



CCW news

Monday, 21 November 2011
Geneva, Edition 4

Into (Very) Thin Air: “Base Camp” for the great protocol summit attempt

On Friday, 18 November 2011, the Chair of CCW negotiations on a possible future protocol on cluster munitions, French Ambassador Eric Danon, introduced a new version of a protocol text containing minimal amendments to the previous, still highly contested, August 2011 version of the GGE Chair's text. Using a metaphor around mountain climbing, the Chair referred to this new draft as the CCW's "base camp" on the road to future campsites, with a further revised version of the text to be issued on Tuesday.

The Chair spent the day giving delegations a run through of what to expect in the new text before it was issued at the end of the day. Grouping major outstanding concerns, Amb. Danon asked delegations to consider two main questions: if the protocol was to be considered an intermediary step while waiting for something stronger; and whether it was possible to strengthen the immediate humanitarian impact of the protocol. **Austria** welcomed this but said it would have been good to have had this discussion conceptually much, much earlier.

The **US**, in the guise of a last minute, heretofore unexpected proposal, offered two amendments it implied were monumental in nature. The proposal was quickly revealed to have been shopped for a considerable time, given the number of prepared written statements that followed which were delivered in orchestrated succession.

The grand US proposal was to move the exclusion for weapons with a claimed less than 1% failure rate from Technical Annex A (which refers to munitions excluded entirely from the protocol, such as weapons not covered under the Oslo definition of cluster munitions), to Technical Annex B (the optional menu of technical "safeguards" which can be employed to deem a cluster munition a legally permissible weapon.) This would be accompanied by a new paragraph stating that while the protocol did not apply to weapons not banned under the

Convention on Cluster Munitions, each High Contracting Party to a CCW protocol that retained these munitions "should ensure that such weapons have the lowest possible unexploded ordnance rate, consistent with military requirements."

Calling it a "major concession" on its part, (despite the fact that the 1% failure rate provision had been in the operative part of the draft protocol since 2008 and was kept there for over two years), the **US** continued that this "significant" move would render a number of other proposals "unnecessary," and ensure more compatibility for Oslo states.

Theatrically, the **US** admonished the plenary that it hoped it was not lost on the room that when Oslo states have "lobbed" criticisms on the CCW text, it has withheld fire on criticizing the Oslo text (showing in fact that this is exactly in fact where the CCW exercise is aiming.)

The **US** claimed that its proposal would go one better than the Oslo Convention by addressing the "heart of the problem;" the failure rate of munitions systems. Despite the US's dramatic delivery, this conjecture absolutely failed to jive with the fact that failure rates were resoundingly and universally dismissed in the Oslo Process as unworkable and a fundamentally erroneous basis for standards addressing humanitarian harm from cluster munitions.



Women deminers in Lebanon carry their gear to their work sites. © CMC, 2011

The **US**, clearly having done its lobbying, was supported by most of the major military non-ban convention States Parties, including **India, Russia, Ukraine, Turkey, Republic of Korea, Brazil, Israel, Poland, and Greece.**

India said the proposal would build compromise and help reduce humanitarian harm caused by the "irresponsible use" of cluster munitions, a qualifier it strongly emphasized. **Russia** gave full support, underlining how difficult this "concession" must have been for the **US** and how "significant" its supposed impact was. **China**, with an extensive written statement, was also highly supportive. **China** specifically called on NGOs "to depart from the bigger picture" and view the merit brought about by the draft protocol, and stressed that while the changes proposed did not perhaps achieve "idealistic high-ground," what they did achieve under "practical conditions" would bring about large financial contributions to resolve problems caused by cluster munitions through destruction of obsolete weapons, victim assistance, and international cooperation.

A small number of Convention on Cluster Munition protocol facilitator states also spoke out in favor of the US's proposal. **Australia** called it a welcome and helpful step which would improve the text's humanitarian output. **The Netherlands** said the principled idea to move the provision was in-line with its proposals to improve the complementarity and compatibility with the ban convention. **Germany** likewise called the proposal a welcome step that showed the readiness of one major cluster munition producer to work with Oslo states.

In light of the US proposal to move the 1% clause from Annex A to Annex B,

Australia, supported by **Germany** and **Switzerland**, called for the Oslo Definition to be moved from Technical Annex A back into the definitions in Article 2. **Russia** reacted negatively, stating it was better to bypass political issues and reiterated its opinion that munitions not covered in the ban convention definition were still cluster munitions.

Others, including **Norway, Canada, Austria, Mexico, Switzerland, Mali**, the **CMC**, and **ICRC**, were clear that they did not find the proposal meaningful. Norway stated that years of testing cluster munitions have found that a 1% failure rate cannot be met even on hard surfaces and despite 1% claims, failure rates of 10% or higher have been seen in actual use. More importantly, 1% is way too much when tens of thousands of cluster munitions are used, Norway emphasized. **Norway** said therefore it was not important where such a clause was located, in Technical Annex A or Technical Annex B. The Convention on Cluster Munitions doesn't have unexploded ordnance rate limitations and the US proposal misses the point that the CCM prohibits all cluster munitions, making UXO rates quite pointless, **Norway** added.

Canada called the proposal "positive" but "sort of déjà-vu". **Canada** was skeptical that the proposal significantly affected in any way the issue of complementarity as the protocol still did not address the problem of cluster munitions' wide area impact and specifically legitimized the use of weapons prohibited by the CCM. **Austria** stated that it failed to see at first glance how fundamental problems, such as whether the protocol would make the use of cluster munitions more or less likely, would be much impacted by the US proposal.

"Into Thin Air" continued on back page

**Katie Harrison, Steve Goose: Editors. Kate Castenson: Deputy Editor
Amy Little, Bonnie Docherty, Richard Moyes, Eva Veble, Mary Wareham: Contributors. Laurent Vilain: Designer. Sylvie Brigot-Vilain: Coordinator**

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

CCW News is a product of the Cluster Munition Coalition. The CMC reserves the right to decide what to publish in the CCW News.

