



**SECRETARY OF DEFENSE**  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

JUN 19 2008

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF JOINT CHIEFS OF STAFF  
UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY AND LOGISTICS  
UNDER SECRETARY OF DEFENSE FOR POLICY  
COMMANDERS OF THE COMBATANT COMMANDS  
GENERAL COUNSEL OF THE DEPARTMENT OF  
DEFENSE**

**SUBJECT: DoD Policy on Cluster Munitions and Unintended Harm to Civilians**

The Department recognizes the need to minimize the unintended harm to civilians and civilian infrastructure associated with unexploded ordnance from cluster munitions, consistent with the obligation to minimize the collateral effects resulting from the use of force in pursuit of legitimate military objectives. The following establishes the Department's policy regarding cluster munitions and expands the previous policy, established by Secretary Cohen on January 10, 2001, on submunitions reliability for new types of cluster munitions.

Cluster munitions are legitimate weapons with clear military utility. They are effective weapons, provide distinct advantages against a range of targets and can result in less collateral damage than unitary weapons.

There remains a military requirement to engage area targets that include massed formations of enemy forces, individual targets dispersed over a defined area, targets whose precise locations are not known, and time-sensitive or moving targets. Cluster munitions can be the most effective and efficient weapons for engaging these types of targets. Unitary munitions do not provide the same capability and effects in the same amount of time as cluster munitions in addressing these requirements. Cluster munitions are an integral part of U.S. forces capabilities. The loss of the ability to employ cluster munitions, in a manner consistent with the law of armed conflict, would create a capability gap for indirect fire of area targets and require an increase in other resources.

For the purposes of this policy, cluster munitions are defined as munitions composed of a non-reusable canister or delivery body containing multiple, conventional explosive submunitions. Excluded from the definition are nuclear, chemical, and biological weapons as well as obscurants, pyrotechnics, non-lethal systems (e.g., leaflets), non-explosive kinetic effect submunitions (e.g., flechettes or rods), or electronic effects.



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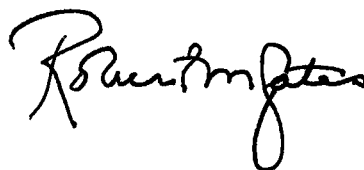


Landmine submunitions are also excluded since they are covered by existing policy and international agreements.

The policy applies to systems delivered by aircraft, cruise missiles, artillery, mortars, missiles, tanks, rocket launchers, or naval guns that deploy payloads of explosive submunitions that detonate via target acquisition, impact, or altitude, or that self-destruct (or a combination of both). It is DoD policy that:

- As soon as possible, but no later than one year from the date of this memorandum, the Military Departments and Combatant Commands will initiate removal from the active inventory of all cluster munition stocks that exceed operational planning requirements or for which there are no operational planning requirements. The excess cluster munitions will be demilitarized as soon as practicable within available funding and industrial capacity.
- After 2018, the Military Departments and Combatant Commands will only employ cluster munitions containing submunitions that, after arming, do not result in more than 1% unexploded ordnance (UXO) across the range of intended operational environments. The 1% UXO limit will not be waived. Although the use of self-deactivation devices or mechanisms can reduce the hazards to civilians, self-deactivated submunitions will still be considered UXO.
- Until the end of 2018, use of cluster munitions that exceed the 1% UXO rate must be approved by the Combatant Commander.
- Prior to 2018, the Department may, consistent with U.S. law and policy, seek to transfer cluster munitions that do not meet the 1% UXO rate provided that the receiving foreign government agrees not to use these cluster munitions after 2018. After 2018, the Department will not seek to transfer cluster munitions that exceed the 1% UXO rate, except for purposes of destruction, training, or development of detection and clearing methods.
- The Military Departments and Combatant Commands will maintain a robust stockpile surveillance program to ensure operational quality and reliability of cluster munitions.
- The Military Departments and Combatant Commands, in keeping with past practices that are consistent with Protocol V to the Convention on Conventional Weapons, will continue to record and retain information on the use of cluster munitions and provide the relevant information to facilitate the removal or destruction of cluster munitions.

The DoD policy above is intended to minimize the potential unintended harm to civilians and civilian infrastructure of U.S. cluster munitions employment to the extent possible. DoD recognizes that blanket elimination of cluster munitions is unacceptable due not only to negative military consequences but also due to potential negative consequences for civilians. Large-scale use of unitary weapons, as the only alternative to achieve military objectives, could result, in some cases, in unacceptable collateral damage and explosive remnants of war (ERW) issues. Combatant Commanders will continue to ensure that employment of cluster munitions is consistent with the law of armed conflict and applicable international agreements in order to minimize their impact on civilian populations and infrastructure.

A handwritten signature in black ink, appearing to read "Robert M. Gates". The signature is written in a cursive, flowing style with a large initial 'R' and a long, sweeping tail.