

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

CCM/CW/SR/2

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

Held at Croke Park, Dublin on Tuesday, 20 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 10 a.m.

The President invited the vice-Foreign Minister of Venezuela to make a general statement.

**Venezuela** affirmed its support for the Oslo Process since its inception. International peace and security would be best guaranteed by a total ban on cluster munitions. The Ottawa Convention could provide a useful benchmark in drafting the new Convention. Venezuela was not in favour of the view that the effects of inhumane weapons could be mitigated by technological improvements. Results in laboratory tests may not coincide with matters on the ground. Venezuela stressed the importance of the Convention requiring States to provide full assistance to cluster munitions victims. There should be no loophole allowing user States to transmit this responsibility to States affected by cluster munitions.

### Article 4

The President opened discussions on Article 4, addressing the clearance and destruction of cluster munitions remnants. This would be essential to the clearing of contaminated territories and to allow the destruction of cluster munitions. While the draft text was well-developed, some proposals for amendments had been made.

**Mexico** stated that Article 4 was an important lynchpin of the draft Convention, requiring the destruction and clearance of unexploded remnants.

**Canada** stated that differences on the ground must be taken into account. The five year time limit in Articles 4(1) (a) and (b) would be difficult for some States to comply with. Situations would vary depending on the amenability of the terrain concerned and the commitment of States involved. It supported Ireland's proposal to include the words "no later than 5 years after the end of active hostilities" in Article 4(1) (b), as set out in CCM/31. The meaning of "cluster munitions contaminated area" should be clear for the purposes of this obligation. It expressed its support for Indonesia's proposal for the definition of a "cluster munitions area" in Article 2, as set out in CCM/27. Article 4(2) (c) should be revised to state "make every effort to ensure that cluster munitions remnants ... are perimeter marked".

**Canada** expressed its support for Italy's proposal for the deletion of Article 4(4), as set out in CCM/34. It would prefer a collective responsibility model of the type in the Ottawa Convention. Regarding paragraph 5, States should be required to request the minimum period of time necessary in seeking any extension to the deadline under Article 4(1). Provision should also be made for a lesser period of time to be granted than the extension requested.

**Lao People's Democratic Republic** indicated that it found Article 4 acceptable as formulated but had concern about the five year deadline for clearance. This would not be possible to achieve in Lao, having regard to the scale of the affected areas. A ten year period, allowing for the possibility of requesting an extension, might be preferable. Wording should be incorporated into paragraph 7 to refer to need to give special consideration to requests from States Parties most affected by cluster munitions.

**Serbia** stated that the five year time period was not a realistic timeframe for Serbia. While international co-operation had been established for the clearance of cluster munitions remnants in Serbia, there were ongoing problems. Ten years would be a more reasonable timeframe.

**France** stated that Article 4 needed to be adjusted in certain respects, to take into account Protocol V to the Convention on Certain Conventional Weapons, regarding explosive remnants of war. Incompatible regimes between international instruments should not be adopted. A distinction should also be drawn between previously existing explosive remnants and those created after the entry into force of the Convention. France and Germany had tabled a proposal addressing amendments to the text, as set out in CCM/32.

**Indonesia** stated that it was happy with the existing text of Article 5. Indonesia is not a State Party to the Convention on Certain Conventional Weapons or its Protocols and considers that they should not appear in the text of the draft Convention. However, Article 4 could incorporate equivalent standards to those set out in Protocol V, without explicitly mentioning it.

**Japan** expressed its support for Canada, France and Italy's views on retroactivity and paragraph 4.

The **United Kingdom** stated that it was critically important to set out Article 4 correctly. It referred to its suggested amendments in CCM/33 regarding deadlines, the obligations of users, and retroactivity. Informal consultations on Article 4 would be useful.

**Germany** stated that it is necessary to have consistency with other international instruments such as Protocol V to the Convention on Certain Conventional Weapons. It has suggested a new paragraph, as set out in CCM/32.

Article 4(4) should not create new precedents inconsistent with practice. New language for this paragraph had been proposed by Germany and France, as set out in

CCM/47. Germany suggested that it might be useful for the President to compile a revised text of Article 4 based on the suggestions made.

**Finland** stated its view that Protocol V to the Convention on Certain Conventional Weapons is relevant. The risk that States might be deterred from joining the Convention should be borne in mind when considering any retroactive obligations.

**Chile** shared the view that there should be consistency between the draft Convention and Protocol V. Protocol V could provide a model for Article 4, with some exceptions. Technical and financial assistance is an important element in the clearance of remnants which should be incorporated into Article 4.

**Norway** stated that effective clearance of remnants within clearly set deadlines is an important element of the new Convention. However, a five year deadline would probably be too short, as it risked presenting an obstacle to States joining the Convention.

**Lebanon** pointed out that the magnitude of injuries to civilians from cluster munitions escalates in the aftermath of a conflict. It is important to ensure that the Convention places responsibility upon user States for their acts.

**Australia** supported the concerns of the United Kingdom, France and Germany regarding the retroactivity of Article 4. The different treaty regimes should be consistent; in particular there should be consistency between the draft Convention and the provisions of Protocol V and the Ottawa Convention. It emphasised that the concerns of affected States, such as Lao People's Democratic Republic and Serbia, regarding the inadequacy of time periods in draft Article 4 for the clearing of cluster munitions remnants should be taken seriously. These States should not realistically be expected to have to seek extensions to the deadlines imposed. Obstacles should not be created to prevent affected States joining the Convention.

**Venezuela** stated that Article 4(4) was fundamental to addressing the consequences of cluster munitions in the aftermath of a conflict. It expressed its view that the existing Article 4 should be maintained as drafted.

The **Philippines** expressed its support for Lao People's Democratic Republic's remarks. The Philippines had proposed draft language for Article 5 on the subject of the retroactive obligations of user States, as set out in CCM/58.

**South Africa** expressed its support for the views of affected States on the matter of deadlines. The experience of the Mine Ban Treaty could be used as a formula to ensure that developing States with fewer resources receive assistance in the clearance of remnants.

*The floor was opened to observer delegations.*

The **Cluster Munition Coalition** expressed its support for Ireland's proposal on Article 4, as contained in CCM/31. It had several minor suggestions to improve the clarity of Article 4, which it would outline informally. Under Article 4(2) (a), the word "contamination" should replace the word "threat" to ensure that there is an

obligation to clear all contaminated areas. An obligation of clearance without destruction should not be adopted as this would undermine the object of the Convention.

The **Cluster Munition Coalition** expressed the view that the deadline in Article 4(1) should not be changed from five years. The special obligation of user States to provide assistance contained in Article 4(4) should be preserved. The Coalition had prepared a position paper on this subject.

**The International Committee of the Red Cross** pointed out that Protocol V to the Convention on Certain Conventional Weapons refers to the explosive remnants of munitions that may still be used by States. Here, Article 4 would refer to remnants of cluster munitions that would be prohibited for use. The wording of the draft Convention should reflect this distinction.

*The floor was returned to participating States.*

**Serbia** thanked Australia for its comments. The primary interest of all affected States is to make all territory safe from cluster munitions, but a realistic approach to achieving that objective must be adopted.

The President stated that there were a relatively small number of outstanding issues with regard to Article 4. Informal consultations would be helpful. He appointed Lieutenant Colonel Jim Burke of the Irish Defence Forces as a Friend of the President on Article 4. Colonel Burke would seek to agree a text in informal consultations, but if this was not possible, he would return to the Committee with the text which he considered to best reflect the balance of interests on the issue.

Lieutenant Colonel Burke stated that there was consensus on many elements of Article 4 but some important issues remained to be resolved. He would begin by conducting bilateral consultations with interested States, to be followed by an open meeting.

**Congo** suggested that there were some problems with a lack of availability of conference documents in French. This was causing practical problems for the participation of Francophone countries.

The President responded that documents CCM/1-50 were available in French. When new proposals for amendments were presented in English, they were immediately translated into the other working languages of the Conference and made available to delegates.

### **Article 5**

The President opened discussions on Article 5 addressing victim assistance. This Article was related to the definition of “cluster munition victims” in Article 2, which was currently under informal discussion. There was also related draft preambular language on victims.

**Canada** supported Article 5 as a separate provision on victim assistance. It welcomed the Convention’s acknowledgement of indirect victims of cluster munitions, such as

families and communities affected. It proposed that language referring to victims that “have been materially and demonstrably affected” would be useful to define the scope of the obligation.

**Canada** supported the suggestion of the International Committee of the Red Cross that a non-discrimination provision be incorporated to prevent disparate treatment of war victims. It also supported the Cluster Munition Coalition’s suggestion that a short third paragraph be included in Article 5 requiring States to have consultations with victims in determining the assistance to be provided. A new paragraph 4 could also be included requiring the matter of ongoing support to cluster munition victims to be mainstreamed into policy-making by States.

The **Philippines** suggested that persons killed by cluster munitions should be included within the definition of cluster munition victims. This would entail an obligation to provide assistance to their families. The presence of non-nationals in a cluster munitions affected area should also be borne in mind. The Philippines referred to its proposal in CCM/58 to include a reference to international humanitarian law in Article 5(1). It had also suggested a new paragraph addressing the responsibility of user States for the past use of cluster munitions. It was flexible on the final wording of this new proposed paragraph but considered a provision of this kind to be essential to the new Convention.

**Argentina** referred to the wide-ranging definition of victims proposed in Article 2. It considered the text of Article 5 should include further details, and it would later present proposed wording. Here, it would present the ideas underlying those proposed changes. Article 5 should contain references to States’ duty of co-operation, national implementation and principles of human rights law, including non-discrimination and the full participation of victims in society. Transparency measures under Article 7 should ensure full disclosure of measures adopted by States to assist victims.

**Serbia** considered that victim assistance is a priority in the new Convention. Affected States would require solidarity and co-operation in meeting their future obligations under Article 5. All of the practical steps of victim assistance could not be foreseen in the Convention, but could be addressed in additional instruments adopted to the Convention.

**Switzerland** expressed its support for including the core principle of non-discrimination in the Convention to avoid the categorisation of victims. Draft Article 5 was a good starting-point but could be improved upon. A reference to medical and social services would be central to the provision of effective rehabilitation to victims.

**Australia** stated that many affected States have limited resources for victim assistance. It joined Canada in supporting the suggestion of the International Committee of the Red Cross to amend Article 5 to include a non-discrimination provision. This would ensure consistency with the UN Convention on the Rights of Persons with Disabilities.

**Chile** welcomed Article 5’s specific reference to the matter of victim assistance, which would meet one of the key principles of the Oslo Declaration. The draft Convention, once agreed, would mark a significant step forward for the whole corpus

of international humanitarian law and human rights law. It welcomed the idea of supporting the families of those affected by cluster munitions, by providing social and economic assistance. It agreed that the text of Article 5 should be fine-tuned and shared the views of Argentina and the Cluster Munition Coalition on possible improvements to Article 5. Article 7 should complement this by specific provisions on transparency of States' measures to assist victims.

**Costa Rica** stated that Article 5 was good and appropriate. The definition of cluster munitions victim in Article 2 must be maintained as is. Costa Rica agreed with Argentina and Chile that a wide-ranging definition must be maintained. The proposal of Ireland for the Preamble, contained in CCM/4, was appropriate, as was the proposal by Lesotho, as set out in CCM/7.

**Guatemala** shared the views of Argentina and the Cluster Munition Coalition. The Convention should include a framework for assistance and guarantees of appropriate medical assistance and more specific language for long term medical care, rehabilitation and social inclusion should be added. Guatemala fully supported the text of Article 2 contained in the draft Convention.

**Indonesia** noted that as a troop-contributing country to UN peacekeeping missions, whose troops had been killed and injured by unexploded ordnance, it understood the importance of victim assistance. There should be no discrimination with regard to victims. The definition in Article 2 should include all persons, civilians or combatants who have suffered.

The **United Kingdom** supported the Oslo Declaration on the need to offer assistance to victims and, in CCM/23 had made a proposal on the definition of a victim contained in Article 2. On Article 5, the United Kingdom supported non-discrimination between victims and stated that account should be taken of national laws and practices.

The President clarified that those parts of the Preamble referring to victim assistance would be dealt with now and the rest of the Preamble would be discussed at a later time.

**Venezuela** stated that the provisions of Article 5 should be strengthened and should include a clear provision on responsibility of user States for use of munitions before the entry into force of the Convention. It would be contradictory to seek a prohibition and include victim assistance and not make provision for what had happened in the past.

**Honduras** stated that the spirit of the Convention should be total prohibition, like the Ottawa Convention. It was appropriate that all those who had been harmed should receive assistance. Provisions on victim assistance should be clear and transparent and contain a retroactive element. Sanctions should be linked with human rights issues.

**Mexico** stated that Article 5 was the lynchpin of the Convention and shared in the views of Argentina, Guatemala, Costa Rica and Honduras.

**New Zealand** expressed support for elements of the International Committee of the Red Cross proposal on non-discrimination and equal access for all victims to assistance irrespective of the cause of their injury. New Zealand also supported a broad definition of cluster munitions victim including families and communities.

**Norway** considered that the text must reflect the development of new standards since the conclusion of the Mine Ban Treaty and provide for effective and gender sensitive victim assistance. The Article should reflect the highest human rights standards, be non-discriminatory and not create new categories of victims. The Preamble should demonstrate a strong commitment to victim assistance. The definition in Article 2 should be a fact based and accurate description and Norway considered the text as it stood as helpful. Not all States Parties would be in a position to fulfill these obligations alone; they must be seen in the light of Article 6 on international cooperation.

**Uganda** stated that victim assistance was cardinal and supported a strengthened Article 5. The Article should clearly reflect IHL provisions and the definition should be interpreted broadly to include families and communities.

**Sierra Leone** reiterated its position on the primacy of victim assistance and endorsed the statements of Serbia, Switzerland and Australia. Victim assistance should reflect international best practice and should be approached from an inclusive point of view.

**Fiji** supported what Article 5 tries to achieve but sought clarification on the meaning of States Parties in the context of the Article. Fiji asked who would be considered the responsible State Party if Fijian soldiers participating in UN peacekeeping mission were injured by cluster munitions?

The President responded that the obligation would be on States Parties.

**Uruguay** agreed with the need for a broad definition of cluster munition victims to include not just the direct victim but also families and communities. Like Argentina, Chile and other Latin American countries, it believed the Article could be strengthened, adding further obligations on States Parties to provide reports on assistance provided to victims.

**Lao People's Democratic Republic** stated that countries affected by cluster munitions need assistance from other countries that could provide it and from the international community. Lao People's Democratic Republic supported the proposal of the Philippines, that countries that have used cluster munitions should provide assistance. The most important element was to create an obligation on user states. There should be no discrimination made between victims of different kinds of unexploded ordnance.

The President reminded delegations that the issue of international cooperation and assistance would be dealt with under Article 6.

**Germany** echoed the sentiments of previous speakers on the vital role of victim assistance. Germany agreed with Switzerland, the United Kingdom and others that the definition should be non-discriminatory.

**Panama** joined in the statements of other Latin American countries and the Cluster Munition Coalition on the importance of Article 5.

**Sudan** joined with previous speakers on the need for a broad definition including victims' families. It supported the inclusion of reporting and implementing provisions on victim assistance.

The **Cook Islands** supported the current text of Article 4, which was clear and the most appropriate.

**Peru** agreed with the clear emphasis on victims in Articles 2, 5 and 6 and the Preamble.

The **Cluster Munition Coalition** stated that lessons learned since the implementation of the Mine Ban Treaty should be incorporated into the text. Tangible and verifiable obligations should be spelt out. The obligation to report should be clearer and include a time frame and national plans with measurable indicators of implementation. The Cluster Munition Coalition supported the proposal of Argentina that survivors must be included in the decision making process of victim assistance.

The **International Committee of the Red Cross** noted that several Governments had referred to its proposal on non-discrimination between victims. The ICRC would support the proposal of Australia to broaden the language used to include any victims, whether arising in the context of armed conflict or not. The ICRC agreed with the Cluster Munition Coalition on the need to strengthen monitoring and implementation of victim assistance provisions, as was also the case for the clearance and stockpile destruction elements.

The President stated that further work on Article 5 was clearly necessary and nominated Mr. Markus Reiterer of Austria as a Friend to undertake consultations. The consultations should search for text for Article 5, text on the definition of cluster munitions victim in Article 2 and relevant draft preambular language. The process should result in a text acceptable to all. Where this was not possible, the Friend would present a text that in his opinion best reflects the balance of interests present.

### **Article 6**

The President then opened the discussion on Article 6 announcing his intention to return to certain provisions of this Article as the consultation undertaken by Friends on Articles 3, 4 and 5 developed.

As a general comment, **Botswana** stated that States Parties have the right to seek and receive assistance. The fact that there is no obligation on States Parties to assist others in the form of a fund to meet the obligation to destroy cluster munitions may prove an obstacle to those in the developing world that may not have enough funds to fulfill their obligations. The current draft refers to the provision of assistance by States Parties "in a position to do so", which lacks obligatory force. Part of the Mine Ban Treaty failure has been a lack of funding. Therefore, the provisions of Article 6 should be strengthened.

The **Philippines** had submitted two proposals. The first was to include migrants in the list of persons concerned in paragraph 7 and to include a reference to the International Organization for Migration in the enumeration of assistance providing organisations. The second proposal was for a new paragraph providing for an explicit reference to the Convention on Certain Conventional Weapons, stating that the interface with the CCW should be explored.

**Canada** stated that although the emphasis was on the obligations of States Parties in a position to provide assistance, affected countries could also encourage the provision of assistance. Canada proposed two amendments to paragraph 3, which requires States not to impose undue restrictions on assistance. It suggested the insertion of “and other such” between clearance and equipment, and the insertion of “and receipt” after “provision” to acknowledge the responsibility of affected States to facilitate assistance. The new paragraph 3 would thus read, “All States Parties shall not impose undue restrictions on the provision *and receipt* of clearance *and other such* equipment...”

**Canada** expressed support for the proposal of Denmark, France, Germany and Sweden, as set out in CCM/37, for paragraph 9 *bis*.

**Canada** suggested the addition of a new paragraph between paragraphs 9 and 10 requiring that action to address cluster munitions take place in the appropriate context and that affected States Parties will include and give due consideration to cluster munitions action in their national development plans.

Recalling the recent situation in a particular country in Asia, **Germany** underlined the importance of a solid legal basis when trying to bring in assistance to support victims. Germany along with Denmark, France and Sweden proposed a new paragraph, set out in CCM/37, which would be complementary to paragraph 11 of Article 6.

**Indonesia** supported Article 6 as drafted. On paragraph 2, Indonesia welcomed the opportunity to receive technical assistance, training and capacity building in the area of clearance prior to the deployment of peacekeepers. Paragraphs 4 and 5 should recognize the special responsibility of user States that have deployed cluster munitions, not just regarding the provision of assistance, but also the provision of information, including the numbers and types of munitions used and maps indicating where they were used. On paragraph 9, Indonesia requested information on the trust fund, for example, where it would be located and who would manage it.

**Serbia** noted the amendments to Article 6 proposed at the Wellington Conference which aimed to provide full assistance to affected countries. It was important that lessons learned from existing models of assistance should be incorporated into the text.

**The Netherlands** expressed support for the proposal contained in CCM/37.

**Argentina** stated that the present draft of Article 6 was on the whole, good. Argentina did not agree with those proposals tabled that called for the removal of paragraphs. On paragraph 9 *bis*, and the proposal contained in CCM/37, the text should be aligned with paragraph 6(1).

**South Africa** agreed with Botswana and its aims of strengthening Article 6. Certain paragraphs had been deleted in some proposals, including that contained in CCM/38. South Africa would prefer to have the language retained. The proposal contained in CCM/37 needed further refinement. South Africa asked whether the reference to favorable entry and visa regimes would require a change in domestic laws.

**Peru** recalled that its experience in providing humanitarian assistance under the Ottawa Convention had shown that efforts made by some States are not enough, and that the support of the international community is required. Peru was prepared to discuss the proposal of Canada on having national plans to ensure compliance. There was a need to ensure that resources were made available by international organisations.

As a donor country, **Australia** was comfortable with the text as drafted. Affected States bear primary responsibility for providing assistance, but are not alone in this regard, and States in a position to do so should also have a responsibility. The provision of assistance must take into account integrated mine assistance programmes, including all forms of explosive remnants of war.

The **Democratic Republic of the Congo** proposed an amendment to paragraph 7, adding that, “in particular those that have used cluster munitions, shall provide assistance to victims”.

**Ghana** supported the proposal of Denmark, France, Germany and Sweden, as contained in CCM/37. It would also give serious consideration to the proposal of Canada.

**Zambia** had experienced difficulty in accessing assistance under the Mine Ban Treaty. Zambia agreed with Botswana and stated that the provision of assistance should apply to all key areas, stockpile destruction, clearance, and victim assistance and risk education.

**Uganda** stated that the assistance channeled through international organisations and bilateral agreements should be targeted to improve the existing capacities of governments.

**Chile** endorsed the words of other countries on victim assistance. It was important to consider the proposal made by Denmark, France, Germany and Sweden. The proposal of Canada should also be considered.

**Mozambique** had experience of the implementation of the Ottawa Convention assistance provisions and supported the view of Botswana that Article 6 be strengthened, not weakened.

**Lesotho** agreed with Zambia that user States should be obliged to assist victims.

**Nicaragua** stated that it was essential to have the help of the international community and shared the statement made by Peru.

**Chad** supported the proposals made by Zambia and the Democratic Republic of the Congo on the obligations of user countries.

**Guinea** noted that the problem lies in the procedures for the provision and receipt of assistance. Article 6 should be improved and contain specific wording on procedures.

**Tanzania** was comfortable with the present formulation but shared the desire to strengthen the provisions further and agreed with the Zambian statement. Tanzania also saw merit in the Canadian proposal for national plans.

**Panama** agreed with the Canadian proposal for paragraph 3. Panama also supported the proposal of Denmark, Germany, France and Sweden contained in CCM/37 on paragraph 9 *bis*, however it did not agree with the word “regimes” in the fourth line, which might require a change in internal legislation. Panama also called for different wording for “favorable entry”.

**Japan** stated that those States exercising jurisdiction and control over territory can most effectively provide assistance and that Japan supported Article 6 as it stands.

The **Cluster Munition Coalition** supported the emphasis on the duty of user States to provide assistance and stated that Article 6(2) should contain a general obligation on clearance. The CMC encouraged and supported the proposals made by Zambia and Canada.

**Ethiopia** supported statements made regarding the strengthening of Article 6, and also Article 5. Regarding Article 6, its provisions should be strong enough to accommodate the needs of victim countries that do not have the resources or the know-how to mitigate the consequences of cluster munitions.

The President informed delegations that Article 6 would be revisited in the Committee of the Whole later in the week once it was clear what progress was being made in informal negotiations. Members of the President’s team would speak to delegations that had made statements to further explore their positions on Article 6.

The meeting rose at 12.50 p.m.

