



Doc. 11925
26 May 2009

Ban on cluster munitions

Committee Opinion¹

Committee on Legal Affairs and Human Rights
Rapporteur: Mr Holger HAIBACH, Germany

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Political Affairs Committee, Mr Johannes Pflug (Germany, SOC), on his excellent report and supports by and large the proposed draft resolution and draft recommendation.
2. The committee wishes nevertheless to make a few amendments to further strengthen the draft resolution and draft recommendation and take account of the unacceptable recent use of cluster bombs by both parties during the war between Georgia and Russia.

B. Proposed amendments to the draft resolution and to the draft recommendation

Amendment A (to the draft resolution)

After paragraph 10, add a new paragraph as follows:

“In this context, the Assembly strongly condemns the use of cluster munitions – by both parties – during the August 2008 war between Georgia and Russia. It urges Georgia and Russia to continue, as a matter of urgency, to remove mines and unexploded ordnance and to raise awareness among the affected population about the dangers posed by such devices.”

Amendment B (to the draft resolution)

After paragraph 16, add a new paragraph as follows:

“The Assembly strongly opposes any attempt to bypass the Cluster Munitions Convention by developing an alternative legal instrument – such as a draft Protocol to the Convention on Conventional Weapons – that would merely regulate but not ban the use of cluster munitions.”

Amendment C (to the draft recommendation)

At the beginning of paragraph 1.2, add the words:

“actively and publicly – possibly in a declaration – support the campaign for ratification of the Cluster Munitions Convention and”

1. See [Doc. 11909](#) tabled by the Political Affairs Committee.



C. Explanatory memorandum by Mr Haibach, rapporteur

1. I can only congratulate Mr Pflug on his excellent report and stress again that his explanatory memorandum is so complete that there is not much to add.
2. I should like, however, to put forward a few amendments to the draft resolution and to the draft recommendation to strengthen them and to take into account the unacceptable recent use of cluster bombs by both parties during the war between Georgia and Russia.

1. Amendment A

Explanatory note:

The rapporteur would like to recall that in its [Resolution 1633 \(2008\)](#) on the consequences of the war between Georgia and Russia, the Assembly notes that *“The use of heavy weapons and cluster munitions, creating grave risks for civilians, constituted a disproportionate use of armed force by Georgia, albeit within its own territory, and as such a violation of international humanitarian law and Georgia’s commitment to resolve the conflict peacefully.”* In this resolution, the Assembly urges both Georgia and Russia to remove mines and unexploded ordnances and to raise awareness among the affected population about the dangers posed by such devises.

Furthermore, in the report after his visit to the conflict area, between 22 and 29 August 2008, the Council of Europe Human Rights Commissioner presented six principles for urgent protection of human rights and humanitarian security, including the following:

*“The whole area affected by the warfare must be de-mined. Cluster bombs, mines, unexploded ordnances and other dangerous devices must be located, removed and destroyed. Until this is done the targeted terrain must be marked and the population clearly informed about the dangers. The parties to the conflict need to declare what type of weapons and ammunition were used, when and where. International contribution to this effort will be required and should be welcomed by both parties.”*²

Since the Assembly has fully subscribed to this principle, it should be adequately reflected in the draft resolution presented by the Political Affairs Committee on the ban on cluster munitions³.

2. Amendment B

Explanatory note:

This amendment addresses the concern over the initiative taken by several states to draft a Protocol to the Convention on Conventional Weapons to regulate the use of cluster munitions⁴. Such an attempt undermines the absolute ban provided in the Convention on Cluster Munitions. The draft resolution presented by the Political Affairs Committee rightly urges all member states to ratify this convention as a matter of urgency and should condemn and strongly oppose any attempt to bypass it.

3. Amendment C

Explanatory note:

This amendment asks the Committee of Ministers to actively and publicly support the campaign for ratification of the Convention on Cluster Munitions so as to ensure the full support and the commitment of all member states of the Organisation for it.

Reporting committee: Political Affairs Committee

2. See [CommDH\(2008\)22](#), 8 September 2008.

3. In this context, see also Human Rights Watch report ‘A dying practice – Use of cluster munitions by Russia and Georgia in August 2008’, 14 April 2009.

4. See <http://www.stopclustermunitions.org/wp/wp-content/uploads/2008/09/observations-on-ccw-draft-prot-ii-082908.pdf>.

Committee for opinion: Committee on Legal Affairs and Human Rights

Reference to committee: [Doc. 11213](#) and Reference No. 3364 of 25 June 2007

Opinion approved by the committee on 19 May 2009

Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Ms Heurtin