

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

CCM/CW/SR/16

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**DUBLIN 19 – 30 MAY 2008**

## **SUMMARY RECORD OF SIXTEENTH SESSION OF THE COMMITTEE OF THE WHOLE**

Held at Croke Park, Dublin on Wednesday, 28 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 4.30 p.m.

The President opened the meeting by giving the floor to the Deputy Minister for Foreign Affairs of Zambia, Professor Phiri.

Deputy Minister for Foreign Affairs Phiri, Zambia, expressed his country's gratitude for the Irish Government's efforts to achieve agreement on a convention to ban cluster munitions causing unacceptable harm. He thanked the African delegations for their cooperation with Zambia in the African group. It had been clear to Zambia from the outset of the Oslo Process that a strong convention was required in order to enhance human security. The outcome of the negotiations did not involve winners and losers, but reflected a mutual understanding between States of the need to address humanitarian concerns. The issue was very dear to the hearts of Africans, who had themselves been the victims of weaponry. Zambia appreciated the President's efforts to ensure a convention which was strong in all critical areas.

The Deputy Minister stated that he expected colleagues to assist in achieving a text that ensures civilians are safeguarded. The draft text represented the best effort to achieve true consensus.

### Presidency Paper CCM/PT/15

The President stated that all delegations had now an opportunity to consider the Presidency Paper (CCM/PT/15) setting out the draft text of a Convention, which had been circulated that morning. He reminded delegates that all participating states had endorsed the Oslo and Wellington Declarations and that they had committed themselves to conclude a Convention this year that will (i) prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and (ii) establish a framework 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.

He said that the draft text before the Conference this afternoon represents his assessment at this point of where the best balance of interests and compromise – consistent with the

Oslo Declaration – now lies. It is a package of elements that entails concession for all sides but remains nevertheless an extremely ambitious Convention text that meets the objectives delegations set themselves in Oslo in February last year.

The President said that the headline definition of a “cluster munition” will lead to the prohibition of all cluster munitions that cause unacceptable harm to civilians and that it prohibits all cluster munitions ever used in armed conflict. For many states represented this will involve the removal of all cluster munitions from national stocks.

He said that the provision on relations with states not party to the Convention will exceed what some would have wished to see but is short of what many have said they need. There will be no transition period for use of cluster munitions.

He said that the draft sets new standards for victim assistance, clearance of contaminated areas and stockpile destruction and that there is a strong package on international co-operation and assistance. In his view the text meets the objectives set in Oslo in a balanced but ambitious and effective manner. It will have a direct humanitarian impact and will mitigate the effects of armed conflict on civilians both during and after hostilities.

In opening discussion the President asked delegations to bear in mind how far all have come in this process and how close all now are to successfully completing it. Once a new Convention is adopted and the necessary framework of co-operation and assistance is established states can begin to ensure that cluster munitions are no longer used in armed conflict and that the effects of their use on civilians will be prevented or greatly mitigated.

He did not propose that to have an article by article debate of the Presidency Paper. As a Presidency Paper it is not open to amendment as such anyway. He needed to know if delegations have difficulties. However the text represents a package of compromises for all and he accepted that no delegation will be completely satisfied with it. He asserted nevertheless that it is a very strong instrument that will significantly develop international humanitarian law in this area and will meet all the objectives set in Oslo. With that in mind he hoped that delegations will find the text broadly acceptable and will be able to support it. He concluded by saying that he would like that at the end of discussion this evening delegations can agree to adopt this text. That would pave the way for its formal adoption on Friday morning.

**Zambia**, speaking on behalf of the African group, thanked the President for his efforts to conclude the agreement. While it did not agree with the language of certain Articles, it was prepared to accept the agreement in a spirit of compromise as a total package. It would have preferred a stronger Convention but there was a give and take element involved in the negotiations. It reserved the right to consider its position in the event of any further amendments to the text.

**New Zealand** complimented the President on his skilful efforts during the Conference. It considered the draft Convention to be a strong, balanced text that was ground-breaking in many respects. It met the humanitarian objectives of the Oslo Process. New Zealand considered that the risk involved in any attempts to re-open the text should be avoided. It particularly welcomed the provision on victim assistance, which represented a significant

advance in international humanitarian law. It also appreciated the President's fortitude in resisting attempts to include a transition period in the document. The overall text was one which New Zealand wished to support.

**Canada** stated that the draft Convention was high-quality document which struck the right balance between the interests of various States and the interests of civil society. It was willing to provisionally accept the Convention.

**Mexico**, speaking on behalf of the Latin American and Caribbean group, thanked the President for his hard work and efforts. The text had many positive elements, for example the provisions on disarmament, victim assistance, international co-operation, the absence of transition periods, and the ban on any reservations to its provisions. It provided a strong basis for achieving the objectives of the Oslo Declaration.

**South Africa** thanked the President for guiding the negotiations, and concurred with his remarks that the text was ambitious and far-reaching. It moved safely in the direction of the Oslo objectives, and was a balanced text emerging from intense negotiations which had involved many different viewpoints.

**Switzerland** congratulated the President on having achieved the best possible compromise in the draft text. The outcome would end the use of cluster munitions and ensure that victims and their families were provided with assistance and support. It would also provide for international co-operation in clearance and destruction. It considered that the text was balanced and ambitious, and met the objectives of the Oslo Process. It should be possible to achieve the universal application of the Convention.

**France** congratulated the President and commended the spirit of compromise which had informed the negotiations. It was an ambitious and balanced text, which asked for sacrifices from all delegations in order to meet humanitarian objectives. France was willing to recommend the formal approval of the draft Convention as presented.

The **Philippines** expressed its appreciation to the President, and commended the text as a balanced package which should not be re-opened in whole or in part. It would respond to the needs of the time in ensuring international co-operation and assistance.

**Indonesia** stated that the text represented the best compromise that could be reached. It accommodated Indonesia's concerns and Indonesia could accept it in its entirety.

The President drew delegates' attention to a minor correction in Article 4(4) (a) of the text circulated, where "the former State Party is encouraged to" should read "the former State Party is strongly encouraged to".

**Bahrain** congratulated the President on the work done to reach consensus, despite some divergence of views among States in the negotiations. The ban on cluster munitions should be seen as a new chapter in international humanitarian law, accompanying the Landmines Convention. All cluster munitions used to date had resulted in unacceptable harm. The Convention would provide an international instrument regulating the stockpiling, development and destruction of these weapons. Bahrain supported the draft Convention as a whole.

Arabic-speaking delegations would have greatly benefited from having Arabic as a working language of the Conference. Bahrain suggested that the draft text should be forwarded to the UN Secretary-General requesting its circulation as an official document of the UN General Assembly's forthcoming session. This would ensure its accurate translation into Arabic and other languages, allowing governments to consider the text and recommend the Convention for adoption and ratification.

**Austria** welcomed the exceptional provisions in the treaty on victim assistance and international co-operation, which would set new standards in international humanitarian law. While Austria would have preferred a stronger norm for the prohibition of cluster munitions, it was willing to accept the draft text as a strong package. Article 2 could be considered again at Review Conferences and Meetings of States Parties to ensure that the approach adopted in the text was adequately meeting humanitarian concerns. It did not believe that the language in Article 21 was the best that could be achieved, but respected the President's assessment on this.

**Fiji** thanked the President for his efforts. The text represented a compromise package and a solid contribution to international humanitarian law. It called on all delegates to agree to the text.

**Norway** stated that the Presidency Paper represented an adequate and good reflection of the negotiations. The text was the best possible response, and its provisions on victim assistance achieved a core purpose of the Oslo Process. Norway was prepared to accept the text presented.

**Australia** stated that the text was the strongest possible text capable of achieving the broadest support. It commended all delegates for their constructive approach to the negotiations.

**Italy** expressed its full approval of the text, and stated its appreciation for the fair and honest manner in which negotiations had been conducted.

**Morocco** agreed with the comments made by Zambia. It trusted that the text presented could achieve consensus. It represented a significant milestone in international humanitarian law, though Morocco hoped that a complete prohibition of cluster munitions could be achieved in the Review Conferences.

The **United Kingdom** stated that while the UK was not a core group member, it had been one of the original signatories of the Oslo Declaration. The text presented represented the best possible consensus achieved after arduous discussions, balancing humanitarian and security concerns. The UK took the opportunity to draw delegates' attention to the statement made earlier that day by the Prime Minister in which he had announced the withdrawal from service of all UK cluster munitions with immediate effect. This clearly demonstrated the importance the UK Government attached to a successful outcome to the conference and a strong Convention.

**Tanzania** congratulated the President and aligned itself with the remarks of Zambia on behalf of the African group. The text was an ambitious endeavour, which had remained focused on the pledges contained in the Oslo Declaration. While hopeful that the

Convention could be strengthened in future, Tanzania was willing to support the text presented.

**Japan** stated that the text represented the best possible balance and was now being considered in Tokyo.

**Ghana** expressed its support for the text presented, and joined the consensus in recommending the Convention to its Government for signature.

**Botswana** agreed that the text was a balanced effort and called for restraint in re-opening its provisions.

**Jamaica** congratulated the President for his guidance and determination in the negotiations. While it maintained its stance that Article 2(2) (c) should not have been included, Jamaica was willing to support it on the basis that the text had been achieved in good faith and was open to review in the future.

**Samoa** expressed its warm compliments to the President and welcomed the ambitious text that had been achieved. Its provisions on victim assistance, verification and international co-operation would be central to the development of international humanitarian law. It was willing to accept the current draft as it stood.

**Belgium** stated that the Convention contained some innovative provisions, and was in line with the Belgian national law banning cluster munitions. It would be capable of wide endorsement by States, and provided for a result-oriented process of implementation, destruction of cluster munitions, and international co-operation. Belgium was particularly pleased with the victim assistance provision and with the effective preventive elements in the Convention. Belgium was willing to fully subscribe to the text presented.

**Croatia** thanked the President and expressed its willingness to support the text in its entirety.

The **Cook Islands** commended the wisdom of the President in putting forward this text and stated that it was willing to accept the draft Convention in its entirety.

**Denmark** thanked the President for his success in reconciling conflicting views, and expressed its support for the draft text presented.

**Mauritania** stated that the draft Convention lacked some elements which its delegation would have liked to see included, but it was willing to join with the African group in endorsing the draft Convention.

**Belize** expressed its thanks to the President, and stated that the text presented represented a significant advance from the initial draft. It would forward the text to its capital with the strongest recommendation for its adoption and endorsement.

**Germany** thanked the President and stated that the text represented the best possible compromise available. It should be submitted to the Plenary for adoption.

**Guinea** echoed the comments of Zambia and stated that a balanced package had been achieved which marked significant progress in international law. Its delegation would be unstinting in its efforts to recommend its adoption and signature.

**Guinea-Bissau** stated that it fully supported Zambia's remarks and regarded the text as the best possible compromise available.

**Burundi** expressed its gratitude to the President and stated that the draft text was a balanced Convention which could achieve broad consensus.

The **Czech Republic** stated that the text was the best possible compromise, meeting the objectives of the Oslo Process.

**Albania** indicated full support of the draft.

**Spain** had sought as broad a ban of cluster munitions as possible and stated that any exemptions to the prohibition must be based on not creating unacceptable harm. The proposal had a sufficiently broad ban and the draft text was an excellent document. Not all arguments for exemptions are inspired by humanitarian reasons and the exemptions created could be improved upon. Spain would be pleased if consensus could be achieved on this text and supported a broad prohibition.

**Iceland** welcomed the draft text and recalled the rules of international humanitarian law, the law of treaties and the law of state responsibility which will guide future interpretation and application of the Convention.

The **Holy See** described the draft text as a strong, credible and realistic instrument, noting that the door remained open for improvement in the form of future protocols. The text as presented was acceptable to move forward and was the best option to prevent more future victims.

**Lesotho** stated that draft text was a balanced and groundbreaking framework. Lesotho would have desired a differently worded text in some articles, but in the spirit of compromise was ready to support the draft in its entirety.

**Bosnia and Herzegovina** indicated full support of the draft text as tabled.

**Vanuatu** expressed satisfaction with the draft Convention text, as a friend of the affected countries and on humanitarian grounds.

**Nigeria** associated itself with statement of Zambia. The text contained something for everyone and Nigeria would recommend the adoption of the text to its Government.

**Mozambique** associated itself with the statement of Zambia. Mozambique had a will to contribute to a strong Convention and believed the balance achieved represented the best possible compromise. Mozambique welcomed the current draft and intended to recommend approval by its Government

**Madagascar** welcomed the decision of France and the United Kingdom to withdraw cluster munitions from active service. Determined to make progress, Madagascar

described the draft Convention as a detailed and balanced text which it was willing to recommend for endorsement by its Government.

**Lao People's Democratic Republic** was pleased with the text, particularly Article 4 on clearance and destruction and Article 5 on victim assistance. The presence of cluster munitions victims at the Conference and the intention to give tangible proof of suffering caused by cluster munitions was welcomed.

**Malaysia** stated that the text reflected the maximum compromise that could be achieved at this hour. The text was a milestone in the development of international humanitarian law and Malaysia would give the draft a thorough review and the serious consideration that it deserved.

**Senegal** expressed a wish that the text be adopted unanimously; the Senegalese delegation will certainly do so. Senegal endorsed the **Zambian** statement and hoped that the text would be signed by a large number of countries, and be implemented as it stood.

**Luxembourg** supported the text.

**Uganda** supported the **Zambian** statement and was satisfied with the draft text. It would recommend adoption by its Government.

**Lithuania** would have liked to have seen a stronger text but stated that the package prepared was a great achievement and that States should work towards quick entry into force.

**Malawi** supported the statement of **Zambia** and saluted the work of the Cluster Munition Coalition. Malawi described the draft as the perfect balance to protect civilians and stated that it had instructions to accept the draft Convention as is.

**Sudan** associated itself with the statement of **Zambia**. Sudan was ready to follow consensus and accept the text as is.

**Malta** described the text as a small but significant step in progress towards disarmament. Malta was impressed by the strengths of the Convention, would support the draft Convention as presented and would work towards its universal adoption.

**Sao Tome et Principe** described the text as robust, ambitious and balanced. Sao Tome et Principe endorsed the text and would recommend its adoption to its Government.

**Niger** endorsed the statement of **Zambia**, recalling its opening position of a Convention without exclusion or delay. Niger approved of the document and would recommend adoption to government.

**Burkina Faso** endorsed the statement of **Zambia**. The Conference had achieved an excellent document, which Burkina Faso supported in its entirety and would recommend for adoption by its Government.

**Moldova** indicated its full support of the draft Convention.

**Sierra Leone** agreed with Zambia and supported all that had been said in furthering arrangements for adoption. Sierra Leone stated its intention to adopt the Convention as it is.

**Sweden** described the text as the best possible compromise resulting from the negotiations. Sweden was ready to support a decision to accept the draft Convention unchanged for adoption.

**Mali** associated itself with the statement of Zambia and approved without reservation the draft Convention as it is.

**Côte d'Ivoire** regretted that ideas of a complete and utter ban regardless of the type of cluster munition and an end to any complicity between State Parties and non-signing third parties had not been fully incorporated into the draft Convention. However, as the work done was the fruit of consensus, Côte d'Ivoire would give full support to the spirit of the draft.

**Serbia** agreed with Austria that the humanitarian provisions of the draft Convention were exceptional. Serbia supported the draft text as is and would recommend its adoption

**Honduras** expressed a difficulty with Article 2(c) and on the responsibilities of countries that produce cluster munitions. Harm done must be compensated, and the draft text does not condemn manufacturing countries for what they have done.

**Togo** associated itself with the statement of Zambia and would make all efforts necessary to recommend the text to its authorities.

**Benin** stated that the draft Convention had struck an excellent balance of interests and was it pleased that the draft does not have any possibilities of reservations. Benin particularly welcomed the provisions on assistance to victims and stated that the Conference could be proud of its achievements.

**Kenya** associated itself with the statement of Zambia. The contribution of all delegations to the text was commended. Kenya welcomed the draft Convention as a balanced compromise on all concerns and endorsed the draft in its entirety.

The **Democratic Republic of the Congo** stated that an important legal instrument had been produced despite imperfections. It would be a constraint on manufacturing countries and would be possible to look victims in the eye. The Democratic Republic of the Congo associated itself with the statement of Zambia and favoured the text as it had been submitted. The delegation was ready to adopt the text as it had been presented.

*The floor was opened to observer delegations.*

The **International Committee of the Red Cross** recognised that important concessions had been made by all States. Overall, the ICRC was pleased with current draft, which would lead to the stigmatisation of cluster munitions and have an impact beyond those signing the Convention. The ICRC welcomed the comprehensive definition of cluster munitions, the absence of a transition period, groundbreaking provisions on victim assistance and the broad definition of victims. The provisions on the relationship with



States not party demonstrated a strong commitment to ending the use of cluster munitions by all States. The ICRC encouraged States to make clear in their statements upon adoption that destruction obligations also apply to bomblets from dispensers. The adoption of the draft text by all states was encouraged.

The **Cluster Munition Coalition** stated that the draft Convention outcome far exceeded the expectations of nearly everyone. The prohibition contained therein was more comprehensive than that of the Mine Ban Treaty: not just some cluster munitions but all were prohibited; no distinction was made between good and bad cluster munitions. The exclusion in Article 2(c) applied to munitions that do not have the same effects as cluster munitions, that is, that do not have wide area and excessive unexploded ordnance effects. The CMC noted that no exceptions which would have weakened the Convention and no transition period had been included. The CMC welcomed the excellent provisions on victim assistance, clearance, transparency and cooperation, which represented an improvement on the Mine Ban Treaty. Though the CMC would have liked to have seen further improvement, they believed that the Convention might not have gotten better, but worse, if opened and respected that this was not a proper path to take. Article 21 was the only stain on the Convention. The CMC was deeply disappointed with this provision as it was not clear that intentional assistance was banned. The CMC called on all States to clarify that Article 21 does not allow intentional assistance in prohibited acts, foreign stockpiling or acts that undermine fundamental obligations of the Convention in any way. The CMC also welcomed the recognition by States of the role of the CMC and civil society in the drafting of the Convention.

**Vietnam** stated that it might have wished for stronger text, as a State with experience of the effects of cluster munitions. One cannot have good and bad cluster munitions. The Convention puts burdens on suffering countries not on users. Vietnam needs and encouraged international donors to help it to deal with the consequences of cluster munition use.

**Thailand** described the draft Convention as well balanced and welcomed its adoption.

The **International Federation of Red Cross and Red Crescent Societies** welcomed the draft text. Articles 1 and 2 in particular would add to increasing stigmatisation of cluster munitions. The draft Convention was not perfect but was a reasoned and balanced compromise which enhances international humanitarian law. Article 5 serves as a new benchmark in the area. The absence of a transition period and the strong in-built mechanism facilitating review and amendment were also welcomed.

*The floor was returned to Participating States.*

The **Netherlands** was not entirely happy with the draft text 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.

**Ireland** also joined the consensus in support of the draft text.

The President thanked all delegations for their constructive approach and recognised that all had made concessions. In view of the positive reactions to his draft text, and in the absence of objections, he proposed to adjourn the Committee of the Whole and immediately to convene the Plenary. He would then propose that the Plenary agree to adopt on Friday morning the draft Convention set out in the Presidency Paper together with whatever technical and editorial modifications were necessary to ensure consistency of terminology throughout the text.

The Committee of the Whole was adjourned at 7.55 p.m.