GROUP OF GOVERNMENTAL EXPERTS OF THE STATES PARTIES TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS

CCW/GGE/IX/WG.1/WP.1 29 November 2004

Original: ENGLISH

Ninth Session Geneva, 8-16 November 2004 Item 7 of the agenda

Working Group on Explosive Remnants of War

DEALING WITH THE IMPACT OF CLUSTER MUNITIONS

Prepared by the Cluster Munition Coalition

1. The humanitarian dangers presented by ERW have steadily been gaining prominence within civil society and among governments around the world. Many observers have noted that because of their increased use and their high risk of becoming ERW, cluster munitions stand out as the category of weapons most strongly requiring action to reduce their humanitarian impact. It is for this reason that this CMC paper focuses on cluster munitions. However, many other conventional munitions, such as artillery shells and mortar bombs, are also prone to becoming ERW and constitute a significant part of the ERW problem in some of the 97 affected countries or territories. Generic measures designed to minimise the post-conflict humanitarian impact of explosive ordnance, such as those outlined in the technical annex of CCW Protocol V, should be applied to all munitions at risk of becoming ERW. Nevertheless, given the clear humanitarian impact of cluster munitions, the CMC urges governments to implement specific measures without delay at both national and international levels to prevent more civilian deaths due to these weapons.

2. This paper outlines the reasons why cluster munitions present a danger to civilians both during conflict and after hostilities have ceased. The CMC strongly urges all governments that possess cluster munitions to act on the recommendations outlined in this paper and to support negotiations within the CCW on a new Protocol restricting the use of cluster munitions. Such a clarification of the application of International Humanitarian Law to cluster submunitions would provide greater protection to civilians in areas where they are used.

Factors related to design:

3. The failure of submunitions to function as designed is one of the central concerns surrounding the weapon type. Every mechanism with moving parts is subject to failure, but the complexity of the ejection, dispersal and arming cycle of modern submunitions makes them particularly vulnerable to malfunction.

GE.04-63743

- (i) Problem: Lack of self-destruct or self-deactivation mechanism.
 When a munition fails to explode it becomes a dangerous piece of UXO. Sometimes unexploded submunitions can be as dangerous as the largest AP fragmentation mines. Without a self-destruct or self-neutralisation mechanism it will remain unexploded indefinitely. Given existing self-destruct and self-deactivation mechanisms that are cheap and simple, there is no reason why munitions should not be equipped with them.
- (ii) Problem: Presence of an All-Ways-Acting (AWA) fuze¹.
 This fuze is extremely hazardous as it can be initiated by inertia in any direction.
 Submunitions with AWA fuzes are more dangerous to civilians and make clearance operations more difficult. The design should ensure that fuze failure leaves the munition unable to function.
- (iii) Problem: Unreliable fuzing and arming system.
 Aging cluster munitions that require spinning to arm have a system that is often too complex and fails to function, leaving unexploded submunitions.
- (iv) Problem: Relative inaccuracy of cluster munition Rockets have a deliberately wide footprint and are not as accurate as other forms of delivery systems with guidance mechanisms. They require complex calculations and this provides scope for error during combat. The deployment of cluster munitions by rockets, such as in MLRS, can compound their negative effects, especially in populated areas.
- (v) *Other problems*: In some cases the age of the munition and the presence of a parachute can also cause problems.
 - All munitions have an expiry date and after this date they may no longer function as intended. Like any piece of machinery, mechanisms become less reliable and increase the likelihood of the munition becoming an ERW.
 - Many submunitions, especially DPICMs, have parachutes to stabilize them. In some cases, these parachutes can catch on vegetation or debris and fail to hit the ground. This prevents the submunition from detonating and results in an unexploded submunition.

Examples:

4. Listed below are some existing cluster munitions that display one or more of these characteristics:

AO-2.5 RT, BANTAM, BLU-26, BLU-61, BLU-63, BL755, BLU-97, KB-1, KB-2, M42, M46, M74, M77, M85, Mk 118, OGR F1, PTAB 2.5

¹ There may be one particular axis in which some of these fuzes may not function, but they are still liable to activation by inertia in all directions.

5. This list is not intended to be exhaustive and it should be noted that it is the problematic characteristics that should be banned, not simply the individual munitions. All munitions with these characteristics should be banned and no munitions with these characteristics should be banned and no munitions with these characteristics should enter into service in the future.

Factors associated with use:

6. The huge numbers of submunitions used, in comparison with unitary weapons, combined with their known high failure rates, leads to large scale ERW contamination in cluster strike zones.

- (i) *Problem*: Use of cluster munitions in or near populated areas. Because of the problems outlined in this paper, cluster munitions are particularly dangerous when used in populated areas. Inaccuracy and high failure rate make them unacceptable for use in civilian areas.
- (ii) *Problem*: Failure to provide timely warnings to civilian populations and deminers. Warnings are required to prevent civilian populations from interacting with submunitions out of curiosity or economic necessity. Deminers often have difficulty locating potentially dangerous areas that need to be marked and fenced.
- (iii) Problem: Inappropriate drop/launch conditions. Most submunitions are not armed until they are clear of the delivery system. If dropped at an inappropriate altitude or launched at an inappropriate speed or trajectory they may land before being armed, resulting in a dangerous piece of UXO. Weather conditions can also increase the chance of the munition missing the intended target.
- (iv) Problem: Insufficient impact due to soft terrain. Submunitions often land in mud, sand, swamp, water or thick vegetation. Since most submunitions are designed to explode on impacting a hard surface, this leads to many UXO. This also increases the risk of unexploded submunitions being present under the surface – a serious problem for local people as well as for humanitarian deminers and a key factor contributing to land denial. This problem also increases the risk of ERW in agricultural areas because ploughed fields are often the most prone to be soft landing areas.

Impact on civilians

7. Submunitions are a double hazard to civilians. First, when used in or near populated areas, they kill and injure due to their inherently indiscriminate delivery. On March 31 2003, ground-launched DPICMs killed Amir Ahmad, 9, Jawad Ruman, 27, and Khalid 'Abbas, 32 all civilians. Their deaths were recorded by Human Rights Watch in Al Hilla, and included in its recent report "Off Target" on civilian casualties from the war in Iraq. Human Rights Watch field assessments

of a handful of cities in Iraq found that by the end of May 2003, unexploded submunitions had already caused hundreds of civilian casualties.

8. Second, when they fail to explode on impact, submunitions become similar to landmines and can be activated by the presence or interaction of a person. This is demonstrated by another example from the Human Rights Watch report "Off Target" when Hussam Jasmi, 13 and Muhammad Mun 'im Muhammad, 14 were killed after stepping on a BLU-97 submunition. Even if they do not explode, the presence or assumed presence of unexploded submunitions has a socio-economic impact. In Laos where submunitions and other ERW have killed thousands, Handicap International has reported that a third of the incidents occur during agricultural work. Development projects and relief work can be severely hampered by the presence of ERW. In the village of Bartusha in the highlands of Kosovo, development has been severely affected by unexploded submunitions. Plans to bring running water to the village were slowed by the presence of submunitions and due to the presence of ERW aid agencies could not reconstruct homes in the hills above the village.

9. The density of ERW resulting from cluster munitions presents a further humanitarian problem and makes cluster ERW contamination qualitatively worse than other ERW contamination. This means that land denial is much more likely to occur in areas where cluster munitions have been used and if people refuse to accept this land denial they face serious risks in conducting their everyday activities.

Conclusions

10. The CMC has been encouraged by recent measures taken by several countries to address the pressing humanitarian impact of cluster munitions. Denmark, Ireland, New Zealand, Norway, Sweden and Switzerland have voiced their support for a new CCW Protocol on submunitions. Australia, Belgium, Denmark, Norway, Sweden and the European Union have all taken some steps towards recognising and addressing the problems surrounding cluster munitions. States Parties to the CCW must build on the success of last year's Protocol V on ERW and begin negotiations on an instrument dealing with submunitions. Such negotiations should have a broad mandate encompassing all aspects of the problem and striking the appropriate balance between military and humanitarian concerns. While in certain cases increased reliability through technical improvements to munitions may reduce the humanitarian impact, the CMC considers that the munitions listed as examples above will continue to cause unacceptable civilian casualties.

11. Furthermore, as has been noted by many experts, the failure rate of submunitions is only one aspect of the problem – even if the failure rate is 1%, an area where submunitions have been used will need to be thoroughly cleared until it is safe for use. A 1% failure rate may be "acceptable" from a military perspective, but from the perspective of a community that has been affected by cluster munition strikes even this relatively low failure rate can produce hundreds or thousands of deadly unexploded munitions that can have effects similar to landmines. The only 100% reliable way to eliminate the humanitarian impact of these weapons is by removing them from military stockpiles and never using them. Based on the common views within civil society and the international humanitarian community – as well as several military experts - the CMC

urges all armed forces to cease using cluster munitions and to destroy those munitions that have proved to have unjustifiable humanitarian effects as well as negative military consequences.

Recommendations

12. The problems illustrated above clearly demonstrate that munition characteristics as well as the way in which munitions are used contribute to a serious humanitarian problem. If countries are to continue using these weapons, which are increasingly seen as unacceptable by civil society and the humanitarian community, then they must adhere to strict minimum standards in the interests of protecting civilians during and after conflict. The CMC strongly urges all States Parties to the CCW to implement the following recommendations as a minimum first step towards eliminating the humanitarian suffering caused by cluster munitions:

- (i) Ban all submunitions with the following characteristics:
 - Lack of self-destruct or self-deactivation mechanism
 - Presence of an all-ways acting fuze
 - Unreliable fuzing and arming system
- (ii) No use of cluster munitions in or near populated areas
- (iii) Strict command responsibility when using relatively inaccurate delivery systems such as MLRS
- (iv) Timely information provided to civilian population and/or humanitarian deminers
- (v) Appropriate drop or launch conditions
- (vi) Proper analysis of terrain in target area
- (vii) Destruction, not transfer of obsolete submunitions
- (viii) Regular testing and maintenance of cluster munitions. This is particularly important and should be even more stringent for cluster munitions.