

**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**

EXPLOSIVE REMNANTS OF WAR

Submitted by the United States of America

1. The United States believes that unexploded cluster munitions are a problem that must be addressed within the broader context of explosive remnants of war. However, we believe that careful thought needs to be given as to how to address these issues within a new instrument focused on cluster munitions. States in a position to do so have been and are continuing to engage in clearance and related work. Our negotiations within the CCW framework should support and augment those efforts, not slow them down or complicate them.
2. There are clear obligations and best practices for all types of Explosive Remnants of War in Protocol V. However, the challenge for these negotiations is how to make clear that these obligations and best practices fully apply in the context of cluster munitions without creating duplicative or contradictory structures. The United States does not want to create greater international obligations with respect to the cleanup of cluster munitions than other forms of ERW. Affected states should be allowed to request, receive, and prioritize assistance based on the impact created not the type of weapons that caused the damage. A narrow focus on the clearance of cluster munitions is contrary to the comprehensive approach that clearance organizations take on the ground and would result in reduced efficiency and effectiveness of existing post-conflict mechanisms. Similarly, with respect to victims assistance, no victim of explosive remnants of war should be given priority or status above another. All should receive appropriate help and assistance based on need in a non-discriminatory manner.
3. In addition, we want to avoid any confusion about which Protocol would apply in particular situations. If there are any differences in similar provisions in Protocol V and our new protocol on cluster munitions, States may face questions about which protocol to apply. Uniformity will best serve implementation.
4. There is a large, established, international humanitarian mine action community that has long been addressing the humanitarian impact of ERW created by cluster munitions, along with other ERW and landmines. The CCW should not create mechanisms that attempt to duplicate

these efforts or administrative structures that relate only to cluster munitions. We believe that states should incorporate cluster munitions into the informal implementation mechanisms that are being developed for Protocol V.

5. In order to address the important issue of cooperation and assistance with regard to unexploded cluster munitions, while avoiding the problems described above, the U.S. delegation suggests that a productive approach may be to work toward agreement on the substantive outcome we are seeking, and then form a technical-legal drafting group to figure out how best to incorporate provisions in this area into the new protocol. This group could consider a number of approaches, including (i) incorporating some or all of Protocol V by reference, (ii) repeating some of its provisions in the new protocol in a manner that makes clear that cleanup of cluster munitions should be undertaken taking fully into account broader ERW issues that may exist, or (iii) including a provision urging full implementation of Protocol V. Consideration will also need to be given as to how to draft a cluster munitions instrument in a manner that takes into account that not all countries may become parties to both the new protocol and Protocol V.
