

III. The Convention on Cluster Munitions

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The 2008 Convention on Cluster Munitions (CCM) addresses the humanitarian consequences of and unacceptable harm to civilians caused by cluster munitions. The CCM establishes an unconditional prohibition and a framework for action. It also requires the destruction of stockpiles within eight years, the clearance of areas contaminated by cluster munition remnants within 10 years and the provision of assistance for victims of the weapon. As of 31 December 2017, the convention had 102 states parties and 17 signatory states.¹

Key developments in 2017

In October 2017, 134 states, including 30 non-signatories to the convention, voted to adopt the third UN General Assembly resolution supporting the Convention on Cluster Munitions.² The resolution provides states outside the CCM with an important opportunity to indicate their support for the humanitarian rationale of the treaty and the objective of its universalization. Russia and Zimbabwe were the only states to vote against the resolution (as they were in respect of the 2016 resolution), while 36 states abstained.³

Most of the states still outside the convention abide de facto by the ban on the use and production of cluster munitions. However, despite international condemnation, there was continued use of cluster munitions in two countries in 2017: in Syria, where they have been used since mid-2012, and in Yemen, where they have been used since 2015.⁴ According to *Cluster Munition Monitor 2017*, more than 600 cluster munition attacks occurred in Syria in the five-year period to July 2017, and there have been at least 238 separate attacks since August 2016, mostly carried out by the armed forces of the Syrian Government.⁵ Other attacks have been attributed to Russia, which began joint operations with Syria in September 2015. However, in a position paper attached to a December 2016 letter to Human Rights Watch, the Russian Foreign Minister, Sergey Lavrov, claimed that the use of cluster

¹ In 2017 Benin and Madagascar ratified the CCM. South Sudan announced that it would also accede, but had not submitted its instrument of accession by the end of the year. For a summary of the Convention on Cluster Munitions see annex A, section I, in this volume.

² United Nations General Assembly, Implementation of the Convention on Cluster Munitions, A/C.1/72/L.41, 12 Oct. 2017.

³ Cluster Munitions Coalition, 'United Nations votes on cluster munitions resolution', 9 Nov. 2017.

⁴ On the conflict in Syria see chapter 2, section V, in this volume.

⁵ *Cluster Munition Monitor 2017* focuses on calendar year 2016, with information included to July 2017 where possible. International Campaign to Ban Landmines-Cluster Munition Coalition (ICBL-CMC), *Cluster Munition Monitor 2017* (ICBL-CMC: Geneva, Aug. 2017), pp. 15-18.

munitions in Syria was in accordance with IHL, without explicitly denying or admitting to their use.⁶

In Yemen, a coalition of states led by Saudi Arabia has been involved in military operations against the Houthi—a predominantly Shia-led religious-political movement that emerged from Sa'dah, northern Yemen in the 1990s—and their allies since March 2015. At least 23 cluster munition attacks have been documented in Yemen since the start of the conflict, but fewer attacks since the second half of 2016.⁷ On 15 June 2017 the European Parliament adopted a third resolution condemning Saudi-led coalition airstrikes in Yemen, including its use of cluster munitions.⁸ Similar resolutions were agreed in February 2016 and July 2015. In addition, there were unverified allegations of cluster munitions use by Libyan National Army (LNA) forces in Libya and by the Islamic State in Iraq in 2016 or the first half of 2017.⁹

Under the CCM, 28 of the 41 states parties that have possessed stockpiles of cluster munitions have completed the destruction of nearly 1.4 million stockpiled cluster munitions containing 175 million submunitions. This represents the destruction of 97 per cent of all cluster munitions and 98 per cent of all submunitions declared as stockpiled under the treaty. No state party completed the destruction of its cluster munition stocks in the second half of 2016 or the first half of 2017, but Spain and Switzerland are expected to do so in 2018.¹⁰ *Cluster Munition Monitor* is unable to provide a global estimate of the quantity of cluster munitions currently stockpiled by non-signatories to the CCM as too few have disclosed information on the types and quantities they possess.

The United States, a non-signatory to the convention, views cluster munitions as a military necessity but in 2008 introduced a policy to reduce the failure rate of the weapon to 1 per cent or less by 2019—a standard considered important given the hazard to civilians of unexploded submunitions in conflict zones. In November 2017, however, the US Department of Defense (DOD) said that it would be unable to fulfil the 2008 pledge. Under the new policy, the US military can continue to use cluster munitions that do not meet the 1 per cent or less unexploded submunitions standard in extreme situations to meet immediate warfighting demands. Furthermore, while the

⁶ Lavrov, S., 'Russia's Position on the Use of Cluster Munitions in Syria', Position Paper annexed to letter to HRW from Sergey Lavrov, Russian Minister of Foreign Affairs, 9 Dec. 2016 (in Russian, with unofficial translation).

⁷ ICBL-CMC (note 5), pp. 18–22; Amnesty International, 'Yemen: Saudi Arabia-led coalition uses banned Brazilian cluster munitions on residential areas', 9 Mar. 2017; and HRW, 'Yemen: Cluster munitions wound children', 17 Mar. 2017.

⁸ European Parliament, Resolution on the humanitarian situation in Yemen, P8_TA(2017)0273, Strasbourg, 15 June 2017.

⁹ ICBL-CMC (note 5), pp. 22–23; and Bulos, N., 'Islamic State fires cluster bombs at Iraqi government forces', *Los Angeles Times*, 21 Feb. 2017.

¹⁰ ICBL-CMC (note 5), pp. 26–34.

US DOD will continue to replace cluster munitions that exceed the 1 per cent rate, the new policy does not set a deadline for achieving this. Instead, the US military ‘will retain cluster munitions currently in active inventories until the capabilities they provide are replaced with enhanced and more reliable munitions’.¹¹

As of July 2017, 82 states parties had submitted an initial transparency report as required by the convention, while 18 states parties had failed to do so—including five that were originally due in 2011. As of 30 June 2017, 50 states parties had submitted their annual updated transparency report covering activities in 2016, and 27 states parties were yet to do so.¹²

Conflict and insecurity made the clearance of cluster munitions more challenging in several countries, but at least 88 square kilometres of contaminated land was cleared in 2016, resulting in the destruction of 140 000 submunitions—both increases compared with 2015.¹³ Between 2010 and 2016, more than 535 000 submunitions were destroyed and at least 425 km² of land was cleared worldwide. At least 26 states and three other areas remain contaminated by cluster munitions.¹⁴ An accurate estimate of the total size of the contaminated area is not possible because the extent of contamination and the progress of clearance are difficult to discern in many states, especially non-signatory states.

Mozambique reported the completion of its clearance of cluster munitions in December 2016, bringing the total number of states parties that have done so under the convention to eight.¹⁵ Only one (Croatia) of 13 states parties with declared contaminated areas and ongoing clearance programmes is judged to be on track to meet its mandated 10-year clearance deadline.¹⁶

Following an earlier workshop in Africa in August 2016, three regional workshops aimed at encouraging the universalization and implementation of the convention took place in 2017: in Bangkok on 16–17 March, in Kampala on 29–30 May and in Rakitje, Croatia, on 12–13 June.¹⁷

¹¹ Burns, R., ‘US putting off planned ban of its use of cluster bombs’, Associated Press, 30 Nov. 2017; and Feickert, A. and Kerr, P. K., *Cluster Munitions: Background and Issues for Congress*, RS22907 (Congressional Research Service: Washington, DC, 13 Dec. 2017).

¹² ICBL–CMC (note 5), pp. 36–37.

¹³ ICBL–CMC (note 5), pp. 53–54.

¹⁴ The states parties with cluster munition remnants are: Afghanistan, Bosnia and Herzegovina, Chad, Chile, Croatia, Germany, Iraq, Laos, Lebanon, Montenegro, Somalia and the United Kingdom; signatory: Angola; non-signatories: Azerbaijan, Cambodia, Georgia, Iran, Libya, Serbia, South Sudan, Sudan, Syria, Tajikistan, Ukraine, Viet Nam and Yemen; other areas: Kosovo, Nagorno-Karabakh and Western Sahara. ICBL–CMC (note 5), pp. 53–63.

¹⁵ The others are: Albania, the Republic of the Congo, Grenada, Guinea-Bissau, Mauritania, Norway and Zambia. ICBL–CMC (note 5), p. 63.

¹⁶ The other 12 are: Afghanistan, Bosnia and Herzegovina, Chad, Chile, Colombia, Germany, Laos, Iraq, Lebanon, Montenegro, Somalia and the UK. ICBL–CMC (note 5), pp. 63–69.

¹⁷ CCM, Seminar Final Report, ‘Cooperating to implement the CCM: The Country Coalition Concept’, 16–17 Mar. 2017, Bangkok; CCM, ‘Final Report on Convention on Cluster Munitions Ratification Seminar’, Kampala, 29–30 May 2017; and CCM, ‘The Workshop on Enhancing Implementa-

Seventh Meeting of States Parties to the CCM

The Seventh Meeting of States Parties to the CCM took place in Geneva on 4–6 September 2017 under the presidency of Germany. Earlier in the year Germany held bilateral meetings with at least 14 states that have produced and/or stockpiled cluster munitions, including Brazil, Saudi Arabia, Syria and Ukraine.¹⁸ The meeting of the states parties was the second formal meeting since the adoption of the 2015 Dubrovnik Action Plan, a five-year action plan that provides a roadmap for states to implement and universalize the convention.¹⁹ In the final report of the meeting, states parties ‘expressed their strong concern regarding recent incidents and evidence of use of cluster munitions in different parts of the world and condemned any use by any actor’.²⁰ In addition, having noted that less than half of states parties had made a financial contribution to the 2016 CCM Implementation Support Unit (ISU) budget—which was fully covered only because a few states parties made significant contributions in excess of their assessed contributions—the meeting adopted a political declaration as an annex to the final report that identified a number of specific measures to improve the CCM’s financial procedures.²¹

tion of Articles 3 and 4 of the CCM in South-East Europe: The Country Coalition Concept’, Croatia, 12–13 June 2017.

¹⁸ Minutes of the CCM Coordination Committee Meeting, Geneva, 23 Mar. 2017.

¹⁹ The Dubrovnik Action Plan was adopted at the First Review Conference of the CCM in Dubrovnik, Croatia, on 11 Sep. 2015. For the text of the plan see CCM, ‘Dubrovnik Action Plan’, [n.d.]. For an update on progress see CCM, ‘Convention on Cluster Munitions, 7MSP Progress Report: Monitoring progress in implementing the Dubrovnik Action Plan, Submitted by the President of the Seventh Meeting of States Parties, CCM/MSP/2017/9, 10 July 2017.

²⁰ CCM, Final Report, CCM/MSP/2017/12, 25 Sep. 2017. See also the coverage of the meeting by the Cluster Munition Coalition, ‘The Seventh Meeting of States Parties’.

²¹ CCM, Final Report (note 20).