

**GROUP OF GOVERNMENTAL EXPERTS OF THE
HIGH CONTRACTING 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**

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Item 6 of the Agenda
Cluster munitions

**PROPOSAL FOR MAIN ELEMENTS OF A DRAFT CCW PROTOCOL ON
PROHIBITIONS OR RESTRICTIONS OF CLUSTER MUNITIONS**

Submitted by Turkey

1. The main elements of a future CCW protocol may include, inter alia, the following:
 - I. Scope of application
 - II. Definitions
 - III. Restrictions on the use
 - IV. Protection of civilians
 - V. Application and implementation of existing international humanitarian law
 - VI. Victim assistance, cooperation and assistance

2. Scope of application and restrictions on use are linked to definitions. No agreement has been reached yet on definitions of cluster munitions (CM). In this context, the various proposals put forward by delegations so far, as well as the consolidated draft text of the working group on the definitions (January 2008) are going to require further discussions in the GGE. Pending that and parallel to these discussions, the GGE may consider the following possible elements:
 - (i) For the first three subjects (scope of application, definitions and restrictions on use), amended Protocol II of the CCW (AP II) may offer a sound basis to elaborate on.
 - (ii) For protection of civilians, we may draw upon our discussions in the GGE, and make use of document CCW/GGE/2008-II/3, paragraph 16 as reference.
 - (iii) For application and implementation of existing international humanitarian (IHL) law, a "best practices" framework could be annexed to the future protocol. As reflected in document CCW/GGE/2008-II/3, paragraph 15, the best practices should aim at strengthening compliance with IHL and assisting States and their

military forces in implementing law when applying military force, including the use of cluster munitions.

- (iv) For victim assistance, cooperation and assistance, article 6, paragraph.3 of the Ottawa Convention as well as CCW Protocol V may provide the basis.

3. As adherence to various international conventions / treaties among CCW States Parties vary, we suggest making use of the rationale and the language contained therein, rather than direct references.

4. Possible references with regard to each of the six subjects in paragraph 1 are listed below for convenience:

I. SCOPE OF APPLICATION

5. Article 1, paragraphs 2 to 6 of AP II may usefully serve in this context, once the GGE agrees on definitions. Proposal: This Protocol relates to the use of [...] defined herein, but does not apply to the use of [...].

“2. This Protocol shall apply, in addition to situations referred to in Article I of this Convention, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Protocol.

4. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Protocol to parties to a conflict, which are not High Contracting Parties that have accepted this Protocol, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.”

II. DEFINITIONS

7. Cluster munition: GGE agreement.

8. Definitions such as “Military objective” and “Civilian objects” can be worked out on the basis of article 2, paragraph 6 and 7 respectively of AP II:

“Military objective” means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

“Civilian objects” are all objects which are not military objectives as defined in paragraph [...] of this Article.”

III. RESTRICTIONS ON THE USE OF CLUSTER MUNITIONS

9. Suggest to use article 3, paragraphs 7 to 10 of AP II as basis for restrictions on the use:

“It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians or civilian objects.” [Paragraph 7]

“The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use of such weapons are:

- (a) which is not directed against a military objective. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used; or
- (b) which employs a method or means of delivery which cannot be directed at a specific military objective; or
- (c) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” [Paragraph 8]

“Several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective.” [Paragraph 9]

“All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. These circumstances include, but are not limited to: ...” [Paragraph 10]

IV. PROTECTION OF CIVILIANS

10. Document CCW/GGE/2008-II/3, paragraph 16, LEGAL TEXTS :

- “(i) It is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by cluster munitions.
- (ii) It is prohibited in all circumstances to make any military objective located within a concentration of civilians or in areas normally inhabited by civilians the object of attack using cluster munitions.
- (iii) It is prohibited to attack with cluster munitions objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, or pharmaceutical installations. This shall also apply if these installations are not used solely for the sustenance of the civilian population but also for the sustenance of members of the armed forces.”

V. APPLICATION AND IMPLEMENTATION OF EXISTING INTERNATIONAL HUMANITARIAN LAW

11. Best practices might include the aims stated in paragraph 15 of document CCW/GGE/2008-II/3:

- (i) “To identify the applicable principles of IHL pertaining to the application of military force and of the particular weapon in use.
- (ii) To determine the lawfulness of the weapon under consideration by way of a legal review.
- (iii) To ensure that military doctrine reflects the relevant law.
- (iv) To have adopted a manual of IHL (otherwise known as the Law of Armed Conflict - LOAC), for use by the military.
- (v) To ensure that military planners take into consideration the relevant law.
- (vi) To have a targeting procedure conducted by trained personnel that leads to a targeting directive, which is cleared by appropriate political and legal authorities.
- (vii) To ensure that appropriate Rules of Engagement (ROE) are in place, which are cleared by appropriate political and legal authorities.
- (viii) To train all military personnel in IHL and ROE to ensure they understand and comply with humanitarian and legal obligations.

- (ix) To ensure the availability of legal advice at every appropriate step above, including for training and operations.
- (x) To have in place within domestic law an enforcement mechanism properly to investigate and deal with breaches of IHL.”

VI. VICTIM ASSISTANCE, COOPERATION AND ASSISTANCE

12. Countries, in a position to do so, should, when feasible, provide assistance to those who are in need. Article 6, paragraph 3 of the Ottawa Convention may offer the ground for language on victim assistance:

“Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine (CM) victims and for (Mine) awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent Societies and their International federation, non-governmental organizations, or on a bilateral basis.”
