

Group of Governmental Experts 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

6 Septembre 2010

Original: English

2010, Second Session
 Geneva, 30 August-3 September 2010
 Item 6 of the agenda
 Cluster munitions

**Draft
 Protocol on cluster munitions**

Submitted by the Chairperson

The High Contracting Parties,

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

Recognising that victims of cluster munitions are all 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;

Resolved to do their utmost in providing assistance to the victims of cluster munitions,

Have agreed 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, to address the humanitarian impact caused by cluster munitions.
2. This Protocol shall apply to situations of conflict, and situations resulting from conflicts referred to in article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001.
3. 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.

4. 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.

5. This Protocol shall not apply to the munitions described in technical annex A.

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.

Article 3

International Humanitarian Law

1. In implementing this Protocol, each High Contracting Party and party to an armed conflict shall ensure full compliance with all applicable principles and rules of International Humanitarian Law.
2. Nothing in this Protocol shall be interpreted as detracting from, or otherwise prejudicing, other applicable principles and rules of international humanitarian law.

Article 4

General prohibitions and restrictions

1. It is prohibited for a High Contracting Party to use, transfer, otherwise acquire, stockpile or retain cluster munitions described in technical annex C.
2. It is prohibited for a High Contracting Party to use, develop, produce, otherwise acquire, stockpile or retain 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 2 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 2 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 Parties.
4. Notwithstanding a High Contracting Party's deferral of compliance pursuant to paragraph 3 of this article, each High Contracting Party shall:
 - (a) only use cluster munitions that do not meet the standards described in Technical annex B after approval by its highest-ranking operational commander in the area of operations or by the appropriate politically mandated operational authority; and
 - (b) use only cluster munitions with the lowest possible unexploded ordnance rate, consistent with military requirements.
5. Each High Contracting Party shall:
 - (a) take steps in any design, procurement, or production of cluster munitions, to incorporate additional safeguard mechanisms or designs, or otherwise minimize the unexploded ordnance rate;
 - (b) improve to the extent possible the accuracy of their cluster munitions and submunitions which meet the standards 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. It is prohibited for a High Contracting Party to transfer cluster munitions other than those described in Technical annex B.
7. In the event that a High Contracting Party determines that it cannot immediately comply with paragraph 6 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 transfer for a period not exceeding five years from the entry into force of this Protocol.

This deferral shall be announced by declaration at the time of its notification of consent to be bound by this Protocol.

8. Each High Contracting Party shall:

- (a) not transfer any cluster munition manufactured before 1990 except pursuant to security cooperation agreements or arrangements existing at the time of the entry into force of this Protocol;
- (b) not transfer any cluster munition that does not meet its design specifications,
- (c) not transfer any cluster munition that has been designated for destruction, except for the purposes of destruction pursuant to paragraph 10 of this article;
- (d) not transfer any cluster munition or submunition to any recipient other than a State or State agency authorized to receive such transfers;
- (e) prevent unauthorised transfers, from areas under its jurisdiction or control, of any cluster munition or submunition; and
- (f) ensure that any transfer in accordance with this article takes place in full compliance, by both the transferring and the recipient State, with the relevant prohibitions of this Protocol.

9. A High Contracting Party that has deferred compliance with the prohibition of transfer, pursuant to paragraph 6 of this article, shall, during the period of deferral, not transfer any cluster munition or submunition other than those described in Technical annex B, unless the recipient State agrees to:

- (a) apply this Protocol;
- (b) not use the cluster munitions after the expiration of the deferral period of the transferring High Contracting Party referred to in paragraph 7 of this article; and
- (c) not transfer the cluster munitions to a third party.

10. 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.

11. The obligations in this Article do 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.

Article 5

Storage and destruction of cluster munitions

1. Each High Contracting Party shall:

- (a) on entry into force of this Protocol for it or immediately after any period of deferred compliance under paragraph 3 of article 4, remove all cluster munitions other than those described in Technical annex B 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;
- (b) destroy or ensure the destruction of all cluster munitions under its jurisdiction and control other than those described in Technical annex B as soon as feasible, starting no later than:
 - (i) the entry into force of the Protocol for the High Contracting Party; or

(ii) the end of the period of deferred compliance referred to in paragraph 3 of article 4 if applicable to the High Contracting Party, and

(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.

2. A High Contracting Party that has cluster munitions other than those described in Technical annex B under its jurisdiction and control shall, after the expiration of any period of deferred compliance specified in sub-paragraph 1(b) of this article, develop a comprehensive plan in accordance with national procedures for the destruction of all such cluster munitions including a schedule and the time required for completion of destruction. The High Contracting Party shall revise the comprehensive plan as necessary.

Article 6

Clearance and destruction of cluster munition remnants

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. Areas affected by cluster munition remnants which are assessed pursuant to paragraph 3 of this article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. After the cessation of active hostilities and as soon as feasible, 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) assess and prioritise needs and practicability in terms of marking and clearance, removal or destruction taking into account the impact from other explosive remnants of war and landmines;
- (c) mark and clear, remove or destroy cluster munition remnants; and
- (d) take steps to mobilise resources to carry out these activities.

4. 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.

5. The High Contracting Parties shall co-operate, where appropriate, both among themselves and with other states, relevant regional and international organizations and non-governmental organizations on the provision of *inter alia* technical, financial, material and human resources assistance including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil the provisions of this Article.

Article 7

Recording, retaining and transmission of information

1. High Contracting Parties and parties to an armed conflict shall to the maximum extent possible and as far as practicable record and retain information on the use or abandonment of cluster munitions, to facilitate the rapid marking and clearance, removal or destruction of cluster munition remnants, risk education and the provision of relevant information to the party in control of the territory and to civilian populations in that territory.

2. High Contracting Parties and parties to an armed conflict which have used or abandoned cluster munitions which may become cluster munition remnants shall, without delay after the cessation of active hostilities and as far as practicable, subject to these parties' legitimate security interests, make available such information to the party or parties in control of the affected area, bilaterally or through the United Nations or another mutually agreed third party or, upon request, to other relevant organizations which the party providing the information is satisfied are or will be undertaking risk education and the marking and clearance, removal or destruction of cluster munition remnants in the affected area.

Article 8

Protection of humanitarian missions and organizations from the effects of cluster munitions

1. Each High Contracting Party and party to an armed conflict shall:

(a) protect, as far as feasible, from the effects of cluster munition remnants, humanitarian missions and organizations that are or will be operating in the territory under the control of the High Contracting Party or party to an armed conflict and with that party's consent; and

(b) upon request by such a humanitarian mission or organization, provide, as far as feasible, information on the location of all cluster munition contaminated areas that it is aware of in territory where the requesting humanitarian mission or organization will operate or is operating.

2. The provisions of this Article are without prejudice to existing International Humanitarian Law or other international instruments as applicable or decisions by the Security Council of the United Nations which provide for a higher level of protection.

Article 9

Victim assistance

1. High Contracting Parties and parties to the armed conflict shall, in accordance with domestic laws and procedures, as well as their obligations under applicable international law provide or facilitate the provision of appropriate and adequate assistance, including medical care, rehabilitation and psychological support and assistance for social and economic inclusion to cluster munition victims in territories under their jurisdiction or control. Each High Contracting Party and party to the armed conflict shall make every effort to collect reliable data with respect to cluster munition victims.

2. High Contracting Parties shall not discriminate against or among cluster munition victims, or between cluster munition victims and other victims of armed conflict or explosive remnants of war. Differences in treatment between such victims with disabilities and other persons with disabilities should be based only on medical, rehabilitative, psychological or socio-economic needs, taking into account age and gender sensitivities.

3. In order to fulfill its obligations under this Article, each High Contracting Party shall take, among others, the following measures, as appropriate:
- (a) assess the needs of cluster munition victims;
 - (b) develop, implement and enforce national laws and policies;
 - (c) develop, where it does not already exist, in accordance with national procedures, a national plan, with provision of adequate assistance, including timeframes to carry these activities, with a view to incorporating them within applicable national health, disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors in the field of assistance and rehabilitation of victims of cluster munitions;
 - (d) seek to mobilize national and international resources;
 - (e) closely consult with and involve cluster munition victims and their representative organizations;
 - (f) designate, in accordance with national procedures, a focal point within the government for coordination of matters relating to the implementation of this article; and
 - (g) strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Article 10

Co-operation and assistance

1. In fulfilling its obligations under this Protocol, each High Contracting Party has the right to seek and receive assistance and each High Contracting Party in a position to do so shall provide such assistance in accordance with the provisions of this article.
2. Each High Contracting Party in a position to do so shall provide assistance for the marking and clearance, removal or destruction of cluster munition remnants, and for risk education to civilian populations and related activities inter alia through the United Nations system, other relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.
3. Each High Contracting Party in a position to do so shall provide assistance, including to develop national capacities, for the care and rehabilitation and social and economic reintegration of victims of cluster munitions and cluster munition remnants. Such assistance may be provided inter alia through the United Nations system, relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.
4. Where, after entry into force of this Protocol, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a High Contracting Party, each High Contracting Party in a position to do so shall urgently provide emergency assistance to the affected High Contracting Party.
5. Each High Contracting Party in a position to do so shall contribute to trust funds within the United Nations system, other relevant trust funds, or by other means, to facilitate the provision of assistance under this Protocol.
6. Each High Contracting Party shall have the right to participate in the fullest possible exchange of equipment, material, services and scientific and technological information other than weapons related technology, necessary for the implementation of this Protocol.

High Contracting Parties undertake to facilitate such exchanges in accordance with national legislation and shall not impose undue restrictions on the provision of and receipt of clearance equipment and related technological information for humanitarian purposes.

7. Each High Contracting Party in a position to do so shall facilitate the development and use of technology and equipment for the detection and clearance of cluster munition remnants, including as appropriate through the use of trust funds established for that purpose or other means, in order to reduce the humanitarian impact of cluster munitions and cluster munition remnants.

8. Each High Contracting Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Protocol, in particular its humanitarian objectives, including through the timely collection and release of relevant data and information, and the facilitation of the entry and exit of assistance-related personnel, material and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.

9. Each High Contracting Party undertakes to provide information to the relevant databases on mine action established within the United Nations system, especially information concerning various means and technologies of clearance of cluster munition remnants, lists of experts, expert agencies or national points of contact on clearance of cluster munition remnants and, on a voluntary basis, technical information on relevant types of explosive ordnance.

10. High Contracting Parties may submit requests for assistance substantiated by relevant information to the United Nations, to other appropriate bodies or to other states. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations and non-governmental organizations.

11. In implementing the provisions of this article, High Contracting Parties shall make use of, where appropriate, existing mechanisms, tools and databases within the Convention on Certain Conventional Weapons framework and other relevant instruments and mechanisms.

12. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and in co-operation with the requesting High Contracting Party and other High Contracting Parties, recommend the appropriate provision of assistance. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required, including possible contributions from the trust funds established within the United Nations system.

13. High Contracting Parties in a position to provide assistance shall, where appropriate, cooperate to develop coordinated strategies for the effective and efficient provision of assistance.

Article 11

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. For this purpose, a Conference of High Contracting Parties shall be held annually, unless otherwise 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) review the technical annexes every five years beginning with the fifth Annual Conference of High Contracting Parties and consider whether any amendments to them should be made, in order to further minimise the humanitarian impact of cluster munitions;
- (c) consider matters pertaining to cooperation and assistance and national implementation of this Protocol, including annual national reporting; and
- (d) prepare for review conferences; and
- (e) consider other relevant matters.

3. 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 5;
- (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 5; and
 - (ii) the comprehensive plan referred to in paragraph 2 of article 5;
- (e) cluster munitions that do not meet the standards described in technical annex B retained in accordance with paragraph 11 of article 4;
- (f) the 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.

4. A High Contracting Party which has availed itself of a deferral period referred to in this Protocol shall provide additional information in their annual reports on the implementation of the applicable Article during that deferral period, including on the following matters:

- (a) cluster munitions retained for use in accordance with paragraph 3 of article 4; and
- (b) cluster munitions transferred in accordance with paragraph 7 of article 4, and the recipient State or State agency to which these munitions were transferred.

5. 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.

Article 12
Compliance

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this protocol by persons or on territory under its jurisdiction or control.
2. The measures envisaged in paragraph 1 of this article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, willfully kill or cause serious injury to civilians and to bring such persons to justice.
3. Each High Contracting Party shall require that its armed forces and relevant agencies, departments or ministries issue appropriate instructions and operating procedures and that its personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.
4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

Technical annex A

The Protocol shall not apply to the following munitions:

1. a munition or submunition designed to dispense flares, smoke, pyrotechnics, or chaff;
2. a munition or explosive submunition designed exclusively to engage aircraft, missiles or unmanned aerial vehicles while in flight;
3. a munition or submunition designed to produce electrical or electronic effects;
4. a munition that has all of the following characteristics:
 - (a) each munition contains fewer than ten explosive submunitions;
 - (b) each explosive submunition weighs more than four kilograms;
 - (c) each explosive submunition is designed to detect and engage a single target object;
 - (d) each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (e) each explosive submunition is equipped with an electronic self-deactivating feature.
5. a cluster munition that incorporates a mechanism or design which, after dispersal, results in no more than 1% unexploded ordnance across the range of intended operational environments.

Technical annex B

The following cluster munitions are not subject to the prohibitions in paragraph 2 of article 4 of this Protocol:

1. A cluster munition whose explosive submunitions possess at least one of the following safeguards that effectively ensure that unexploded submunitions will no longer function as explosive submunitions:
 - (a) a self-destruction mechanism or a self-neutralisation mechanism;
 - (b) a self-deactivating feature; or,
 - (c) two or more initiating mechanisms, at least one of which functions as a self-destruction mechanism.
2. A cluster munition that is designed exclusively as an anti-ship munition for use at sea, and is used against ships which are at sea at the time of the attack;
3. A cluster munition that is designed exclusively for use by direct fire delivery systems and to engage directly and specifically a target object, and disperses or releases fewer than ten explosive submunitions;
4. A cluster munition that is designed exclusively as an anti-runway munition and disperses or releases explosive sub-munitions each of which weighs more than five kilograms, and is used against hard-surfaced runways, constructed from mass concrete, reinforced concrete, asphalt or a combination of these, or from an equivalent material which yields the same compressive strength.

Technical annex C

The use, transfer, acquisition, stockpiling or retention of the following munitions are prohibited in accordance with paragraphs 1 and 2 of article 4.

1. Cluster munitions other than those described in technical annex B and produced before 1980;
 2. Cluster munitions other than those described in technical annex B unless subject to deferral periods pursuant to paragraphs 3 and 7 of article 4.
-