

Provisions and Challenges under Article 3 of the Convention on Cluster Munitions

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On 31 May 2008 more than 100 governments, the International Committee of the Red Cross, UN agencies and NGOs around the world celebrated the adoption of the Convention on Cluster Munitions. This new instrument of international humanitarian law is an enormous achievement. With the adoption of the Convention, cluster weapons can no longer be perceived as legitimate means of warfare but are now considered by most States to be unacceptable weapons which have intolerable consequences for civilians. This new convention is also important because it brings hope that the ongoing harm caused by cluster munitions will soon be addressed and an expectation that future generations will live free from these dangers. The signing of the Convention by 94 States in Oslo, followed by additional 4 signatures and 10 ratifications, have turned these hopes and expectations into firm commitments that many States are now beginning to translate into concrete action.

Fulfilling the Convention's commitments requires concerted action at the national, regional and international levels. In this regard, the International Committee of the Red Cross (ICRC) warmly welcomes the convening of this conference. It is the first large international gathering to examine a specific requirement of the Convention with a view to its effective implementation. The ICRC thanks the Government of Germany for the invitation to attend the meeting and to comment on some of the issues and challenges arising under Article 3 and other articles related to stockpile destruction.

The destruction of cluster munition stockpiles is a central component of the Convention and a key step towards preventing future cluster munition casualties. Eliminating these weapons from a State's arsenal will ensure that such weapons are never used, are never given the chance to become an explosive remnant of war and never threaten a civilian man, woman or child.

To ensure that this is achieved, article 3 outlines a number of specific requirements. Firstly, it requires each State Party which has cluster munition stockpiles to separate cluster munitions from other weapons intended for operational use. Next, a State's cluster munitions must be marked for the purpose of destruction. Finally, it requires the destruction of stockpiles as

soon as possible but no later than 8 years after the entry into force for the Convention for that State Party. Clearly, these steps constitute a process which firmly reflects and operationalizes a State's intention to never again use cluster munitions. It is important to stress that implementing these steps in a timely manner will require a State to begin, immediately upon becoming a State Party, to prepare the domestic policies and regulations to execute these requirements. . Indeed, many steps can be taken in advance of the Convention's entry into force.

It also worth noting that the principal obligation of article 3 is for a State Party to destroy its stockpiles "as soon as possible". In our view, the 8 year limit specified by the Convention is a lower standard to be met if the amount of munitions and the possible technical challenges involved make it impossible to destroy the weapons in a shorter time frame. With this in mind, the ICRC believes that in implementing article 3 States should move in an expeditious manner and develop policies to fulfil their stockpile destruction commitments as soon as possible rather than on the basis of the upper limit of 8 years.

These requirements will certainly be challenging for States with significant stockpiles of cluster munitions. Envisioning this, the Convention contains important tools to help States Parties. Firstly, and of particular importance, are the provisions of article 6 on international cooperation and assistance. This article establishes that each State Party as the right to seek and receive assistance to help it meet its obligations under the Convention. It also requires each State Party in a position to do so to provide assistance for the destruction of stockpiled cluster munitions. As we have learned from other treaty regimes, such assistance provisions are crucial tools to help ensure that all States are able to implement their obligations in a timely manner and that such treaties achieve their humanitarian goals.

In addition to article 6, article 7 on transparency measures has a central role to play in meeting the Convention's obligations on stockpile destruction. Under this article, each State Party is required to report on a number of issues related to stockpiled or manufactured cluster munitions. These include information on the amount and types of cluster munitions held as well as their explosive content and fuse types. A State must also provide information about how its cluster munitions will be destroyed.

While article 7 reports are necessary for transparency and to build confidence that the Convention's obligations are being respected, they are also an important device to identify and resolve any problems anticipated or encountered in the implementation of the Convention. Thus, they can be an opportunity for States Parties to highlight technical,

financial or procedural problems they may face or are facing in their stockpile destruction process. Sharing these matters with other States Parties, international organisations or NGOs will facilitate access to technical and financial aid and assistance. Subsequent reports and updates can also indicate the extent to which problems have been resolved, whether major challenges remain and how these challenges may impact on future progress in the destruction of stockpiles. In this regard, article 7 reports are not only transparency measures but are also planning tools for all State Parties.

As these comments indicate, for the ICRC articles 3, 6 and 7 of the Convention on Cluster Munitions are intimately linked. They can be used together to help identify and resolve potential problems and increase the chances for early success in fulfilling the Convention's stockpile destruction obligations. It is also important to recall that while there are challenges for States with significant stockpiles of cluster munitions, valuable lessons have been learned over the past decade in the international community's efforts to destroy stockpiles of anti-personnel mines. . We have learned that it is important to adopt and implement policies and plans for stockpile destruction at an early stage, well in advance of the required deadline. In some instances, States developed their plans and began destroying anti-personnel mines far too late to meet the Mine Ban Treaty's requirements or did not allow adequate time for the negotiation of international assistance agreements. We hope that States Parties to the Convention on Cluster Munitions can learn from these earlier problems.

The option of retaining cluster munitions for development and training purposes is provided for in article 3. As stated in paragraph 6 of that article, their number has to be limited to "the minimum number absolutely necessary for these purposes". In view of past experiences, we would urge States to clarify the extent to which both cluster munitions and explosive submunitions are needed for these purposes and to implement this provision in the most restrictive manner. This would confirm that this is a very narrow exception. States Parties will also need to agree at an early stage what information should appear in article 7 reports concerning retained cluster munitions and submunitions.

The Berlin Conference is providing an initial opportunity for States to prepare the ground for their implementation of article 3 and other provisions of the Convention on Cluster Munitions related to stockpile destruction. The ICRC is confident that the discussions today and tomorrow will benefit States' efforts in destroying their cluster munitions stockpiles and therefore bring us closer to ending, for all times, the suffering and casualties caused by cluster munitions.