

**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**

CCW/GGE/2008-III/3  
28 July 2008

Original: ENGLISH

---

**2008, Third Session**  
**Geneva, 7-25 July 2008**  
Item 9 of the Agenda  
**Adoption of procedural report**

## **PROCEDURAL REPORT**

Submitted by the Secretariat

1. The Meeting 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 (CCW) held at Geneva from 7 to 13 November 2007 decided, as contained in paragraph 37 of its Report (CCW/MSP/2007/5), that:

“The Group of Governmental Experts (GGE) will negotiate a proposal to address urgently the humanitarian impact of cluster munitions, while striking a balance between military and humanitarian considerations.

The GGE should make every effort to negotiate this proposal as rapidly as possible and report on the progress made to the next Meeting of the High Contracting Parties in November 2008.

The work of the GGE will be supported by military and technical experts. The GGE will meet in 2008 not less than three times for a total of up to seven weeks, as follows:

- 14 – 18 January
- 7 – 31 July
- 1 – 5 September
- 3 – 7 November

The Chairperson of the GGE, in consultation with the regional groups, shall decide on the duration of the second and the third sessions of the Group of Governmental Experts.”

2. Pursuant to the relevant decision of the Meeting of the High Contracting Parties to appoint “a representative of the Western European and Others Group as Chairperson of the Group of Governmental Experts” as contained in paragraph 41 of its Report

(CCW/MSP/2007/5), the Group of Governmental Experts was chaired by Ambassador Bent Wigotski of Denmark.

3. Pursuant to the relevant decision of the Meeting of the High Contracting Parties, the Chairperson of the Group of Governmental Experts in consultation with the regional groups decided at its first 2008 session that the second 2008 session of the Group of Governmental Experts would be held from 7 to 11 April 2008, as contained in paragraph 17 of its Procedural Report (CCW/GGE/2008-I/3), and that the third 2008 session of the Group in July would be shortened accordingly and would end one week earlier than scheduled by the 2007 Meeting of the High Contracting Parties.

4. The third 2008 session of the Group of Governmental Experts was held at Geneva from 7 to 25 July 2008.

5. The following States Parties to the Convention participated in the work of the Group: Albania, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Holy See, Honduras, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Lao People's Democratic Republic, Latvia, Liberia, Lithuania, Madagascar, Mali, Malta, Mexico, Moldova, Montenegro, Morocco, Netherlands, New Zealand, Niger, Norway, Pakistan, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, and Venezuela (Bolivarian Republic of).

6. The following Signatory States to the Convention also participated in the work of the Group: Egypt and Viet Nam.

7. The following States not parties to the Convention participated as observers: Angola, Azerbaijan, Brunei Darussalam, Burundi, Ghana, Haiti, Iraq, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mozambique, Oman, Qatar, Swaziland, Syrian Arab Republic, and Thailand.

8. The representatives of the United Nations Development Programme (UNDP), United Nations Institute for Disarmament Research (UNIDIR), United Nations Mine Action Service (UNMAS), and United Nations Office for Disarmament Affairs (UNODA) took part in the work of the Group.

9. The representatives of the International Committee of the Red Cross (ICRC) took part in the work of the Group. The representatives of the Geneva International Centre for Humanitarian Demining (GICHD) and the European Commission also participated in the work of the Group.

10. The representatives of the following non-governmental organisations took part in the work of the Group: Cluster Munition Coalition, Handicap International, Human Rights Watch, International Campaign to Ban Landmines, Landmine Action, University of Exeter, and Women's International League for Peace and Freedom.

11. On 7 July 2008, the session was opened by the Chairperson, Ambassador Bent Wigotski of Denmark. He was assisted by Maj. Gen. Lars C. Fynbo of Denmark as Chairperson of the Meetings of the Military and Technical Experts (MMTE); Mr. Craig Maclachlan of Australia as Friend of the Chair (FOC) on Cooperation and Assistance; Mr. Markus Reiterer of Austria as FOC on Victim Assistance; Lt. Col. Jim Burke of Ireland as FOC on Definitions; and Mr. Ryuichi Hirano of Japan as FOC on Protection of civilians and civilian objects. Mr. Peter Kolarov, Political Affairs Officer, Office for Disarmament Affairs, Geneva Branch, served as Secretary of the Group, and was assisted by Mr. Bantan Nugroho, Political Affairs Officer.

12. The Group held plenary meetings and informal open-ended meetings under the Chairperson of the MMTE and the Friends of the Chair and considered document CCW/GGE/2008-III/2, titled “Cluster Munitions”, referred to as the “Chair’s paper”. The document is available in all official languages through the Official Document System of the United Nations at <http://documents.un.org>, and the official CCW website as part of the website of the United Nations Office at Geneva at <http://www.unog.ch/disarmament/CCW>.

13. At its first plenary meeting, on 7 July 2008, the Group confirmed the agenda as adopted at the first 2008 session of the Group (CCW/GGE/2008-I/3, Annex 1), confirmed the Rules of Procedure as adopted and used by the Third Review Conference (CCW/CONF.III/11, Part III), and agreed on its provisional Programme of Work. The Programme of Work of the third 2008 session of the Group of Governmental Experts is contained in Annex I.

14. The Group of Governmental Experts heard a presentation by the Russian Federation on “Integration of International Humanitarian Law in the Armed Forces of the Russian Federation”.

15. At its final plenary meeting on 25 July 2008 the Group of Governmental Experts heard the reports of the Chairperson of the MMTE and the Friends of the Chair. At the same plenary meeting the Chairperson of the Group submitted under his own responsibility a revised version of the Chair’s paper for consideration at the fourth 2008 session of the Group of Governmental Experts, as contained in Annex II.

16. At the same plenary meeting on 25 July 2008 the Group of Governmental Experts adopted the procedural report of its third 2008 session, as contained in document CCW/GGE/2008-III/CRP.1, as orally amended, which is being issued as document CCW/GGE/2008-III/3.

Annex I**PROGRAMME OF WORK**

of the Third 2008 Session of the Group of Governmental Experts

Monday, 7 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u>: Opening formalities; General provision and scope of application; Definitions</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u>: Protection of civilians and civilian objects</li> </ul>
Tuesday, 8 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>FOC</u>: Protection of civilians and civilian objects</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u>: Victim assistance</li> <li>• <u>FOC</u>: Victim assistance</li> </ul>
Wednesday, 9 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u>: Cooperation and assistance</li> <li>• <u>FOC</u>: Cooperation and assistance</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>FOC</u>: Definitions</li> </ul>
Thursday, 10 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u>: Protection of civilians and civilian objects</li> <li>• <u>FOC</u>: Protection of civilians and civilian objects</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>MMTE</u>: Recording, retaining and transmission of information</li> <li>• <u>FOC</u>: Cooperation and assistance</li> </ul>
Friday, 11 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>FOC</u>: Protection of civilians and civilian objects</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>FOC</u>: Protection of civilians and civilian objects</li> </ul>
Monday, 14 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>MMTE</u>: Clearance and destruction; Recording, retaining and transmission of information</li> <li>• <u>FOC</u>: Cooperation and assistance</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>FOC</u>: Definitions</li> </ul>
Tuesday, 15 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>FOC</u>: Definitions</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u>: Possible elements to be included in a text serving as the basis for negotiations on Articles 2, 4, 5 and 6</li> </ul>
Wednesday, 16 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u>: Articles 6, 9, 12, and 13</li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• Informal consultations</li> </ul>
Thursday, 17 July 2008	10.00 – 13.00	<ul style="list-style-type: none"> <li>• <u>Plenary</u></li> </ul>
	15.00 – 18.00	<ul style="list-style-type: none"> <li>• <u>FOC</u>: Definitions</li> </ul>

Friday, 18 July 2008	10.00 – 13.00	• <u>MMTE</u>
	15.00 – 18.00	• Informal consultations
Monday, 21 July 2008	10.00 – 13.00	• <u>MMTE</u>
	15.00 – 18.00	• <u>FOC</u> : Definitions
Tuesday, 22 July 2008	10.00 – 13.00	• <u>MMTE</u>
	15.00 – 18.00	• <u>FOC</u> : Cooperation and assistance • <u>FOC</u> : Victim assistance
Wednesday, 23 July 2008	10.00 – 13.00	• <u>FOC</u> : Protection of civilians and civilian objects
	15.00 – 18.00	• <u>Plenary</u> : Article 1 • <u>MMTE</u>
Thursday, 24 July 2008	10.00 – 13.00	• Informal consultations
	15.00 – 18.00	• Informal consultations
Friday, 25 July 2008	10.00 – 13.00	• <u>Plenary</u> : Wrap-up; Adoption of the Procedural Report; Closure of the session

Annex II

**CLUSTER MUNITIONS<sup>1</sup>**

**Preamble**

The High Contracting Parties,  
[...]

*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 not apply to mines 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 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (the Convention).
3. This Protocol shall apply in all situations referred to in Article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001, and to all situations resulting from conflicts referred therein.
4. This Protocol is without prejudice to existing or future international humanitarian law [which provide for stricter obligations or which have wider applicability] [applicable to the High Contracting Parties establishing [stricter] obligations][which specifically addresses the subject matter of this Protocol]

---

<sup>1</sup> This annex is reproduced as submitted by the Chairperson.

## Article 2. Definitions

For the purposes of this protocol:

### Cluster munition - Option A:

1. **Cluster munition** means
  - (a) a conventional munition that is designed to disperse or release explosive submunitions, and includes those explosive submunitions
  - (b) *a dispenser, affixed to an aircraft, which is designed to disperse or release multiple explosive sub-munitions in a single act, other than direct fire munitions.*

### Cluster munition - Option B:

1. **Cluster munition** means a carrier-container that is designed to disperse or release explosive submunitions, and includes those explosive submunitions.

[2. **Carrier-container** means:

- (a) *A conventional munition or,*
- (b) *A dispenser, affixed to an aircraft, which is designed to eject or disperse or release multiple explosive sub-munitions in a single act, other than direct fire munitions]*

3. **Explosive submunition** means a conventional munition 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.
4. **Failed cluster munition** means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered, and which should have dispersed or released its explosive submunitions but did not do so.
5. **Unexploded submunition** means an explosive submunition which has been dispersed or released by or otherwise separated from, a cluster munition and has failed to explode as intended.
6. **Abandoned cluster munitions** means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, 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.
7. **Cluster munition remnants** means failed cluster munitions, abandoned cluster munitions and unexploded submunitions.

8. **Military objective** means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
9. **Civilian objects** are all objects which are not military objectives as defined in paragraph 8 of this Article.
10. **Concentration of civilians** means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.
11. **Feasible precautions** are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.
12. **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.
13. **Self-destruction mechanism** means an incorporated or attached automatically-functioning mechanism, [which is in addition to the primary initiating mechanism of the munition, and] which secures the destruction of the munition into which it is incorporated or to which it is attached.
14. **Self-neutralisation mechanism** means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.
15. **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.
16. ***Cluster munition victims** means 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. They include those persons directly impacted by cluster munitions as well as their affected families and communities.*
17. **Cluster munition contaminated area** is an area known or suspected to contain cluster munition remnants.
18. **Shelf-Life** means the period of time [as determined by the High Contracting Party] during which the technical and performance characteristics of reliability and safety of cluster munitions in its national military stocks can be maintained [without incurring significant additional costs].

**Article 3. Protection of civilians, civilian population and civilian objects**

1. The High Contracting Parties and parties to the conflict [, using cluster munitions in accordance with the provisions of this Protocol,] shall ensure full compliance with all the applicable principles and rules of international humanitarian law, including those set forth in this Article. Nothing in this Article/Protocol shall be interpreted as detracting from or otherwise prejudicing other applicable principles and rules of international humanitarian law.
2. In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.
3. All feasible precautions shall be taken to protect civilian population, individual civilians and civilian objects from the effects of cluster munitions.
4. It is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by cluster munitions.
5. Indiscriminate attacks [by cluster munitions] are prohibited. Indiscriminate attacks are:
  - (a) those which are not directed at a specific military objective;
  - (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
  - (c) those which employ a method or means of combat the effects of which cannot be limited as required by [this Protocol] [the applicable principles and rules of international humanitarian law]; and, consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.
6. Among others, the following types of attacks are to be considered as indiscriminate:
  - (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
  - (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
7. *It is prohibited in all circumstances to make any military objective located within a concentration of civilians [or in areas normally inhabited by civilians] the object of attack using cluster munitions.*

8. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

9. (1) *It is prohibited to attack, destroy, remove or render useless by cluster munitions objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, [or pharmaceutical installations] for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.*

(2) *The prohibitions in sub-paragraph (1) of this paragraph shall not apply to such of the objects covered by it as are used by an adverse Party:*

(a) *as sustenance solely for the members of its armed forces; or*

(b) *if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.*

(3) *In recognition of the vital requirement of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in sub-paragraph (1) of this paragraph may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.*

#### **Article 4. General prohibitions and restrictions**

##### **Option A:**

1. The High Contracting Parties recognize that technical improvements can play an important role in minimizing the humanitarian impact of cluster munitions.

2. Upon entry into force of this Protocol, the High Contracting Parties undertake:

(a) Not to develop, produce or otherwise acquire cluster munitions, which do not possess safeguards in the form of a self-destruction mechanism, self-neutralization mechanism or self-deactivating feature, or a combination thereof, or any other device which effectively ensures that an unexploded submunition will no longer function as designed;

- (b) during the transition period set forth in paragraph 4, to only use cluster munitions that do not meet either of the criteria in paragraph 4 after direct approval by the highest-ranking commander in the theatre of operations;
- (c) during the transition period set forth in paragraph 4, to take steps in any design, procurement, or production of cluster munitions to minimize the unexploded ordnance rate or incorporate additional fail-safe mechanisms;
- (d) as soon as feasible only to use cluster munitions that incorporate self-destruct, self-deactivation, or self-neutralization mechanisms;
- (e) to complete an evaluation of the military requirements and remove the stocks of cluster munitions in excess of these requirements from active inventory as soon possible;
- (f) to the extent possible to improve the accuracy of their cluster munitions; and
- (g) to endeavour to only use cluster munitions with the lowest possible unexploded ordnance rate, consistent with military requirements.

3. The High Contracting Parties in a position to do so may [shall] facilitate exchange of equipment, material, and scientific and technological information that will lessen the humanitarian impact of cluster munitions [and will increase the reliability of regulated cluster munitions].

4. Within [...] years from the entry into force of this Protocol the High Contracting Parties shall be required only to use, develop, produce, otherwise acquire, stockpile or retain cluster munitions that have at least [...] of the following characteristics:

- (a) safeguards in the form of a self-destruction mechanism, self-neutralization mechanism or self-deactivating feature, or a combination thereof;
- (b) contain any other device which effectively secures that the explosive submunition will no longer function as designed;
- (c) contain submunitions that do not result in more than [...] % unexploded ordnance across the range of intended operational environments, after arming;
- (d) are equipped with a guidance system or otherwise effective only within a pre-defined area;
- (e) contain less than [...] submunitions in each cluster munition.

5. The obligations in this Article do not apply to cluster munitions:

- (a) designed to dispense flares, smoke, pyrotechnics or chaff;

- (b) designed to produce electrical or electronic effects; or
- (c) acquired or retained for the exclusive purpose of training in detection, clearance, and destruction techniques, or for the development of cluster munitions countermeasures.

**Option B:**

1. It is prohibited in all circumstances to use, develop, produce, otherwise acquire, stockpile or retain any cluster munition, unless it:

- (a) possess effective safeguards in the form of a self-destruction mechanism, self-neutralization mechanism or self-deactivating feature, or a combination thereof, or any other device which effectively ensures that an unexploded submunition will no longer function as designed; [and/or] contains submunitions that, after arming, do not result in more than [...] % unexploded ordnance across the range of intended operational environments; and
- (b) is equipped with a guidance system or is otherwise effective only within a pre-defined area; [and/or]
- (c) contains less than [...] submunitions in each cluster munition.

2. In the event a High Contracting Party determines that it cannot immediately comply with paragraph 1 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 paragraph 1 of this Article for a period not to exceed [...] years from the entry into force of this Protocol. In the meantime it shall:

- (a) only use cluster munitions that do not comply with paragraph 1 if its vital security interests so require;
- (b) only use cluster munitions that do not comply with paragraph 1 after direct approval by the highest-ranking operational commander in the theatre of operations; and\
- (c) take all appropriate steps to improve the accuracy and minimize the unexploded ordnance rate of the cluster munitions that do not comply with paragraph 1, and, consistent with military requirements, only use cluster munitions with the lowest possible unexploded ordnance rate and/or equipped with fail-safe mechanisms.

3. It is prohibited to use, acquire, stockpile or retain any cluster munition, which is designed and produced before [...] year.

4. Each High Contracting Parties shall complete an evaluation of its military requirements and remove the stocks of cluster munitions in excess of these requirements from active service.

5. The obligations in this Article do not apply to cluster munitions:
- (a) designed to dispense flares, smoke, pyrotechnics or chaff;
  - (b) designed to produce electrical or electronic effects; or
  - (c) acquired or retained for the exclusive purpose of training in detection, clearance, and destruction techniques, or for the development of cluster munitions countermeasures.

**Option C:**

1. All cluster munitions containing explosive submunitions weighing less than 20 kg. are prohibited, unless they possess all of the following characteristics or features:
- (i) each munition contains fewer than 10 explosive sub-munitions;
  - (ii) each explosive submunition weighs more than four kilograms;
  - (iii) each explosive submunition is designed to detect and engage a single target objective;
  - (iv) each explosive submunition is equipped with an electronic self destruction mechanism;
  - (v) each explosive submunition is equipped with an electronic self-deactivating feature.
2. Each High Contracting Party undertakes never under any circumstances to:
- (a) use prohibited cluster munitions;
  - (b) develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, prohibited cluster munitions;
  - (c) assist, encourage, or induce anyone to engage in any activity prohibited to a High Contracting Party under this Protocol.

**Article 5. Storage and Destruction<sup>2</sup>**

1. Each High Contracting Party undertakes:
- (a) to create and maintain stockpile surveillance and management program to ensure the operational quality and reliability of their cluster munitions. In implementing this provision, the High Contracting Parties shall make use of, where appropriate, existing mechanisms, tools and databases within the Convention's framework and other relevant instruments and mechanisms;

---

<sup>2</sup> The content of this Article will depend on the final version of Article 4.

- (b) to take all cluster munitions prohibited under Article 4 [or found to be in excess in accordance with Article 4] out of its operational stocks, and keep them in separate and secure stockpiles for the purpose of destruction.
2. Each High Contracting Party shall destroy or ensure the destruction of:
- (a) all stockpiled cluster munitions it owns or possesses, or are under its jurisdiction or control, and which are prohibited under Article 4, as soon as possible, but not later than [...] years after the prohibition comes into effect; and
  - (b) all abandoned cluster munitions and submunitions prohibited under Article 4 and that are under its jurisdiction or control, as soon as possible, but not later than [...] years after the prohibition comes into effect.
3. In case a High Contracting Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions within this time period, it may submit a request to a Conference of the High Contracting Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munitions, for a period of up to [...] years.

#### **Article 6. Transfers<sup>3</sup>**

1. In order to promote the purposes of this Protocol, each High Contracting Party:
- (a) undertakes not to transfer any cluster munition or sub-munition prohibited by this Protocol, except for the purpose of destruction, development of training in detection and clearance and for the development of cluster munitions counter measures;
  - (b) undertakes not to transfer and not to authorize the transfer of any regulated cluster munition or sub-munition
    - (i) to any recipient other than a State or State agency authorized to receive such transfers, and
    - (ii) without the provision of an end-user certificate by the recipient.
  - (c) undertakes to prevent unauthorized transfers, from areas under its jurisdiction or control, of any cluster munition or sub-munition.
  - (d) undertakes not to transfer any regulated cluster munition to States which are not bound by this Protocol unless the recipient State agrees to apply this Protocol [to the transferred munitions]; and

---

<sup>3</sup> The content of this Article will depend on the final version of Article 4.

- (e) undertakes to 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 provisions of this Protocol and the applicable norms of international humanitarian law.

2. The High Contracting Parties, pending the entry into force of this Protocol, will refrain from any actions which would be inconsistent with paragraph 1 of this Article, including when providing relevant licenses.

#### **Article 7. Clearance and destruction**

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 munition which has become cluster munition remnants does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide upon request from the party in control of the territory, 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, [but not later than [...] years,] 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. [In case a High Contracting Party believes that it will be unable to destroy or ensure the destruction of all cluster munition remnants within this time period, it may submit a request to a Conference of the High Contracting Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munition remnants, for a period of up to [...] years.] 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) asses and prioritize needs and practicability in terms of marking and clearance, removal or destruction;
- (c) mark and clear, remove or destroy cluster munition remnants; and
- (d) take steps to mobilize 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 8. 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 have become cluster munition remnants shall, without delay after the cessation of active hostilities and 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 9. 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.
- (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 10. Victim assistance

1. Each High Contracting Party with respect to cluster munition victims in territories under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, [ensure] [provide or facilitate] the provision of adequate assistance, including age- and gender-sensitive medical care, rehabilitation and psychological support and social and economic inclusion. Each High Contracting Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.

2. [As necessary, in order to fulfill its obligations under this Article, each High Contracting Party shall, *inter alia*]:

- (a) Assess the needs of cluster munition victims;
- (b) Develop, implement and enforce [any necessary] [appropriate] national laws and policies;
- (c) Develop, in accordance with national procedures, a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within applicable national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
- (d) Seek to mobilise national and international resources;
- (e) Not discriminate against or among cluster munition victims, or between cluster munition victims [and those who have suffered injuries or disabilities from other causes] [other victims of armed conflict]; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;
- (f) Closely consult with and actively involve victims of cluster munition and their representative organizations [, as appropriate];
- (g) Designate, in accordance with national procedures, a focal point within the government for coordination of matters relating to the implementation of this Article; and
- (h) 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 11. 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, materiel 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 12. 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, Conferences of High Contracting Parties shall be held as agreed by a majority, but no less than eighteen High Contracting Parties.

2. The work of the Conferences of High Contracting Parties shall include:

- (a) review of the status and operation of this Protocol;
- (b) consideration of matters pertaining to cooperation and assistance and national implementation of this Protocol, including national reporting or updating on an annual basis;
- (c) preparation for review conferences.

3. 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 13. 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, wilfully 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 through the Compliance mechanism of the Convention, 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**

### **Best Practice for Testing of cluster munitions**

Testing is important for both the military effectiveness of particular munitions and to reduce their humanitarian impact. Regardless of the testing regime, results achieved will not always be perfectly representative of facts on the ground.

#### **Testing cluster munitions**

1. Role of testing: to achieve the highest reliability across the full life cycle of any munition, including cluster munitions.

2. State responsibilities:
  - (a) States acquiring cluster munitions are responsible for ensuring that testing is carried out for meeting reliability standards as identified by them.
  - (b) States should do their utmost to carry out comprehensive and objective testing in conditions as realistic as possible and representative of intended operational conditions, including :
    - (i) climate
    - (ii) terrain factors.

[...]

Annex III

**LIST OF DOCUMENTS**

of the Third 2008 Session of the Group of Governmental Experts  
7 – 25 July 2008

CCW/GGE/2008-III/1	Provisional Programme of Work, submitted by the Chairperson
CCW/GGE/2008-III/2	Cluster Munitions, submitted by the Chairperson
CCW/GGE/2008-III/3	Procedural Report, submitted by the Secretariat
CCW/GGE/2008-III/INF.1 and Add.1	List of Participants
CCW/GGE/2008-III/CRP.1	Draft Procedural Report, submitted by the Secretariat
CCW/GGE/2008-III/MISC.1	Provisional List of Participants

The documents above are available in all official languages through the Official Document System of the United Nations at <http://documents.un.org>, and the official CCW website as part of the website of the United Nations Office at Geneva at <http://www.unog.ch/disarmament/CCW> .

---