

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

CCM/CW/SR/8

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

Held at Croke Park, Dublin on Friday, 23 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 10.15 a.m.

The President opened the meeting, giving the floor to Deputy Minister of Foreign Affairs of Lao People's Democratic Republic, Bounkeut Sangsomsak, to make a General Statement.

### General Statement

The **People's Democratic Republic of Lao** strongly supported the Oslo process for the banning of cluster munitions. As the most heavily bombed country on earth, it had great interest and hope at this final stage of the process. It did not want people of other countries to experience the pain which Lao had. Lao had a sad history as a victim of cluster munitions, with several thousand accidents having occurred since 1973. Mr. Sangsomsak noted that a Handicap International report recorded more than 13,000 casualties from cluster munitions in 74 countries: 36% of these incidents had occurred in Lao alone. The contamination of vast areas of land in Lao by cluster munitions had caused significant obstacles to economic development, and had impeded its progress in efforts to achieve the UN Millennium Development Goals.

As the country most affected by cluster munitions, Lao commended Norway for initiating the process to ban cluster munitions. It also commended the efforts of the international community. The treaty would establish important norms for international co-operation and assistance in clearing remnants of cluster munitions and providing assistance to victims, and for placing responsibility on user States to address the consequences of the use of cluster munitions. Lao considered that States should seek to give all civilians a safe and secure life, and strongly hoped that one day war would be made illegitimate and illegal.

### Article 3

The President proposed to open the discussion on the draft text of Article 3 contained in an informal paper by a Friend of the President of 22 May, which had emerged from informal consultations led by Ambassador Kongstad.

**Australia** thanked Ambassador Kongstad for his efforts in conducting the informal discussions. The draft text was in keeping with Australia's position that certain changes were required to Article 3, for example a paragraph on retention. It welcomed the changes which had been

proposed in the informal paper to paragraphs 1-4 of Article 3. However, it wished to propose a change to Article 3(5) addressing requests by States Parties for extensions to the deadline in Article 3 for destruction of cluster munitions. It considered that the detail contained in Article 3(5) for the assessment of requests by States Parties was excessive. The procedures should be determined by States Parties after the conclusion of the negotiations. Australia proposed aligning Article 3(5) with the less detailed language of the corresponding provision of draft Article 4(7).

**Argentina** stated that it had carefully considered the text which reflected the result of detailed consultations. Nevertheless, having regard to the legal significance of Article 3, it would like to a Spanish language version of the informal paper available as soon as possible. Argentina had no objections to the English language version.

**France** congratulated the Friend of the Chair on the significant improvements which he had proposed to the text of Article 3. In particular, France welcomed the eight year deadline for destruction of cluster munitions, which it regarded as a reasonable timeframe. France was satisfied with paragraph 6 as proposed. France was unhappy with the final part of paragraph 5, echoing the view of Australia that the provision is too detailed in setting out the procedures for considering extension requests. It proposed that the final two sentences of that paragraph, beginning with “To assist States Parties ...” should be deleted from the text. Alternatively, France would be in favour of bringing Article 3(5) in line with the less detailed language of Article 4(7). France wished to associate itself with the remarks of Australia in this regard.

**Canada** remarked that it had originally proposed the text of draft Articles 3 and 4, with the intention of avoiding pitfalls which had emerged in the Ottawa extension process. Canada was not personally convinced of the case for not retaining that original language but in any event, Canada strongly favoured ensuring consistency between Article 3(5) and Article 4(7).

**Panama** expressed its wish to have the text of the informal paper on Article 3 available in Spanish.

*The floor was opened to observer delegations.*

The **Cluster Munition Coalition** considered that the text of Article 3 had been weakened in informal consultations. The basic deadline for destruction of stockpiles had been extended from six to eight years. There had been no explanation by States of the criteria for arriving at either of these deadlines. While the Cluster Munition Coalition welcomed the modifications that had been made to the provisions on requests for extensions, it questioned the need for including the possibility of an extension period in the draft Convention at all. This possibility provided a disincentive to States for timely compliance, regardless of whether the extension period was actually required by a State. The Cluster Munition Coalition was pleased with the detail and transparency provided for by the draft Convention on extension requests. It accepted Canada’s point that Article 3(5) and Article 4(7) should be consistent, but would fall in favour of including as much detail as possible on the extension request process.

The **Cluster Munition Coalition** was unconvinced of the need for States to retain cluster munitions for training, development or military counter-measures. However, given that a retention clause had been added in paragraph six, it welcomed the requirements on transparency which had been included. The clause’s requirement that only the “minimum number absolutely necessary” for this purpose should be retained had been drawn from the language of the Ottawa Convention. That had proven to be ineffective and controversial in some instances, with States

disagreeing on what the minimum number required was. Some States had not treated the concept of a minimum number in a sufficiently serious manner. The Coalition considered that States should express their views on the meaning of this concept in the course of negotiating the Convention. This would establish guidance on the meaning of the phrase in the diplomatic record of the Convention.

The **International Committee of the Red Cross** was concerned that Article 3(3) created the possibility of open-ended extension periods *ad infinitum*. It should be possible to determine the outer limit from the text of the treaty. It agreed with the Cluster Munition Coalition that the experience of the landmine ban had shown that States frequently requested unjustified extensions of time. A higher threshold was required under Article 3(4) (b) for States seeking to justify the request for an extension. The International Committee of the Red Cross suggested that the wording could be revised to require States to provide “a detailed explanation of the *exceptional circumstances* leading to the proposed extension” rather than merely requiring a detailed explanation of the reasons.

The **International Committee of the Red Cross** considered that it would be useful to include the degree of precision contained in the informal paper on Article 3(5). The process for considering extension requests had taken several years to agree in the context of the Landmine Convention. The International Committee of the Red Cross was of the view that maintaining the proposed wording would allow the focus to remain on the actual extension request, rather than on establishing the process, in the early years of the Convention.

*The floor was returned to participating States.*

**Germany** expressed its agreement for the informal paper as it stood, but stated the International Committee of the Red Cross’s remarks deserved careful consideration. Germany considered the text of the proposed Article 3 to be inconsistent as regards paragraphs 6 and 7 regarding the transfer of cluster munitions. It suggested that the following words should be deleted from paragraph 7 – “and training in detection, cluster munitions and sub-munitions clearance or destruction techniques” – as this aspect was already sufficiently addressed in paragraph 6.

**Burkina Faso** expressed its wish to have the Presidency texts available in all three working languages of the Conference.

**Indonesia** stated that it was generally comfortable with the text of the informal paper on Article 3. It would give positive consideration to the remarks of the ICRC and the proposal made by Germany. It also wished to propose a technical amendment to the last line of paragraph 5, referring to the President of Meetings of States Parties or Review Conferences to the Convention. The text should state “to assist him *or her* in that task” as it was possible that a woman might one day act as President.

The **United Kingdom** sought guidance from the President on the status of the International Committee of the Red Cross’s comments on the text, in light of Rules 1, 30 and 31 of the Conference.

**Mexico** stated that it disliked the inclusion of paragraph 6 on retention in Article 3. This could lead to loopholes weakening the text of the Convention. It supported the ICRC’s suggestion that detailed explanations justifying the request for an extension should be required. It would appreciate a Spanish version of the informal paper being made available.

**Honduras** stated that it was broadly opposed to the retention of cluster munitions. It might be acceptable for training purposes, but in any case they should not be maintained in large amounts. On the issue of deadlines, clear reasons should be required for any request for an extension. Honduras spoke of its experience of a meeting in Jordan on the Anti-Personnel Landmine Convention, where States had sought extensions after the ten year period without providing convincing reasons. This could occur here too. Honduras also requested the text of the informal paper in Spanish.

**Nicaragua** stated that it did not think it was appropriate to discuss the Friend's proposals on Article 3 before the informal paper had been distributed in all three working languages of the Conference.

**Cambodia** stated that it was comfortable with the text presented by Ambassador Kongstad.

**Peru** welcomed the text which it considered made significant progress in establishing consensus among delegates. The text of the treaty must, in so far as possible, satisfy the aspirations of all. While adjustments to Article 3 might be required, Peru agreed with the deadlines suggested in the informal paper and welcomed the transparency measures and measures on retention suggested. Peru participates in peacekeeping missions and needs to have its team trained in deactivation of cluster munitions.

**Senegal** stated that it would prefer to have a French version of the informal paper. It considered that there were two problems with the proposed text of Article 3. Firstly, it was not convinced that provision should be made for training on live cluster munitions. Senegal was concerned about the possibility of fraudulent measures for transfer of cluster munitions under the pretence of training.

**Spain** pointed out that it has an international demining centre which carries out training activities. Spain had requested the possibility of keeping cluster munitions for that purpose in the process of negotiating the Convention. Spain considered that it was important to maintain the possibility of training experts from other countries for the purposes of clearance of cluster munitions. Spain was surprised at some countries' opposition to this.

**Ghana** stated that it was prepared to agree generally with the text of Article 3 as set out by the Friend of the President. However, Ghana shared Senegal's concerns about transfer and considered that training should take place without live munitions.

**South Africa** considered the text proposed to be carefully balanced, reflecting the concerns of many delegations. South Africa was ready to consider the text favourably.

The President thanked all delegations for their contributions to the discussion. He wished to make two general comments. Firstly, on the matter of translation, an informal discussion paper of a Friend is not a formal document of the conference. Outside of the Plenary and the Committee of the Whole, the working language of the conference is English. When a Presidency text of Article 3 was issued, the text would be made available in all three working languages.

With regard to interventions by observer delegations, only participating States can propose amendments to the text of the Convention. A Friend of the President can take the comments of observer delegations into account in seeking to reach consensus on the text. The comments of the

ICRC on Article 3 this afternoon had been favourably supported by a number of participating States.

The President welcomed the informal paper on Article 3 which showed a great deal of progress had been made by the Friend. In light of the proposals for textual changes which had been made by delegations in the course of the discussion, he asked Ambassador Kongstad to carry out further informal consultations to see if agreement could be reached on the text.

### **Article 6**

The President stated that his team had conducted bilateral discussions with interested delegations on Article 6, following the debate in the Committee of the Whole. These discussions had been constructive, and the President believed that some minor amendments to Article 6 would be capable of securing agreement on the text. The amended text of Article 6 would be circulated as a Presidency Non-Paper for discussion in the Committee of the Whole on Monday.

### **Proposal for additional text on transition periods**

The President noted that three proposals had been made for a transition period to be provided for in the Convention. Germany had proposed amendment to Article 18 in this regard, as represented in CCM/46, while an additional article to provide for a transition period had been proposed by Switzerland, as set out in CCM/50, and Slovakia, as set out in CCM/66. The President did not wish to re-open the text of Article 18, which had been discussed by the Committee of the Whole earlier that week.

**Switzerland** had submitted a proposal for additional text on a transition period. Certain elements of the Convention, such as the definition of cluster munitions, were central to this issue and were still under consideration. Switzerland proposed postponing the discussion on transition periods to a later date. It hoped to return next Tuesday with a common proposal following discussions.

**Japan** agreed with Switzerland. The question of a transition period was heavily related to definitions that were not yet resolved.

**Denmark** supported Switzerland's remarks.

**Slovakia** referred to CCM/66 proposing the introduction of a transition period. It supported Switzerland's suggestion that the discussion should be postponed until next week as the question of a transition period was closely related to the outcome of discussions on Articles 1 and 2.

**Mexico** considered the question of a transition period to be a delicate aspect of the draft Convention. Mexico would be opposed to its inclusion. It looked forward to further discussions on this point.

**Argentina** disliked the concept of including a transition period, which would be negative in an instrument of this nature. There was a risk that allowing a transition period would lead to a greater use of the weapon. It would be happy to pursue discussions on this matter next week.

**Mauritania** considered transition periods to be unsuitable in this Convention, as it would allow the use, transfer and stockpiling of cluster munitions.

**Costa Rica** shared the views of Argentina and Mexico that a transition period should not be included. It suggested discussing this issue next Monday rather than Tuesday. The explanation

that it was linked to other Articles of the draft treaty was not a convincing reason for postponing the discussion.

**Guatemala** stated its opposition transition periods as a counter-productive concept which would set a bad precedent in the new treaty.

**Guinea** stated that there must be consistency in the result achieved in negotiating the new treaty. States should not work to ban cluster munitions causing harm and damage yet give States leeway to use them in the same instrument. It was open to discussions on this topic, but the objective of the Convention having immediate effect must be remembered.

**Zambia** stated its opposition to the inclusion of a transition period.

**Panama** stated that it was concerned at the tenor at the Swiss proposal which went against the spirit of the draft Convention.

**Sweden** commented that it had been active in seeking to ban cluster munitions even before the Oslo process, and had been a co-sponsor of the Oslo Declaration. There should be no doubt about Sweden's position on the Convention. However, Sweden considered that the introduction of a transition period would strengthen the effect of the Convention on the ground by ensuring that more States could become parties.

**Honduras** stated that it was against the proposed transition period which would undermine the Convention. If the effect of cluster munitions was extended through transition periods, the States Parties would be responsible for the blood of innocent people. Its view was unlikely to change in future discussions on this matter.

**Venezuela** opposed the proposal for a transition period which would do nothing to strengthen the draft Convention.

**Austria** considered that a transition period would be a fundamental shortcoming in the new Convention, allowing the legitimate use of cluster munitions for a certain period of time. This would undermine the Convention. States requesting the inclusion of a transition period had already recognised that these weapons caused unacceptable harm to civilians. A transition period would create two tiers of States Parties, those immediately committed to the treaty and those availing of the transition period. Neither the Mine Ban Treaty nor the Chemical Weapons Convention contained transitional periods of this kind.

**Chad** was opposed to the inclusion of transition periods in a Convention which is intended to ban cluster munitions.

Along with **Japan, Denmark, Slovenia and Sweden, Germany** supported the Swiss proposal as contained in CCM/50.

The following countries opposed the introduction of transitional destruction periods:

**Norway, Cook Islands, Lebanon, Ecuador, Nigeria, Chile, Lao People's Democratic Republic, Paraguay, Togo, Belize, Sierra Leone, Niger, Malta, Uruguay, Kenya, Lesotho, Burundi, Nicaragua, Indonesia, Madagascar, Tanzania, Benin, Botswana, Peru, Burkina Faso, Bolivia, Comoros, Sao Tome and Principe, Uganda, Mali, Seychelles, Congo,**

**Mozambique, Sudan, Vanuatu, Senegal, Bosnia-Herzegovina, El Salvador, Croatia, Democratic Republic of the Congo, Cote d'Ivoire, Ghana, Montenegro, Malaysia, Iraq.**

The **Cluster Munition Coalition** and the **International Committee of the Red Cross** also opposed any transitional period.

The **United Kingdom** suggested that given the obvious differences on the topic the President could appoint a Friend to conduct negotiations on the issue. This suggestion was supported by **Slovakia**.

**Costa Rica** did not agree with the suggestion of the **United Kingdom** that a Friend be appointed to conduct further consultations. As interpretation is not available for the informal meetings chaired by Friends of the President, the matter should remain in the Committee of the Whole. **Panama, Niger, Venezuela, Nigeria, Malta** and **Nicaragua** agreed with the statement of Costa Rica.

**Venezuela** further stated that the majority of delegates were opposed to a transition period (applause).

The President requested that delegates conduct themselves with proper decorum.

**Honduras** also stated that it was inappropriate to appoint a Friend but that if a Friend were appointed he should involve the GRULAC countries who unanimously rejected the proposal for a transition period.

**Sierra Leone** raised a question on mechanisms for further discussions and requested that the object of further consultations should be made clear.

**France** supported the proposal of **Sweden** and further considered that the matter should be discussed within the Committee of the Whole.

The President stated that further effort would be required to overcome differences. Those States seeking transitional periods must convince other States of the necessity for such periods. Delegations with proposal should conduct consultations to try and develop understanding on the issue. The President proposed that Germany take the lead on such consultations.

**Germany** agreed to carry out consultations.

**Costa Rica** raised a procedural question on Germany's role in carrying out consultations

The President responded that Germany had not been appointed as a Friend of the President but as the first country to submit a proposal had been asked to consult on its position with other States.

### **Article 5**

The President then introduced the Non-Paper on Article 5, which had been introduced by the Friend of the President, Mr. Markus Reiterer of Austria. The President clarified that Article 5 on victim assistance should be seen as relating to the provision by the States Parties of assistance to all persons under their jurisdiction or control without distinction. All issues relating to international cooperation and assistance fall within Article 6.

Mr. Reiterer introduced his Non-Paper on Article 5 and thanked delegations for their constructive engagement on the text. The first amendment proposed was to the Preamble. The language in the 2nd preambular paragraph had been changed to be consistent with the language of paragraph 5(1). The third preambular paragraph had been amended to include the element of age and gender and the special needs of vulnerable groups. Three changes had been made to the definition of “cluster munition victim” as it appears in Article 2. The term “all” had been added before “persons” to encompass all persons who had suffered harm regardless of their status as migrants, refugees, Internally Displaced Persons etc. An amendment was also made to take into account the most extreme form of physical injury, those “who had been killed”. In the last sentence of the definition, “affected” had been added before families and communities.

In Article 5 (1), the words “applicable” had been added before the reference to human rights and international humanitarian law. Reference was also made to age and gender sensitive assistance. Paragraph 2 had been redrafted to be more specific on how obligations should be implemented. Language building on the experience of the Mine Ban Treaty and the issue of needs assessment had been added. States Parties will have to develop national plans and budgets with a view to incorporation into existing national disaster plans. Sub-paragraph (e) on the issue of nondiscrimination provided that no discrimination be made against or amongst cluster munitions victims. The only reasons for difference in treatment should be the differing needs of victims.

Language had also been added to include consultations with victims and existing good practices on victim assistance.

**Honduras** raised a question as to whether the text of Article 2 could be amended to include reference to those that had been killed so as to tally with Article 5.

The President responded to the statement of Honduras by clarifying the proposed text would replace the existing text in Article 2.

**Honduras** thanked the President for his clarification and requested that the reference to those killed in Article 2 be incorporated into the headings.

**Indonesia** raised a question on the content of paragraph 2(h) and asked what guidelines and practices were being referred to.

**Chile** expressed its satisfaction with the text. The text was also strongly supported by **Serbia, Switzerland, Cambodia, Ghana, Spain, Austria, Canada, Guatemala, Belgium, Fiji, France, United Kingdom, Cook Islands, Nigeria, Ecuador, Mali, Uganda, Croatia, Germany, Vanuatu, Senegal, Guinea, Venezuela, Zambia, Chad, Lebanon, Burundi, Mozambique, Bosnia and Herzegovina, Madagascar, Dominican Republic, Sweden, Sudan, Montenegro, Sierra Leone, Guinea-Bissau, United Nations High Commissioner for Refugees, Iraq, Thailand, Cluster Munition Coalition, and Austria.**

The **Philippines** also expressed its satisfaction with the text, particularly welcoming the President’s understanding that the word “all” would include non-nationals of affected States. The Philippines raised the issue of a reference to the special responsibility of user States as similar language appears in the informal paper on Article 4(4).

The President reminded the Philippines that the language on user responsibility under Article 4 was still under discussion.



The **International Federation of Red Cross and Red Crescent Societies** also expressed support for the draft Article and suggested a small drafting change to the first sentence of Article 5, to change the word “areas” with “territories” to bring into line with other Conventions.

The President proposed to forward the text of the Non Paper on Article 5 to Plenary as a Presidency Text. The President noted that there were no objections to the proposal.

The meeting rose at 13.03 p.m.