
Ban on Cluster Bombs: An Idea Whose Time has Come

G S Sachdeva

Introduction

The world has been infested with cluster munitions for over half a century and man has faced this scourge which has inflicted, and continues to cause, untold tragedy and attendant misery. According to some estimates, cluster bombs have led to more deaths of, and injuries to, civilians than to the combatants. The indiscriminate character of this weapon, its area-effect due to scatter and rampant possibilities of their delayed explosion come in sharp relief.

Handicap International, a campaign group, has estimated that worldwide, about 100,000 people have been killed or disabled by cluster bombs since 1965. Nearly 98 per cent of the affected comprised the civilian population and a quarter of these victims were children who mistook the bomblets for toys or Easter eggs or tin cans due to their shape and appearance and these have exploded during innocent play or accidental hit. The Soviet Union was the first to use cluster bombs against Nazi troops in 1943. This deadly legacy had stayed on to cause immense grief since then. Hence, the outrage expressed by the activists of humanitarian rights and civil liberties is legitimate and understandable.

In deference to the dictates of public conscience and with broad international support, Norway initiated a process, with determination, to ban cluster munitions and destroy their stockpiles. Garnering further impetus from the adoption of the Protocol on Explosive Remnants of War, annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons, the Oslo Initiative ultimately resulted in the conclusion of the Convention on Cluster Munitions, 2008. But the task remains unfinished due to abstentions

Dr G S Sachdeva is guest faculty for Air and Space Law in the Centre for International Legal Studies, JNU, New Delhi.

that comprise over half the world's population and exceptions provided in the Convention. Hence, efforts must continue, unabated and speedily.

Nature of Cluster Munitions

Cluster munitions are a class of cognate weapons which, when dropped from the air or fired from artillery guns, tend to explode in mid-air to randomly scatter over a wide area a variety of sub-munitions or bomblets that may be hundreds in numbers and of size as small as eight centimetres. Each bomblet has a capacity to further explode on striking the ground with a thud and act lethal. Many of these pellet bombs act dud and do not burst immediately even with the impact of the fall from such a height. Thus, the duds litter the combat zone with potential mini-bombs that may burst impromptu or due to sudden impact any time later and may kill or maim with utter disregard of whether the victim is a combatant or a civilian. Such incidents can happen a long time after the drop or end of hostilities because these do not self-destruct themselves by any auto-mechanism or stipulated passage of time.

Cluster munitions are neutral and indiscriminate in their action and effect. Apart from the lethal impact on combatants during an attack in armed conflict, the remnants of these continue to cause suffering to civilians and other innocent victims long after the war has ended because many of them, when scattered over the target area, fail to achieve the blast function as intended or when abandoned *in situ* without reclamation or neutralisation after the conflict is resolved by the belligerent parties. Their very existence prejudices the human right to life and liberty and undermines the dignity of humans, apart from hindering resettlement.

Cluster munitions cause many detrimental effects, subsequent to their supposed use, over the infected area. First, these explode on impact when kicked by feet or touched by hands, advertently or inadvertently. The result in either case is that the innocent victim gets killed or maimed. Statistics reveal that a majority of these have been innocent women and playful children. Second, the existence of these bomblets in the area, without any efforts to completely scavenge, can obstruct economic and social development by hampering resettlement as also causing loss of livelihood of natives of the area. Third, the psychological fear of their being randomly scattered also impedes post-conflict rehabilitation and reconstruction, leading to avoidable delay or preventing the return of refugees and other internally displaced persons. Fourth, such a scenario can have negative repercussions on national and international peace-building efforts and

distribution of humanitarian assistance that can persist with severe consequences for many years.

Early Attempts at a Ban

There has been global concern over the long-term damage and risks to civilians during and after the military attacks with cluster bombs because a varying proportion of sub-munitions so dispersed fail to explode on impact and can lie dormant and camouflaged for years until touched or disturbed. Children often get attracted to these and tend to pick them up as toys or canisters for play. During the innocuous games that children play, some of these have exploded and the consequential deaths or injuries appeared meaningless, nay atrocious. These tragedies have occurred well after the conflict had ended and involved persons not originally targeted during military operations. It may be pertinent to mention countries like Laos, Vietnam and Cambodia which have remained infested for over thirty years and have experienced the torture of uncertainties of life and death. Tragedy and grief have become part of their lives. Empathy springs spontaneously.

Man has always been anguished at the tragedy caused by the generic category of weapons that have a wide dispersal, bear dormancy of impact and are indiscriminate in their effect like landmines and cluster bombs. The objective of these instrumentalities has been to infuse fear or to kill or maim the trespasser. The demerits of mindless attrition due to such ordnance had been well appreciated, but compulsions of war strategy always silenced the good voices. Nevertheless, there was a broad spectrum movement to prohibit such weapons. The effort was primarily directed towards the safety and protection of non-combatants and civilians.

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It was in 1977 that Protocols I and II to the Geneva Convention, 1949¹ were signed. These aimed to curb in general all non-specific-targeting weapons. Protocol II prohibited any form of violence to the life, health, well-being and assured general protection to the civilian population and individual citizens not taking direct part in the conflict. Further, Protocol I is more fundamental

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in prohibiting the use of weapons which cause superfluous injury or suffering as also indiscriminate attacks not directed at a specific military objective. Though the Protocols were encouraging, the initiative fell short of its intent and objective. Unfortunately, their operation at ground level was never achieved and the Protocols have remained inefficacious. It is a stark irony that humanity has defeated its own conscience.

The Oslo Initiative

The cluster bombs have recently been used in Kosovo, Afghanistan and Iraq but the ravages in the Lebanon War of 2006 provided true momentum for the campaign to proscribe this weapon. Around the same time, a UN report estimated that up to 40 per cent of Israeli cluster bomblets fail to burst on immediate impact and tend to create havoc later. The global conscience had awakened. Norway took the lead and organised an independent process after discussions at the traditional disarmament forum at Geneva fell through in November 2006. The actual process began in February 2007 in Oslo with 46 nations committing to participate for a legally binding international instrument to prohibit the use and stockpiling of cluster munitions, secure adequate care and rehabilitation to survivors and clearance of contaminated areas.

The movement gained momentum and many countries pledged support later. Unfortunately, there were some, including the US, Russia, China, Israel, Pakistan and India, opposed to the process, though each one for different reasons. Some countries have betrayed vested interest in producing and stockpiling the weapons for arms sales. The US ostensibly objected to the propriety of the forum, yet justified further development and introduction of “smart” cluster munitions, where each sub-munition contains its own targeting and guidance system as well as an auto-self-destruct mechanism. It, thus, clearly indicated that the use of problematic munitions is already becoming obsolescent and would gradually be phased out.

Opposing lobbies have been active, yet delegates from 107 nations formally adopted the final text on 30 May 2008 in Dublin, Ireland. Interestingly, the signatories include seven of the 14 countries that have, some time in the past, used cluster bombs, and 17 of 34 countries that have produced them. Till the end of March 2009, only five countries had ratified the Convention, while to come into force, it requires thirty ratifications. The notable exceptions from the list of signatories are the US, Russia, China, India and Pakistan among others. Thus, it is ironical that almost two-thirds of the world does not subscribe to the ideals of this laudable Convention. Nevertheless, Human Rights Watch, in an optimistic

estimate has stated that the Convention will outlaw 99.9 per cent of the cluster munitions currently existing. It seems a great solace that the Convention has been concluded. Other countries can now be convinced to opt for the ban. Total success appears tractable.

Provisions of the Convention

The negotiating states, deeply concerned, recognised the grave consequences caused by the use of cluster munitions and resolved to conclude a legally binding instrument that would prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians. This instrument also intended to establish a framework for cooperation and assistance to ensure adequate provision of care and rehabilitation for victims. The scope also included harnessing of efforts for clearance of contaminated areas, education on risk reduction and destruction of stockpiles. The resultant instrument has been the Convention on Cluster Munitions, 2008, upholding the tenets and rules of international humanitarian law, in particular the established principle that the right of parties to an armed conflict to choose the methods or means of warfare cannot be grossly disproportionate to the character and quantum of threat and certainly cannot be unlimited in scope of action.

The adherents to the Convention would be obliged to abide by, “never under any circumstances to”:

- Use cluster munitions.
- Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions.
- Assist, encourage or induce anyone to engage in any activity prohibited to a state party under this Convention.²

The Convention defines a cluster munition as “a conventional munition that is designed to disperse or release explosive sub-munitions each weighing less than 20 kilograms, and includes those explosive sub-munitions.”³ The generic type of cluster bombs may be fired with artillery guns or “are specifically designed to be dispersed or released from dispensers affixed to aircraft.”⁴ However, the definition in the Convention does not mean or include the following:

- A munition or sub-munition designed to dispense flares, smoke, pyrotechnics or chaff, or a munition designed exclusively for an air defence role.
- A munition or sub-munition designed to produce electrical or electronic effects.

- A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded sub-munitions, has all the following characteristics:
 - Each munition has fewer than ten explosive sub-munitions.
 - Each explosive sub-munition weighs more than 4 kg.
 - Each explosive sub-munition is designed to detect and engage a single target object.
 - Each explosive sub-munition is equipped with an electronic self-destruction mechanism.
 - Each explosive sub-munition is equipped with an electronic self-deactivating feature.⁵

To carry forward this definition, a failed cluster munition means that which has been fired, dropped, launched projected or otherwise delivered to disperse or release its explosive sub-munitions but has failed to do so. And abandoned are those that have not been used and have been left behind or dumped and which no longer remain under the control of the party that abandoned them. The remnants of cluster munitions are the ones that contaminate the target area and create a suspicion of their presence and concomitant risks of injury.

It will be seen that it is a typically exclusive definition that does not fully describe cluster munitions but itemises those not covered under cluster munitions. This makes it pertinent to refer to another similar clause in the Convention that states, "This Convention does not apply to mines."⁶ The term "mine", here means landmine, a type of military ordnance that can be buried underground, or placed on or near the ground or other surface area and it explodes by the presence, proximity or contact of a person or vehicle or on sensing of pressure.

As the above definition uses a lot of ordnance jargon, it seems essential to elaborate on it, drawing explanations from the Convention. Explosive sub-munition means a conventional munition that is dispersed or released by a cluster munition and functions by detonating an explosive charge prior to, on or after impact. Those duds that remain unexploded are defined as ones dispersed or released by, or otherwise separated from, a dispenser or cluster munition but which have failed to explode as intended.

Explosive bomblet means a conventional munition, weighing less than 20 kg, which is not self-propelled, and which in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact. And unexploded bomblets are those that have been dispersed, released or otherwise separated from a dispenser but have failed

to explode as intended. In general, the definitions are highly simplistic yet carry endemic complexity.

Exceptions and Permissions

It is common diplomatic experience that treaty negotiations are an arduous task beset with compromises and concessions. Hence, certain exceptions are natural and necessary in every convention to accommodate conflicting views and for speedy negotiations. The same exigency has been adopted here. Some of the exceptions provided under the Convention are discussed in the succeeding paragraphs.

First, it is not unusual for friendly armies to conduct joint exercises for training and practice.

It is also equally well known that armed forces of many countries participate as constituents of defence pacts or take part in combined operations in eventual contingencies or similar operations for collective assault in compliance of UN security mandates or in response to aggression or threat thereof to their common security and mutual interests. In such circumstances, it is likely that some collaborating forces may not be adherents to the Convention and as part of their own or combined military strategy or contingent tactics, may use cluster munitions while others in adherence to the Convention, shun their use. Thus, such collective operation may cast consequential responsibility, by legal implication, on those who abide by the Convention and render them liable for defiance and default. Legally and logically, culpability may attach to all accomplice-states and their participating nationals, more so, if such munitions are used on territory under their control and jurisdiction.⁷

In order to obviate such embarrassing complications and to accommodate concerns raised by Australia, Canada, Japan, the UK and others, the Convention has incorporated a contingent provision to evade consequences of eventualities of military alliance of signatories with non-signatory nations and to assure immunity to the signatory-participants.⁸ The Convention has not forbidden such illicit cooperation in concordance with military alliances. It states, "Notwithstanding the provisions of [prohibition under] this Convention and in accordance with international law, states parties, their military personnel or nationals, may engage in military cooperation or operations with states not party

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to this Convention that might engage in activities prohibited to a state party.”⁹ The escape route is clear and well placarded.

Secondly, as stated earlier, the Convention ordains to prohibit the use, production, transfer and stockpiling of cluster munitions but permits the parties to “separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction.”¹⁰ Despite this clear mandate, the Convention honours national laws germane to the ordnance inventory and merely obliges the parties to take action “in accordance with national regulations.”¹¹ The edge of the Convention has been blunted.

Thirdly, notwithstanding the prohibitions under the Convention, “the retention or acquisition of a limited number of cluster munitions and explosive sub-munitions for the development and training of personnel in cluster munitions and explosive sub-munitions detection, clearance or destruction techniques, or for the development of cluster munition counter-measures, is permitted. The amount of explosive sub-munitions retained or acquired shall not exceed the minimum number absolutely necessary for these purposes.”¹² To achieve this intent, the Convention, in abeyance of the ban, permits transfer of cluster munitions to another state party not holding the same.¹³ The seeds of proliferation are sown here. However, there is a consolatory provision that requires state parties to submit an annual report to the Secretary General of the UN regarding planned and actual use of stocks held as well as quantities transferred along with details of the receiving party.¹⁴

Appraisal: An Unfinished Task

The Convention leaves many chinks to defeat the espoused objective and becomes vulnerable to spasms of criticism. It may, however, be argued that in the interest of consensus and the hurry in adoption of the avowed Convention, some dissidence had to be compromised or its adverse effects diluted to the maximum possible extent. Some of the pertinent points are elucidated here.

Delay in Ratifications

With the conclusion of the Convention, mankind heaves a sigh of relief from this scourge that has afflicted it since World War II. The concerted efforts have, indeed, been laudable and have saved humanity from avoidable suffering and tragedy. It is a sincere tribute to the innocent victims of the past. But the success achieved is only partial and it leaves the task unfinished, calling for greater vigour and still wider support.

It is, of course, commendable that the initiative of Norway gained momentum along its journey and 107 nations agreed to the final text of the draft. But till the end of March 2009, only four countries out of 96 signatory states had ratified the Convention, while it needs a minimum of 30 ratifications, acceptances, approvals or accessions to come into force. Hence, the Convention is not yet in place. This implies that continued diplomatic thrust is necessary to bring on board more states and quickly enough. No doubt, with this Convention, we can see the light at the end of the tunnel, but are still groping in the dark and are yet to get out of it. The journey of success is still not fully covered and the little distance to the destination must be traversed with broad strides and rapidly enough.

Definitional Exclusions

Secondly, one gets disillusioned by the exclusive nature of the definition of cluster munitions and cognate terminology that makes its scope restrictive. Thus, the definitional mandate of the Convention clearly permits those types of weapons with sub-munitions that do not have indiscriminate area effect or do not pose a risk of unexploded ordnance, provided, however, that such munitions strictly meet the criteria for the minimum weight, the restricted number of sub-munitions, the capacity of each sub-munition individually to detect and engage a single target-object and that the sub-munitions have been incorporated with electronic self-destruct and self-deactivation mechanisms.

The parameters described clearly indicate that “smart” cluster munitions with an integral, independent targeting and guidance system and with auto self-destruct mechanisms, under development and operationalisation in many countries like the US, Australia¹⁵ and others, have deliberately and consciously been kept out of its grasp. The contra-lobby has succeeded and in due course, the generation of “smart” munitions would take over to infest war zones, with fewer but equally lethal remnants. The world will get back to almost square one. Even the psychological stigma of a ban on cognate instrumentalities will not be able to deter their use.

Dilemma of Joint Operations

The third concession accommodates the inconvenience of military alliances and joint exercises by armed forces of different countries which involve signatories and non-signatories to the Convention. In such pre-pledged cooperation, there may be occasions when non-signatory states in combined operations use cluster munitions banned under the Convention. Here, culpability would attach to the participating military personnel and nationals of the participating signatory-state.

The dilemma was apparent and stared in the face. Therefore, an escape was necessary and has been provided. The signatory states have been accorded immunity under the Convention¹⁶ for engaging in such prohibited activity, if carried out jointly with non-signatories. The necessity has been justified in deference to existing pacts and commitments inherited from the past.

The diplomatic lobby spearheading this exception from Article 1 of the Convention and under the International Humanitarian Law, comprised the US, the UK, Australia, Canada, Japan and others. There is only slender merit in the argument to validate the concession. The Convention should have urged non-signatory states to desist from the use of prohibited weapons and compelled signatory states not to evade or wriggle out of such committals, legally under the writ of this Convention, rather than allow them to become accomplices to the wrong-doing. The nominal advisory contained in Article 21 (2) of the Convention is weak and impotent. The dilemma is clear, but hard choices should not be avoided.

Permissible Retention of Small Quantities

The fourth concession, notwithstanding the obligation under the Convention for destruction of stockpiles and stockholdings of the banned weapons, states that “the retention or acquisition of a limited number of cluster munitions and explosive sub-munitions for the development of, and training in, cluster munitions and explosive sub-munition detection, clearance or destruction techniques, or for the development of cluster munition counter-measures, is permitted. The amount of explosive retained or acquired shall not exceed the minimum number absolutely necessary for these purposes.”¹⁷

However, the concession appears to have been introduced under duress to acknowledge a vague and dubitable requirement of the future. The perceptions of this necessity are bound to differ and turn controversial. This clause would appear retrograde in permitting procurement of weapons even by the non-holding states. Moreover, the minimum quantity for absolute necessity would tend to be variable for diverse considerations of psychological confidence and allied factors. The numbers, even if computed by factoring in all genuine considerations and with the best of intentions, would always remain indeterminate and suspect. Apart from the above criticism, this provision leaves scope for concealed holdings and clandestine transfers, and, hence, would need appropriate checks and balances for transparency. The edifice of the Convention has, thus, been weakened.

Prolonged Time-Frame for Scavenging

The fifth point relates to the time-frame provided under the Convention, “to clear and destroy, or ensure the clearance and destruction, of cluster munition remnants located in cluster munition contaminated areas...”¹⁸ The state-parties are required to complete sweeping of, or destruction of, the existing remnants from infected areas under its control or jurisdiction “as soon as possible but not later than ten years...” from “the date of entry into force of this Convention...”. For subsequent contaminations, clearance must be completed, at worst, within ten years after the end of the respective hostilities that contaminated the areas.¹⁹

However, in exceptional circumstances, this deadline can be shifted further based on *bonafide* justification of the magnitude of the task or it being beyond their professional capability. Within the provisions of the Convention, two extensions of each up to five years can be granted.²⁰ It needs no convincing that the prolonged period could total up to twenty years. The longevity of this period is inordinate and consequent suffering of deaths, injuries and other losses during the intervening period would be too uncomfortable on humanitarian considerations.

In cases where the contaminated state, being party to the Convention, is unable to undertake the job for lack of technical competence or financial resources, it “has the right to seek and receive assistance.”²¹ And the states “in a position to do so shall provide technical, material and financial assistance...aimed at the implementation of the obligations of this Convention.” This provision imposes a bounden duty on the fraternity of state-parties to facilitate clearance of remnants for humanitarian purposes. The modalities for such support could be through the UN system, international or regional institutions or non-governmental organisations or on a bilateral basis.

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On completion of the obligation, the state-party shall render a declaration of compliance. Of course, during the process of clearance or destruction, the states are obligated to manage the task as per international practices and safety procedures, including International Mine Action Standards (IMAS). Here also, it seems wise to abide by the dictum that safety standards cannot be compromised yet the urgency to clear the areas for the protection of innocent victims can also not be underrated or sacrificed at the altar of techno-fastidiousness. Pragmatism would be sagacious.

Gestation Period for Destruction of Stockpiles

Lastly, the gestation period provided under the Convention for destruction of prohibited weaponry is rather prolonged. It stipulates a period of eight years from the date the Convention comes into force. Thus, given the pace of ratifications and six months of lull period thereafter, it may take more than a year for the Convention to be effective. The limitation period for destruction of stockpiles starts subsequent to this. Further, the parties that are unable to discharge their obligation within this time-frame can request for extension of the deadline by four years. And this deadline can be extended by another four years under exceptional circumstances to truly comply with the mandate under the Convention. The total period, so provided, appears unnecessarily long compared to the quantum of the task. The parties need to be urged to infuse urgency to the task, dedication in efforts and sincerity of purpose in achievement. Regular monitoring and reporting of progress should have been incorporated in the Convention for better results.

It seems pertinent to reiterate here that the Convention does not ban cluster munitions where each sub-munition has an integral and independent targeting and guidance system and also a self-destruct mechanism. Research and development worldwide, and particularly in the US, is racing in this direction and optimistic estimates forecast their operationalisation in the field in another three years. Given this time-frame for operational deployment of the next generation of cluster munitions, the Convention has miserably failed even before it has become operative. The new generation of ordnance shall make the banned arsenals obsolescent in a couple of years and obsolete thereafter. The Convention has, thus, lost its sting and utility almost already. It has become further irrelevant by the time-frame for destruction enshrined therein. The irony stares us in the face and even mocks at us.

Indian Perspective

It seems devoid of ethical logic and shows a lack of sensitivity for humanitarian considerations that so many countries should abstain from a Convention devoted to such an espoused principle and noble aspiration. Strangely enough, half the number of countries of the world have either not participated in the proceedings or have not signed the Convention pledging their support. The list of defaulters here is long and ominous. It comprises the US, Russia, China, Israel, Brazil and India of the big league and the smaller ones include Argentina, Bangladesh, Pakistan, Sri Lanka, Myanmar and Thailand among others.

India's abstention compels us to pause and ponder over the reasons. Apparently, it seems ironical that India, a land of *rishis* and sages, professing a culture of non-violence and with a deep-rooted pacifist philosophy, should not support a cause so dear to humanity and imbued with humanitarian hues. The paradox is obvious but it should not be viewed in isolation. Of course, government policy notes enshrined in official annals have not been declassified to reach the public domain, yet it would not be difficult to surmise and analyse the rationale behind the decision of the government. India's compulsions to refrain from the Convention are discussed in the succeeding paragraphs.

The first reason appears to be a regional bind due to the peculiarities of India's borders with the neighbouring states which though mostly demarcated and separated by insurmountable hills or arduous terrain or water bodies or flowing rivers, yet are unusually long and extended for efficacious round-the-clock security. Land territory borders, by their very nature, tend to be porous and thus difficult to insulate by an ubiquitous all-time and all-weather vigil by the presence of patrolling frontier forces. Other expedients may be useful and necessary under unstable conditions of localised conflicts. Cluster munitions may appear to be a viable option responding well to certain exigencies and tactics deployed. Further, the fear psychosis that flows from the suspected presence in a contaminated area achieves half the task without damage or death. A hardy option of military strategy in the national interest cannot be forsaken for an illusive ideal of universal façade.

Secondly, the aspect of unilateral dimension also assumes pertinence because none of the neighbouring states has signed the Convention, may be for their own strategic reasons or parochial compulsions. The principle of goodwill and amity is surely laudable but it leaves India uncomfortable and cornered

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by legally binding itself to the Convention. In consequence, by doing so, India would be creating corridors free of cluster munitions while being surrounded by neighbours who retain this option and in all probability could resort to this contingency on a minor pretext with even the slimmest advantage. India in such an eventuality would deeply regret its premature decision of having foreclosed its option voluntarily without reciprocal guarantees or mutual confidence or doctrinal abdication of the use of cluster munitions.

Thirdly, the regional security scenario is not conducive to India's idealist stance and pacifist ideology. The neighbouring polity is inimical, whether overtly or covertly. Or, at least a few are not truly friendly. Even internal *realpolitik* within some of these is in turmoil and unstable and does not portend well. Therefore, India cannot wish away threats from its regional neighbours and contiguous nations, whether of armed aggression or demographic assault or from a more serious and continuing onslaught of terrorist infiltration or guerrilla attacks by foreign mercenaries. The signs of discordance are clearly discernible and the not-so-veiled inimical attitude of some of the adjoining countries is hard to miss or ignore. The political panorama binds Indian diplomacy to the hard contours of security realities and a clairvoyant vision of varied manifestations of potential threats. Hence, the decision could not be different under the given circumstances that seem pregnant with mischief and misadventure.

In a nutshell, though in consonance with the culture and ethos of India, it behoves us even today to jump the fence to reach out to a pacifist and humanitarian cause, the peculiar regional compulsions, the characteristic geo-physical nature of borders and the internal political instability in adjoining states and security problems of proliferating terrorist infiltration compel us to take a different stand, contrary to the traditional Indian psyche. More importantly, when all the neighbours have steadfastly refused to sign the Convention on Cluster Munitions, India cannot safely stand tall as a sage amongst the not-so-saintly. Hence, the die has been cast, the option has crystallised and the decision has been vindicated. Still, it may be worthwhile if all the regional states, in concert and unison, can accede to the Convention with mutual confidence-building measures in place. Hopefully, that would be a great day and a celebratory triumph of diplomacy.

Conclusion

The world has remained plagued with cluster munitions and has borne the brunt of their risks and ravages for over half a century. They have caused tremendous loss

of limb and life of innocents, besides the targeted combatants. The attendant suffering and tragedy has been mourned widely. Yet humanity has remained unrepentant and impenitent. Unfortunately, there has been no succour coming to the civilian victims or any rehabilitation offer. A greater misfortune is that even though the hostilities of World War II have long ended, the risks from the remnants in contaminated areas are still potentially live and the march of suffering and distress seems unending. Added to the existing woes is the continuing use of these weapons by some countries like Israel during the Lebanon War as recently as 2006. Further, the psychological fear of their presence and strong possibility of random explosions hinders the return and resettlement of refugees and other displaced populace.

The political panorama binds Indian diplomacy to the hard contours of security realities and a clairvoyant vision of varied manifestations of potential threats.

The misery has been widespread and the feeling of grief palpable. Humanity has been on trial for mitigation of suffering. Among the various initiatives to ban cluster munitions, success visited the Oslo process initiated by Norway in February 2007. Gradually, the campaign gathered momentum and resulted in the Convention on Cluster Munitions, 2008, that was adopted at Dublin, Ireland, on 30 May 2008. It had been signed by 96 states and ratified by four till March 2009. On the face of it, the reach of the Convention appears fairly universal and its acceptance near global. But, on the contrary, the list of non-signatories is daunting for their political clout and controversial lobbying, and includes the US, Russia, China, Israel, India, Pakistan, Bangladesh and many more. The arguments for not joining the humanitarian bandwagon may be different, yet the net result is that more than half the population of the world is denied the protection of the ban under the Convention.

Moreover, the exceptions provided in the Convention, like immunity to armed forces of state-parties while participating in joint military operations, undermine its objective. Considering the effect of other exceptions in tandem, the Convention appears a halfway house of compromises and concessions. The sensitivity to human distress is neither complete nor fully imbued with commensurate empathy. Hence, vigorous diplomatic efforts are still wanted to get more countries on board and the signatory-states to submit their ratification or approval so that the Convention can come into force at the earliest to arrest

the avoidable maiming or loss of innocent lives and consequent misery. The effort has been, no doubt, commendable yet the task remains unfinished. Let's not deprive humanity of hope. The initiative must be sustained and the march must continue to reach the goal of a world free from cluster munitions.

Notes

1. The United Nations Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, commonly referred to as the CCW.
2. Convention on Cluster Munitions, 2008. Article 1.
3. *Ibid.*, Article 2.2.
4. *Ibid.*, Article 1.2.
5. *Ibid.*, Article 2.2.
6. *Ibid.*, Article 1.3.
7. *Ibid.*, Article 9.
8. *Ibid.*, Article 21.3.
9. *Ibid.* Words in parentheses have been substituted.
10. *Ibid.*, Article 3.1.
11. *Ibid.*
12. *Ibid.*, Article 3.6.
13. *Ibid.*, Article 3.7.
14. *Ibid.*, Article 3.8
15. The vested interest of Australia was that the prohibition should exclude the SMArt 155 artillery shells it had recently bought. These release two self-guided self-destructing submunitions. But their dud-rate remains uncertain and unverified.
16. Refer n. 1, Article 21(3).
17. *Ibid.*, Article 3.6.
18. *Ibid.*, Article 4 (1).
19. *Ibid.*, Article 4(1) [a] and [b].
20. *Ibid.*, Article 4(8).
21. *Ibid.*, Article 6 (1).