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Ban on cluster munitions

Committee Opinion¹

Committee on Migration, Refugees and Population

Rapporteur: Ms Claire CURTIS-THOMAS, United Kingdom

A. Conclusions of the committee

1. The committee welcomes the report of the Political Affairs Committee on the Ban on cluster munitions.
2. The committee is pleased to note that many of its principal concerns have been reflected in the report, draft resolution and draft recommendation, including the humanitarian consequences of the use of cluster munitions in conflict and post-conflict situations.
3. However, the committee remains concerned that, for the reasons provided by the rapporteur of the Political Affairs Committee, the class of real and potential cluster munition victims in conflict and post-conflict states is very wide. Urgent action should be taken by States, not only to prohibit the prospective use of cluster munitions, but also to address violations of rights and suffering of cluster munition victims which have already occurred.
4. It is appropriate to consider the humanitarian consequences of cluster munitions as a global problem (in particular due to proliferation or stock-piling of such weapons). Nevertheless, the committee urges all Council of Europe member states to fully accept their obligations as signatories of treaties banning cluster munitions and their obligations under international humanitarian law and international human rights law.
5. The committee also remains concerned by reports of international organisations² and NGOs³ concerning the use of cluster munitions by Russian and by Georgian forces in the August 2008 war. Some evidence collected, specifically names those individuals killed as well as the particular model of cluster munitions.⁴ Urgent action must be taken by the authorities in Russia and Georgia to reduce the scale of the potential impact of the cluster munitions already reportedly dropped. For this to happen, it is necessary for all sides to exchange information on all bombs used and the locations in which they were used. Your rapporteur refers in this respect to Parliamentary Assembly [Resolution 1648 \(2009\)](#) on the humanitarian consequences of the war between Georgia and Russia, paragraph 24.11 in which the Assembly calls on Georgia, Russia and the de facto authorities in South Ossetia and Abkhazia to: “exchange information on mines and unexploded ordnance and remove, together with the assistance of the Halo Trust and other experts in the area, all

1. Reference to committee: [Doc. 11213](#), Reference No. 3364 of 25 June 2007, modified on 29 September 2008.

2. “Human Rights in the War Affected Areas Following the Conflict in Georgia”, OSCE, 27 November 2008, http://www.osce.org/documents/odhr/2008/12/35656_en.pdf; and Joint OSCE/UNEP Environmental Impact Assessment Mission to Georgia, 29 September – 3 October 2008, pps 9 and 11.
http://www.osce.org/documents/eea/2008/10/34577_en.pdf

3. For example see Human Rights Watch “A Dying Practice. Use of Cluster Munitions by Russia and Georgia in August 2008”; and “Civilians in the Line of Fire: The Georgia-Russia Conflict”, Amnesty International, 2008, AI Index: EUR 04/005/2008, <http://www.amnesty.org/en/library/asset/EUR04/005/2008/en/d9908665-ab55-11dd-a4cd-bfa0fdea9647/eur040052008eng.pdf>

4. *Ibid* and see also Statement by the Permanent Representative of the Kingdom of the Netherlands to the OSCE regarding the death of Dutch cameraman Stan Storimans on 12 August 2008
http://www.osce.org/documents/pc/2008/10/34651_en.pdf



remaining explosive remnants of war. Ensure that all areas of danger are mapped, fenced and identified for the local population and that awareness-raising programmes of the dangers of these explosive remnants continue to be run for those at risk, whether they are civilians, police officers, members of the authorities or others.”

6. The issue of responsibility for clearing mines and unexploded ordnance after a conflict is not always clear. For example, accountability mechanisms for failures, as regards mine clearance and victim assistance activities, by states acting individually or as troop contributing Nations to international organisations, must be clarified and addressed. In one case, in 2000, 8 boys playing in the Mitrovica hills came across a number of undetonated cluster bomb units dropped during the NATO bombardment of Kosovo in 1999 and began playing with them. Believing it was safe, one boy threw an undetonated cluster munition into the air. It exploded, killing one boy and blinding and disfiguring his brother. French troops forming part of UNMIK had failed to support de-mining activities and warn the local population as it was not a “high priority”. In 2007, the European Court of Human Rights found that the impugned action was attributable to the UN and not to the French Government. Clear lines of responsibility must be drawn between the troops on the ground, the troop contributing Nations and the organisations of which they form part (e.g. NATO, UNMIK, UNMACC).⁵

7. The above example concerning the Behrami boys highlights the importance of educating local populations as to the location of munitions and the risks entailed (an obligation found in the 1980 Convention on Certain Conventional Weapons). Children make up a significantly high proportion of all casualties of these indiscriminate weapons. Children are attracted by munitions which are shaped like every-day objects, such as balls and canisters, and are likely to pick up and touch unexploded cluster munitions, putting themselves and others at risk. Those who work in agriculture or on the land are also at particular risk. Major awareness campaigns must be run on a continuous basis, aimed at both adults and children, until the threat of mines and unexploded ordnance has been dealt with.⁶

8. The report identifies the rules of international humanitarian law which confine the acceptable means and methods of warfare which can be employed by states. The Convention on cluster munitions creates a total ban on direct and indirect use of cluster munitions, and enters into force six months after 30 states have ratified it.⁷ As the Rapporteur points out, there have been 6 ratifications to date, including 3 from amongst the 47 Council of Europe Member States.⁸

9. The Committee encourages states to sign and ratify the Convention on cluster munitions and to reconsider the reasons put forward for failing to do so. For example, some states argue that ratifying the Convention on cluster munitions would pose a threat to national security, especially if one’s enemies have not joined; or that it places a heavy burden on States with large stockpiles of weapons, or those which bear ultimate responsibility for clearance and victim assistance. In countering these arguments, it should be highlighted that the factual evidence concerning the catastrophic nature of cluster munitions is clear. Equally clear is the fact that cluster munitions are of limited military use in modern warfare and are poor defensive weapons. The Convention gives States Parties 8 years to destroy stockpiles of cluster munitions, extendable by 4 years. Ultimate responsibility for clearance is placed on affected states in order to protect their sovereignty and in recognition of international human rights obligations to care for their own people. The Convention also provides that all states “in a position to do so” provide technical, material and financial assistance to affected states and deadlines for clearance in an affected state may be extended by 5 years if the territory is too contaminated to clear within the 10-year deadline.⁹

B. Proposed amendments

Whilst emphasising its support for the draft resolution tabled by the Committee on Political Affairs, the Committee on Migration, Refugees and Population proposes the following amendments:

5. *Behrami and Behrami v. France, Saramati v. France, Germany and Norway*, App. Nos, 78166/01; 71412/01, (dec) Grand Chamber, 2 May 2007.

6. “The Impact of Cluster Munitions on Children”, Statement by UNICEF on the First Global Day of Action on Cluster Munitions, 5 November 2007, http://www.unicef.org/media/media_41656.html

7. Adopted on 30 May 2008 in Dublin by more than 100 countries.

8. Namely Austria, Ireland and Norway. The Holy Sea, Laos, and Sierra Leone have also ratified the convention.

9. “Twelve Facts and Fallacies About the Convention on cluster munitions”, Human Rights Watch, 14 April 2009. http://www.hrw.org/sites/default/files/related_material/HRW,%20CCM%20Facts%20and%20Fallacies,%204.10.09.pdf

Amendment A (to the draft resolution)

In paragraph 12 at the end of the second to last sentence ending “cluster munitions victims and to ensure their social and economic inclusion”, add the following:

“These cluster munition victims include all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly affected by cluster munitions as well as their families and communities.”

Amendment B (to the draft resolution)

Delete the last sentence in paragraph 12 and create a new paragraph 13 as follows:

“Under the new treaty, States Parties in a position to do so are required to provide technical, material and financial support, to assist other States Parties that are affected by cluster munitions, in implementing the treaty.”

Amendment C (to the draft resolution)

Create a new paragraph after paragraph 13 as follows:

“Where international forces (e.g. NATO or bodies created by or acting under the delegated authority of the UN Security Council) undertake de-mining and related activities, clear lines of command and control and responsibility and accountability must be established.”

Amendment D (to the draft resolution)

In sub-paragraph 14.5 after the words “keep accurate records of where such munitions have been used” add the following:

“and undertake to support de-mining activities by marking, identifying and reporting on the location of cluster munitions sites, and in turn, to exchange such information with all relevant stakeholders”

Amendment E (to the draft resolution)

In sub-paragraph 14.7 after the words “exposed to the danger of cluster munitions” add the following:

“and run major awareness campaigns, aimed at children and other potential victims, on a continuous basis, until no risk remains”

Reporting committee: Political Affairs Committee

Committee for opinion: Committee on Migration, Refugees and Population

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Secretariat of the committee: Mr Neville, Mrs Odrats, Mr Ekström