



ICRC

## ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

# 2008 Convention on Cluster Munitions

The Convention on Cluster Munitions is a response to the suffering caused by cluster munitions, which have killed and injured many thousands of civilians in countries where they have been used. In May 2008, 107 States concluded an international treaty prohibiting these weapons. The negotiations that led up to this were part of the "Oslo Process", a Norwegian initiative whose aim was the conclusion of a treaty on cluster munitions by the end of 2008. The Convention was opened for signature on 3 December 2008 and entered into force on 1 August 2010.

An important addition to international humanitarian law (IHL), the Convention reinforces fundamental customary IHL rules that are applicable to all States. These rules require parties to a conflict to distinguish at all times between civilians and combatants, to direct operations only against military objectives and to take constant care to spare civilians and civilian objects. On the basis of this Convention, cluster munitions are considered – like exploding and expanding bullets, chemical weapons, biological weapons, anti-personnel mines, weapons using undetectable fragments and blinding lasers – as weapons prohibited under IHL.

### What are cluster munitions?

A cluster munition is a weapon that disperses or releases explosive submunitions: small, unguided explosives or bomblets (each weighing less than 20 kilograms) that are designed to explode prior to, on or after impact. Depending on the model, the number of submunitions dispersed or released by a cluster munition can vary from several dozens to over 600.

Under the terms of the Convention, weapons with fewer than ten explosive submunitions are not considered to be cluster munitions as long as each submunition weighs more than four kilograms, can detect and engage a specific target object and is equipped with electronic self-destruct and self-deactivating features. The Convention neither prohibits nor restricts the use of these weapons; however, their use is regulated by the general provisions of IHL.

### Why ban cluster munitions?

Cluster munitions have been a humanitarian issue for decades. They have taken a heavy toll on civilians during armed conflict and have continued to do so even after the end of fighting.

During armed conflict: Cluster munitions are designed to have a devastating impact in battle; they

scatter large numbers of explosive submunitions over vast areas in order to destroy mobile or multiple military targets. Civilian casualties are often high when cluster munitions are used against military objectives in populated areas. Since submunitions are generally unguided, wind and other factors can cause them to strike well outside the target area.

After the end of armed conflict: A high proportion of the submunitions that are dispersed or released fail to detonate as intended, contaminating large areas with deadly explosive ordnance. These devices have killed or injured many thousands of civilians. Their presence makes farming and other essential activities hazardous. It also hinders the reconstruction and development of infrastructure – roads, railways and power plants. Children, intrigued by the shape and colour of submunitions, are often tempted to pick them up. The consequences of this are grim: serious injury, disability or death.

### The basic obligations of the Convention

States adhering to the Convention must **never under any circumstances use, develop, produce, acquire, stockpile, retain or transfer cluster munitions**. They are also generally prohibited from assisting, encouraging or inducing

anyone to undertake any activity prohibited by its provisions.

In addition to the prohibitions mentioned above, States possessing, or affected by, cluster munitions are also required to take action in specific areas: destroying stockpiles, clearing remnants of cluster munitions and providing assistance for victims.

**A timetable for the destruction of stockpiles:** Each State is required – within eight years of becoming a party to the Convention – to destroy the stockpiles of cluster munitions under its jurisdiction and control. This deadline can be extended for an additional four years and further extensions of four years may also be granted in exceptional circumstances. States may also retain a limited number of cluster munitions and explosive submunitions for training in clearance and development of destruction techniques.

**A framework for clearance:** Each State must also clear its territory of unexploded submunitions within ten years of its becoming a party to the Convention. If a State is unable to do so, it may request extensions for additional periods of five years.

**Robust provisions on assistance for victims:** Each State Party that has cluster munition victims on its territory or under its control must

provide for their medical care and physical rehabilitation, psychological support and social and economic inclusion. In addition, the State must assess domestic needs in these areas and develop plans and mobilize resources to meet them. This is the first time that such a detailed provision on assistance for victims has been included in an IHL treaty.

It is worth noting that it is not only those who are killed or injured by cluster munitions who are defined as "cluster munition victims"; the term also covers families and communities that have suffered socio-economic and other negative consequences. This broad definition reflects a growing consensus among those concerned with weapons removal.

### **Measures and mechanisms to promote implementation and ensure compliance**

The Convention includes a variety of measures and mechanisms for promoting its implementation and for ensuring that its provisions are respected. Some of these may necessitate the adoption of domestic legislation and administrative regulations.

In the interests of transparency, States are required to **report annually** to the UN Secretary-General on a range of matters, such as the types and numbers of cluster munitions destroyed, the extent and the location of areas contaminated by cluster munitions, the status of clearance programmes, the measures taken to provide risk education and warnings to civilians, the status of programmes for providing assistance to victims and the measures taken domestically to prevent and suppress violations of the Convention. Reporting on these matters also provides an overview on the status of implementation.

In addition, **meetings of States Parties** are held regularly to review the effectiveness of the Convention and progress in implementation. The 2011 Meeting of States Parties established annual intersessional meetings of experts to further discuss the achievements and challenges in implementation. The ICRC and other organizations participate in these events.

The first Review Conference to review the operation and status of this Convention was held in 2015. Further Review Conferences shall be held, when requested by a State Party, at intervals of at least five years (Art. 12).

Should concerns arise about a State's **compliance** with the Convention, clarification may be sought through the UN secretary-general. If necessary, the issue may be submitted to a meeting of States Parties, which can adopt procedures or specific mechanisms to clarify the situation and draft a resolution. In any dispute involving two or more States Parties, efforts shall be made to settle the issue by negotiation or other peaceful means of their choice, such as referring the matter to the International Court of Justice in accordance with the Court's statute.

Finally, each State Party has an obligation to take all appropriate **legal, administrative and other measures** to implement the Convention. This includes the imposition of penal sanctions to prevent and suppress violations by persons, or on territory, under the State's jurisdiction or control. To this end, domestic legislation may have to be adopted and the regulations governing the armed forces amended.

The Implementation Support Unit for the Convention became operational in 2015. Among other things, the Unit provides support to States Parties in their implementation efforts and prepares the formal and informal meetings of the Convention.

### **Relations with States not party to the Convention**

The Convention does not prohibit "military cooperation and operations" with States not party to the Convention that might use cluster munitions during combined operations. States Parties may continue to be involved in planning, training, logistics, and combat operations with non-party States using these weapons. Such activities do not necessarily violate the Convention as long as the State Party does not itself use cluster munitions or directly participate in some other prohibited activity such as stockpiling, transferring or producing cluster munitions. In any

case, States Parties are required to discourage the use of cluster munitions by non-party States.

### **What practical impact will the Convention have?**

The Convention is bringing benefits to affected communities. The increasing efforts to clear areas contaminated by cluster munitions is saving lives and reclaiming land for agriculture and other productive activities. The Convention is also benefiting victims of cluster munitions by increasing commitment to various types of support, including medical care and rehabilitation activities. Most importantly, the Convention is preventing an immense amount of human suffering by ensuring that cluster submunitions are destroyed. A total of 1.4 million cluster munitions and 175 million submunitions have already been destroyed by States Parties.

### **What must a country do to sign and ratify the Convention?**

A State that wishes to be bound by the Convention must express its desire by submitting an instrument of ratification or accession to the UN secretary-general, the Convention's depositary. The Convention becomes binding upon that State six months after the deposit of the instrument (Art. 17). It may provisionally apply Article 1 of the Convention pending its entry into force.

A ratification kit for the Convention on Cluster Munitions is available from the ICRC: <https://www.icrc.org/en/document/2008-convention-cluster-munitions-ratification-kit>. The ICRC has also produced model legislation for common-law States on the Convention: <https://www.icrc.org/en/document/2008-convention-cluster-munitions-model-law>.