

Libya, Use of cluster bombs

Case prepared by Alexandra Hansen, BLaw, student at the Universities of Basel and Geneva (Switzerland), under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Libya: Evidence of New Cluster Bomb Use

[Source: Human Rights Watch, "*Libya: Evidence of New Cluster Bomb Use - Investigate Reports; Secure and Destroy Weapons Stocks*", 14 March 2015, available at: <https://www.hrw.org/news/2015/03/14/libya-evidence-new-cluster-bomb-use>]

[...]

[1] Phone interviews with witnesses and photographic evidence reviewed by Human Rights Watch indicate that remnants of RBK-250 PTAB 2.5M cluster bombs were found at Bin Jawad in February 2015 and at Sirte in March. The good condition of the paint on the bomb casings and lack of extensive weathering indicated that the remnants had not been exposed to the environment for long and were from a recent attack. The Libyan Air Force recently bombed both locations, but denied using cluster munitions. It is not possible to determine responsibility on the basis of available evidence.

[2] "The new evidence of cluster munitions use in Libya is highly disturbing," said Steve Goose, arms director at Human Rights Watch and Chair of the Cluster Munition Coalition. "Libyan authorities should investigate these incidents and make sure its forces don't use cluster munitions."

[3] Hostilities since May 2014 have left Libya with rival governments: an internationally recognized

government based in the east, and a self-proclaimed government in Tripoli backed by an alliance of militias known as Libya Dawn that controls much of western Libya. Both claim legitimacy as the sole political authority, but neither has been able to exert full control nationally.

[...]

[4] Since May 2014, forces affiliated with the internationally recognized government based in eastern Libya and under the command of Gen. Khalifa Hiftar have been engaged in a military operation against Libya Dawn. Hiftar's operation, known as Libya Dignity, involves former members of the military, tribal factions, and militias from the mountain town of Zintan. Libya Dawn is led by forces from Misrata and includes militias from Tripoli, Zawiyah, Sebratha, and elsewhere.

[5] The use of cluster munitions in populated areas, such as Sirte, violates the laws of war due to the indiscriminate nature of the weapon. Cluster munitions contain dozens or hundreds of smaller munitions, called submunitions or bomblets, in a container such as a rocket or a bomb. After launch, the container opens up, dispersing submunitions designed to explode when they hit the ground. The submunitions spread indiscriminately over a wide area, often the size of a football field, putting anyone in the area at the time, whether combatants or civilians, at risk of death or injury. Many submunitions do not explode on impact, but remain armed, becoming de facto landmines. Any location contaminated with dud submunitions remains hazardous until cleared by trained explosive ordnance disposal personnel.

[6] Libya should join the 2008 Convention on Cluster Munitions, prohibiting the use of cluster munitions in any circumstance, Human Rights Watch said. A total of 116 nations are party to the treaty, which also requires clearance of cluster munition remnants and assistance to victims of the weapons. [...]

[...]

Recent Evidence of Cluster Munitions use in Libya

Sirte

[7] On March 3, 2015, Brigade 166 fighters from the Libya Dawn alliance showed journalists a remnant of a tail of a bomb lying near one of their positions. From a review of the available photo evidence taken by international journalists, Human Rights Watch identified the weapon used as an RBK-250 PTAB-2.5M cluster bomb containing PTAB-2.5M submunitions. The good condition of the paint on the bomb casing and lack of extensive weathering indicates the remnant had not been exposed to the environment for long and is from a recent attack.

[...]

Bin Jawad

[8] Several sources confirmed to Human Rights Watch that cluster munitions are also believed to have been

used recently in the town of Bin Jawad, where the Libya Dawn alliance also has a presence, and near a front line by the port of Es-Sidr, where forces aligned with the internationally recognized government are fighting Dawn forces for control of oil terminals. The Libyan Air Force has carried out airstrikes there in recent months.

[...]

Watiya front – Western Libya

[9] On February 27, a Facebook site run by a Libyan group calling itself the border guards unit posted photographs showing the remnants of a RBK-250-275 AO-1SCh cluster bomb, but no bomblets. The photographs were purportedly taken on the same date or shortly before at the Watiya front where Libya Dawn has been fighting forces aligned with Libya Dignity. Watiya is about 120 kilometers southwest of Tripoli.

[...]

[10] On February 12, a photograph posted on the Facebook page of a Libyan satellite TV station showed two men wearing fatigues, one of which had Libyan army insignia, standing in front of an RBK-250 PTAB-2.5M cluster bomb affixed to a military aircraft. [...]

[...]

Previous use of Cluster Munitions by Libyan Forces

[11] Libya is not known to have produced or exported cluster munitions, but in the past, it imported and stockpiled the weapons. [...]

[...]

[12] During the 2011 conflict, government forces loyal to Muammar Gaddafi used three different types of cluster munitions at various locations. [...] The UN Commission of Inquiry on Libya reported in 2012 that submunitions and 122 mm cargo rockets used by the Libyan government were also found in the Nafusa Mountains near Jadu and Zintan.

[13] There is no evidence of cluster munition use in Libya by countries involved in the NATO military action in 2011. NATO formally confirmed to the UN Commission of Inquiry on Libya that its forces did not use cluster munitions in the Libya operation. However, NATO airstrikes in 2011 on ammunition storage facilities created hazards when munitions stored by Libya, including cluster munitions, were ejected into the surrounding environment.

[14] In March 2012, Human Rights Watch visited a storage depot in Mizdah, 160 kilometers south of Tripoli, which had been attacked more than 50 times by NATO between April and July 2011. Human Rights Watch found approximately 15 PTAB-2.5M bomblets and about three dozen submunitions of an unidentified type.

[15] When the Gaddafi government was overthrown in 2011, anti-government forces and civilians gained access to weapons depots containing hundreds of thousands of landmines and other weapons, including cluster munitions. There has been no systematic or coordinated stockpile destruction effort by successive interim governments, or international actors.

Discussion

I. Classification of the conflict

1. (*Paras [3]-[4]*) How would you classify the conflict in Libya as at March 2015? Who are the parties to the conflict? Does it matter for the applicable IHL who is the legitimate government of Libya?

II. Methods of warfare

2. (*Paras [1], [5]*) What are cluster munitions? What was the reasoning behind the ban of cluster munitions by the Convention on Cluster Munitions of 30 May 2008? Besides the 2008 Convention on Cluster Munitions, what other international rules, particularly of IHL, apply to the use of cluster munitions? (P I, Arts 35, 48, 51(4) and 57; CIHL, Rules 70 and 71)

3. (*Paras [6], [11]*) Is Libya a party to the Convention on Cluster Munitions? Are they prohibited from importing and stockpiling cluster munitions? Why do you think the Libyan Air Force denied having used cluster munitions although Libya is not a state party to this convention? (See Convention on Cluster Munitions)

4. (*Para. [5]*) Are cluster bombs unlawful weapons under IHL even in States that are not parties to the Convention on Cluster munitions? Does your answer depend on whether they are used in densely populated areas v. strictly battlefield arenas? Under what circumstances, if ever, can cluster bombs be used by states not parties to the Convention on Cluster munitions? (CIHL, Rule 17; P I, Arts 51(4) and 57(2)(a)(ii); Convention on Cluster munitions)

5. (*Para. [5]*) What humanitarian problems are raised by unexploded cluster bombs turning in to “de facto landmines”?

6. (*Paras [1], [7]-[10]*) Would Libya Dawn or Libya Dignity be bound by the prohibition of cluster munitions if Libya was bound by the Convention on Cluster Munitions? Are they bound by other IHL rules governing and possibly, in some or all circumstances, prohibiting cluster munitions?

7. (*Para. [2]*) Given that Libya is not a party to the Convention on Cluster Munitions, on what basis do you think that Human Rights Watch suggests Libyan authorities conduct an investigation into the use of these weapons, and ensure they do not continue to employ them?

8. (*Paras [13]-[14]*) Do you think that NATO forces are responsible in any way for the hazards created by their airstrikes on ammunitions storage facilities?

9. (*Para. [15]*) What are your reflections on the statement made in para. [15]? Where does responsibility for the dispersal of weapons stocks lie? What dangers does it pose? Who bears responsibility for stockpile management and destruction?