

CONVENTION ON CLUSTER MUNITIONS

President's Discussion Paper on Implementation Architecture and Intersessional Work

Introduction

When the First Meeting of States Parties of the *Convention on Cluster Munitions* (CCM) decided to conduct an informal intersessional meeting in 2011, it also “agreed that the informal intersessional meeting should include recommendations for consideration by States Parties at the Second Meeting of States Parties regarding implementation architecture and means to coordinate the work of the Convention on Cluster Munitions, future intersessional work, and whether to establish an Implementation Support Unit and, if so, the nature of the Implementation Support Unit”. The purpose of this paper is to present a proposal for consideration for adoption at the Second Meeting of States Parties.

The development of this paper has been informed by the experience of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction* or the Anti-Personnel Landmine Convention (APLC). Of particular relevance were key decisions made or papers considered at the First, Second, Third and Fourth Meetings of States Parties and at the First and Second Review Conferences of that Convention, and the Report of the Task Force on the Evaluation of the Implementation Support Unit and its Recommendations, adopted at the Tenth Meeting of States Parties to the APLC. Those decisions established and evolved the intersessional work and the implementation support requirements of the APLC, culminating in the establishment of the Standing Committees, Coordinating Committee and Implementation Support Unit (ISU) that exist today.

Of equal interest are the experiences of two other Conventions that have adopted intersessional processes and have established, or are in the process of establishing an ISU. These are the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction* (BWC) and the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects* (CCW).

The Requirement for an Intersessional Process

While the CCM is similar to the APLC in its underlying humanitarian and disarmament goals and objectives, one must be cautious in simply mirroring that system. In examining any requirement to establish an informal implementation process not specifically established by the CCM, it is necessary to first determine whether or not the requirement exists for such an informal system. This leads to one fundamental question – how best to implement and universalize the Convention?

To some extent we are guided by the words of the Declaration of the Oslo Conference on Cluster Munitions of 23 February 2007. That declaration committed all potential States Parties to conclude by 2008 a legally binding instrument that would “establish a **framework** (emphasis added) for cooperation and assistance that ensures adequate provision of care and rehabilitation to survivors and their communities, clearance of contaminated areas, risk education and destruction of stockpiles of prohibited cluster munitions”. Urgency was well expressed by recognition of the need for immediate action and the establishment of the 2008 timeframe for concluding such an instrument. The “legally binding international instrument” that established the framework is, of course, the CCM. States Parties now need to “flesh out” or operationalize that framework in a coherent manner.

At this early stage, a single annual Meeting of States Parties is unlikely to be successful in addressing either the urgency of the issue or the need to fully implement the Convention. In effect, one annual meeting would be unlikely to operationalize the framework referred to in the Oslo Declaration. What is required is continuous and coordinated effort to achieve the objective as described in the Convention’s preamble “to put an end for all time to the suffering and casualties caused by cluster munitions”. States Parties need sufficient opportunity to share experiences and learn from others in order to develop the necessary plans and implement the programmes required to meet their obligations and to achieve the Convention’s objectives. In addition to the APLC, such an approach has been recognized in other Conventions such as the BWC and the CCW, both which meet intersessionally to advance their work.

Within the APLC, the intersessional work programme established, and has since reconfirmed, the use of the guiding principles of “continuity, openness, transparency, inclusiveness and a cooperative spirit”. Indeed these same principles marked the Oslo Process which led to the negotiation, the signing and the entry into force of the CCM and should mark the working philosophy of its intersessional work.

Proposal 1

It is proposed to convene annually, subject to review by the First Review Conference, informal intersessional meetings to be held in Geneva in the first half of the year, for a duration of up to five days. The active participation of all States Parties, observer States and other relevant International Organizations and Non-Governmental Organizations at these meetings would be encouraged.

Such intersessional meetings should adopt working methodologies that permit and promote interaction and dialogue among and between participants.

As far as feasible, intersessional meetings will be held consecutively with informal meetings in Geneva under other relevant treaties, including the Anti-Personnel Mine Ban Convention or Convention on Certain Conventional Weapons.

Implementation Architecture

Intersessional Work

If the decision is made by States Parties to develop and establish a regular intersessional programme of work, some form of an implementation mechanism must be put in place to ensure that it functions effectively. Again, it is useful to examine the implementation architecture of other Conventions as we consider means to ensure the successful universalization and implementation of the CCM. Within CCW Amended Protocol II and V, informal groups of experts have been formed with meetings under the chairmanship of a thematic Coordinator working under the general guidance of the President-Designate. Within the APLC, the Standing Committees chaired by Co-Chairs lead the work for their thematic areas. In the first year of the CCM, the work has been advanced in eight thematic areas by Friends of the President. In the case of all of these Conventions, preparatory work for future formal Meetings are led by the President-Designate.

The APLC has a proven structure that does much to ensure the successful implementation of that Convention. CCW Protocol V and possibly Amended Protocol II, have considerable potential to achieve similar success and have adopted structures that, to some extent, mirror that of the APLC. The CCM should build on the positive lessons of these conventions, as well as the successful use of the wide variety of thematic leaders in the lead up to the 1st and 2nd MSPs.

Proposal Two

It is proposed to establish six Working Groups each led by one or two Coordinators to examine the following thematic areas:

- **Working Group on the General Status and Operation of the Convention;**
- **Working Group on Universalization;**
- **Working Group on Victim Assistance;**
- **Working Group on Clearance and Risk Reduction;**
- **Working Group on Stockpile Destruction and Retention;**
- **Working Group on Cooperation and Assistance.**

In addition to the Working Group Coordinators, one Coordinator would lead each of the thematic areas of National Implementation Measures and Reporting. During the

intersessional meeting, time for discussion of these thematic areas would occur within the Working Group on the General Status and Operation of the Convention.

Creating thematic leadership on all key areas will help States Parties advance work in each issue in a systematic manner.

The Coordinators of the Working Groups would be from a State Party, selected by a Meeting of States Parties or a Review Conference, and would work under the guidance of the President of the last Meeting of States Parties or Review Conference. That President, along with the Coordinators, would be responsible for the organization of the programme of work for the intersessional meeting.

All Coordinators will be appointed for two-year terms. Where two Coordinators are selected for a Working Group, they would start their terms in alternating years (in the first round, one Coordinator would only serve one year). When possible, one of the Coordinators of each Working Group should be from a cluster munitions affected State Party.

Except when necessary, a State Party which provides a Coordinator for one subject should not provide a Coordinator for the same or another subject for the term immediately following.

States Parties may want to consider adoption of an informal working methodology to address the issue of continuity.

In keeping with the principles of flexibility and pragmatism in addressing changing circumstances, States Parties would review the operation of the intersessional programme at the First Review Conference.

A Coordination Process

The 2MSP of the APLC in 2000 recognized that the work of the Standing Committees would require a high degree of coordination to ensure the facilitation of the implementation of that Convention. In order to achieve this degree of coordination, the States Parties established a Coordinating Committee, which meets on an *ad hoc* basis under the chairmanship of the President of the Meeting of the States Parties or Review Conference. Other Conventions such as the BWC and the CCW use similar methodology. It is expected that in order to ensure successful intersessional meetings as well as to adequately plan the formal Meetings of States Parties, a similar coordination mechanism will be required.

Proposal 3

It is proposed to establish a Coordination Committee which would meet on an *ad hoc* basis under the Chairmanship of the President of the Meeting of States Parties. The Committee would be responsible to coordinate matters relating to the work of the Coordinators including integrating such work with the work of the Meetings of States Parties. The Coordination Committee may call upon any relevant party to assist in its work. States Parties would review the operation of the Coordination Committee at the First Review Conference.

The Coordination Committee would comprise:

- **The President of the Meeting of States Parties or Review Conferences (Chair);**
- **The Coordinators of the Working Groups;**
- **The Thematic Coordinators;**
- **The President-Designate of the next Meeting of States Parties or Review Conference;**
- **Representatives of the ICRC and the United Nations;**
- **Representatives of the Cluster Munition Coalition.**

Implementation Support

Again it is useful to examine the experiences of other conventions. In so doing, it should be remembered that although the CCW High Contracting Parties have established an ISU, it has only recently been formed. An ISU has been established for both the BWC and the APLC. An examination of the rationale for the establishment of the three ISUs shows that they have many common responsibilities and that the ISUs can contribute significantly to the successful implementation and universalization of these conventions.

CCW

It is envisioned that the ISU of the CCW will provide administrative support to and prepare documentation for meetings; facilitate communications among States Parties and upon request, with international organizations; serve as a focal point for submission of information; support States Parties in the implementation of the Convention; assist the UNSG in the discharge of his/her responsibilities; and other duties mandated by the States Parties.

BWC

The BWC has responsibilities for administrative support, fostering confidence building measures (CBM), assisting in national implementation and promoting universality. Administratively, the ISU forms the core of the Secretariat at meetings; manages the BWC website; interacts with international organizations, institutions, and non-governmental organizations; and acts as a clearing house for information. On confidence building, the ISU receives and distributes confidence building measures; sends information to States Parties; compiles and distributes data; serves as an information exchange point; and promotes participation in the CBM process. In the area of national implementation, the ISU assists and monitors national implementation; assists States Parties in developing national implementation measures; and acts as a clearing house for assistance. Additionally, the ISU compiles relevant scientific research results and presents them to the delegations. The ISU is also responsible to assist in universalization activities, including reporting to States Parties.

APLC

The 10th Meeting of States Parties has clarified the roles and responsibilities of the ISU based on its recent evaluation. The ISU is responsible for the preparation of and support to all formal and informal meetings including meetings of its subsidiary organs; providing substantive and other support to the President, President-Designate, Co-Chairs and Co-Rapporteurs in their work related to all such meetings; providing advice and support to States Parties on all aspects of the implementation and universalization of the Convention; facilitating communication among the States Parties, and communication and information regarding the Convention for States not Party and the public; keeping records of formal and informal meetings under the Convention, and communicating, as appropriate, the decisions and priorities resulting from such meetings to States Parties and other stakeholders; liaising with actors other than States Parties that participate in the work of the Convention; and proposing and presenting a work plan and a budget for the activities of the ISU for the following year; and reporting to each Meeting of the States Parties or Review Conference.

Proposal 4

It is proposed to establish a small Implementation Support Unit (ISU), reporting directly to the States Parties and led by a Director. The ISU will not be formally linked to any other ISU. Close cooperation, with relevant actors and bodies are encouraged with a view to enhancing inclusiveness and operational effectiveness and efficiency.

It is proposed that the costs of the ISU be provided to ensure long term sustainability whilst securing resources for an efficient and effective implementation support.

States Parties would review the operation of the ISU at the First Review Conference.

It is proposed that the role and tasks of the ISU include, *inter alia*:

- **Preparing, supporting and carrying out follow-up activity from formal and informal meetings of the Convention;**
- **Providing support to the President, President-Designate and Coordinators;**
- **Providing advice and support to States Parties;**
- **Facilitating communication among the States Parties;**
- **Promoting the Convention to States not Party and the public;**
- **Maintaining records of formal and informal meetings;**
- **Liaising with other actors that participate in the work of the Convention, including *inter alia* the CMC, the ICRC, the UN and the GICHD;**
- **Presenting a work plan and a budget, endorsed by the Coordination Committee, to each Meeting of the States Parties or Review Conferences for approval; and**
- **Reporting on the activities and functioning of the ISU to each Meeting of the States Parties or Review Conference.**

Institutional Framework of the ISU

Swiss law regulating the establishment of international non-profit organisations, such as a future CCM ISU, is very flexible and thus makes it possible for States Parties to choose the institutional framework best tailored to meet their identified needs. This includes the option of establishing the ISU as a separate autonomous/independent entity, governed by the States Parties directly in a manner they may decide.

The APLC ISU has just undergone an evaluation which included an examination of its institutional framework. States Parties to the APLC decided to retain the APLC ISU in its current institutional framework within the GICHD, with additional measures to be taken to ensure its independence.

Prior to any decision as to the institutional framework of the ISU, States Parties must consider carefully the advantages and challenges related to the choice of institutional framework for a ISU while keeping in mind the need to quickly set up an effective mechanism adapted to the identified implementation and secretarial needs of the States Parties. Some of these considerations may include:

- Ensuring an ISU that is in accordance with the broadly expressed criteria to secure the independence, inclusiveness, efficiency and effectiveness of the ISU including the direct involvement of States Parties in any decisions and directives that regards the ISU, and that
- the institutional arrangement include appropriate provisions for sustainable financing whilst securing resources for an efficient and effective implementation support

Given the expressed desire to establish an ISU as soon as possible it may also be suggested, if necessary, to convene a half-day extra-ordinary Meeting of States Parties, to be held in Geneva at such time when a feasible arrangement is secured to allow States Parties the opportunity to decide on an operationalization of an ISU in advance of the Third Meeting of States Parties.

To ensure a consistent support to the implementation of the Convention and to secure continuity and an effective and efficient transition to the ISU at such time when an ISU is operational it should also be considered how to best uphold an interim capacity for the period whilst securing the permanent ISU.