

**CMC Statement on on Interpretive Issues**

*Convention on Cluster Munitions 12th Meeting of States Parties,  
Geneva, 10-13 September 2024*

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Thank you, Madame President,

The Cluster Munition Coalition encourages States Parties and signatories that have not yet done so to express their views on three key interpretive issues of concern:

1. The prohibition on assistance during joint military operations with states not party that may use cluster munitions (an issue sometimes called “interoperability”);
2. The prohibitions on transit and foreign stockpiling of cluster munitions; and
3. The prohibition on investment in the production of cluster munitions.

Based on statements and actions to date, it appears that a majority of States Parties and signatories agree that these are prohibited acts. However, a small number of states have taken a contrary view.

The strength and credibility of the Convention are undermined when States Parties do not have a uniform understanding of what acts are banned and what acts are not. We therefore urge States Parties to engage in open discussions on these issues and welcome this dedicated item in this meeting’s agenda.

**INTEROPERABILITY**

The issue of the ban on assistance during joint military operations is complicated by Article 21, which allows a State Party to engage in joint military operations with states not party even if those states reserve the right to use cluster munitions.

Article 21 clarifies that mere participation in joint military operations is acceptable when it says that States Parties “may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.” The article should not, however, be understood to negate States Parties’ obligation under Article 1 to “never under any circumstances” assist with prohibited acts. Article 21 also requires States Parties to discourage use of cluster munitions by states not party, and to encourage them to join the convention.

Together, Article 1 and Article 21 should have a unified and coherent purpose, as the convention cannot require States Parties to both discourage the use of cluster munitions and, by implication, allow them to encourage it. Furthermore, to

interpret Article 21 as qualifying Article 1 would run counter to the object and purpose of the convention, which is to eliminate cluster munitions and the harm they cause to civilians.

Therefore, States Parties must not intentionally or deliberately assist, induce, or encourage any activity prohibited under the Convention on Cluster Munitions, even when engaging in joint operations with states not party. Forms of prohibited assistance include, but are not limited to:

- Securing, storing, or transporting cluster munitions that belong to a state not party;
- Agreeing to rules of engagement that allow cluster munition use by a state not party;
- Accepting orders from a state not party to use cluster munitions;
- Requesting a state not party to use cluster munitions;
- Participating in planning for use of cluster munitions by a state not party; and
- Training others to use cluster munitions.

## TRANSIT AND FOREIGN STOCKPILING

Turning to the second set of interpretive issues, many states have already expressed the view that the ban on assistance with prohibited acts contained in Article 1 should be seen as a ban on the transit of cluster munitions across or through the national territory, airspace, or waters of a State Party as well as on the hosting of foreign stockpiles.

Legislative processes to ratify the convention and ensure it is enforced domestically have helped resolve debates concerning interpretation of the convention and its scope. Yet national laws on their own are unfortunately not always enough when it comes to ensuring clear and strong interpretation of the convention.

Germany is an unfortunate case in point. Over the past decade, Cluster Munition Monitor counted Germany as one of 35 States Parties and signatories to regard that transit and foreign stockpiling as prohibited by the convention. That was our understanding of Germany's implementing legislation though we noted that Germany had not made an interpretive statement on the topic. The implementing law itself declares it forbidden to move cluster munitions in, out, or through German territory.

The Monitor decided to remove Germany from its list of states speaking against transit and the hosting of foreign stockpiling in this year's report after a German television outlet aired an investigative report in July. In that report, a United States Army spokesperson confirmed that US cluster munition delivered by 155mm artillery projectiles stored at a US base in Miesau, Germany had been taken from there and shipped to Ukraine, transiting across Germany and Poland in the process.

Germany's defense minister and other officials told the media outlet that they could not confirm the presence of US cluster munitions on military bases in Germany or whether US cluster munitions had passed through German territory or airspace.

We urge Germany to clarify its stance on the foreign stockpiling and transit of cluster munitions. We call on all States Parties to be clear in expressing the view that the ban on assistance with prohibited acts contained in Article 1 should be seen as prohibiting the transit of cluster munitions across or through the national territory, airspace,

or waters of a State Party.

## DISINVESTMENT

Finally, many States Parties, as well as the CMC, view the convention's Article 1 ban on assistance with prohibited acts as constituting a prohibition on investment in the production of cluster munitions. The Lausanne Action Plan adopted in 2021, encourages the adoption of national legislation prohibiting investment in producers of cluster munitions.

Since 2007, a total of 11 States Parties have enacted legislation that explicitly prohibits investment in cluster munitions. At least 38 States Parties and signatories have stated that they regard investments in cluster munition production as a form of assistance that is prohibited by the convention. We urge others to join them.

A few States Parties to the convention have expressed the contrary view that the convention does not prohibit investment in cluster munition production.

In closing, we again urge States Parties to keep space in the annual Meeting of States Parties space for regular and open discussion about their implementation and interpretation of these key aspects of the convention. Such discussions will help to avoid possible compliance issues in the future, and the Convention on Cluster Munitions will be stronger for it.