

A Bankrupt Calculus: Sending Cluster Munitions to Ukraine

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There is a certain desperation in the logic of those who argue that a depraved solution has merit because it's only slightly less depraved than that of the opponent. Torture is bad but should still be used because your adversary feels free to resort to it. Only do so, however, via judicial warrant. Bombing hospitals is terrible, but when done, select those with military personnel. Before long, one's moral compass does not so much adjust as vanish into a horizon of relativist horror.

Much of this is evident in the Ukraine War, notably regarding weapons supply and deployment. Ukraine, the Biden administration has announced, will receive cluster munitions, despite their appalling record as, [in the words](#) of a coalition of civil society organisations, "indiscriminate weapons that disproportionately harm civilians, both at the time of use and for years after a conflict has ended." Some detail of this was provided in a July 7 White House [press briefing](#) by the National Security Advisor, Jake Sullivan.

According to Sullivan, Washington based its "security assistance decision on Ukraine's needs on the ground, and Ukraine needs artillery to sustain its offensive and defensive operations." It all came down to the sustained use of artillery in the conflict. "Ukraine is firing thousands of rounds a day to defend against Russian efforts to advance and also to support its own efforts to retake its sovereign territory."

Preference shown by Sullivan for the "they do it, so we can" argument, a vagabond's reasoning. In an effort to minimise culpability, he reasons that the US has better cluster munitions than those of the Russian military. (Such a marvellous difference and bound to excite those keen on flimsy moral calculi.) First, Sullivan makes the claim that Russia had "been using cluster munitions since the start of this war to attack Ukraine." No mention is made of [claims](#) by Human Rights Watch that Ukraine has already deployed cluster bombs,

notably on Russian-controlled areas in and around Iziium in 2022.

A point is also made that Russian forces had been using munitions with a failure rate of between 30 and 40 percent. “In this environment, Ukraine has been requesting cluster munitions in order to defend its own sovereign territory. The cluster munitions that we would provide have dud rates far below what Russia is doing – is providing – not higher than 2.5 percent.” The admission is telling, if only because US law and regulations prohibit the transfer of cluster munitions with “dud rates” higher than 1 percent.

Kyiv has also wooed Washington with an undertaking that it will de-mine the residual remains of the munitions in question. Again, reasons Sullivan, such de-mining would have to take place in any case, given Russia’s own resort to their use.

Only briefly in such casuistry does Sullivan mention the contentious, hideous nature of the munitions. “We recognize,” he told the press briefing, “that cluster munitions create a risk of civilian harm from unexploded ordnance. This is why we’ve deferred – deferred the decision for as long as we could.” President Joe Biden [reiterated the sentiment](#) to CNN, claiming that it was “a very difficult decision on my part” to make. “I discussed this with our allies. I discussed this with our friends on the [Capitol] Hill.” But White House National Security Council spokesperson John Kirby was probably closer to the mark in [deeming these weapons](#) “innovative” in curbing Russia’s military efforts.

The Biden administration has done much to avoid the stern disapproval of the use of such munitions in international law, hiding behind notions of grave duty. The 2008 United Nations [Convention on Cluster Munitions](#) (CCM) outlines state party obligations to “never under any circumstances” use such munitions; develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, those same munitions; and assist encourage or induce anyone to engage in any activity prohibited to a State Party under the convention.

Article 3 also notes a State Party’s obligations to “destroy or ensure destruction of all cluster munitions [...] as soon as possible but not later than eight years after the entry into force” of the CCM. Inability to do so can lead to the convening of state parties, a review conference for an extension of the deadline, or, in some exceptional cases, an extension of four years.

The [number of parties](#) to the convention, including a number of European states aiding Ukraine, has reached an impressive 123. That said, three relevant absentees from the list stand out: Washington, Moscow and Kyiv. While Biden claims to have had discussions with lawmakers on his decision, 19 members of the House of Representatives have demurred [in a statement](#) rebuking the transfer, reiterating the call for the US to “join global allies and sign on to that UN Convention”.

The signatories also note that “there is no such thing as a safe cluster bomb – and using or transferring them for use hurts the global effort to eradicate these dangerous munitions, taking us down the wrong path.” Past blemishes are also cited as a haunting reminder about what such weapons do. “The US history of using cluster munitions – particularly the legacy of long-term harm to civilians in Southeast Asia – should prevent us from repeating the mistakes of our past.” The difference now is that Ukraine has become the designated proxy for using such crude weaponry and is being given encouragement into the bargain.

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Featured image: US personnel load a cluster bomb to a jet during the bombing of Yugoslavia. (Photo: Richard Rosser / US Navy)

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