



AUSTRALIAN  
LAWYERS  
FOR  
HUMAN RIGHTS

PO Box A147  
Sydney South  
NSW 1235  
alhr@alhr.asn.au  
www.alhr.asn.au

Committee Secretary  
Joint Standing Committee on Treaties  
Department of House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600.

*By email: jsct@aph.gov.au*

17 June 2009

Dear Committee Secretary

**Supplementary Submission regarding treaties tabled on 12 March 2009  
Convention on Cluster Munitions**

Please find following a supplementary submission by Australian Lawyers for Human Rights to the Joint Standing Committee on Treaties on the matter of consideration of the ratification of the Convention on Cluster Munitions.

As advised we regret that we were unable to meet with the Committee to discuss our submission and hope this serves to further clarify our thoughts.

**The Convention Definition and M85s**

From an international humanitarian law perspective, as extensively enumerated in the submission to the Committee by the Australia Red Cross, the definition under the Convention of Cluster Munitions achieves the intended purpose – that is it seeks to eliminate all forms of cluster-like weapon that are indiscriminate, unreliable and thus damaging to the civilian population.

Australian Lawyers for Human Rights does not seek to suggest that the definition itself does not achieve its aim but rather to ask the Committee to think about the drafting of the definition in the context in which it was made. The definition was drafted to address the key aspects of weapons that have been used and seen to cause devastating and long lasting effects on civilian populations but perhaps does not take into account the effects of those munitions

that fall outside the definition. With many of the weapons that are argued to fall outside the definition as yet unused in warfare it is difficult to determine categorically what their impact will be during and after conflict.

A good example of this is found in the M85, the weapon owned by Australia and the United Kingdom, among others reported to have a 0.7% dud rate by its manufacturers. According to the Human Rights Watch report *Off Target The Conduct of the War and Civilian Casualties in Iraq* the United Kingdom used 2,100 artillery shells which contained 102,900 m85 submunitions in Iraq in 2003.<sup>1</sup> These same weapons were used by Israel in Lebanon in 2006. In both instances unexploded ordinances remained.

A report from the UN team coordinating the clear-up of unexploded bombs said:

*We can categorically state that we are finding large numbers of unexploded M85 submunitions that have failed to detonate as designed and failed to self destruct afterwards. In effect these submunitions are more dangerous than other types because the self destruct mechanism makes them more problematic to deal with.*<sup>2</sup>

There is an illuminating video on You Tube ([http://www.youtube.com/watch?v=v\\_jsyObTG8k](http://www.youtube.com/watch?v=v_jsyObTG8k)) that was filmed by Australian John Rodsted in Lebanon – although we note that we are not in a position to verify the location or validity of the footage. Filming for Norwegian People's Aid his footage shows a scene of unexploded M85 cluster duds complete with self-destruct mechanism.

Using this example it would appear that regardless of the number of protective mechanisms installed on a cluster weapon reliability remains highly dubious. When we start reducing the discussion to terms such as .07% dud rates we tend to obscure the reality that hundreds if not thousands of these weapons are used in warfare making the actual numbers of duds much more significant than mere .0? percentages.

Furthermore it is important to acknowledge that warfare is continually evolving. Not simply military capabilities but the methods and environments in which conflicts are fought. Cluster weapons are designed to attack armoured vehicles and yet increasingly the conflicts being fought are not between armed forces but between an armed force and an insurgent force. These battles are not fought in the fields and frontlines but in and around civilians' homes, workplaces and communities.

Australian Lawyers for Human Rights acknowledge that the Convention on Cluster Munitions is a feat of international negotiation and applaud the Australian Government for looking to ratify it so promptly. We also acknowledge that negotiating the Convention was difficult and fraught over exactly such issues as definitions. However we would ask that the Australian Government, after ratifying the Convention without reservation, consider taking steps in domestic legislation to address Australia's use of weapons that although perhaps not strictly cluster munitions, by definition, have the potential for similar effects.

## **Further support**

Australian Lawyers for Human Rights urged the Government to encourage non-state signatories to become parties to the Convention. The more state practice that can be achieved the closer we come to making the commitments made under the Convention on

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<sup>1</sup> Human Rights Watch (2003), *Off Target: The Conduct of the War and Civilian Casualties in Iraq*, p.90.

<sup>2</sup> Landmine Action, *M85 cluster bomb fact-sheet*  
[http://www.landmineaction.org/resources/ActionPacks/m85\\_factsheet.pdf](http://www.landmineaction.org/resources/ActionPacks/m85_factsheet.pdf)

Cluster Munitions customary international law applicable across the board regardless of a state's signatory status.

Australia should utilise its close diplomatic relationships to promote the intention of the Convention on Cluster Munitions, particularly encouraging cluster-producing States such as China, Russia, India and the US to become signatories.

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Thank you for taking the time to consider our further thoughts.

Kind regards



Susan Harris Rimmer  
President, Australian Lawyers for Human Rights



Rebecca Minty and Jessica Casben  
Co-Convenors, Australian Lawyers for Human Rights - ACT