

CCM Intersessional Meeting
30 June 2011
Other Implementation Issues
Statement of Canada

Mr. President,

Canada has not yet developed and enacted its national legislation and so was unable to comment during yesterday's discussions, as any reference to legislation before it is enacted would be premature.

I would, however, like to comment on our consistent position in the negotiations with respect to Article 21.

Mr. President,

For Canada, ensuring its continued ability to conduct effective military operations with non-State Parties was a 'red line' issue in the negotiation of the Convention on Cluster Munitions. The inclusion of Article 21 allowed Canada - and many other states - to ultimately support the unanimous adoption of the Convention text in Dublin in 2008. This Article is an integral part of the Convention fabric, not an exception to it.

Canada and many other states made substantial efforts throughout the Oslo Process to highlight our legitimate interoperability concerns and to work to address them in good faith. These efforts included providing numerous practical examples of interoperability activities requiring protection.

Many of these concerns were outlined in a document presented by Canada and 11 other states in Wellington, highlighting various interoperability scenarios requiring legal protection, and numerous other practical examples were provided by various states throughout the Oslo Process.

Article 21 was designed to protect these and other activities, all of which might involve or relate to the continued lawful use of cluster munitions by States not Parties to the Convention.

The final text of this Article was the product of extensive negotiations in Dublin, conducted under the able leadership of the Swiss Friend of the President, which built upon and generally reflected a text originally presented by Canada.

Most importantly, Article 21, paragraph 1, expresses our continued shared goal of universalizing the Convention on Cluster Munitions. This is not simply a passive provision – it requires that States Parties encourage States not Parties to join the Convention regime.

Article 21, paragraphs 2, 3 and 4, establish specialized obligations applicable to States Parties engaged in military cooperation and operations with States not Parties. These provisions have themselves already contributed substantially toward the universalization of the Convention -

there are many States Parties and signatories, including Canada, who would simply not have been able to support the Convention without them.

Article 21, paragraph 2, requires the Governments of States Parties, when initiating military cooperation and operations with States not Parties, to notify those states of their obligations under the Convention, to promote its norms, and to make their best efforts to discourage the use of cluster munitions by those states. As noted by Canada in the informal negotiations, this provision was not intended to establish ongoing obligations at the operational or tactical levels for individual military personnel of States Parties.

The remainder of Article 21 establishes specialized legal obligations applicable to States Parties engaged in military cooperation or operations with such states, notwithstanding their general obligations under Article 1.

When Canada supported the adoption of the final text of the Convention in Dublin, it was premised on the clear understanding that Article 21(4) expressly and fully delineates the activities prohibited in this context.

It is worth noting that these obligations include substantial further prohibitions beyond those presented in the original Canadian proposal for what became Article 21. The initial proposal would have prohibited a State Party engaged in military cooperation or operations only from “itself ... directly fir[ing], drop[ping], launch[ing], project[ing] or otherwise deliver[ing] cluster munitions” – that is, from having its military forces deliver cluster munitions from its own weapons platforms. This concept was included in Article 21(4)(c), albeit rephrased as a prohibition on the State Party “itself us[ing] cluster munitions”.

Even during military cooperation and operations a State Party may not “itself stockpile or transfer cluster munitions”. It may not “develop, produce or otherwise acquire cluster munitions”. Nor may it “expressly request the use of cluster munitions in cases where the choice of munition used is within its exclusive control.”

For Canada and other states with legitimate interoperability concerns, these are substantial and meaningful restrictions. Their agreement in Dublin did not come easily.

Article 21 allows states such as Canada to meet legitimate security requirements while actively supporting the Convention and working toward its universalization. That universalization goal is one to which Canada remains firmly committed. Article 21 will not be necessary – nor will it have any effect – once the goal has been realized.

Thank you, Mr. President.