

## **Convention on Cluster Munitions**

### **Intersessional Meeting**

#### **OTHER IMPLEMENTATION ISSUES – ARTICLE 21**

##### **Statement by Australia**

30 June 2011

Statement delivered by Mr Philip Kimpton, First Secretary, Australian Permanent Mission to the United Nations in Geneva

We wish to respond to some of the discussion regarding Article 21 from yesterday and today.

Australia's legislation – the Criminal Code Amendment (Cluster Munitions Prohibitions) Bill 2010 – faithfully implements the CCM. It ensures all conduct prohibited by the Convention is the subject of a criminal offence under Australian law, while also allowing conduct permitted by the Convention. The limitations contained in the Bill ensure that Australia and Australians will continue to act consistently with the object and purpose of the CCM, even when undertaking cooperative activities with countries that are not party to the Convention.

We note the views of some regarding the interpretation of paragraphs 3 and 4 of Article 21. The Convention permits military cooperation and operations between States Parties and States not Party to the Convention in certain circumstances, subject to restrictions. These restrictions include that a State Party must not itself use cluster munitions, and must not expressly request the use of cluster munitions in a situation where the choice of munitions used is within the State Party's exclusive control. The ability to maintain the capability to cooperate militarily with States not Party is central to the protection of Australia's national security. Australia has been very clear on this matter, and our approach to interoperability, since the Oslo Process.

We understand that elements of Article 21 were not supported by all at the Dublin Conference that adopted the CCM. They are nevertheless part of the final package that makes up the Convention.

We would also like to refer briefly to the comments made by some about the negotiations on a cluster munitions protocol within the Convention on Certain Conventional Weapons (CCW). We do not share the view that participation in, and support for, those negotiations somehow is contrary to the letter or the spirit of paragraphs 1 and 2 of Article 21. These are legitimate

negotiations within an important instrument of international humanitarian law. Moreover they have the potential to establish prohibitions and restrictions on a significantly greater number of cluster munitions than are currently covered by the CCM. To engage constructively in these negotiations – seeking the strongest possible humanitarian outcome – is not inconsistent with our support for the CCM.

As we have stated a number of times this week, Australia is a strong supporter of the CCM, its absolute prohibitions on cluster munitions and its humanitarian objectives. We will continue to work in partnership with States, international organisations and civil society towards these goals. The discussion on Article 21 demonstrates to us the importance of pursuing keenly the universalisation of the CCM, which as it is progressively realised, will reduce the need for reliance on all aspects of Article 21.