



ICRC

**Fourth Review Conference of the States Parties
to the
Convention on Prohibitions or Restrictions on the Use of Certain
Conventional Weapons
which may be Deemed to be Excessively Injurious
or to Have Indiscriminate Effects**

14-25 November 2011

Geneva, Switzerland

**Statement by
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15 November 2011

Review Conferences are moments not only to consider proposals for new norms but also to take stock of how well the commitments in existing protocols are being implemented. They also afford an opportunity to reflect on the adequacy of existing protections in light of technical developments and military practices. We hope the Fourth Review Conference will devote adequate time and attention to all of these objectives.

One of the principal issues addressed by States Parties since the last Review Conference is a set of measures to address the unacceptable human costs of **cluster munitions**. Following 5 years of work, two draft texts have been submitted to the Review Conference for consideration. The International Committee of the Red Cross (ICRC) appreciates that several major stockpilers of cluster munitions have recognised the severe humanitarian impacts of these weapons and are prepared to take some steps forward in this field.

The ICRC is convinced that the problems, in humanitarian terms, associated with cluster munitions are comprehensively and effectively addressed through the Convention on Cluster Munitions (CCM). Nevertheless, the ICRC has consistently supported work in the CCW in the belief that rules could be agreed for States not ready to accede to the Convention on Cluster Munitions and that these rules would constitute an urgent response that complements, rather than contradicts, the Convention on Cluster Munitions.

The ICRC greatly appreciates the determined efforts of the Chairman of the GGE, Mr Gary Domingo, and the Friends of the Chair to bridge wide differences on many issues. We fully recognise that the use of some cluster munitions, namely those produced before 1980, would be prohibited under the Draft Protocol and that this should lead to the destruction of these types at some future point in time. Having called for years for the elimination of inaccurate and unreliable cluster munitions we can only welcome such steps. We also appreciate that significant commitments in the fields of clearance and victim assistance have been included. However, these positive measures must be weighed against the human costs of the far greater quantities of cluster munitions the use of which would be permitted for 12 years or indefinitely.

For a variety of reasons which I will outline in a moment, the ICRC believes that the Draft Protocol submitted to this meeting does not represent an urgent or an adequate response to the humanitarian problems caused by cluster munitions. Rather, it risks perpetuating many aspects of these problems.

First, the Draft Protocol would permit the continued use of all cluster munitions produced after 1980, including those with no safety features, for up to 12 years after the Protocol enters into force. Thus, even if the Protocol enters into force in 2 or 3 years time, all post-1980 cluster munitions could be used until 2026. If entry into force is delayed their use could continue yet longer.

Second, the Draft Protocol allows the use indefinitely of cluster munitions produced after 1980 that contain a single safety feature even though munitions with such features have been known to fail in significant numbers. The human costs of such failure will be multiplied by the absence of a limitation on the number of submunitions permitted per cluster munition.

Third, the Draft Protocol is likely to result in long-term investment in the development and production of cluster munitions with one safety mechanism, even though there remain serious concerns about reliability and accuracy of such weapons. It is therefore doubtful that States that go down this path will be ready to adopt further restrictions or prohibitions for decades.

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.

The ICRC's concerns were outlined in a letter which I sent to Foreign Ministers of all CCW States Parties in October. While we fully recognise that it is States that have the final responsibility for the adopting international law, we invite States to carefully consider the implications identified by the ICRC when deciding on how to proceed. Regardless of the outcome of this meeting, we urge all States to do all they can at national level to prevent further civilian suffering resulting from cluster munition use.

In addition to decisions on the Draft Protocol on Cluster munitions, the ICRC hopes that the Review Conference will devote significant time to reviewing the **status and operation of the Convention** and its existing protocols. In our view, not enough time has been spent in the past 10 years assessing the implementation of existing protocols as most attention has focussed on the negotiation of new instruments.

At the August session of the Group of Governmental Experts the ICRC highlighted several aspects of the Convention that could be the focus of substantive review. These include **implementation mechanisms** for CCW obligations at the national level such as legislation, training and administrative measures. Another issue is the extent to which States have established **mechanisms to review the legality of new weapons** they develop or acquire. Such mechanisms are necessary to implement general IHL rules and are required by Article 36 of 1977 Additional Protocol I to the Geneva Conventions. The importance of such review mechanisms was stressed in the final declarations of the Second and Third CCW Review Conferences.

An additional issue is the adequacy of protection of civilians from **weapons with significant incendiary effects**, including the provisions of Protocol III on incendiary weapons. Past use of such weapons in densely populated areas highlights the dangers that exist for civilian populations and the need to further examine this matter. The ICRC believes that there would be considerable value in examining the military, technical, legal and humanitarian aspects of such weapons either through work on this issue in the CCW's Group of Governmental Experts or other settings.

Finally, the ICRC believes that this Review Conference is an important moment to stress the need for the full implementation of the recording requirements of the **Protocol on Explosive Remnants of War**. These crucial provisions, which require States Parties to institute national procedures to record the use and abandonment of explosive ordnance by their armed forces, are essential to the Protocol's success. However, it is not clear that all States Parties to Protocol V are in a position to implement this responsibility. Such procedures need to be in place, formalised in doctrine and training, and regularly exercised. If this is not done, States Parties will be unable to fulfil their obligations to log and retain the required information during a conflict or to use such information to facilitate clearance operations at the end of active hostilities.

The ICRC urges delegations to ensure a full and comprehensive review of all aspects of this important Convention of IHL. ~~We appreciate the opportunity to contribute to the work of this Conference and will be pleased to elaborate on many of the themes presented here at the appropriate time.~~