

CCW news



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Consensus as elusive as ever

Consensus in the CCW has remained as elusive as ever throughout the first week of the Fourth Review Conference. Wednesday and Thursday saw an article-by-article review of the Chair's draft text of a CCW protocol on cluster munitions, during which states stacked new and old proposals on top of each other like the paperwork held in the UN documents booth. As French Chair Ambassador Eric Danon led states through the text it became unmistakably clear that, as usual, views on every substantive provision of the draft text diametrically diverge.

States were even polarized over the content of the preamble. **Canada, Austria, and Ireland** called for inclusion of language describing the protocol as an interim step towards the Convention on Cluster Munitions. **Switzerland and the Netherlands** made other proposals, all of which were objected to. Meanwhile, **India and Pakistan** reintroduced past proposals indicating the only problem is "irresponsible use" of cluster munitions. Several Convention on Cluster Munitions states, as well as the **CMC**, again called for the definition of a cluster munition victim to be moved to the operative article on definitions in order to give it legal effect. Israel repeated its objection.

Clearly core conceptual disagreements remain about the basic prohibitions and exceptions in the protocol. **Norway** and other ban states expressed serious concerns about the fundamentally unworkable nature of an exemption for all cluster munitions with less than a purported 1% failure rate. **Pakistan and India** requested the deletion of key parts of the Convention on Cluster Munitions definitions contained in the annex.

No agreement was discernable on the draft text's proposed prohibition on the use of cluster munitions produced before 1980. Instead of 1980, **Germany** suggested a "rolling" cut-off date of 20 years, which was supported by **Canada, Italy, and Australia**. **Pakistan** opposed the 1980 cut-off date as "arbitrary and meaningless in reality." **Russia, India, Republic of Korea** and the **US** called for the 1980 date to remain unchanged.

Norway proposed the deletion the proposed 12-year transition period that would allow all post-1980 cluster munitions to be used, which was supported by several ban states. **Germany** recommended that, at a minimum, deferrals for the use of cluster munitions should be deleted, which was supported by several ban states. At the other end of the spectrum, **China, Israel, Republic of Korea, India, Pakistan, Ukraine, US** and **Russia** insisted the 12-year transition period remain unchanged.

Numerous ban states raised objections to the blanket exception for cluster munitions with one safeguard, with some such as **Norway, Mexico, and Canada**, as well as the **ICRC**, indicating that Article 5 and Technical Annex B could be deleted altogether.

On Article 7 on transfers, **Mexico** reintroduced its proposal for a total ban on the transfer of cluster munitions, and was backed by several states. **Pakistan** requested a deferral period to allow transfers for five years. **Sweden** with the support of several ban states proposed changing the cut-off date for a proposed prohibition on transfers from cluster munitions produced before 1980 to those produced before 1990.

Switzerland with the support of other ban states proposed linking the clearance article with its proposal on the protection of civilian populations. **China** said the proposed 10-year clearance deadline was legally in contradiction with Protocol V on explosive remnants of war.

Austria described the draft victim assistance article as "major step backwards" from existing legal instruments, a criticism echoed by the **CMC**.

Germany and Norway suggested revisions to the text's so-called "endeavor clause" that says states will endeavor in the future to adopt more comprehensive provisions. The **CMC** and **ICRC** objected to it as weak and without substance. **India** said any implication that the protocol is an intermediate step is unacceptable. **China, Israel, and Russia** also opposed it.

On Thursday afternoon, **Spain** announced that the **European Parliament** had just adopted a resolution calling on states to reject the protocol if it allows use of cluster munitions prohibited by the ban convention. Spain described the resolution as representing "the views of the whole continent."

Convention on Cluster Munitions states that most notably are playing a facilitating role in concluding a protocol, aside from **France** as chair, include **Australia, Germany, Italy, Japan, the Netherlands, Portugal, Sweden, and Switzerland**. It appears the **United Kingdom** is active behind the scenes.

Over the course of this week, Convention on Cluster Munitions states have continued to object to what can only be described as significant procedural issues that have been exacerbated by a continued lack of clarity and transparency from the podium. Several states appear truly exasperated that, after years spent making repeated proposals, their concerns still have not been taken into account in the Chair's text. **Norway** suggested that square brackets be used in the draft text to clarify sections that lack agreement.

States have also expressed concern at the Chair's intention not to make publicly available the source of all proposals delivered to him privately, outside the negotiations. **Austria** was strongly critical of this measure, while **Norway** said that "normal" diplomatic procedures must be followed, even in the CCW. Surprisingly, **Portugal and Italy** tacitly supported for

the Chair's plan to withhold attribution of certain proposals.

Ambassador Danon appeared exasperated at the objections to CCW procedure and said it was "clear" that "this text was not agreed consensually."

It is unclear what kind of rabbit the Chair will attempt to pull out of his hat on Friday in the form of a new text. All CCW chairs have tried and failed at the task of producing a text on cluster munitions that incorporates the wildly different points of view expressed by CCW states. The **CMC** see little reason to believe this time will be any different. Ambassador Danon has stated that after consideration of this new text on Monday, a subsequent revised version will be presented on Tuesday for further discussion.



Rima Saad, a Battle Area Clearance (BAC) searcher with the Norwegian People's Aid all-female demining team, searches for cluster bombs. © Mariella Furrer, CMC, 2011

QUOTE On 16 November 2011, the European Parliament passed a resolution which:

"Calls on the Member States not to adopt, endorse or subsequently ratify any protocol to the CCW allowing for the use of cluster munitions, which are prohibited under the CCM..."

Deeply regrets the fact that the draft text of Protocol VI to be discussed at that conference threatens to undermine the clear and robust international humanitarian law standard established by the CCM, which comprehensively bans cluster munitions, and would also weaken the protection of civilians; ...

Considers that Protocol VI to the CCW is not compatible with the CCM and that the Member States which have signed the CCM have a legal obligation to strongly oppose and reject its introduction..."

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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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