

Compliance with Article 4 of the Convention on Cluster Munitions (CCM)

Draft working paper, presented by the President of the Third Meeting of States Parties at the April 2013 Intersessional meetings¹.

Background

The Second Meeting of States Parties to the CCM agreed on the urgency for and need to apply all available methods for the efficient survey and clearance of cluster munitions remnants. At that meeting, the States parties² endorsed a set of concrete and operational recommendations for how to address contamination by cluster munition remnants in the most effective and efficient manner.

The paper "*Application of all available methods for the efficient implementation of Article 4*", presented to the 2MSP by Australia as Friend of the President on clearance, outlines seven guiding principles for conducting survey and clearance operations and has the potential to assist in making operations more effective and efficient. This discussion paper builds on, and further develops the analysis and recommendations in that paper.

As more States parties with Article 4 obligations progress with their survey and clearance operations, clarification of what constitutes completion will be important. A shared understanding between the States parties as well as stakeholders such as the International Committee of the Red Cross, the United Nations, the Cluster Munition Coalition together with national and international survey and clearance operators, on what compliance with Article 4 entails, may assist states in their development and implementation of national survey and clearance plans.

Requirements for compliance with obligations under Article 4

A shared understanding of what Article 4 entails must be based on the following:

- The Convention, in particular Article 2.11, and Article 4.
- Article 4.1(a-c), Article 4.2(a) and Article 4.2(d) are particularly relevant for the purposes of this paper.
- The practical and operational experiences made by national authorities, humanitarian clearance agencies and relevant United Nations organisations.
- Documented and verifiable results from application of specific methods to identify cluster munition contaminated areas.
- Relevant National and International Mine Action Standards.

The Convention's requirements

According to Article 4.1(c), a State shall make a declaration of compliance when it has fulfilled its obligations under Article 4.1 (a) and (b) while taking the measures outlined in Article 4.2.

¹ This paper is the same as that distributed during the Intersessional meeting, save for the correction of two factual errors. The corrections have no bearing on the substance of the paper, which remains unchanged

² "...the Meeting warmly welcomed the paper ...and agreed to encourage States parties, as appropriate, to implement the recommendations..." (2MSP Final Report section IV, para 22)

The essence of how to fulfill the Convention's obligations when it comes to survey and clearance is specified in:

Article 2.11 (definition of cluster munition contaminated areas)

Article 4.2(a) (obligation to survey and record cluster munition contaminated areas)

Article 4.2(d) (obligation to clear and destroy all cluster munition remnants in areas under the State's jurisdiction or control).

Consequently, a State with obligations to clear areas contaminated with cluster munition remnants needs to have concluded the following steps in order to make a declaration of compliance:

1. The State has made every effort to identify all cluster munition contaminated areas (as defined in *Article 2.11*), according to Article 4.2 (a)

AND

2. The State has cleared and destroyed all (*Article 4.2 (d)*) cluster munition remnants located in the areas identified through step 1, pursuant to national standards, taking international standards into account (*Article 4.3*)³.

What constitutes “Every effort to identify all cluster munition contaminated areas”?

Article 2.11 defines cluster munition contaminated areas as “...an area known or suspected to be contaminated by cluster munition remnants.”

The first question to be asked is how to identify areas known or suspected to be contaminated by cluster munition remnants.

An area *known* to contain cluster munition remnants is one where there is *physical evidence* of cluster munition remnants, as defined in Article 2.7.

An area *suspected* to contain cluster munition remnants is an area where a *strong claim* can be made of presence of a cluster munition remnant hazard. States parties agreed at 2MSP that such a strong claim should be based on *indirect evidence*, including, but not limited to, local knowledge, information about current and historical land-use, conflict history and bombing data, general mine action assessments and accident patterns. Indirect evidence should be corroborated and supported by triangulated data.

³ Article 4.3 states that States parties shall take international standards, including the International Mine Action Standards, into account, when implementing the activities referred to in Article 4. 2. In this paper, the term national standards implies that international standards are taken into account.

States parties at 2MSP agreed that the level of evidence for both *known* and *suspected* cluster munition contaminated areas should be defined in national standards. National standards should also specify the required follow-up of the both categories of contamination, known and suspected⁴.

The second question is what constitutes *every effort*, as required under Article 4.2(a). The term constitutes a strong obligation to do whatever is necessary in order to fulfill the obligation. It implies an obligation to consider and evaluate all available sources of information, including indirect evidence.

Thus, a State party with cluster munition contaminated areas under its jurisdiction or control, must, as a minimum, undertake systematic actions (surveys), following national standards, that identify and, as precisely as possible, geo-locate these areas. Where cluster munition remnants are found, national standards must define methods and approaches to accurately determine the perimeters of the contaminated area, i.e. where to stop the further search.

In order to facilitate the appropriate response, all surveys must, to the degree possible, differentiate between categories of the explosive contamination, distinguishing between mined areas, cluster munition contaminated areas and general UXO contaminated areas, as well as any mixture of the categories.

All relevant data from such surveys should as a minimum be entered into a national database that is accessible to all stakeholders. States parties agreed at the 2MSP that suspected contamination from cluster munitions should normally be recorded as a single point (evidence point or similar) unless the boundaries of the suspected contaminated area can be accurately identified and recorded at the same time.

To ensure the operational integrity of the information in the database, the evidence-threshold for including areas in the database should be high, and at a minimum should segregate between areas that need to be surveyed further and areas where technical survey and eventual clearance procedures must be conducted in order to release them. Procedures should be in place to ensure that data is systematically maintained and updated. The database should be used as the main vehicle for prioritizing tasks, allocate resources and as basis for national strategies.

Declaration of compliance

When a State has completed steps 1 and 2, and thus has fulfilled its obligations under Article 4, it has an obligation to make a declaration of compliance to the next Meeting of States Parties (*Article 4.1(c)*). The Convention does not offer a description of what is required in such a declaration, but based on the above, and building on the experience gained from the template for a voluntary declaration of compliance under the Mine Ban Convention, it is suggested that the

⁴ Paragraph 9 (i – vii) in the 2MSP paper on methods describes a series of relevant actions for this.

declaration should contain the following:

A) A declaration of compliance together with a description of what actions the State has taken to reach compliance and of where the final data can be found in the future. At a minimum, this section of the declaration should contain the following:

[State] declares that it has made every effort to identify all cluster munition contaminated areas under its jurisdiction or control.

[State] declares that it has cleared and destroyed or ensured the destruction of all cluster munition remnants in these areas, in accordance with Article 4 of the Convention. [State] declares that it completed this obligation on [date].

A description of the methods that have been used to identify and clear these areas, and of the areas that have been surveyed and cleared.

Information on where the database with the final information will be located, how it will be maintained and how to get in contact with the institution responsible for the database.

If possible, the information should be supplemented with maps and geo-referenced data.

And:

B) A description of what actions the State will take if previously unknown cluster munition contaminated areas are identified after completion:

In the event that previously unknown areas contaminated by cluster munitions are discovered after this date, [State] will, as soon as possible;

(i) accurately identify the extent of the contaminated areas and destroy or ensure the destruction of all cluster munitions remnants in these contaminated areas and ensure the effective exclusion of civilians in accordance with Article 4

(ii) make its needs for assistance known to other States Parties, as appropriate

(iii) report such contaminated areas in accordance with its obligations under Article 7 and share such information through any other formal and informal means.

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