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Will Oslo be the Next Ottawa? The Cluster-munitions Debate

More than a decade has passed since the monumental Ottawa Mine Ban Convention¹ was opened for signature in December 1997. Now, with the adoption of the text of the *Convention on Cluster Munitions*² in May 2008, the global community is closer than ever to an international agreement prohibiting the use of cluster munitions. A review of the key issues underpinning the debate on cluster munitions follows.

by Jeff Abramson [Arms Control Association]

On 30 May in Dublin, Ireland, 107 countries participating in the Oslo Process agreed to the text of a new convention that bans virtually all existing cluster munitions. Using some of the language of the Ottawa Mine-ban Convention, and led by many of the same advocates who pushed for that convention more than 10 years ago, the CCM represents the possibility that we will see a new global norm against the use of cluster munitions, with stockpiles eliminated, lands cleared and victims assisted. Whether and how that comes about, however, may be determined in a separate process held within the Geneva-based Convention on Certain Conventional Weapons.³ Negotiators there are working to create a separate cluster munitions protocol that could have the backing of the world's major stockpilers of cluster munitions, such as China, India, Israel, Pakistan, Russia and the United States, most of whom have thus far remained outside the Oslo Process.

Interoperability and Definition: Oslo Compromises

The text agreed to in Dublin requires the destruction of all cluster munitions (as defined by the Convention) within eight years and the clearance of all areas afflicted with unexploded cluster submunition remnants within 10 years. Extensions may be requested if these deadlines cannot be met. The accord also includes measures for international assistance to victims of cluster munitions. Countries were able to sign the Convention beginning in December, 2000, and it will enter into force six months after 30 governments sign and ratify it.²

Many advocates and government representatives celebrated the conclusion of the CCM. In his 30 May closing statement, Irish Minister for Foreign Affairs Micheál Martin said, "I am ... convinced that together we will have succeeded in stigmatizing any future use of cluster munitions."⁴ Cluster Munition Coalition Co-chair Steve Goose noted that it "can only be characterized as an extraordinary convention, one that is certain to save thousands and thousands of civilian lives for decades to come."⁵

If as strong an international consensus develops around cluster munitions as has developed around anti-personnel landmines, such predictions may come true. During the CCM negotiations, however, compromises were made—notably on interoperability and the definition of cluster munitions—in order to maintain the support of a number of key countries. These compromises opened the door to future cluster use.

A major question going into the Dublin conference was whether eventual CCM States Parties would be able to cooperate militarily with nonmember States Parties that maintain cluster munitions. Because the current policy of the United States is to retain the right to use certain cluster munitions, the desire to maintain interoperability put U.S. allies in a particularly difficult position.⁶ Although abstaining from the Oslo Process, the United States exerted pressure on its participants regarding the interoperability issue.

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During a press briefing in the initial days of the Dublin meeting, Acting Assistant Secretary of State for Political-Military Affairs Stephen D. Mull repeated U.S. interoperability arguments that the draft convention could be read as calling for the criminalization of military cooperation between eventual member and nonmember states. Because U.S. ships carry cluster munitions, he further extended the argument to say that U.S. disaster relief and humanitarian assistance could be cut off, raising the stakes for the global community. Mull also said that "a much more effective way to go about this is to pursue technological fixes that will make sure that these weapons are no longer viable once the conflict is over."⁷

To address interoperability concerns, Article 21 was added, specifically clarifying “relations with states not party to this convention.” It permits military cooperation even when cluster munitions are used, as long as member states do not “expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.”² This rather broad exemption made it easier for U.S. allies to support the convention, as the United Kingdom dramatically did on 28 May when Prime Minister Gordon Brown issued a statement that said, “In order to secure as strong a convention as possible in the last hours of negotiation, we have issued instructions that we should support a ban on all cluster bombs, including those currently in service by the UK.”⁸

A separate concession on the definition of cluster munitions partially reflects U.S. preference for technological improvements instead of an outright ban. In Article 2, negotiators exempted munitions that “avoid indiscriminate area effects and the risks posed by unexploded submunitions” by requiring that no more than nine explosive submunitions be included in a cluster munition and that each of them meet the following characteristics:

- Weigh more than four kilograms (8.8 pounds) and less than 20 kilograms (44.09 pounds).
- Be designed to detect and engage a single target.
- Be equipped with an electronic self-destruct mechanism and an electronic self-deactivating feature.

According to most experts, no cluster munitions that have been used in combat to date would meet this stringent definition.⁹ Others, however, such as the German-produced

“There remains a military requirement to engage area targets that include massed formations of enemy forces, individual targets dispersed over a defined area, targets whose precise locations are not known, and time-sensitive or moving targets. Cluster munitions can be the most effective and efficient weapons for engaging these types of targets.”⁶

Although the argument is made that 21st-century warfare is not based on combatting tank formations and indirect area targets, countries possessing the vast majority of global cluster stockpiles did not sign onto the CCM. Even though his country did so, Danish Ambassador Bent Wigotski said, “Countries possessing more than 90 percent of the world stockpiles do not take part in the Oslo Process and have no intention of acceding to the convention. ... Any comparison with the Ottawa Convention is misleading. Cluster munitions are much more important [than landmines] for a number of countries, constituting a very significant part of their firepower.”¹³

CCW Process will be Important

Instead, many major cluster-munitions producers and stockpilers—including China, India, Israel, Pakistan, Russia and the United States—have stayed out of the Oslo Process in favor of the CCW, which is designed to address weapons that are deemed excessively injurious or to have indiscriminate effects. As the Oslo Process was launched, countries participating in the CCW opted to begin negotiations on the weapons. Those discussions are conducted primarily by the CCW Group of Government Experts on Protocol V, which entered into force 12 November 2006, and covers explosive remnants of war, of which cluster munitions that remain unexploded after the end of a conflict are a subset.

The successful conclusion of the CCM should put added pressure on the countries participating in the CCW to reach a new accord for a “Protocol VI”¹⁴ on cluster munitions by a November 2008 meeting of CCW States Parties. Even though many of those countries also participated in the Oslo Process, any agreement that comes out of the CCW is unlikely to include as sweeping a limitation on cluster munitions as the CCM. As of the writing of this article, exactly what that protocol might entail is still unclear.

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SMArt-155, which has only two submunitions, would meet the requirements.¹⁰ Whether countries will choose to invest in the more expensive cluster-like weapons or convert existing weapons to meet the new standards remains to be seen. Still, such weapons would be a vast improvement over older cluster munitions that have maimed or killed thousands of noncombatants to date.¹¹

Military Utility Remains Sticking Point

Estimating the size of the global stockpile is difficult; the United States itself maintains more than 700 million cluster submunitions.¹² The definitional compromise reached in Dublin reflects the fact that many countries still claim that cluster munitions have military utility. Shortly after the conclusion of the accord, the U.S. Defense Department clarified U.S. cluster-munition policy, stating,

Rather than simply calling for a blanket restriction on cluster-munitions use, the July draft allows for military purposes and relies on avoiding “incidental loss of civilian life, injury to civilians, [and] damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.”¹⁵ In September, delegates discussed prohibiting the use of some cluster munitions and the chairperson’s draft circulated near the conclusion of that meeting presented multiple options for determining what types of cluster munitions might be prohibited, relying heavily on technical improvements.¹⁶

Although many advocates would prefer that these countries sign onto the Oslo-inspired convention, the CCW could still serve to further an international norm that dramatically reduces the humanitarian impact of cluster munitions. Most of the world’s major producers and stockpilers of anti-personnel landmines, including China, India, Israel, Pakistan, Russia and the United States, are bound by CCW Amended Protocol II.¹⁷ That agreement does not ban landmines but does provide important humanitarian restrictions on their use and requirements for self-destruct mechanisms and detectability. The combination of the Ottawa Convention and CCW Protocol II has led

to a virtual ban on new deployments of anti-personnel mines, evidenced in part by the lack of U.S. deployment of such weapons in Afghanistan and Iraq.¹⁸ A new CCW Protocol VI could provide a similar mechanism for those countries not ready to completely forswear use of cluster munitions.

Assessing Future Progress

A number of indicators will provide clues as to what kind of global norm is being established—an effective ban on use of cluster munitions or a more general humanitarian effort to assist victims and clear impacted areas. For both the CCM and a CCW protocol, the number of countries signing and the pace of their submission of articles of ratification will be early measures.

munitions that might be on U.K. territory by the end of the eight-year stockpile-destruction deadline. Other countries have suggested that they are studying the issue or find no basis for third-party stockpile removal.¹³ If a trend develops that pressures the United States or other expected nonmembers to remove cluster stockpiles for member territory, it would indicate that a norm around the CCM is growing, leading to more dramatic action than that potentially agreed to in the CCW.

Although cluster munitions themselves are not commonly used weapons, there is strong evidence that Georgia and Russia utilized them against each other in August 2008.^{19,20} Previously, there had been a two-year gap since cluster munitions were last employed in combat. In 2006 Israel fired cluster munitions into

The future is, of course, difficult to predict; nonetheless, it is reasonable to believe that the world will see less use of cluster munitions and more relief to those who have suffered due to these indiscriminate weapons. ♦

See Endnotes, page 111

Portions of this article are drawn from the author’s earlier work, “107 Countries Approve Cluster Munitions Treaty,” published in the July/August 2008 edition of *Arms Control Today*, available online at <http://tinyurl.com/6ckvqv>.



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The interaction of eventual CCM member states with nonmember states, especially concerning storage of cluster munitions at foreign bases, also promises to be noteworthy. CCM advocates have called for eventual States Parties to ask allies to remove cluster munitions from any bases on a CCM member’s territory. U.K. officials have indicated that they intend to ask the United States to remove any cluster

Lebanon during hostilities that summer, with perhaps one million submunitions failing to explode initially. The terrorist group Hezbollah reportedly fired other cluster munitions into northern Israel that same year.²¹ (The subsequent humanitarian outcry helped spark Norway to launch the Oslo Process apart from the CCW.) Until a new gap in usage develops, it will be difficult to judge whether the weapons themselves are becoming anathema.

News Brief

Coroner criticizes British MoD for paratrooper’s death in minefield rescue

On 6 September 2006, Cpl. Mark Wright, of Edinburgh, Scotland, was killed by a landmine blast while trapped in an unmarked Afghan minefield. Six of his paratrooper comrades were also injured. During a hearing regarding Wright’s death, coroner Andrew Walker openly criticized the United Kingdom’s Ministry of Defence, remarking that the troops in Afghanistan during the incident did not have access to the proper equipment and resources required for a safe minefield-rescue operation.

Wright and his platoon of paratroopers became stranded inside the minefield after a sniper in their platoon strayed into the unmarked area and was injured by an explosion. According to the coroner, the blast that killed Wright was set off by the downdraft from an RAF Chinook helicopter that was being used for the rescue. The Chinook was not equipped with a winch that the trapped troops had requested, and after realizing that the Chinook could set off another landmine explosion, the paratroopers waved away the helicopter. As it departed, a landmine was set off and exploded, striking Wright. Two U.S. Blackhawk helicopters equipped with winches came later and rescued the troops. Wright died while on board one of the helicopters. A head official from the military’s Joint Helicopter Command denied that the helicopter had set off the blast.