

**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**

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**Application and implementation of existing
internal humanitarian law to specific munitions
that may cause explosive remnants of war,
with particular focus on cluster munitions,
including the factors affecting their reliability
and their technical and design characteristics,
with a view to minimizing the humanitarian
impact of the use of these munitions**

OVERVIEW OF EXISTING AND PROPOSED DEFINITIONS

Submitted by the Geneva International Centre for Humanitarian Demining (GICHD)

Introduction

1. The GICHD has conducted research on currently available definitions and descriptions of the terms “Cluster Munitions” and “Submunitions”. The most relevant ones, available in English, are reflected in this paper. Following the compilation of definitions and descriptions, the GICHD completed an analysis of the technical implications of the definitions.

Definitions / Descriptions and their Technical Implications

2. The definitions and descriptions can be divided into three groups: (i) those with a broad approach, (ii) those presented in a regulatory context and (iii) those reflected in national legislation. The first group includes definitions and descriptions contained in NATO standards, International Mine Action Standards (IMAS), United Nations working papers, or UNIDIR, ICRC, Cluster Munition Coalition and Handicap International studies. The second group includes the proposals brought forward by Germany in the CCW context and the definition contained in the discussion document of the co-chairs of the Lima Conference on Cluster Munitions. The third group includes the Belgian national legislation on Cluster Munitions.

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3. In general terms, NATO, IMAS and the UN refer to a Submunition as:

‘Any munition that, to perform its task, separates from a parent munition.’

4. This definition includes all kinds of launching and delivery methods (ground, air, sea) and all types of submunitions such as (i) those containing High Explosive (HE), (ii) those not containing HE, (iii) those containing nuclear, biological or chemical components (NBC), and (iv) landmines. Only the UN definition makes a limitation to conventional munitions and to submunitions that explode after dispersal or release from a parent munition.

5. In addition, the UN defined Cluster Munitions as

‘Containers designed to disperse or release multiple sub-munitions’ (CCW/GGE/X/WP.3)

6. This definition limits the term ‘Cluster Munitions’ to the container. The German definition below uses the term for the container including the submunitions.

7. Germany first presented a definition in the CCW in March 2006 (CCW/GGE/XIII/WG.1/WP.10). An updated version has been presented in the Draft CCW Protocol on Cluster Munitions (CCW/GGE/2007/WP.1), which reads as follows:

“Cluster munitions means an air-carried or ground-launched dispenser that contains submunitions with explosives. Each cluster munition is designed to eject submunitions over a pre-defined area target.

Cluster munitions does not mean a dispenser that contains:

- (a) direct-fire submunitions,
- (b) flare and smoke ammunitions,
- (c) landmines,
- (d) sub-munitions that are inert post impact, or
- (e) less than ten submunitions with explosives.

“Submunition of cluster munitions means a munition, which contains explosives and separates from a parent munition. Submunitions are designed to detonate on, prior to, or immediately after impact on the identified target.”

8. The German definition excludes sea-launched Cluster Munitions, and in the HE section direct-fire submunitions, those that are inert post impact and those containing less than ten submunitions. The two latter, as well as target detecting submunitions, are defined as “alternative munitions”:

“Alternative munitions means an air- or ground-launched dispenser that contains submunitions; the dispenser contains (a) sub-munitions that are inert post impact, or (b) less than ten submunitions with explosives. Alternative munitions are designed to eject submunitions over a pre-defined area target. They include multiple sensors with a capability to detect a target.”

9. The German definition for Cluster Munitions and Submunitions would include all those types that have raised humanitarian concern so far (reference types used in recent and past conflicts, or the “Dirty Dozen” identified by Human Rights Watch), but it might not include types that could create future concerns (reference direct fire, inert post impact, less than ten submunitions, target detecting submunitions)

10. The discussion paper on “a legally binding international instrument that will prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians”, presented by the co-chairs of the Lima Conference, provides the following definition:

“Air carried dispersal systems or air delivered, surface or sub-surface launched containers, that are designed to disperse explosive sub-munitions intended to detonate following separation from the container or dispenser, unless they are designed to, manually or automatically, aim, detect and engage point targets, or are meant for smoke or flaring, or unless their use is regulated or prohibited under other treaties.”

11. Comments on this definition:

- (i) The definition could read as if only the container is covered and not the submunitions, and
- (ii) there is no clear subdivision between cluster munitions and submunitions.
- (iii) Moreover, it is not clear whether or not the definition includes sea-based systems.
- (iv) The expression “detonate” technically refers to HE only, and would as such exclude for example phosphorous based components.
- (v) The expression “explosive sub-munitions” already excludes “smoke or flaring”, for this reason the later exclusion is a duplication.
- (vi) By NATO standards, a point target is “a target which requires the accurate placement of bombs or fire”. This may need specification in a political context.
- (vii) Technically, the definition excludes non-explosive submunitions and NBC submunitions, and it includes landmines. Only the last part of the definition would exclude landmines (“their use is regulated or prohibited under other treaties”), but this formulation would probably need precision.

12. The Belgian law on Cluster Munitions of 9 June 2006, after a broad general definition of Submunitions, excludes those types containing only smoke-producing material, illuminating material, or material exclusively conceived to create electric or electronic counter-measures. A second phrase excludes submunitions with the ability to discriminate soft targets, but this can be considered theoretical because these systems are not developed yet. The fact that technical aspects (“obligatory control of their trajectory and destination” or “can only explode at the moment of the impact”) have been combined with humanitarian aspects (“indiscriminately saturate combat zones” or “cannot explode by the presence, proximity or contact of a person”) makes this definition interesting. By merely looking at the text extract, the definition seems to include NBC submunitions, but these may be excluded in other text parts of the law, such as landmines.

Conclusions

13. A clear technical definition including all aspects and allowing a workable division of the terms “Cluster Munition” and “Submunition” has not been achieved yet.

14. The broad approaches are too broad to be useful in a regulatory context. They can be used as a base, but would require further specification. A technical definition will be required to specify which munitions will be addressed, but there are clear limitations to technical definitions: some elements of the definition may result from political decisions (e.g. more or less than ten submunitions, direct fire, sensor fuze). Furthermore, it may be complicated to cover all munitions, e.g. submunitions released from a dispenser and not from a parent munition, new developments, or phosphorous based components, which are not HE but still a humanitarian concern.

15. There is however the possibility to combine technical and humanitarian approaches, as is done in the definition for the Belgian law. The challenge will be to agree on a definition which covers all munitions that have raised humanitarian concerns in the past, and could raise humanitarian concern in future. This will at some stage require political decisions.

16. A tabular overview of various technical aspects of the definitions is provided in the table below.

Table: What is, from a technical perspective, covered under which definition?

	Delivery from			Carrier Types	Submunition Types				Targeting		
	Air	Ground	Sea		Mines	HE	no HE	NBC	Unguided	Detect	Distinct
IMAS / NATO	Yes	Yes	Yes	All munitions, not reflecting dispensers	Yes	Yes	Yes	Yes	Yes	Yes	Yes
UNMAS	Yes	Yes	Yes	All munitions, not reflecting dispensers	Yes	Yes	No	No	Yes	Yes	Yes
Germany	Yes	Yes	No	All	No	Yes, but not: Direct fire, Inert post impact, Less than 10, Target detection	No	No	Yes, but not: Direct fire, No HE, Inert post impact, Less than 10	No	No
Lima Co-Chairs	Yes	Yes	No	All	No	Yes, but not: Point target detection, Those regulated or prohibited under other treaties	No	No	Yes, but not: No HE	No, but limited to point targets	No, but limited to point targets
Belgium	Yes	Yes	Yes	All	Yes, but covered in other text part	Yes, but not: Target distinction	Yes, but not: Smoke, Illuminating, Electronic counter measures	Yes (?)	Yes, but not: Smoke, Illuminating, Electronic counter measures	Yes	No