

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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Cluster munitions

**Draft Alternative Protocol on Cluster Munitions
(Draft Protocol VI to the CCW)**

Working Paper submitted by Austria, Mexico and Norway

I. Introduction

1. Austria, Mexico and Norway would like to introduce an alternative to the current Chair's text with respect to the negotiation process in the framework of the CCW for a Protocol VI on Cluster Munitions.
2. Austria, Mexico and Norway and several other States Parties to the Convention on Cluster Munitions (CCM) have frequently voiced their concern regarding the content of the draft protocol and the GGE negotiation process.
3. At the same time, it is important to recognize and value the wish of states not parties to the CCM to take multilaterally agreed intermediate steps with respect to the humanitarian problems caused by cluster munitions. Austria, Mexico and Norway and several other States Parties to the CCM believe the CCW negotiations should strive:
 - (a) to reach consensus on a protocol text that establishes meaningful intermediate steps and amounts to true added value in addressing the humanitarian problems caused by cluster munitions;
 - (b) to ensure that the outcome is complementary to and compatible with the commitments that have been taken by CCM signatory and ratifying states, of which a significant number are also High Contracting Parties to the CCW.
4. Finding a solution that meets these two main objectives has made the negotiations in the GGE particularly difficult. So far the gaps have not been bridged but rather been in competition with one another during the course of the negotiation process. These problems are particularly evident in the approach that has been taken with respect to the definition of cluster munitions, which remains highly problematic. As a consequence, there are serious problems with the entire draft text with its obligations, prohibitions and provisions. Nevertheless, Austria, Mexico and Norway remain fully convinced that consensus on a meaningful outcome can still be found. For this reason, Austria, Mexico and Norway have developed the attached Alternative Draft Protocol VI as a constructive proposition to build

consensus and to bring the GGE negotiation process to a positive conclusion in time for the Review Conference. The Alternative Draft Protocol VI is based on the following principles:

(a) It is aimed primarily for CCW High Contracting States not Party to the CCM, allowing them to clearly acknowledge the humanitarian problem caused by cluster munitions and to take effective steps in addressing these concerns;

(b) It is focused on objectives and concrete commitments to make a meaningful and significant contribution in matters of clearance, stockpile destruction, victim assistance, etc.;

(c) It does not contain a definition of cluster munitions and would, thus, not contradict norms enshrined in the CCM;

(d) It sets a clear goal that additional steps to achieve the humanitarian objectives should be taken (endeavour clause);

(e) It would be a realistic result and preserves the integrity of the CCW as an effective instrument of IHL.

5. Austria, Mexico and Norway would like to request that this proposal is circulated to all High Contracting Parties as a Working Paper of the GGE entitled "Draft Alternative Protocol on Cluster Munitions; Working Paper submitted by Austria, Mexico and Norway." In addition, Austria, Mexico and Norway would like to request that sufficient time be allocated for the consideration of this proposal in the August meeting of the GGE.

6. Austria, Mexico and Norway look forward to discussing this proposal during the forthcoming GGE meeting and hope that it will facilitate consensus and, thus, a successful conclusion of the current negotiations process on cluster munitions in the framework of the CCW.

II. Draft Alternative Protocol on Cluster Munitions

The High Contracting Parties,

Recognising the serious humanitarian problems caused by cluster munitions,

Determined to address *urgently* the humanitarian impact caused by cluster munitions,

Basing themselves on the principles and rules of International Humanitarian Law in order to protect civilians from attacks, bearing in mind in particular the prohibition against employing means of combat that may be deemed to be excessively injurious or to have indiscriminate effects,

Recognizing that the right of the High Contracting Parties, or a party to a conflict, to choose means of warfare is not unlimited,

Bearing in mind that women and children are particularly vulnerable in situations of conflict and armed violence and therefore *acknowledging* the importance of United Nations Security Council Resolution 1325 on women, peace and security and United Nations Security Council Resolution 1612 on children in armed conflict;

Bearing in mind also the Convention on the Rights of Persons with Disabilities which, *inter alia*, requires that States Parties to that Convention undertake to ensure and promote the full realization of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability,

Recognising that victims of cluster munitions are all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or

substantial impairment of the realisation of their rights caused by the use of cluster munitions, as well as their affected families and communities,

Noting the Convention on Cluster Munitions, done at Dublin, Ireland, on 30 May 2008, and the necessity of supporting intermediary steps towards achieving its goals,

Resolved to do their utmost in providing assistance to the victims of cluster munitions,

Have agreed as follows:

Article 1

General provisions and scope of application

1. The High Contracting Parties will, in conformity with the Charter of the United Nations and the rules of International Humanitarian Law and other rules of international law applicable to them, take all necessary measures to prevent and alleviate the human suffering caused by cluster munitions.
2. This Protocol shall apply in all circumstances, including in situations of or resulting from conflict referred to in Article 1, paragraphs 1 to 6 of the Convention as amended 21 December 2001.
3. This Protocol shall not affect any rights or obligations that States Parties to the Convention on Cluster Munitions, done at Dublin, Ireland, on 30 May 2008, have under that Convention.

Article 2

Compliance with IHL

1. In implementing this Protocol, each High Contracting Party and party to an armed conflict shall ensure full compliance with principles and rules of International Humanitarian Law.
2. Nothing in this Protocol shall be interpreted as detracting from, or otherwise prejudicing, any applicable principles or rules of International Humanitarian Law.

Article 3

Stockpile destruction

Each High Contracting party that possesses cluster munitions undertakes to:

- (a) Remove cluster munitions no longer intended for use under its jurisdiction and control from its operational stocks, separate them from other munitions, and in accordance with national procedures mark and safely secure them;
- (b) Destroy or ensure destruction, in accordance with national procedures, of stockpiled cluster munitions under their jurisdiction and control as soon as feasible, starting with the oldest and most unreliable and inaccurate cluster munitions;
- (c) Develop a comprehensive plan, in accordance with national procedures, for the destruction of cluster munitions. The comprehensive plan shall include a schedule and the time required for completion of destruction. The comprehensive plan shall be revised as necessary.

Article 4

Termination of transfers

Each High Contracting Party undertakes to, as soon as feasible, terminate transfers of cluster munitions, starting progressively with the termination of transfers of the oldest and most unreliable and inaccurate munitions.

Article 5

Clearance and relation to Protocol V

1. Each High Contracting Party and party to an armed conflict shall after cessation of hostilities and as soon as feasible, mark and clear, remove or destroy cluster munition remnants in affected areas under its control. Each High Contracting Party undertakes to complete clearance of such areas as soon as feasible but no later than ten years after entry into force of this Protocol for this High Contracting Party.
2. In the event that a High Contracting Party determines that it will be unable to clear and destroy or ensure the clearance or destruction of all cluster munitions remnants referred to in paragraph 1 of this Article within ten years, it may submit a request to the Conference of High Contracting Parties for an extension for completing clearance and destruction of cluster munitions remnants by a period of up to five years.
3. Such extension requests should contain information on the duration of the proposed extension, an explanation for the reasons for the proposed extension and any other information relevant to the request for the proposed extension.
4. This Article shall not affect any rights or obligations that High Contracting Parties to Protocol V under the Convention have under that Protocol.

Article 6

Victim Assistance

1. The High Contracting Parties and parties to an armed conflict shall, in accordance with applicable law, provide or facilitate the provision of adequate assistance, including medical care, rehabilitation and psychological support and assistance for social and economic inclusion to cluster munitions victims in territories under their jurisdiction or control. Each High Contracting Party shall make every effort to collect reliable data with respect to cluster munitions' victims.
2. The High Contracting Parties and parties to an armed conflict shall not discriminate against or among cluster munitions victims, or between cluster munitions victims and other victims of armed conflict or explosive remnants of war. Differences in treatment between such victims with disabilities and other persons with disabilities should be based only on medical, rehabilitative, psychological or socio-economic needs, taking into account age and gender sensitivities.
3. In order to fulfil its obligations under this Article, each High Contracting Party shall take, among others, the following measures, as appropriate:
 - (a) Assess the needs of cluster munitions victims;
 - (b) Develop, implement and enforce national laws and policies;
 - (c) Develop, where it does not already exist, in accordance with national procedures, a national plan, with provision of adequate assistance, including timeframes to carry out these activities, with a view to incorporating them within applicable national health, disability, development and human rights frameworks and mechanisms, while respecting the role of and contribution of relevant actors in the field of assistance and rehabilitation of victims of cluster munitions;
 - (d) Seek to mobilize national and international resources;
 - (e) Closely consult with and involve cluster munitions victims and their representative organizations;
 - (f) Designate, in accordance with national procedures, a focal point within the government for coordination of matters relating to the implementation of this Article.

(g) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Article 7

International Cooperation and assistance

In fulfilling its obligations under this Protocol, each High Contracting Party has the right to seek and receive assistance and each High Contracting Party in a position to do so shall provide assistance for the purpose of enhancing the implementation of the provisions of this Protocol.

Article 8

National implementation

Each High Contracting Party will endeavour to introduce and implement national measures aiming for comprehensive prohibitions on the use, stockpiling, production and transfer, as well as the final destruction of, cluster munitions.

Article 9

Reporting

Each High Contracting Party shall report annually on the measures taken to implement the Articles of this Protocol to the Secretary-General of the United Nations, who shall circulate the reports to all High Contracting Parties.

Article 10

Conferences of the High Contracting Parties

The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the implementation of this Protocol and related to additional steps for reaching the aims enumerated in the preamble. For this purpose, a Conference of the High Contracting Parties shall be held annually to review the status and operation of this protocol.
