

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

CCM/CW/SR/3

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## SUMMARY RECORD OF THIRD 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 3 p.m.

### **Article 7**

The President, proposed to examine the draft text of Article 7, addressing transparency measures, supplementing the draft Convention's provisions on stockpiling, destruction and clearance and non-proliferation of cluster munitions. He pointed out that amendments had been proposed to the substantive provisions of the treaty addressing stockpiles, retention, destruction and clearance (Articles 2 and 3). Therefore, the elements of Article 7 addressing transparency on these matters should not be discussed until agreement had emerged on Articles 2 and 3. The remaining elements of Articles 7 could be discussed immediately.

**Canada** commented that Article 7(1) (j) should be amended to refer to the amount of area, as well as the type and quantity of cluster munition cleared. It was working on wording to propose regarding retention which it would present for later discussions.

**Japan** expressed its support for the reporting mechanisms in Article 7, but noted that careful consideration should be given to its scope and content in order to take account of national security concerns.

**Botswana** commented that Article 7 would require information to be reported to the UN Secretary-General. It referred to its earlier statement that Article 2's definition of "transfer" should encompass the transfer of cluster munition affected territory to another State for destruction. Article 7 should ensure a formal mechanism for monitoring the destruction of cluster munitions by that third State.

**Belgium** made a number of suggestions for the re-drafting of Article 7. The word "submunitions" should be added to Article 7(1) (b). Paragraphs (c) and (g) should mirror this. Belgium also proposed placing point (e) after points (f) and (g). The reference in existing paragraph (g) to the status of the programme should be expanded to refer to both the destruction and clearance of cluster munitions. Paragraph (j) should require reporting on the amount of area of cluster munition remnants cleared as well as a breakdown of the quantity.

**Belgium** further proposed adding a new paragraph (n) to Article 7(1) to include a reference to national resources available for fulfilling obligations. It also proposed an additional paragraph (o) to refer to the amount, type and destination of international co-operation and assistance provided under Article 6.

**Finland** supported these proposed changes, stressing that Article 7 should be clear that it only refers to cluster munitions prohibited under the Convention.

The **United Kingdom** agreed that the obligation to report should be limited to the scope of Article 2's definition of cluster munitions once agreed. It suggested that a single national contact point would be preferred under paragraph (m), as set out in CCM/41. A query arose regarding the obligation of annual reporting in Article 7(2) – would this obligation be open-ended or would it end once the relevant obligation ceased? The United Kingdom would prefer the latter. It suggested that the obligation in paragraph (h) to report on the types and quantities of cluster munitions destroyed in accordance with Article 3 would more appropriately take effect once the relevant deadline in Article 3 for compliance with this obligation had expired.

**Chile** agreed with the United Kingdom that the various articles of the Convention should be consistent. Article 7 required two types of reports to be made by States parties – an initial report under paragraph 1 and an annual update in paragraph 2. Some of the content of paragraph 1 was not in line with the notion of the initial report, for example paragraph (h). Article 7(1) and (2) should be refined to clarify exactly what information is required in each report. Paragraph (c) should also be strengthened to provide for full transparency on stockpiled cluster munitions.

**Peru** supported Chile's comments.

**Indonesia** commented that it had some difficulties with Article 7 as currently drafted.

**Samoa** referred to the importance of Article 7 to ensure compliance with the Convention. It would like a simplified reporting mechanism to be incorporated into the text or to be agreed with the depositary for suitable countries, such as small or developing nations not significantly affected by cluster munitions. This would promote greater adherence with the treaty.

**Argentina** supported the text of Article 7, but proposed that a new sub-paragraph could be added to Article 7(1) to reflect the possibility under Article 3 (if agreed) of keeping cluster munitions for training purposes. The proposal made by the United Kingdom in CCM/41 could address this.

*The floor was opened to observer delegations.*

The **Cluster Munition Coalition** stated that transparency measures would be critical to the success of the Convention. While it was broadly satisfied with the text of Article 7, it wished to suggest small changes based on the experience of the Mine Ban Treaty. It supported Belgium's proposed changes to Article 7. Article 7(1) (i) should encompass reporting on both the discovery and the subsequent destruction of stockpiles. It also suggested that the provisions of Article 7(1) addressing reporting on clearance and victim assistance should be fleshed out, using similar language to

sub-paragraph (g) to include reference to plans and timelines in order to ensure the full implementation of these obligations. In paragraph (j), it supported the proposal that both the area and quantity of cluster munitions remnants cleared should be referred to. It also supported the inclusion of a paragraph requiring States to provide information on resources. States should also be required to report on their obligation of international co-operation and assistance in Article 6.

*The floor was returned to participating States.*

**Australia** agreed that transparency measures should be linked to the scope and definitions of the Convention. Appropriate transparency measures could also assist in resolving the matter of the retention of cluster munitions for training purposes.

The President proposed informal discussions to be conducted by his team on a bilateral basis with all delegations that had intervened on Article 7. The Committee of the Whole could then return to discussing Article 7 following these discussions.

### **Article 8**

The President opened discussions on Article 8. This provision closely mirrors the corresponding Article 8 of the Anti-Personnel Landmines Convention, though the present draft text omits any reference to fact-finding missions. This element of the Landmines Convention has never been used, and has been deemed by some to be redundant. He proposed conducting an initial discussion on Article 8, which the Committee could return to later.

**Argentina** considered the text of Article 8 to over-simplify the procedures of the Ottawa Convention. That text had been extremely detailed. Argentina suggested revisiting the Ottawa provisions to see what important elements could be included in the draft treaty. Otherwise, verification missions might not occur in practice. It stated its willingness to consult on the adaptation of the Ottawa text to the present Convention.

**Indonesia** stated that it could generally support Article 8. It would be preferable to include more paragraphs on convening a special meeting of States Parties, similar to the Ottawa Convention.

*The floor was given to observer delegations.*

The **Cluster Munition Coalition** commented that additional discussion would be required on verification procedures. A reference to fact-finding missions was possible but the experience of the Anti-Personnel Landmines Convention showed a lack of willingness to utilise such missions. It suggested that an informal body might be responsible in the first instance for the initial examination of compliance matters. This might avoid more formal procedures.

The **International Federation of Red Cross and Red Crescent Societies** wished to clarify whether the reference in Article 8(5) to “the use of co-operative measures referred to in Article 5 of the Convention” (victim assistance) was correct.

The President considered that informal consultations would be necessary on the text of Article 8. Mr. Halisa Mabhongo would act as a Friend of the President in this regard.

Mr. Mabhongo stated that he would first consult bilaterally with interested delegations and would then decide if an informal meeting should be convened. The President welcomed this approach and stated that discussion on Article 8 would be reopened in the Committee of the Whole following informal consultations.

### **Article 9**

The President opened discussions on Article 9 stating that national implementation measures will depend on the substantive obligations that emerge, but it would still be useful to have an initial discussion.

**Botswana** raised the issue of non-State actors possessing cluster munitions, for example, rebel movements. While only States Parties are normally the subject of international conventions, situations do arise where non-State actors possess cluster munitions and may use them in civil strife, for example from a neighbouring country. It suggested that the issue of sanctions against States giving sanctuary to such rebel movements merited a closer look.

The **Philippines** referred to its proposal, as contained in CCM/56, to add additional text to Article 1, including a new paragraph (4) on non-State actors. This would read “Armed groups that are distinct from the armed forces of a State shall not, under any circumstances, engage in any activity prohibited to a State Party under this Convention”.

**Indonesia** pointed out that Article 9 already made reference to the obligation of States Parties to take appropriate measures to prevent prohibited activity under the Convention being carried out by persons under its jurisdiction or control.

*The floor was opened to observer delegations.*

**Ethiopia** wished to align itself with Botswana’s concerns regarding “transfer” and referred to its position paper, as contained in CCM/CRP/1.

The **Cluster Munition Coalition** stated that it was broadly happy with the text of Article 9, which mirrors the wording of the Landmine Convention. National implementation measures would be essential to the full implementation of the treaty. It suggested that a deadline might be included in Article 9.

*The floor was returned to participating States.*

**Botswana** supported the inclusion of a deadline on national implementation.

The President stated his intention to make proposals on Article 9 later in the week.

### **Article 10**

The President opened discussions on Article 10, dealing with the settlement of disputes.

The **United Kingdom** raised the reference in Article 10 to the possible referral of disputes under the Convention to the International Court of Justice (“ICJ”). Not all States Parties will be parties to the Statute of the ICJ. It suggested revising the wording of Article 10(1) to state “referral, by mutual consent, to the International Court of Justice in conformity with the Statute of the Court,” as proposed in CCM/43.

**Indonesia** supported this proposal.

**Sierra Leone** supported this proposal.

**Botswana** agreed with the proposal but sought clarification on the matter of enforcement of any relevant ICJ decision.

**France** stated that Botswana’s concern was addressed by the terms of the Statute of the International Court of Justice itself, which obliges States to apply the decision of the International Court of Justice in good faith.

*The floor was given to observer delegations.*

**Ethiopia** raised the issue of enforcement mechanisms for contravention of the Convention under Article 10. It sought clarification on the role of the UN Security Council or the role of regional organisations such as the African Union in the event of non-compliance.

### **Article 11**

**The President** opened discussions on Article 11, dealing with the Meetings of States Parties.

The **United Kingdom** commented that the proposed text largely followed the corresponding provision of the Ottawa Convention, save for the reference to decisions on the “interpretation” of the Convention. It considered that this may present difficulties where such decisions ran counter to previous interpretative declarations of States. It also made a general comment that the increasing number of international treaties involving regular meetings and reporting obligations. These commitments are difficult for States, even well-resourced States, to meet and thought should be given to the rationalisation of States meetings under international treaties.

**Indonesia** expressed its support for Article 11 as drafted.

*The floor was given to observer delegations.*

The **Cluster Munition Coalition** commented that the Article doesn’t reflect the reality of the Meetings of States Parties where most discussion would centre on Article 11(1) (a). The substantive obligations of the Convention should be clearly laid out to allow for its fullest implementation.

The **International Federation of Red Cross and Red Crescent Societies** pointed out that the provision in Articles 11(3) and 12(3) for the attendance of non-States Parties as observers at meetings of the States Parties and the Review Conferences

made reference to the International Committee of the Red Cross, but failed to refer to national Red Cross and Red Crescent societies and their International Federation (as Article 6(7) did). The International Federation suggested that the Articles concerned might be amended accordingly.

### **Article 12**

The President opened discussion on Article 12 dealing with review conferences. No proposed amendments had been tabled on this Article. It proposed to issue the text of Article 12 to the Plenary, subject to the understanding that nothing is agreed until everything is formally agreed.

*The floor was given to observer delegations.*

The **International Federation of Red Cross and Red Crescent Societies** repeated its point about attendance at meetings in the context of Article 12(3) on Review Conferences.

The President responded that the relevant paragraphs of Articles 11 and 12 did not prevent the attendance of the International Federation at meetings of States Parties and Review Conferences. No participating State had proposed an amendment to address this point.

*The floor was returned to participating States.*

**Mexico** stated that it was willing to take up the amendment to Articles 11 and 12 suggested by the International Federation of Red Cross and Red Crescent Societies.

**Panama** supported this amendment.

The President stated that this amendment to Articles 11 and 12 could be considered by the Committee of the Whole later in the week.

### **Articles 13-22**

The President stated that the draft Convention conferred the role of the depositary on the UN, and also conferred certain other functions on the UN Secretary-General. The UN Office of Legal Affairs had made technical, legal comments on these aspects of the draft Convention. A President's Non-Paper would be circulated proposing technical modifications to Articles 13-22 to take account of these comments. These Articles would be discussed in the Committee of the Whole once delegations had an opportunity to consider the proposals.

The meeting rose at 4.15 p.m.