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Briefing Paper on the Convention on Cluster Muntions

International Campaign to Ban Landmines and Cluster Munition Coalition

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THE CONVENTION ON CLUSTER MUNITIONS

The 2008 Convention on Cluster Munitions is a legally binding international treaty that comprehensively prohibits the use, production, stockpiling and transfer of cluster munitions, requires destruction of stockpiled cluster munitions within eight years, and clearance of contaminated land within ten years. It recognises the rights of individuals and communities affected by the weapon and requires states to provide assistance. The Convention also obliges countries to assist affected states to fulfil their obligations.

The Convention was signed by 94 states when it opened for signature in Oslo, Norway on 3 December 2008. Sixty percent of the world's states have now joined the Convention on Cluster Munitions including stockpilers, former users and producers of the weapon as well as the majority of affected countries. An up to date list of states that have joined the Convention is available at www.stopclustermunitions.org

Following the deposit of the 30th instrument of ratification on 16 February 2010, the Convention entered into force on 1 August 2010.

The Convention on Cluster Munitions is a 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 obligations relating to victim assistance are groundbreaking; they demand the full realisation of the rights of people affected by cluster munitions and require states to implement effective victim assistance measures. The Convention is already contributing internationally to the increasing stigma against cluster munitions. It is hoped that no state or non-state armed group, including those states that have not yet joined the Convention, 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 definition captures all those weapons that contain submunitions and that cause the problematic effects of cluster munitions: 1) a wide area effect; and 2) a risk of unexploded ordnance. The 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. The Cluster Munition Coalition (CMC) believes that all States Parties can destroy their stockpiles within the eight-year deadline.

This article allows for the retention of a “minimum number absolutely necessary” 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 ten 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.

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. The first reporting deadline was 27 January 2010. States Parties 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 both the positive obligations and prohibitions of the Convention, including penal sanctions. The CMC urges all States Parties to enact comprehensive new national legislation.

- **Meetings of States Parties (Art. 11) and Review Conferences (Art. 12)**

Meeting of States Parties must be held annually. The First Review Conference, held in 2015, confirmed the annual frequency of Meetings of States Parties until 2020.

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

The Convention entered into force on 1 August 2010 following the deposit of the thirtieth instrument of ratification on 16 February 2010. Now that 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).

All countries that have not signed the Convention can accede to the Convention at the United Nations in New York. Those states which have already signed must ratify the Convention (usually through parliamentary approval), and formally deposit their instrument of ratification with the United Nations Office of Legal Affairs: treaty@un.org. 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).

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

States Parties are required to promote universalisation of the Convention, to notify States not Party of their treaty obligations, and to discourage States not Party from using cluster munitions. States Parties may engage in military cooperation and operations with States not Party that might engage in prohibited activities but still must respect their Article 1 duty to never assist anyone with any prohibited act.

Interpretation of Key Provisions

Some terms or provisions of the treaty may 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(1)(c) and the prohibition on transfers of cluster munitions in Article 1(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 Parties 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(1)(c) should be read to prohibit investments in the production of cluster munitions.

States Parties must make it clear that:

- The prohibition on assistance in Article 1(1)(c) includes a prohibition on investments in the production of cluster munitions.
- They intend to make it explicit in national legislation that such investments are prohibited.

3. Definitions

Although all cluster munitions are prohibited by definition under this Convention, the definitional clause at Article 2(2)(c) excludes from the category of "cluster munitions", those 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(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(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 Parties must make it clear that:

- Any weapon they claim meets the criteria set out in Article 2(2)(c) does not cause effects similar to cluster munitions.
- While the technical characteristics set out in 2(2)(c) are necessary for a weapon to be excluded, these characteristics in themselves are not necessarily sufficient given the intent of Article 2(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(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 Parties 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 sub-munitions 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(3) leaves some ambiguity regarding States Parties relations with States not Party 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(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 Parties 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 States not Party.
- There should be no stockpiling of States not Party cluster munitions on territory under a State Party’s jurisdiction and control.
- States Parties must ensure destruction or removal of cluster munitions of foreign states that are currently held on territory under their jurisdiction and 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 and control of a State Party, the State Party should, to be consistent with the spirit of the treaty, insist on their removal.

Joining the Convention

States that wish to ratify or accede to the Convention can do so at the United Nations headquarters in New York. The United Nations Secretary-General is depository of the Convention.

• Current status of the Convention

An up to date list of states that have joined the Convention is available at www.stopclustermunitions.org

• Entry into force – 1 August 2010

As stipulated in the Convention (Article 17), thirty ratifications were necessary for the Convention to *enter into force* and become binding international law. The 30th ratification was deposited on 16 February 2010 and the Convention entered into force on 1 August 2010. For the 30 states that ratified and triggered its entry into force, it also entered into force for these states nationally on the same day – 1 August – making them States Parties to the Convention. For all states that subsequently ratify the Convention, it will enter into force on the first day of the sixth month after their ratification.

Now that the Convention has entered into force, it is no longer open for signature and states can no longer sign and then ratify. They must become bound through the one-step process of “accession”.

Every country that has signed the Convention on Cluster Munitions must still ratify it in order to become a State Party.

How to ratify or accede to the Convention

For states that have signed the Convention on Cluster Munitions, the next step is to ratify it. The purpose of ratification is to ensure that the government has thoroughly examined the implications of the obligations in the treaty and has determined that it is in a position to comply with them. Ratification is the process by which a particular state becomes a State Party bound by the Convention.

- **How does the Convention become law for a particular country?**

States must carry out the national domestic requirements necessary to ratify or accede to an international Convention. The procedure differs from country to country and is usually set by the constitution or in national law. For some countries, ratification or accession requires drafting new national legislation. In almost every country, ratification or accession involves consideration by the parliament and/or executive, in addition to consultations among various government departments or ministries.

After the decision to ratify or accede to the Convention has been made at the national level, states must then deposit their instrument of ratification or accession with the United Nations, which has been tasked as depository of the Convention (Article 22). This is the step that makes that state a State Party to the Convention.

Now that the Convention has entered into force, non-signatories can accede to the Convention in a one-step process called accession. Certain states use the terms “acceptance” or “approval” to describe their adherence to international treaties. These terms have the same legal effect as ratification and consequently express a State’s consent to be bound by a treaty.

- **How is ratification carried out?**

States ratify the Convention by depositing an “instrument of ratification” with the United Nations in New York. The ICRC has drafted a model instrument of ratification available below.

To deposit the instrument of ratification, states should contact the Treaty Section at the UN Headquarters in New York:

Treaty Section, Office of Legal Affairs
2 UN Plaza - 323E 44th St
Room DC2-0513
United Nations
New York 10017
United States

Tel.: +1-212-963-5047
Fax: +1-212-963-3693

Model Instrument of Ratification

For States Signatories

WHEREAS the Convention on Cluster Munitions was adopted at Dublin on 30 May 2008 and opened for signature at Oslo on 3 December 2008, WHEREAS the said Convention has been signed on behalf of the Government of _____ on _____,

NOW THEREFORE I, **[name and title of the Head of State, Head of Government or Minister of Foreign Affairs]**, declare that the Government of _____, having considered the abovementioned Convention, ratifies the same Convention and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of ratification at _____ on _____.

[Signature]

[Seal]

This instrument must be signed by the Head of State, Head of Government or Minister of Foreign Affairs.

- **How is accession carried out?**

States can accede to the Convention by depositing an “instrument of accession” with the United Nations in New York. The ICRC has drafted a model instrument of ratification available overleaf. To deposit the instrument of accession, states should contact the Treaty Section at the UN Headquarters in New York at the following address:

Treaty Section, Office of Legal Affairs
2 UN Plaza - 323E 44th St
Room DC2-0513
United Nations
New York 10017
United States

Tel.: +1-212-963-5047
Fax: +1-212-963-3693

Model Instrument of Accession

For non-signatory states

WHEREAS the Convention on Cluster Munitions was adopted at Dublin on 30 May 2008,

NOW THEREFORE I, **[name and title of the Head of State, Head of Government or Minister of Foreign Affairs]**, declare that the Government of _____, having considered the abovementioned Convention, accedes to the same Convention and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of accession at _____ on _____.

[Signature]

[Seal]

This instrument must be signed by the Head of State, Head of Government or Minister of Foreign Affairs.

Additional Resources

ICRC Ratification Toolkits and Model Legislation

The ICRC has produced Ratification Toolkits in consultation with the UN Treaty Section that contains:

- Model Instruments of ratification (available in Arabic, Chinese, English, French, Spanish, Russian)
- Model legislation for common law states (available in English). <http://www.icrc.org>

Cluster Munition Coalition (CMC)

<http://www.stopclustermunitions.org>

The Convention on Cluster Munitions (CCM)

<http://www.clusterconvention.org>

The Cluster Munition Monitor

<http://www.the-monitor.org>

UN Treaty Section

<http://treaties.un.org>

