

**MEETING 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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**Consideration of the report of the work  
of the Group of Governmental Experts**

**DRAFT PROTOCOL ON CLUSTER MUNITIONS**

Presented by the Chairperson of the CCW Group of Governmental Experts

**Introduction**

1. The present paper is based on the intensive work during the two sessions of the CCW Group of Governmental Experts (GGE) in 2009 and the week of informal consultations in August 2009 at which a wide range of issues of the complex matter of cluster munitions were covered by the participating delegates.
2. The paper reflects the assessment by the Chairperson that despite the constructive spirit and all the efforts it was not possible to reach a common view on a proposal on cluster munitions.
3. As a consequence, the present text of a Draft Protocol on Cluster Munitions is submitted for consideration by the Meeting of the States parties to the CCW under the personal responsibility of the Chairperson of the CCW GGE. The text represents the Chairperson's vision of a possible balance between humanitarian and military considerations and is intended to be a contribution for the consideration of the issue by the 2009 Meeting of the States parties.

## CLUSTER MUNITIONS<sup>1</sup>

The High Contracting Parties,

Recognising .....,

.....,

Have agreed as follows:

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

1. In conformity with the Charter of the United Nations, 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 apply to situations of conflict, and situations resulting from conflicts referred to in Article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001.
3. This Protocol shall not affect any rights or obligations Parties to the Convention on Cluster Munitions, done at Dublin, Ireland, on 30 May 2008 and opened for signature in Oslo, Norway, on 3 December 2008, have under that Convention.
4. This Protocol shall not apply to mines, booby-traps and other devices 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 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (the Convention).
5. This Protocol does not apply to munitions or explosive submunitions that are exclusively designed as anti-ship munitions for use at sea when used against ships which are at sea at the time of the attack.
6. This Protocol does not apply to munitions which are designed exclusively as anti-runway munitions and that disperse or release explosive sub-munitions each of which weighs more than five kilograms, when used against hard-surfaced runways, constructed from mass concrete, reinforced concrete, asphalt or a combination of these, or from an equivalent material which yields the same compressive strength.

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<sup>1</sup> The current text does not preclude the exact location of each provision in the final version of the draft Protocol.

## Article 2. Definitions

For the purposes of this protocol:

1. 'Cluster munition' means
  - (a) A conventional munition that is designed to disperse or release explosive submunitions, and includes those explosive submunitions; or
  - (b) A munition consisting of a container, affixed to an aircraft, which is designed to disperse or release multiple explosive submunitions, other than self-propelled explosive submunitions, and includes those explosive submunitions.
2. 'Cluster munition' does not mean or include:
  - (a) munitions or submunitions designed to dispense flares, smoke, pyrotechnics, or chaff;
  - (b) munitions or explosive submunitions designed exclusively for an air defence role;
  - (c) munitions or submunitions designed to produce electrical or electronic effects;
  - (d) munitions that, in order to avoid indiscriminate effects and the risks posed by unexploded submunitions, have all of the following characteristics:
    - (i) each munition contains fewer than 10 explosive submunitions;
    - (ii) each explosive submunition weighs more than four kilograms;
    - (iii) each explosive submunition is designed to detect and engage a single target object;
    - (iv) each explosive submunition is equipped with an electronic self-destruction mechanism;
    - (v) each explosive submunition is equipped with an electronic self-deactivating feature.
  - (e) munitions which are exclusively designed for use by direct fire delivery systems, and that disperse or release fewer than 10 explosive submunitions.
3. 'Explosive submunition' means a conventional munition, weighing less than 20 kilograms, that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact.

4. 'Failed cluster munition' means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered during an armed conflict, and which should have dispersed or released its explosive submunitions but did not do so as intended.
5. 'Unexploded submunition' means an explosive submunition which has been dispersed or released by, or otherwise separated from, a cluster munition during an armed conflict and has failed to explode as intended.
6. 'Abandoned cluster munitions' means cluster munitions or explosive submunitions that have not been used during an armed conflict, that have been left behind or dumped by a party to an armed conflict or in a situation arising directly from an armed conflict, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use.
7. 'Cluster munition remnants' means failed cluster munitions, abandoned cluster munitions and unexploded submunitions.
8. '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 neutralisation, in the circumstances ruling at the time, offers a definite military advantage.
9. 'Civilian objects' are all objects, which are not military objectives as defined in paragraph 8 of this Article.
10. '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 cluster munition remnants.
11. 'Self-destruction mechanism' means an incorporated or attached automatically-functioning mechanism, which is in addition to the primary initiating mechanism of the munition, and which secures the destruction of the munition into which it is incorporated or to which it is attached.
12. 'Self-neutralisation mechanism' means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.
13. 'Self-deactivating' means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition.
14. 'Cluster munition victims' means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.

15. 'Cluster munition contaminated area' means an area known or suspected to contain cluster munition remnants.

### **Article 3. Protection of civilians, the civilian population and civilian objects**

1. In implementing this Protocol, each High Contracting Party and party to an armed conflict shall ensure full compliance with all applicable principles and rules of international humanitarian law.
2. Nothing in this Protocol shall be interpreted as detracting from, or otherwise prejudicing, other principles and rules of international humanitarian law.

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

1. It is prohibited for a High Contracting Party to use, develop, produce or otherwise acquire cluster munitions that do not meet the criteria in paragraph 2.
2. The prohibition in paragraph 1 shall not apply if:
  - (a) The cluster munition is capable of being delivered accurately to a pre-defined target area and each explosive submunition possesses one (1) or more of the following safeguards that must effectively ensure with a high degree of reliability that unexploded submunitions will no longer function as explosive submunitions:
    - (i) a self-destruction mechanism;
    - (ii) a self-neutralization mechanism;
    - (iii) a self-deactivating feature;
    - (iv) two or more initiating mechanisms
  - or
  - (b) The cluster munition is capable of being delivered accurately to a pre-defined target area and incorporates a mechanism or design which, after dispersal, results in no more than 1% unexploded ordnance across the range of intended operational environments.
3. A High Contracting Party may defer compliance with the prohibition of use for a period not exceeding eight (8) years from the Protocol's entry into force for it. This deferral shall be announced by declaration at the time of its notification to be bound by this Protocol. In case a High Contracting Party is unable to comply with paragraph 1 of this Article within that transition period, it may notify a Conference of the High Contracting Parties that, it will extend this period of deferred compliance for a period of up to four (4) additional years.
4. Notwithstanding a High Contracting Party's deferral, pursuant to paragraph 3, of the prohibition of use in paragraph 1, each High Contracting Party undertakes, immediately upon entry into force for it:

- (a) To use cluster munitions that do not meet the criteria in paragraph 2 only after approval by its highest-ranking operational commander in the area of operations or by the appropriate politically mandated operational authority, in accordance with its national procedures;
- (b) To use only cluster munitions with the lowest possible unexploded ordnance rate, consistent with military requirements;

5. Each High Contracting Party undertakes, immediately upon entry into force of the Protocol for it:

- (a) Not to develop new types of cluster munitions, or produce cluster munitions, which do not meet the requirements of paragraph 2;
- (b) To take steps in any design, procurement, or production of cluster munitions to minimize the unexploded ordnance rate or incorporate additional safeguard mechanisms or designs;
- (c) To improve to the extent possible the accuracy of their cluster munitions and submunitions which meet the requirements of paragraph 2;
- (d) To evaluate its military requirements and as soon as possible to remove the stocks of cluster munitions in excess of these requirements from active inventory and designate these stocks for destruction.

6. It is prohibited to use cluster munitions or explosive submunitions that are exclusively designed as anti-ship munitions for use at sea, against targets other than ships which are at sea at the time of the attack.

7. It is prohibited to use cluster munitions or explosive submunitions that are exclusively designed as anti-runway munitions and that disperse or release explosive submunitions each of which weighs more than five kilograms, against targets other than hard-surfaced runways, constructed from mass concrete, reinforced concrete, asphalt or a combination of these, or from an equivalent material which yields the same compressive strength.

8. The obligations in this Article do not apply to cluster munitions acquired or retained in a limited number for the exclusive purpose of training in detection, clearance, and destruction techniques, or for the development of cluster munitions countermeasures.

9. The High Contracting Parties in a position to do so are encouraged, through bilateral or multilateral mechanisms established between them, to facilitate the exchange of equipment, material, and scientific and technological information that will lessen the humanitarian impact of cluster munitions.

## **Article 5. Stockpile, storage and destruction**

Each High Contracting Party undertakes:

- (a) After any period of deferred compliance under Article 4 (3), to remove all cluster munitions under its jurisdiction and control that do not meet the standards provided for in Article 4 (2) from its operational stocks, separate them from munitions retained for operational use, mark and safely secure them, in accordance with national procedures;
- (b) To destroy or ensure the destruction of all cluster munitions under its jurisdiction and control that do not meet the standards provided for in Article 4 (2), as soon as feasible after the entry into force of this Protocol, starting no later than:
  - five (5) years after the entry into force of the Protocol for the High Contracting Party; or
  - the end of the period of deferred compliance referred to in article 4 (3) if applicable to the High Contracting Party;
- (c) To create and/or maintain a stockpile surveillance and management program to ensure the operational quality and reliability of weapons permitted under this Protocol. In implementing this provision, the High Contracting Parties shall make use of, where appropriate, existing mechanisms, tools, and databases within the Convention's framework and other relevant instruments and mechanisms.

## **Article 6. Transfers**

1. It is prohibited for a High Contracting Party to transfer cluster munitions that do not meet the requirements of Article 4 (2).
2. A High Contracting Party may defer compliance with the prohibition of transfer for a transition period not exceeding five (5) years from the Protocol's entry into force for it.
3. Notwithstanding a High Contracting Party's deferral, pursuant to paragraph 2, of the prohibition of transfer, each High Contracting Party undertakes, immediately upon entry into force for it:
  - (a) Not to transfer any cluster munition manufactured before 1990 except pursuant to patterns of security cooperation or security cooperation agreements existing at the time of the entry into force of the Protocol;
  - (b) Not to transfer any cluster munition that has been significantly degraded from its original specifications;

- (c) Not to transfer any cluster munition or submunition to any recipient other than a State or State agency authorized to receive such transfers;
- (d) To prevent unauthorized transfers, from areas under its jurisdiction or control, of any cluster munition or sub-munition;
- (e) 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 prohibitions of this Protocol.

4. A High Contracting Party that has deferred the application of paragraph 1 shall, during the period of deferral, not transfer any cluster munition or submunition that does not meet the requirements of Article 4 (2), unless the recipient State agrees to apply this Protocol with respect to the transferred items.

5. This Article does not apply to transfers for the purpose of destruction, retrofitting in order to comply with the criteria set forth in Article 4, development of training in detection and clearance, and for the development of cluster munitions countermeasures.

#### **Article 7. Clearance and Destruction of Cluster Munitions Remnants**

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, 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 taking into account the impact from other explosive remnants of war and landmines;



- (c) 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 fulfill the provisions of this Article.

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

1. High Contracting Parties and parties to an armed conflict shall to the maximum extent possible and as far as practicable 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 become cluster munition remnants shall, without delay after the cessation of active hostilities and as far as practicable, 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 contaminated areas 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. High Contracting Parties and parties to the armed conflict shall, in accordance with domestic laws and procedures, as well as their obligations under applicable international law provide or facilitate the provision of appropriate and adequate assistance, including medical care, rehabilitation and psychological support and assistance for social and economic inclusion to cluster munition victims in territories under their jurisdiction or control. Each High Contracting Party and party to the armed conflict shall make every effort to collect reliable data with respect to cluster munition victims.

2. High Contracting Parties shall not discriminate against or among cluster munition victims, or between cluster munition victims and other victims of armed conflict/ERW and other persons with disabilities. Differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs, taking into account age and gender sensitivities.

3. In order to fulfill its obligations under this Article, each High Contracting Party shall take, among others, the following measures, as appropriate:

- (a) Assess the needs of cluster munition victims;
- (b) Develop, implement and enforce national laws and policies;
- (c) Develop, where it does not already exist, in accordance with national procedures, a national plan, with provision of adequate assistance, including timeframes to carry these activities, with a view to incorporating them within applicable national health, disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors in the field of assistance and rehabilitation of victims of cluster munitions;
- (d) Seek to mobilize national and international resources;
- (e) Closely consult with and involve cluster munition victims and their representative organizations;
- (f) Designate, in accordance with national procedures, a focal point within the government for coordination of matters relating to the implementation of this Article; and

- (g) 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 and each High Contracting Party in a position to do so shall provide such assistance in accordance with the provisions of this Article.
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, including to develop national capacities, 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, other relevant trust funds, or by other means, 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, services 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 in a position to do so shall facilitate the development and use of technology and equipment for the detection and clearance of cluster munition remnants, including as appropriate through the use of trust funds established for that purpose or other means, in order to reduce the humanitarian impact of cluster munitions and cluster munition remnants.

8. 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, material and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.

9. 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.

10. 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.

11. 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 and other relevant instruments and mechanisms.

12. 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.

13. High Contracting Parties in a position to provide assistance shall, where appropriate, cooperate to develop coordinated strategies for the effective and efficient provision of assistance.

## **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 cooperation and assistance and national implementation of this Protocol, including national reporting or updating on an annual basis; and
  - (c) Preparation for review conferences.
3. The High Contracting Parties shall provide annual reports on the implementation of this Protocol to the Depositary, who shall circulate them to all High Contracting Parties in advance of the Conference. A High Contracting Party which has availed itself of a deferral period referred to in this Protocol is encouraged to provide a voluntary report on the implementation of the applicable Article during that deferral period.
4. 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, willfully 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.
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