

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

CCM/CW/SR/1

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## SUMMARY RECORD OF FIRST SESSION OF THE COMMITTEE OF THE WHOLE

Held at Croke Park, Dublin on Monday, 19 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 3 p.m.

The President welcomed delegates to the first session of the Committee of the Whole. The Committee would engage in a detailed article-by-article discussion of the draft Convention and consider the proposals made by delegations at the Wellington Conference and since then. Where it was not possible to reach general agreement on an article in the Committee, informal consultations would take place, chaired by the President or a nominated colleague.

### Article 1

The President noted that several proposals had been made to amend Article 1, which deals with the general obligations of States Parties and the scope of application of the Convention.

The **United Kingdom** noted that States must be careful when drawing on the language of the Ottawa Convention as cluster munitions are not landmines. Articles 1(b) and (c) needed further refinement, particularly as States would not sign up to an agreement which posed a risk to participation in UN peacekeeping operations.

**Japan** concurred with the United Kingdom's remarks, stating that the success of the Conference depended on successful resolution of the issue of interoperability. Informal meetings on this issue would be useful.

The **Philippines** informed the Committee that it had tabled additional amendments to Article 1 so as to include a reference to non-State actors.

**Denmark** fully associated itself with the comments of the United Kingdom and Japan. The issue of interoperability should be resolved within the text of the Convention itself and not outside of it.

**Argentina** promised its full co-operation in seeking to conclude a treaty. Interoperability required extensive discussion in the Committee of the Whole, and was linked to the question of defining cluster munitions in Article 2. Argentina accepted that transitional periods should be allowed for the destruction of stockpiled

cluster munitions, but the use of cluster munitions should not be allowed during this period.

**Finland** supported the comments of the United Kingdom and Japan, and emphasised that interoperability should be resolved in the text itself. Article 1 should be complemented by the definitions in Article 2.

**Ireland** drew attention to the proposal it had made at the Wellington Conference to bring dispensers attached to aircraft to release or disperse explosive bomblets within the scope of Article 1, as set out in CCM/15.

**Canada** stressed its view that the Convention should not prevent combined military operations with non-States Parties. It hoped to soon table additional text on Article 1 to address interoperability.

The **Czech Republic** associated itself with the remarks of the United Kingdom and Japan.

**Australia** shared the concerns expressed about interoperability, pointing out that non-States Parties will continue to produce and use cluster munitions in the short to medium term. The issue, which has repercussions for missions under Chapter VII of the UN Charter, must be resolved in the text and sustained informal discussions should commence in order to reach a solution.

**Germany** supported Australia's call for a focused discussion on interoperability.

**Indonesia** indicated that it was comfortable with the text of Article 1 as it currently stood. It sought clarification from States concerned about interoperability on the issues of military alliances with non-States Parties and the link with Chapter VII resolutions of the UN Security Council. Indonesia considered that the inclusion of transitional periods for States to comply with obligations under Article 1 contradicted the spirit of the Convention.

**New Zealand** emphasised its commitment to a strong treaty. Article 1 is fundamental to the parameters of the Convention, which is a humanitarian instrument. New Zealand's participation in peacekeeping missions must not be called into question, and clarification should be provided in the text. New Zealand welcomed informal consultations on this issue.

While **Peru** was happy with the text of Article 1, it expressed the view that a clear provision on interoperability would enrich the Convention by securing the agreement of States.

**Costa Rica** expressed support for the views of Peru and Argentina. It is happy with the text of Article 1 as it currently stands. Informal consultations would be useful to clarify interoperability.

**Lithuania** expressed the view that concrete provision should be made for interoperability in the text of the Convention.

**Guatemala** supported the text of Article 1 as it currently stands, but was willing to discuss interoperability informally. It considered that the inclusion of transitional periods in Article 1 would weaken the instrument.

**Venezuela** considered that transitional periods, while necessary to allow time for the destruction of stockpiles, should not allow for the use of cluster munitions. It agreed with Indonesia that the issue of interoperability was not yet fully understood, and should not weaken the Convention.

**Malta**, while happy with Article 1 as it stood, understood States' concerns about interoperability. This matter required further clarification, particularly its relationship with the obligation of non-encouragement in Article 1(c). Malta echoed Venezuela's comment regarding transition periods.

**Portugal** stated that most nations will participate in operations with non-States Parties. The solution on interoperability should not risk making the Convention irrelevant. The definition of prohibited cluster munitions should be addressed before discussing interoperability. Informal consultations would be necessary.

**Albania** associated itself with the remarks made by Germany. An informal working group should propose language on Article 1 to the Committee of the Whole.

**Italy** agreed that Convention language on interoperability would be required.

**Zambia** sought clarification on whether an interoperability provision would in effect allow States to use cluster munitions.

*The floor was given to observer delegations.*

The **Cluster Munition Coalition** stated that the interoperability provision should not undercut States' core obligation in Article 1(c). The existing text did not prohibit mere participation in joint military operations with non-States Parties that use cluster munitions. The Landmines Convention had regarded national declarations and implementation laws as sufficient to address this concern. The States Parties must make it clear that they object to any use of cluster munitions by non-States Parties and that the interoperability language is merely aimed at legal protection for soldiers.

*The floor was returned to participating States.*

**Lao People's Democratic Republic** agreed with the remarks of Indonesia. The provision on interoperability could respect obligations to military alliances without condoning the use of cluster munitions, using the Ottawa Convention as guidance.

The President stated that the discussion had revealed several different positions and it was essential to intensify negotiations on Article 1. Ambassador Christine Schraner (Switzerland) would act as a Friend of the President to convene informal consultations on Article 1. While the President hoped that a proposed solution could be agreed in consultation, he invited Ambassador Schraner to present the proposal that she thought might best balance the interests of States concerned if a consensus proposal did not emerge.

Ambassador Schraner stated that she would seek to establish common ground on the key challenge of interoperability, which could determine the effectiveness and relevance of the Convention. The provision must address the genuine concerns of States without creating a loophole in the Convention. She invited participants to make concrete proposals on the matter.

## **Article 2**

The President opened discussions on Article 2 of the draft Convention. He reminded participants that the Oslo Declaration had committed States to adopting an agreement prohibiting cluster munitions which cause unacceptable harm. He proposed to examine all elements of Article 2, save for the definition of “cluster munitions victim” which would be addressed in considering Article 5 on victim assistance.

**Botswana** considered that the proposed definition of “transfer” in Article 2 was not sufficiently clear and should include a reference to transfer for the purposes of destruction of cluster munitions to best capture the object of the agreement.

**Indonesia** objected to the reference in draft Article 2 to “mines” as defined in the Protocol on Prohibitions or Restrictions on the Uses of Mines, Booby-Traps and Other Devices, on the basis that it is not a State Party to that instrument. Indonesia proposed replacing the text with language drawn from the Ottawa Convention, as set out in CCM/54. It also proposed a new definition of cluster munitions affected areas, as contained in CCM/27.

The President remarked that Article 1(2) is intended to indicate that the Convention does not apply to “mines” as defined in other instruments.

**Canada** opposed any definition of cluster munitions that would be too far-reaching, stating that such a definition reflects an indefensible presumption that no existing or future cluster munitions can be sufficiently accurate to meet the standards of international humanitarian law. The Oslo Declaration refers to cluster munitions causing “unacceptable harm” and there may be cluster munitions that fall within acceptable parameters. If a suitable definition is achieved, Canada would then support a total ban on prohibited cluster munitions as so defined.

**Denmark** drew delegates’ attention to its proposals in CCM/17 and expressed the view that any Friend of the President dealing with the issue should consider both the definition of cluster munitions and the transitional periods for the primary obligation. These remarks were supported by Japan and Sweden.

**Burkina Faso** had no particular difficulties with the proposed wording of Article 2, but considered that the issue of defining “cluster munition” should be addressed before moving to the issue of “cluster munition victim.”

**The Netherlands** supported Canada’s proposal that the reference in the Oslo Declaration to “unacceptable harm” should be reflected in the definition of cluster munition adopted in Article 2.

**Australia** referred to some key features of cluster munitions that cause unacceptable harm, namely wide area of dispersal, high number of sub-munitions, high risk to civilians. Cluster munitions that do not reach this threshold should not be banned.

**Norway** supported the view that the starting point of the definition should be “unacceptable harm”. Several elements must be added to Article 2(c) to reflect this.

The **United Kingdom** associated itself with Australia, Denmark, Canada and Japan, and suggested that informal consultations be held on the issue.

**Germany** agreed with these countries and referred to its proposal, contained in CCM/19, setting out the crucial elements of cluster munitions which fall within acceptable parameters, for example the limited number of explosive sub-munitions, point target systems, pre-defined area accuracy, self-destruction and deactivation.

**France** supported the view that the prohibition should only extend to cluster munitions which cause unacceptable harm.

**Costa Rica** agreed with the present definition in Article 2 but respected the position of other States. However, it was concerned about the prospect of making some cluster munitions legally exempt on the basis that States might not have an incentive to join if their arsenal fell outside the technological parameters of Article 2.

**Indonesia** stated that the definition of cluster munition should be as wide as possible, and cautioned against relying on technological exemptions of cluster munitions that are not yet in operation and whose effects on the field cannot be properly assessed. Venezuela, Jamaica, Guatemala and Mexico supported the concern that technological advances may not overcome the humanitarian problems caused by the use of cluster munitions in the field.

**Peru** stated that the definition of cluster munitions should not be ambiguous as this may leave room for States not to fulfil their obligations under the Convention.

**Malta** stated that the notion of what is a cluster munition is not self-evident. Article 2(c) must be fulfilled by a combination of precise and objective criteria.

**Austria** supported the view that the language of Article 2(c) must be clear and precise.

The **United Kingdom** expressed the view that the discussions had revealed that States could be broadly divided into three camps on this issue: (i) those who considered that all conceivable cluster munitions should be banned; (ii) those who favoured excluding the cluster munitions which they use and (iii) those who advocate adopting criteria to reflect what causes a cluster munition to result in unacceptable harm. This last position is closest to the terms of the Oslo Declaration. A structured discussion on CCM/17 is required.

**Finland** commented that it would prefer to permit sub-munitions with effective fail-safe mechanisms.

**Lao People's Democratic Republic** rejected the notion that some cluster munitions cause “acceptable” harm.

**Italy** welcomed CCM/17 as a good starting point to achieve a comprehensive definition in Article 2(c).

**Lebanon** pointed out all cluster munitions used in the field to date had been unreliable and indiscriminate. The definition should cover all types causing unacceptable harm. **Nigeria** concurred.

**South Africa** expressed its willingness to engage with the CCM/17 proposals, including a debate on the meaning of unacceptable harm. **Bulgaria** agreed.

**Belgium** recommended further reflection on the pursuit of humanitarian objectives as a point of departure in defining cluster munitions. A cumulative approach to technical elements would be advisable.

*The floor was opened to observer delegations.*

The **Cluster Munition Coalition** submitted that the Convention should ban all cluster munitions as a category in order to increase its norm-building capacity. However, it recognised that there is dwindling support for a blanket ban. It expressed concerns about the unclear language of the exemptions being proposed, for example the proposed reference to “sensor-fusing”. The effects and capacities of weapons, not their technical characteristics, are significant.

**The International Federation of Red Cross and Red Crescent Societies** commented that it does not promote exclusions based on the technical characteristics of weapons. However, it understood the concerns raised. The treaty should prohibit inaccurate and unreliable cluster munitions, not those which are no more harmful than other munitions in use by States. Discussions should focus on the performance and capacity of weapons and not their technical specifications. For example, the language could refer to “point target discrimination” as a performance criterion, rather than to sensor-fusing which is a means of seeking to achieve this.

The President thanked delegations for their comments on Article 2, and stated that he considered informal consultations to be necessary. Ambassador Don MacKay (New Zealand) would act as a Friend of the President in convening informal discussions on Article 2. This work should proceed against the benchmark of the Oslo Declaration's commitment to prohibit cluster munitions causing unacceptable harm. If a text was not agreed informally, Ambassador MacKay would submit the proposal that he considered best.

Ambassador MacKay proposed to focus initially on Article 2(c). He would make available a brief discussion paper setting out elements for discussion in advance of the informal consultations.

### **Article 3**

The President opened discussions on Article 3, concerning storage and stockpiling, noting that this provision is essential to prevent the use and proliferation of cluster munitions.

**Canada** stated that it supported the underlying concept of Article 3, but had reservations about the existing draft text. States parties should not be required to construct separate facilities to store prohibited cluster munitions, but to separate them from other weapons. It supported text proposed by the United Kingdom and submitted that the time period in Article 3 should be as short as possible in order to encourage compliance with the Convention. Text should be added to require States parties requesting an extension to this deadline to seek the minimum time necessary. Language should also be added to paragraph 5 allowing the request to be granted for a lesser period of time than that sought. New sub-paragraphs could also be added to paragraph 4 to refer to the quantity and type of cluster munitions held.

The **United Kingdom** suggested that the language of Article 3 might be improved in a practical fashion. Keeping stockpiles of weapons separate merely increases the costs of compliance. It suggested that a ten year period might be more appropriate in paragraph 2, while maintaining the possibility of requesting extension periods.

**Germany** stated that it intended to submit proposals on a revised text to address environmentally friendly destruction of cluster munitions.

**France** stated that the text should refer to the possibility of States keeping a limited stock of prohibited cluster munitions for the purpose of training in detection and clearance.

**Indonesia** agreed with the merit of the French proposal, having regard to States' participation in UN peacekeeping missions.

**Slovakia** agreed with the proposal regarding retention. It emphasised that resources for the destruction of stockpiles must be used efficiently. It should be clear to States Parties that separate installations were not required if prohibited weapons were clearly designated as such.

**South Africa** expressed its satisfaction with the existing six year deadline in Article 3, bearing in mind that the proposed text already allows States the possibility to request extensions.

**Italy** expressed support for clear provisions on retention, accompanied by transparency provisions.

**Portugal** considered that States should be required to justify any request for extensions of the deadline beyond ten years. States should also be required to report on any retention of cluster munitions for training purposes. **Fiji** and **Senegal** agreed that the retention of cluster munitions for training purposes should be permitted, with appropriate guarantees for transparency.

*The floor was opened to observer delegations.*

The **Cluster Munition Coalition** spoke of the experience of the Mine Ban Treaty stockpile deadline, where there had been technical problems with compliance. It considered that a ten year deadline might be excessive, encouraging States to delay compliance. Regarding retention of prohibited cluster munitions for training, live sub-munitions are not necessary for this purpose. Any provision for retention should be accompanied by appropriate caveats, e.g. transparency measures.

*The floor was returned to participating States.*

The **United Kingdom** disputed the point made by the CLUSTER MUNITION COALITION regarding the use of live munitions for training purposes, stating its preference to have troops trained using live ammunition.

On stockpiles, **Bulgaria** commented that the main concern is to ensure that prohibited weapons are stored carefully and securely out of use, not necessarily in separate facilities. Realistic deadlines should be adopted for compliance.

The President thanked all present for their participation. Ambassador Stefan Kongstad (Norway) would act as a Friend of the President to conduct informal consultations on the text of Article 3.

Ambassador Kongstad referred to several proposals having been made on the text of Article 3, dealing with stockpile obligations, and retention of weapons for training. These proposals would have implications for the text of Article 7 dealing with transparency.

The meeting rose at 6 p.m.