



## **Cluster Munitions and the Convention on Conventional Weapons Myths and Realities**

Discussions on cluster munitions have been ongoing in some form or another in the forum of the 1980 Convention on Conventional Weapons (CCW) for more than a decade. Since 2007 a Group of Government Experts (GGE) has been meeting regularly to negotiate a new legally binding agreement. The mandate for the GGE in 2011 is “to address urgently the humanitarian impact of cluster munitions, while striking a balance between military and humanitarian considerations.” In late 2010 a draft protocol on cluster munitions (CCW/GGE/2010-II/WP.2) was circulated by the chair of the GGE. Apparently supplanting this text, a revised “Advance Version” of a new text prepared by the chair was distributed in March 2011.

### **Myth 1: A CCW protocol on cluster munitions would have significant humanitarian benefits.**

Some states have described the text as providing for “an immediate ban on cluster munitions produced before 1980 that do not incorporate any safeguards.” Many states claim that this text would capture “a large portion of those weapons that have been cited as being the most likely to have unacceptable humanitarian effects.”

- In reality, the text is weak and is replete with exceptions, loopholes, and deferral periods that concretely undermine any impact of an effective prohibition. The so-called ban elements in the text would not prohibit cluster munitions that have been demonstrated to cause unacceptable humanitarian harm. Instead the text would legitimize the continued production, stockpiling, use, and transfer of many of the most dangerous types into perpetuity.
- Exempting from prohibition cluster munitions that “incorporate a mechanism or design” that result in less than one percent of unexploded ordnance is an unworkable provision. This provision is not a good basis for multilateral agreement since it will be up to individual states to determine the reliability rate. Any international agreement based on

the provision will be fatally flawed by its dependence on unverifiable national implementation measures, and it would be impossible to certify global compliance with the norm. Under this scenario, it is easy to envision situations where a type of cluster munition produced before 1980 is considered to be prohibited by one state and exempted by another.

- Another fundamental flaw in the text is a provision that exempts cluster munitions that have so-called safeguards, better described as loopholes, such as the ability to either self-destruct, self-neutralize, or self-deactivate. Post-conflict clearance of dud submunitions equipped with these features has demonstrated that they do not “effectively ensure that that unexploded submunitions no longer function.” If an agreement includes this loophole, states would still be able to produce, stockpile, and use cluster munitions with submunitions like the artillery and rocket delivered M85 self-destructing dual-purpose improved conventional munition used in Iraq, Lebanon, and Georgia, and the rocket delivered 9N210 submunition used in Georgia.
- Most appallingly, and in direct contradiction to the urgency called for in the mandate of the GGE, the text contains a lengthy transition period that would enable compliance with the protocol to be deferred for at least 12 years – and this period is only set to go longer as negotiations proceed. Thus while claiming to have “banned cluster munitions,” a state will be permitted to stockpile and use the types of cluster munitions that have been demonstrated to cause humanitarian problems following their use in places like Afghanistan, Chad, Israel, Kuwait, Laos, Saudi Arabia, Sudan, and the successor states of the former Yugoslavia.

## **MYTH 2: A CCW protocol would capture states that stockpile the vast majority (85-90%) of the world’s cluster munitions.**

The argument that a CCW protocol would capture most of the major users, producers, and stockpilers of cluster munitions is not convincing or backed up by sound data. It neglects the fact that the Convention on Cluster Munitions includes many former users, producers, and stockpilers of cluster munitions.

- A total of 87 states have possessed stockpiles, of which 38 have joined the Convention on Cluster Munitions, 32 are part of the CCW but not the Convention on Cluster Munitions, and 17 stockpilers are not part of either treaty. So the myth that only the CCW includes stockpilers of cluster munitions has no basis in reality.

- 11 states party to the Convention on Cluster munitions and one signatory state have so far officially declared possessing 818,059 cluster munitions containing 98,606,677 submunitions in transparency reports. Of these, 492,716 cluster munitions containing 42,519,318 submunitions have been destroyed to date.
- The vast majority of CCW states stockpiling cluster munitions have not disclosed detailed information on the quantities, types, or other information. Thus it is not possible, given what is known, to make a valid claim about quantities in stockpile that the CCW could potentially capture.

States have failed to demonstrate with concrete data what the impact of the 1980 date would have on current stockpiles. Only one state party to the CCW that has not joined the Convention on Cluster Munitions, the United States, has disclosed the size of its stockpile: nearly 5.5 million cluster munitions containing nearly 730 million submunitions. As the US representative has stated several times at CCW, over 95 percent of this stockpile does not meet reliability standards set by US national policy and will not be used after 2018. In February 2011, the US stated that, if adopted as a CCW protocol, the chair's 2010 text would require the US to permanently set aside from use, and to ultimately destroy, approximately 40 percent of its cluster munitions stocks.

- What little data on stockpiles does exist suggest that the quantities of cluster munitions produced before 1980 may in fact be quite modest. For example, it is unclear if cluster munitions already removed from the active inventory and designated for demilitarization were included in the tally that resulted in the claim that up to 40 percent of the US stockpile would be prohibited.
- Additionally, while the US General Accounting Office noted in 1981 that the US had produced only 966,000 M483A1 155mm artillery projectiles by that time; the total inventory of this type was reported in 2004 to the US Congress to total 3.9 million projectiles. Thus it appears that only 25 percent of the most common type of cluster munition in the US inventory was produced before 1980. The other types of cluster munitions that could have been produced before 1980, based on their type classification date, appear to total less than 200,000 items according to publicly released 2004 data.
- Cluster munitions produced before 1980 are at this point over 30 years old, and while they could be capable of functioning at some level, they more likely constitute

a significant operational and post-conflict liability based on their demonstrated failure rates and humanitarian impact.

### **MYTH 3: Any CCW protocol on cluster munitions is better than no protocol.**

The idea that some rules are better than none is strongly promoted by certain states supporting a CCW protocol. Yet this ignores the fact that over the past three years new international law on cluster munitions has been firmly established.

- The 2008 Convention on Cluster Munitions entered into force on 1 August 2010 and prohibits the use, production, stockpiling, and transfer of cluster munitions. It also requires destruction of stockpiled cluster munitions within eight years, clearance of contaminated areas within ten years, and the provision of assistance to victims of the weapon. A total of 108 states have joined the Convention, of which 55 are states parties.
- By creating a competing piece of international law on cluster munitions, a CCW protocol could undercut the strong standards set by the Convention on Cluster Munitions. A new CCW protocol could re-legitimize a weapon already prohibited by the Convention on Cluster Munitions; revive acceptance of a technical approach to improving the weapon as opposed to a complete prohibition; weaken or delay the stigmatization of cluster munitions being created by the Convention on Cluster Munitions; and harm efforts to universalize the Convention, as some states would opt to join only the lower standard of the CCW.
- The Convention on Cluster Munitions and this CCW process are not complementary. The adoption of a weak CCW protocol would set a horrible precedent in international law and create headaches in terms of national interpretation and practical implementation.

### **MYTH 4: A CCW protocol should be acceptable for states that have joined the Convention on Cluster Munitions.**

The chair's text contains a provision stating that it shall not affect rights or obligations of states that are party to both the CCW and the Convention on Cluster Munitions. In other

words, for states parties to the Convention on Cluster Munitions a CCW protocol on cluster munitions would have absolutely no meaningful effect.

- Two-thirds of CCW states parties have either signed or ratified the Convention on Cluster Munitions. It is hard to understand why certain Convention on Cluster Munitions states parties (perhaps most notably Australia, France, Germany, and Ireland) are actively supporting CCW efforts to create a weaker protocol on cluster munitions. Such actions are at odds with their obligation to promote the norms of the Convention on Cluster Munitions.
- If a CCW protocol is concluded, do these and other states party to the Convention on Cluster Munitions intend to undertake a national process to ratify and implement an instrument that has no meaning for them? There would be considerable political cost in agreeing a new lower standard, especially if there is no humanitarian benefit to be gained from adopting a protocol based on this text.

### **MYTH 5: The failure to create a CCW protocol on cluster munitions would weaken the overall viability of the CCW.**

Civil society shares the desire of governments that the CCW be a strong and relevant international instrument. Yet more than five years of talks in CCW on cluster munitions have been deeply damaging to the reputation of the CCW, as well as lengthy, costly, and futile.

Through its deliberations on cluster munitions, the CCW has become known as a consensus-based process dominated by those who place military considerations above humanitarian concerns. Perhaps most disturbingly, the CCW's work on cluster munitions is weakening multilateral disarmament diplomacy through the CCW's failure to negotiate a strong and comprehensive instrument in a timely manner.

- States that are not ready to join the Convention on Cluster Munitions could take some of the positive steps envisioned in the chair's text and implement them at the national level through national measures, as interim steps toward a comprehensive ban. Such states could also endorse a political declaration, as happened when CCW negotiations on Mines Other Than Anti-Personnel Mines were unsuccessful. A CCW protocol is not necessary for states to take action on cluster munitions.

- The chair's text is as fundamentally flawed as previous draft texts that successive CCW chairs have produced over the past five years. There remain huge gulfs of disagreement on a wide range of issues. It is time to stop the negotiations on cluster munitions in the CCW as they are no longer worth the time, money, and human resources required. Negotiations should conclude at the Review Conference in November 2011.
- There are much better ways for the CCW to spend its time and redeem itself. For example, Human Rights Watch is urging states to re-visit Protocol III on incendiary weapons, with a view to future amendment because the protocol does not adequately fulfill its purpose of protecting civilians from the effects of incendiary munitions.