



CMC Briefing Paper on the Convention on Cluster Munitions

The Convention on Cluster Munitions (CCM) negotiated and adopted at the Dublin Diplomatic Conference on 30 May 2008 by 107 states¹ is a legally binding international treaty that prohibits the use, production, stockpiling and transfer of cluster munitions and is in accordance with international human rights and international humanitarian law. The Convention will be open for signature in Oslo on 3 December 2008 and will enter into force six months after the 30th country has deposited its instrument of ratification with the Secretary General of the United Nations, who will be the depositary for the treaty. The treaty text is now finalized and no changes can be made.

The new Convention on Cluster Munitions is an historic achievement. The strength of the treaty is largely due to the prohibition on cluster munitions as an entire category of weapons. The negotiators rejected proposals for broad exceptions from the ban and for a transition period during which cluster munitions could still be used. The treaty requires states to destroy existing stockpiles within eight years and to clear contaminated land within 10 years. The obligations relating to victim assistance are groundbreaking; they demand the full realization of the rights of people affected by cluster munitions and require states to implement effective victim assistance measures.

Although the treaty has not yet entered into force, it is already contributing internationally to the increasing stigma against cluster munitions. It is hoped and expected that no state or non-state armed group, including those states that have not been part of the Oslo Process, will ever use cluster munitions again.

A SUMMARY OF THE KEY OBLIGATIONS ON STATES

General obligations and scope (Article 1)

The production, stockpiling use, and transfer of all cluster munitions are prohibited in all circumstances, including in international conflicts and conflicts of a non-international nature. It is also prohibited to assist, encourage or induce anyone to engage in any activity prohibited by the Convention.

Definitions (Article 2)

A cluster munition is defined in the Convention as: *'a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions.'* The

¹ Albania, Argentina, Australia, Austria, Bahrain, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chad, Chile, Comoros, Republic of Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Democratic Republic of Congo, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Germany, Ghana, Guatemala, Guinea, Guinea-Bissau, Holy See, Honduras, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kyrgyzstan, Lao PDR, Lebanon, Lesotho, Lithuania, Luxembourg, Macedonia (FYR), Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mexico, Moldova, Montenegro, Morocco, Mozambique, The Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Qatar, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Tanzania, Timor-Leste, Togo, Uganda, United Kingdom, Uruguay, Vanuatu, Venezuela and Zambia.

definition makes certain clarifications for weapons that have submunitions but are not considered cluster munitions, such as weapons with submunitions designed for smoke, flare, and electronic counter-measures. Also falling outside the definition are weapons that have submunitions but that do not cause the indiscriminate area effects or UXO risks of cluster munitions. Such munitions must meet each of a series of five minimum technical characteristics set out in the treaty. (See below for additional details).

Stockpile destruction (Article 3)

All States Parties must destroy all stockpiles of cluster munitions under their jurisdiction and control *as soon as possible* but no later than eight years after the Convention enters into force for the State Party. Should States Parties need additional time to destroy cluster munition stockpiles, a request must be submitted and extensions for a period of up to four years may be granted.

This article allows for the retention of a “minimum number” of cluster munitions and submunitions for training in and development of clearance techniques and counter-measures. It requires detailed annual reporting on the retained munitions. (See below for more details).

Clearance of contaminated areas (Article 4)

States Parties are obliged to clear areas contaminated by cluster munitions as soon as possible but no later than 10 years after entry into force of the Convention for that State Party. States Parties have to report annually on the status and progress of clearance programmes, which should ensure that States start their clearance activities as soon as possible.

CMC believes that most affected countries should be able to clear contaminated areas well before the ten-year deadline. Should States Parties need more than 10 years to clear their contaminated areas, they may apply for extension periods of up to 5 years, but the extension period should not be longer than strictly necessary.

Article 4 also includes provisions for marking and fencing of contaminated areas, and provisions for risk reduction education.

Importantly, States Parties that have used cluster munitions in the past on the territory of another State Party are ‘strongly encouraged’ to provide assistance to help clear and destroy cluster munitions including provision of technical data on the location and nature of the cluster munitions strikes.

Victim assistance (Article 5)

This article adopts a holistic view of victim assistance by requiring states parties to ensure that victims of cluster munitions can enjoy their human rights.

States Parties are obliged to provide assistance to cluster munition victims including medical care, rehabilitation and psychological support and to assist social and economic inclusion. Cluster munition victims include all persons directly impacted by cluster munitions as well as their affected families and communities. States Parties must develop a national action plan to implement victim assistance activities and designate a national focal point within the government for coordinating all matters related to this article. In their work on victim assistance States Parties must consult with and involve cluster munition victims and organisations working on this issue. States Parties should integrate victim assistance work into existing mechanisms to make it more cost-efficient and effective.

International cooperation and assistance (Article 6)

All States Parties in a position to do so are required to provide technical, material and financial assistance to States Parties affected by cluster munitions to assist with clearance, risk education, stockpile destruction and victim assistance including social and economic recovery.

In addition and as noted above, under the clearance obligations former user States Parties are strongly encouraged to provide assistance to States Parties who have been affected by their use of cluster munitions.

Transparency measures (Article 7)

States Parties are obligated to report to the United Nations no later than 180 days after entry into force and on an annual basis by 30 April each year thereafter. They are required to report on the status of their treaty implementation, including: national implementation measures; the type, quantity and technical characteristics of cluster munitions and submunitions stockpiled; the status and progress of stockpile destruction programmes; the conversion or de-commissioning of production facilities; the size and location of areas contaminated by cluster munitions; the status and progress of cluster munitions clearance programmes; measures taken to provide risk education; the status and progress of implementation of the treaty's victim assistance provisions; the amount of national resources allocated for clearance, stockpile destruction and victim assistance; and the type, quantity and destination of international cooperation and assistance provided.

Facilitation and clarification of compliance (Article 8)

States Parties agree to consult and cooperate regarding implementation of the Convention and to work together to facilitate compliance with their obligations. A process is laid out to deal with the clarification and resolution of questions of compliance, including requesting clarification through the UN Secretary-General and recommending "appropriate measures" at a Meeting of States Parties. Meetings of States Parties may also adopt other procedures or "specific mechanisms for the clarification of compliance."

National implementation measures (Article 9)

States Parties are obliged to take all appropriate legal, administrative and other measures to implement the Convention, including penal sanctions. The CMC urges all States Parties to enact comprehensive new national legislation.

Meetings of States Parties (Art. 11), Review Conferences (Art. 12) and Amendments (Art. 13)

A first Meeting of States Parties must be held within one year of entry into force, and then annually until the first Review Conference, which must be held five years after entry into force. If States Parties wish to amend the Convention, a majority must inform the Secretary-General of their desire to convene an Amendment Conference.

Signature (Art. 15), Ratification and accession (Art. 16), Entry into force (Art. 17) and Reservations (Art. 19)

All countries, including those who did not adopt the Convention in Dublin, can sign the Convention in Oslo on 3 December 2008, and thereafter at the UN in New York. Signatories must then ratify the Convention (usually through parliamentary approval), and formally deposit the ratification with the UN. States cannot make any reservations to the Convention when they ratify or accede (meaning they cannot formally declare that certain provisions do not apply to them).

The Convention will enter into force on the first day of the sixth month after the 30th ratification has occurred. Once the Convention has entered into force, states can no longer sign, but must accede or consent to be bound (essentially a one-step process of signature and ratification).

Relations with States not Party to the Convention (Article 21)

States Parties are required to promote universalization of the Convention, to notify non-States Parties of their treaty obligations, and to discourage non-States Parties from using cluster munitions. States Parties may engage in military cooperation and operations with non-States Parties that might engage in prohibited activities.

TERMS OF THE TREATY THAT NEED CLARIFICATION

Some terms or provisions of the treaty might be subject to conflicting interpretations. The following is a list of the CMC's key concerns and how we believe they should be commonly understood and implemented by States Parties.

1. Transit of cluster munitions

The definition of 'transfer' in Article 2 (identical to that in the Mine Ban Treaty) does not make it explicit that the transit of cluster munitions through States Parties is prohibited under this Convention. However, both the prohibition on assistance in Article 1(c) and the prohibition on transfers of cluster munitions in Article 1(b) should be read to prohibit the transit of cluster munitions across, above, or through national territory. This is the common understanding under the Mine Ban Treaty.

States must make it clear that:

- As well as transfers, the transit of cluster munitions is prohibited under the Convention.

2. Investments

While it is not explicitly stated, the prohibition on assistance in Article 1(c) should be read to prohibit investments in cluster munitions producers.

States must make it clear that:

- The prohibition on assistance in Article 1(c) includes a prohibition on investments in cluster munitions producers.
- They intend to make it explicit in national legislation that investments are prohibited as has already been done by Austria, Belgium and Luxembourg.

3. Definitions

Although all cluster munitions are prohibited by definition under this Convention, the definitional clause at article 2(c) excludes from the category of "cluster munitions" weapons that employ submunitions but which should not have the humanitarian effects of cluster munitions. In order to be permitted, a weapon should not create indiscriminate area effects and UXO risks and must meet a cumulative series of five technical characteristics. These include the capacity for each submunition to individually seek out and engage a single target such as a vehicle; minimum weight and maximum number of submunitions criteria; electronic self-destruction mechanisms, and electronic self-deactivating features.

The only existing weapons with submunitions that article 2(c) could allow are the German SMArt 155, the French/Swedish BONUS, and the discontinued US SADARM project. All three of these systems use artillery shells containing two individual target-seeking submunitions. These weapons have not been widely used and are not widely stockpiled.

The restrictive nature of the technical criteria in 2(c) should prevent the future development of weapons that might have the effects of cluster munitions and the effects-based approach to the exclusion ("in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions") will provide a valuable method for judging the humanitarian consequences of future technologies.

States must make it clear that:

- Any weapon they claim meets the criteria set out in Article 2(c) does not cause effects similar to cluster munitions.

- While the technical characteristics set out in 2(c) are necessary for a weapon to be excluded, these characteristics in themselves are not necessarily sufficient given the intent of article 2(c) to avoid indiscriminate area effects and the risk of unexploded ordnance.
- Future Meetings of States Parties should regularly review the criteria in Article 2(c) to ensure they remain adequate to protect civilian populations.

4. Retained cluster munitions

Regarding the exemption for cluster munitions and submunitions retained for the purpose of development and training, it is not clear how the “minimum number absolutely necessary” will be interpreted. This makes it crucial that states comply fully with the detailed reporting requirement on cluster munitions retained for development and training.

States must make it clear that:

- The minimum number absolutely necessary of explosive sub-munitions retained under Article 3.6 should be in the hundreds or thousands or less, *but not* tens of thousands—as is the common understanding under the Mine Ban Treaty.
- Retaining any cluster munitions or submunitions should be the exception and not the rule; most States Parties, even if they currently stockpile cluster munitions, do not have a compelling need to retain any for any purpose.

5. Interoperability and foreign stockpiling of cluster munitions

The current text in Article 21 paragraph 3 leaves some ambiguity regarding States Parties relations with non-States Parties that might use cluster munitions during joint military operations. In particular it states that: *‘Notwithstanding [...] Article 1 [...] States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not parties to the Convention that might engage in activities prohibited to a State party.’*

However, Article 1(c) still prohibits States Parties from, under any circumstances, assisting, encouraging, or inducing anyone to engage in an activity prohibited under the Convention.

States must make it clear that:

- States Parties must not intentionally or deliberately assist, induce, or encourage any activity prohibited under this treaty – including use, transfer or stockpiling of cluster munitions – when engaging in joint operations with non-States Parties.
- There should be no stockpiling of non-States Parties’ cluster munitions on territory under a States Party’s jurisdiction or control.
- States Parties must ensure destruction or removal of cluster munitions of foreign states that are currently held on territory under their jurisdiction or control as soon as possible. Under the Mine Ban Treaty, some states applied the stockpile destruction deadline to foreign stocks as well.
- Even if foreign stocks are not under the jurisdiction or control of a State Party, the State Party should, to be consistent with the spirit of the treaty, insist on their removal.