

Article 36

Assessment of UK position in relation to draft Protocol VI to the CCW, 11 Nov. 2011

Adoption of a CCW Protocol (VI) on cluster munitions, based on the current draft, would be a legal embarrassment and a step backwards for humanitarian protection. The UK Government's ambivalent position provides some hope that consideration of the subject is prevailing over blind US pressure.

Recent statements by UK government officials provide an indication of their orientation to draft Protocol VI to the CCW. Unlike Australia and Germany, who seem enthusiastic to adopt the draft Protocol and have chaired negotiating sessions towards its approval, the UK position is more nuanced and sceptical.

In Parliament on 9th November, Minister of State David Lidington stated that:

“Negotiations are under way and we have a seat at the table ... However, we are a long way from seeing a protocol that we regard as worth debating or as acceptable in any way.”(House of Commons Hansard, 9 Nov 2011, Col 419)

He stated that it was “disappointed by the progress achieved during the negotiations.” Whilst he reiterated the Government's wish to get “the best possible result” he made it clear that it wanted users and producers “to give up more, to be more transparent and to be explicit in their commitment to work towards a world entirely free of cluster munitions.”

These points were repeated by Lord Howell of Guildford when speaking in the House of Lords (House of Lords Hansard, 10 Nov 2011, Col 337). He also recognised that the draft Protocol could serve to “legitimise” continued cluster munition use:

“We do not want to legitimise lower standards or undermine or dilute the Convention on Cluster Munitions in any way ... there are risks in this matter, and we are determined to avoid them.”

It is the fact that draft Protocol VI would, in the eyes of some states, legitimise continued cluster munition use, rather than the concern that it contradicts the legal obligations of States Parties to the Convention on Cluster Munitions, that is the fundamental problem, and the UK seems now to be recognising this.

Addition of an “endeavour clause” is insufficient

Some countries have suggested that a clause making vague commitments raise standards in the future (a so-called “endeavour clause”) would make the draft Protocol VI compatible with the CCM. The UK statement that the current draft text is “a long way” from being adequate, and the repeated indications that changes would need to be made to the scope of prohibition, and transparency requirements, in addition to commitments to future reform, suggest that an endeavour clause alone should be insufficient for the UK.

Prohibition of CRV-7 / Hydra type cluster munitions

Also notable in recent UK statements is their reading that the current text would prohibit the CRV-7 rocket-delivered cluster munitions that the UK used to possess (Written Answer, Jeremy Browne MP, 1 Nov 2011). Other interpretations might suggest that these munitions (and the Hydra system that is very similar) would be allowed under point 3 of Technical Annex B. The fact that the draft text is ambiguous on such basic points as whether certain weapons are prohibited or not is simply one example of its gross inadequacy.

Conclusion

Based on recent statements to Parliament it would be wrong for the UK to support adoption of a Protocol based on the current text without major changes in a number of areas – doing so would suggest that the statements cited here were misleading. US pressure to adopt the draft Protocol will pass but if adopted, such a poorly conceived legal instrument would promote continued cluster munitions use and be a long-standing stain on the CCW and on the wider fabric of international humanitarian law.