

Why and how all states should join the Convention on Cluster Munitions

2016

www.stopclustermunitions.org



The Convention on Cluster Munitions (CCM) was established to put an end for all time to the suffering and casualties caused by cluster munitions. It is the most significant humanitarian disarmament treaty of the past decade, with far-reaching obligations. It is adhered to by more than half the world. Its entry into force was triggered by 30 ratifications, which were achieved in a very short period of time – just 14 months. So far the Convention has made great progress, with 90% of States Parties' stockpiles destroyed, and a notable increase in the clearance of cluster munition-affected land and assistance provided to cluster munition victims. The Convention's ultimate success will depend, however, on states' wide acceptance of it as a legal standard and global norm.

The CMC believes that every country in the world can and should join the CCM. It is a question of political will and placing a priority on the protection of civilians over outdated and indiscriminate weapons. This paper describes why it is urgent for all countries to join the Convention, beginning with those that have used, produced, or stockpiled the weapon and those affected by cluster munitions, and then looking at those states that do not fall into these categories. It also presents the steps states need to take to ratify or accede.

Why Join the Convention on Cluster Munitions

The world has suffered enough from the use of these indiscriminate killers

Cluster munitions are *indiscriminate* and *unreliable* weapons, both at the time of use and long afterwards, causing major humanitarian problems and risks to civilians. First, upon deployment cluster munitions spread explosive submunitions over a large area, usually leaving a footprint the size of one or two football fields. Such widespread dispersal means that the weapons cannot distinguish between military targets and civilians. Anyone within this large strike zone is at serious risk of being killed or injured. The humanitarian impact is especially heavy when cluster munitions are used in areas where civilians are present, which is the case in most modern conflicts.

In addition, many submunitions fail to detonate on impact, leaving de facto antipersonnel mines that continue killing or maiming for decades after they have been used. The strong explosive force of these "duds" makes them even more dangerous than antipersonnel mines to those who accidentally trigger them, usually a civilian and very often a child. Cluster munition remnants pollute fields and buildings, and sometimes even remain hanging from trees. Not only do they create immediate dangers to those returning to live and work in contaminated areas, but they also present long-term lethal barriers to development as agricultural land, pastures for grazing, and other land needed for social or economic projects must be cleared before it can be used safely. Most cluster bomb casualties are caused to people who could not afford to wait until such clearance took place before carrying out their routine activities on such land.

Cluster bombs have therefore killed and injured thousands of civilians during the last 70 years and continue to do so today. In all of the conflicts where these weapons have been used, they have left a predictable pattern of human suffering. It is this unacceptable harm that the Convention on Cluster Munitions was created to prevent.

A comprehensive global ban is the only way to resolve the problem

The 107 states that negotiated and formally adopted the Convention on Cluster Munitions in Dublin in May 2008 agreed to a strong, comprehensive Convention, banning all types of cluster munitions and creating rigorous obligations on stockpile destruction, clearance, victim assistance and international cooperation and assistance. An effort by some states, including self-declared major users and producers, to develop alternative international law with only limited prohibitions and restrictions on some cluster munitions failed in 2011 after years of discussions.

The CCM therefore stands as the sole international standard on cluster munitions, a standard endorsed by over half the world's states. The states that adopted the CCM did so because they recognized that the only way to effectively address the problems caused by cluster munitions is through a total ban, backed by requirements to destroy stocks, clear affected land, and assist victims. The development of the Convention's text was guided by a broad group of states, including many countries that have suffered the consequences of cluster munition use, keeping the focus on preventing future harm.

A large and diverse group of states have already joined

As of early 2016, 60% of the world's states have joined the Convention, demonstrating widespread international rejection of cluster munitions. At least 43 countries that have stockpiled, produced, and/or used cluster munitions have joined the Convention, including key international and regional military powers. Several of the world's most affected states have joined the Convention, including Afghanistan, Iraq, Lao PDR, and Lebanon. A total of 21 NATO nations have adhered as well. Their participation shows that a wide variety of states with different political, economic, and security perspectives all support the cluster munitions ban.

The Convention is already working, preventing untold harm to civilians

This broad group of states is already well underway to implementing their obligations, some even before ratification. For example, States Parties have already collectively destroyed some 90% of their declared cluster munition stockpiles. Every State Party to the Convention that had stockpiles has already either finished destroying them or is well on its way to completing destruction before the deadline, some with the support of other States Parties or international actors. Such efforts demonstrate the clear preventative nature of the Convention, as the destroyed cluster munitions will never pose a risk to civilians.

The Convention has also created a strong community of states, UN agencies, civil society organizations and other interested actors, bound together to ensure cluster munitions are never used again and to address the impact cluster munitions have already caused. This group keeps the spotlight on the issue of cluster munitions, pressuring States not party not to use them and to join the Convention. The engagement of such actors has also led to new funding and other forms of assistance to affected states.

Why Stockpilers, Producers, Users and Affected States Must Join

Because the Convention on Cluster Munitions is largely about preventing future harm to civilians, it is particularly important for those states that have produced, stockpiled, and/or used cluster munitions to join to ensure that cluster munitions are never used again. As well, adherence by those states that have suffered the impact of cluster munitions will enable them to address remaining contamination and assist victims with the support of other States Parties while strengthening the growing norm against cluster munitions.

Future use makes no military or political sense

A small group of states may be reluctant to join the Convention on Cluster Munitions because of the perceived military value of the weapon, especially when a state is experiencing ongoing regional tensions. The CMC strongly urges such states to reconsider this assessment and abandon the reflex to hold onto any and all weapons they may possess to ward off potential threats.

Firstly, the military utility of cluster munitions is limited in modern warfare for the following reasons:

- The weapons were designed for Cold War-era operations with large formations of tanks or troops. Today's combat often takes place in urban environments, however, where there are a high number of civilians present. The weapons are therefore less effective, and the humanitarian impact is magnified.
- Using cluster munitions is often counterproductive for modern militaries. They interfere with military operations, as contaminated areas reduce the mobility of the forces that use them and endanger friendly troops. The harm caused to civilians also means continued use of the weapons would increase hostility among the local population towards the users.
- Cluster munitions are also poor defensive weapons, leaving behind a large numbers of explosive submunitions that would endanger a state's own population.

But most importantly, 60% of the world's states have already seen that the humanitarian impact of cluster munitions far outweighs any perceived military benefit. Given the wide-area impact of cluster munitions and the tendency for combat to take place in areas with a high number of civilians, it is almost impossible for them to be used in a way that distinguishes between civilian and military targets. The use of cluster munitions consistently leads to pollution by unexploded submunitions, which continue to claim lives in an indiscriminate manner. Cluster munitions do not meet the criteria a responsible government should have for weapons in its arsenal.

In addition, the political cost of using cluster munitions, even for states not party, has become very high given the Convention's powerful stigmatizing force. Recent instances of cluster munition use by non-signatory states have triggered strong international condemnation due to the ban. Indeed, in almost every recent case, the states that deployed cluster munitions later denied such use out of a concern for the criticism they would incur.

By joining the Convention, a state will help increase this stigmatization, thereby reducing the chance that cluster munitions would be used against it in any future conflicts. In addition, many defence companies are moving away from the development and production of cluster munitions as the market is drying up and financial institutions are increasingly developing policies to prevent investment in any company associated with the production of these illegal weapons.

Implementation is beneficial to affected states

Most affected states, whether or not they are party to the Convention, are already undertaking cluster munition clearance and victim assistance. By joining the Convention, they will increase their capacity to carry out such work. First, the Convention requires all states "in a position to do so" to provide technical, material, and financial assistance to those affected states that have clearly presented their needs. In addition, they will become part of the community of states that meets regularly to discuss how to make progress in such areas in the most efficient and effective manner, allowing them to benefit more generally from the experience and expertise of other states and engaged actors.

User states have a special responsibility to assist affected states with clearance. Article 4(4) strongly encourages user states to provide assistance for clearance of submunitions they left before the Convention entered into force. This assistance includes information on types, quantities, and location of cluster munition remnants, all of which can facilitate clearance.

Affected states will therefore not have to meet their obligations alone. States facing exceptional circumstances, such as very high levels of contamination, can request one or more extensions of up to five years each. But the vast majority of states currently affected by cluster munitions should be able to finish clearance long before their deadline.

States with stockpiles of cluster munitions also are already regularly carrying out stockpile destruction as stocks reach the end of their shelf life. By joining the Convention, states will therefore not be incurring new costs, but will simply be receiving more support for such activities by joining the Convention since the duty to provide cooperation and assistance also applies to technical, material and financial assistance for stockpile destruction. Many states have already benefited from such assistance, including support in finding simple and low-cost means to destroy stockpiles. So far, no State Party – even those with the largest stocks – has projected any difficulty with meeting the Convention's eight-year deadline. In fact most States Parties are on track to complete well before their deadline, and some such as Denmark, Germany, Italy, Japan or the United Kingdom have already completed the destruction of their entire stockpile of cluster munitions.

In other words, the Convention should be seen as an opportunity for affected states to get support for work that they are doing anyway. The benefits for undertaking these positive obligations are abundantly clear, from allowing vast areas of land to be cultivated and enabling survivors to gain economic independence, to building confidence with neighboring states by destroying stocks.

Strength in Numbers: Why Non-Affected States Also Must Join

It is essential for the strength of the ban that all states join the Convention, no matter the size of the country or whether or not they are affected or have used, produced or stockpiled the weapon. With every new country that joins the CCM, the global norm rejecting this weapon is strengthened and the greater the protection for civilians will be. By joining the CCM each state gives one more voice in favor of the ban.

When states not affected by cluster munitions join, they demonstrate solidarity with those that have suffered from their use. The CCM is part of the overall fabric of international humanitarian law and the global effort to promote human security and address armed violence. Some countries suffer from cluster munitions, some suffer more from other explosive remnants of war or other threats to the security of civilians. By joining the range of international instruments on the protection of civilians, states help to reinforce each other's efforts to promote peace and security for all.

Finally, for states with no stockpiles, contamination or cluster munition survivors, joining the Convention is a simple process, with which the CMC, ICRC and UN all stand ready to provide support. Once part of the Convention, obligations for such states are minimal. They simply need to adopt a national implementation law, which may have already been done as part of the ratification or accession process, and afterwards provide short annual status reports.

How to Join 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.

Now that the Convention has entered into force, those states that did not have the opportunity to sign need to join by acceding to the Convention – a one-step process. Certain states use the terms “acceptance” or “approval” to describe their adherence to international treaties. These terms all have the same legal effect as ratification and consequently express a State's consent to be bound by a treaty.

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 national legislation before it

can take place, while in some states this step can wait until afterwards. 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 deposit their instrument of ratification or accession with the United Nations' Secretary-General, who has been tasked as depository of the Convention (Art. 22).

How to find model national legislation

The ICRC has model legislation for common law states (available in English). <http://www.icrc.org/eng/resources/documents/misc/cluster-munitions-model-law-010109.htm>

National legislation model for small states that do not possess cluster munitions and are not contaminated by them: http://www.clusterconvention.org/files/2011/05/Model-Legislation_Cluster-Munitions-Act-2011.pdf

How to deposit instruments of ratification or accession

States ratify or accede to the Convention by depositing an “instrument of ratification” or an “instrument of accession” with the United Nations in New York.

The ICRC has drafted model instruments: <http://www.icrc.org/eng/assets/files/other/ratification-kit-cluster-munitions-eng.pdf>

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

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

Cluster Munition Coalition
Chemin Eugene-Rigot 2
1202 Geneva
Switzerland

Email: info@stopclustermunitions.org

www.stopclustermunitions.org

