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*Cluster Munitions: Background and Issues for Congress*

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**Abstract.** Cluster munitions are air-dropped or ground-launched munitions that release a number of smaller submunitions intended to kill enemy personnel or destroy vehicles. Cluster munitions were developed in World War II and are part of many nations' weapons stockpiles. Cluster munitions have been used frequently in combat, including the early phases of the current conflicts in Iraq and Afghanistan. Cluster munitions have been highly criticized internationally for causing a significant number of civilian deaths, and efforts have been undertaken to ban and regulate their use.

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# **CRS Report for Congress**

## **Cluster Munitions: Background and Issues for Congress**

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### **Summary**

Cluster munitions are air-dropped or ground-launched munitions that release a number of smaller submunitions intended to kill enemy personnel or destroy vehicles. Cluster munitions were developed in World War II and are part of many nations' weapons stockpiles. Cluster munitions have been used frequently in combat, including the early phases of the current conflicts in Iraq and Afghanistan. Cluster munitions have been highly criticized internationally for causing a significant number of civilian deaths, and efforts have been undertaken to ban and regulate their use. This report will be updated.

**What Are Cluster Munitions?**<sup>1</sup> Cluster munitions are weapons that open in mid-air and dispense smaller submunitions — anywhere from a few dozen to hundreds — into an area. They can be delivered by aircraft or from ground systems such as artillery, rockets, and missiles. Cluster munitions are valued militarily because one munition can kill or destroy many targets within its impact area, and fewer weapons systems are needed to deliver fewer munitions to attack multiple targets. Cluster munitions also permit a smaller force to engage a larger adversary and are considered by some an “economy of force” weapon. Many cluster munitions rely on simple mechanical fuzes that arm the submunition based on its rate of spin and explode on impact or after a time delay. A newer generation of sensor-fuzed submunitions are being introduced by a number of nations to improve the munitions’ and submunitions’ accuracy and to reduce the large number of residual unexploded submunitions. These sensor-fuzed submunitions are designed to sense and destroy vehicles without creating an extensive hazard area of unexploded submunitions.

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<sup>1</sup> Information in this section unless otherwise noted is from Mark Hiznay, “Operational and Technical Aspects of Cluster Munitions,” United Nations Institute for Disarmament Research Disarmament Forum,” 2006, pp. 15-25.

**History.**<sup>2</sup> Cluster bombs were first used in World War II, and inclusive of their debut, cluster munitions have been used in at least 21 states by at least 13 different countries. Cluster munitions were used extensively in Southeast Asia by the United States in the 1960s and 1970s, and the International Committee of the Red Cross (ICRC) estimates that in Laos alone, 9 to 27 million unexploded submunitions remained after the conflict resulting in over 10,000 civilian casualties to date. Cluster munitions were used by the Soviets in Afghanistan, by the British in the Falklands, by the Coalition in the Gulf War, and by the warring factions in Yugoslavia. In Kosovo and Yugoslavia in 1999, NATO forces dropped 1,765 cluster bombs containing approximately 295,000 submunitions. From 2001-2002, the United States dropped 1,228 cluster bombs containing 248,056 submunitions in Afghanistan, and U.S. and British forces used almost 13,000 cluster munitions containing an estimated 1.8 to 2 million submunitions during the first three weeks of combat in Iraq in 2003. Senior U.S. government officials have stated that the United States has not used cluster munitions since 2003, during the intervention in Iraq.<sup>3</sup> It is widely believed that confusion over U.S. cluster submunitions (BLU-97/B) that were the same color and size as air-dropped humanitarian food packets played a major role in the U.S. decision to suspend cluster munitions use in Afghanistan but not before using them in Iraq.

In 2006, Israeli use of cluster munitions against Hezbollah forces in Lebanon resulted in widespread international criticism. Israel was said to have fired significant quantities of cluster munitions — primarily during the last three days of the 34-day war after a UN cease fire deal had been agreed to<sup>4</sup> — resulting in almost 1 million unexploded cluster bomblets to which the UN attributed 14 deaths during the conflict.<sup>5</sup> Reports maintain that Hezbollah fired about 113 “cluster rockets” at northern Israel and, in turn, Israel’s use of cluster munitions supposedly affected 26% of southern Lebanon’s arable land and contaminated about 13 square miles with unexploded submunitions.<sup>6</sup> One report states that there was a failure rate of upwards of 70% of Israel’s cluster weapons.<sup>7</sup>

**Cluster Munitions Criticisms.** The fundamental criticisms of cluster munitions are that they disperse large numbers of submunitions imprecisely over an extended area, that they frequently fail to detonate and are difficult to detect, and that submunitions can remain explosive hazards for decades. Civilian casualties are primarily caused by munitions being fired into areas where soldiers and civilians are intermixed, inaccurate cluster munitions landing in populated areas, or civilians traversing areas where cluster munitions have been employed but failed to explode. Two technical characteristics of

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<sup>2</sup> Ibid.

<sup>3</sup> Stephen D. Mull, Acting Assistant Secretary of State for Political-Military Affairs, U.S. Cluster Munitions Policy, On-the-Record Briefing, Washington, D.C., May 21, 2008.

<sup>4</sup> Scott Peterson, “Cluster Bombs: A War’s Perilous Aftermath,” *Christian Science Monitor*, February 7, 2007 and “Israel Criticized for Cluster Bombs,” *Los Angeles Times*, February 1, 2008.

<sup>5</sup> “Major Violations on Both Sides in Israel-Lebanon Conflict, Say UN Experts,” United Nations Office at Geneva News & Media, October 4, 2006.

<sup>6</sup> Scott Peterson.

<sup>7</sup> Ibid. Failure rate as described here is either a failure to detonate on impact or a failure to detonate after a predetermined time delay.

submunitions — failure rate and lack of a self-destruct capability — have received a great deal of attention.

**Failure Rate.**<sup>8</sup> There appears to be significant discrepancies among failure rate estimates. Some manufacturers claim a submunition failure rate of 2% to 5%, whereas mine clearance specialists have frequently reported failure rates of 10% to 30%. A number of factors influence submunition reliability. These include delivery technique, age of the submunition, air temperature, landing in soft or muddy ground, getting caught in trees and vegetation, and submunitions being damaged after dispersal, or landing in such a manner that their impact fuzes fail to initiate.

**Lack of Self-Destruct Capability.** Submunitions lacking a self-destruct capability — referred to as “dumb” munitions — are of particular concern because they can remain a hazard for decades, thereby increasing the potential for civilian casualties. Some nations are developing “smart” or sensor-fuzed weapons with greater reliability and a variety of self-destruct mechanisms intended to address the residual hazard of submunitions.<sup>9</sup> Experts maintain that self-destruct features reduce — but do not eliminate — the unexploded ordnance problem caused by cluster munitions and that the advantage gained by using “smart” cluster munitions are negated when high-failure rate and/or “dumb” cluster munitions are used in the same area.<sup>10</sup> For some nations, replacing “dumb” and high-failure rate cluster munitions may not be an option — China, Russia, and the Republic of Korea maintain that they cannot afford to replace all current submunitions with “smart” submunitions.<sup>11</sup>

**International Attempts to Regulate Use.** The use of cluster munitions is currently not prohibited under international law or governed by international treaty. There are however, two major ongoing international initiatives to regulate cluster munitions.

**UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW).** In an effort to restrict or ban specific types of weapons used in armed conflicts, 51 states negotiated the CCW in 1980.<sup>12</sup> When the treaty entered into force in December 1983, it applied only to incendiary weapons, mines and booby-traps, and weapons intended to cause casualties through very small fragments. Since then, some states parties have added provisions through additional protocols to address other types of weapons. Negotiations on cluster munitions are carried out under Protocol V on Explosive Remnants of War. The United States was originally against any

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<sup>8</sup> Unless otherwise noted, information in this section is from Mark Hiznay, p. 22.

<sup>9</sup> Gayle S. Putrich, “Cluster-Bomb Ban Exempts Some Smart Munitions,” *Defense News*, June 2, 2008, p. 4.

<sup>10</sup> Hiznay, p. 23.

<sup>11</sup> Ibid.

<sup>12</sup> Information in this section is from an Arms Control Association Fact Sheet. “Convention on Certain Conventional Weapons Convention (CCW) at a Glance,” Washington, D.C., October 2007.

CCW negotiations on cluster munitions, but dropped its opposition in June 2007. Some have characterized the CCW as “slow-moving,” “ponderous,” and “lacking life.”<sup>13</sup>

**Oslo Convention on Cluster Munitions.**<sup>14</sup> Described as “frustrated with the CCW process,” in 2007 a number of CCW members — led by Norway — initiated negotiations outside of the CCW to ban cluster munitions.<sup>15</sup> On May 30, 2008, they reached an agreement to ban cluster munitions.<sup>16</sup> The United States, Russia, China, Israel, Egypt, India, and Pakistan did not participate in the talks or sign the agreement. Convention participants plan to return to Oslo, Norway in December 2008 to sign the agreement, which will enter into force once 30 nations have signed.<sup>17</sup> The Oslo Convention on Cluster Munitions, *inter alia*, bans the use of cluster munitions, as well as their development, production, acquisition, transfer, and stockpiling.<sup>18</sup> The Oslo Convention does not prohibit cluster munitions that can detect and engage a single target or explosive submunitions equipped with an electronic self-destruction or self-deactivating feature<sup>19</sup> — an exemption that seemingly permits sensor-fuzed or “smart” cluster submunitions.

**Current U.S. Policy on Cluster Munitions.** U.S. government officials have stated that “the United States relies on them [cluster munitions] as an important part of our own defense strategy,” and that Washington’s preferred alternative to a ban would be “to pursue technological fixes that will make sure that these weapons are no longer viable once the conflict is over.”<sup>20</sup> The United States has also agreed to address the humanitarian aspects of cluster munitions use through the Convention on Certain Chemical Weapons (CCW) rather than the Oslo Convention on Cluster Munitions.<sup>21</sup> U.S. officials note that:

Cluster munitions are available for use by every combat aircraft in the U.S. inventory, they are integral to every Army or Marine maneuver element and in some cases constitute up to 50 percent of tactical indirect fire support. U.S. forces simply can not

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<sup>13</sup> “A Change of Heart, or of Tactic?, Cluster Munitions,” *The Economist*, June 23, 2007.

<sup>14</sup> For detailed information on the Convention on Cluster Munitions, see [<http://www.clustermunitionsdublin.ie/documents.asp>].

<sup>15</sup> Arms Control Association Fact Sheet. “Convention on Certain Conventional Weapons Convention (CCW) at a Glance,” Washington, D.C., October 2007.

<sup>16</sup> Kevin Sullivan and Josh White, “111 Nations, Minus the U.S., Agree to Cluster-Bomb Ban,” *Washington Post*, May 29, 2008.

<sup>17</sup> Gayle S. Putrich, “Cluster-Bomb Ban Faces Many Obstacles, *Defense News*, May 26, 2008.

<sup>18</sup> Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, Convention on Cluster Munitions, Dublin, Ireland, May 30, 2008 [<http://www.clustermunitionsdublin.ie/documents.asp>].

<sup>19</sup> *Ibid.*

<sup>20</sup> Mull.

<sup>21</sup> Unless otherwise noted information in this section is from Richard Kidd, Director of the Office of Weapons Removal and Abatement, U.S. Department of State, “Is There a Strategy for Responsible U.S. Engagement on Cluster Munitions ?” April 28, 2008.

fight by design or by doctrine without holding out at least the possibility of using cluster munitions.<sup>22</sup>

The United States also maintains that using cluster munitions reduces the number of aircraft and artillery systems needed to support military operations, and that if cluster munitions were eliminated, significantly more money would need to be spent on new weapons systems, ammunition, and logistical resources. Officials further suggest that if cluster munitions were eliminated, most militaries would increase their use of massed artillery and rocket barrages, which would likely increase destruction of key infrastructure. U.S. officials were concerned that early versions of the Oslo Convention on Cluster Munitions would prevent military forces from non-states parties from providing humanitarian and peacekeeping support and significantly affect NATO military operations, but the version signed May 30, 2008, does permit States Parties to engage in military cooperation and operations with non-States Parties (Article 21, Paragraph 3).

**A New U.S. Policy?**<sup>23</sup> Sources indicate that the Department of Defense will soon issue a new policy on cluster munitions. This policy is said to require that cluster munitions used after 2018 must leave less than 1% of unexploded submunitions on the battlefield. This policy supposedly will permit the development of a new generation of cluster munitions less dangerous to civilians. While such a high level of performance might be achievable under controlled laboratory conditions, previously mentioned factors such as delivery technique, landing in soft or muddy ground, getting caught in trees and vegetation, and submunitions being damaged after dispersal or landing could result in an appreciable number of dud submunitions, even if it has a self-deactivation feature.

**Recent Legislative Initiatives.** In February 2007, the House and Senate introduced H.R. 1755 and S. 594, the Cluster Munitions Civilian Protection Act of 2007, which, *inter alia*, limits the use, sale, or transfer of cluster munitions unless the submunitions have a 99% or higher function rate and precludes cluster munition use in areas where civilians are known to be present or in areas normally inhabited by civilians. The House version has been referred to the Armed Services Subcommittee on Readiness and the Senate version to the Committee on Foreign Relations. The 2008 omnibus appropriations measure, P.L. 110-161, the Consolidated Appropriations Act, 2008, Sec. 646 (b), placed a one-year moratorium on the export or transfer of cluster munitions unless (1) the munition has a 99% or higher tested rate, (2) that any exported cluster munitions or associated technologies are for use against clearly defined military targets, and (3) that these munitions will not be used where civilians are known to be present. U.S. government officials have stated that “we are not now, because of this law [Sec. 646(b) of P.L. 110-161], in effect, providing cluster munitions to foreign partners.”<sup>24</sup>

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<sup>22</sup> Ibid.

<sup>23</sup> Kris Osborn, “Cluster Effects, No Duds,” *Defense News*, June 16, 2008, pp. 11-16 and Statement by Senator Patrick Leahy, “The United States and Cluster Munitions,” Cluster Munitions Survivors Forum World Conference on Cluster Munitions, Dublin, Ireland, May 26, 2008.

<sup>24</sup> Mull.

## Potential Issues for Congress.

**Cluster Munitions in an Era of Precision Weapons.** It may be argued that even with advances in “sensor-fuzed” type submunitions that seek out and destroy certain targets, cluster munitions are still essentially an indiscriminate area weapon in an era where precision weapons are increasingly becoming the military norm. In Operation Desert Storm in 1991, only about 10% of ordnance used were precision-guided, but by the time of the Iraq invasion in 2003, “the ratio of ‘smart’ to dumb weapons was nearly reversed.”<sup>25</sup> Since then, this trend towards greater precision has continued, if not accelerated with the development of precision rocket, artillery, mortar munitions, and smaller-precision aerial bombs designed to reduce collateral damage.<sup>26</sup> Given current and predicted future precision weaponry trends, cluster munitions might be losing their military relevance — much as chemical weapons did between World War I and World War II.

**National Defense Strategy and Cluster Munitions.** According to reports, the Secretary of Defense — allegedly overruling objections of Service Chiefs — has recently approved the 2008 National Defense Strategy, which will shift focus from preparing for major conventional wars to preparing for “more Iraq-like missions.”<sup>27</sup> Instead, the Services will be asked “to focus their efforts on current operations in Iraq and Afghanistan and not structure long-term plans for how to train and equip forces based on fighting a major war against a potential adversary such as China or Russia.”<sup>28</sup> It is possible that this strategic shift might have implications for the future of cluster munitions as well. U.S. officials have recently stated:

... when you’re fighting a counterinsurgency, which is what’s happening in both Afghanistan and Iraq, I think our military planners would agree ... that they’re [cluster munitions] not appropriate and wouldn’t be very useful.”<sup>29</sup>

In this context, cluster munitions may have little or no military utility in anticipated future U.S. military operations.

**Weapons in Lieu of Cluster Munitions.** According to the State Department, the U.S. military suspended its use of cluster munitions in Iraq and Afghanistan in 2003. For subsequent military operations, where cluster munitions would otherwise have been the weapon of choice, Congress might review what types of weapons were substituted in place of cluster munitions and how effective they were in achieving the desired tactical results. Such insights could prove valuable in analyzing U.S. policy options on the future of cluster munitions.

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<sup>25</sup> J.R. Wilson, “Pinpoint Accuracy: Bombs, Rockets, and Mortars Get New Brains,” Armed Forces Journal, January 2005, pp. 32-34.

<sup>26</sup> Jeffrey Kofman, “Introducing the Small Diameter Bomb,” ABC News, February 16, 2008.

<sup>27</sup> Jason Sherman, “Gates Approves New Defense Strategy Over Objections of Service Chiefs,” *InsideDefense.com*, June 12, 2008.

<sup>28</sup> Ibid.

<sup>29</sup> Mull.