

Fourth Review Conference 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 13 of the agenda

Consideration of proposals for additional protocols to the Convention

**Draft
Protocol on Cluster Munitions**

Submitted by the Chairperson of Main Committee II

1. Amend the following paragraph to read

The High Contracting Parties,

Determined to address urgently the humanitarian impact caused by cluster munitions,

Desiring to protect civilians from the indiscriminate effects of weapons,

Basing themselves on the principles and rules of International Humanitarian Law,

Recognising that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited,

Reaffirming the need to continue the codification and progressive development of the rules of international law applicable in armed conflict,

Determined to take action in implementing comprehensive prohibitions and restrictions on cluster munitions which may have indiscriminate effects,

Resolved to do their utmost in providing assistance to the victims of cluster munitions, who include 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, as well as their affected families and communities,

Bearing in mind the Convention on the Rights of Persons with Disabilities which, *inter alia*, requires that States Parties to that Convention undertake to ensure and promote the full realization of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability,

Determined to make an effective and coordinated contribution to resolve the challenge of removing and destroying cluster munition remnants located throughout the world,

Resolved to take further steps in order to improve and complement existing provisions regarding cluster munitions,

Have agreed, as such a step, 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, taking all necessary and feasible measures to address the humanitarian impact and to alleviate human suffering caused by cluster munitions.
2. This Protocol shall not affect any rights or obligations that States Parties to the Convention on Cluster Munitions, done at Dublin, Ireland, on 30 May 2008, have under that Convention.
3. 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.
4. This Protocol shall not apply to the munitions described in Technical Annex A. Nevertheless, each High Contracting Party that retains munitions in accordance with this Technical Annex should ensure that such munitions have the lowest possible unexploded ordnance rate, consistent with military requirements.
5. The application of the provisions of this Protocol to parties to an armed conflict, which are not High Contracting Parties that have accepted this Protocol, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

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. '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.
3. '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.
4. '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.
5. '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.

6. 'Cluster munition remnants' means failed cluster munitions, abandoned cluster munitions and unexploded submunitions.
7. '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.
8. 'Self-destruction mechanism' means an incorporated or attached automatically-functioning mechanism, which secures the destruction of the munition into which it is incorporated or to which it is attached.
9. 'Self-neutralization mechanism' means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.
10. '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.
11. 'Cluster munition contaminated area' means an area known or suspected to contain cluster munition remnants.
12. '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.
13. 'Civilian objects' are all objects which are not military objectives as defined in paragraph 12 of this Article.

Article 3 bis

Protection of civilians

1. It is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack.
2. In order to ensure respect for and the protection of civilian populations, individual civilians and civilian objects, High Contracting Parties and parties to an armed conflict shall at all times respect and recognise the distinction between military objectives, and civilians or civilian objects.

Article 5

General prohibitions and restrictions on cluster munitions produced on or after 1 January 1980

1. It is prohibited for a High Contracting Party to use, stockpile or retain cluster munitions produced on or after 1 January 1980, other than those described in Technical Annex B.
2. It is prohibited for a High Contracting Party to produce, develop or otherwise acquire cluster munitions other than those described in Technical Annex B.
3. In the event that a High Contracting Party determines that it cannot immediately comply with paragraph 1 of this Article it may declare at the time of its notification of consent to be bound by this Protocol that it will defer compliance with the prohibition of use, stockpiling and retention for a period not exceeding eight years from the entry into force of this Protocol. In case a High Contracting Party is unable to comply with paragraph 1 of this Article within the period it announced by declaration, it may notify the Depositary that it will extend this period of deferred compliance for up to four additional years. The

Depositary shall circulate declarations and notifications referred to in this paragraph to all High Contracting Parties.

4. During a period of deferred compliance pursuant to paragraph 3 of this Article, a High Contracting Party shall not use cluster munitions, other than those described in Technical Annex B, except:

(a) in order to defend its territory, or to fulfil obligations pursuant to its security cooperation agreements or arrangements existing at the time of entry into force of this Protocol; and

(b) after approval by its highest-ranking operational commander in the area of operations or by the appropriate politically mandated operational authority.

5. Upon entry into force of this Protocol, each High Contracting Party that retains cluster munitions shall:

(a) take steps in any design, procurement, or production of cluster munitions, to incorporate additional safeguard mechanisms or designs, to reduce the number of submunitions contained in each cluster munition, or otherwise minimize the unexploded ordnance rate;

(b) improve to the extent possible the accuracy of their cluster munitions and explosive submunitions described in Technical Annex B; and

(c) review the military necessity to retain cluster munitions and as soon as possible remove excess cluster munitions from operational stockpiles and designate these stocks for destruction.

6. Each High Contracting Party shall endeavour to ensure that submunitions, which are equipped with a self-destruction or self-neutralisation mechanism in accordance with paragraph 1 of Technical Annex B and that are developed after the entry into force of this Protocol, are also equipped with a self-deactivating feature.

7. It is prohibited to use munitions described in paragraphs 2, 3 and 4 of Technical Annex B other than for the purpose for which each was exclusively designed.

8. This Article does 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. The number retained should be the minimum necessary for such purposes.

9. The prohibition on stockpiling and retention of cluster munitions in paragraph 1 of this Article shall not apply to cluster munitions removed from operational stocks for their subsequent destruction in accordance with Article 6.

Article 6 **Storage and destruction of cluster munitions**

1. Each High Contracting Party that retains cluster munitions shall:

(a) remove all cluster munitions prohibited by this Protocol, as well as those no longer intended for use, that are under its jurisdiction and control from its operational stocks, separate them from munitions retained for operational use, and in accordance with national procedures mark and safely secure them:

(i) for those cluster munitions referred to in paragraph 1 of Article 4 – on entry into force of the Protocol for it; and

(ii) for those cluster munitions referred to in paragraph 1 of Article 5 – on entry into force of the Protocol for it or at the end of any period of deferred compliance pursuant to paragraph 3 of Article 5;

(b) destroy or ensure the destruction, in accordance with national procedures, of all cluster munitions prohibited by this Protocol, as well as those no longer intended for use, that are under its jurisdiction and control as soon as feasible, starting no later than:

(i) for those cluster munitions referred to in paragraph 1 of Article 4 – the entry into force of the Protocol for it; and

(ii) for those cluster munitions referred to in paragraph 1 of Article 5 – the entry into force of the Protocol for it or at the end of any period of deferred compliance pursuant to paragraph 3 of Article 5;

(c) create and maintain a stockpile surveillance and management programme in accordance with national procedures to ensure the safety and reliability of cluster munitions not prohibited by this Protocol. In implementing this provision, the High Contracting Parties shall make use of, where appropriate, existing mechanisms, tools, and databases within the framework of the Convention and other relevant instruments and mechanisms; and

(d) remove all cluster munitions produced after 1 January 1980 and which are more than 40 years old from its operational stocks, unless their reliability has been confirmed by appropriate testing procedures.

2. A High Contracting Party that has cluster munitions prohibited by this Protocol under its jurisdiction and control shall develop a comprehensive plan, in accordance with national procedures, for the destruction, after the expiration of any applicable period of deferred compliance, of all such cluster munitions. The comprehensive plan shall include a schedule and the time required for completion of destruction. The High Contracting Party shall revise the comprehensive plan as necessary.

Article 7

Prohibitions and restrictions on the transfer of cluster munitions

1. It is prohibited for a High Contracting Party to transfer any cluster munitions produced before 1 January 1980.

2. It is prohibited for a High Contracting Party to transfer any cluster munitions produced between 1 January 1980 and 1 January 1990, other than those described in Technical Annex B where that transfer is pursuant to security cooperation agreements or arrangements existing at the time of the entry into force of this Protocol.

3. It is prohibited for a High Contracting Party to transfer any cluster munitions produced on or after 1 January 1990, other than those described in Technical Annex B.

4. Upon entry into force of this Protocol, each High Contracting Party shall:

(a) not transfer any cluster munition that diverges substantially from its design specification;

(b) not transfer any cluster munition that has been designated for destruction, except for the purposes of destruction pursuant to paragraph 5 of this Article;

(c) not transfer any cluster munition to any recipient other than a State or State agency authorized to receive such transfer;

(d) prevent unauthorised transfers, from areas under its jurisdiction or control, of any cluster munition; and

(e) ensure that any transfer of cluster munitions takes place in full compliance, by both the transferring and the recipient State, with the relevant prohibitions or restrictions of this Protocol.

5. This Article does not apply to transfers for the purpose of destruction, retrofitting in order to comply with the standards described in Technical Annex B, development of training in detection and clearance, or for the development of cluster munitions countermeasures.

Article 8

Marking, clearance and destruction of cluster munition remnants and risk reduction education

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 munitions which have 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. Clearance and destruction of such cluster munitions remnants shall be completed as soon as feasible but no later than 10 years after the cessation of active hostilities. Areas affected by cluster munition remnants which are assessed pursuant to paragraph 4 of this Article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. Where cluster munition remnants are located in territories under the control of a High Contracting Party and party to an armed conflict at the time of entry into force of this protocol for it, that party shall mark and clear, remove or destroy cluster munition remnants in affected territories under its control as soon as feasible and to the extent possible within 10 years after the entry into force of the Protocol for it.

4. As soon as feasible after the cessation of active hostilities, or where applicable after entry into force of this Protocol for it, 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) take all feasible precautions to protect the civilian population, individual civilians and civilian objects from the risks and effects of cluster munition remnants;
- (c) take appropriate measures in order to mark affected areas so as to ensure the effective exclusion of civilians;
- (d) assess and prioritise needs and practicability in terms of clearance, removal or destruction taking into account the impact from other explosive remnants of war and landmines;
- (e) conduct risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by cluster munition remnants;
- (f) clear, remove or destroy cluster munition remnants; and

(g) take steps to mobilise resources to carry out these activities.

5. 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.

6. If a High Contracting Party believes that it will be unable to clear and destroy the cluster munition remnants referred to in paragraph 2 of this Article within that time period, it may submit to a Conference of High Contracting Parties a notification that it intends to extend the deadline for completing the clearance and destruction of such cluster munition remnants, by a period of up to five years. The Conference of High Contracting Parties shall consider the notification and may make recommendations to the High Contracting Party.

7. Each notification shall contain:

(a) the duration of the intended extension;

(b) an explanation of the reasons for the intended extension;

(c) the humanitarian, social, economic and environmental implications of the intended extension; and

(d) any other information relevant to the notification of the intended extension.

8. Such an extension may be renewed upon the submission of a new notification in accordance with paragraphs 6 and 7 of this Article. In submitting a further notification of intended extension, a High Contracting Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 13

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 and on additional steps for achieving the objectives set out in the Preamble to this Protocol. For this purpose, a Conference of High Contracting Parties shall be held as agreed to by a majority, but no less than eighteen High Contracting Parties.

2. Conferences of High Contracting Parties shall:

(a) review the status and operation of this Protocol;

(b) consider matters pertaining to cooperation and assistance and national implementation of this Protocol, including annual national reporting; and

(c) prepare for review conferences; and

(d) consider other relevant matters.

3. During the conferences referred to in paragraph 3 of Article 8 of the Convention following the entry into force of this Protocol, the High Contracting Parties shall:

(a) review the Technical Annex B of this Protocol with a view to further minimising the humanitarian impact of cluster munitions; and

(b) endeavour to agree on comprehensive prohibitions and restrictions regarding the use, stockpiling, production and transfer of cluster munitions, as well as the completion of destruction of cluster munitions, in line with other relevant and applicable agreements.

4. The High Contracting Parties shall provide annual reports on the implementation of this Protocol to the Secretary-General of the United Nations, who shall circulate them to all High Contracting Parties, including on the following matters:

- (a) dissemination of information on this Protocol to their armed forces and relevant agencies or departments and to the civilian population;
- (b) stockpile surveillance and management programmes for storage of cluster munitions described in Technical Annex B in accordance with sub-paragraph 1 (c) of Article 6;
- (c) cluster munitions that do not meet the standards described in Technical Annex B, other than those subject to a deferral period under this Protocol;
- (d) destruction of cluster munitions under its jurisdiction and control other than those described in Technical Annex B:
 - (i) the status and progress of the destruction of cluster munitions in accordance with sub-paragraph 1 (b) of Article 6; and
 - (ii) the comprehensive plan referred to in paragraph 2 of Article 6;
- (e) cluster munitions retained in accordance with paragraph 2 of Article 4 and paragraph 8 of Article 5;
- (f) activities on clearance and destruction of cluster munitions remnants;
- (g) victim assistance;
- (h) international cooperation and assistance;
- (i) legislation related to this Protocol; and
- (j) other relevant matters.

5. A High Contracting Party which has availed itself of a deferral period referred to in this Protocol shall provide additional information in its annual reports on the implementation of the applicable Article during that deferral period.

6. A High Contracting Party retaining cluster munitions in accordance with paragraph 5 of Technical Annex B shall provide information in its annual reports on the methodology used to determine how such munitions meet the criteria set out in that paragraph.

7. 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.
