

**GROUP OF GOVERNMENTAL EXPERTS OF THE  
HIGH CONTRACTING PARTIES TO 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**

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Item 6 of the Agenda  
Cluster munitions**

**CLUSTER MUNITIONS**

Submitted by the Chairperson

**INTRODUCTION**

1. The following paper is submitted with the sole purpose of providing a basis for further negotiations on the proposal to address urgently the humanitarian impact of cluster munitions. It is based on proposals presented by the Friends of the Chair, as well as contributions put forward by delegations.
2. The list of topics contained therein should not be regarded as exhaustive nor exclusive. Some chapters are still empty and do not contain specific texts. This is mainly due to the wide range of divergent views expressed so far by delegations hence the intention of the Chairperson to proceed with further consultations before submitting any formal proposal.
3. Some of the texts included in this paper are interlinked with the above issues which are still subject to continuing consultations. Therefore, their inclusion in the text shall be only regarded as indicative and their retention will depend on the final agreement on all the aspects of the proposal.
4. The Chairperson has intentionally avoided the use of brackets, except in some very rare cases like the case of the definition of cluster munitions, as contained in CCW/GGE/2008-I/3. Pursuant to the established practice he has the intention to proceed on the basis of the principle that nothing is agreed until everything is agreed.

## TEXTS

### **Preamble**

The High Contracting Parties,  
[...]

*Have agreed as follows:*

### **Article 1. General provision and scope of application**

1. In conformity with the Charter of the United Nations and of the rules of International Humanitarian Law and other rules of international law applicable to them, the High Contracting Parties agree to comply with the obligations specified in this Protocol, both individually and in co-operation with other High Contracting Parties, to address the humanitarian impact caused by cluster munitions.
2. This Protocol shall not apply to “mines” as defined in Article 2 of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to this Convention.
3. This Protocol shall apply to situations resulting from conflicts referred to in Article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001.
4. This Protocol is without prejudice to existing or future international humanitarian law which provide for stricter obligations or which have wider applicability.

### **Article 2. Definitions**

For the purpose of this Protocol:

1. **“Cluster munition”** means a carrier-container which contains [more than ten [x]] explosive sub-munitions and is designed to [eject or disperse or release]/[dispense] explosive sub-munitions [over an area [target]]
2. **“Explosive sub-munition”** means a conventional explosive munition which is designed to separate from a cluster munition and which is designed to detonate on, prior to or after impact on [a]/[an area] target.
3. **“Carrier-container”** means:
  - (a) a conventional munition [that may be artillery shell, air bomb, guided or unguided missile] or,
  - (b) a dispenser, affixed to an aircraft, which is designed to [eject or disperse or release]/[dispense] [multiple sub-munitions]/[more than [y] sub-munitions] in a single [act]/[continuous/uninterrupted process].

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- (b) a dispenser, affixed to an aircraft, which is not designed to [eject or disperse or release]/[dispense] direct-fire munitions.]<sup>1</sup>

4. **“Unexploded cluster munition”** means cluster munition that has been primed, fused, armed, or otherwise prepared for use and which have been used in an armed conflict. It may have been fired, dropped, launched or projected, and should have exploded but failed to do so.
5. **“Abandoned cluster munition”** means cluster munition that has not been used during an armed conflict and that has been left behind or dumped by a party to an armed conflict, and which is no longer under the control of the party that left it behind or dumped it. Abandoned cluster munition may or may not have been primed, fused, armed or otherwise prepared for use;
6. **“Cluster munition remnants”** means unexploded cluster munitions and abandoned cluster munitions.
7. **“Military objective”** means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
8. **“Civilian objects”** are all objects which are not military objectives as defined in paragraph 7 of this Article.
9. **“Concentration of civilians”** means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.
10. **“Feasible precautions”** are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.
11. **“Perimeter-marked”** are cluster munition remnants, which are placed within a perimeter-marked area which is monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area. The marking must be of distinct and durable character and must at least be visible to a person who is about to enter the perimeter-marked area.

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<sup>1</sup> Draft definitions of cluster munition, explosive sub-munition and carrier-container as contained in CCW/GGE/2008-I/3. Proposals for definitions are also contained in documents CCW/GGE/2007/WP.1, CCW/GGE/2007/WP.9, CCW/GGE/2008-I/WP.2.

12. **“Transfer”** involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over the cluster munitions, but does not involve the transfer of territory containing stockpiled cluster munitions.

13. **“Self-destruction mechanism”** means an incorporated or externally attached automatically-functioning mechanism which secures the destruction of the munition into which it is incorporated or to which it is attached.

14. **“Self-neutralization mechanism”** means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.

15. **“Self-deactivating”** means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, battery, that is essential to the operation of the munition.

16. **“Recording”** means a physical, administrative and technical operation designed to obtain, for the purpose of registration in official records, all available information facilitating the location of cluster munition remnants.

### **Article 3. Protection of civilians and civilian objects**

1. In order to ensure respect for and protection of the civilian population and civilian objects, the High Contracting Parties and parties to the conflict using cluster munitions shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

2. It is prohibited in all circumstances to make the civilian population as such, individual civilians, or civilian objects the object of attack by cluster munitions.

3. It is prohibited in all circumstances to make any military objective located within a concentration of civilians [or in areas normally inhabited by civilians] the object of attack using cluster munitions.

4. Several clearly separated and distinct military objectives located in a city, town, village or other area containing a concentration of civilians or civilian objects are not to be treated as a single military objective.

5. It is prohibited to attack, destroy, remove or render useless by cluster munitions objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, [or pharmaceutical installations] for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

6. The prohibitions in paragraph 4 shall not apply to such of the objects covered by it as are used by an adverse Party:

- (a) as sustenance solely for the members of its armed forces; or
- (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

7. Each High Contracting Party and party to a conflict shall not launch an attack with cluster munitions which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

8. In the conduct of military operations with use of cluster munitions, constant care shall be taken to spare the civilian population, civilians and civilian objects. All feasible precautions shall be taken in the use of cluster munitions with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

9. The precautions in attacks by cluster munitions referred to in paragraph 7 shall include, *inter alia*, the following:

- (a) those who plan or decide upon an attack shall take all feasible measures to verify that the objectives to be attacked are military objectives.
- (b) those who plan or decide upon an attack shall take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
- (c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit; and
- (d) those who plan or decide upon an attack shall take all feasible precautions to preserve the natural environment with a view to avoiding, and in any event to minimizing its unnecessary or disproportional damage.

10. The indiscriminate use of cluster munitions is prohibited. Indiscriminate use is any use of cluster munitions:

- (a) which is not directed against specific military objectives. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used;
- (b) which employs a method or means of delivery which cannot be directed at specific military objectives; or
- (c) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

11. In order to ensure respect for and protection of the civilian population and civilian objects, the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations with use of cluster munitions, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations. The High Contracting Parties and parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

#### **Article 4. General prohibitions and restrictions**

[...]<sup>2</sup>

#### **Article 5. Storage and Destruction**

[...]<sup>3</sup>

#### **Article 6. Transfers**

1. In order to promote the purposes of this Protocol, each High Contracting Party:
  - (a) undertakes not to transfer any cluster munition or sub-munition the use of which is prohibited by this Protocol, except for the purpose of destruction.
  - (b) undertakes not to transfer and not to authorize the transfer of any cluster munition or sub-munition
    - (i) to any recipient other than a State or State agency authorized to receive such transfers, and
    - (ii) without the provision of an end-user certificate by the recipient.
  - (c) undertakes to prevent unauthorized transfers, from areas under its jurisdiction or control, of any cluster munition or sub-munition.
  - (d) undertakes not to transfer any cluster munition to States which are not bound by this Protocol unless the recipient State agrees to apply this Protocol; and
  - (e) undertakes to ensure that any transfer in accordance with this Article takes place in full compliance, by both the transferring and the recipient State, with the relevant provisions of this Protocol and the applicable norms of international humanitarian law.
2. The transfer of cluster munitions for development of and training in cluster munition detection, clearance, and destruction techniques is permitted.
3. The High Contracting Parties, pending the entry into force of this Protocol, will refrain from any actions which would be inconsistent with paragraph 1 of this Article, including when providing relevant licenses.

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<sup>2</sup> See explanation in the Introduction.

<sup>3</sup> Ibid.

## **Article 7. Clearance and destruction**

1. Each High Contracting Party and party to an armed conflict shall bear the responsibilities set out in this Article with respect to all cluster munition remnants in territory under its control. In cases where a user of cluster munition which has become cluster munition remnants does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide where feasible, *inter alia* technical, financial, material or human resources assistance, bilaterally or through a mutually agreed third party, including *inter alia* through the United Nations system or other relevant organizations, to facilitate the marking and clearance, removal or destruction of such cluster munition remnants.

2. After the cessation of active hostilities and as soon as feasible, but not later than [...] years, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy cluster munition remnants in affected territories under its control. Areas affected by cluster munition remnants which are assessed pursuant to paragraph 3 of this Article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall take the following measures in affected territories under its control, to reduce the risk posed by cluster munition remnants:

- (a) survey and assess the threat posed by cluster munition remnants;
- (b) assess and prioritize needs and practicability in terms of marking and clearance, removal or destruction;
- (c) perimeter-mark and clear, remove or destroy cluster munition remnants; and
- (d) take steps to mobilize resources to carry out these activities.

4. In conducting the above activities, the High Contracting Parties and parties to an armed conflict shall take into account international standards, including the International Mine Action Standards.

5. The High Contracting Parties shall co-operate, where appropriate, both among themselves and with other states, relevant regional and international organizations and non-governmental organizations on the provision of *inter alia* technical, financial, material and human resources assistance including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil the provisions of this Article.

## **Article 8. Recording, retaining and transmission of information**

1. High Contracting Parties and parties to an armed conflict shall record and retain information on the use or abandonment of cluster munitions, to facilitate the rapid marking and clearance, removal or destruction of cluster munition remnants, risk education and the provision of relevant information to the party in control of the territory and to civilian populations in that territory.

2. High Contracting Parties and parties to an armed conflict which have used or abandoned cluster munitions which may have become cluster munition remnants shall, without delay after the cessation of active hostilities and subject to these parties' legitimate security interests make available such information to the party or parties in control of the affected area, bilaterally or through the United Nations or another mutually agreed third party or, upon request, to other relevant organizations which the party providing the information is satisfied are or will be undertaking risk education and the marking and clearance, removal or destruction of cluster munition remnants in the affected area.

**Article 9. Protection of humanitarian missions and organizations from the effects of cluster munitions**

1. Each High Contracting Party and party to an armed conflict shall:
  - (a) Protect, as far as feasible, from the effects of cluster munition remnants, humanitarian missions and organizations that are or will be operating in the territory under the control of the High Contracting Party or party to an armed conflict and with that party's consent.
  - (b) Upon request by such a humanitarian mission or organization, provide, as far as feasible, information on the location of all cluster munition remnants that it is aware of in territory where the requesting humanitarian mission or organization will operate or is operating.
2. The provisions of this Article are without prejudice to existing International Humanitarian Law or other international instruments as applicable or decisions by the Security Council of the United Nations which provide for a higher level of protection.

**Article 10. Victim assistance**

1. Each High Contracting Party with respect to victims of cluster munition in territories under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, ensure the provision of adequate age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each High Contracting Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.
2. In fulfilling its obligations under paragraph 1 of this Article each High Contracting Party shall:
  - (a) Assess the needs of victims of cluster munition;
  - (b) Develop, implement and enforce any necessary national laws and policies;
  - (c) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;



- (d) Take steps to mobilise national and international resources;
- (e) Not discriminate against or among victims of cluster munition, or between victims of cluster munition and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;
- (f) Closely consult with and actively involve victims of cluster munition and their representative organizations;
- (g) Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and
- (h) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

## **Article 11. Co-operation and assistance**

1. In fulfilling its obligations under this Protocol, each High Contracting Party has the right to seek and receive assistance.
2. Each High Contracting Party in a position to do so shall provide assistance for the marking and clearance, removal or destruction of cluster munition remnants, and for risk education to civilian populations and related activities inter alia through the United Nations system, other relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.
3. Each High Contracting Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of cluster munitions and cluster munition remnants. Such assistance may be provided inter alia through the United Nations system, relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.
4. Where, after entry into force of this Protocol, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a High Contracting Party, each High Contracting Party in a position to do so shall urgently provide emergency assistance to the affected High Contracting Party.
5. Each High Contracting Party in a position to do so shall contribute to trust funds within the United Nations system, as well as other relevant trust funds, to facilitate the provision of assistance under this Protocol.
6. Each High Contracting Party shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information other than weapons related technology, necessary for the implementation of this Protocol. High Contracting Parties undertake to facilitate such exchanges in accordance with national legislation and shall

not impose undue restrictions on the provision of and receipt of clearance equipment and related technological information for humanitarian purposes.

7. Each High Contracting Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Protocol, in particular its humanitarian objectives, including through the timely collection and release of relevant data and information, and the facilitation of the entry and exit of assistance-related personnel, materiel and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.

8. Each High Contracting Party undertakes to provide information to the relevant databases on mine action established within the United Nations system, especially information concerning various means and technologies of clearance of cluster munition remnants, lists of experts, expert agencies or national points of contact on clearance of cluster munition remnants and, on a voluntary basis, technical information on relevant types of explosive ordnance.

9. High Contracting Parties may submit requests for assistance substantiated by relevant information to the United Nations, to other appropriate bodies or to other states. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations and non-governmental organizations.

10. In implementing the provisions of this Article, High Contracting Parties shall make use of, where appropriate, existing mechanisms, tools and databases within the Convention on Certain Conventional Weapons framework.

11. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and in co-operation with the requesting High Contracting Party and other High Contracting Parties, recommend the appropriate provision of assistance. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required, including possible contributions from the trust funds established within the United Nations system.

## **Article 12. Consultations of High Contracting Parties**

1. The High Contracting Parties undertake to consult and co-operate with each other on all issues related to the operation of this Protocol. For this purpose, Conferences of High Contracting Parties shall be held as agreed by a majority, but no less than eighteen High Contracting Parties.

2. The work of the Conferences of High Contracting Parties shall include:

- (a) review of the status and operation of this Protocol;
- (b) consideration of matters pertaining to national implementation of this Protocol, including national reporting or updating on an annual basis;
- (c) preparation for review conferences.

3. The costs of the Conferences of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the Conference, in accordance with the United Nations scale of assessment adjusted appropriately.

### **Article 13. Compliance**

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control.
2. The measures envisaged in paragraph 1 of this Article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, wilfully kill or cause serious injury to civilians and to bring such persons to justice.
3. Each High Contracting Party shall require that its armed forces and relevant agencies, departments or ministries issue appropriate instructions and operating procedures and that its personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.
4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

### **Technical Annex**

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