

DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A CONVENTION ON CLUSTER MUNITIONS

CCM/CW/SR/10

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SUMMARY RECORD OF TENTH SESSION OF THE COMMITTEE OF THE WHOLE

Held at Croke Park, Dublin on Monday, 26 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 10.09 a.m.

The President reminded delegates of his previous statement that a Convention would be concluded this week and of his intention to reach general agreement on a text, to be adopted on Friday morning. Substantive work must finish on the evening of Wednesday 28 May in order to allow preparation of authentic texts in the official languages, to be formally adopted on the morning of Friday 30 May. The President then proposed that Committee of the Whole discussions begin, starting with the Preamble. The Committee would then discuss the work carried out by Friends of the President on Articles 3 and 8, followed by the Presidency non-paper of 23 May, containing proposed changes to Article 6. The President then proposed to have a discussion of the paper of the Friend of the President, Ambassador Schraner, on the relationship between Parties to the Convention and those not party, that is, a discussion on interoperability and other issues within the context of Article 1.

Preamble

The President stated that general agreement on preambular language on victim assistance as proposed by Mr. Reiterer had been reached and then opened the floor to delegates to discuss the rest of the Preamble.

Indonesia introduced their proposal for a new preambular paragraph contained in CCM/53. The purpose of the paragraph was to recognize the grave consequences of the use of cluster munitions, as stated in the Oslo Declaration

The **International Committee of the Red Cross** had raised a number of proposals for the Preamble at Wellington; the United Kingdom had also presented changes. Both Parties had worked to come up with language that would resolve all proposed changes and it was suggested that the United Kingdom present the text that had been drafted.

The **Cluster Munition Coalition** expressed the view that the Preamble should recognize that the area effects of cluster munitions during attacks are as important a basis for the Convention as unexploded ordnance in post-conflict situations. The International Committee of the Red Cross had proposed good language in Wellington and the Cluster Munition Coalition hoped to see it included.

The **United Kingdom** had worked on suggestions for the Preamble together with the International Committee of the Red Cross and proposed to take forward informal consultations on the non-paper jointly produced by the United Kingdom and the ICRC.

Indonesia then clarified that the proposal contained in CCM/53 also contained a second element, that is, a proposal on the promotion of the universalisation of the Convention, using similar language to that of the Mine Ban Treaty.

Canada welcomed informal discussions on the first intervention. The suggestion of the Cluster Munition Coalition with respect to the International Committee of the Red Cross text, on addressing the impact of cluster munitions during attack as well as post-conflict was supported. Canada also proposed that the Preamble contain a reference to UN Security Council Resolution 1325 on the differential impact of conflict on different genders. Canada supported a strong reference to encouraging the universalisation of the Convention.

Norway supported the Preamble as it stands and supported the proposal by Canada to include a reference to UN Security Council Resolution 1325. The proposal to include a reference to Resolution 1325 was also supported by **Argentina** and **Sweden**. **South Africa** also supported the Canadian proposal.

Botswana welcomed further informal discussions on the Preamble, particularly on the suggestions of the Cluster Munition Coalition. Botswana also called for the inclusion of language in the Preamble referring to cooperation of non-state actors. This proposal was supported by the **Philippines** who welcomed language on the role of non-state actors either in the Preamble or in Article 1. The inclusion of language on non-state actors was also supported by **Uganda**.

Argentina supported the proposal of Indonesia.

Canada supported Argentina's suggestion to include a reference to children in armed conflict and also supported the proposal of Botswana to include a reference to non-state actors.

The President stated that Ambassador Millar of Australia had agreed to act as a Friend of the President on the issue and would convene open-ended informal consultations.

Article 3

Friend of the President, Ambassador Kongstad, stated that minor changes had been made as a result of consultations and that general agreement had been reached on a text. The President announced that the text would be circulated in the Committee of the Whole and then would be forwarded to Plenary as a Presidency Text later in the day.

Article 8

Ambassador Mabhongo stated that his consultations were ongoing and that the current text was likely to be agreed today. He was hopeful to be able to return with a text to the Committee of the Whole today that could then be forwarded to the Plenary.

Article 6

The President then introduced the President's non-paper on Article 6 on international cooperation and assistance. The proposed text was intended to reflect the cooperative spirit in

which delegates were gathered and under which the efforts of affected states, donor states, and international organisations come together. Bilateral consultations had taken place and based on the views expressed a non-paper had been circulated with possible amendments suggested. The proposals made by Canada had been included in paragraph 3. The first sentence of paragraph 4 contained a reference to Article 4(4) and there had been a proposal to delete this reference. It was not possible to finalize this aspect of Article 6 until discussions on Article 4 have been concluded. A drafting change to paragraph 7 had also been made to change from a capital to a small letter. A formal proposal to delete paragraph 8 had encountered opposition in discussion and the paragraph had thus been retained. Paragraph 9 was new, added as result of proposals made in Wellington contained in CCM/37, which had commanded considerable support during Committee of the Whole discussions on 20 May. Words had been added to the first line of paragraph 9 *bis* as result of the proposal made by Argentina, Inadvertently, the proposal had not been reflected correctly in the text. The word “or” in the first line should be replaced by “and” to read as follows: “Each State Party that seeks *and* receives assistance shall...” so that States Parties are only obligated to facilitate assistance if they had actually sought it. In the chapeau of paragraph 10, the reference to the United Nations was to now read United Nations system, an addition mentioned in the Committee of the Whole during the discussion of Article 14. The word “coordination” had been added in sub paragraph (e) of paragraph 10 at the suggestion of the United Kingdom.

France supported the new amendments in the non-paper without reservation. France agreed with the suggestion of the President that paragraph 4 should be re-examined after discussions of Article 4(4) have been settled. On the last line of paragraph 4, on lists of experts, expert agencies or national points of contact, it was appropriate to include the destruction of sub-munitions and not just clearance. France proposed the addition of “and on destruction of cluster munitions” after the word remnants to read “...clearance of cluster munition remnants, and on destruction of cluster munitions ...”.

The President stated that as similar language on clearance and destruction of cluster munition remnants existed in Article 4 this proposal should be acceptable. The President suggested the language “expert agencies or national points of contact on clearance and destruction of cluster munition remnants and related activities”. **France** agreed with this suggestion.

Lao PDR had no major objections to the proposed text and agreed that the beginning of Article 6(4) should be revisited after Article 4(4) had been decided. On paragraph 9 and the unimpeded import of equipment and material, the issue of explosives used to destroy sub-munitions was raised. The Government of Lao could not support the facilitation of assistance involving the importation of explosives for reasons of national security; the text could be supported if it was clear that explosives were excluded.

The **Philippines** stated that it attached great importance to the obligations contained in Article 4(4) of the last informal paper and that this should be borne in mind when discussing Article 6(4).

Norway raised a question on the inclusion of language on the clearance of stockpiles. Norway understood that stockpiles were not remnants and therefore that clearance language was inappropriate.

The President clarified that Article 4(4) dealt with remnants and that paragraph 5 dealt with stockpiles.

Indonesia clarified that it understood the French proposal to relate to line 3 of paragraph 4. Indonesia accepted the thrust of the new paragraph 9 but stated that the technicalities included could be better dealt with through bilateral arrangements between donor and receiving States. Rather than including such details in the Convention, Indonesia proposed that the paragraph could stop after word “implementation” in line 3. The proposal to end after the word “implementation” was supported by the **Philippines, Uganda, Chile** and **Cambodia**.

Sierra Leone raised a question on the meaning of the final phrase of paragraph 9 “unimpeded import”. Was it a subjective or objective test and who would decide? They requested the one of the supporters of the proposal clarify the intent.

South Africa supported the suggestions of Argentina for paragraph 9 *bis*. However, South Africa had a problem with the second part; the concepts of favourable entry and visa regimes added were likely to contradict domestic laws, requiring them to be changed. The suggestion from Indonesia that the sentence end after implementation was the most appropriate. South Africa indicated that they were comfortable with what was contained in the original draft Convention. **Lesotho** and **Zambia** supported the view of South Africa to end paragraph after “implementation”. **Uganda** also agreed with the proposals of Indonesia and South Africa that the element of state sovereignty be respected above the granting of favourable regimes. **Venezuela** supported Indonesia, South Africa and others that paragraph 9 *bis* contained too much detail on matters within the competence of nation States.

Austria suggested an amendment to paragraph 7, to bring it into line with Article 5. The following change was suggested for the end of the first line “for the assistance of cluster munition victims according to Article 5”.

On the proposal for paragraph 9 *bis* the **Netherlands** stated that there was common understanding that assistance is given by mutual agreement but that basic provisions needed to receive and give assistance effectively should be inserted. The details in the last part are essential elements to overcome issues that have in practice proved to be obstacles in the giving and receiving of assistance. The Netherlands supported the proposal of Argentina that paragraph 9 *bis* read “each State Party that seeks *and* receives....”

The **Philippines** referred to the proposal contained in CCM/58 on the responsibility of user States, and the discussion of the working group where it was agreed not to pursue such a concept under Article 5. It was requested that the Philippines’ idea be introduced into Article 6.4 at an appropriate place.

Germany stated that paragraph 9 *bis* had special value in detailing the role played by the receiving state. Germany favoured keeping the text as it stood and supported the Argentinean proposal. It did not support the proposal of Indonesia and South Africa to stop text at the word “implementation”. The details that follow were intended to help better implementation of the future Convention.

Botswana reserved the right to return later and agreed with the proposal by Indonesia for the introduction of paragraph 4. On paragraph 9 *bis*, Botswana was inclined to go with the South African proposal to end the paragraph in line 3; the rest of the paragraph had ambiguities that would be solved by the proposal to end the paragraph earlier.

In reaction to the statements of the Netherlands and Germany, **South Africa** stated that their concerns could be efficiently met on a bilateral basis. Alternatively, South Africa suggested the adding of the wording “in accordance with national laws and policies”, after “...effective implementation thereof” as a way of moving discussion forward.

Canada supported the proposal of Indonesia for a reference to “destruction” in paragraph 4. Canada supported the Austria proposal for a reference to Article 5 in paragraph 7. Canada also strongly supported the wording of paragraph 9 *bis* and could not support ending the paragraph after implementation. Canada had previously encountered serious problems with giving assistance in the context of the Mine Ban Treaty, for example, the imposition of duties on equipment.

Sweden supported the position of Germany and Canada and suggested that there maybe ways to look at text again. On the comment of Lao PDR, equipment would also include explosive materials.

As the basis of the Convention was a cooperative approach the **United Kingdom** could see why some might argue that the language of paragraph 9 *bis* was over prescriptive.

Mexico stated that the Preamble was generally acceptable. On paragraph 9 *bis*, though the need to facilitate activities of those providing assistance was understood, the language might be over prescriptive. Mexico supported the South African suggestion for wording “in accordance with national legislation”.

Sudan supported the position that it was not necessary to keep details in paragraph 9; a State that seeks assistance will not act against its interest. Visa matters relate to sovereignty and it would not be proper to state such provisions in the Convention.

Ghana stated that paragraph 9 *bis* clearly spelled out the obligations of donors and receiving States and suggested replacing “favourable” with “appropriate” and that the last line be amended to reflect that any decision taken must be in last line to be in conformity relevant domestic laws.

Sierra Leone stated that the positions of States re paragraph 9 *bis* were coalescing around two approaches. One was a shortened version, the second was to retaining the paragraph but to look at the language again. Given the element of prejudgment and the anticipation of problems in the current draft, Sierra Leone supported the position of the United Kingdom that the text was overly prescriptive.

Canada suggested that the specificity in current text might go too far and suggested the insertion of the following wording after the word “implementation”: “including facilitating the entry of personnel, materiel and equipment in a manner consistent with national laws”.

Ethiopia agreed with the Austrian proposal for paragraph 7. On paragraph 9 *bis*, Ethiopia supported South Africa, Indonesia and others on respect for state sovereignty and the limiting of language.

Guinea also supported the proposal of Canada adding that it should meet the misgivings of Lao as it balances concerns on the entry of assistance and with those of national concerns. Guinea could find consensus on that basis.

The proposal of Canada for paragraph 9 *bis* was also supported by **Mexico** and **Chile**

The President suggested that Canada carry out bilateral discussions and return to the Committee of the Whole with proposals later in the week. Canada accepted to carry out bilaterals.

Article 1

The President stated that the issue of interoperability and relations with non-States parties had initially been considered in Article 1. However, Ambassador Schraner (acting as a Friend of the President in conducting informal discussions on this matter) had concluded last Friday that there was a general agreement among States that a new article, rather than an amendment to Article 1, should address interoperability. The President proposed to structure discussions as follows: firstly, to consider proposals made on Article 1 excluding any discussion of interoperability and; secondly, to discuss Ambassador Schraner's proposal on interoperability which had been circulated last Friday. Any proposals made regarding transition periods in the context of Article 1 would also form part of this later discussion.

The President noted that the remaining proposals on Article 1 related to the scope of the Convention. A proposal had been made to delete the reference to "mine" in Article 1(2). Ireland had proposed extending the scope of the Convention to include dispensers, as set out in CCM/15. The remaining proposals related to amendments of a drafting nature.

Ireland stated that it had first proposed the inclusion of dispensers at the Wellington Conference. It proposed including a new paragraph in Article 1 stating that "Dispensers, affixed to an aerial platform and designed to disperse or release explosive bomblets, are subject to the same provisions as cluster munitions." This would necessitate consequential amendments in Article 2, for example a corresponding definition of "explosive bomblet" and "unexploded explosive bomblet". These corresponding definitions are set out in CCM/25.

The **United Kingdom** stated that the definition set out in the Irish proposal might be too broad, having regard to the technical complexity of weapons systems.

The floor was opened to observer delegations.

The **Cluster Munition Coalition** expressed its support for Ireland's proposal.

The **International Committee of the Red Cross** supported Ireland's proposal, which would prevent the problem caused by cluster munitions from being repeated by the use of similar small explosive munitions.

The floor was returned to participating States.

The **Philippines** raised the matter of including a reference to non-State actors in the Convention. It would not necessarily insist on this reference being included in Article 1: it was open to the possibility that it could be included in the Preamble.

The President stated that informal consultations on the Preamble could incorporate discussion of whether a reference to non-State actors might be included there.

Canada expressed its support for the spirit of the Irish proposal, but echoed the United Kingdom's comment that the language must be sufficiently precise to ensure that it does not a wider field of application than what the Convention is intended to capture.

Ghana expressed its support for Ireland's proposal, which it considered would strengthen the text of the Convention.

The President stated that his team would consult with delegations that had expressed views on these issues and would prepare a non-paper in light of these consultations.

Interoperability

The President stated that a series of widely attended informal consultations had been held last week on the issue of interoperability. Delegations had also had a useful discussion within the Committee of the Whole of text proposed by the Friend of the President, Ambassador Christine Schraner.

Argentina stated that several delegations shared a general reservation about including the concept of interoperability in the Convention, as it may create a window for the use of cluster munitions by military coalitions. Argentina had been unable to participate in the last round of informal consultations, but had taken part in earlier discussions on interoperability. It considered that the views of Argentina and others were not adequately reflected in the Friend's text. Despite concerns voiced about inclusion of the concept, paragraph (c) of the Friend's text actually widened the scope of interoperability by referring to Article 1 as a whole and not merely Article 1(c). The interoperability concerns of some States had originally been understood to relate exclusively to Article 1(c). The text as it now stood was moving away from an area of agreement. Argentina had reservations about the proposed Article.

Australia considered that the informal consultations had been positive. There were two issues that it wished to raise. Firstly, it was uncertain about the meaning of the last sub-paragraph of paragraph 3. It also considered that there were problems with the phrase "expressly request the use of" in paragraph 4. This was an unfortunate expression which might prove problematic on the ground. This language needed further refinement.

Jamaica proposed the insertion of the words "use of cluster munitions" in paragraph 3 to address a potential use of cluster munitions in a specific operation.

Canada considered that the draft text was a good starting point regarding interoperability concerns. It supported Australia's concerns about the interpretation of certain phrases.

Denmark supported the remarks of Australia and Canada, stating that it had interpretive difficulties with paragraph 4.

The Netherlands stated that it was indispensable to find an adequate solution to the issue of interoperability. Much progress had been made but work on this issue was not yet concluded.

Mexico stated its view that interoperability had no place in the Convention. It shared Argentina's views about paragraph 3, which it considered to expand rather than restrict the exception. The article would create a lacuna which had no place in the Convention.

Venezuela thanked Switzerland for its efforts but stated that the concept of interoperability would facilitate an exemption undermining the Convention. It would risk creating two orders of States Parties, those complying immediately with the Convention and those continuing to effectively have recourse to cluster munitions. It was unconvinced that this Article should be included.

The **United Kingdom** stated that there had been uncertainty on several sides on this issue. The text of the Friend of the President was a good basis but problems remained. It accepted that there were concerns that the draft text widened the scope of the interoperability provision. A clear understanding of the meaning of “assist” in Article 1 of the Convention was required. The United Kingdom referred to its domestic criminal law which defined being an accessory to a crime as one who aids, abets, counsels or procures the commission of an illegal act. The Convention must be drafted with a realistic legal position. The United Kingdom considered that the process of a political declaration was important. Paragraph 4 of the draft text should ensure that States Parties cannot use the interoperability provision as an exception to their obligations under Article 1. The wording of the draft text had become somewhat convoluted, losing sight of the underlying message on interoperability.

Italy considered that the draft text was a good basis for discussion. It supported the United Kingdom’s position, and shared Australia and Canada’s concerns regarding the final paragraphs. Further elaboration was required in the text.

Honduras stated that it objected to the inclusion of the term interoperability in the Convention. It would allow States to make cluster munitions available to others. The term was inappropriate in a Convention seeking to eliminate cluster munitions and their use.

The President reminded delegates that the term “interoperability” does not itself appear in the text.

Zambia wished to draw attention to paragraph 3(a) of the Friend’s text. The African group of States was of the view that the inclusion of the word “may” here might be helpful. The paragraph could read “host States...which *may* engage in activities described in Article 1.” A similar amendment could be made to paragraph 3(b) to include the word “may”. Zambia agreed with the proposal of the Cluster Munition coalition to include the rest of paragraph 3 as it stood. It had reservations about the concept of “effective control”: this would require further study to avoid problems of interpretation. In paragraph 4, the African group proposed that it should read “Nothing in paragraph 3 of this Article shall, however, authorise a State party to itself *develop, stockpile, produce, transfer and otherwise* use or expressly request the use of cluster munitions.” Zambia emphasised that it had difficulties with the concept of interoperability but considered this to be an element of compromise in the negotiations.

Japan stated that the proposed Article on interoperability should be read as a whole. It considered that the text struck a delicate balance meeting the various concerns of States. Issues remained but States were close to reaching general agreement. It was prepared to continue discussions based on the Friend’s text.

Guatemala supported the remarks of Argentina and Mexico. It was willing to consult further on the issue of interoperability.

Indonesia stated that delegations must seek to leave as few loopholes as possible in the Convention regarding States' obligations under Article 1. It noted that proponents of a provision on interoperability had stressed that they did not intend to leave a loophole in the Convention. Many States had legal obligations arising in the context of joint military operations. The text provided was a good basis to ensure that any loopholes were as minimal as possible.

Uruguay stated that paragraph 3 was unacceptable as currently worded. It supported the remarks of other South American delegations.

The **Former Yugoslav Republic of Macedonia** stated that the purpose of the interoperability provision was not to create a loophole, but to ensure that States politically willing to join the Convention could have practical cooperation with States not Party. It agreed with Japan that the text should be considered as a whole. It also agreed with Canada and the United Kingdom on the need for clarity regarding the meaning of paragraphs 3 and 4.

Belize aligned itself with the comments of the United Kingdom. States were committed in the Oslo process to achieve a Convention garnering as much support as possible.

Austria stated that it had consistently understood the need for some States to have an interoperability provision contained in the Convention. Additional language may be required to address concerns about paragraph 3.

France stated that while considerable progress had been made on the matter of interoperability, some issues remained for clarification.

Germany stated that the issue of interoperability was very important. It supported the remarks of France, the United Kingdom and others. It also welcomed the very flexible comments of Zambia, Indonesia and Austria. The text of the proposed article might be improved, but the inclusion of an interoperability provision was essential.

New Zealand agreed that the proposed article must be read as a whole. It regarded the various paragraphs as achieving a delicate balance. It had some suggestions which it would put forward in further informal consultations on interoperability.

Sierra Leone inquired whether sufficient time remained available to delegations to reach consensus on the matter of interoperability. What was the timeline envisaged by the President?

The President responded that sufficient time must be made available.

The floor was opened to observer delegations.

The **International Committee of the Red Cross** stated that it had expressed its views on interoperability in the informal consultations. It asked for further efforts to clarify paragraph 3(b), particularly the meaning of "that State Party, its armed forces or individual nationals." There may be some inconsistency with the chapeau of paragraph 3. It understood the intent of the provision, but considered that its formulation was in some sense repetitive. The subjects and objects of paragraph 3, particularly 3(b), should be clarified.

The **Cluster Munition Coalition** stated that it understood the need of some States to protect their troops from liability in joint operations. It was encouraged by what it took as the United Kingdom's acknowledgment that the text proposed might be seen as widening the scope of the interoperability provision. It suggested that paragraph 3 should be replaced by simpler language modeled around this objective. The Coalition particularly objected to the reference to hosting non-States Parties in paragraph 3(a). It considered that the concern of delegations in negotiating the interoperability provision was joint military operations with the United States, not with other countries. The United States was not participating in the talks and other States should not negotiate on their behalf.

The stigmatisation of cluster munitions must be achieved to ensure universal adherence to the Convention. States should not support a loophole allowing troops to call in back-up involving the use of cluster munitions. The stockpiling of US cluster munitions should not be allowed.

The President welcomed delegates' discussion of the proposed interoperability provision. It was clear that further consultation was required on this matter. Ambassador Schraner remained available to continue informal consultations.

Ambassador Schraner stated that she had listened carefully to the comments of delegations and would conduct bilateral consultations to collect proposals. She would also hold an informal meeting with concerned States at 3pm that afternoon.

The President stated that the Committee of the Whole would return to discussing definitions at 3pm that afternoon. UNDP would host a briefing on technical terms at 2pm. A revised Article 3 non-paper had been distributed to delegations for consideration that afternoon.

The meeting rose at 1 p.m.