

The Cluster Munition Coalition is led by a Governance Board of:

Action On Armed Violence, Asociación para Políticas Públicas-APP, Cambodia Campaign to Ban Landmines, Campaña Colombiana Contra Minas, DanChurchAid, Handicap International, Human Rights Watch, ICBL Georgian Committee, IPPNW, Mines Action Canada, Nepal Campaign to Ban Landmines, Norwegian People's Aid, and Protection.



**Cluster Munition Coalition Memo
Use of Cluster Munitions in Ukraine
November 2014**

1. Situation Update

In October 2014, during a week-long investigation in eastern Ukraine, Human Rights Watch documented widespread use of cluster munitions in fighting between government forces and pro-Russian rebels in more than a dozen urban and rural locations.¹ While it was not possible to conclusively determine responsibility for many of the attacks, the evidence points to Ukrainian government forces' responsibility for several cluster munition attacks on Donetsk. While not definitive, circumstances indicate that anti-government forces might also have been responsible for the use of cluster munitions, according to Human Rights Watch.

Human Rights Watch found evidence of surface-fired 220mm Uragan (Hurricane) and 300mm Smerch (Tornado) cluster munition rockets. In the 12 incidents documented by Human Rights Watch in October, cluster munitions killed at least 6 people and injured dozens. The real casualty number from use of cluster munitions in the conflict is probably higher, Human Rights Watch said, since it has not investigated all allegations of cluster munition use. Also, in some cases, it was not possible to determine what weapon caused the death or injury because several types of explosive weapons were used at the same time in the same area.

In early July 2014, evidence also strongly indicated ground-launched cluster munitions were used in two separate locations in eastern Ukraine during fighting between Ukrainian government forces and armed insurgents. On 3 July, the remnants of a 300mm 9M55K Smerch cluster munition rocket and a 9N235 fragmentation submunition were identified from photographs reportedly taken at Kramatorsk in eastern Ukraine.² On 11 July, photographs taken by the *Associated Press* at an insurgent base at Slavyansk, which was abandoned during the Ukrainian government's early July take-back of the town, show the remnants of at least eight 220mm 9M27K-series Uragan cluster munition rockets and at least three fragmentation submunitions that are either 9N210 or 9N235.³ According to the *Associated Press*, the remnants at Slavyansk were collected and destroyed by Ukrainian government explosive ordnance disposal teams. During August 2014, remnants of both Smerch and Uragan cluster munition rockets were documented at multiple locations in territory controlled by Ukrainian government forces and in territory controlled by armed insurgents.⁴

Ukraine has repeatedly and vehemently denied using cluster munitions at any time during the ongoing conflict.⁵ Andriy Lysenko, spokesman of National Security and Defense Council, stated on 21 October, "For the period of anti-terrorist operation the Ukrainian troops didn't use any kind of weapons banned by international treaties. This includes use of cluster bombs."⁶ The Ukrainian government remarked that "the use of such bombs and shells goes against the interest of the government" as it would violate their commitment to "never use force against civilians" and the "multitude of unexploded ordinance in the wide area covered would create a menace that, once liberated, the Ukrainian government would have to eliminate."⁷ In a letter to the editor of the *New York Times* published 30 October 2014, the Foreign Minister of Ukraine said the reports of Ukraine responsibility for cluster munition use were only an attempt by its detractors to "mar Ukraine's name in the eyes of the world and its own citizens." Indeed, he noted, "Ukraine is the last party that would be interested in making the local population hate the central government in Kiev."⁸

2. Time for action

Cluster Munition Coalition calls to action on Ukraine:

- **The government of Ukraine should initiate an independent investigation into the allegations of use of cluster munitions in Ukraine, and make the findings of the investigation public.**
- **All parties to the conflict in Ukraine should renounce the use of cluster munitions, an internationally banned weapon.**
- **Ukraine should accede to the Convention on Cluster Munitions**
- **Cluster munition stockpiles should be declared and destroyed.**
- **Cluster munition remnants must be cleared and destroyed as soon as it is safe to do so and international support given to enable clearance efforts.**

¹ Human Rights Watch "Ukraine: Widespread Use of Cluster Munitions," 20 October 2014 at <http://www.hrw.org/news/2014/10/20/ukraine-widespread-use-cluster-munitions>

² Armament Research Services blog, "9M55K cargo rockets and 9N235 submunitions in Ukraine," 3 July 2014 at <http://www.armamentresearch.com/9m55k-cargo-rockets-and-9n235-submunitions-in-ukraine/>

³ 9M27K-series rockets have a different submunition payload depending on the configuration of the rocket. The 9M27K contains the 9N210 submunitions, while the 9M27K-1 contains the 9N235 submunition. See also: <https://twitter.com/balintzslanko/status/487501447907790848> and <http://www.armamentresearch.com/9m27k-series-cargo-rockets-used-in-ukraine/>

⁴ See for example <http://www.youtube.com/watch?v=Zkeucr7mho&feature=youtu.be>, <https://www.youtube.com/watch?v=hZEOzaZCfV4>, https://twitter.com/Ss_donetchina/status/501423198471467008, and <https://www.youtube.com/watch?v=uXDSS0FvotE&feature=youtu.be>

⁵ See <https://storify.com/banclusterbombs/ukraine-cluster-munition-use> for a list of Ukraine's reactions.

⁶ <http://www.kyivpost.com/content/ukraine/ukrainian-government-denies-allegations-of-war-crimes-368871.html>

⁷ <http://atocriemea.ukrinform.ua/en/publication/cluster-munitions-facts-and-comments>

⁸ http://www.nytimes.com/2014/10/31/opinion/start-a-dialogue-ukraines-foreign-minister-urges.html?_r=0

- Through mine risk education, clear warnings must be given to communities about the terrible danger unexploded bomblets pose.
- The victims of cluster munitions and other explosive weapons must be supported, and needs addressed of civilian refugees displaced by use of these weapons.
- Governments worldwide should continue to condemn use of cluster munitions in Ukraine and call for Ukraine and all states to join the Convention on Cluster Munitions.

3. A legal and ethical obligation to speak out

The 2008 Convention on Cluster Munitions bans the use, production, stockpiling and transfer of the weapon and places obligations on countries to clear contaminated areas, destroy stockpiles, and assist victims. A total of 115 states have joined the Convention, which is establishing a global norm against these deadly weapons. States Parties to the Convention on Cluster Munitions have a legal obligation under **Article 21.2** to “discourage States not party to this Convention from using cluster munitions,” and many have already done so. Signatories, having committed to respect the principles of the Convention when signing, also have a duty to actively discourage use. Non-signatory states and other actors should also speak out against use of this weapon as a sign of their support for the emerging norm against use. Indeed, states both inside and out of the Convention have systematically condemned all instances of use of cluster munitions since the Convention was adopted in 2008.⁹

- **To date, at least 52 states have condemned the use of cluster munitions in Ukraine, of which 27 have made direct national statements, and the others associated themselves with an EU statement expressing concern about use in Ukraine. Many additional states have condemned the use of cluster munitions more generally in the context of recent use in Ukraine.**
- The Cluster Muniton Coalition has expressed concern at the evidence of cluster munition use in eastern Ukraine and called for an investigation.
- 5MSP President of the Convention on Cluster Munitions, Costa Rica, joined all those condemning use, and said allegations of use in Ukraine were of “deep concern.” In its President’s Summary Costa Rica stated that at the 5MSP, States Parties to the Convention on Cluster Munitions committed to continue condemning, at all times, any use of cluster munitions by any actor, in any place and under any circumstances, in order to further stigmatize cluster munitions and their use.
- UN Secretary General Ban Ki Moon said the reports of cluster munition use were “extremely alarming,” and called for “an end to use of these indiscriminate weapons.”
- During a 24 October United Nations Security Council debate on the situation in Ukraine, 10 states expressed concern at the reported use of cluster munitions and, while noting Ukraine’s denial, called for an investigation to determine responsibility for use.
- At a 30 October Organization for Security and Cooperation in Europe (OSCE) Council meeting in Vienna, the United States and other OSCE member states expressed concern at the cluster munition use and called for an investigation.
- In a 15 November report on the human right situation in Ukraine, the OHCHR expressed concern about the reported use of cluster munitions, noting their use “in populated areas violates the laws of war due to the indiscriminate nature of the weapon and may amount to war crimes” and calling for a prompt and thorough investigation.
- Russia, not a CCM State Party, also criticized the use of cluster munitions in populated areas and strongly urged states to “compel Kiev to unconditionally renounce further use of cluster munitions against civilians in southeastern Ukraine.”¹⁰

Links to all statements and declarations condemning the use of cluster munitions in Ukraine can be found here:

<http://www.stopclustermunitions.org/Ukraine>

At least 27 states have made national statements expressing concern, including Argentina, [Australia](#), Austria, Chad, [Chile](#), Colombia, [Costa Rica](#), [Croatia](#), Czech Republic, [Ecuador](#), [Ireland](#), [Italy](#), Jordan, Lithuania, Luxembourg, [Mauritania](#), [Netherlands](#), [New Zealand](#), Norway, Peru, [Portugal](#), Russian Federation, Rwanda, [Slovenia](#), [Somalia](#), United Kingdom and USA.

The following 52 states have condemned use of cluster munitions, naming Ukraine directly, in their national statements at 5MSP, and/or via the [EU 5MSP statement](#), which requires the endorsement of all EU states and other states aligning themselves with the statement, and/or at UNGA 2014 First Committee on Disarmament and International Security and/or during a 24 October debate by the UN Security Council on the situation in eastern Ukraine: Albania, Argentina, [Australia](#), Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Chad, [Chile](#), Colombia, [Costa Rica](#), [Croatia](#), Cyprus, Czech Republic, Denmark, [Ecuador](#), Estonia, Finland, France, Germany, Greece, Hungary, Iceland, [Ireland](#), [Italy](#), Jordan, Latvia, Lithuania, Luxembourg, Macedonia FYR, Malta, [Mauritania](#), Moldova, Montenegro, [Netherlands](#), [New Zealand](#), Norway, Peru, Poland, [Portugal](#), Romania, Russian Federation, Rwanda, Serbia, Slovakia, [Slovenia](#), [Somalia](#), Spain, Sweden, Turkey, United Kingdom and USA.

Afghanistan, Armenia, Canada, Cote d’Ivoire, Cuba, El Salvador, Guatemala, Holy See, Japan, Lebanon, Mexico, Namibia, Palestine, Senegal, South Africa, Swaziland, Switzerland, Uganda and Zambia have also issued statements which include condemnation of the use of cluster munitions in the context of ongoing use in Ukraine, but have not specifically named Ukraine in those statements.

4. Universalising the Convention on Cluster Munitions

Ensuring more countries join the Convention on Cluster Munitions is an important means of strengthening the global stigma against the weapon and to prevent future atrocities.

- States not party to the Convention on Cluster Munitions should **ratify or accede without delay**.
- Under **Article 21** of the CCM, *States Parties have a legally binding obligation to “encourage States not party to this convention to ratify, accept, approve or accede to this convention, with the goal of attracting the adherence of all States to this convention.”*

⁹ CMC, “Stigma: The Political Costs of Using Cluster Munitions,” April 2014, <http://www.stopclustermunitions.org/media/331266/Stigma-The-Political-Costs-of-Using-Cluster-Munitions-English-April-2014.pdf>

¹⁰ http://mid.ru/bdomp/brp_4.nsf/e78a48070f128a7b43256999005bcb3/3cb0d2874273033044257d7a005c327b!OpenDocument