

As alleged in the indictment, from October 2008 through November 2009, Lewis purchased a Greco-Roman style Egyptian sarcophagus, a nesting set of three Egyptian sarcophagi, a set of Egyptian funerary boats and Egyptian limestone figures from Khouli, who earlier acquired those items from Alshdaifat and Ramadan. Each of these antiquities was exported from Dubai, United Arab Emirates, and smuggled into the United States using a variety of illegal methods intended to avoid detection and scrutiny by U.S. Customs & Border Protection ("Customs"). Specifically, the defendants allegedly made false declarations to Customs concerning the country of origin and value of the antiquities, and provided misleading descriptions of the contents on shipping labels and customs paperwork, such as "antiques," "wood panels" and "wooden painted box."<sup>8</sup>

#### USE OF FORCE AND ARMS CONTROL

##### *U.S. Efforts Supporting New CCW Protocol on Cluster Munitions Fail*

The 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 Convention on Conventional Weapons or CCW)<sup>1</sup> is a chapeau convention, to which protocols regulating specific types of weapons have been added over time.<sup>2</sup> They have included nondetectable fragments, mines and booby traps, incendiary weapons, blinding laser weapons, and explosive remnants of war.<sup>3</sup> Protocols are adopted by consensus. This method means that they tend to be tightly drawn and limited in scope, but it also increases the prospects of their adoption and implementation by major military powers.

The United States has opposed calls to ban cluster munitions outright, regarding them as legitimate weapons with military utility in combat, but has supported negotiations on a CCW protocol regulating them.<sup>4</sup> In November 2011, the U.S. delegation to the CCW's Fourth Review Conference pressed for adoption of such a protocol requiring the elimination of large numbers of older cluster munitions. However, the proposed new protocol limiting, but not eliminating, these weapons, met strong opposition from a group of about fifty states, led by Austria, Mexico, and Norway, that are parties to the Convention on Cluster Munitions, also known as the Oslo Convention.<sup>5</sup> The Oslo Convention bans the parties' possession and use of almost all of these weapons.<sup>6</sup> It currently has sixty-six parties, but these do not include many important military powers including China, India, Israel, North Korea, Pakistan, Russia, South Korea, and the United States.<sup>7</sup>

<sup>8</sup> *Id.* (footnotes omitted).

<sup>1</sup> 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, Oct. 10, 1980, 1342 UNTS 137, 19 ILM 1523 (1980).

<sup>2</sup> For information on the CCW and its protocols, see [http://www.unog.ch/80256EE600585943/\(httpPages\)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument).

<sup>3</sup> John R. Crook, Contemporary Practice of the United States, 101 AJIL 478, 501, 502 (2007).

<sup>4</sup> John R. Crook, Contemporary Practice of the United States, 102 AJIL 860, 889 (2008).

<sup>5</sup> For the text of the Oslo Convention and related information, see <http://www.clusterconvention.org/>.

<sup>6</sup> While the Oslo Convention is often described as banning possession and use of cluster munitions, its Article 2(c) defines cluster munitions to exclude certain advanced weapons that incorporate small numbers of sub-munitions.

<sup>7</sup> Crook, *supra* note 3, at 503.

The International Committee of the Red Cross<sup>8</sup> and other organizations and groups supporting a complete ban on cluster munitions also opposed the new protocol. The director of the arms division of Human Rights Watch savaged the U.S. position.

Regrettably, the move to eliminate cluster munitions is under attack, with the United States leading the way. The US is touting a much weaker alternative through the Convention on Conventional Weapons (CCW)—an alternative with much lower standards than US policy already requires.

At a conference in Geneva beginning November 14, diplomats will try to conclude negotiations on a new CCW protocol on cluster munitions. Though cloaked in humanitarian rhetoric, the draft is clearly an effort to provide political and legal cover for potential future use of the weapon. That is bad news because cluster munitions are indiscriminate when they are used, causing harm well beyond the target, and leaving unexploded submunitions to threaten civilians long afterward.<sup>9</sup>

The U.S. delegation countered that the proposed CCW protocol stood a chance of adoption by important states with significant stockpiles that are not likely ever to accept the Oslo Convention, resulting in the elimination of many weapons otherwise remaining in national arsenals. In a November 2011 telephonic press conference prior to the vote on the proposed protocol, Department of State Legal Adviser Harold Koh and Deputy Assistant Secretary of Defense Bill Leitzau explained the U.S. position. An excerpt follows:

MR. KOH: . . . We wanted to dispel at the outset the notion that in some way we are trying to detract from the Oslo Convention, which is a separate treaty outside the framework of the CCW, which also addresses clusters. We see the two as complementary, not as competitive. Nothing that we are saying or supporting would diminish or detract from the Oslo Convention, and we think that the protocol that's under consideration here takes a significant step toward a goal that everybody shares, which is to address comprehensively the humanitarian impact of cluster munitions.

Just to make this concrete, many countries in the world are not parties to Oslo and are unlikely to become so, and . . . they represent 85 to 90 percent of the world's cluster munition stockpiles. So a question then becomes: How do you regulate that 85 to 90 percent holders if they're never going to join the Oslo Convention? And the obvious answer is to try to bring regulation into the CCW, where they do participate.

Under discussion right now is a ban on cluster munitions that are produced before 1980. If that were adopted as part of this protocol upon ratification and entry into force, it would immediately prohibit over 2 million cluster munitions or more than 100 million submunitions, which is about one-third of the entire U.S. stockpile of cluster munitions. To put it directly, if this rule is adopted, it would prohibit more cluster munitions for the United States alone, than the Oslo Convention has prohibited for all of its member states combined. And we think that this is a very significant humanitarian impact and should be supported. It's true for other countries as well. For example, Ukraine announced that if this

<sup>8</sup> Statement by Jakob Kellenberger, President of the International Committee of the Red Cross. Fourth Review Conference of the States Parties to the Convention on Certain Conventional Weapons (CCW), 14–25 November 2011, Geneva, Switzerland (Nov. 15, 2011), at <http://www.icrc.org/eng/resources/documents/statement/ccw-statement-2011-11-15.htm>.

<sup>9</sup> Steve Goose, *The United States Aims Low on Cluster Munitions*, HUFFINGTON POST, Nov. 15, 2011, at [http://www.huffingtonpost.com/steve-goose/the-united-states-aims-lo\\_b\\_1094448.html](http://www.huffingtonpost.com/steve-goose/the-united-states-aims-lo_b_1094448.html).

rule were adopted, it would prohibit more than a third of their existing stocks, almost 700,000 tons. Millions of the Russians' munitions would be banned as well. So, we think that this protocol would have an immediate and tangible humanitarian effect.

The two other advantages of adopting this protocol are that it would create a detailed set of rules about clusters, including obligations with regard to transparency, cooperation, clearance, assistance to victims, and technological assistance. And a third advantage is that the draft protocol is designed to evolve and grow stronger. There are a very detailed set of technical annexes that would adapt to technical developments that might occur with regard to these kinds of munitions, and as well as commitments to review the annexes and to get more comprehensive provisions over time.<sup>10</sup>

Opponents of the new protocol blocked its adoption in the conference's final hours.<sup>11</sup> Some diplomatic observers believe this outcome damages the credibility of the United Nations as a forum for future disarmament negotiations.<sup>12</sup> The United States Mission in Geneva issued a statement expressing disappointment at the outcome.

The United States is deeply disappointed by the failure of the Fourth Review Conference of the Convention on Certain Conventional Weapons (CCW) to conclude a protocol on cluster munitions.

The past four years of negotiations in the CCW offered a rare opportunity to place the major users and producers of cluster munitions, who represent between 85 and 90 percent of the world's stockpiles, under a legally binding set of prohibitions and restrictions regarding cluster munitions for the first time. The protocol would have led to the immediate prohibition of many millions of cluster munitions; placed the remaining cluster munitions under a detailed set of restrictions and regulations; and subjected member states to a detailed list of additional obligations on issues such as clearance, transparency and destruction, all of which would have led to a substantial humanitarian impact on the ground.

In fact, the protocol would have prohibited a greater number of cluster munitions for the United States alone than the Oslo Convention has prohibited for all of its member states combined.

In the wake of this outcome, the United States will continue to implement its own voluntary policy to prohibit by 2018 the use of cluster munitions with more than a one percent unexploded ordnance rate, and we encourage other countries to take similar steps. The United States will also continue to serve as a world leader in addressing the humanitarian impact of cluster munitions and other explosive remnants. Since 1993, the United States has provided more than \$1.9 billion to mitigate the threat from explosive remnants of war and other conventional weapons destruction in 81 countries.<sup>13</sup>

<sup>10</sup> U.S. Dep't of State Press Release No. 2011/1946, CCW Protocol on Cluster Munitions Would Have Immediate and Tangible Humanitarian Effect (Nov. 16, 2011), at <http://geneva.usmission.gov/2011/11/17/ccw-protocol-2/>.

<sup>11</sup> Nick Cumming-Bruce, *Switzerland: Munitions Treaty Fails*, N.Y. TIMES, Nov. 26, 2011, at A8.

<sup>12</sup> *Id.*

<sup>13</sup> U.S. Mission to the United Nations in Geneva Press Release, U.S. Deeply Disappointed by CCW's Failure to Conclude Protocol on Cluster Munitions, Statement of the United States of America on the Outcome of the Fourth Review Conference of the CCW (Nov. 25, 2011), at <http://geneva.usmission.gov/2011/11/25/u-s-deeply-disappointed-by-ccws-failure-to-conclude-protocol-on-cluster-munitions/>.