

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

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## SUMMARY RECORD OF FOURTH SESSION OF THE PLENARY AND CLOSING CEREMONY OF THE CONFERENCE

Held at Croke Park, Dublin on Friday, 30 May 2008

Chair: President O'CEALLAIGH

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

The President provided a brief outline of the manner in which the Plenary Session would proceed. Firstly, States had to formally adopt the text of the Convention on Cluster Munitions, as they had agreed on Wednesday evening.

Following adoption, delegations could make a statement on the Convention. The President reminded delegations that statements made on Wednesday afternoon and evening would be reflected in the Summary Records of the Conference.

He then proposed to turn to the Final Document of the Conference, which was made available in draft form on Wednesday evening. The Plenary would adopt the Procedural Report, a purely factual description of the Conference proceedings, contained in the Final Document along with its five annexes (Agenda, Rules of Procedure, list of official conference documents, the documents themselves, and the list of delegates).

The closing ceremony of the Conference, with the participation of the Minister for Foreign Affairs of Ireland and other distinguished guests, would follow at 12.00p.m.

### ADOPTION OF THE CONVENTION ON CLUSTER MUNITIONS

The President proposed that the Conference adopt the text of the Convention, as set out in document number CCM/77.

The Convention was adopted by acclamation

### STATEMENTS BY DELEGATIONS FOLLOWING THE ADOPTION OF THE CONVENTION

**Mexico** expressed its satisfaction with the outcome of the Conference. The Convention was a milestone in the development and codification of international humanitarian law. Mexico hoped to be one of the first States to sign it.

The **Holy See** welcomed the Convention's provisions on the protection and care of victims, which marked a new chapter in international humanitarian law. It greatly appreciated the contribution of all delegates, including the UN, the International Committee of the Red Cross and civil society, and the efforts of the President, in achieving these compelling objectives. It called on the solidarity of the international community to assume responsibility for victim assistance and clearance of contaminated areas.

The **Holy See** wished to express its understanding that Article 5(2)(c) shall guarantee pluralism and involve a diverse range of actors, including government, non-governmental organisations and non-State actors, in victim assistance efforts, in line with paragraph 10 of the Preamble to the Convention. It hoped that the spirit of partnership between delegations and civil society which had characterised the Conference would continue in order to ensure the effective implementation of the Convention.

**Norway** stated its intention to sign the Convention in Oslo in December. While the Convention would not yet enter into force for some time, in practical terms its implementation began now. Reflecting on the Oslo Process, Norway remarked that it had taken a humanitarian approach to disarmament. It had greatly benefited from effective partnership between affected and unaffected States, and between States and civil society. The input of United Nations Development Program and the International Committee of the Red Cross had been particularly valuable. Norway stated that Article 21 on interoperability was essential to ensure that the Convention did not hinder future joint military operations with non-States Parties. No loopholes had been left in the Convention.

**Canada** thanked Ireland, and welcomed the substantive outcome of the Conference. It considered that the text of the Convention struck the right balance between competing interests. There had been differing reactions to Article 21, with the Cluster Munitions Coalition describing it as a "stain on the fabric of the Convention." Others described it as a loophole. Canada regarded it as an essential element to legally protect joint military operations, which actually strengthened the Convention. The metaphor of steel was suggested to describe the Convention; its inherent flexibility added to its strength. The Convention would achieve a major paradigm shift in how the world viewed cluster munitions. Both humanitarian and security considerations had been taken into account in negotiating the Convention, and the Canadian delegation was proud to take it back to its capital for consideration.

**Nigeria** expressed its deep appreciation to the President and to Ireland. The painstaking negotiations had resulted in a Convention which would ban and stigmatise cluster munitions. Nigeria intended to sign the Convention in Oslo in December. States had a collective responsibility to sign and ratify the Convention as soon as possible.

**Slovenia** delivered a statement on behalf of the European Union, commending the results of the Conference. The EU regarded the text as having responded to humanitarian concerns, and called upon States to strive for its universalisation. The

EU Member States would also continue to participate in parallel efforts within the context of the Convention on Certain Conventional Weapons.

**Germany** expressed its full support for the Convention, and wished to inform delegates of a joint declaration of its Ministries of Defence and Foreign Affairs yesterday in support of the Convention. Germany would sign the Convention in Oslo and ratify it as quickly as possible thereafter. Germany would unilaterally renounce the use of all types of cluster munitions and destroy its stocks as quickly as possible.

**Hungary** welcomed the outcome of the Conference and thanked the President for his able stewardship of the negotiations. Hungary had adopted a unilateral moratorium of all cluster munitions in its possession in November 2007. It welcomed Article 21 of the Convention as an appropriate solution to safeguard peacekeeping and humanitarian operations.

**Cambodia** expressed its satisfaction with the negotiations, and called for the effective implementation of the Convention's provisions. International co-operation would be essential to achieving the ambitions of the text.

**Chile** welcomed the successful outcome of the Conference, and expressed its particular support for the Convention's provisions on destruction, clearance, risk education, victim assistance, transparency and its lack of a transition period or any provision for reservations. Chile would have preferred a reference to the qualitative criterion of unacceptable harm in the Convention's definitions, but expressed the hope that any shortcomings could be addressed in the Review Conferences. Chile would make great efforts to achieve the universalisation of the Convention.

**Lebanon** congratulated the President and expressed its support for the Convention, which had focused on humanitarian concerns. It delivered a message from people of South Lebanon, an area badly affected by cluster munitions, who welcomed the new Convention.

**Congo** thanked the President and Ireland, and associated itself with the remarks made by Zambia on behalf of the African group in the Committee of the Whole on Wednesday. States must now work effectively at national level to implement the Convention.

**Argentina** thanked the Core Group for leading the Oslo Process. It stated that it would remain watchful of Article 2(2)(c) of the Convention, to see if there is a need for its revision in the future. Argentina maintained the view that Article 21 should not appear in the Convention, on the basis that this Article generates uncertainty without contributing to the aims of the Convention. However, it was part of the necessary consensus to agree the text as a whole.

**Australia** welcomed the Convention, which would achieve a strong humanitarian outcome. States should now focus on ensuring the rapid entry into force and full implementation of the Convention. Australia welcomed the input of civil society to negotiations of the Convention. It regarded the Convention as a balanced text which would ensure adherence by the greatest possible number of States, and would

establish a new norm in international humanitarian law. Australia was confident that it would be in a position to sign the Convention before the end of the year.

**Austria** stated that the Convention marked a milestone in the development of international humanitarian law. The constructive and co-operative spirit of the negotiations should be preserved in its implementation. Austria had adopted national legislation in December 2007 prescribing a total ban on cluster munitions. It had actively engaged in the Oslo Process and intended to contribute beyond signature of the text in December. Mr. Markus Reiterer had made significant efforts as Friend of the President in pursuing negotiations on Article 5, the human face of the Convention. Austria welcomed the important contribution of cluster munitions victims to the Conference, and thanked the President for his leadership.

**France** stated that the Dublin Diplomatic Conference was one of the most successful diplomatic conferences it had participated in. The Convention was the product of meticulous negotiations, and represented a milestone in international humanitarian law. France intended to sign the text in Oslo in December, and was committed to destroying the quasi-totality of its stockpiles before that time.

**Palau** hoped that the new Convention would achieve universalisation. It acknowledged the particular contribution of Norway to the Oslo Process, and thanked the Cluster Munition Coalition for its inspirational partnership.

**Venezuela** welcomed the adoption of the Convention by consensus and thanked Ireland for hosting the negotiations. It saluted the work of the Cluster Munitions Coalition and the International Committee of the Red Cross. The text contained key provisions of international humanitarian law, which would address the suffering of innocent civilian populations. Venezuela was unhappy with the provision on interoperability, which it regarded as undermining the spirit and purpose of the Convention.

**Uruguay** welcomed the success achieved in adopting the text of the Convention. It welcomed the humanitarian aspects of the Convention, and hoped for the rapid accession of the widest possible number of States.

**Peru** had supported a legally binding instrument banning cluster munitions to fulfill an ethical imperative of preventing civilian suffering. The text adopted contained important provisions on victim assistance, international co-operation and destruction of cluster munitions, which would form part of international humanitarian law. Peru expressed its admiration for the efforts of the President and the Core Group in leading the Oslo Process to its conclusion.

**Guatemala** stated that it was very happy to see the Oslo Process lead to an internationally binding legal instrument. Guatemala had suffered similar damage from landmines and very much supported the provisions on victim assistance in the Convention.

**Indonesia** stated that the Convention was a milestone in international humanitarian law and disarmament. It attached great importance to the universalisation of the

Convention, and welcomed the spirit of compromise which had emerged in the negotiations.

The **Netherlands** requested that remarks made by it at the sixteenth Session of the Committee of the Whole be included in the record at this point. The Netherlands was not entirely happy with the Convention but stated that the unhappiness had been equitably distributed. The Netherlands joined the consensus that the text be forwarded to the Plenary for adoption. It hoped that it would persuade countries present as observers to move and others to sign up to the Convention in due course. The Netherlands also wished to call on all States to ratify Protocol V of the Convention on Certain Conventional Weapons on Explosive Remnants of War as quickly as possible.

**Honduras** stated that cluster munitions had devastating effects on civilian populations, especially children. It welcomed the commitment in the Convention to preventing suffering of this kind in the future.

**Botswana** stated that the Convention would greatly alleviate civilian suffering, and should enjoy broad acceptance. It welcomed the invaluable contribution of civil society and the International Committee of the Red Cross to the negotiations, and thanked Norway for guiding the Oslo Process.

The **United Kingdom** stated that it had worked fully towards achieving the humanitarian objectives of the Oslo Process, and had already taken significant steps towards implementation of those norms. It thanked the Core Group, the President and welcomed the contribution of the UN, the International Committee of the Red Cross and civil society to the negotiations. It paid tribute to victims around the world for raising awareness and motivating States to act. The Convention represented a major contribution to re-defining the limits of war.

**Burundi** stated that the adopted Convention would govern the behaviour of all States present. Burundi intended to sign the Convention in Oslo and would do its utmost to implement it at national level.

**Costa Rica** welcomed the successful conclusion of the Conference. While it would have preferred a broader definition of cluster munitions, and more rigour in Article 21, the achievements in the text as a whole were so great that Costa Rica was willing to support it.

**Timor Leste** stated that while delegations had different perspectives in the negotiations, all had acted in a spirit of compromise to achieve a fair text. Timor Leste was willing to endorse this highly credible Convention and looked forward to signing it in Oslo.

**Japan** welcomed the contribution of civil society to the negotiations, and expressed its support for the Convention, which took humanitarian concerns seriously.

**Moldova** thanked all delegations for their constructive participation in the Conference, and expressed its support for the Convention.

**Estonia** expressed its support for the Convention and stated that the final text was the best available compromise to avoid unnecessary civilian suffering. It would carefully consider the text in Tallinn in the months ahead.

**Sweden** thanked Ireland for its open and positive conduct of the negotiations, and stated that it agreed with the need to achieve consensus on a Convention text which successfully balanced humanitarian and military concerns.

**Finland** considered the new convention as a remarkable milestone in developing international humanitarian law. It will constitute an important tool for addressing the challenges of victim assistance and clearance of cluster munition remnants in affected areas. Finland sees the text as a result of a compromise, a compromise in which not all of the delegation's concerns were entirely met. The convention text will now be carefully considered in the capital.

**Slovakia** stated that it was ready to fully contribute to strengthening international humanitarian law and preventing civilian suffering. The Convention contained important provisions which would address humanitarian concerns. Its national authorities would carefully study the text in advance of the signature ceremony in Oslo.

**Spain** stated that it wholeheartedly subscribed to the Convention, notwithstanding that it maintained its view on Article 2, as expressed in the Committee of the Whole last Wednesday. The Convention would have an important impact on talks on the Convention on Certain Conventional Weapons to be held in Geneva in July. It considered the reference to Protocol V in the Preamble of the Convention to be significant. Spain would remain firm in its position that the scope of the Convention should be as broad as possible to avoid the devastating effect of cluster munitions.

**El Salvador** welcomed the successful outcome of the Conference and expressed the view that the Convention should start taking effect immediately.

**Samoa** welcomed the adoption of the Convention which would contribute to disarmament, non-proliferation and international humanitarian law. It should be implemented in good faith in a spirit of broad co-operation.

**Niger** welcomed the adoption of the text as a key milestone in international humanitarian law. It intended to be among the first wave of States to join the Convention in December at Oslo, and encouraged other States to do the same.

**Ecuador** congratulated the President and called for the full implementation of the Convention to ensure that no future suffering would be caused by cluster munitions. It was vital that civil society should continue to be included in the implementation of the Convention.

**Belize** expressed its gratitude to the President and stated that Belize would endorse the Convention as a whole with immediate effect.

**Iceland** expressed its full support for the Convention, and stated that its implementation should be guided by the principle of good faith enshrined in Article

28 of the Vienna Convention on the Law of Treaties. Regard should also be had to the International Law Commission Draft Articles on State Responsibility. Article 21 of the Convention dealt with particular concerns regarding joint military operations with non-States Parties, without allowing for departure from the specific obligations of the Convention.

**Belgium** welcomed the Convention, particularly its provisions on victim assistance which represented an important step forward. The Belgian Minister for Foreign Affairs, Karel de Gucht, would initiate an international campaign to achieve the universalisation of this Convention.

**Kenya** stated that the Convention was a significant milestone in international humanitarian law, and welcomed that it did not allow for transition periods. It also welcomed the Convention's provisions on victim assistance and international co-operation. The Convention reflected the fact that cluster munitions causing unacceptable harm to civilians had no place in the twenty-first century.

**Cameroon** congratulated the President and welcomed the outcome of the negotiations. Cameroon was not a user of cluster munitions, nor did it possess areas in need of clearance, but stood in solidarity with affected States. It welcomed the Convention as achieving a fair balance between military and humanitarian concerns.

**Zambia** thanked the President, and stated that it would be happy to sign and ratify the Convention. It expressed its understanding that Article 21 would not create a loophole for States Parties to allow the indefinite stockpiling and transit of cluster munitions on their territories.

*The floor was opened to observer delegations.*

The **Cluster Munition Coalition** stated that it had participated in the Conference in an effort to ensure that the treaty provided the best possible protection to civilians. It welcomed the fact that millions of cluster munitions were now consigned to destruction. The Convention's provisions on victim assistance would also set new standards. However, the CMC was disappointed with Article 21, and cautioned against it becoming a loophole in the Convention. It also emphasised that Article 2(2) (c) must be carefully monitored to prevent the future development of weapons causing unacceptable harm.

The **CMC** called on States to develop common understandings on the foreign stockpiles and on the minimum number of cluster munitions necessary to be retained for the purposes of training, development and counter-measures. It commended all delegates for the success of the Conference, and called for the swiftest possible entry into force of the Convention.

The **Geneva International Centre for Humanitarian Demining** warmly welcomed the Convention and stated that it looked forward to providing ongoing technical advice and assistance in the clearance and destruction of cluster munitions.

The **International Federation of Red Cross and Red Crescent Societies** welcomed the Convention as an important breakthrough for victims' rights and to prevent

civilian suffering. It encouraged as many States as possible to sign and ratify the new Convention.

**Sierra Leone** stated that it was happy to have participated in the process and stood by the spirit and letter of the Convention.

#### ADOPTION OF THE FINAL DOCUMENT OF THE CONFERENCE

The President stated that the Final Document of the Conference CCM/78 consisted of three parts: a Procedural Report with five annexes (Agenda, Rules of Procedure, list of official conference documents, the documents themselves, and the list of delegates); the text of the Convention; and the Summary Records of the sessions of the Plenary and the Committee of the Whole. The Summary Records would be made available in draft form on the website of the Conference, and could be reviewed by delegates for any necessary corrections.

The President drew the attention of delegations to paragraph 19 of the Procedural Report. The Secretary-General of the United Nations, who had agreed to act as depositary of the Convention, would be invited to prepare the authentic Arabic, Chinese and Russian texts. Once this had been done, the Convention would be opened for signature in Oslo on 3 December next, in the six official languages of the UN.

Finally, paragraph 21 contained a decision that the President of the Conference would report to the next session of the UN General Assembly on the outcome of the Conference. As the Secretary-General of the United Nations would require an appropriate mandate to carry out the administrative functions assigned to him under the Convention, as distinct from his depositary functions, a General Assembly Resolution in the autumn would be necessary.

The President proposed that delegates adopt the text of the Procedural Report.

The procedural report was adopted.

#### CLOSING CEREMONY OF THE CONFERENCE

The President welcomed the Minister for Foreign Affairs of Ireland, Mr Michéal Martin; Deputy Minister for Defence of Norway, Mr Espen Barth Eide; Ms Sara Sekkenes of the United Nations Development Programme (to speak on behalf of the United Nations and deliver a message from the United Nations Secretary-General, Mr Ban Ki-moon); Mr Peter Herby, Head of the Arms Unit of the Legal Division of the International Committee of the Red Cross; and Ms. Grethe Ostern of the Cluster Munitions Coalition.

Mr Michéal Martin stated that the adoption of a far-reaching Convention text by consensus reflected the constructive spirit of the Conference. He wished to warmly pay tribute to the efforts of all delegations, and to express his pride in the central role played by the President of the Conference, the Department of Foreign Affairs and the Department of Defence of Ireland.



The Convention agreed upon was strong and ambitious and would set new standards, stigmatising the use of cluster munitions. The Oslo Process had been based on an exemplary partnership of States, the United Nations, the International Committee of the Red Cross and civil society. In particular, the efforts of the Cluster Munition Coalition and of victims themselves who had campaigned to help civilians in future should be welcomed. The Minister also saluted the leadership of Norway.

Three immediate goals were now set by the Convention: first, to take national measures to ratify it. Secondly, States must seek to ensure the universalisation of the new Convention by encouraging accession by all UN members. Lastly, States must do all that is necessary to fully implement the provisions of the Convention.

Mr Espen Barth Eide welcomed the progress made since the first meeting in Oslo. While important concessions had to be made by all States in adopting the Convention, a strong, comprehensive text had been agreed. It was a victory for international humanitarian law and proved the potential of partnership to address important humanitarian questions. The Convention achieved a complete ban on all cluster munitions causing unacceptable harm, and set new standards for victim assistance and clearance of affected areas. It would enhance human security by preventing the future use of cluster munitions.

The Convention would also create a norm having effects beyond the legal text itself. It would have an impact on the perceived legitimacy of State's behaviour. States should strive towards universal adherence to the Convention. The Deputy Minister thanked Ireland, and in particular the President, for having hosted the final negotiations and invited all delegations to Oslo for the signing of the Convention on 3 December 2008.

Ms Sara Sekennes delivered a message on behalf of the UN Secretary-General Mr Ban Ki-moon, welcoming the adoption of the Convention text and the successful outcome of the Conference. A broad coalition of States and other actors had created a new international standard. The Secretary-General was honoured to accept depositary functions under the Convention, and encouraged States to sign and ratify it.

On behalf of the **United Nations Mine Action Team**, Ms Sekennes thanked the President for his outstanding leadership and expressed appreciation for the efforts of all States and observer delegations in the negotiations.

On behalf of the **International Committee of the Red Cross**, Mr Peter Herby expressed great appreciation to all present in reaching this historic point. States had risen to the challenge of determining where the necessities of war must yield to the requirements of humanity. Cluster munitions causing unacceptable harm were morally repugnant and were now illegal under international humanitarian law. Alongside the Landmine Convention and Protocol V on Explosive Remnants of War, the Convention was the last essential element in an international legal regime to address the effects of weapons that keep on killing. The Convention would also create a broader norm that States using cluster munitions could not ignore.

More time and resources would be required to implement this new norm. Mr Herby urged States to be vigilant in ensuring respect for the rules and principles of international humanitarian law.

Ms Grethe Ostern, speaking of behalf of the **Cluster Munition Coalition**, spoke of the pain and suffering that had been caused by cluster munitions in countries such as Lao, where these weapons continued to kill and maim civilians many years after they had been used. The new Convention would ensure that cluster munitions causing unacceptable harm would not be used in future, saving lives and preserving land from contamination. The Coalition wished to thank the President and Ireland, and all States that had shown unwavering commitment to achieving a comprehensive ban on cluster munitions.

The Coalition called for universal acceptance of the new Convention, and had prepared an action plan for its entry into force.

*(The action plan was presented to the Norwegian Deputy Minister for Defence.)*

The President thanked all present for their participation in the work of the Conference. He wished to express his appreciation for the invaluable work done by those who had acted as Friends of the President on various issues, and for the important contribution of the Vice-Presidents and the Secretariat of the Conference. He thanked all delegates for their co-operation and constructive approach to negotiations. The new Convention would help to make the world a better and safer place.

The President declared the Conference closed.

The meeting rose at 1 p.m.