

**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
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**

CLUSTER MUNITIONS

Submitted by France

1. France is very aware of the humanitarian risks posed by the use of cluster munitions. Recent events, particularly the conflict in Lebanon, have demonstrated the urgent need to find practical solutions to the humanitarian impact of submunitions.
2. France is mindful of the question of respecting international humanitarian law on the protection of civilians in armed conflicts. France possesses cluster munitions but has not used them since 1991. It does not export them and keeps a very small stockpile. Its rules on the use of this category of weapons entail strict protection of civilian populations in all circumstances.
3. Conscious of the humanitarian impact of submunitions, France intends to continue with its decisive action to strengthen the relevant international norms and to suggest some lines of thought for its partners, with a view to giving each State the opportunity to proceed as fast as possible to a better understanding of the humanitarian concerns connected with this type of weapon.

4. It is important to arrive at a common understanding of what cluster munitions are, since the term is currently used to describe a wide range of concepts. Once this is done, it should be possible to proceed as fast as possible to an accepted definition, which would be an indispensable prerequisite for putting in place practical measures to counter the humanitarian consequences of the use of submunitions.

5. The definition of cluster munitions should take into account such factors as the technical characteristics of such weapons (restrictions on active life, target detection systems and so on) and their shelf life.

6. As the law stands, the use of submunitions is regulated by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, which establishes the principles of the prohibition on causing superfluous injury or engaging in indiscriminate attacks and of precautionary measures and proportionality. For post-conflict periods, Protocol V on Explosive Remnants of War sets out the principle of the clearance of unexploded ordnance, which also covers submunitions, and encourages States, on the basis of best practices, to take preventive measures to improve the reliability of munitions, including submunitions, in order to prevent them from becoming explosive remnants of war. France, which ratified Protocol I in 2001 and was among the first 25 States to have ratified Protocol V on Explosive Remnants of War, regrets the failure of these instruments to achieve universality and encourages States that have not yet done so to ratify them as soon as possible.

7. Not only must thought be given to the implementation of existing international law, but the specific problem of submunitions obliges us to go further and to establish a new, legally binding international instrument.

8. The 1980 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 is the most appropriate framework for dealing with the question of cluster munitions, inasmuch as one of its features is that it can bring together all States possessing, using or exporting such

weapons. This aim of universality should be given priority in order to address humanitarian considerations effectively. The concern for effectiveness and equality also means that account should be taken of the real disparities between different States in military terms - such as the purpose for which they hold cluster munitions, their policy on the use of such munitions and the diverse nature and quantity of stocks held - as well as in economic and technical terms, and the security and defence obligations and concerns of the States parties that are the least advanced technically or that have limited resources.

9. In this context, France hopes that the mandate for discussion of cluster munitions adopted at the Third Review Conference of the High Contracting Parties to the Convention in November 2006 will enable us to proceed, at the next Conference of States Parties in November 2007, to the negotiation of a legally binding international instrument on submunitions. Such an instrument could take the form of an additional protocol to CCW (Protocol VI).

10. France took advantage of its participation in a seminar organized by the International Committee of the Red Cross (ICRC) in April to work for rapid progress and practical measures. It will adopt the same approach at the meeting of the Group of Governmental Experts in June. This meeting should take the opportunity to formulate recommendations on the adoption in November 2007 of a mandate for negotiation on cluster munitions.

11. France participated in the Oslo Conference on Cluster Munitions, which was held on 22 and 23 February 2007. At that Conference, it undertook, along with 45 other States, to work towards a legally binding international instrument prohibiting the use, production, stockpiling and transfer of the cluster munitions most dangerous for civilian populations. The States also agreed to hold further meetings, which would include those to be held in Lima in May, in Vienna in November/December and in Dublin in early 2008. A regional meeting was also announced by Belgium. The "Oslo process" that was thus set in train does not conflict with current procedures under the Convention: on the contrary, the two should be mutually complementary and reinforcing. The Oslo process has thus given a political impulse to the work of the Convention with a view to encouraging the earliest possible outcome.

12. Lastly, France would like to share with its partners some thoughts about the main characteristics of a protocol additional to the Convention on cluster munitions:

- (i) Such an instrument will need to strike a balance between humanitarian requirements, including the threat that may be posed by some submunitions to civilian populations, and military considerations, particularly the fact that many armed forces consider it impossible to abolish all weapons that might come into the category of cluster munitions. It will therefore have to establish the principle of a strict prohibition on the use, development, production, acquisition, stockpiling or transfer of cluster munitions, which, according to the accepted definition, are capable of causing unacceptable harm to civilian populations (“prohibited” submunitions). It will also have to ensure that it does not restrict participation in operations undertaken jointly or in the framework of an alliance and does nothing to harm the defence interests of States;
- (ii) The definition of prohibited cluster munitions will have to take into account the inherent technical characteristics of the munition concerned (such as the existence or not of restrictions on its active lifetime), the number of submunitions involved (which would mean defining the threshold number below which a weapon containing submunitions would not be considered a cluster munition) and the shelf life of such weapons (which would involve the introduction of a threshold after which they would automatically pass into the category of prohibited cluster munitions);
- (iii) The instrument will have to establish an obligation to destroy prohibited cluster munitions, at the same time providing for an appropriate transition period and the possibility of maintaining minimum stockpiles for an interim period for specific lawful purposes;
- (iv) The instrument will need to contain measures based on best practices in order to improve the reliability, accuracy and deployment of such cluster munitions as remain authorized;

- (v) It will also need to provide encouragement for cooperation and assistance among States, particularly with regard to the destruction of stockpiles, the development and operationalization of techniques for the destruction, neutralization and clearance of cluster munitions and training in such techniques. The instrument will need to be designed to complement Protocol V on the Explosive Remnants of War;
- (vi) Lastly, the instrument could contain a mechanism to ensure that its provisions are observed, taking into account the establishment of appropriate transition periods for the introduction of various measures of a compulsory nature, such as prohibitions on use and the obligation to destroy cluster munitions.
