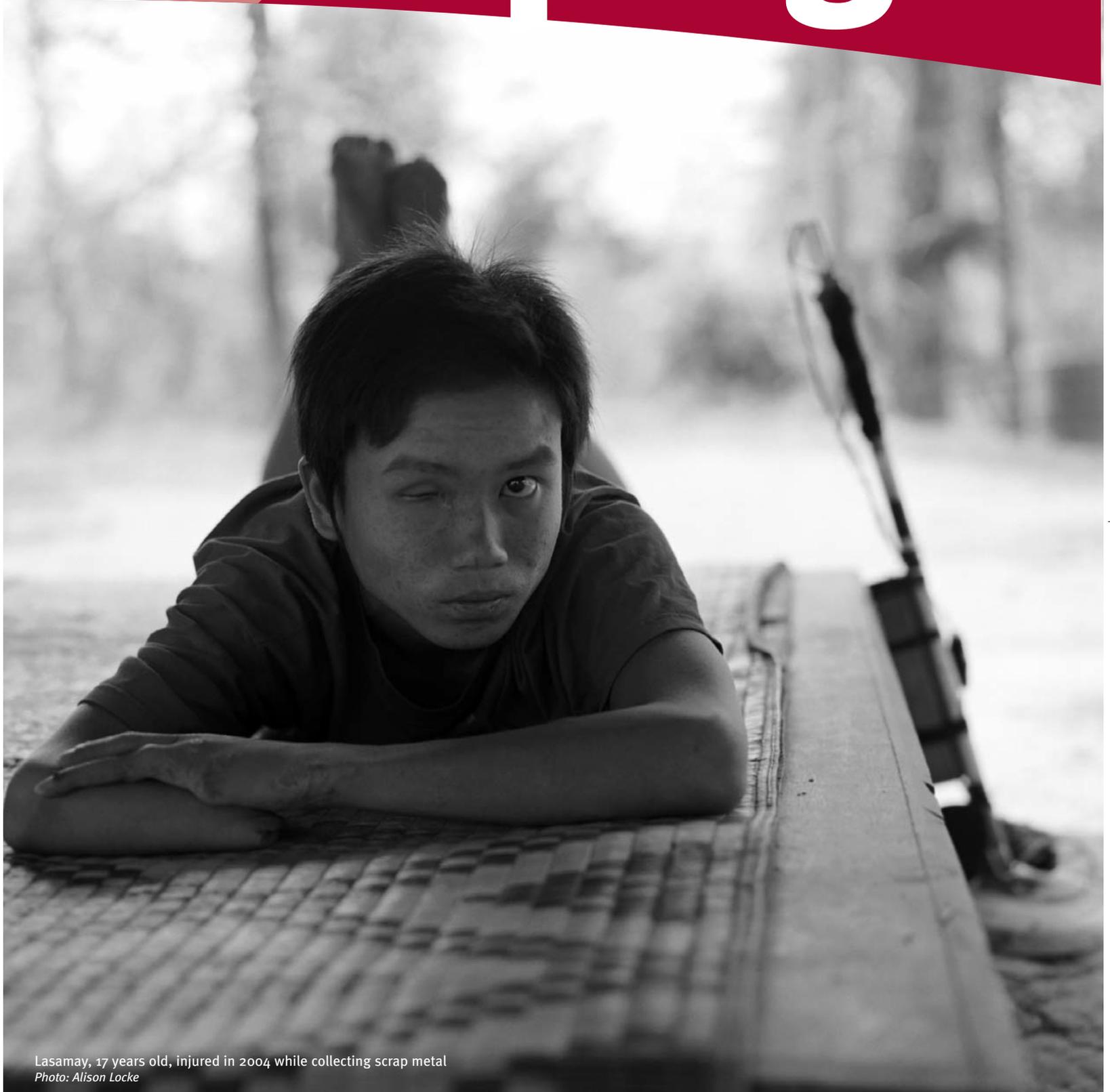


landmine action issue 13 | autumn 2007

campaign



Lasamay, 17 years old, injured in 2004 while collecting scrap metal
Photo: Alison Locke

In this issue ...

A large number of states are now committed to conclude in 2008 a treaty prohibition on cluster munitions that cause unacceptable harm to civilians. The process of developing that treaty still faces tough arguments about how cluster munitions are defined and what, if anything, might escape prohibition. This newsletter provides Landmine Action's perspective on some of those difficult questions.



Definition

The Cluster Munition Coalition (CMC) has now proposed a definition for what should be prohibited under a new treaty.

“A cluster munition is a weapon comprising multiple explosive submunitions which are dispensed from a container.

“An explosive submunition is a munition designed to be dispensed in multiple quantities from a container and to detonate prior to, on, or after impact.”

This definition is clear and broad. It offers no exceptions.

It offers no exceptions for solutions that do not work in practice: there is no exemption, for example, for submunitions fitted with self-destruct mechanisms.

The CMC proposal offers no exceptions on the basis of unsubstantiated claims: there is no exemption, for example, for ‘sensor fuzed weapons’.

During the process of negotiating an international treaty there will be numerous demands that this and that type of cluster munition should not be prohibited. This Landmine Action newsletter focuses on these issues and on the questions that they raise. In looking at them we see underlying themes regarding the burden of proof and the need for evidence. Given that real civilian lives are at stake, it is striking how little substantive evidence governments have put forward to explain why their proposed solutions will be sufficient. Where demands for exemptions have already been made they have not been backed up with evidence that would be considered sufficient in any other area of public health policy. The requirement for evidence is particularly important against the background of a long history of misleading claims and failed solutions.

There are no exemptions in the CMC proposal because none are justified on the basis of the evidence that states have presented. Landmine Action believes any future prohibition should be based on this strong definition – to produce a treaty committed to the protection of civilians, without exceptions.

Cluster munitions and remotely delivered landmines

By **Richard Moyes**

Cluster munitions and landmines are often linked together. In conflict after conflict, cluster munitions have left areas like minefields – densely littered with lethal explosives. Like landmines, these items then kill, injure and deprive those living in the post-conflict environment.

Many of the organisations now working for an international ban on cluster bombs have a history of working to eradicate landmines. Given this, it should be no great surprise that the definition of cluster munitions recently adopted by the Cluster Munition Coalition should also capture remotely-delivered or ‘scatterable’ landmines under its call for a prohibition.

Scatterable landmines – which can be used to create minefields from a distance – are among the most insidious of landmine variants. They can turn large areas into minefields at the push of a button. These are ‘victim-activated’ weapons, which will kill and injure soldiers or civilians without distinction.

But aren’t landmines already banned? The 1997 anti-personnel Mine Ban Treaty outlaws the use of scatterable anti-personnel mines but scatterable anti-vehicle mines are not covered. And although it is supported by more than 150 countries, there are still some major military powers that haven’t signed up to that law.

The UN Convention on Conventional Weapons (CCW) says that scatterable mines are legal weapons – but that they need to be used with certain restrictions. Under the CCW scatterable anti-personnel mines should include certain self-destruct and self-deactivation mechanisms to limit their active life. Many states at the CCW believe that scatterable anti-vehicle mines should also be required to have such features, but after more than 5 years of talking and watering down proposals, still no legally binding controls have been agreed.

In the process of drafting a cluster bomb treaty, argument is most likely to focus on the anti-vehicle variant of scatterable mines – should they fall within

the scope of the treaty at all, and if so should they really be prohibited outright?

First and foremost, it is very likely that governments will argue that these are completely different weapons and need to be dealt with through separate discussions. But is this really the case? After all, the definitions of cluster munitions and submunitions used in the International Mine Action Standards, by the United Nations and by NATO, all also agree that scatterable mines *are* submunitions. The CMC’s inclusion of them is hardly radical then.

What is more, the different treatment of scatterable mines as opposed to mines laid by hand in the UN CCW suggests that even in this very conservative forum it is recognised that scatterable mine are a distinct type of landmine *and one that poses particular humanitarian problems*.

What is more, certain more modern cluster munitions, with so-called sensor fuzed submunitions, are supposed only to detonate due to the presence or proximity of vehicles. This seems very like the definition of an anti-vehicle mine.

So it seems hard to argue that there is any intrinsic reason why scatterable mines in general, and scatterable anti-vehicle mines in particular, should not fall within the scope of a new cluster bomb treaty.

The next issue is the case for their prohibition. Anti-vehicles are, after all, victim activated weapons that many would argue are inherently indiscriminate. Where the attackers cannot control the level of civilian access to minefields they have created remotely it can be argued that the effects of the attack cannot be limited to military objectives in the way that international law demands.

Where anti-vehicle mines have been used in large numbers they have had a severe impact on the civilian population. This has been felt most acutely where the use of anti-vehicle mines on roads has blocked access by government and humanitarian agencies to some of the most vulnerable populations in post-conflict environments. Unknown thousands have been denied clean water, food, healthcare and other assistance as a result.

For remotely delivered anti-vehicle mines, which cannot even be mapped and fenced off effectively at the time of use, the only solution short of a prohibition – as suggested by the CCW – is that these mines must have self-destruct and self-deactivation mechanisms. The standard proposed by the CCW for such mechanisms is that no more than 10% of the mines will fail to self-destruct after 45 days and that no more than 1 in 1,000 of the mines will be capable of functioning after 120 days through the combination of self-destruct and self-deactivation. There are three key concerns with this proposed solution:

- The time delay is so long that any number of civilians could try to use the area within that period. 120 days is longer than the main combat phase of a number of recent conflicts, meaning that 10% of the mines could continue to be active even when post-conflict recovery operations were being implemented.
- If the munitions do not self destruct they are left lying on the ground. Local people and clearance organisations will have treat all of these mines as if they are live – meaning that roads continue to be blocked and humanitarian assistance is denied.
- Reliability: The self-destruct and self-deactivation mechanisms on these mines are not relied upon so much in case the main fuse fails as because the mine simply has not registered the presence, proximity or contact of a vehicle. This makes these mechanisms arguably more reliable than backup self-destruct mechanisms on impact-fuzed submunitions for example. However, much more substantive reliability data would need to be presented by states in order provide confidence that these systems really do function as claimed.

These are serious short-comings in the only proposals states have yet offered to limit the humanitarian impact of these weapons without banning them outright.

States should explain and demonstrate how they will overcome these concerns and thus demonstrate that they can reliably limit the impact of these weapons on the civilian population in the way that international law demands. Unless they can do so, there are no grounds for excluding scatterable anti-vehicle mines from a prohibition on cluster munitions.

Dumb cluster bomb policy

By **Richard Moyes**

The UK Government wants to keep cluster munitions with self-destruct mechanisms and so-called 'direct fire' cluster munitions. However, its arguments for the exemption of these systems from a future ban have failed to convince key parliamentary oversight bodies. The justifications that government officials have mustered make little sense and the confusing claims look set to create a legal tangle for Ministers, civil servants and military commanders alike.

Against this backdrop, the UK's efforts to turn its national policy into an international law look all the more cynical.

In a ruse apparently copied from the German Government's widely rejected draft cluster munition Protocol to the CCW, the UK proposed in June 2007 that so-called 'direct fire' munitions should not be eligible for definition as cluster munitions. A few months later, and without any announcement, it turned out that this 'draft definition' for the CCW was now UK Government policy.

This change is particularly confusing for Parliamentarians in the UK. At the beginning of 2006 these weapons were simply cluster munitions, by the end of the year they were smart cluster munitions, and a few months later they were not cluster munitions at all.

To make matters still more confusing, the justifications provided by UK officials don't make any sense either. Officials have explained that "in the direct fire role the firing crew has line of sight from the platform to the target and has a sophisticated target identification and acquisition system to aid discrimination." However, there is no explanation at all of why these weapons will not cause exactly the same post-conflict harm as other forms of cluster bomb. Being able to see the target at the time of attack has no bearing on the post conflict effects of a weapon.

When the Government was challenged about its sudden decision to claim that these weapons were no longer cluster bombs, officials scored another own goal. Ministry of Defence sources told the BBC

17 MAY 2007: LORD TRIESMAN (THE PARLIAMENTARY UNDER-SECRETARY OF STATE, FOREIGN AND COMMONWEALTH OFFICE)

"I have always accepted that there are liable to be proven differences between systematic testing and the figures generated by real conditions. It is very hard for obvious reasons to make an accurate estimation, although it would be valuable to continue working towards doing so."

that the UK's position on this was endorsed by both the Norwegian Government and the International Committee of the Red Cross (ICRC) – this claim was straightforwardly untrue (a fact that the BBC reported) and the MoD had to issue a public retraction.

The UK's handling of its direct fire exclusion has weakened its credibility on the issue of cluster munitions as a whole. Its explanations don't make any sense and, most bizarrely, the whole line of argument seems anyway unnecessary. If its primary desire was to protect its Apache-launched CRV7 cluster munitions from a future prohibition, then the UK has also proposed that weapons with less than 10 submunitions should not be considered cluster munitions. This numbers based exclusion can and should be challenged – but it at least can be argued seriously with meaningful points on both sides.

Self-destruct mechanism

Since November 2006, when it unveiled its 'dumb' cluster bomb policy, the UK has been arguing that submunitions with self-destruct mechanisms are an adequate solution to the post-conflict problems caused by cluster bombs.

UK officials have no evidence to back up this opinion and the policy itself seems to be based primarily on the fact that the army still has 2.8 million of these submunitions left on the shelf.

Back in 2005, the UK had told the UN CCW, in a formal paper, that by 2015 all of its cluster munitions would have a self-destruct mechanism that would reduce their failure rate to "less than 1%." Six months later the MoD tested its self-destructing munitions in Norway and found the failure rate, even in ideal test conditions, was more than double what they had claimed.

As a result, the UK quietly dropped its "less than 1%" target and now argues that any old self-destruct mechanism will do.

The use of M85 submunitions by Israel in Lebanon in 2006 has created further problems for the UK Government. A meeting of respected international experts convened by the ICRC (and eagerly supported by UK officials before they heard what the experts had to say) produced a number of presentations attesting that the failure rate of these munitions in Lebanon was significantly higher than was being claimed by governments like the UK on the basis of unrepresentative tests. Influential Select Committees in the UK House of Commons started looking into the matter and have published a number of reports drawing the same conclusions: that even for submunitions with self-destruct mechanisms the "potential to inflict death and injury on innocent non-combatants entering the field after the engagement is ... substantial."

Faced with mounting evidence that this self-destruct solution does not in reality protect people trying to rebuild their lives after conflict, UK civil servants have been forced to act; but not to protect civilians. Instead they have been forced to find excuses as to why the expert evidence from Lebanon is not relevant to the weapons held by the UK.

Their first line of argument was to claim that there was "confusion" among the expert sources as to whether these M85 actually had self-destruct mechanisms. This line of argument had to be dropped because the only people who were suffering from this confusion turned out to be the UK officials themselves.

The next line of argument, and one officially provided by the Government to the Foreign Affairs Select Committee, is that they are awaiting the findings of "Israel's internal investigation into their



Suraj, 15 years old, injured in Afghanistan 2003
 Photographer: Alison Locke

systems' performance." However, when questioned further, it turns out that there are no actual grounds for thinking Israel will be publishing an estimate of M85 failure rates. Given that Israel does not have access to the areas where the cluster munitions landed (and hence would not be able to gather information on the numbers left unexploded) it is hard to imagine how any such analysis could possibly be done by Israel anyway.

The trump card of UK officials dealing with this issue is to point out that sampling of sites of contamination after the conflict, without having all of the data on the numbers fired in specific locations, "can only have the status of an estimate." But this has been clearly acknowledged by all of the individual experts and NGOs that have analysed this issue.

The problem that UK officials have to face up to is that their own tests, conducted on flat, hard ground, without vegetation or structures, with ideal weather conditions, and firing only a small sample of the M85s that the UK holds in its stockpiles, are themselves only capable of producing an estimate of the actual contamination that these weapons will create when used in

conflict. Despite numerous official statements over the years noting how ground conditions and other factors affect performance, the testing done by the UK makes no efforts to simulate actual operational conditions. There are no scientific grounds on which the UK can argue that its tests present a more accurate indicator of performance in combat than the sampling and estimations made after actual combat use.

While UK civil servants may think adopting a posture of wilful ignorance will be sufficient to convince the Select Committees (and this seems highly unlikely) their posture is also creating a serious legal liability should UK commanders use M85 in combat.

Only last year, the UK declared that the foreseeable unexploded ordnance risk of an attack should be considered when commanders assess whether an attack would be legal under the laws of war. The MoD has also asserted that it draws on information regarding the failure rates of the munition as a guide.

If the UK did use M85 submunitions in the future, and if post-conflict civilian casualties did occur (as they did when the

UK used these weapons in the past) the approach taken to the Lebanon evidence by UK officials would no doubt come under serious legal scrutiny. Perhaps the civil servants involved can reassure themselves that it will be the commanders on the ground, not them, that would bear criminal responsibility for not having this information on possible higher failure rates *that they should reasonably have known*.

The price of confusion

The UK's approach to the issue of cluster munitions is in danger of creating excessive levels of confusion. For example, probably the biggest problem with the UK's proposed direct fire exclusion is that the justifications proffered for it are so irrelevant and insubstantial that Parliamentarians and other key decision makers presume they are missing something. This does make it more difficult for civil society campaigners who need to keep clear arguments to the fore in order to mobilise the widespread public support that exists on this issue and the convince Ministers to take action.

In the long run though, with more than 80% of the UK public consistently in support of a ban, this confusion may be more of a problem for the civil servants that have created it.

For example, having muddied the waters considerably with its 'dumb' and 'smart' definitions, not to mention its sudden but unannounced redefinition of certain cluster munitions as 'not cluster munitions', UK officials may face an uphill struggle explaining over the months ahead how they plan to replace M85 whilst also arguing that M85 needs to be retained. According to current intelligence the replacement for these so-called 'smart' cluster bombs will be further 'smart' cluster bombs – but really smart this time, not dumb like the last smart ones – and not cluster bombs at all actually because they will have too few submunitions... If these munitions happened also to be called SMARt then the confusion will be all the greater.

Short-term thinking and hastily constructed policies and proposals are in danger of creating a tangle that UK officials will struggle to find away out of. With the recently published CMC definition rejecting an exclusion for 'sensor fuzed' munitions, the future of UK cluster munitions policy looks long and arduous for NGOs and civil servants alike.

A sensor fuzed solution?

By **Richard Moyes**

Some states have suggested that 'sensor fuzed' submunitions should be exempt from the coming prohibition on cluster munitions. These submunitions use infra-red and other sensors to search for and engage targets on the ground. The container disperses a number of submunitions over a broad 'target area' and within that area the submunitions are designed to identify 'point targets' – usually vehicles – and attack them by firing an 'explosively formed projectile' while the submunition is still in the air.

Types currently in service include the U.S. air-launched 'Sensor Fused Weapon' (with 40 submunitions), the German SMArt 155 and Swedish BONUS artillery projectiles (both with 2 submunitions each). Proponents of these types of weapons, including apparently progressive states, claim that these weapons are not indiscriminate in the area they affect and they leave a very low number of 'dangerous duds'. However, despite repeated requests from humanitarian organisations since 2003, no detailed evidence from actual use or testing of these weapons has been presented in public to justify such assertions.

There is a well documented history of governments making unsubstantiated claims about the performance and acceptability of cluster munitions. In the 1970s the UK's BL-755 cluster bomb was feted by Governments' because it saturated only a "small area" by comparison with some of its predecessors. Thirty years and many civilian casualties later the UK has finally acknowledged that these weapons have an unacceptably high failure rate and declared a moratorium on their use. In the last year, analysis of the performance of Israeli M85 submunitions with self-destruct mechanisms in Lebanon has undermined assertions by the manufacturers and countries like the UK which stockpile them, that these submunitions present no significant post-conflict threat. Civilians continue to be killed and injured by these submunitions.

The history of misleading government claims about the effectiveness and efficiency of their cluster munitions should demand that current claims are treated with the greatest scepticism.

Given that only a few of these new sensor fuzed weapons have ever been used in combat, and certain models have not been used at all, the issue of sensor fuzed weapons is actually quite simple. It boils down to a question: what is a sufficient level of proof that these weapons will not cause humanitarian problems? Given that civilian lives are at stake, surely it is not unreasonable to demand more than unsubstantiated assertions? Is there any area of public health where such a low standard of proof would be required before new and potentially dangerous technology was introduced for use by governments? A robust treaty process that takes protection of civilians as its priority, should require substantiated answers to several questions before any assessment of the acceptability of these weapons can be made.

These questions regarding sensor fuzed and target-detecting submunitions include:

- **How accurate is the container munition?**
If the container munition is not accurate then the submunition search area will not be in the right place. This may increase the risk of civilian objects being inadvertently identified as targets.
- **What area is covered by the submunitions?**
The US Sensor Fuzed Weapon (BLU-108), for example, covers an area of some 30 acres (more than 120,000 m²). Such a wide target area increases the likelihood of the target area overlapping areas of civilian population. The larger the area covered the more likely it is that the area will also contain civilian objects that may be identified as targets by the submunitions.
- **What type or level of heat source will be targeted by the weapon?**
Although they are intended to strike military vehicles the sensors on these submunitions are designed to respond to heat sources of a rough size and shape. This means that *any* heat source that matches the basic profile will be targeted by the weapons and civilian vehicles are just as likely to be struck as military vehicles.

- **Within areas of civilian population how common are the sorts of object that might be targeted?**

In areas of civilian population, particularly in the developing world where grid electricity supply is intermittent, heat sources of the size and shape equivalent to a vehicle engine are likely to be commonplace. As noted above, more information would be needed to determine what other types of object, for instance household generators, might also trigger attacks.

- **How reliably or accurately do the individual submunitions strike the individual targets?**

Another point of risk for the civilian population relates to how accurately the individual submunitions strike their intended targets.

Detailed assessment of these points is necessary to determine whether these weapons are distinct from other cluster munitions and whether consideration should be given to excluding them from the coming ban. Some proposals to exempt these weapons have referred to their ability to strike 'point targets' without identifying the specific characteristics of a point target or acknowledging that in this case a 'point target' may refer to a civilian ambulance just as much as a tank. As a point of comparison, would it be considered acceptable for ground troops to spread out across a 30 acre area and, without specific warnings, to randomly strike military and civilian vehicles alike? Within the area affected by these weapons, commanders would be giving up any capacity to distinguish between military and civilian objects.

The post-conflict threat

Where governments have suggested that 'sensor fuzed' weapons be exempted from the ban on cluster bombs, they have to date offered no evidence that weapons of this type will not also fail in large numbers and cause post conflict contamination. Thus a draft text proposed for the Lima conference suggested an exemption for sensor fuzed submunitions without requiring them to have any features that would ensure against an excessive post conflict impact. If a sensor fuzed weapon had 100 submunitions and failure rate of 50%, would it be acceptable?



Zahra, 11 years old, injured in Lebanon 2006
 Photographer: Alison Locke

15 DECEMBER 2006: THE BISHOP OF COVENTRY

“In medicine, if an apparently effective drug has too many bad side-effects it is withdrawn from circulation. Cluster bombs produce too many bad side-effects. I believe that any society that claims to be civilised should outlaw practices that may at present be legal but that future generations will undoubtedly see as immoral”

Under the terms of the Lima draft text, and other proposals that have been put forward, the answer would be yes.

All the sensor fuzed weapons currently on the market are thought to feature electronic fuzes – with self-destruct and self-neutralisation mechanisms – but given the history of claims regarding cluster munitions wouldn't it be sensible to see some proof that these mechanisms actually work, and to a very high degree of reliability?

In the Convention on Conventional Weapons many states have agreed in principle that scatterable mines designed to be detonated by the presence, proximity or contact of a vehicle, should require both self-destruct and self-deactivation mechanisms, such that only 1 in 1000 of these weapons might continue to function after a certain period of time. Why would this obligation not be required for sensor fuzed weapons as an absolute minimum?

The following questions should be addressed regarding the post-conflict threat produced by these weapons:

- How has any self-destruct reliability been tested and evaluated?
- How accurately are these tests thought to predict performance in actual combat? What issues of uncertainty remain?
- What level of reliability has been found in operational and test conditions for the performance of the submunitions and of any self-destruct or fail-safe mechanisms?
- If explosive submunitions are not released due to a failure in one of the carrier munitions are they also designed to self-destruct in these circumstances?
- How dangerous are any unexploded submunitions and under what circumstances would they be considered safe to handle (Are they considered safe to move in explosive ordnance disposal protocols? Would they be considered safe to bring into a public place and be passed around amongst the public?)

Conclusions

In calling for a prohibition on sensor-fuzed weapons, NGOs are displaying a level of precaution that would be considered common place in any other area of public health where new technologies are being introduced that may put the public at risk.

A further challenge for NGOs comes with the recognition that states may reject this call. Such a rejection may be based on detailed analysis of evidence resulting in a conclusion that these weapons are sufficiently different to other cluster munitions not to present the same problems of excessive civilian risk. Rather more likely is that these weapons will be excluded from the prohibition as a result of political horse-trading that is not backed up by evidence or rational argument. If this were to be the case, then NGOs and committed states should not allow such weapons to fall completely outside the scope of a treaty. If the political process of negotiation leads that way, then a future treaty could ban cluster bombs and still exert controls over 'other submunition-based weapons.'

The decision to prohibit 'cluster munitions' as a category should not blind people to this possibility. If excluded on the basis of political horse-trading, rather than substantive evidence and analysis, such weapons may go on to cause excessive civilian harm in the future.

In the ten years since the anti-personnel Mine Ban Treaty, Governments have tried and failed within the consensus-based Convention on Conventional Weapons (CCW) to agree to enhanced regulations governing the use anti-vehicle mines – weapons that are not prohibited by the Mine Ban Treaty. A large body of states seem to consider enhanced legal control over anti-vehicle mines to be necessary but neither the Mine Ban Treaty nor the CCW have provided an effective mechanism for them to achieve that. Sensor fuzed weapons, which are designed to be detonated by the presence or proximity of a vehicle, may yet be part of the process of international legislation over anti-vehicle mines.

Given the difficulty of opening up the political and diplomatic space in which genuinely progressive humanitarian legislation restricting the means and methods of warfare can be developed, unnecessarily contracting the scope of such legislation would be a grave error.

Cluster munitions: they won't make friends and they won't win wars

By **Simon Conway**,
Co-Chair, Cluster Munition Coalition

When considering the history of the use of cluster munitions, particularly the American saturation bombing of the Plain of Jars in Laos during the secret war there in the 1970's, the shelling of Afghan villages with rockets during the Soviet occupation in the 1980's or the more recent Israeli assault on Lebanon, when more than four million cluster submunitions – most of them fired within the last 72 hours of the conflict – rained down upon the impoverished Shiite villages of the south, it is tempting to draw a parallel with a scene from the opening chapters of Conrad's seminal 1899 novel *Heart of Darkness*. Marlow, the main protagonist, witnesses a French warship lying off the African coast indiscriminately shelling an impenetrable forest. The image of the boat's six inch guns hurling explosive-filled steel shells into the darkness of a continent became a powerful metaphor for the vanity and hypocrisy of turn-of-the-century European imperialism, its high ideals so easily reduced to an atavistic and ultimately futile desire to punish.

For forty years, from Laos to Lebanon, cluster munitions have been the weapon of choice of industrialised nations for use against poorer, agrarian nations, but, as is clear from Iraq today technological superiority is not in itself sufficient to prevent failure. In 1975, Harry G Summers, an army colonel who later wrote a history of the Vietnam War, told a North Vietnamese colonel, 'You never defeated us on the battlefield,' and the colonel replied, 'That may be so, but it is also irrelevant'. The US may have consistently defeated North Vietnamese Army and Viet Cong units, but the manner in which the military success was achieved – over 380 million submunitions dropped – had a vast political cost, such that any benefit of local tactical victory was entirely nullified.

War always involves killing people and destroying things, but whether or not this



Dtar, 33 years old, injured while fishing in Laos 2003
Photographer: Alison Locke

death and destruction comes at too high a political cost is dependent on the choice of targets and the types of weapons used – simply put, it is the method of overcoming the enemy which determines the outcome – to quote General Rupert Smith in his book, *The Utility of Force*: "If the military success is achieved by bombing civilian targets and causing the loss of many civilian lives, which results in a strong national and international public reaction, the chances are it will not be easily converted into political capital".

The reason that the use of cluster munitions has proven to be so controversial and has so consistently failed to achieve the results intended is as

a consequence both of their design and of the nature of modern warfare. The very wide area effect of cluster munitions means that when used in modern conflict in which the enemy is embedded in civilian areas – "amongst the people" – it is inevitable that there will be large scale civilian casualties.

The most significant event in the design and subsequent use of cluster munitions was the Korean War, when American military might was challenged by an enemy that was technologically inferior but with massive supplies of manpower. US commanders confronted the nightmare of seeing their forces overrun by hordes of enemy soldiers. The

FIELD MARSHALL LORD BRAMALL

“If you liberally employ munitions that were designed for entirely different circumstances but which under modern conditions of conflict are more notable for the appalling and abiding legacy of death and mutilation that they provide for our own follow-up troops and even more the countless innocent civilians in the area, you would be making substantial inroads into any moral high ground and greatly weaken the chances of achieving your all-important political aim”.

result was a revolution in the design of anti-personnel weapons with an emphasis on the production of large quantities of fast-flying fragments designed to maximise the damage to soft tissue over the widest possible area. This emphasis on killing as many people as possible over the broadest possible area had a kind of logic to it as long as the threat of Warsaw Pact invasion was imminent. But it ignores the fact that in parallel to the threat of interstate industrial war, the US fought an almost continuous series of non-industrial wars, either directly or via proxies in both Africa and Asia, using the same area effect weapons designed for use against the Soviet horde and with predictably horrific effects. On their side, the Soviets did much the same and then, in the chaos that followed the Soviet collapse, the Yeltsin administration extended their use into the former Soviet Republics. Since the end of the Cold War, non-industrial or asymmetric war has become the norm and cluster munitions have continued to be manufactured, used and sold. We have sold them to irresponsible governments in Eritrea, Ethiopia, Iraq and Iran. They have now begun to fall into the hands of non-state actors, first in the former Yugoslavia, then in post-Soviet Afghanistan and most recently – from China via Iran - into the hands of Hezbollah in Lebanon.

There have been attempts, particularly since the end of the Cold War, to downplay the anti-personnel effects of the weapon and to emphasise the armour-piercing characteristics as if that might make them more acceptable. And you can see how their minds' are working: anti-personnel mines are illegal but anti-tank mines are not. At the time of the conflict in Kosovo,

the British Foreign Secretary argued that “There is a use of cluster bombs but in this context what that refers to are antitank weapons. Each of the clusters in them is designed to penetrate heavy armour”. It was a misleading claim, firstly because the 240,000 submunitions dropped on Kosovo – causing more than 75 deaths and injuries to civilians at the time of use and at least 152 post-conflict casualties – were “combined effects” munitions deliberately designed to create antipersonnel fragmentation and not exclusively anti-armour, and secondly because it suggests that the targets they were dropped on were primarily armour when in fact this was not the case.

In response to criticisms of the use of cluster munitions in built up areas defence officials have stated that a far greater weight of high explosive would have to be delivered to achieve the same probability of destroying enemy forces when using blast bombs instead of cluster munitions – in nutshell, if you don't let us use cluster munitions we'll have to flatten city blocks. Setting aside the fact that parties to a conflict “must at all times distinguish between the civilian population and combatants and between civilian objects and military objects” under the terms of the 1977 Geneva Conventions, the real significance is that in order to destroy a point target such as an artillery, mortar or anti-aircraft position dug in at a road junction an area weapon is used, and from the fact that the weapon disperses anti-personnel fragmentation throughout the area it follows that any civilian personnel within the area have become an integral part of the target. The target area has been enlarged as a consequence of the design

of the weapon – the death of civilians is an intrinsic consequence of the design of the weapon. A far better alternative to using an area weapon against a point target is to improve the accuracy of delivery of a point weapon against a point target. We need weapons that hit the right targets and kill the right people. Killing the wrong people is the best recruiting sergeant for a new breed of terrorists and the best way to perpetuate a conflict for generations. The British Army learned that the hard way as a consequence of Bloody Sunday. The simple truth is that our opponents have learned to drop below the threshold of the utility of our weapons. Their method is to force our military to react in an excessive manner against a guerilla force that is fighting amongst the people. The result is that we end up killing the very people that we are supposed to be delivering democracy or basic human rights to.

What we should now recognise is that the cluster munitions that we have and that we continue to use are not fit for purpose. War is no longer a single massive industrial event that delivers a conclusive result. The wars that we fight now be it in Kosovo, Iraq or Afghanistan are wars to impose order. Our aim in fighting them is to achieve and maintain order in which political and economic measures can take hold. Once again to quote General Rupert Smith, “there is a good principle of English Common Law that when you are faced with violent disorder and it is your duty to quell it then you are to take the course of action with the least likelihood of causing loss of life and property”. There is no better argument for an immediate prohibition of cluster munitions.

The capacity to kill large numbers of people is not in itself sufficient to justify claims that cluster munitions have utility. If, by our choice of weapon systems we kill large numbers of civilians it doesn't matter how noble our cause might be, we will alienate the very people that we are seeking to save. Using cluster munitions is not the way to win wars in fact it's the way to lose wars.

Let's stop losing wars. Let's stop killing civilians. Let's ban cluster bombs.

www.stopclustermunitions.org

Spiked!

By Richard Moyes

In June 2007, The U.S. made an intervention at the UN CCW arguing that the problem of cluster munitions “is episodic, manageable within current response mechanisms and, on a global scale, less harmful than the threat caused by other types of unexploded ordnance.”

By focusing on a few examples we can draw out reasons why the overall arguments can be rejected or considered irrelevant.

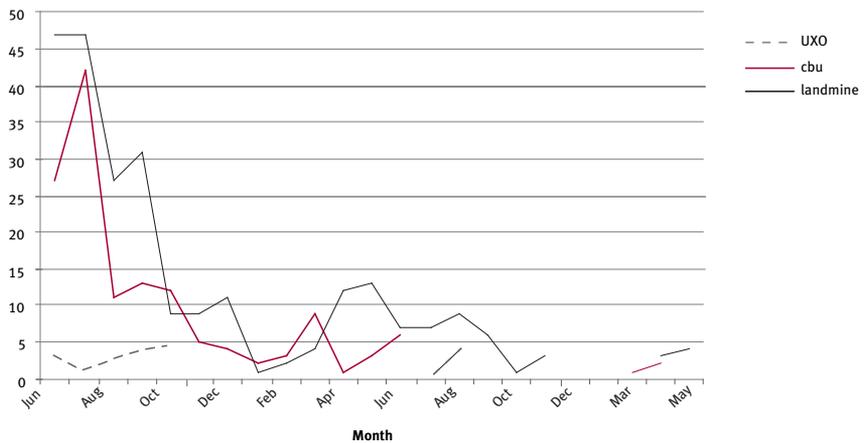
The U.S. claims that among the 52 countries where they have provided conventional weapons destruction assistance, “only ten have reported any threat from cluster munitions.” The argument here seems to be that cluster munitions are not a problem in countries where they have not been used.

It was also argued that cluster munition casualties occur in a “spike” shortly after the cessation of hostilities. However, where this has been experienced, it might be attributed to focused efforts by the international community to address cluster munitions. In Kosovo and Lebanon cluster munitions clearly presented the principal unexploded ordnance threat in the wake of the conflict and were addressed as such.

UN casualty data for Kosovo shows landmines and cluster munitions casualties both following a very similar pattern in the year after the conflict. It is not then clear that the “spike” that the U.S. has identified is a function of the munitions or of the type of response mounted by the international community (coupled with the development of coping strategies amongst the local population) to the most severe forms of post-conflict threat.

The U.S. analysis draws on un-referenced casualty data taken over unknown periods. For example, it was claimed that in Lebanon cluster

Comparison of cluster munition and landmine casualties per month after the conflict in Kosovo



munitions account for less than 10% of “total casualties.” According to Mine Action Centre figures, casualties from 14th August 2006 to June 23rd 2007 can be broken down as follows:

Type	Number
Cluster munition	217
Anti-personnel mines	8
Anti-tank mines	4
Other unexploded ordnance	6
Unknown	13
Total	248

The U.S. claim only stands up if data is taken from a period before cluster munitions were used in massive numbers. Added to the insight that cluster munitions do not cause a problem in countries where they have not been used, we can add the revelation that cluster munitions don’t cause a problem *before* they have been used.

Since the last major war, cluster munitions have accounted for at least 87% of all landmine and ERW casualties in Lebanon. Their statistical analysis ends up falling into a trap of its own making. It is stated that submunitions in Afghanistan make up “less than 1 one-

hundredth of 1 per cent of contamination” in that country (i.e. <0.01%), and elsewhere it is noted that they make up less than 2% of the casualties. If we take these figures as approximates it suggests that submunitions cause a proportion of civilian death and injury 200 times greater than one would expect given their prevalence amongst the contamination. Thus, on average, a single submunition presents a risk to civilians equivalent to 200 of the other items of contamination they are compared against when those are treated as a homogenous group.

The relative risk of cluster munitions becomes even greater if one acknowledges that they are much more likely to create items of unexploded ordnance than other munitions (whether as a result of higher failure rates or simply because there are so many in a container.)

Given this, we can only be thankful that cluster munitions have not been used in more countries, with greater frequency or in greater numbers.

Indeed, the first on their list of practical suggestions to reduce the likelihood of civilian casualties is “using fewer cluster munitions.” At least on that we can probably all agree.

9 JULY 2007: LORD ELTON

“... the noble Baroness, Lady Amos, replied in a letter on 15 May to say that the British Government had handed the co-ordinates to NATO and that NATO would “in due course” hand them to Serbia? It has been eight years for children to blow their feet off. If NATO has not yet done this, why can we not send our co-ordinates to the Serbians direct and get others to do the same?”

The powerful will not protect us

By **Matthew Bolton**

Cluster munitions are a security threat – unexploded bomblets pose a serious risk to the safety of civilians in many conflict zones. However, the institutions we commonly expect to safeguard our security – governments and the military – are rarely seen at the forefront of protecting civilians from the effects of cluster munitions.

Moreover, the so called ‘great powers’ who have permanent seats on the United Nations Security Council, a body whose name suggests it is responsible for protecting the world, have failed to provide a lead in the international effort to regulate or prohibit cluster munitions.

Instead, just as was the case with the international effort to ban anti-personnel landmines, the responsibility for building a global framework to protect civilians from cluster bombs has fallen to actors that lie outside the traditional security complex: NGOs, religious groups and the media, backing the political lead of smaller states.

The diplomacy of committed states and the campaigning of the Cluster Munition Coalition have put the issue of cluster munitions on the global radar. More than 80 countries are now part of the ‘Oslo Process’ that aims to create a prohibition on cluster munitions analogous to the antipersonnel Mine Ban Treaty. A new norm shunning the use of cluster bomblets is emerging.

The Oslo Declaration of February 2007, is not the first proposal to ban cluster bombs - but previous efforts fell on deaf ears. In 1973, shocked by the impact of cluster munitions on civilians in Indochina (Vietnam, Cambodia and Lao), Sweden, and a group of other smaller states, presented a direct and bluntly worded proposal to restrict the use of antipersonnel weapons, including a ban on fragmentation cluster bomblets and aerially dispersed mines.

The diplomatic move did not come as a result of great power politics. The US, unsurprisingly, actively worked against information about the impact of ordnance in Indochina reaching the rest of the world – it had kept the bombing of Lao more or less secret until 1969. The USSR, not usually one to let a propaganda

LORD HANNAY OF CHISWICK; FORMER PERMANENT REPRESENTATIVE TO THE UN. CURRENTLY CHAIR OF THE UNA UK

“We really must not accept that smart cluster munitions are somehow okay. I am sure we will have to accept less than global membership in the early stages of any ban, as we have in the ban on landmines, but there must be plenty of naming and shaming and of compelling the recalcitrants to explain and defend their position; we must not simply allow them to get away with it as unavoidable.”

opportunity go by, was also loath to see restrictions that might impact its own massive military machine.

Indeed, Sweden’s proposal withered and died under the pressure of the great powers, which spread disinformation, cast aspersions on the information gathered by the Swedes and misled the public on the human impact of these weapons.

The diplomatic effort led by Sweden in the 1970s had its own roots in the work of idealistically motivated individuals who had borne witness to the suffering being caused by these weapons during the Vietnam War. It was journalists and peace activists who first sounded the alarm about the impact of cluster munitions on the civilian population during and after attacks.

For instance, the 1967 International War Crimes Tribunal, an inquiry organized by philosophers Bertrand Russell and Jean-Paul Sartre, sent investigators to North Vietnam to examine US use of cluster munitions and commissioned research by medical experts into the injuries they caused. The tribunal concluded that cluster bombs “must be regarded as arms prohibited by the laws and customs of war.”

The first significant attempts to clear up and mitigate the effects of cluster munitions in Indochina were also not funded by the great powers or implemented by military engineers. It was the Quakers and Mennonites, historic peace churches providing relief and reconstruction aid to Lao, that first sought ways to find and clear up the unexploded bombs. Such actions were the direct precursors of ‘mine action’ being undertaken in the region today.

Anti-cluster bomb campaigning in the 1970s, led by countries like Sweden and activist groups like the peace churches,

failed to develop substantive restrictions on these weapons in part because they were conducted in the great-power-centric context of the Cold War.

While they were able to raise public concern, their energy was dissipated, depoliticized and stifled in the highly technical discourse and proceedings of Cold War arms control meetings. The Cold War reification of ‘national security’ placed concerns about weapons firmly in the hands of the military, diplomats and arms ‘experts’, rather than affected or concerned civilians. This tradition lingers on to this day in the UN Convention on Conventional Weapons.

Luckily for today’s cluster munitions campaigners, the end of the Cold War and the rising power of organised civil society has meant that the public is less willing to defer to the judgment and capacity of great powers – and their militaries and diplomats – in protecting civilians from the cluster munitions crisis.

The Cluster Munition Coalition is also building on the international ban on anti-personnel landmines, which has created a broader public consciousness of explosive remnants of war, framed in humanitarian, rather than military terms, and has shaped new norms about the impact of weapons on civilians.

The success of the landmine ban and the new disability convention show that coalitions of smaller states, international organisations, NGOs and committed individuals now have the ability to shape the international agenda in a way they never could during the Cold War. We must seize this opportunity to finish the work started by Sweden and the peace churches in the 1970s.

The Oslo Process

Declaration

A group of States, United Nations Organisations, the International Committee of the Red Cross, the Cluster Munitions Coalition and other humanitarian organisations met in Oslo on 22 – 23 February 2007 to discuss how to effectively address the humanitarian problems caused by cluster munitions.

Recognising the grave consequences caused by the use of cluster munitions and the need for immediate action, states commit themselves to:

1. Conclude by 2008 a legally binding international instrument that will:
 - (i) prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and
 - (ii) establish a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation to survivors and their communities, clearance of contaminated areas, risk education and destruction of stockpiles of prohibited cluster munitions.
2. Consider taking steps at the national level to address these problems.
3. Continue to address the humanitarian challenges posed by cluster munitions within the framework of international humanitarian law and in all relevant fora.
4. Meet again to continue their work, including in Lima in May/June and Vienna in November/December 2007, and in Dublin in early 2008, and welcome the announcement of Belgium to organise a regional meeting.

84 states are now participating in this process

Afghanistan, Albania, Angola, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Chad, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Guinea Bissau, Holy See, Honduras, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Jordan, Lao PDR, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Malawi, Malta, Mauritania, Mexico, Montenegro, Mozambique, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, St Vincent and the Grenadines, Sweden, Switzerland, Tanzania, Thailand, Turkey, Uganda, UK, Uruguay, Venezuela, Yemen and Zambia.

Timeline to a treaty

- **4–7 December: Vienna Conference on Cluster Munitions**
To ensure the continued success of the Oslo process, aimed at establishing a prohibition on cluster munitions by 2008 and to enter into discussions on complicated elements of the treaty
- **18–22 February 2008, Wellington Conference on Cluster Munitions**
To ensure the continued success of the Oslo process in establishing a treaty prohibiting cluster munitions and to prepare the ground for negotiations on the treaty text
- **19–30 May 2008: Dublin Conference on Cluster Munitions**
To negotiate an international convention that prohibits cluster munitions and has wide governmental support
- **September/October 2008: Oslo**
States invited to Oslo to sign the treaty

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Diana

THE WORK CONTINUES

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