

# DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A CONVENTION ON CLUSTER MUNITIONS

CCM/CW/SR/13

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SUMMARY RECORD OF THIRTEENTH SESSION OF THE COMMITTEE OF THE WHOLE

Held at Croke Park, Dublin on Tuesday, 27 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 3.20 pm.

The President introduced the issue of interoperability. Ambassador Schraner had held further consultations and had now submitted a draft text of a possible additional article for the Convention. Ambassador Schraner's assessment was that the text represented the language most likely to represent a balance between positions and stood the best chance of commanding general agreement. The text was circulated as a proposal of the Friend of the President on interoperability and it was not proposed to have a discussion on the text at that time.

## Article 6

The President announced that following consultations carried out by Canada, a large measure of agreement had been reached. **Canada** then reported on the progress of consultations. The majority of consultations had focused on paragraph 9 *bis*, however other paragraphs were also considered, including a modified proposal from Austria for paragraph 7. The Austrian proposal read as follows:

“Each State Party in a position to do so shall provide assistance for the implementation of obligations contained in Article 5 to adequately provide age and gender sensitive assistance, including medical care, rehabilitation and psychological support, as well as for social and economic inclusion of cluster munitions victims.”

On paragraph 9 *bis*, Canada had not been able to speak to all delegations but canvassed a wide cross-section of delegates. Canada produced a compromise text as follows:

“Each State Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of the Convention, including facilitation of the entry of personnel, materiel and equipment, in a manner consistent with national laws and regulations and international best practices.”

The President welcomed the agreement on paragraph 9 *bis* as well as the improvements made to Article 7.

**Switzerland** reiterated the importance of Article 6 for Switzerland. Based on their experience and long collaboration, Switzerland were in favour of the principle mentioned and formulated in general terms by a reference to national laws and best international practice. Switzerland also supported the revised Austrian proposal for paragraph 7.

**Indonesia** expressed its difficulties with additional phrases added to the last part of paragraph 9 *bis*. In particular, Indonesia requested further clarification on the term “international best practices” and whether they would deal with the entry of materiel and personnel. If such areas were considered to be included in the reference to international best practices, Indonesia could only support the text if it ended after the words national laws and regulations.

**Cambodia** agreed with Indonesia and asked for further clarification on the explanation of “international best practices”.

**Cameroon** supported the efforts of Canada on paragraph 9 *bis*.

**Canada** clarified what was meant by the term “international best practices”. It had been suggested by another delegation and it was clear that laws would take predominance over practices. National laws would be paramount but should be informed by international best practices. The phrase implied no legal requirement to change national laws. However, if national laws are restrictive or obstructive, this will inhibit the ability of donor countries to contribute and of affected countries to receive assistance.

**Cambodia** expressed satisfied with the explanation of Canada.

The **Philippines** expressed support for the statement of Indonesia and asked whether Article 11 was not sufficient to meet the concerns of those who want expedited procedures.

**Germany** considered that recent experience with national disasters and the requirement to provide expeditious support should have provided a different response. Though grateful to Canadian colleagues for efforts to find a solution acceptable to all, Germany failed to understand why the text of paragraph 9 *bis* as proposed had been whittled down. Paragraph 11 was much too weak. International best practices were a natural point of orientation and would be seen as a clear signal of cooperation. Germany was not happy with text, though was willing to go along with it. There should be no problem with the text as it stands.

**Serbia** expressed its full support for the Austrian and Canadian amendments.

**Australia**, as a donor country, supported the comments of Germany.

**Albania** also shared the concerns of Germany that any comments for further weakening of paragraph 9 *bis* would be insupportable. Albania also raised a question on the intention behind the additional text proposed by Austria on age and gender assistance. If the provision was meant to be read as a limitation to age, this would not

be accepted. If it were meant to include all kinds of ages it would be supported as it is. Albania requested an explanation from Austria.

The **Netherlands** did not like the Canadian compromise but could accept it. Along with Germany and Albania the Netherlands failed to see why clauses on the moral obligation to facilitate assistance were objectionable.

**Lao People's Democratic Republic** had expressed concerns with the previous version. The new version responded well to concerns and therefore could be accepted. Lao People's Democratic Republic had received assistance for many years and not had any problems, therefore it might be a good idea to have a clarification of what is meant by international best practices.

**Indonesia** thanked Canada for the clarification. Cambodia had no experience of difficulties in receiving personnel and was not convinced that the reference to "international best practices" was necessary. What does international best practice in granting visas mean, for example, when every country has their own national law on visas.

**Canada** understood concern over the term "international best practices" that was somewhat vague and perhaps implied that an international code of practice existed, which it does not. Canada gave an example from its experience of trying to contribute a piece of equipment (a flail for mine clearing action) in an affected country and being informed that Canada would have to pay import duties. The emphasis should be on facilitation and countries receiving assistance should look around and see what others do to facilitate assistance on all aspects.

The President reminded delegates that the purpose was to try to mitigate the effect of use of cluster munitions. The President noted Canada's argument that national law takes precedence over international practices.

**Germany** agreed with Canada that no goods or personnel required should be unduly prevented from doing their job.

**South Africa** stated that they had been happy to go along with text as proposed by Canada, but were now worried by the explanations of Canada. South Africa would disagree with any implication that States would have to change national laws and regulations. South Africa suggested the addition of extra words after national laws and regulations as follows: "and where necessary consider international best practices".

**Canada** requested time to reflect on this and asked whether this would allay Indonesian concerns.

**Indonesia** thanked South Africa for the proposal and agreed to undergo consultations with Canada as suggested by the President.

## Article 2

The President updated the Committee on the progress of the text of Article 2. Ambassador Mackay had prepared a revised text on the definition of a "cluster

munition”. Discussion of all other definitions except for “cluster munition” and “cluster munition victim” were the subject of a paper prepared after consultations carried out by Lieutenant Colonel Burke which would be circulated. Ambassador Mackay had forwarded a text he believed to represent the language most likely to represent balance and stand the best chance of agreement. Bilateral consultations would be carried out on the revised text.

### **Preamble**

The President announced that after initial discussion in the Committee of the Whole, consultations had been carried out by Ambassador Millar, and a proposed new text for the Preamble had been circulated.

Ambassador Millar presented the proposed new text. The first five paragraphs were a restructuring of the previous text for clarity, drawing on the paper of the International Committee of the Red Cross and the United Kingdom. The International Federation of the Red Cross and cluster munition affected States had also provided input on the text. The next group of paragraphs reflected the outcome of separate informal meetings on victim assistance and had not been discussed. Paragraph 11 was a new paragraph directly reflecting language in Additional Protocol I of the Geneva Conventions relating to cases not covered by the Conventions and other international agreements. The following paragraph was also new and related to the activities of non-state actors, related to discussions in the Committee of the Whole. Article 15 refers to United Nations Security Council Resolutions 1325 and 1612. The final new paragraph 19 related to universalisation and full implementation.

**Germany** raised a question on the choice of language between “bear the brunt of” over “continue to suffer most” as most soldiers involved in armed conflict also suffer.

**Jamaica** expressed a preference for the language “continue to suffer most” over “bear the brunt”. On the inclusion of a special reference to women and children, Jamaica noted that on the basis of research, men are more affected and therefore suggested to refer to just civilians or to also include men on the list.

**Canada** was very pleased with new inclusions. It echoed the comments of Jamaica and Germany, that the language “suffer the most” was better in the first line.

The **Netherlands** was satisfied with the text and had one minor comment, which might also solve another problem on the issue of additional articles governing relationship with other treaties. The Netherlands suggested a minor amendment to last preambular paragraph (paragraph 20) on the relationship between this treaty and the principle of international humanitarian law that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited. The Netherlands proposed to broaden this paragraph to include more principles of international humanitarian law, changing first line to read “basing themselves upon already existing rules and norms of international humanitarian law, including the principle (delete international humanitarian law) that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited....”

The **Philippines** in CCM/9 had also raised question of the relationship with other conventions. The Philippines had no specific wording to provide but would support any wording that strengthened the paragraph in that direction.

**Mexico** welcomed the comment of the Netherlands, but proposed to table an amendment to it. Mexico proposed the use of the wording “particularly the principle” instead of “including the principle”.

**Cambodia** was very satisfied with the text and would not oppose small changes to improve wording.

**Burundi** made a wording suggestion, that the language “determined to put an end definitively” be used instead of saying “determined to put an end for all time”.

**Austria** stated that it had no problem with proposal by the Netherlands, except for the reference “already existing”. The reference seemed redundant and Austria preferred that those two words be dropped.

**Australia** provided clarification on the origin of the language “bear the brunt of armed conflict”. This language was a direct quote from Red Cross Conference last November that everyone had agreed upon. On paragraph 3 and the issue of the special status of women, the proposal had come at the suggestion of cluster munition affected States. Australia agreed to conduct further consultations on the Preamble.

The **Netherlands** stated that the amendments by Mexico and Austria to their proposed amendment were welcome and that no further consultation on their behalf was necessary.

The President thanked delegates for their contributions and then suspended the Committee of Whole. Delegates were asked to remain available for work during the evening.

The President said that he would spend the remainder of the day conducting bilateral and other consultations with delegations and then intended to circulate a composite text this evening.

The meeting rose at 4.17 p.m.