

Wadlow, René (2011): Ban on Cluster Weapons Upheld: World Law Significantly Strengthened.

World Citizens welcomed the upholding of the total ban on cluster weapons as a significant step in the development of world law. In a 28 November 2011 message to Dr Jakob Kellenberger, President of the International Committee of the Red Cross (ICRC), the Association of World Citizens (AWC) welcomed the strong leadership of the ICRC to prevent a weakening of the international treaty imposing a comprehensive ban on the use, production, stockpiling, and sale of cluster munitions. The treaty, often called the Oslo Convention as negotiations began in Oslo in February 2007, was reviewed in November 2011 at the United Nations in Geneva as part of the review of the *Convention on Prohibition on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects* — the “1980 Inhumane Weapons Convention” to its friends.

At the review conference, there was a proposition by what I have called “the Outlaw States” — led by the United States with strong support from Russia, China, India, Pakistan and Israel which have opposed the ban from the start of the 2007 negotiations, to substitute a new treaty on the same topic but much weaker.

As I have maintained for the Association of World Citizens, for world law to be effective, it must be clear and have broad popular support. If there were two international treaties dealing with the same subject but having different provisions, there would be confusion as to which treaty was applicable especially if both treaties were signed by the same State. Thus having both a more comprehensive and a less comprehensive treaty on the same issue would be a dangerous precedent.

Fortunately, the ICRC with its long history of upholding respect for international humanitarian law led the opposition to the “Outlaw States” with the strong support of a coalition of non-governmental organizations. There was also strong opposition to the weak draft treaty from those States which have taken a lead on the cluster weapon ban such as Norway and Ireland. More unusual was the outspoken opposition given by UN agencies, especially those dealing with human rights and development issues. Usually, UN agencies stay in the background during governmental negotiations. Since all States are part of the UN system, the Secretariat cannot be seen as favoring one group of States over another.

In this situation, however, the narrow interests of the “Outlaws” to continue selling and using cluster weapons was so obvious and so weakening to the foundations of world law that the UN agencies had to speak out publicly

Fortunately, the "Outlaws" had no intellectual arguments for their proposition. They were able to twist a few arms and push States to abstain. Nevertheless, an *ad hoc* coalition of some 50 States from all world regions was able to push back and thus prevent, what we must hope, is the last gasp from the "Outlaws" to promote the use of weapons broadly recognized as causing unacceptable harm to civilians and having lasting effects on development for decades after conflicts have ended.

The ban on cluster weapons is an example of a remarkable combination of civil society pressure and leadership from a small number of progressive States. As arms negotiations go, the cluster bomb ban has been swift.⁽¹⁾ They began in Oslo, Norway, in February 2007. The negotiations were a justified reaction to their wide use by Israel in Lebanon during the July-August 2006 conflict. The UN Mine Action Coordination Centre (UNMACC) working in southern Lebanon reported that the cluster bomb density there is higher than in Kosovo and Iraq, especially in built up areas, posing a constant threat to hundreds of thousands of persons, as well as to UN peacekeepers. It is estimated that one million cluster bombs were fired on south Lebanon during the 34 days of war, many during the last two days of war when a ceasefire was a real possibility. The Hezbollah militia also shot off rockets with cluster bombs into northern Israel.

Cluster munitions are warheads that scatter scores of smaller bombs. Many of these sub-munitions fail to detonate on impact, leaving them scattered on the ground, ready to kill and maim when disturbed or handled. Reports from humanitarian organizations and mine-clearing groups have shown that civilians make up the vast majority of the victims of cluster bombs, especially children attracted by their small size and often bright colors.

The failure rate of cluster munitions is high, ranging from 30 to 80 per cent. But "failure" may be the wrong word. They may, in fact, be designed to kill later. The large number of unexploded cluster bombs means that farmlands and forests cannot be used or used with great danger. Most people killed and wounded by cluster bombs in the 21 conflicts where they have been used are civilians, often young. Such persons often suffer severe injuries such as loss of limbs and loss of sight. It is difficult to resume work or schooling.

Now the ban on cluster munitions has become a part of recognized world law as it has been agreed to by the vast majority of UN members and a concerted effort to weaken the treaty led by militarily powerful States has failed. It would be useful for the "Outlaws" to drop their addiction to cluster bombs and to join the treaty as an important sign of respect for international agreements. However, the ban is now part of world law even if the "Outlaws" refuse to sign. As world citizens, we need to keep up the

pressure and to show wide popular respect for World Law.

(1)For a good account of the negotiations, see John Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won* (Geneva: UN Institute for Disarmament Research, 2009)

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