



Issues of concern to address at the 2nd Review Conference of Convention on Cluster Munitions and in the Lausanne Action Plan



The Second Review Conference of the Convention on Cluster Munitions (2RC) provides a unique opportunity to assess progress made to date in universalization and implementation of the convention over the past five years, as well as since its entry into force ten years ago.

Most importantly, the 2RC and the Lausanne Action Plan should squarely address the main challenges currently faced by the convention and provide a clear and ambitious roadmap for CCM States Parties and community to effectively tackle them in the upcoming five years.

Among the key challenges facing the CCM currently are:

- Ongoing use of cluster munitions (by Syria with active assistance from Russia)
- Continued slow pace of universalization
- Recent delays in implementation of time-bound obligations of the convention
- Implementation of victim assistance provisions.

The 2RC and its outcome documents should:

- Condemn any use of cluster munitions by any actor at any time and explicitly express horror over ongoing use of the weapon by Syria. Discuss concrete actions to prevent future use.
- Highlight the human cost of recent cluster munition use to convey a sense of urgency to put a final end to cluster munitions.
- Urge signatories to ratify and non-signatories to accede immediately.
- Call on States Parties that are falling behind on their clearance and stockpile destruction obligations to reinvigorate their efforts to implement them within respective deadlines.
- Emphasize the crucial importance of national ownership in fulfilling convention obligations.
- Include a commitment to keep providing high levels of cooperation and assistance and to increase technical and financial support for victim assistance in particular, to allow fulfillment of convention obligations.
- Strengthen commitments aimed at promoting a better understanding of different people's experiences, capacities, needs and vulnerabilities in order to better address their needs and protect their rights. Gender, age and disability as well as other diversity factors should be taken into account.
- Confirm that the commitments under the previously adopted Action Plans (from Vientiane and Dubrovnik) are still valid and should be acted upon.

Issues of special concern

Based on the experience of recent years a number of issues are of special concern and require more attention and creativity from the CCM community in the coming years.

Respect for the ban norm

The ongoing use of cluster munitions by Syria, with assistance from Russia, for close to ten years, constitutes the biggest challenge for the ban norm. During the 10-year period of Cluster Munition

Monitor reporting between 2009-2018, over 80% of new recorded cluster munitions casualties occurred in Syria. Despite the fact Syria's use of cluster munitions caused an international outcry at one point, the use has not stopped and continues to account for a majority of casualties recorded annually.

It should also be noted that the Saudi-led coalition used cluster munitions in attacks in Yemen in 2015-2017 though such attacks have since ceased, in part due to strong international criticism.

In addition, 16 states not party still produce cluster munitions, nearly 50 still stockpile cluster munitions, and most assert the right to transfer and use the weapon at any time.

The 2RC and the Lausanne Action Plan should adopt actions that:

- More strongly support stigmatization of cluster munitions and commit States Parties to engage more actively with states remaining outside of the convention to prevent any future casualties by discouraging use, production, stockpiling, and transfer of cluster munitions, and in particular by promoting steps such as adopting moratorium on transfer and production of cluster munitions.
- State Parties should condemn use of cluster munitions in Syria in terms at least as strong as the language of successive UN General Assembly resolutions (67/262, 68/182, 69/189, 70/234, 71/248, 72/191 and 73/182) supported by 147 States.
- Engage in firmer, more concerted and more persistent reaction and steps on the part of States Parties vis-à-vis future cluster munition use and users with the objective of a halt of use.
- Encourage States Parties who have not yet done so to express their views on key interpretive issues related to prohibition of: assistance during joint military operations with States not Party that may use cluster munitions; transit and foreign stockpiling of cluster munitions; and investment in production of cluster munitions.

In the convention's machinery:

- States Parties should consider amending the mandate of the Coordinators on Universalization to actively coordinate and carry out work aimed at promoting adherence with the Convention's norms and the response to future situations of use. This could be also part of the mandate of a Committee/Coordinators on Cooperative Compliance if such were created.
- Another option could be to establish a Special Envoy (at high level) under the President to serve such purpose.

Universalization

The slow pace of universalization of the convention remains a serious concern. With 108 States Parties (as of April 2020) we are far behind the goal of the Dubrovnik Action Plan (DAP) of 130 States Parties by the 2RC. Since the First Review Conference only 10 states have joined the convention.¹

What has been missing or insufficient is the promotion of further ratifications of / accessions to the convention as part of a long term, continuous, strategic and well-coordinated effort, including at high-level, by a large number of States Parties (and other key actors). The concept of 'different people knocking on the same door with the same message at different time' has proven to be a successful tool in different treaties, including the Mine Ban Treaty, through its informal Universalization Contact Group that functioned during the first several years after the Treaty's entry into force. This group was pivotal in bringing on board dozens of states. Engagement at high level under the Mine Ban Treaty has been also supported through the High-Level Universalization Task Force.

¹ Palau, Cuba, Madagascar, Benin, Sri Lanka, Gambia, Namibia, Philippines, Maldives and Sao Tomé & Príncipe.

The 2RC and the Lausanne Action Plan should adopt actions that:

- Commit States Parties to make every possible effort, in a joint, concerted and enduring manner to bring onboard of the convention new States Parties.
- Commit all States Parties to promote ratification of/accession to the convention using all available avenues and spaces at global, regional and bilateral level, including high level engagement.

In the convention's machinery:

- States Parties should explore options on how to strengthen the capacity behind the universalization work and how to ensure this is a joint, concerted, continuous effort (including at high level) of all those that have interest and means to contribute concretely to the effort.
- Following the example of the Mine Ban Treaty, States Parties should create an informal group on universalization. A high-level envoy on CCM universalization could also be highly useful.

Delayed implementation and missed deadlines

Starting from last year, the CCM has been faced with its first missed deadlines for obligations under Art. 3 (stockpile destruction) and Art. 4 (clearance), with the concerned States Parties requesting extensions to their deadlines. More missed deadlines and requests for extensions (multiple) may be expected in the coming years.

Under Art. 3 States Parties are obliged to destroy their stockpiles *'as soon as possible and not later than eight years.'* The evidence of the past ten years has clearly shown that the eight-year deadline was plenty, with vast majority of states completing their destruction on or ahead of time. Nevertheless, three States Parties (Bulgaria, Guinea-Bissau, and Peru) have failed/will fail to meet their Art. 3 deadlines.

While extensions for stockpile destruction are permitted under Art. 3, the actual obligation is to destroy *'as soon as possible'* which should be understood to be before the deadline, unless exceptional circumstances exist.

All three cases of missed deadlines demonstrated insufficient political will and lack of timely and diligent planning. Bulgaria and Peru had done close to nothing during the eight-year period and submitted (incomplete) requests for significant extension to their deadlines. Guinea-Bissau missed its deadline without even submitting an extension request and found itself last year temporarily in violation of the convention.

In addition, both of the original extension requests were not comprehensive and lacked a clear plan how these States Parties intended to fulfill their obligations within the newly requested deadlines.

Under art. 4 States Parties are obliged to clear their contamination *'as soon as possible and not later than ten years.'* While extensions to this period, of up to five years, are allowed under the convention, it is believed that a vast majority of states with cluster munition contamination should be able to complete clearance within ten years. The provision of extension was intended for exceptional cases of massive contamination, such as in the case of Lao PDR, where it was evident from the beginning that more than ten years would be needed.

Nevertheless, two States Parties (Germany and Lao PDR) have already missed their clearance deadlines and were granted additional time. At least two more States Parties (Chile and Lebanon) will miss their deadlines this year and have already requested extensions. While this was certainly

expected in the situation of Lao PDR, the other cases raise questions over appropriate political will, as well as timely planning and action.

For instance, Chile has done no cluster munition clearance at all during its 10-year deadline, while Germany has done very little.

It is also worth noting that all four concerned States Parties requested five additional years – the maximum time allowed per extension request, raising a question whether some of these requests, as required by the convention, do not ‘exceed the number of years strictly necessary’ to complete this obligation. In addition, two of the requesters (Chile and Lao PDR) did not present a clear work plan for the requested time.

As the draft 2RC Progress Review Document (April 2020) points out: “ There is a clear danger that an undesirable precedent will be established if States Parties do not apply all reasonable efforts during the initial 10-year framework but continue to request the maximum extension period allowed by the convention when the original deadline has been missed.”

The 2RC and the Lausanne Action Plan should adopt actions that:

- Bring the focus back on ‘as soon as possible’ and on the necessity of respecting deadlines in regard to the time-bound obligations under art. 3 and 4.
- Introduce an ‘early warning’ mechanism in situations where no progress on fulfilling these obligations is reported for a prolonged time (for instance for two consecutive years) to engage the concerned State Party more effectively to complete stockpile destruction / land clearance ‘as soon as possible’ and within the deadline, and to avoid situations of noncompliance.
- Re-engage with States Parties (Comoros, Congo, Guinea, Guinea-Bissau, Guyana, Madagascar, Rwanda, Togo) that have not reported any actions to implement their obligations, including but not limited to submitting initial transparency reports or declaring stockpiles where concrete information exists of the presence of stockpiles.

In the convention’s machinery:

- Cases of delayed action on Art. 3 or Art. 4 could be referred to the President who would then need to address them as a matter of priority. Such a step was agreed upon by States Parties to the Mine Ban Treaty at its 2019 Review Conference. (Oslo Action Plan – Action#49)
- Referral could also be made to a Committee/Coordinators on Cooperative Compliance, if such were established through a 2RC decision.

Risk Education

Article 4 of the convention, as well as the DAP, includes ‘risk reduction education’ to ensure civilians living in or around cluster munition contaminated areas are made aware of and protected from the risks posed by cluster munition remnants. Cluster munition remnants continue to cause indiscriminate harm, with children comprising the majority (52% in 2018) of all casualties. Increasing pressure on land and resources due to population growth, economic factors and climate change may also increase exposure to contamination in affected states. However, as to date, reporting on risk reduction education efforts has been limited, with only five States Parties (Afghanistan, Croatia, Iraq, Lao PDR and Lebanon) providing detailed disaggregated data in their Article 7 reports.

The 2 RC and the Lausanne Action Plan should adopt actions that:

- Emphasize the importance of the delivery of effective, relevant and context specific risk education programs and associated measures such as marking, for the protection of civilians living in or around cluster munition contaminated areas.

- Commit affected States Parties to report fully on these programs and measures using disaggregated data in their Article 7 reports.
- Commit all States Parties that submit a request for extension to their Art. 4 deadline to include a comprehensive plan on risk education, in the situation the existing contamination affects or may affect local population.
- Make clear the obligation to provide risk education specific to cluster munition remnants, considering the context of the new broader understanding of EORE (explosive ordnance risk education), which requires risk education to be conducted for all types of weapons causing casualties.
- Change the terminology from ‘risk reduction education’ to ‘risk education.’

Victim Assistance

The CCM was the first multilateral treaty to make the provision of assistance to victims of a specific weapon a formal obligation for all States Parties with victims. The convention became a model for victim assistance and also in terms of survivors’ participation during the text negotiations. Today, the convention continues to set the highest legal standards for victim assistance. Although a relatively small number of States Parties have victim assistance obligations under the convention’s Art. 5, all States Parties to the CCM carry great responsibilities for providing victim assistance to the majority of recorded victims of cluster munitions around the world; and for upholding implementation of highest standard of victim assistance in IHL and realizing the potential benefits of these provisions.

Ten years since the entry into force of the convention and five years after the adoption of the Dubrovnik Action Plan, it is still a challenge for majority of States Parties responsible for victims to demonstrate clear progress under each pillar of victim assistance, with each State Party being able to present a selected minimum of concise achievable objectives from the outset of the action plan. Along the same lines, data collection and analysis were reported to be a major challenge. This area needs to be improved in order to better identify the actual needs and most importantly to effectively address them by States Parties, including by those which have already received significant international support for such measures with few results.

In particular, participation of victims under Art. 5 (f) of the convention remains weak. The commitment from DAP of “Increased involvement of victims” under Action 4.2, while not overly ambitious, requires much more specific active measures. It seems that the “gender and age sensitive, sustainable, meaningful and non-discriminatory” participation promised in this action has not occurred.

In the broader area of mine action, the IMAS Review Board approved a new International Mine Action Standard on Victim Assistance² that also acknowledges that victim assistance is a long-term commitment that will continue well after the completion of land release. For CCM States Parties victim assistance remains an ongoing legal obligation.

The 2RC and the Lausanne Action Plan should adopt actions that:

- Promote an integrated approach to victim assistance;
- Address issues relevant to people injured, survivors and indirect victims that have been identified in applicable international human rights and humanitarian law mechanisms and fora, such as the Universal Periodic Review, the Committee of the Convention on the Rights of Persons with Disabilities (CRPD), the Mine Ban Treaty and its Oslo Action Plan.

² Available here https://www.mineactionstandards.org/en/standards/document-detail/?tx_imas_document%5Bdocument%5D=296&tx_imas_document%5Baction%5D=show&tx_imas_document%5Bcontroller%5D=Document&cHash=7c2b7e6d5baaad35679a388042c4d607

- Strengthen data collection and analysis in order to better identify and address the needs of direct and indirect victims, and use existing information or a situation assessment, where possible, to avoid delaying the implementation of activities when a general need is known.

Compliance

Overall compliance with the convention has been commendable. However, there are some areas of concern, in particular since last year's missed deadlines under Art. 3 and Art. 4 and the upcoming challenges highlighted above.

Three States Parties missed their Art. 3 stockpile destruction deadlines, with two having done very little during the eight-year period, and with one finding itself temporarily in non-compliance by failing to meet the deadline and to submit a request for extension.

Similarly, four States Parties will miss their Art. 4 land clearance deadlines, one of which has done no clearance at all during the past ten years and so far, presented no clear plan for future completion.

Compliance with the annual Art. 7 transparency reporting requirement is way below acceptable with only 63% of annual reports submitted during the entire calendar year in 2019.

Only 31 States Parties have enacted specific domestic legislation to enforce implementation of the convention's provisions. And among these, only twelve (including Switzerland) explicitly prohibit investment in cluster munitions production.

Five States Parties have not reported using any cluster submunitions retained for permitted purposes, since retention was first reported (BiH, Bulgaria, Cameroon, Slovakia, and Sweden). It is therefore unlikely that the current holdings by these states constitute the "minimum number absolutely necessary" as required by the convention.

Lastly, and as elaborated above, even though almost all states not party are in *de facto* compliance with the ban norm on use, production, and transfer, the use of cluster munitions in Syria is still taking place.

The 2RC and the Lausanne Action Plan should adopt actions that:

- Recognize current compliance concerns under the CCM, as named above, and introduce a section on compliance in the LAP.
- Highlight the importance of fulfilling ALL obligations, including those under Art. 7 and Art. 9, as well as encouraging legislation that prohibits investment in cluster munitions; where possible actions should be time-bound.

In the convention's machinery:

- Creation of a Committee/Coordinators on Cooperative Compliance should be considered with a mandate to address all cases of non-compliance as well as compliance concerns.

Convention meetings and machinery

Meetings of States Parties (MSP) and Intersessional Meetings

We believe that annual MSPs of a minimum of four days should be maintained in the next five years following the 2RC. At the same time the intersessional work programme should be re-introduced, with a minimum duration of 1.5 to 2 days.

Intersessional Meeting provides an opportunity for additional, informal dialogue and check in on progress and challenges in universalization and implementation of the convention ahead of the MSP.

More specifically its objectives can be summarized as follows:

- To provide a platform for the President and the Committees to carry out their mandate of presenting preliminary observations concerning their activities and progress in implementation of matters related to their mandates.
- To provide a platform for States Parties implementing obligations under the convention and relevant action plan to provide updated information on implementation and to discuss progress and challenges in the lead up to the Meeting of the States Parties/Review Conference.
- To engage States not Party in the work of the convention and to receive updates on progress made towards ratification of/accession to the convention.
- To transmit to States Parties information on the status of preparation for the MSP, including by ensuring agreement on a draft agenda and programme of work.
- To provide a platform for the convention community to hold bilateral and multilateral discussions.

At the moment, the CCM and its community have only one opportunity – the formal MSP – once a year for such a dialog and is missing out on the more informal exchange of views and preparation work mid-year.

Reintroducing the Intersessional Meetings at this point in time would be also particularly useful for the extension request processes. Without the Intersessional Meetings we are collectively missing an opportunity for dialogue with states that request extensions, and these states are missing an opportunity to improve their requests before MSPs on the basis of public comments from states and other stakeholders.

Reintroducing the meetings would be a helpful way to foster the spirit of transparency, openness and collaboration that should prevail under this convention, and should contribute to more progress on the universalization and implementation fronts. It would also introduce more informal and dynamic interactions and a cooperative, energetic spirit within the CCM community.

CCM Intersessional Meetings do not need to be very long, with 1.5 to 2 days being sufficient. As done in the past, these should ideally be scheduled back-to-back with the MBT ISC meetings to piggyback on the participation and to ensure cost efficiency.

Convention Machinery

Following the review of issues of special concern as outlined above, we believe it is time for the CCM to establish:

- Committee/Coordinators on Cooperative Compliance with a mandate to address all cases of non-compliance with the convention and with the no-use norm, as well as all other compliance concerns.
- Should such a Committee/Coordinators not be established, the President's mandate should be extended to include all above matters.
- Cases of prolonged delay on Art. 3 or Art. 4 should be treated as compliance concerns and after two consecutive years of non-action on these obligations referred to either the Committee/Coordinators on Cooperative Compliance or the President, and addressed as a matter of priority (Similar decision was adopted at the 2019 Review Conference of the Mine Ban Treaty).