANITARIAN LAW: WHAT IS BEING DONE?

The Convention on Certain Conventional Weapons (CCW)

Cluster bombs are not banned or restricted under current international law, nor are there any specific legal instruments concerning other unexploded munitions or abandoned stockpiles of munitions (with the exception of anti personnel landmines banned under the Mine Ban Convention, and items restricted by amended protocol II of the CCW).

Following the 1999 conflict in Kosovo, where cluster munitions were used so widely as to unexpectedly cause more death and injury than landmines, various NGOs called for a moratorium on the use of cluster munitions, until appropriate legal instruments had been developed to restrict their use, oblige parties to a conflict to clear up the detritus of war, provide assistance to casualties and provide warnings to local populations about their hazards. At the time the European Parliament echoed these calls, passing a resolution demanding an immediate moratorium on the use, production and transfer of cluster weapons.

In 2000, after undertaking extensive research on the effects of cluster weapons in Kosovo, the ICRC issued a call for the adoption of a new protocol to the CCW³ collectively dealing with the problem of ERW. As proposed by the ICRC, the protocol sought to:

³ Negotiated in 1980, and a by-product of negotiations on additional protocols to the Geneva Convention in 1977, the CCW regulates the use of certain weapons to prevent unnecessary suffering to combatants and indiscriminate harm to civilians.

First background document on the agenda item of Explosive Remnants of War

- clear or facilitate the clearance of explosive remnants of war,
- ensure the provision of accurate technical information and information on the location of these explosive remnants to UN and other demining and mine awareness organisations,
- provide technical information on munitions likely to have long term effects,
- prohibit the use of sub munitions against any target located within a concentration of civilians.

A 'Group of Governmental Experts' (GGE) was formed to address the issue, with the mandate to:

- negotiate an instrument on post-conflict remedial measures of a generic nature which would reduce risks related to ERW, excluding landmines, but including abandoned munitions.
- determine whether negotiations could successfully address measures for improving the reliability of munitions (to reduce failure rates), through voluntary best practices.
- separate from the negotiations to continue to consider, on an open ended basis, possible preventative measures aimed at improving design of certain specific types of munitions, including cluster munitions.

The negotiations have fallen short of the expectations of a number of humanitarian organisations, particularly among the NGO community. In particular, criticism has been directed at the GGE for not addressing weapons specific issues and failing to look into the serious question of the use and effects of cluster munitions.

The last meeting of the GGE will be held in November 2003, following which it will present a report on the outcome of their deliberations, possibly including a new protocol, to the Meeting of State Parties, to be held 27-28 November. Following this the negotiations on ERW may be concluded or prolonged into 2004. Many hope for the extension of negotiations to discuss weapons specific issues, particularly the case of cluster munitions, as these fall within the GGE mandate.

Other initiatives

There are several other initiatives that demonstrate a growing momentum globally, among both Governments and throughout civil society, to restrict the use of cluster munitions. A few of these are noted below:

- This month, a number of NGOs will launch the 'Cluster Munition Coalition'. This coalition has wide membership and includes many members of the International Campaign to Ban Landmines (a consortium of 1,400 NGOs which was awarded the Nobel Peace Prize in 1997 for their work in banning landmines).
- In October, a motion was passed in the Senate of the Australian Parliament calling for a moratorium on the production, transfer and use of cluster munitions and to guarantee that Australian forces will not use or be involved in the use of these weapons.
- The Norwegian Government has banned the use of airdropped cluster munitions by its armed forces.
- Human Rights Watch has called for a moratorium on the use of cluster munitions pending the introduction of legislation to regulate their use.

WHAT NEXT?

Given the evident humanitarian consequences of cluster munitions and the unique opportunity for advocacy offered by the current CCW process, we recommend that the IASC:

- calls for an immediate moratorium on the use of cluster munitions pending the adoption of effective international legislation to regulate their use;
- agree that Mr Ross Mountain, on behalf of the IASC, make a statement to this effect at the meeting of States Parties to the CCW 27-28 November 2003;
- Agree on a consultative process to finalise the draft statement submitted as an attachment to this background paper.

The statement will strengthen the growing momentum behind the call for a moratorium on the use of cluster munitions, and form the basis for further IASC engagement.

Proposed actions/decisions by the IASC WG:

- Review and agree upon the recommendations above, including way forward for the upcoming CCW meeting.