

TWELVE FACTS AND FALLACIES ABOUT THE CONVENTION ON CLUSTER MUNITIONS

Fallacy 1: Joining the Convention on Cluster Munitions poses a threat to national security, especially if one's enemies have not joined.

Facts:

- The military utility of cluster munitions is limited in modern warfare. The weapons were designed for Cold War-era operations with large formations of tanks or troops. Today's combat often takes place in urban environments, where the humanitarian harm of cluster munitions is magnified.
- Using cluster munitions is often counterproductive for modern militaries. They interfere with military operations and endanger friendly troops and civilians. Continued use of the weapons would increase civilian hostility towards the users.
- Many cluster munitions are already reaching the end of their shelf life and will soon be unsafe to use. Alternatives to cluster munitions exist, such as close air support and precision-guided weapons.
- Cluster munitions are poor defensive weapons. It does not make sense to use them on one's own soil because the large numbers of duds they leave behind endanger civilians.
- Using this stigmatized weapon will attract international condemnation, which is counter to a state's national interests. The political cost of using cluster munitions will be high.
- By joining the Convention, a state will increase the stigmatization of cluster munitions. A state party's enemies will find it particularly difficult to use cluster munitions against the state party because the latter has the moral high ground.

Fallacy 2: The Convention on Cluster Munitions will have little power because some major producers, stockpilers, and users did not join.

Facts:

- At least 33 countries that have stockpiled, produced, and/or used cluster munitions have signed the Convention. A total of 18 NATO nations, including France, Germany, and the United Kingdom, have signed thus far, and Colombia, Indonesia, Japan, and South Africa have signed as well. Their participation shows that key international and regional military powers have condemned the weapons.
- Almost half the world, including states from every region, has signed the Convention, demonstrating widespread international rejection of cluster munitions.

- The Convention’s stigmatization will make it politically difficult for even non-states parties and non-state armed groups to use cluster munitions. The Mine Ban Treaty similarly stigmatized antipersonnel landmines, and in recent years, Burma (Myanmar) is the only country to make significant use of them.

Fallacy 3: States cannot join the Convention on Cluster Munitions if they have large stockpiles of the weapon.

Facts:

- The Convention gives states parties eight years to destroy their stockpiles of cluster munitions. If a state party cannot meet that deadline because it has large stockpiles, it can request a four-year extension.
- The Mine Ban Treaty allowed states only four years, with no extensions, to destroy their stocks of antipersonnel landmines. Very few states parties have failed to meet that deadline. While landmines are easier to destroy than cluster munitions, parties to the Convention on Cluster Munitions have at least twice as long to finish destruction.

Fallacy 4: States should also pursue a cluster munitions protocol to the Convention on Conventional Weapons (CCW) because it is more likely to have the support of certain major users and stockpilers.

Facts:

- A CCW protocol would run counter to the goals of the Convention on Cluster Munitions. It would be a weak alternative that would regulate rather than ban the weapon. The existence of a weaker instrument would decrease the stigma created by the Convention’s comprehensive ban.
- Having a second instrument on cluster munitions would give states an excuse not to sign the stronger Convention. They could argue they have adequately addressed the problem of cluster munitions by agreeing to be bound by the CCW protocol.
- It would set a bad precedent in international law to conclude a second instrument setting a lower standard than an already widely agreed upon instrument on the same subject with a higher standard.
- Under international law, states parties to the Convention must uphold the “object and purpose” of the Convention, even before it enters into force. Many parties to the CCW are also signatories and future states parties to the Convention. If they created a weaker instrument that allowed some cluster munitions, they would be acting contrary to the Convention’s object and purpose. Arguably, joining a CCW protocol would violate their obligation to uphold the stronger Convention on Cluster Munitions.

Fallacy 5: Because the Convention on Cluster Munitions was negotiated outside of the CCW, it does not have the support of the United Nations and is not a “UN convention” like the CCW.

Facts:

- UN agencies, notably the UN Development Programme (UNDP), UN Mine Action Service (UNMAS), and UN Children’s Fund (UNICEF), participated actively in the Oslo Process, which created the Convention.
- UN Secretary-General Ban Ki-moon called for a prohibition on cluster munitions and expressed support for the new Convention early in the Oslo Process and at the signing conference.
- The UN Secretary-General is the depository for the Convention’s signatures, ratifications, and accessions, and the United Nations has other treaty-mandated responsibilities. In this respect, the Convention does not differ from the CCW.

Fallacy 6: The Convention on Cluster Munitions does not ban all cluster munitions.

Facts:

- The Convention expressly bans the use, production, stockpiling, and transfer of all cluster munitions, as they are defined under the treaty. The Convention considers a cluster munition to be a conventional weapon that carries submunitions and causes humanitarian harm because of its broad area effect and large number of unexploded duds. It is a categorical prohibition on those weapons.
- Certain weapons that contain submunitions, such as those that dispense flares, smoke, pyrotechnics, or chaff, are not prohibited because they do not cause the same harm as cluster munitions.
- Other weapons that carry a limited number of submunitions and have five cumulative characteristics are not prohibited because negotiating states judged that they would not cause the humanitarian harm that cluster munitions do. Such weapons are not considered cluster munitions. Only three existing weapons have the five required characteristics: SADARM, BONUS, and SMArt-155.¹

Fallacy 7: Negotiating states crafted the Convention’s definition of cluster munition to protect their own arsenals.

Facts:

- The Convention does not exclude the cluster munitions of any particular country. The definition of cluster munition is based on the effects of the weapon, not politics.

¹ Article 2(2)(c) excludes munitions with submunitions if they have fewer than 10 submunitions and each submunition weighs more than four kilograms, can detect and engage a single target object, and is equipped with electronic self-destruction and self-deactivation features. The United States stockpiles SADARM but has stopped production. The United States used SADARM in Iraq in 2003. Sweden, in partnership with France, produces BONUS. Germany produces SMArt-155.

- During negotiations, states rejected the broad exceptions proposed by some during the Oslo Process that would have permitted many countries to continue to stockpile and use a large number of cluster munitions, such as those with self-destruct devices.
- Only a handful of countries currently possess or are acquiring BONUS or SMArt-155 (the only weapons with submunitions that are held by signatories and excluded from the Convention’s definition because they do not cause the same humanitarian harm as cluster munitions). The numbers of these weapons are very small compared to cluster munition stockpiles.² Neither has been used in combat to date.
- States that have signed the Convention will be destroying hundreds of millions of submunitions contained in dozens of different types of cluster munitions, including some considered highly advanced and acquired quite recently.

Fallacy 8: Article 21, which deals with “interoperability” or joint military operations with non-states parties, will fundamentally undermine the Convention on Cluster Munitions.

Facts:

- Article 21 states, in part, that “States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.”
- Human Rights Watch and the Cluster Munition Coalition opposed the inclusion of Article 21 because it was poorly drafted, introduced some elements of uncertainty and interpretation, and was politically motivated rather than based on humanitarian concerns. However, it is unlikely to have a negative humanitarian effect by promoting or facilitating ongoing use of cluster munitions.
- Under Article 1(1)(c), states parties shall not assist non-states parties with activities prohibited by the Convention. Article 21 does not change this rule, which should be read broadly to encompass a wide range of assistance. A broad reading advances the goal of the Convention to end the humanitarian harm caused by cluster munitions.
- Experience with the Mine Ban Treaty shows that states parties can conduct joint operations with non-states parties without violating the prohibition on assistance. Many parties to the Mine Ban Treaty have participated in combat operations with the United States, which has not joined the treaty. Joint operations in and of themselves do not necessitate a violation of the prohibition on assistance.
- Article 21(4) lists acts that are not allowed in joint operations. This list, however, is not all-inclusive. Nothing in the article explicitly authorizes the assistance prohibited under Article 1. States parties should acknowledge that it is prohibited to provide

² To date, the only countries known to have the SMArt-155 are Germany, Greece, and Switzerland. Australia and the United Kingdom are in the process of procuring them. Sweden and France have BONUS.

knowingly any assistance with a prohibited act.

- The first two paragraphs of Article 21 strengthen the Convention. They require states parties to discourage use by other states, to urge others to join the Convention, to notify their allies of their treaty obligations, and to promote the Convention's norms. These provisions set an important precedent, having not appeared in previous weapons treaties.

**Fallacy 9: The Convention may prevent future use,
but it does not address the harm from past use.**

Facts:

- Several articles of the Convention are devoted to post-conflict remedial measures to reduce the harm of existing submunition contamination.
- The Convention requires clearance of submunition duds to minimize the number of future civilian casualties.
- Article 4(4), which strongly encourages user states to assist with clearance, explicitly applies to use that occurred before the Convention enters into force. It, too, is designed to minimize civilian casualties.
- The Convention establishes groundbreaking victim assistance provisions that dramatically strengthen the victim assistance provisions of earlier treaties. The Convention seeks to reduce the long-term effects of cluster munitions on victims. It defines victim broadly to include not only individuals, but also affected families and communities. In Article 5, it enumerates a wide range of assistance that states parties are required to provide, including physical, psychological, and socioeconomic support.
- States parties that are not affected are required to assist with these remedial measures.

**Fallacy 10: The Convention imposes an unfair burden on affected states,
which bear ultimate responsibility for clearance and victim assistance.**

Facts:

- The Convention places the ultimate responsibility for clearance on affected states in order to protect their sovereignty. It requires affected states to provide victim assistance because under international human rights law, states are generally responsible for caring for their own people.
- The Convention requires all states "in a position to do so" to provide technical, material, and financial assistance to affected states. Affected states will therefore not have to meet their obligations alone.
- User states have a special responsibility to assist affected states with clearance. Article 4(4) strongly encourages user states to provide assistance for clearance of

submunitions they left before the treaty enters into force.

- Heavily affected states can request a five-year extension for clearance if their territory is too contaminated to clear within the 10-year deadline.

Fallacy 11: The provision allowing retention of cluster munitions for training purposes is a loophole in Convention's complete ban.

Facts:

- While the Convention would have been even stronger without this provision, the provision allowing states to retain cluster munitions for training purposes (Article 3(6)) significantly limits retention.
- States parties can only retain the “minimum number absolutely necessary” for training.
- States parties must report on the stocks they are retaining and how they plan to use them. Such transparency provides a check on abuse.
- States parties may not use these cluster munitions for any act prohibited by the treaty, such as use during armed conflict.

Fallacy 12: Now that the Convention has been adopted and opened for signature, most of the work has been finished.

Facts:

- Negotiating the Convention on Cluster Munitions was a major accomplishment toward ending the scourge of this weapon. Now states must sign, ratify, and implement the Convention as soon as possible.
- States should sign the Convention to increase its stigmatization of cluster munitions. The more signatories there are, the clearer it is that the international community has condemned the weapons.
- States should ratify the Convention so that it enters into force and becomes legally binding as soon as possible. The Convention requires 30 ratifications before it enters into force.
- States should also pass comprehensive implementing legislation as soon as possible. The Convention requires states parties to institute implementation measures. In most countries, legislation is necessary for the Convention to take effect domestically.
- States should act immediately to maintain the momentum generated by the Convention's adoption in May 2008 and the signing ceremony in December 2008.