

CIVILIAN HARM FROM US-MADE CLUSTER MUNITIONS IN LEBANON

The Importance of Clear Terms and Legislation

A cluster munition is an explosive weapon, dropped from the air or fired from artillery, that releases or ejects smaller submunitions, or “bomblets.” According to Human Rights Watch, “cluster munitions pose an immediate threat to civilians during conflict by randomly scattering submunitions or bomblets over a wide area,” and “continue to pose a threat post-conflict by leaving remnants, including submunitions that fail to explode upon impact becoming de facto landmines.”¹ In 1976 and 1978, the United States sold cluster munitions to Israel subject to terms of a classified bilateral end-user agreement and the bilateral Mutual Defense Assistance Agreement of 1952 (MDAA). Although the agreements for these sales have never been made public, US and Israeli officials have publicly confirmed that the terms limited their use to clearly defined military targets; areas away from civilians; and major wars “against organized Arab armies.”^{2,3} In spite of these provisions, Israel allegedly used US-manufactured cluster munitions in areas heavily populated by civilians during its invasion of Lebanon in 1982.⁴ The munitions and the sub-munitions they left behind led to civilian casualties, including the death and injury of children playing with unexploded bomblets.⁵

A US Congressional investigation into the 1982 invasion found that Israel’s use of the cluster munitions in civilian areas violated the terms of the MDAA.⁶ In response, the Reagan administration enacted what became a six-year export ban on cluster munitions in Israel. The ban was quietly lifted in November 1988.⁷

During the 34-day war with Hezbollah in July and August of 2006, Israel again used US-made cluster munitions in populated areas of Southern Lebanon. According to the UN, eight civilians died and 30 were injured during the conflict due to cluster munitions, landmines, and unexploded bombs.⁸ A UN Commission found that Israel used 90 percent of the cluster munitions in the final 72 hours of the conflict, calling their use “excessive and not justified by any reason of military necessity” and concluding that the munitions were “used deliberately to turn large areas of fertile agricultural land into ‘no go’ areas for the civilian population.”⁹ A report by the UN Mine Action Coordination Center confirmed that the bombs were US made, after finding “hundreds” of American-made unexploded bomblets in South Lebanon.¹⁰

The State Department pursued an inquiry and notified Congress that the AECA may have been violated, as Israel’s use of cluster munitions in populated areas contradicted the terms of the sale.¹¹ While no sanctions were imposed, in 2007 and again in 2008 Congress passed a temporary one-year moratorium on all exports of cluster munitions with a lower than 99 percent reliability rate (or higher than one percent dud rate).^{12,13} Also in 2008, DoD released a new cluster munitions policy to phase out all US retention, use, and export of cluster munitions with a less-than-99 percent reliability rate by 2018.¹⁴ The Omnibus Appropriations Act of 2009 (Pub. L. 111-8, section 7056(b)) additionally required that:

- 1 “Cluster Munitions.” Human Rights Watch. Accessed August 29, 2019. <https://www.hrw.org/topic/arms/cluster-munitions>.
- 2 Miller, Judith. “U.S. Bars Cluster Shells for Israel Indefinitely.” The New York Times. July 28, 1982. Accessed August 29, 2017. <http://www.nytimes.com/1982/07/28/world/us-bars-cluster-shells-for-israel-indefinitely.html>.
- 3 Getler, Michael. “President Halts Shipment of ‘Cluster’ Shells to Israel.” The Washington Post. July 20, 1982. Accessed August 29, 2017. https://www.washingtonpost.com/archive/politics/1982/07/20/president-halts-shipment-of-cluster-shells-to-israel/aeba41dc-ba63-4b2b-8b6f-91f33f6649f9/?utm_term=.386ec292df70.
- 4 <https://www.hrw.org/news/2006/08/11/us-deny-israeli-request-cluster-munitions>
- 5 http://www.thejerusalemfund.org/wp-content/uploads/2016/06/AECA_MichaelFBrown-1230546601-document-3058.pdf
- 6 <https://babel.hathitrust.org/cgi/pt?id=pur1.32754077258022;view=1up;seq=5>
- 7 <https://www.hrw.org/news/2006/08/11/us-deny-israeli-request-cluster-munitions>
- 8 Cloud, David. “Inquiry Opened Into Israeli Use of U.S. Bombs.” The New York Times. August 25, 2006. Accessed August 29, 2017. <http://www.nytimes.com/2006/08/25/world/middleeast/25cluster.html>
- 9 United Nations, General Assembly, Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1, A/HRC/3/2 (23 November 2006), available from <http://www.refworld.org/docid/45c30b6e0.html>. Accessed August 29, 2017.
- 10 <https://fas.org/spp/crs/mideast/RL33566.pdf>
- 11 Cloud, David and Myre, Greg. “Israel May Have Violated Arms Pact, U.S. Says.” The New York Times. January 28, 2007. Accessed August 29, 2017. <http://www.nytimes.com/2007/01/28/world/middleeast/28cluster.html>.
- 12 http://www.noclusterbombs.org/assets/usclb/downloads/Press_Releases/December_19__2007__US_Congress_Passes_Cluster_Bomb_Export_Moratorium.docx
- 13 <https://www.gpo.gov/fdsys/pkg/BILLS-110hr2764enr/pdf/BILLS-110hr2764enr.pdf>.
- 14 <http://archive.defense.gov/releases/release.aspx?releaseid=12049>

No military assistance shall be furnished for cluster munitions, no defense export license for cluster munitions may be issued, and no cluster munitions or cluster munitions technology shall be sold or transferred, unless--

(1) the submunitions of the cluster munitions have a 99 percent or higher functioning rate; and

(2) the agreement applicable to the assistance, transfer, or sale of the cluster munitions or cluster munitions technology specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present.¹⁵

Similar language has been included in annual legislation each subsequent year^{16,17} and in 2011 DSCA incorporated these requirements into its Security Assistance Management Manual.¹⁸

The Israeli case illustrates the important role that clear terms of sale and proper Congressional oversight can play, even when considering arms sales to a close US partner. By explicitly requiring that Israeli forces use US-made cluster munitions only on clearly defined targets and in areas away from civilians, the terms in the MDAA gave Congress the basis for its investigation into Israel's use of the munitions, which in turn led to the six-year export ban on the munitions to Israel. Likewise, by requiring the notification to Congress of potential violations, the AECA allowed a level of Congressional scrutiny that informed future legal regulations on global cluster munitions exports.

15 <https://www.congress.gov/bill/111th-congress/house-bill/1105/text?overview=closed>.

16 "United States: Cluster Munition Ban Policy." Landmine and Cluster Munition Monitor. August 8, 2016. Accessed August 30, 2017. <http://www.the-monitor.org/en-gb/reports/2016/united-states/cluster-munition-ban-policy>.

17 A set of complementary House and Senate bills introduced in 2015 and 2017, the "Cluster Munitions Civilian Protection Act," goes further, requiring that no US cluster munitions be exported unless "the policy applicable to the export or transfer of such cluster munitions specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians," and calling for plans to accede to the 2008 Convention on Cluster Munitions. These bills have not moved past the introduction stage. See https://www.feinstein.senate.gov/public/_cache/files/3/e/3eff1d28-efa0-4300-94bf-975ca43f011a/C2425EC3A9DF11D1966743655E66D600.cluster-munitions-civilian-protection-act.pdf, accessed August 30, 2017.

18 <http://www.samm.dscamilitary.com/policy-memoranda/dsca-11-33>.