

CMC BRIEFING PAPER ON THE CONVENTION ON CLUSTER MUNITIONS

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The 2008 Convention on Cluster Munitions (CCM) is a legally binding international treaty that prohibits the use, production, stockpiling and transfer of cluster munitions and requires clearance of remnants and destruction of stocks. It requires states to provide assistance to survivors and their communities and builds on existing international human rights and humanitarian law. The Convention was signed by 94 states when it opened for signature in Oslo, Norway on 3 December 2008. It will enter into force six months after the 30th country has deposited its instrument of ratification with the Secretary General of the United Nations, who is the depositary of the treaty.

The Convention on Cluster Munitions is an historic achievement. The strength of the treaty is largely due to the prohibition on cluster munitions as an entire category of weapons.

The negotiators rejected proposals for broad exceptions from the ban and for a transition period during which cluster munitions could still be used. The treaty requires states to destroy existing stockpiles within eight years and to clear contaminated land within 10 years. The obligations relating to victim assistance are groundbreaking; they demand the full realization of the rights of people affected by cluster munitions and require states to implement effective victim assistance measures.

Although the treaty has not yet entered into force, it is already contributing internationally to the increasing stigma against cluster munitions. It is hoped and expected that no state or non-state armed group, including those states that have not been part of the Oslo Process, will ever use cluster munitions again.

1] A summary of the key obligations on states

- **General obligations and scope (Article 1)**

The production, stockpiling use, and transfer of all cluster munitions are prohibited in all circumstances, including in international conflicts and conflicts of a non-international nature. It is also prohibited to assist, encourage or induce anyone to engage in any activity prohibited by the Convention.

- **Definitions (Article 2)**

A cluster munition is defined in the Convention as: 'a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions.' The definition makes certain clarifications for weapons that have

submunitions but are not considered cluster munitions, such as weapons with submunitions designed for smoke, flare, and electronic counter-measures. Also falling outside the definition are weapons that have submunitions but that do not cause the indiscriminate area effects or UXO risks of cluster munitions. Such munitions must meet each of a series of five minimum technical characteristics set out in the treaty. (See below for additional details).

- **Stockpile destruction (Article 3)**

All States Parties must destroy all stockpiles of cluster munitions under their jurisdiction and control as soon as possible but no later than eight years after the Convention enters into force for the State Party. Should States Parties need additional time to destroy cluster munition stockpiles, a request must be submitted and extensions for a period of up to four years may be granted.

This article allows for the retention of a “minimum number” of cluster munitions and submunitions for training in and development of clearance techniques and counter-measures. It requires detailed annual reporting on the retained munitions. (See below for more details).

- **Clearance of contaminated areas (Article 4)**

States Parties are obliged to clear areas contaminated by cluster munitions as soon as possible but no later than 10 years after entry into force of the Convention for that State Party. States Parties have to report annually on the status and progress of clearance programmes, which should ensure that States start their clearance activities as soon as possible.

CMC believes that most affected countries should be able to clear contaminated areas well before the ten-year deadline. Should States Parties need more than 10 years to clear their contaminated areas, they may apply for extension periods of up to 5 years, but the extension period should not be longer than strictly necessary.

Article 4 also includes provisions for marking and fencing of contaminated areas, and provisions for risk reduction education.

Importantly, States Parties that have used cluster munitions in the past on the territory of another State Party are ‘strongly encouraged’ to provide assistance to help clear and destroy cluster munitions including provision of technical data on the location and nature of the cluster munitions strikes.

- **Victim assistance (Article 5)**

This article adopts a holistic view of victim assistance by requiring states parties to ensure that victims of cluster munitions can enjoy their human rights.

States Parties are obliged to provide assistance to cluster munition victims including medical care, rehabilitation and psychological support and to assist social and economic inclusion. Cluster munition victims include all persons directly impacted by cluster munitions as well as their affected families and communities.

States Parties must develop a national action plan to implement victim assistance activities and designate a national focal point within the government for coordinating all matters related to this article. In their work on victim assistance States Parties must consult with and involve cluster munition victims and organisations working on this issue. States Parties should integrate victim assistance work into existing mechanisms to make it more cost-efficient and effective.

- **International cooperation and assistance (Article 6)**

All States Parties in a position to do so are required to provide technical, material and financial assistance to States Parties affected by cluster munitions to assist with clearance, risk education, stockpile destruction and victim assistance including social and economic recovery.

In addition and as noted above, under the clearance obligations former user States Parties are strongly encouraged to provide assistance to States Parties who have been affected by their use of cluster munitions.

- **Transparency measures (Article 7)**

States Parties are obligated to report to the United Nations no later than 180 days after entry into force and on an annual basis by 30 April each year thereafter. They are required to report on the status of their treaty implementation, including: national implementation measures; the type, quantity and technical characteristics of cluster munitions and submunitions stockpiled; the status and progress of stockpile destruction programmes; the conversion or de-commissioning of production facilities; the size and location of areas contaminated by cluster munitions; the status and progress of cluster munitions clearance programmes; measures taken to provide risk education;

the status and progress of implementation of the treaty's victim assistance provisions; the amount of national resources allocated for clearance, stockpile destruction and victim assistance; and the type, quantity and destination of international cooperation and assistance provided.

- **Facilitation and clarification of compliance (Article 8)**

States Parties agree to consult and cooperate regarding implementation of the Convention and to work together to facilitate compliance with their obligations. A process is laid out to deal with the clarification and resolution of questions of compliance, including requesting clarification through the UN Secretary-General and recommending "appropriate measures" at a Meeting of States Parties. Meetings of States Parties may also adopt other procedures or "specific mechanisms for the clarification of compliance."

- **National implementation measures (Article 9)**

States Parties are obliged to take all appropriate legal, administrative and other measures to implement the Convention, including penal sanctions. The CMC urges all States Parties to enact comprehensive new national legislation.

- **Meetings of States Parties (Art. 11), Review Conferences (Art. 12) and Amendments (Art. 13)**

A first Meeting of States Parties must be held within one year of entry into force, and then annually until the first Review Conference, which must be held five years

after entry into force. If States Parties wish to amend the Convention, a majority must inform the Secretary-General of their desire to convene an Amendment Conference.

- **Signature (Art. 15), Ratification and accession (Art. 16), Entry into force (Art. 17) and Reservations (Art. 19)**

All countries that have not yet done so can sign the Convention at the United Nations in New York. Signatories must then ratify the Convention (usually through parliamentary approval), and formally deposit their instrument of ratification with the United Nations Office of Legal Affairs: treaty@un.org. States cannot make any reservations to the Convention when they ratify or accede (meaning they cannot formally declare that certain provisions do not apply to them).

The Convention will enter into force on the first day of the sixth month after the 30th ratification has occurred. Once the Convention has entered into force, states can no longer sign, but must accede or consent to be bound (essentially a one-step process of signature and ratification).

- **Relations with States not Party to the Convention (Article 21)**

States Parties are required to promote universalization of the Convention, to notify non-States Parties of their treaty obligations, and to discourage non-States Parties from using cluster munitions. States Parties may engage in military cooperation and operations with non-States Parties that might engage in prohibited activities.

Terms of the treaty that need clarification

Some terms or provisions of the treaty might be subject to conflicting interpretations. The following is a list of the CMC's key concerns and how we believe they should be commonly understood and implemented by States Parties.

1. Transit of cluster munitions

The definition of 'transfer' in Article 2 (identical to that in the Mine Ban Treaty) does not make it explicit that the transit of cluster munitions through States Parties is prohibited under this Convention. However, both the prohibition on assistance in Article 1(c) and the prohibition on transfers of cluster munitions in Article 1(b)

should be read to prohibit the transit of cluster munitions across, above, or through national territory. This is the common understanding under the Mine Ban Treaty.

States must make it clear that:

- As well as transfers, the transit of cluster munitions is prohibited under the Convention.

2. Investments

While it is not explicitly stated, the prohibition on assistance in Article 1(c) should be read to prohibit investments in cluster munitions producers.

States must make it clear that:

- The prohibition on assistance in Article 1(c) includes a prohibition on investments in cluster munitions producers.
- They intend to make it explicit in national legislation that investments are prohibited as has already been done by Belgium and Luxembourg.

3. Definitions

Although all cluster munitions are prohibited by definition under this Convention, the definitional clause at article 2(c) excludes from the category of “cluster munitions” weapons that employ submunitions but which should not have the humanitarian effects of cluster munitions. In order to be permitted, a weapon should not create indiscriminate area effects and UXO risks and must meet a cumulative series of five technical characteristics. These include the capacity for each submunition to individually seek out and engage a single target such as a vehicle; minimum weight and maximum number of submunitions criteria; electronic self-destruction mechanisms, and electronic self-deactivating features.

The only existing weapons with submunitions that article 2(c) could allow are the German SMArt 155, the French/Swedish BONUS, and the discontinued US SADARM project. All three of these systems use artillery shells containing two individual target-seeking submunitions. These weapons have not been widely used and are not widely stockpiled.

The restrictive nature of the technical criteria in 2(c) should prevent the future development of weapons that might have the effects of cluster munitions and the effects-based approach to the exclusion (“in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions”) will provide a valuable method for judging the humanitarian consequences of future technologies.

States must make it clear that:

- Any weapon they claim meets the criteria set out in Article 2(c) does not cause effects similar to cluster munitions.
- While the technical characteristics set out in 2(c) are necessary for a weapon to be excluded, these characteristics in themselves are not necessarily sufficient given the intent of article 2(c) to avoid

indiscriminate area effects and the risk of unexploded ordnance.

- Future Meetings of States Parties should regularly review the criteria in Article 2(c) to ensure they remain adequate to protect civilian populations.

4. Retained cluster munitions

Regarding the exemption for cluster munitions and submunitions retained for the purpose of development and training, it is not clear how the “minimum number absolutely necessary” will be interpreted. This makes it crucial that states comply fully with the detailed reporting requirement on cluster munitions retained for development and training.

States must make it clear that:

- The minimum number absolutely necessary of explosive sub-munitions retained under Article 3.6 should be in the hundreds or thousands or less, but not tens of thousands—as is the common understanding under the Mine Ban Treaty.
- Retaining any cluster munitions or submunitions should be the exception and not the rule; most States Parties, even if they currently stockpile cluster munitions, do not have a compelling need to retain any for any purpose.

5. Interoperability and foreign stockpiling of cluster munitions

The current text in Article 21 paragraph 3 leaves some ambiguity regarding States Parties relations with non-States Parties that might use cluster munitions during joint military operations. In particular it states that: *‘Notwithstanding [...] Article 1 [...] States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not parties to the Convention that might engage in activities prohibited to a State party.’*

However, Article 1(c) still prohibits States Parties from, under any circumstances, assisting, encouraging, or inducing anyone to engage in an activity prohibited under the Convention.

States must make it clear that:

- States Parties must not intentionally or deliberately assist, induce, or encourage any activity prohibited under this treaty – including use, transfer or stockpiling of cluster munitions – when engaging in joint operations with non-States Parties.
- There should be no stockpiling of non-States Parties’ cluster munitions on territory under a States Party’s jurisdiction or control.

- States Parties must ensure destruction or removal of cluster munitions of foreign states that are currently held on territory under their jurisdiction or control as soon as possible. Under the Mine Ban Treaty, some states applied the stockpile destruction deadline to foreign stocks as well.
- Even if foreign stocks are not under the jurisdiction or control of a State Party, the State Party should, to be consistent with the spirit of the treaty, insist on their removal.

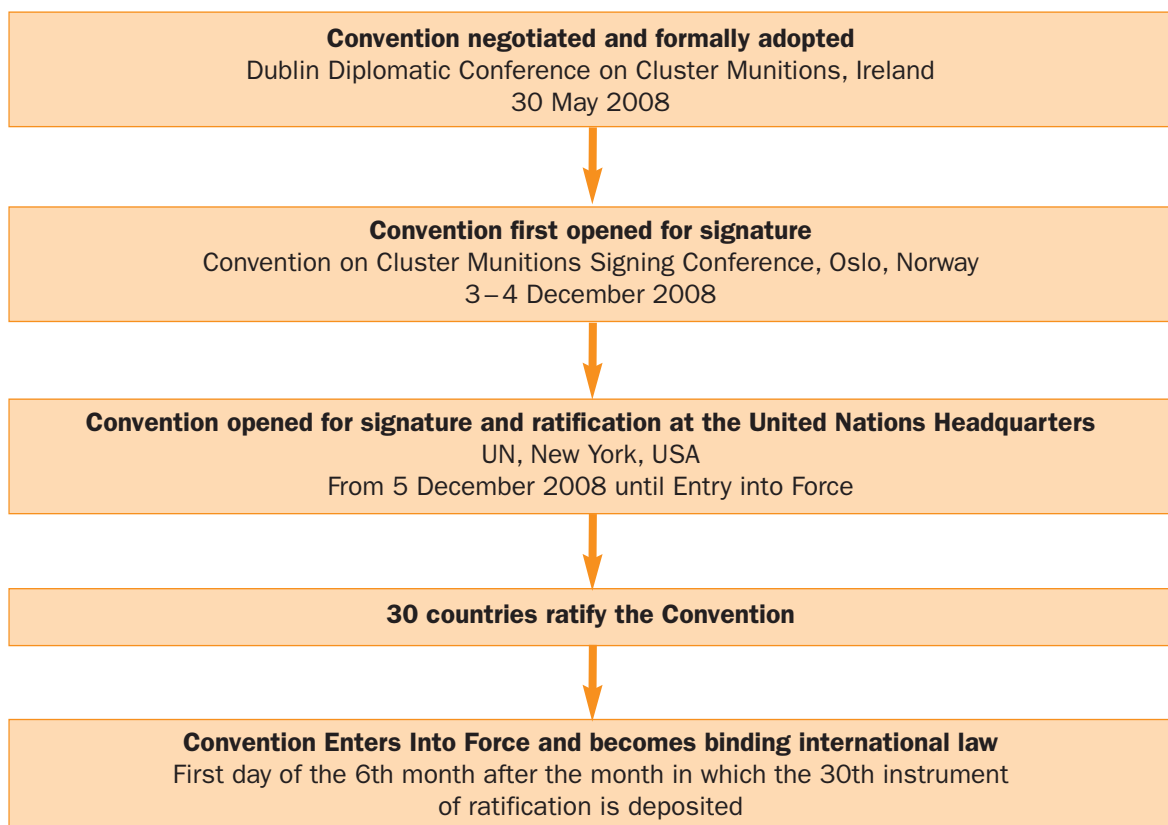
2] Signing and ratifying the convention

The Convention on Cluster Munitions was signed by 94 countries at the Convention on Cluster Munitions Signing Conference in Oslo, Norway on 3 – 4 December 2008. The Convention is now open for signature and ratification at the United Nations in New York. You can see the current list of signatories including ratifications on the CMC website: www.stopclustermunitions.org/treatystatus/

This Cluster Munition Coalition (CMC) document provides information on how to sign and ratify the Convention. It complements the ratification kit prepared by the International Committee of the Red Cross (ICRC).

Thirty ratifications are necessary for the Convention to enter into force and become binding international law (Article 17). Only when the Convention enters into force will states be bound by all of the Convention's terms and will the deadlines start counting down for clearance of contaminated land and destruction of remaining stockpiles. The CMC is challenging all states to ratify the Convention on Cluster Munitions without delay and to strive to be among the first 30 states responsible for triggering entry into force.

● Timeline: from Adoption of the Convention to Entry Into Force



How to sign the convention

From 5 December 2008 the Convention can be signed by states at the United Nations in New York. States wishing to sign the Convention on Cluster Munitions must notify the UN Treaty Section in New York.

● What is the significance of signing the Convention?

By signing the Convention, a state proclaims its consent to be bound by its provisions once it ratifies the treaty. In addition, the state is obligated to not act against the “object and purpose” of the treaty until the treaty becomes law for that state. Every country that has signed the Convention on Cluster Munitions must still ratify it in order to become a State Party bound by the Convention’s provisions.

After the Convention enters into force, states that have already signed can still ratify. However, after the Convention enters into force, it is no longer open for signature. States may no longer sign then ratify, but instead can become bound through the process of “accession,” which has the same effect as ratification.

● Who can sign the Convention?

Only Heads of State, Heads of Government or Ministers for Foreign Affairs are empowered by virtue of their functions, to sign a treaty on behalf of a State without having to produce “full powers” to that effect.

Other representatives wishing to sign the Convention must be in possession of appropriate “full powers”, which expressly authorise signature of a specific treaty by a named representative issued and signed by

one of these authorities. Please note in particular that all Ministers other than Ministers of Foreign Affairs require full powers. Full powers are distinct from credentials. Credentials alone are not adequate for the purpose of signing a treaty.

● What are the necessary procedures to sign the Convention?

States must fax or email a dated copy of the required “full powers” signed by a Head of State or Government or Minister of Foreign Affairs to the UN Treaty Section, along with a note verbale requesting an appointment to sign. A model Full Powers document prepared by the UN treaty Section is below.

UN Treaty Section, Office of Legal Affairs,
United Nations Headquarters, New York:
Tel: +1 212 963-5047
Fax: +1 212 963-3693
E-mail: treaty@un.org

Once the appointment has been made and the “full powers” document has been approved by the UN Treaty Section, the signing of the Convention will take place in the UN Treaty Section’s Signature Room S-3205, on the 32nd Floor of the UN Secretariat Building in New York. A template “full powers” document prepared by the United Nations is available below.

Model Full Powers

I, **[name and title of Minister for Foreign Affairs, Head of Government or Head of State]**,

HEREBY AUTHORIZE, [name and title], to sign the Convention on Cluster Munitions, done at Dublin on 30 May 2008, on behalf of the Government of **[name of State]**.

Done at **[place]** on **[date]**

[Signature]

To be signed by the Head of State or Government, or Minister for Foreign Affairs.

How to ratify the convention

● What is the next step after signing?

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. It is also the process necessary for the Convention to *enter into force* and become international law: 30 ratifications are necessary for that to happen.

States that have not yet signed the Convention must sign and ratify the Convention by depositing their instrument of “full powers” to sign, and their “instrument of ratification” to ratify, with the United Nations Secretary-General who is the depository of the Convention.

● How does the Convention become international law?

An international treaty, such as the Convention on Cluster Munitions, becomes law through the process called *entry into force*. Only when thirty states have ratified the Convention does it enter into force.

According to the Convention, it will enter into force on the first day of the sixth month after the month in which the thirtieth state has deposited its instrument of ratification. Each state that deposits its ratification instrument *after* the 30th state becomes bound by the Convention on the first day of the sixth month after the month in which it ratified.

When the Convention enters into force, the deadlines for destroying stockpiles and clearing contaminated land start to count down for the States Parties. At that time, the States Parties are also legally bound to implement the requirement to provide assistance to affected communities according to the Convention’s terms.

● How does the Convention become law for a particular country?

After signing the Convention states must first carry out the national domestic requirements necessary to ratify an international Convention. The procedure to ratify an international Convention differs from country to country and is usually set by the constitution or in national law. For some countries, ratification requires drafting new national legislation. In almost every country, ratification involves consideration by the parliament and/or executive, in addition to consultations among various government departments or ministries.

After the decision to ratify the Convention has been made at the national level, states must then deposit their ratification instrument with the United Nations, which has been tasked as depository of the Convention (Article 22). This is the step that makes that state a State Party to the Convention.

● How is ratification carried out?

States ratify the Convention by depositing an “instrument of ratification” with the United Nations in New York. The ICRC has drafted a model instrument of ratification available below.

To deposit the instrument of ratification states should contact the UN Treaty Office at the UN Headquarters in New York at the following address:

UN Treaty Section, Office of Legal Affairs,
United Nations Headquarters, New York:
Tel: +1 212 963-5047
Fax: +1 212 963-3693
E-mail: treaty@un.org

Note: States can sign and ratify the Convention at the same time by simultaneously depositing their instrument of “full powers” to sign and their “instrument of ratification” with the United Nations.

Model Instrument Of Ratification

For States Signatories

WHEREAS the Convention on Cluster Munitions was adopted at Dublin on 30 May 2008 and opened for signature at Oslo on 3 December 2008, WHEREAS the said Convention has been signed on behalf of the Government of _____ on _____,

NOW THEREFORE I, **[name and title of the Head of State, Head of Government or Minister of Foreign Affairs]**, declare that the Government of _____, having considered the abovementioned

Convention, ratifies the same Convention and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of ratification at _____ on _____.

[Signature]

[Seal]

This instrument must be signed by the Head of State, Head of Government or Minister of Foreign Affairs.

Additional Resources

● ICRC Ratification Toolkits and Model Legislation

The ICRC has produced Ratification Toolkits in consultation with the UN Treaty Section that contains additional information on ratification as well as:

- A Model Instrument of Ratification (available in Arabic, Chinese, English, French, Spanish, Russian)
- Model Legislation for Common Law States (available in English)
<http://www.icrc.org>
- **Cluster Munition Coalition (CMC)**
<http://www.stopclustermunitions.org>
- **UN Treaty Section**
<http://treaties.un.org>