

CCW news



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Down the Rabbit Hole? Negotiations Begin

For proponents of the cluster bomb ban, the Fourth Review Conference has gotten off to a strong start. More than 30 states have emphasized that there is no consensus on the Chair's draft text for a protocol on cluster munitions and have been resolute in promoting the 2008 Convention on Cluster Munitions.

On the opening day of the conference, **Costa Rica** delivered a joint statement endorsed by 28 states, representing one-quarter of the CCW's States Parties. **Ghana** subsequently associated itself. The group's statement expressed the collective view that there is no consensus on the Chair's text, that numerous deep differences have not yet been addressed, that the text is an inadequate response to humanitarian concerns, and that a weak protocol on cluster munitions would diminish the CCW.

Most national statements by these states and other signatories and States Parties to the Convention on Cluster Munitions expressed strong opposition to the fundamental flaws of the Chair's text. **Canada** said that the Chair's text does not meet the CCW mandate to balance military and humanitarian concerns and urged taking a step back from the Chair's text rather than "continue to chase an elusive rabbit down a warren fraught with diametrically opposed paths and mutually exclusive trails." **Denmark** reversed its position and said that it is "not in a position to support the draft as it stands" because it "unfortunately, undermines rather than underpins the Convention on Cluster Munitions." **Switzerland** criticized the draft protocol for leaving "a very open door" for the use of cluster munitions that have unacceptable humanitarian impact. **Slovenia** said the draft text does not adequately respond to humanitarian concerns and encouraged states to take national steps and accede to the Convention on Cluster Munitions as soon as possible. **New Zealand**

said that it remained unclear if the divergent views on the draft protocol could be bridged or whether the issue should be "put aside."

Similarly resolute statements against the proposed cluster munitions protocol were provided by a number of states including **Austria, Chile, Colombia, Costa Rica, Ecuador, Holy See, Guatemala, Lao PDR, Mexico, Mali, Nicaragua, Norway, Peru, Spain, and Togo.**

There was a noticeable lack of convergence of positions supporting the draft protocol by states that have not joined the Convention on Cluster Munitions and that that have most actively pursued a protocol, namely the **US, Belarus, Brazil, China, India, Israel, Republic of Korea, Poland, Pakistan, Romania, Russia, Turkey, and Ukraine.** Other states that have not participated as actively in the development of the protocol - **Argentina, Estonia, Greece, Finland, and Slovakia** - nonetheless supported it in their opening statements.

The **US** and others strongly extolled the supposed significant humanitarian benefits the Chair's draft would bring about, but **Pakistan** declared that the Chair's text did not address its concerns and contained "certain elements that are discriminatory in nature and could provide a group of countries with possible commercial advantages." Pakistan described the text's "arbitrary dates and unfair technical provisions" as "advantageous to some states and detrimental to others."

A handful of states that have signed or ratified the Convention

on Cluster Munitions continued to express support for the adoption of a protocol based on the Chair's text, while indicating many shortcomings must be addressed, including **Australia, Germany, Ireland, Lithuania, and Sweden.** Germany was strident in stating that the draft protocol still does not meet its concerns in a number of essential areas. **Bulgaria, Croatia, and Japan** appeared to support the draft protocol without much obvious reservation.

None of the international organizations and non-governmental observers speaking endorsed the draft protocol on cluster munitions. **UN Secretary General Ban Ki-moon** provided a statement highlighting the unacceptable harm caused by cluster munitions. **UN High Commissioner on Human Rights, Navi Pillay,** made a strong appeal for states to adhere to the Convention on Cluster Munitions. The president of the **ICRC, Jakob Kellenberger,** warned of the unacceptable harm that the draft



Soraj Ghulam Habib lost both his legs when a BLU-97 cluster submunition he stumbled across exploded while he was playing with friends near his home in Herat, Afghanistan © Alison Locke

Chair's text could bring about if agreed. **CMC** chair Steve Goose of Human Rights Watch gave a strong and moving statement, as did Lynn Bradach of the **Ban Advocates,** in memory of her son Thomas, a US Marine killed on duty in Iraq in 2003 from a US submunition.

After general statements concluded on Tuesday morning, Ambassador Eric Danon of **France** convened Main Committee II, the body responsible for the protocol negotiations. Gary Domingo of the **Philippines** reported back on the work of the Group of Governmental Experts (GGE) that he chaired throughout 2011 and said that, in his view, the Chair's text represented the best basis for the work of the Review Conference.

This was swiftly opposed by **Norway, Austria, and Mexico,**

who said that the GGE did not reach that conclusion, but rather that there was no consensus of the chair's text, and that all proposals, including their joint proposal for an alternative protocol, should have equal standing. The US and others then insisted that the Chair's text was the only basis for consensus.

Mystifyingly, this procedural lack of consensus was met by dismissal from the French chair, who simply gavelled the meeting to a close, saying that all proposals would remain on the table, while indicating every intent to continue on the basis of the Chair's text alone. On the first day of what was to be real negotiations, the session ended 1.5 hours early.

Katherine Harrison, Action on Armed Violence



«It doesn't look that elusive to me...»

QUOTE «Only a comprehensive ban will spare civilians from the unacceptable harm posed by cluster munitions now and in the future. That ban already exists and we would strongly encourage those Member States that have not signed or ratified the Convention on Cluster Munitions to accede without delay.» - UN High Commissioner for Human Rights Navanethem Pillay

«The ICRC is particularly concerned that the adoption of the Draft Protocol in its current form would set an unfortunate precedent in international humanitarian law. It would be the first time that States will have adopted a treaty of humanitarian law that provides less protection for civilians than a treaty already in force.» - President of the International Committee of the Red Cross Dr. Jakob Kellenberger

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We welcome comments or feedback, including letters to the editor or commentaries, from all delegates to the CCW Review Conference. These can be provided to us at the CMC seat, or by email to ccwnews@icblcmc.org

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