



HRN Protests the US Decision to Supply Cluster Munitions to Ukraine and Condemns Russia's Bombings and Uses of Cluster Munitions against Civilians

On June 30, US President Joe Biden approved the sending of cluster munitions to Ukraine as part of the US's new \$800 million military assistance package. The decision required the administration to bypass a US law prohibiting the transfer of cluster munitions with a failure rate of more than 1%. A Pentagon spokesperson said that the munitions being sent to Ukraine were tested to fail at a rate of 2.35% or less.¹ However, the Pentagon's own statements indicate a 14% failure rate, and multiple expert sources including bomb disposal technicians and civilian deminers expect a higher failure rate of 20% regardless of the country of origin.²

On July 20, it was reported that Ukraine has already used US-supplied cluster munitions against Russian forces in Southeast Ukraine to break up fortified Russian positions.³ To keep the strike in perspective, at the time of Ukraine's strike, Russian forces had launched air attacks on populated areas of the Odesa region for several days in a row, killing two and wounding 22 civilians, at least five of whom were children, and destroying six houses and apartment buildings.⁴

Cluster munitions of all types pose a grave threat to civilian lives even long after the conflict has ended because of their large dispersion and because a certain percent of the submunitions do not explode when dropped, allowing them to explode possibly decades later. The risk of harm is particularly high and devastating for children. According to the Cluster Muniton Coalition's 2022 report, hundreds of uses of cluster munitions by Russian forces in Ukraine have already been documented, reported, or alleged, including against homes, hospitals, and schools, causing at least 200 civilian deaths by July 2022, a number considered underreported then and even much higher now a year later.⁵ Past experiences of US cluster munitions used in Iraq and Laos also demonstrate the significant harm and costs they pose to civilians long after conflict ends. The large pledges the US government has already made to address explosive remnants of war from past conflicts makes the current decision deeply inconsistent with even its own commitments.

More than 110 countries, including 23 NATO members but excluding the US, Ukraine, and Russia, have ratified the Convention on Cluster Munitions (CCM) prohibiting the use and transfer of cluster munitions. The international community has also roundly criticized the decision. The spokesperson for the UN Office of the High Commissioner for Human Rights, Marta Hurtado, stated of the decision that "the use

¹ DeYoung, "Biden approves cluster munition supply to Ukraine", Washington Post, 6 July 2023, <https://www.washingtonpost.com/national-security/2023/07/06/biden-cluster-bombs-ukraine/>.

² Ismay, "Cluster Weapons U.S. Is Sending Ukraine Often Fail to Detonate" New York Times, 7 July 2023, <https://www.nytimes.com/2023/07/07/us/cluster-weapons-duds-ukraine.html>.

³ Hudson and Khurshudyan, "Ukraine begins firing U.S.-provided cluster munitions at Russian forces", Washington Post, 20 July 2023, <https://www.washingtonpost.com/world/2023/07/20/cluster-munitions-ukraine-war-russia/>.

⁴ Id.; Al Jazeera, "Russian missile attack on Odesa kills one, damages cathedral", 23 July 2023, <https://www.aljazeera.com/news/2023/7/23/russian-missile-attack-on-odesa-kills-one-damages-cathedral>.

⁵ Cluster Muniton Coalition, "Cluster Muniton Monitor 2022, August 2022, http://www.the-monitor.org/media/3348257/Cluster-Muniton-Monitor-2022-Web_HR.pdf, pp. 7, 14; Hernandez, "Russia is using controversial 'cluster munitions' in Ukraine, humanitarian groups say", NPR, 28 February 2022, <https://www.npr.org/2022/02/28/1083616770/russia-is-using-controversial-cluster-munitions-in-ukraine-humanitarian-groups-s>.

of such munitions should stop immediately and not be used in any place." NATO allies of the US that also disagreed or gave critical remarks of the decision include the UK, Canada, Germany, and Spain.

Importantly, in bypassing its own law prohibiting cluster munition transfers above 1%, the US is eroding its own standard of protection. The decision also seriously undermines the international effort to ensure universal adoption and implementation of the CCM to prohibit use and transfer of cluster munitions entirely, and by extension efforts to combat other explosive remnants of war that harm and kill civilians. The protection of civilian lives is the most important commitment of international humanitarian law, and the use of cluster munitions is incompatible with that commitment by its very nature.

Human Rights Now joins the voices in the international community protesting the US government's decision to send cluster munitions to Ukraine and their use by Ukrainian forces, and we call on the US, Ukraine, and Russia to cease all uses, production, stockpiling, and transfers of cluster munitions and to ratify and implement the CCM. We also protest all violations of international human rights and humanitarian law, which are greatly more widespread among the Russian military, and we call for accountability. In particular, we strongly condemn the widespread use of cluster munitions in civilian areas and the intentional bombing of civilian targets by the Russian military in Ukraine, and we call on the government of Russia to immediately end its illegal war of aggression in Ukraine.