

# **Toward an Improved *Convention on Certain Conventional Weapons*: A Proposal**

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## ***Background***

The *Convention on the Prohibitions or Restriction on the use of Certain Conventional Weapons Which May Be Deemed to be excessively Injurious or that Have Indiscriminate Effects* (CCW) was established in 1980. Within this framework Convention, five separate Protocols have been negotiated to address the humanitarian impact of incendiary weapons, blinding laser weapons, mines, booby traps, explosive remnants of war and weapons that injure by means of non-detectable fragments.

The results after 30 years, including 16 years of almost continuous negotiation since 1994, have been modest to say the least. Only two sub-categories of weapons have been prohibited: (i) weapons, the primary effect of which is to injure by fragments which in the human body escape detection by x-rays, and (ii) blinding laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision.

Other weapons are subject to limited restrictions on their use which many would argue are of negligible humanitarian benefit. Protocol V establishes responsibility for provision of information on and clearance of explosive remnants of war.

Routinely, the CCW moves incredibly slowly by any standard – except perhaps when measured against the *Conference on Disarmament* that has been all by paralyzed for more than a decade. Sometimes even after years of negotiation, the CCW achieves nothing at all, as occurred with Mines Other Than Anti-personnel Mines (MOTAPM), which ended without agreement after five years of negotiation (2002-2007). Ongoing negotiations on cluster munitions since 2008 appear poised to end without result as well.

It was the failure of the CCW to adequately address anti-personnel mines and cluster munitions that led like-minded States to take negotiations outside the CCW in 1997 and 2007 respectively. In both cases, these alternative processes produced excellent results and have contributed as great deal to international humanitarian law.

Regrettably, several states including the US, Russia, China, India, Israel and Pakistan with large stockpiles of these weapons, remained outside these instruments and are not bound by the provisions of either Convention.

## ***Decision Making in the CCW***

The word ‘consensus’ is nowhere to be found in the CCW Framework Convention, any of the five Protocols or in the CCW Rules of Procedure. When the CCW framework Convention was

established 30 years ago, States agreed on all elements of the Rules of Procedure except those regarding decision making. There was controversy at the time over whether or not voting should be allowed or to take a consensus approach. In the absence of agreement on a standing rule, States agreed on consensus decision making for that meeting.

Article 8 of the framework Convention provides for review and amendment of the Convention and states that a conference can be convened if a majority of not less than 18 High Contracting Parties so agree. It also states that such a conference may agree upon amendments which shall be adopted and shall enter into force in the same manner as the Convention and the annexed Protocols. The Rules of Procedure used at Review Conferences have, in turn, only referred to Article 8 of the framework Convention as the basis of decision making. Given this ambiguity, the practice at Meetings of States Parties and subordinate bodies such as Groups of Government Experts has been to reaffirm the applicability of the Rules of Procedure of the previous Review Conference at the beginning of each session. Thus, there is no standing rule of consensus in the CCW, only an established practice of consensus.

It is notable that in the vast majority of UN-facilitated processes, including the Non-Proliferation Treaty, the Chemical Weapons Convention, the Biological and Toxins Weapons Convention, the International Atomic Energy Association General Conference and the UN Programme of Action on Small Arms and Light Weapons, voting is permitted after all efforts to reach consensus have been exhausted. To my knowledge, consensus decision making is the formal practice only in the Conference on Disarmament, the planned 2012 conference to negotiate an Arms Trade Treaty and the Comprehensive Test Ban Treaty, on matters of substance only.

In practice, the tradition of consensus decision making in the CCW has given each state an effective veto. Negotiations inevitably move towards the lowest common denominator and concessions are consistently made by the majority of States to get others on board. Recent examples are the aforementioned Mines Other Than Anti-personnel Mines (MOTAPM) where a serious effort led by the US with support of most European States, Canada, Latin American States, India and Japan, was blocked by Russia, China, Pakistan, Cuba and Belarus.

A similar process with different country groupings is unfolding in the CCW with respect to cluster munitions. For more than three years, the large majority of states have made concessions and if anything emerges, which is unlikely, I believe it will be weak, ineffective from a humanitarian perspective and could undermine existing standards that have been established outside of the CCW, specifically in the Convention on Cluster Munitions. -- And this will have taken 4 or more years and considerable effort and expense to occur.

Given this practice, States which support clear and effective results (high norms in international humanitarian law) are the *demandeurs*, in relation to those who do not. Those who oppose high standards do not have to convince others of their position, but can simply say no until proponents concede.

### ***Proposal***

In light of the fact that standing rules of procedure concerning decision making have never been agreed and that the *status quo* in the CCW is neither efficient nor effective, it is recommended that one or more countries table a proposal during the CCW Review Conference in November 2011, to adopt a standing rule of procedure with respect to decision making modeled along the lines of the NPT, etc, that allows for voting in the event that efforts to reach decisions by consensus fail.

It is further proposed that, consistent with normal practice in UN-facilitated fora, States require a two-thirds majority for the adoption of matters of substance and a simple majority on matters of procedure.

### ***Considerations***

The CCW is becoming increasingly marginalized. If it continues to pose an almost insurmountable obstacle to getting real work done on important issues, States will continue to take issues outside the CCW. Some of the world's largest countries do not participate in such processes, however, often the very states which most need to be involved to achieve significant results over the longer term.

The upcoming Fourth Review Conference of the CCW in November 2011 presents a rare and appropriate opportunity to review and amend or reform as necessary, any element of the CCW, including its business practices. It is within the scope and authority of the President of the Review Conference to bring this or other such proposals to conclusion at the Review Conference itself, without requiring consensus among states to do so.

The proponents of the foregoing proposal could proceed, first, by refusing to adopt consensus decision making as the *modus operandi* at the Review Conference. This will create a procedural impasse and opportunity to do things differently than in the past.

In the end, no State would or could be forced to adopt standards or measures that it does not believe to be in its national interest, as it can simply refrain from consenting to be bound by any Protocol it does not support. The proposed new rules, however, would prevent one or more States from holding up the work of the majority.

Whereas a strong negative reaction can be expected from several member states which prefer the *status quo* in the CCW, it is believed that a clear majority of states would support such a proposal.

### ***Conclusion***

This could mark a new beginning for the CCW; one where the CCW becomes the forum of choice in which to negotiate effective conventional arms agreements, instead of one where arms control and disarmament aspirations of the majority of States are weakened or dashed completely.