



Medical Association for Prevention of War (Australia)

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Thursday, February 15, 2007

Dr Kathleen Dermody
Secretary,
Senate Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Dr Dermody,

I have pleasure in forwarding the accompanying joint submission to your committee's inquiry into the **Cluster Munitions (Prohibition) Bill 2006** on behalf of the Medical Association for Prevention of War and Australians for Lebanon.

As you will note, the submission has been prepared by senior office-bearers of both organisations. Our representatives would be pleased to provide additional information or to attend to give evidence to your committee.

Please do not hesitate to contact me at the above address.

Yours sincerely,

Nancy Atkin
Executive Officer
Medical Association for Prevention of War (Australia)



**Submission to the Standing Committee on Foreign Affairs,
Defence and Trade: Inquiry into Cluster Munitions
(Prohibition) Bill 2006**

Submission by:

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GP; Immediate Past President, Medical Association for Prevention of War (Australia)

The authors would be pleased to speak to the Inquiry.

Submitted 15 February 2007.

Terms of reference:

The purpose of the bill is to ensure that innocent civilians in conflict zones are not maimed, killed, or put at risk as a result of Australians possessing, using or manufacturing cluster munitions.

Our submission

The substantial part of this submission is the report by a delegation of Australians from our two organisations formed to visit areas of South Lebanon most heavily affected by the July-August 2006 war.

The aim of the delegation was to gain information to assist in addressing the cluster bomb problem as it affects the people of Lebanon and also as it affects victims and potential victims in other parts of the world.

The delegation's report, entitled **Cluster Bombs: The Case of Lebanon**, is pertinent to the terms of reference in the following ways:

1. It provides a case study documenting the use of cluster bombs and their effects in the south of Lebanon, including:
 - That the overwhelming majority of victims are civilians, commonly children.
 - The health burden in terms of injury and death
 - The longer term economic burden caused by cluster bombs.
 - The impossibility of ever completely eradicating the bombs.
2. The report supports and goes beyond the provisions of the Bill, in supporting a global ban on cluster munitions
3. Cluster munitions in the south of Lebanon were fired by the Israeli Defence Force. Australian media reports suggest that the IDF may include some Australian citizens¹.

¹ <http://www.abc.net.au/news/newsitems/200607/s1698821.htm>
<http://www.theage.com.au/news/national/world-travellers-doing-their-bit-for-the-homeland/2006/07/27/1153816320697.html>

Recommendations by the delegation:

The delegation recommends (page 7) that Australians, particularly the Australian Government:

- continue to provide all possible financial assistance to expedite the clearance of cluster bombs from Lebanon and other affected countries;
- provide funding for rehabilitation and other forms of victim assistance;
- request the Israeli Government to provide cluster bomb strike data for South Lebanon;
- Support the Cluster Munitions (Prohibition) Bill 2006, a Bill for an Act to prohibit the use, possession and manufacture of cluster munitions, and for related purposes; and
- support a global ban on the development, production, transfer, stockpiling and use of cluster bombs.

Overview of the delegation's report

The report is in seven sections, all pertinent to the inquiry:

1. Introduction
2. Summary of findings
3. Recommendations
4. Meetings held
5. Findings
6. International humanitarian law and cluster munitions
7. Australia's role

CLUSTER BOMBS: THE CASE OF LEBANON

Report of a humanitarian delegation to Lebanon of representatives of
Australians for Lebanon and the Medical Association for Prevention of
War (Australia), 14 December to 22 December 2006

Delegation members:

Dr Hadia Haikal Mukhtar
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Adjunct Professor Phillip Salem
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February 2007

Glossary of acronyms

| | |
|---------------|---|
| AFL | Australians For Lebanon |
| CCW | Convention on Certain Conventional Weapons |
| HRW | Human Rights Watch |
| IDF | Israeli Defence Force |
| IHL | International humanitarian law |
| MAPW | Medical Association for Prevention of War (Australia) |
| NDO | National Demining Office |
| UNMACC | United Nations Mine Action and Coordination Centre |
| UNMAS | United Nations Mine Advisory Service |

1. INTRODUCTION

During the course of the war between Israel and Hezbollah from 12 July to 14 August 2006, reports appeared of the use of very large numbers of cluster munitions by the Israeli Defence Forces (IDF) against the people of Lebanon. After the ceasefire, the enormous scale of contamination of the land by unexploded cluster munitions and the consequent risk to the people, their livelihood, and their capacity to resume normal civilian life became apparent.

Lebanon is a small, fertile and mountainous country of 10,452 square km. It is bordered by Syria in the north and east, by Israel in the south, and by the Mediterranean Sea in the west. It has a multicultural and multi-religious population of approximately 3,874,000 people. The south, now heavily affected by cluster munitions, consists primarily of densely populated villages that rely on agriculture as their main source of income.

Cluster munitions are shells that eject multiple small sub-munitions that spread over a wide area, often numbering in the hundreds from one shell. They can be air-dropped or ground-launched. Unexploded sub-munitions are left behind, and these act as live explosives that can be activated by civilians who are now continuing or resuming the use of their land.

A delegation of Australians was formed to visit areas of South Lebanon most heavily affected by the July-August war, in order to gain information to assist in addressing the cluster bomb problem as it affects the people of Lebanon and also as it affects victims and potential victims in other parts of the world. The two organisations represented by the delegation were *Australians for Lebanon*, which formed in 2006 to advocate for the humanitarian concerns of all those affected by the July-August 2006 war, and the *Medical Association for Prevention of War (Australia)*, which works for the abolition of all weapons of mass destruction and for a reduction of the impact of war on people and the environment.

Members of the delegation were Dr Hadia Mukhtar (AFL and MAPW), Adjunct Professor Phillip Salem (AFL), and Dr Sue Wareham (MAPW). Much of the delegation's visit was filmed by film maker Rania Stephan. Further fact-finding and advocacy for cluster bomb victims was undertaken in Lebanon shortly after the delegation's visit by Mr Mike Helal, Vice-President of the

Australian Lebanese Youth Association, in particular by meeting with a representative in Lebanon from the United Arab Emirates Program to Support and Rebuild Lebanon, which funds much of the de-mining work that occurs in the country.

The delegation conducted meetings and site visits from 14 December to 22 December 2006. (Dr Wareham joined the delegation on 18 December. Dr Mukhtar remained in Lebanon until 12 January 2007).

2. SUMMARY OF FINDINGS

- More than one million unexploded cluster bombs currently contaminate the south of Lebanon.
- They are located in densely populated villages; and agricultural lands such as olive groves and citrus and banana plantations.
- The overwhelming majority of the victims of cluster bombs in Lebanon are civilians. About a third of them are children.
- National and international organisations are working to clear the cluster bombs. The goal of the UN Mine Action Coordination Centre (UNMACC) is to clear most of them by the end of 2007. However this presupposes a significantly increased rate of clearance from the current rate.
- Even after “clearance”, a number of these weapons will remain. Some of them, buried underground, are likely to become exposed at a later date as soil movement occurs, for example after rain.
- Clearance is significantly impeded by the failure of the IDF to provide the relevant strike data on numbers and types of weapons used and their targets, despite repeated requests by the UN to do so. Maps that have been provided are inadequate.
- Cluster bombs cause death or terrible physical and psychological suffering for civilians.
- Cluster bombs also create an additional financial burden for communities struggling to recover from the effects of war. Rehabilitation for victims of these weapons is a lengthy and expensive process.
- The Australian Government’s contributions to cluster bomb clearance in Lebanon are very welcome. Victim assistance remains an outstanding need.

3. RECOMMENDATIONS

The delegation recommends that Australians, particularly the Australian Government:

- continue to provide all possible financial assistance to expedite the clearance of cluster bombs from Lebanon and other affected countries;
- provide funding for rehabilitation and other forms of victim assistance;
- request the Israeli Government to provide cluster bomb strike data for South Lebanon;
- Support the Cluster Munitions (Prohibition) Bill 2006, a Bill for an Act to prohibit the use, possession and manufacture of cluster munitions, and for related purposes; and
- support a global ban on the development, production, transfer, stockpiling and use of cluster bombs.

4. MEETINGS HELD

The delegation met with or visited a range of organisations and individuals, including:

- Rick Fredsborn, Norwegian People's Aid
- Lebanese Red Cross
- Zak Johnson, Handicap International
- Her Excellency Ms Lyndall Sachs, Australian Ambassador to Lebanon
- Colonel Mohamad Fehmi, Director, National Demining Office, Lebanese Armed Forces
- World Vision Australia and Lebanon
- Hammoud Hospital, Sidon
- Chris Clarke and Dalya Farran, UN Mine Action Coordination Centre (joint UN Mine Action Service and Lebanese Armed Forces program), Tyre
- BACTEC (a commercial firm providing battle area clearance) site near Tyre
- Bahman Hospital, South Beirut
- Nadim Houry, Human Rights Watch (HRW).
- Habbouba Aoun, Landmines Resource Centre, Faculty of Health Sciences, University of Balamand, Beirut
- Rotary Club, Sahl El Metn area, Lebanon (Dr Mukhtar only)
- Arc-En-Ciel, Lebanon (a non-government organisation caring for people with disabilities in Lebanon)

5. REPORT OF INFORMATION RECEIVED

Information received by the delegation from different sources on the cluster bomb problem in Lebanon was consistent, and there appears good coordination between different agencies working to clear the bombs.

The primary sources of information were Colonel Fehmi of the National Demining Office, Mr Chris Clark of the UN Mine Action Service, Mr Rick Fredsborn of Norwegian People's Aid and Mr Zak Johnson of Handicap International.

Their descriptions of the nature and extent of the problem can be summarised as follows.

The total number of unexploded cluster munitions in Southern Lebanon is estimated to be over one million. Most were from rocket and artillery launch (see boxed data), with a smaller number being air-dropped.

- At least 1,800 multiple launch rocket system (MLRS) rockets were launched, each of which disbursts 644 cluster bombs
- Approximately 160,000 artillery projectiles were fired, of which approximately 10-20% had cluster munitions with 88 bomblets each.

Around 90% of these munitions were fired in the last 3 days of the war.

The estimated failure rate of the cluster munitions used in Lebanon is 30 - 40%. (In this context, "failure" means failure to explode on initial impact, thereby leaving behind a live munition). The expected failure rate of cluster bombs is normally closer to 10%, but in this war it was much higher because many of the munitions used were very old, including munitions from the 1970s.

The cluster bombs that have been identified were mostly made in Israel and the USA, with a much smaller number from China. The BLU 63 munition (air-dropped, produced in the US by Lockheed Martin/Lanson) has a lethal radius of 123 metres.

On the morning of the cease fire, 14 August 2006, UNMACC quickly ascertained that there would be a big cluster bomb problem in Lebanon. As internally displaced people rapidly started returning to their homes, in the southern Lebanon district of Nabatieh alone there were 14 casualties from cluster bomb strikes within a 30 minute period. Many cluster munitions were found by villagers in their gardens, houses, and in the rubble of buildings.

The number of cluster bomb casualties in Lebanon since the cease fire, at the time of our visit, was 188, of whom 26 had died². Each week there are, on average, two to three more casualties.

Children are particularly vulnerable, in part due to their natural impulsiveness and inquisitiveness. Bombs in many shapes, some hanging on the trees by white ribbons, are very attractive to children. At the cluster munitions

² UNDP Mine Action. Information on mine and UXO victims. Accessible at: http://www.ndo-lb.org/pdf/20070109_Victims_Analysis_UNDP%209_0.pdf

clearance site near Tyre that was visited by the delegation, a local boy had been killed several days previously

Although mine awareness and education work is carried out, and the local populations are warned not to go into affected areas, one local man summed up a common dilemma: "If I don't collect my olives, my children starve". The delegation met an 18 year-old boy, a trainee mechanic who had inadvertently picked up a cluster bomb which had landed in a pile of car parts. The bomb exploded causing him severe injuries to his right leg and left hand.

The search for cluster bombs is made primarily by clearance workers meticulously examining the ground with a metal detector, square metre by square metre. Local people, both male and female, are trained for this role.

By December 2006, approximately 91,000 cluster munitions had been cleared, including most of those in houses, schools etc. However agricultural areas are still heavily affected. It is estimated that with more demining teams in place, and an increase in the clearance rate, "clearance" will be completed by the end of 2007. However clearance can never be absolute, and the problem of unexploded cluster bombs will remain for many years to come. The weapons can become buried and very difficult to detect. Some of the munitions found in Lebanon bury themselves up to 15cm underground on impact. Subsequent rains and soil movement can result in these devices again becoming more superficial.

Chris Clark of UNMACC stated that the IDF has failed to provide data needed to facilitate clearing of the cluster munitions. He stated that the only useful information they had been able to obtain was from comments in the Israeli media. The maps of cluster munition locations provided since the August 2006 ceasefire were "useless", he said. By contrast, at the cessation of the Israeli occupation of Lebanon in May 2000, appropriate maps of landmine locations had been provided by the IDF. What is needed now is tables of strike data including the type of weapon used, numbers used, and grid reference of target areas. Such data has been repeatedly requested by the UN.

A further problem has recently re-emerged, that of landmines. According to Mr Clark, the whole of South Lebanon (south of the Litani River) was littered with landmines at the time of the Israeli withdrawal from the country in the year 2000. These had mostly been cleared, except for those along the 'blue line' (border region) which remain in situ. However two weeks before the delegation's visit, newly laid mines (that is, mines laid in 2006) were found in the south of the country.

Nadim Houry of Human Rights Watch outlined the terrible violations of human rights and humanitarian law committed by both sides in the 2006 war³. HRW first confirmed Israel's use of cluster munitions in the 2006 war on 24 July, and documented its extensive use of the weapon.

³ The Delegation have prepared a supplementary report on human rights violations

The organisation urged the US to (again) cease supply of these weapons to Israel. (In 1982 the US had banned the sale of cluster bombs to Israel after restrictions placed on their use had been breached in Lebanon. However sales had resumed in 1988.) A preliminary State Department report to Congress has found that Israel had probably violated arms export agreements in its use of cluster bombs in Lebanon.⁴

HRW also documented reports alleging Hezbollah's use of cluster munitions against the people of Israel, albeit it on a vastly smaller scale than those employed by Israel. It has been alleged that attacks were made with a Chinese-made rocket.

Cluster munitions impose not only severe physical and psychological suffering, but also a financial burden on victims, their families and affected countries. There is the cost of clearing the munitions, lost productivity, and the cost of caring for those who have been disabled. Prostheses and ongoing care are required for life.

In Lebanon, much of the funding for the clearing of both landmines in the past, and now of cluster bombs, has been provided by the United Arab Emirates. Australia has also contributed (see section 7).

Colonel Fehmi stated that the major financial need now in relation to Lebanon's cluster bomb problem is mine victim assistance, and he strongly urged this should be a priority for donor countries and individuals. While munition clearance is obviously critical, it is often more difficult to attract funding for victim assistance.

6. INTERNATIONAL HUMANITARIAN LAW AND CLUSTER MUNITIONS

International humanitarian law (IHL) dictates that a distinction must be made between civilian and military populations during times of war, and that indiscriminate attacks are prohibited. Despite the theoretical possibility that cluster munitions could be used only against large military targets, the nature of these weapons makes any lawful use extremely unlikely. A single cluster munition strike will generally contaminate a wide area. All available evidence demonstrates that, where cluster bombs are used, the number of civilian casualties vastly outnumbers military casualties, and the impact on civilians vastly outweighs any possible military advantage.

Despite the fact that cluster bombs, as they are used in practice, clearly violate the uncontroversial IHL principle of distinction between civilians and combatants, the argument that they are not prohibited weapons is still put forward. This is reminiscent of the arguments that were – and still are, in some cases – used to justify the use of landmines, despite overwhelming evidence that landmines cause grossly disproportionate civilian harm and terrible suffering.

⁴ Cluster Bombs violated sanctions, *Canberra Times*, 31 January 2007

The “Ottawa Process” that successfully led to the 1997 Mine Ban Treaty (which came into effect in March 1999), largely grew out of the failure of the 1995-96 negotiations for a landmine protocol to the 1980 Convention on Certain Conventional Weapons (CCW). The Mine Ban Treaty has had a major impact on the use of landmines globally and on the number of victims.

At the Review Conference of the CCW in Geneva in November 2006, a number of state parties, strongly supported by leading NGOs, indicated support for a proposal to negotiate a ban on cluster munitions that cause unacceptable humanitarian harm. While even this goal does not appear to go so far as to call for a total ban on these weapons that are by nature indiscriminate, it is at least a call for action rather than simply more talking about the problem. Australia failed to support this proposal, but instead supported a UK proposal for an ERW (Explosive Remnants of War) mandate to consider the application and implementation of IHL to specific munitions, with a particular focus on cluster munitions.

7. AUSTRALIA’S ROLE

The delegation is very pleased to note AusAID funding for cluster bomb clearance in Lebanon, with \$1 million announced on 25 January 2007 for clearance of unexploded ordnance and to provide support to survivors, in addition to a previous \$500,000. We support additional funds being made available for rehabilitation of cluster bomb victims.

The delegation notes with concern that, despite clear statements from the UN Mine Action Service that the IDF has not provided adequate information on their use of cluster munitions in Lebanon, the Australian Government claims otherwise. Their statement “Maps have been provided”, while true, is misleading. UNMAS emphasised to the delegation that the maps provided are inadequate, and that strike data are needed. The delegation urges the Australian Government to request the IDF to provide the necessary strike data forthwith.

Australia’s approach to the problem of cluster munitions was raised in parliament on 4 December 2006. In response to a number of questions on notice from Senator Lyn Allison, Senator Ian Campbell replied on behalf of the Minister for Defence Brendan Nelson, as follows:

“Cluster munitions have the potential to cause great harm to civilians, and the Government supports discussions in international fora aimed at placing restrictions on their use. Cluster munitions are not illegal under any arms control or IHL instrument, and they have legitimate military utility where properly targeted, are reliable and discriminating, and deployed in compliance with IHL.”

Senator Campbell referred to the November 2006 Review Conference of the CCW Convention, and the mandate to review the application of IHL with respect to cluster munitions that Australia has supported. He continued:

“This is to include factors affecting the reliability of cluster munitions, and their technical and design characteristics, with a view to minimising their humanitarian effects.”

Regrettably, while a review of cluster munitions is welcome, a focus simply on certain of their technical characteristics is merely tinkering at the edges. These weapons are, by their very nature, indiscriminate. They will kill or disfigure a child as readily as a soldier. In Lebanon, an overwhelming majority of the casualties are civilians. The possibility of these weapons being used in a discriminating fashion is extremely remote, if not impossible. That is the reality. Theory that ignores the practical realities is largely irrelevant conjecture.

The sense of déjà vu in this, as noted in Section 6, is disheartening. Just over a decade ago, countless lives and limbs were destroyed by landmines while governments attempted to justify the use of these indiscriminate and inhumane weapons along the same lines: that they were not illegal under any arms control or IHL instrument, had legitimate military utility where properly targeted, were reliable and discriminating, and were deployed in compliance with IHL.”

Australia, to the government’s credit, announced its strong support for the Mine Ban Treaty in April 1996. It would be entirely consistent with our country’s opposition to the possession and use of landmines if we were to play a leading role in efforts to eradicate the global scourge of cluster bombs

The delegation urges the Australian Government, and all other governments, to work for a ban on the development, production, transfer, stockpiling and use of cluster munitions by all nations and sub-national groups.

We applaud the fact that the Australian Defence Force has not used cluster munitions as a weapon of war.

* * * * *

Phillip Salem and Sue Wareham thank Hadia Mukhtar for the excellent planning and coordination of this trip. The delegation thanks the people of Lebanon for their warmth and hospitality in welcoming us, and the officials whom we met for their generous allocation of time to brief us. We acknowledge and thank also the work of all the parliamentarians who have brought the issue of cluster munitions to the attention of the Australian Parliament.

We particularly acknowledge and thank the courageous individuals, both local and expatriates, who undertake the clearing of unexploded remnants of war in Lebanon and elsewhere, at considerable personal risk. If there are any heroes in this report, it is these people.