

2008

Frank Slijper
Miriam Struyk
Roos Boer



[THE DEVIL IS IN THE DETAIL]

The Dutch Position on Cluster Munitions


IKV PAX
CHRISTI

“If the military success is achieved by bombing civilian targets and causing the loss of many civilian lives, which results in a strong national and international public reaction, the chances are it will not be easily converted in political capital”.

General Rupert Smith in ‘The Utility of Force’

Every year, cluster munitions cause a large number of civilian casualties. This publication has sprung from the commitment of those who have directly or indirectly had to deal with the effects of this type of weapon. The inhumane suffering caused by this weapon among civilians can largely be prevented. However, this is only possible if those in power to protect civilians take the necessary steps to ban these weapons.

We would like to express our gratitude to the following people:

Kostadin Kamenoc, Jawad Metni and Human Rights Watch for their photographic material. Collin King, Mark Hiznay, Richard Moyes, Grethe Østern, Jean-Marc Boivin, Louis Maresca and Thomas Nash for contributing their expertise.

February 2008,
Frank Slijper, Miriam Struyk and Roos Boer¹

¹ Frank Slijper is senior researcher for the Dutch Campaign Against Arms Trade (Campagne tegen Wapenhandel).

Miriam Struyk and Roos Boer are policy advisors for IKV Pax Christi.

Table of Contents

1 Introduction	1
2 International Context	2
3 The Dutch Context	5
4 Dutch Cluster Bombs	9
5 Technical Solutions	11
6 Conclusions and Recommendations	13

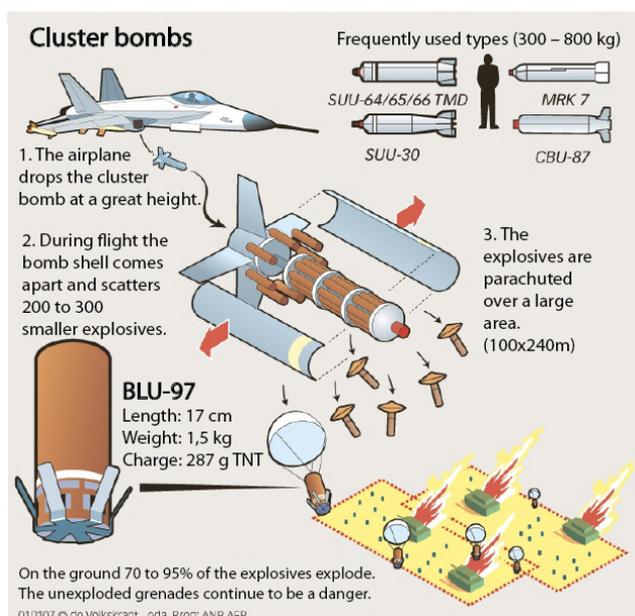
1. Introduction

“Cluster bombs are pernicious weapons of ill repute that have become synonymous with civilian casualties”, according to a group of Nobel Peace Prize laureates.² In military terms they are called area weapons, due to their potential to distribute submunitions over a large surface area. In previous decades cluster munitions have been deployed in inhabited areas, where they have indiscriminately killed or mutilated civilians and soldiers alike. Moreover, unexploded submunitions cause great suffering years after a conflict has ended. This heritage is comparable to that of landmines. Numerous civilian casualties, often children, are the sinister side-effect of the use of these bombs.

An international ban on cluster munitions should put an end to the great humanitarian suffering they cause. Production, trade, transfer and use of cluster bombs must be stopped. Dismantling of existing stockpiles and clearing unexploded remains should be put at the top of the agenda.

This opinion is not only shared by civilian organisations united in the Cluster Munition Coalition (CMC)³. At present, 94 governments have committed themselves to the Oslo Process that must lead to such a treaty.⁴ In the course of last year, this process has gained

considerable momentum due to the joint efforts of the CMC and several committed governments under the leadership of Norway.



Expectations are that in May 2008 in Dublin consensus will be reached on the text for a treaty. In February 2008 provisional negotiations will take place in Wellington, New Zealand. It is crucial that during these meetings a treaty text is agreed upon that is as comprehensive as possible. But, ‘the devil is in the detail’. A number of countries including the Netherlands is trying to negotiate exceptions for certain types of cluster munitions, which threatens to weaken the resulting treaty.

How cluster bombs work

Although the Netherlands has committed itself to the Oslo Process, it refuses to bind itself to a complete ban on cluster munitions. This has to do with the fact that the Dutch Air Force has cluster bombs in its arsenal, and does not want to dispose of them. At this stage the Dutch government will go no further than a temporary suspension of the use of cluster weapons,

² Nobel Women’s Initiative, “Statement of the Nobel Women’s Initiative to the Lima Conference on Cluster Munitions,” May 23, 2007

³ A coalition of several hundred international organisations, including Human Rights Watch, Handicap International and the ICBL, united in the Netherlands in the Cluster Munition Coalition with Amnesty International, IKV Pax Christi, Oxfam Novib, Unicef Netherlands and refugee organization ‘Stichting Vluchteling’. IKV Pax Christi is member of the international steering committee of the CMC. Also see: www.stopclustermunitie.nl

⁴ For a list of participating states: www.stopclustermunitions.org

leaving open the possibility of using them in the future.⁵ While large banks and pension funds, under pressure of Dutch public opinion, have stopped investing in companies that produce cluster munitions, the government itself refuses to unambiguously distance itself from this type of weapon. Internationally, the Dutch position is widely frowned upon. While initially the Netherlands took the lead in discussions on landmines and unexploded ordnance in the international arena, it is now hampering the process.

'With its current position the Netherlands places itself at the periphery in an area where it used to be a frontrunner'

The coming months constitute the moment of truth. A growing group of countries is preparing for a comprehensive ban on cluster bombs. IKV Pax Christi urgently calls upon the Dutch government to provide its full support to a clear 'no' to cluster bombs.⁶ With its current position the Netherlands places itself at the periphery in an area where it used to be a frontrunner.

A country that hosts international treaty organisations in the field of chemical and biological weapons, and that plays a prominent role in the area of international law, ridicules itself by joining those who are delaying an international and broadly supported ban on the use of cluster munition. It is time for a much more active and constructive Dutch role in the Oslo Process. After a year of hesitation, IKV Pax Christi now urges the Netherlands to join countries such as Norway and Austria, and take a pioneering role as it has done before in similar processes. With respect to cluster munitions, it is now or never.

2. International context

The subject of cluster munitions has been firmly put on the international agenda in a very short period of time. At this moment, negotiations that should result in a treaty mostly take place within the so-called Oslo Process. This process started in February 2007, when at the invitation of the Norwegian government 46 countries came together after earlier attempts by the UN Convention on Certain Conventional Weapons (CCW) in Geneva had failed to succeed. The resulting Oslo Declaration⁷, supported by among others the Netherlands, aims for a legally binding international treaty banning cluster bombs that cause unacceptable harm to civilians. In the ensuing meetings the number of supporting countries has grown to 94 at present. Important producers and users that are absent are the United States, China, Russia and Israel. However, it is expected that – as is the case with the Landmine Treaty – most countries that will not sign the future treaty on cluster munitions will nevertheless adhere to the new international norm and refrain from using cluster munitions after such a treaty has come into force.

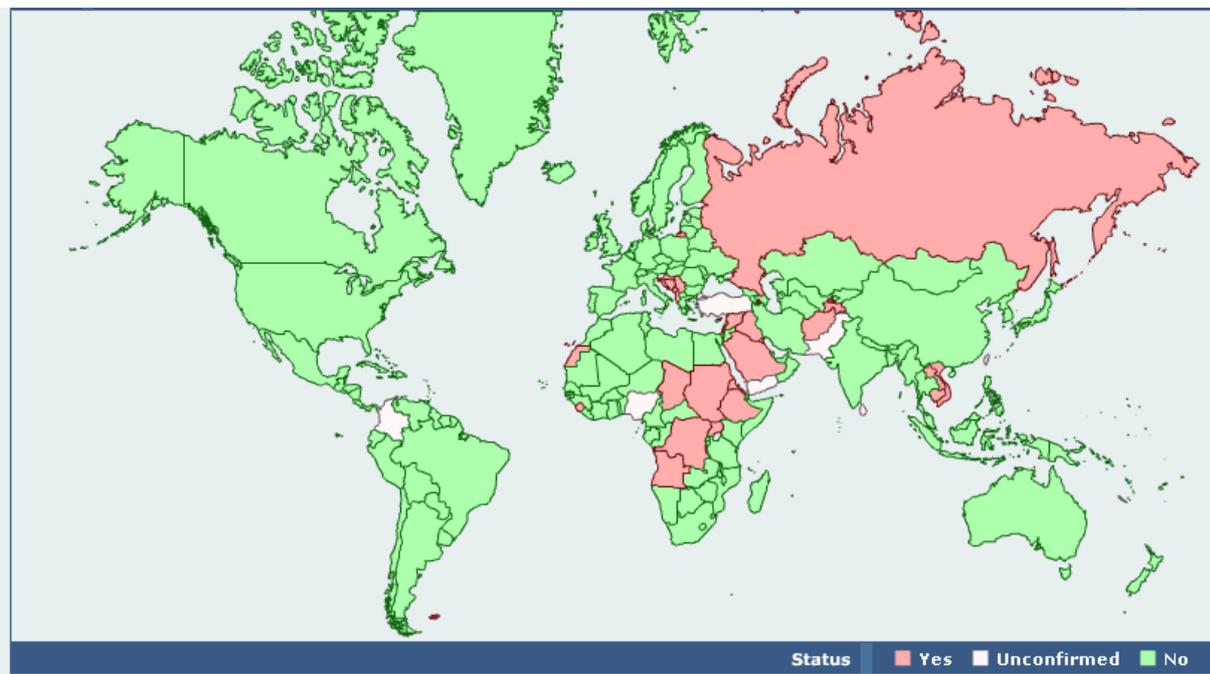
From the 18th until the 22nd of February 2008, further negotiations will take place in Wellington, New-Zealand. During meetings in May 2008 in Dublin, the precise text of the treaty must be determined. In order to reach this milestone it is of the utmost importance that as many countries as possible support a comprehensive ban on cluster munitions.

⁵ Minister of Foreign Affairs, also speaking for the Minister of Defence, 'Parliamentary letter regarding questionnaire on cluster munitions (Kamerbrief inzake vragenlijst betreffende clustermunitie)', 26 June 2007, 21501-02 no. 760

⁶ Also see memorandum 'The Dutch policy regarding cluster munitions (Het Nederlandse beleid inzake clustermunitie)' of IKV Pax Christi, November 2007;
<http://www.ikvpaxchristi.nl/files/Documenten/wap%20cluster%20munitie/Policy%20Paper%20clustermunitie2.pdf>

⁷ <http://www.stopclustermunitions.org/files/Oslo%20declaration.pdf>

Several days after the Oslo Conference, Dutch military expert Ko Colijn wrote: “What has in fact been agreed upon in Oslo, is that cluster bombs that do not cause ‘unacceptable harm’ to civilians will remain permissible. Apparently acceptable suffering is allowed. Cynically speaking, little more has been attained than the kind of protection that already existed. Though cluster bombs do not fall under international treaties against Inhumane Weapons – and are therefore permitted according to the Netherlands – our government does consider them to fall under the basic principles of the laws of war.”⁸ Colijn was well aware of the fact that an incomplete interpretation of the treaty could reduce the effect of actually preventing humanitarian suffering to a virtual zero. And precisely the Netherlands is making good use of any loopholes in the Oslo Declaration, and seems committed to weakening the treaty. The attempts of several, mostly European, countries to formulate exemption clauses to the treaty jeopardize the entire negotiation process, and seriously undermine efforts that would result in a strong treaty. Together with for example Great Britain and France, the Netherlands wants to leave room for excluding certain kinds of cluster munitions.⁹ During the meetings of the CCW Group of Governmental Experts (GGE) in January 2008, disarmament ambassador Mr. J.C. Landman stated on behalf of the Netherlands: “In distinguishing between cluster munitions that should be prohibited and those that should not, it is important to incorporate the notions of accuracy and reliability. Therefore it could be helpful to focus attention on a description of accuracy and reliability, and then decide for what type of munitions those criteria should be applied.”¹⁰



Countries affected by cluster munitions. Source: Human Rights Watch

The countries concerned apparently share the opinion that not all cluster munitions cause unacceptable harm to civilians. Based on criteria for the reliability (failure rate), accuracy and number of submunitions they attempt to create an artificial distinction between ‘good’ and ‘bad’ cluster bombs. However, for none of the type of cluster munitions that were used in the previous decades in conflict situations unacceptable consequences for civilians can be ruled out. For new types this can not be guaranteed either.

⁸ Ko Colijn, “Clustering together (Samen Clusteren)”, Vrij Nederland, 3 March 2007

⁹ <http://disarmamentinsight.blogspot.com/2007/12/cluster-munitions-vienna-tough-talk-on.html>

¹⁰ ‘Vragen van het lid Van Velzen aan de ministers van Defensie en Buitenlandse zaken over cluster munitie’, House of Representatives, vergaderjaar 2007-2008, Aangangsels van de Handelingen nr. 278, 16 oktober 2007

The group of Oslo-countries that are explicitly against a broad treaty are meeting each other in the periphery of the negotiations. They do so to prevent the driving forces of the Oslo process – especially Norway, Austria, Ireland, Mexico and Peru –from reaching a comprehensive treaty text.

“The Netherlands and a number of other countries believe that the Oslo declaration should be the point of departure for the process, and that the Wellington text should reflect this. This

“Precisely those countries that themselves possess stocks of cluster munitions want an exception to the treaty for their own types of bombs. From a humanitarian point of view we find this completely unacceptable.”

group of countries will meet in the run-up to the Wellington conference to find out in what way their points of view can be presented in time to the government of New-Zealand. The Netherlands will take part in these meetings.”¹¹ According to Thomas Nash, coordinator of the international Cluster Munition Coalition (CMC), the group is made up of “precisely those countries that themselves possess stocks of cluster munitions and that want an exception to the treaty for their own types of bombs.

From a humanitarian point of view we find this completely unacceptable.”¹²

This position of, among others, the Netherlands is one of the most important obstacles expected in the coming negotiation process, and causes irritation among those countries that aim for a comprehensive treaty. Nash calls the position of the Netherlands and other obstructers a ‘recipe for failure’ of the process to achieve a broad ban.¹³ Other experts also appeal to the Netherlands to take a leading role. Richard Moyes of the British organisation Landmine Action: “The Netherlands were earlier a leading state supporter of the Protocol V of the CCW [that sees to the clearing of explosive remains after a conflict – ed.] including financial backing, but now on cluster munitions they’ve become a weak link.” Moyes wonders “to what extent people in the Netherlands are aware of the position that Dutch delegates take in the Oslo Process, and in how far that position represents the position of the Dutch parliament and the Dutch population.”¹⁴

Mark Hiznay of Human Rights Watch links the Dutch position to its support to the US during military interventions. Nevertheless, even to him it remains a mystery why the Netherlands takes up such a reserved position: “Is it still a NATO requirement, what are the alternatives? If you ask the Dutch they simply stare at you, they lack answers to such basic questions. They simply haven’t done their homework.”¹⁵

IKV Pax Christi shares this opinion and already in 2005 called for a Dutch policy review on this. With this aim IKV Pax Christi has written the report “Cluster weapons: necessity or convenience?”, in which among others it calls upon the Dutch government to research the military necessity of cluster munitions.¹⁶

Collin King, an independent British expert on clearance of explosives fails to understand the Dutch position for another reason: “...the tide has turned and there is no way back. You can see that from the changing positions. Like with the Netherlands that is willing to agree to a self-imposed ban on cluster munitions.”¹⁷ But because there is no way back it is no longer of

¹¹ ‘Answer to questions of MP’s Van Velzen and Eijsink on cluster munition (Beantwoording vragen van de leden Van Velzen en Eijsink over clustermunitie)’, 15 January 2008

¹² Rob Vreeken, ‘Netherlands wants a weak treaty (Nederland wil zwak verdrag)’, De Volkskrant, 22 December 2007

¹³ Interview by Frank Slijper, 14 January 2008

¹⁴ Interview by Frank Slijper, 14 January 2008

¹⁵ Interview by Frank Slijper, 14 January 2008

¹⁶ <http://www.ikvpaxchristi.nl/catalogus/default.aspx?lid=1&id=67>

¹⁷ <http://www.ikvpaxchristi.nl/catalogus/default.aspx?lid=1&id=67>

any use to stock cluster munitions according to King: “It will not be accepted anymore internationally if they would be used.”

“It will not be accepted anymore internationally if they would be used.”

Simon Conway, joint chair of the CMC is frustrated by the rhetoric of countries such as the Netherlands, but has faith in the development of the process: “Ultimately, they will listen to logic.”¹⁸

That it can be done differently is shown by Belgium, for example. By law it has banned production, ownership and stocking of cluster bombs as of November 2006. At this point in time the law has been expanded to also prohibit the financing of foreign companies that produce cluster munitions. In anticipation of an international treaty, also Austria has adopted a law in December 2007 prohibiting cluster munitions.

3.The Dutch Context

Poor government position

The recent decision of the government in June 2007 not to use cluster munitions “until further notice”¹⁹ is a step forward, but at the same time it is also disappointing because the possibility of future use still exists. The government maintains its position that cluster bombs are legitimate weapons that do not always have a disproportionate effect on civilian populations.²⁰ “The negative consequences of cluster bombs are incomparable with the suffering and social disruption caused by anti-personnel mines in many parts of the world.”²¹ However, this view is at odds with the estimated 55,000-100,000 victims, 98 percent of which are civilians, caused by cluster munitions over the years.²² This has everything to do with its large deployment in populated areas and the ‘convenience’ of bombs that ‘clean out’ large areas in one go.

An example of this is the use of more than a thousand cluster bombs and their 200,000 cluster submunitions during the NATO bombardment of Serbia in 1999. In this, Dutch F-16 fighter jets were responsible for the use of 173 CBU-87 bombs.²³ According to the British Landmine Action, in no way can these bombardments be considered an example of precision work against solely military targets:

“Political and military officials presented the use of cluster munitions as being against a narrow set of targets only in very specific circumstances. However, NATO bombing records suggest that they were a weapon of convenience used against a wide range of static and mobile targets.”²⁴ In their report, Landmine Action concludes that the military impact of cluster munitions in Serbia was small. According to former American president Carter the use of

¹⁸ ‘Cluster bomb conference ends in hope for victims, differences over definition’, AP, 7 December 2007

¹⁹ Minister of Foreign Affairs, also speaking for the Minister of Defence, ‘Parliamentary letter regarding questionnaire on cluster munitions (Kamerbrief inzake vragenlijst betreffende clustermunitie)’, 26 June 2007, 21501-02 no. 760

²⁰ “Netherlands policy on cluster munitions”, release by Dutch government via COREU, 12 July 2007

²¹ ‘Parliamentary questions on cluster bombs (Kamervragen Clusterbommen)’, House of Representatives, meeting year 2000-2001, 27 400 V and 27 400 X, no. 53, 20 February 2001

²² Handicap International, ‘Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities’, Brussels, May 2007

²³ ‘Questions MP Van Velzen to the Ministers of Defence and Foreign Affairs on cluster munitions (Vragen van het lid Van Velzen aan de ministers van Defensie en Buitenlandse zaken over clustermunitie)’, House of Representatives, meeting year 2007-2008, Attachment to Proceedings (Aanhangsel van de Handelingen) no. 278, 16 October 2007

²⁴ See for example ‘Cluster munitions in Kosovo: Analysis of use, contamination and casualties’, Landmine Action, London, 14 February 2007

cluster munitions in inhabited areas resulted in “damage to hospitals, offices and residences of a half-dozen ambassadors, and the killing of hundreds of innocent civilians and an untold number of conscripted troops.”²⁵

One of the witnesses to this heritage is Branislav Kapetanović. Before being seriously injured by an exploding cluster bomb he worked as deminer for the (former) Yugoslav army. “The number of cluster bombs dropped over Serbia by NATO in 1999 that were left unexploded on the ground was so large that long after the war was over, we were busy clearing them. I worked throughout Serbia and have probably dismantled around two thousand of them. Unfortunately I know by experience how imprecise, unreliable and dangerous cluster bombs are, especially the BLU-97 type that the Netherlands still possesses.”²⁶ On the 9th of November 2000 he was instructed to dismantle a number of cluster bombs next to a military airbase. A BLU-97 spontaneously exploded and caused Kapetanovic to lose his arms, legs and sight.



*A BLU-97 lies in the streets of Niš after Nato bombardments.
Photographer: Kostadin Kamenoc*

An investigation by experts of the Ministry of Defence into “the technical possibilities for combined precision and reliability criteria [...], which will draw a line that is acceptable to our military forces, distinguishing between acceptable and unacceptable cluster munitions” was announced in July 2007 but is still being awaited.²⁷ Disarmament ambassador Landman made the following remarks on this during the CCW: “For effectively minimising ERW (explosive remnants of war - ed.) the protocol will only have to set a clear reliability standard.²⁸ Although the government acknowledges the complexity of the issue and the necessity of a thorough approach, it does not appear to be in a hurry to conduct such a study. This is telling of the passive position taken by the government: “The Minister [of Foreign Affairs – ed.] is speaking with 40 countries in Oslo on conditions for the use of cluster munitions. He has suspended their use in the Netherlands as long as an international treaty has not been reached. This step is a consequence of the course set out in Oslo. The Minister has not taken this step to present the Netherlands as a guiding country.”²⁹

Landman also stated at the same CCW conference: “When considering reliability, it would be preferable to focus on the expected ERW that will be left on the ground, instead of focussing

²⁵ Jimmy Carter, “Have We Forgotten the Path to Peace?”, New York Times, 27 May 1999, cited in ‘Cluster munitions in Kosovo: Analysis of use, contamination and casualties’, Landmine Action, London, 14 February 2007, p. 8

²⁶ The BLU-97 is the submunition of the CBU-87 clusterbomb. Natalie Righton, ‘Life after the exploded cluster bomb (Leven na de ontplofte clusterbom)’, De Volkskrant, 29 June 2007

²⁷ ‘Answer to questions of MP’s Van Velzen and Eijnsink on cluster munitions (Beantwoording vragen van de leden Van Velzen en Eijnsink over clustermunities)’, 15 January 2008

²⁸ Intervention Dutch Delegation during the CCW conference 18 January 2008, available at www.stopclustermunitie.nl

²⁹ Minutes General Meeting on the situation in the Middle East (Verslag Algemeen Overleg over de situatie in het Midden-Oosten, 28 June 2007 (finalized 7 August 2007), 23432 no. 237

on technical ways of preventing ERW³⁰.” A useful remark, but it goes against his proposed strategy of using reliability and precision standards. Available research has shown that test results cannot be translated to operational conditions. The Dutch faith in the relationship between test results and their translation to operational circumstances is remarkable furthermore in the light of previous experiences with test results of producers.³¹ On this, Louis Maresca of the International Red Cross remarks that “governments claiming that a total ban on cluster munitions is unnecessary really need to make the case and show that cluster munitions do not cause such problems.”³²

Instead of taking the lead by dismantling existing stocks, which would show unconditional support for a comprehensive treaty against cluster munitions, the Netherlands at this moment formulates its policy largely based upon what is happening at the international level. While the Netherlands like to take a leading role in several disarmament forums, in the Oslo Process it slows the process down by making the coverage of the treaty dependent on the, yet undefined, size, accuracy and reliability of cluster munitions. “The Dutch government does not aim for a total ban on cluster munitions, but on a ban on the use of cluster munitions that can cause unacceptable humanitarian harm under no matter what circumstances.”³³ For this reason, up to now the government has mainly sought refuge in

“The Netherlands provides no indication as to what acceptable civilian suffering is and what types of cluster munitions are acceptable”

technical improvements meant to limit humanitarian harm as much as possible. The kind of situations in which the use of cluster bombs, and with it the risk of humanitarian suffering, is regarded to be acceptable is limited to denying access to infrastructure by the enemy and the safeguarding of endangered own or friendly troops. Up to now, the government has also not been able to clarify why there are no sufficient alternatives in given cases.

Moreover, the government moves on dangerous grounds when differentiating between acceptable and ‘in any way unacceptable’ humanitarian harm. Who makes this decision, when and based on what? How many casualties per cluster bomb are acceptable, or how many seriously mutilated children? “The Netherlands provides no indication as to what civilian harm is acceptable and what types of cluster munitions are acceptable” according to Miriam Struyk of IKV Pax Christi.³⁴ She cannot understand the Dutch position, especially since it is steering towards a weak treaty with an artificial division between ‘good’ and ‘bad’ cluster munitions. “Within the CCW everything is about consensus. This made it possible that for 30 years there was talk about cluster munitions without any preventative measures. It is therefore good that Norway took the lead out of this deadlock. It is great that the Netherlands is taking part in this Oslo Process, but not if it searches for the lowest possible denominator within the process.” For example, during the Vienna conference in December 2007 the Netherlands indicated that besides certain exceptions (self-destructive and types with a low failure rate) it also wanted to make an exception for types with less than 10 submunitions.³⁵

³⁰ Intervention Dutch Delegation during the CCW conference 18 January 2008, available at www.stopclustermunitie.nl

³¹ For more information on the difference between policy and practice, see the report of Norwegian People’s Aid ‘The reliability of the M85 bomblet tests vs reality – Lessons learned from Norway and Lebanon’ in which they make use of tests done by the Norwegian Defence Staff

³² Reaction to authors by email 29 January 2008

³³ Minutes General Meeting on weapons export policy (Verslag Algemeen Overleg over het wapenexportbeleid), 4 July 2007 (finalized 5 September 2007), 22054 no. 125

³⁴ Klaas Boomsma, ‘Position on bomb needed (Standpunt over bom gewenst)’, Metro, 12 December 2007

³⁵ Report from the Vienna Conference on Cluster Munitions, 5-7 December 2007, page 12, Harrison The Women’s International League for Peace and Freedom, January 2008.

Struyk also criticises the Dutch position from another perspective: “While inside the country the government propagates that it is awaiting international developments, it appears that it is now actively hindering the conclusion of a strong international treaty. It is therefore high time for a clear position both at national and international level.”³⁶

During the Lima conference in May 2007, ambassador Landman set the trend on behalf of the Netherlands with the following intervention:

“...we agreed in Oslo to prohibit the use, production, transfer and stockpiling of cluster munitions that *cause unacceptable harm to civilians*. That, Mr. Chairman, is what the Netherlands is committed to do in good faith: to ban a CERTAIN PART of the Universe of Cluster Munitions, notably *that part that causes unacceptable harm to civilians*. That, Mr. Chairman, is the spirit of Oslo and the guiding principle of this process. The objective of Oslo is *not* to ban an entire category of weapons. This being said, we must make the distinction, and draw the line, between those cluster munitions that cause unacceptable harm, and those that do not, provided that they are properly used of course. It is the line that divides cluster munitions into a group whose use is no longer acceptable under International Humanitarian Law, and into a second group whose use remains legitimate within the confines of International Humanitarian Law (again, if properly used). Defining that line, Mr. Chairman, defining the line that divides the Universe of Cluster Munitions into two parts, that is our BIG challenge. And that is much more difficult than finding a definition of cluster munitions itself.”

Many organisations have undertaken studies showing that under any operational circumstance, the use of cluster munitions naturally causes civilian victims. The Dutch government must conduct a thorough study that indicates where, for them, the line can be drawn between acceptable and unacceptable cluster munitions, what types of cluster munitions are acceptable and what these findings are based on.

Also within the government there is support for a complete ban

Professor in Reformational Philosophy and member of the Dutch Senate for the Christian Party (Christen Unie), Roel Kuiper is of the opinion that

" The emotions regarding that mission certainly play a role "

the use of cluster munitions is in breach of biblical principles on the conduct of war. “The Old Testament tells us that in times of war you are not even allowed to damage the stock and crops of your enemy. The killing of innocent civilians is therefore absolutely forbidden.”³⁷

Maintaining the position taken during the previous government, also the Christian Democratic Party fraction in the House of Representatives fully supports a complete moratorium:

“Minister Van Middelkoop reads the same Bible as I do, he should draw the same conclusions,” according to Joël Voordewind (MP-ed).³⁸

The Dutch Labour Party (Partij van de Arbeid) is satisfied with the government’s decision to suspend the use of cluster munitions, and understands the fact that the government does not support a complete ban and may want to use cluster munitions in the future. Important in this discussion, according to Defence spokesperson Angelien Eijnsink, is that contrary to the time of the landmine discussion, the Netherlands now has a large military force in Afghanistan. “The emotions regarding that mission certainly play a role.”³⁹ Nevertheless, according to her a discussion on a future treaty must not get bogged down in discussions on failure rates.

³⁶ ‘Netherlands slows down international treaty cluster munitions (Nederland vertraagt internationaal verdrag clustermunitie)’, press release IKV Pax Christi, 7 December 2007

³⁷ Rens Ulijn (GPD), ‘Clusterbomb at odds with biblical principles (Clusterbom haaks op Bijbelse principes)’, Leeuwarder Courant 27 June 2007

³⁸ Rens Ulijn (GPD), ‘Clusterbomb at odds with biblical principles (Clusterbom haaks op Bijbelse principes)’, Leeuwarder Courant 27 June 2007

³⁹ Interview by Frank Slijper, 16 January 2008

Former MP for the Labour Party, and current Minister of Development Cooperation Bert Koenders was the initiator of a motion in 2006 calling upon the government to “commit itself to an international treaty that constrains or forbids the use of, production of and trade in cluster munitions.”⁴⁰

Surprisingly, the third government party, the Christian Democrats (CDA), is under the impression that the Netherlands is forerunner in a treaty on cluster munitions.⁴¹ To them it is first and foremost important that a good agreement is reached on what kind of deployment is permissible. Spokesman Raymond Knops, however, thinks that the Dutch ‘moratorium’ should be temporary and should not last for years. He does not consider a general ban on cluster weapons to be desirable. According to him in some cases, such as putting airport landing strips out of order, they could save human lives. Mr. Knops does not, however, provide examples of operations in the past in which cluster munitions have been used successfully. Neither does he provide an answer to the question if landing strips cannot be put out of order with another type of bomb.

From the opposition it is especially Krista van Velzen of the Socialist Party (SP) who in previous years has manifested herself as a great advocate of an international ban on cluster munitions. She can be credited for many parliamentary questions, motions and interventions. In April 2007 she submitted a private member’s bill to the Council of State (a government advisory body) forbidding the use, stockpiling, transfer and production of cluster munitions.⁴² Van Velzen believes that “in the discussion on cluster bombs the Netherlands should be pulling the process rather than hindering it.”⁴³ Other parties supporting the call for an international treaty that is as comprehensive as possible are GreenLeft (GroenLinks), Democrats 66 (D66) and the Party for Animals (Partij voor de Dieren). Up till now the People’s Party for Freedom (PVV) and the Liberal Party (VVD) are strong proponents of maintaining cluster munitions. Hans van Baalen (MP for VVD) regards a complete ban on cluster munitions as undesirable.⁴⁴

4. Dutch Cluster Bombs

In previous years the Ministry of Defence has actually phased out part of the cluster bombs arsenal.⁴⁵ The destruction of this part of the arsenal should be completed in the course of 2009.⁴⁶ Two types of cluster munitions will for the time being remain in the Dutch arsenal: the CBU-87 bomb for the F-16 and the likewise unguided M-261 missile that can be fired from an Apache attack helicopter.⁴⁷ The former was used by the Netherlands during airstrikes in Serbia in spring 1999, the latter has not been deployed by the Netherlands since being taken into use in 1997.⁴⁸

⁴⁰ Motion by MP Koenders c.s. (Motie van het lid Koenders c.s.), House of Representatives, meeting year 2006-2007, 30 800 V, no. 17, 19 October 2006

⁴¹ Minutes of General Meeting (Verslag van een Algemeen Overleg) House of Parliament, meeting year 2007-2008, 21 501-02, no. 778, 27 November 2007

⁴² http://www.sp.nl/nieuwsberichten/4509/070401-initiatiefwet_sp_tegen_clusterbom.html

⁴³ http://www.sp.nl/nieuwsberichten/4509/070401-initiatiefwet_sp_tegen_clusterbom.html

⁴⁴ Minutes of General Meeting (Verslag van een Algemeen Overleg) House of Representatives, meeting year 2007-2008, 21 501-02, no. 778, 27 November 2007

⁴⁵ These were the M483 A1 artillery grenade, M-26 missiles of the MLRS and BL-755 airplane bombs

⁴⁶ See “Netherlands policy on cluster munitions”, release by Dutch government via COREU, 12 July 2007

⁴⁷ At the moment the Netherlands has over 293 pieces of CBU-87 and 1.879 pieces of M-261. See “Netherlands policy on cluster munitions”, release by Dutch government via COREU, 12 July 2007

⁴⁸ Minister of Foreign Affairs, also speaking for the Minister of Defence, ‘Parliamentary letter regarding questionnaire on cluster munitions (Kamerbrief inzake vragenlijst betreffende clustermunitie)’, 26 June 2007, 21501-02 no. 760, question 73

The CBU-87 is regarded by many experts as one of the least reliable types of cluster munitions. Especially these ‘yellow killers’, much-used by the US – among others in Serbia, Iraq and Afghanistan – are seen as the most malicious bombs. British explosives expert Collin King refers especially to the CBU-87 as ‘obviously bad’. High numbers of unexploded BLU-97 submunitions lead to countless victims, including the aforementioned explosives clearer Kapetanović.



Close-up of a BLU- 97 in Kosovo

The fact that the CBU-87 has a high percentage of duds is known to the Ministry of Defence for a long time. A ‘Lot Acceptance Test’ report from 1995 that has recently been made public gives a far too low failure rate for the submunitions due to the fiddling with definitions. By not counting damaged duds as such, they are not calculated into the failure rate percentage. “Therefore, during operational deployment a lot more submunitions are left behind than can be suspected from the reliability rate of the test report,” as Minister Van Middelkoop admitted with a flair for understatement.⁴⁹

Until quite recently, however, the Netherlands held the position that with a few adaptations the CBU-87 could be made more reliable. That is to say that the bombs would end up closer to the intended target by means of adding navigation tools, a so-called Inertial Navigation System, according to the then State Secretary of Defence Van der Knaap in 2005.⁵⁰ Although this need formally still exists⁵¹, the position of the government towards the CBU-87 appears to have shifted over the last months, if only because Minister Van Middelkoop of Defence is taking into account that this bomb may be banned in a future treaty that the Dutch would actually support.⁵² That would be an important and logical step forward. In anticipation of this, the Netherlands would gain much credibility if it would not let its decision depend on the final treaty text but would put the CBU-87 out of use based on its own national policy.

⁴⁹ ‘Lot Acceptance Flight Test report CBU-87 airplane bomb’, Ministry of Defence, 28 Augustus 2007

⁵⁰ ‘Questions by MP Van Velzen to State Secretary of Defence on selling of Dutch cluster bombs (Vragen van het lid Van Velzen aan de staatssecretaris van Defensie over de verkoop van Nederlandse clusterbommen)’, House of Representatives, meeting year 2005-2006, Attachment to Proceedings (Aanhangsel van de Handelingen) no. 109, 6 October 2005

⁵¹ Minister of Foreign Affairs, also speaking for the Minister of Defence, ‘Parliamentary letter regarding questionnaire on cluster munitions (Kamerbrief inzake vragenlijst betreffende clustermunitie)’, 26 June 2007, 21501-02 no. 760, question 51

⁵² Minutes of General Meeting (Verslag van een Algemeen Overleg), House of Representatives, 2007-2008, 21 501-02, no. 778, 27 November 2007

It is widely assumed that no future treaty will leave room for the possession, let alone the use, of the CBU-87.

Finally, it is important to know that the Ministry of Defence is currently looking for a replacement for the CBU-87. In a letter sent to the House of Representatives at the beginning of November 2007, concerning new armoury for the F-16 – and its replacement that will be introduced from 2015 onwards –, the Ministry of Defence writes that fulfilling the need for area weapons will depend on the outcome of the Oslo Process.⁵³ In other words, the Ministry of Defence has made the type of replacement for the CBU-87 dependent on the scope of the future treaty.

A comparable situation applies to the PzH 2000 armoured howitzer, for which Defence still formally needs cluster munitions.⁵⁴ This also appears to have been postponed in anticipation of the Oslo Process.

As far as the M-261 High Explosive Multi-purpose Submunition is concerned, the Ministry of Defence seems to take the position that this type of munitions should be placed among the acceptable types of cluster munitions in a treaty. One of the arguments for this would be the limited number of submunitions, namely 9. Several countries that possess cluster bombs themselves are aiming for a threshold regarding the number of submunitions in a future treaty. Experts, however, completely refute the logic behind this approach. Firing a lot of cluster bombs with few submunitions in the end comes down to the same thing as firing a limited number of missiles with a lot of submunitions. Adding to this, according to the CMC coordinator Thomas Nash “it should be noted that the M-261 can be fired from a pod with 19 rockets from a helicopter, so with $19 \times 9 = 171$ submunitions at a time.”⁵⁵ Human Rights Watch states that the failure rate of the M-261 lies between two and six percent, with which it is not categorised as ‘safe and reliable’. For this reason, the Ministry of Defence must immediately give up the M-261.

5. Technical Possibilities

Just like several other countries, the Netherlands has high hopes for new types of cluster munitions that will cause less casualties, for example because they are more precisely aimed at their target or because unexploded submunitions self-destruct after a given amount of time. Although relevant, the discussion is highly theoretical: a failure rate approaching zero is technically an illusion, even with a self-destruct mechanism. Experience has shown that external circumstances (weather, dust, sand, water) as well as unavoidable technical defects in operational situations always lead to higher failure rates than manufacturers claim based on their own tests.

Reality is more volatile than the advertisements of weapon manufacturers lead us to believe. From a sales perspective manufacturers have an interest in presenting optimistic failure rates that have not yet been reached under realistic, let alone extreme, circumstances. It is therefore startling that in January 2008 disarmament ambassador Landman states that: “(...) How this reliability is achieved, for example through self-destruct or self-neutralizing

⁵³ Ministry of Defence, ‘F-16 Improvement air-surface arsenal phase II (F-16 Verbetering lucht-grond bewapening fase II)’, 7 November 2007

⁵⁴ Questions by MP Van Velzen to State Secretary of Defence on selling of Dutch cluster bombs (Vragen van het lid Van Velzen aan de staatssecretaris van Defensie over de verkoop van Nederlandse clusterbommen)’, Second Chamber, meeting year 2005-2006, Attachment to Proceedings (Aanhangsel van de Handelingen) no. 109, 6 October 2005

⁵⁵ Interview by Frank Slijper, 14 January 2008

mechanisms, can be left to the producers. Technical experts could concentrate on how reliability and accuracy standards should be described and properly tested.⁵⁶

“Countries cannot put blind faith in data from producers – they need to look at hard facts,”

Recent research by the Norwegian defence research institute FFI, Norwegian People’s Aid and British explosives experts has shown that the self-destruct mechanisms in the cluster munitions used by Israel in Lebanon (2006), failed to work in roughly one out of ten cases.⁵⁷ That is considerably higher than the one to two percent claimed by manufacturers. Grethe Østern of

Norwegian People’s Aid: “Field evidence shows that even new generation cluster munitions with self-destruct mechanisms on the bomblets fail far too often and cause unacceptable humanitarian harm, so states cannot justify their use.”⁵⁸ To this, Jean-Marc Boivin of Handicap International adds: “During tests on solid ground, producers estimated the self-destruct mechanisms’ failure rate at one percent. But when used in forests or marshy areas, that percentage rose to an average of 12 to 13.”⁵⁹ Østern concludes that “With this new evidence no country can credibly justify the use of these new generation self-destructing cluster munitions. Countries cannot put blind faith in data from producers – they need to look at hard facts.”⁶⁰

⁵⁶ Intervention Dutch delegation during the CCW conference 18 January 2008, available at www.stopclustermunitie.nl

⁵⁷ Collin King, Ove Dullum en Grethe Østern, ‘M85 – An analysis of reliability’, Norwegian People’s Aid 2007

⁵⁸ ‘Cluster bombs called more sophisticated but not safer’, AFP, 6 December 2007

⁵⁹ ‘Cluster bombs called more sophisticated but not safer’, AFP, 6 December 2007

⁶⁰ ‘Cluster bomb ban treaty: 138 nations make progress in Vienna’, press release CMC, 7 December 2007

6. Conclusions and Recommendations

The Oslo Process is part of a new security framework: it is not only about this specific weapon, it is about shared values. Diplomatic negotiations and discussions on technical details almost make us forget why a few years ago a group of countries, led by the Norwegian government, set out in a new direction. The objective was and is to make an end to the great humanitarian suffering that results from the use of cluster bombs. It concerns very practical issues, such as reducing the suffering of thousands of handicapped victims and their families, and help for the relatives of those who have been killed. It is also about reconstruction: the demarcation and clearance of unexploded cluster bombs and submunitions, in inhabited areas and the surroundings.

Even more important is the need to prevent cluster bombs from being used again in ongoing or future conflicts. Therefore the Netherlands must abandon its passive stance and unconditionally support the Oslo Process. This is to say: no haggling about provisions, no negotiating for exceptions that leave room for the Netherlands to keep its own cluster bombs, and no theoretical talk about the workings of and the need for cluster munitions, but independent research and a policy review.

Where in the Netherlands large banks and pension funds have now clearly distanced themselves from cluster munitions as a result of the general outrage that erupted after two broadcasts of Dutch television programme Zembla, the Dutch government keeps bringing up excuses to plead for exceptions to the rules and make a fictional distinction between good and bad cluster bombs. This role does not suit the Netherlands.

Time is ticking, and it is about time that the Netherlands unconditionally supports Norway and the other leading countries. It is time to ban a weapon that blindly kills and mutilates civilians. At the end of 2008 there will be a treaty: the question is however, what kind of treaty?

IKV Pax Christi therefore calls upon the government:

- To no longer wait and see what happens in the international arena, but take a clear and progressive position in the Oslo Process and make use of the current momentum to reach a strong and comprehensive treaty.
- In the coming Wellington conference the Netherlands should join the majority of countries within the Oslo Process, namely the group of countries that pleads for a strong treaty without exceptions for cluster munitions for which there is no proof that they do not cause unacceptable humanitarian harm in operational circumstances.
- To finish the ongoing research by the Ministry of Defence on what would be acceptable standards for cluster munitions.
- Given the bad reputation of the CBU-87, those bombs should be removed immediately from the Dutch arsenal. Such a decision would show unambiguous support to the Oslo Process.
- The same should be done for the M-261 missile.



IKV Pax Christi
Postbus 19318
3501 DH Utrecht
The Netherlands
info@ikvpaxchristi.nl
www.ikvpaxchristi.nl
+ 31 (0)30-2333346



IKV Pax Christi
Postbus 19318
3501 DH Utrecht
The Netherlands
info@ikvpaxchristi.nl
www.ikvpaxchristi.nl
+ 31 (0)30-2333346