

UNIVERSALISATION OF THE CONVENTION ON CLUSTER MUNITIONS

The capacity of the Convention on Cluster Munitions (CCM) to put an end for all time to the suffering and casualties caused by cluster munitions hinges on states' wide acceptance of it as a legal standard and global norm. The CMC believes that every country in the world should be able to join the CCM. It is a question of political will and placing a priority on the protection of civilians over outdated and indiscriminate weapons.

Under Article 21 of the CCM, States Parties have a legally binding obligation to "encourage States not party to this convention to ratify, accept, approve or accede to this convention, with the goal of attracting the adherence of all States to this convention." They must also "promote the norms it establishes." Under this obligation, messages should be delivered at the political and military levels and repeatedly before and during military operations. States should coordinate their work on universalisation amongst each other and with the CMC, UN and ICRC.

The CMC will monitor States Parties' fulfilment of these obligations in the same way as any other of the CCM's obligations, with an expectation of reporting by states on their activities to promote universal adherence to the convention.

KEY MESSAGES FROM CMC:

- *Strength in numbers* – The more countries that join the CCM, the greater the protection for civilians will be.
- *All states must get on board* – Sound arguments exist to overcome all objections to the CCM.
- *Spread the word* – States Parties have an obligation to reach out to states not party to urge them to join, and civil society will be watching their efforts.

PERCEIVED OBSTACLES TO JOINING THE CCM

There are three main areas where governments have identified obstacles to joining the Convention on Cluster Munitions¹:

- Concerns over **capacity** to implement the convention's obligations, given cost and time;
- Concerns over **national security** issues and perceived military necessity of cluster munitions; and
- A general **lack of priority** for the issue of cluster munitions amidst other pressing concerns.

Capacity for implementation

"How would we fulfil the obligations we would assume if we signed the convention? Right now, we do not think we have the resources to do so."

- The convention places the ultimate responsibility for clearance and the provision of victim assistance on affected states because of their duty to protect and care for their own people.
- The convention requires all states "in a position to do so" to provide technical, material, and financial assistance to affected states. Affected states will therefore not have to meet their obligations alone.
- The convention should not be seen as a burden, but rather an opportunity for affected states to get support for work that they would otherwise have to undertake anyway in the course of exercising their fundamental duties as states towards their citizens.
- 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 enters into force. This assistance includes information on types, quantities, and location of cluster munition remnants, all of which can facilitate clearance.
- States facing exceptional circumstances, such as very high levels of contamination, can request one or more extensions of up to five years each.

¹ This section is drawn from material produced by Human Rights Watch <http://www.hrw.org/en/news/2009/04/14/twelve-facts-and-fallacies-about-convention-cluster-munitions>.

“What about destroying stockpiles?”

- The convention gives States Parties eight years to destroy their stockpiles of cluster munitions. If a State Party cannot meet that deadline due to exceptional circumstances, it can request one or more extensions of up to four years each.
- The Mine Ban Treaty allows States Parties only four years, with no extensions, to destroy their stocks of antipersonnel landmines. Very few States Parties have failed to meet that deadline and mainly because they failed to start planning and destruction early enough. While landmines are easier to destroy than cluster munitions, parties to the Convention on Cluster Munitions have at least twice as long to finish destruction.
- The obligations for cooperation and assistance also apply to stockpile destruction, meaning that by joining the convention, countries with stockpiles have the right to request and receive technical, material and financial assistance from other States Parties.

National security and military necessity

“Banning cluster munitions would undermine our national security, especially when our neighbours have not joined.”

- The military utility of cluster munitions is limited in modern warfare. 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, where the humanitarian harm of cluster munitions is magnified.
- Using cluster munitions is often counterproductive for modern militaries. They interfere with military operations and endanger friendly troops and civilians. Continued use of the weapons would increase civilian hostility towards the users.
- Many cluster munitions are already reaching the end of their shelf life and will soon be unsafe to use.
- Alternatives to cluster munitions exist and most defence companies and armed forces are moving away from cluster munitions anyway.
- Cluster munitions are poor defensive weapons. It does not make sense to use them on one's own soil because the large numbers of duds they leave behind endanger civilians.
- Using this stigmatized weapon will attract international condemnation, which is counter to a state's national interests. The political cost of using cluster munitions would be high.
- By joining the convention, a state will help increase the stigmatization of cluster munitions. A State Party's enemies will find it particularly difficult to use cluster munitions in any conflict involving a State Party given the potential for a public and media backlash.

“Article 21 allows countries that work with allies outside the convention to assist them with use of cluster munitions, fundamentally undermining the ban.”

- The CMC opposed Article 21 as it is poorly drafted, open to interpretation, and politically motivated rather than based on humanitarian concerns. However, it is unlikely to have a negative humanitarian effect by promoting or facilitating ongoing use of cluster munitions.
- Under Article 1(1)(c), States Parties shall not assist states not party with activities prohibited by the convention. Article 21 does not change this rule, which should be read broadly to encompass a wide range of assistance.
- All countries concerned about Article 21 as a potential loophole should join the CCM in order to promote a strict reading of the article and hold to account States Parties engaged in joint operations with allies outside the convention. Standing outside and criticizing Article 21 will not help strengthen the prohibition on assistance.

“The convention contains a loophole for wealthy countries to continue using, producing and trading in certain types of high-tech cluster munitions.”

- The CCM places a categorical prohibition on cluster munitions. No clear definition of a cluster munition existed at the time of the negotiations. The method used to reach a definition of 'cluster munition' was to consider the effects of the weapons that have caused the problem. The resulting definition captures all weapons with submunitions that cause either an 'indiscriminate area effect' or pose risks of unexploded ordnance.

- Through five technical safeguards, the definition clarifies which weapons with submunitions should not cause the effects of cluster munitions and excludes them from the ban.
- The CMC considers that any weapons excluded based on the technical characteristics listed at Article 2(2)(c) should be monitored to ensure that they comply with the humanitarian requirements of the chapeau language of Article 2(2)(c). States Parties to the CCM should promote this approach at meetings of the convention.

CCM as a priority

"The CCM is just not a priority for us right now given so many other pressing matters facing our government. It is also not relevant since we are not affected and do not have stockpiles."

- With every new country that joins the CCM, the global norm rejecting this weapon and requiring assistance to those affected is strengthened. It does not matter whether a country is big or small; affected, stockpiler or neither. By joining the CCM each state gives one more voice in favour of the ban.
- By joining the CCM, states that may not be affected by cluster munitions today will strengthen the global stigmatization of the weapon and therefore help prevent further use which could affect them in the future.
- 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 gun violence. By joining the range of international instruments on the protection of civilians, states show solidarity with and help to strengthen each others' efforts to promote peace and security for all.
- Joining the CCM should not be an onerous process, in particular for states with no stockpiles or affected communities. For these states, accession should involve a straightforward procedure, with which the CMC, ICRC and UN all stand ready to provide support.

Prepared by CMC staff
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