
**Report on the
Lima Conference on Cluster Munitions
23-25 May 2007**



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revised January 2008*

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SUMMARY

From 23-25 May 2007, over 250 participants from some 70 countries, 10 international organizations, and over 30 non-governmental organizations gathered in Lima, Peru to continue efforts to produce a legally binding instrument prohibiting the use of cluster munitions which pose unacceptable harm to civilians.

The Lima Conference on Cluster Munitions is the continuation of the process initiated in Oslo, from 23-25 February 2007, where 46 states signed a declaration pledging to negotiate a treaty on cluster munitions by 2008.

The Conference undoubtedly demonstrated the growing political will and momentum to work toward the negotiation of a treaty that will address, and prevent, the humanitarian suffering caused by the use of these indiscriminate and disproportionate weapons.

At Lima, 28 States joined what is now referred to as the Oslo process, strengthening its effective potential and bringing valuable perspectives from affected countries in diverse regions. During the Conference, Hungary declared a national moratorium on the use of cluster munitions and Peru announced its initiative to create the world's first cluster munitions-free zone in Latin America.

Discussions during the Lima Conference were constructive and contributed to the successful completion of the Conference's objectives. The purpose of the Conference was to facilitate an exchange of views and create a better understanding of the problems associated with the use of cluster munitions. The Conference was not convened to negotiate the text of a future instrument—instead it was intended as a forum to hold discussions on elements to be included in a future treaty, and to create a solid platform to serve as a basis for negotiations at a later date.

States were able to fulfill these objectives during the Conference and reached broad consensus on six main essential areas for inclusion in a new international instrument, such as obligations to provide victim assistance; provisions on clearance; storage and stockpile destruction; international cooperation and assistance; transparency, compliance, and national measures; and procedural issues.

KEY ISSUES

Victim Assistance

States overwhelmingly agreed that victim assistance should form the cornerstone of a future instrument. Many delegations and civil society participants emphasized the

importance of risk education and awareness programs, international cooperation and assistance, and protecting children, who comprise a disproportionate number of cluster munitions victims. There was also consensus on the need to employ a broad definition of ‘victim’ to include not only the individual, but family members and communities affected by the use of cluster munitions. A future treaty should also apply a rights based approach, ensuring non-discrimination and a full realization of victims’ human rights.

Clearance

In discussions on clearance, there was agreement on the essential importance of clearance operations to enable affected communities to recover and rebuild. Participants concurred on the interdependence of risk education and clearance, the need to provide technical and financial assistance, as well as promote national capacity building, and obligations to identify, mark, and fence contaminated areas to protect civilians. Discussions will need to continue, however, to reach consensus on the appropriate length of deadlines for clearance operations and possibilities for extensions.

The Conference also heard from affected States about their experiences with cluster munitions clearance and from the Cluster Munition Coalition (CMC) about the added difficulties that the supposedly ‘safer’ M85 submunitions pose for clearance operations.

Storage and Stockpile Destruction

In the session on storage and stockpile destruction, the main issues discussed for possible inclusion in a future instrument were provisions for storage of cluster munitions and timelines, transparency, and technical challenges for the destruction of existing stocks. Participants emphasized the importance of safety, security, and environmental concerns in stockpile destruction. Participants agreed that destruction of cluster munitions would be an important issue for a future instrument, as cluster munitions are more costly, complex, and time consuming to destroy than landmines.

On the issue of deadlines and extensions for destruction of cluster munitions stocks, however, many States advocated increasing the time allotted for stockpile destruction in the Lima text and strengthening provisions for extensions.

Several delegations, including Australia, the United Kingdom, Germany, France, Belgium, and Ireland argued in favor of retaining live cluster munitions for training and research purposes. This was firmly opposed by Canada, Norway, and the CMC, which informed the Conference that in the past, such arguments were used to as a cover-up to allow States to retain large stockpiles.

Germany reiterated its statement that priority should be given to procuring new replacement weapons over the destruction of existing, dangerous stockpiles.

Finland, France, Japan, the United Kingdom, and the Czech Republic also advocated for provisions on a transition period, during which certain illegal cluster munitions would still be permitted to be used.

Cooperation and Assistance

Many States attached great importance to strengthening provisions for cooperation and assistance. Several States emphasized the crucial role that assistance plays for developing and affected countries. Assistance and universalization of a future treaty are interrelated, and many developing countries will need help in meeting treaty obligations. Limited financial resources, rather than lack of political will, may be the determinant for developing countries' decisions to sign a future instrument.

There was broad consensus that assistance must be provided in a comprehensive manner, with the aim of promoting development and capacity building. Frameworks should be constructed to avoid duplicating existing efforts and ensure that, while some obligations should be assumed by affected States, the international community must be prepared to assist with others. Several States and the CMC also proposed that States who have used cluster munitions should bear special responsibilities and obligations.

Transparency, Compliance, and National Measures

Discussions on transparency, compliance, and national measures were equally constructive. States and civil society agreed on the utility of the Mine Ban Treaty (MBT) as a model for a future instrument on cluster munitions, and could improve areas relating to reporting mechanisms, transparency, and compliance. Delegations emphasized the value of translating the effective 'family atmosphere' towards compliance that exists in the Mine Ban Treaty framework to a new regime on cluster munitions.

Participants affirmed the importance of quality, accuracy, and timely submission of reports. It was also agreed on the necessity of provisions explicitly requiring States to create national legislation and for penal sanctions specific to cluster munitions to promote compliance.

Definitions

While the discussions on the majority of the main elements of a future instrument were constructive and showed signs of promising consensus, participants expressed widely divergent views on a proposed definition for cluster munitions to be used in a future instrument. The issue will be the most significant hurdle for the negotiation of a future treaty, as it will determine the scope and effectivity of a prohibition.

It was a positive sign that all delegations agreed on the necessity of banning some types of cluster munitions and acknowledged the grave humanitarian suffering caused by their use. Certain delegations, however, continued to advocate for the exemption of cluster munitions equipped with self-destruct mechanisms or with certain failure rates, despite repeated demonstrations by civil society of the inadequacy of technical fixes to protect civilians.

Australia, Denmark, Egypt, Finland, France, Poland, and the United Kingdom supported a limited ban exempting cluster munitions with self-destruct mechanisms. Others, such as Argentina, Canada, the Netherlands, Spain, and Switzerland took a more moderate stance, stating that it is necessary to draw a line between those cluster munitions that cause unacceptable harm to civilians and those that can be used responsibly, and create prohibitions on those cluster munitions which pose unacceptable harm to civilians.

Many other States, such as Bosnia, Burundi, Chad, Indonesia, Ireland, Lebanon, Mexico, Norway, Senegal, and Venezuela, along with NGOs, explicitly supported a total ban, stating all cluster munitions threaten civilians by their inherent design and function. For those supporting a total ban, any “harm” to civilians is unacceptable. Despite the contention over the issue of a definition, it was beneficial that, in sharing their perspectives and positions, delegations helped clarify areas for future discussion and the circumstances in which negotiations will have to proceed.

CCW versus Oslo

Another critical issue that continues to threaten the Oslo process’ chance for success remains the debate over the appropriate forum for work on an international prohibition. Although most participants supported work in both the Oslo and CCW (Convention on Certain Conventional Weapons) frameworks as potentially complementary processes, several delegations indicated a preference for work in the CCW and stated they will push for a negotiating mandate within that framework.

Germany had previously submitted a draft text on a possible Protocol VI on cluster munitions within the CCW. France also circulated a draft paper on cluster munitions, calling for work within the CCW and provisions for a transition period and maintenance of minimal stocks of cluster munitions. Both initiatives are significantly weaker than the prohibition contained in the Lima text.

The recent history of the CCW gives little realistic hope for substantive progress on a treaty prohibiting cluster munitions. Advocating for work within the CCW threatens to derail the Oslo process and its aim to establish a treaty that will provide meaningful protection for civilians. It would be optimal if both processes can move forward in a mutually reinforcing fashion to achieve results, but it appears more likely that certain States who want to retain their weapons will use the CCW as an opportunity to produce an extremely weak instrument, or ensure that nothing is achieved at all.

Steps forward

As the Conference concluded, there was a sense of optimism over the growing number of participants and the increasing demonstration of political will to take action and conclude a legally binding instrument banning cluster munitions by 2008. Until participants reconvene in Vienna, for the third major meeting of the Oslo Process, from the 5-7th December, civil society and those concerned about the humanitarian suffering caused by cluster munitions should strive to convince governments to join in the Oslo process. Governments should be encouraged to enact national measures and moratoria, abandon arguments in favor of definitions based on self-destruct mechanisms or failure rates, and reaffirm their commitments to the continuation of the fundamental humanitarian objectives set out in Oslo and reinforced in Lima.

Upcoming Schedule for the Oslo Process

States holding follow-on meetings announced the coming schedule for the Oslo process:

- Austria announced that the Vienna Conference will take place from 5th-7th December, with an NGO forum the day prior to the Conference. Austria stated it will endeavor to provide all assistance that NGOs might require.
- New Zealand will host a Conference in Wellington from 18th-22nd February 2008.
- Ireland announced that the Dublin Conference for the negotiation of a treaty will take place over a two week period from the second half of May to early June 2008.
- Costa Rica will host a regional meeting for Latin America and the Caribbean from the 23rd-24th August, with an NGO event a day prior, as it is dedicated to furthering the creation of a Latin American cluster munitions-free zone.
- Belgium and Serbia are also planning to hold regional meetings in 2007.

BACKGROUND

NGO Regional Civil Society Forum

A day before the beginning of the official conference, the CMC hosted an NGO event called, The Regional Civil Society Forum “Taking Action on Cluster Munitions,” on 22 May 2007. It provided participants with background information on cluster munitions and multiple perspectives from activists, academics, victims, parliamentarians, and members of international organizations, on the humanitarian problems associated with the use of

cluster munitions. The forum was an opportunity to inform participants with factual data about the impact of cluster munitions, demonstrate the necessity of a total ban on cluster munitions, and refute the dangerous and flawed arguments in favor of exempting so-called ‘reliable’ cluster munitions equipped with self-destruct mechanisms.

Nobel Laureate Prof. Jody Williams, in her opening address to the Forum, stated the work of civil society and the purpose of the Lima Conference is essentially to protect civilians from the excesses of military power. She reminded participants of the necessity to measure the impact military power has on civilians—people militaries prefer to call collateral damage.

Mr. Rae McGrath of Handicap International gave a dynamic presentation on the properties of cluster munitions and the problems associated with their use. Cluster munitions consist of two parts—the submunitions and the container/dispenser. Submunitions are generally small in size, used in large quantities, and irregular or unusual in appearance. Containers or dispensers serve the purpose of carrying the submunitions to the target area and are primarily of three types—missiles, artillery shells, and bombs. The process is relatively simple. Containers travel to an area near where it has been decided that there are targets to attack. The containers open and disperse the submunitions over the area. The submunitions fall in a special way so as to approach the ground at the right angle to allow them to explode.

Submunitions have two basic individual properties. They are either designed to be anti-personnel, meaning that they are designed to target human beings, or they can be anti-materiel, meaning that they are designed to target vehicles, military equipment, objects, (or again, people). They achieve their desired devastating effects through fragmentation (little bits of metal or another hard surfaces flying out at hundreds of meters a second and making holes in whatever they hit), shaped charges (metal that becomes extremely hot so that it can pierce through armor, then once inside can act as above), or by being incendiary (causing fires). Modern submunitions are often designed to be combined effect munitions (can make holes in you, set fire to you, or blow you up and then make holes in you, etc).

Mr. McGrath stressed the need to look at the strategic logic (or lack thereof) of using cluster munitions. Supposedly, cluster munitions are intended for use to attack wide areas, containing potentially hidden targets. He emphasized, however, that cluster munitions do not function as designed, and even if they do, their design itself is inherently indiscriminate. Cluster munitions do not pass proportionality tests, and their failure rates are hardly close to what they are claimed to be. Yet militaries in democratic countries are ultimately given these disproportionate, illegal, and indiscriminate weapons by civil society, Mr. McGrath said. It is therefore the responsibility of civil society to prevent their country’s military from using these weapons, just because cluster munitions seem cost-effective and cheap. He warned Conference participants that manufacturers of cluster munitions invent many of the arguments militaries rely on to justify the value of cluster munitions.

The long term impacts of the use of cluster munitions have direct and indirect effects on communities. Cluster munitions jeopardize the future of communities, countries, and regions indefinitely, ensuring that even after the end of hostilities, 'peace' actually has no meaning for many civilians. With untold numbers of unexploded cluster munitions lying in wait to maim and kill civilians, the peace could be more dangerous than the war, Mr. McGrath said. The combined effect of the use of cluster munitions results in communities losing faith in peace agreements and economic problems, both locally and on a wider scale. The UN and NGOs will then have to spend your money, your tax dollars, to clear the cluster munitions and train clearance teams, Mr. McGrath said. So you might be paying for a war you didn't want and then you have to pay to clear up the mess from a 'humanitarian intervention,' Mr. McGrath added.

Mark Hiznay, of Human Rights Watch, introduced the next two speakers, Ms. Bonnie Docherty and Ms. Grethe Østern. Ms. Docherty challenged the five arguments that armed forces make in favor of using cluster munitions. The first is that cluster munitions are essential for today's wars. In actuality, they are wide area weapons designed for use against symmetrical forces. Today's wars are asymmetric and cluster munitions are most often used against a less powerful enemy or in populated areas. The result is that the alienation of the population incurred often undermines any military goals. In addition, militaries have failed to provide concrete examples of where the use of cluster munitions had any significant military advantage.

The second argument Ms. Docherty refuted was that cluster munitions are vital for force protection and military success. Reality shows that cluster munitions are more likely to interfere with military objectives and hinder troop mobility, as US military officials have acknowledged from experiences in Afghanistan and Iraq.

Third, some militaries claim that there are no viable alternatives to cluster munitions. In fact, military technology has evolved rapidly. Precision guided unitary munitions exist and provide greater military utility without the disproportionate and indiscriminate effects of cluster munitions.

Fourthly, some militaries claim that in populated areas, the alternative to cluster munitions is worse. Using a unitary weapon would be worse, they claim, and would require using more fire power and thus cause more harm to civilians. Yet substituting one style of indiscriminate attack for another is not an acceptable solution.

Lastly, some militaries claim that existing international humanitarian law, such as Protocol V (PV) of the CCW (Convention on Certain Conventional Weapons), if implemented correctly, can adequately prevent civilian harm from the use of cluster munitions. However, PV does not specifically mention cluster munitions and only deals with post-conflict situations.

Grethe Østern emphasized that the key task before Conference participants was to agree on an acceptable definition for cluster munitions. She outlined 'three red lines' that would be outright failures should the Conference decide to employ them in a definition. First, it

is not sufficient to ban only those cluster munitions that do not have a self-destruct mechanism, as recent use of the 'benchmark' M85 submunition, containing a self-destruct mechanism, has shown. Secondly, a future prohibition based on quality (e.g. a 1% failure rate) is not tangible. This approach to a prohibition will depend on States' best intentions, and is ultimately impossible to achieve. Lastly, words like 'dangerous/undangerous' duds or 'hazardous/nonhazardous' duds should not be part of a treaty text, as it is impossible to make such a distinction on the ground. Distinguishing cluster munitions based on self destruct mechanisms will weaken a treaty, Ms. Østern maintained.

Nobel Laureate Prof. Jody Williams took the podium on behalf of Archbishop Desmond Tutu and the six women of the Nobel Women's Initiative. Prof. Williams read a letter written by Archbishop Tutu, calling on African States to exhibit the leadership they had previously shown in the Mine Ban Treaty process and to take action to support the Oslo Process. On behalf of the Nobel Women's Initiative, Prof. Williams stressed the importance of civil society activism on the issue of cluster munitions. She warned participants against continuing work in the CCW, as it is a 'go slow' approach. Because the CCW is based on the tyranny of consensus, it did not produce the rapid results so necessary to avert another humanitarian disaster during the past five years of deliberations, she said.

Lord Elton, member of British Parliament and the parliamentary wing of the campaign for the abolition of cluster munitions, spoke to participants about the status of draft legislation in various national parliaments. Australia, Austria, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Sweden, Switzerland, and the United Kingdom have all considered draft legislation to prohibit or limit the use of cluster munitions. Lord Elton urged participants to agree on a definition and not to waste time discussing failure rates. The House of Lords decided to send the strongest message of support to Lima, he said, with many former generals agreeing that cluster munitions no longer served any military utility.

Mr. Paul Eavis of the UNDP (United Nations Development Program) outlined the challenges that the use of cluster munitions pose to development and the reconstruction of post conflict areas. He presented many compelling statistics about the impact of cluster munitions on civilians and communities in Laos and Lebanon. 80 million cluster munitions were dropped on Laos, the world's most affected country, with an estimated 10-30% of submunitions failing to explode, resulting in millions of unexploded cluster munitions to continue maiming and killing civilians. The 10 year clearance plan for Laos is set to expire in 2013, yet the problems from cluster munitions will continue.

In Lebanon, beyond injuring and killing civilians, the presence of cluster munitions has denied civilians access to one quarter of the country's arable farm land. Long term development of affected communities is also undermined by loss of food security through land denial and loss of live stock, while health and hygiene are also threatened due to lack of water and sanitation. The use of cluster munitions has far reaching consequences

for entire communities, as loss of livelihoods and the ability to sustain families results in poverty and the inability for communities and countries to successfully rebuild.

Beside their physical and tangible effects, the use of cluster munitions poses serious problems from the stand point of international humanitarian law (IHL). Peter Herby, of the ICRC (International Committee of the Red Cross), addressed participants on the issue of the adequacy of existing IHL. Mr. Herby invalidated the argument that strict implementation of existing rules of IHL will be adequate to address the humanitarian problems caused by cluster munitions. The use of cluster munitions fundamentally violates essential principles of IHL, such as the principle that distinctions must be made between combatants and civilians and the principle of proportionality.

Following his presentation, Stan Brabant of Handicap International (HI) Belgium provided participants with an overview of statistics compiled on civilian casualties from cluster munitions in recent conflicts. He introduced HI's new report, "Circle of Impact: the Fatal Footprint of Cluster Munitions on People and Communities," which aims to provide a more encompassing picture of the effects of cluster munitions use. 98% of cluster munition casualties are civilians, Mr. Brabant stated.

Simon Conway, Director of Landmine Action and Co-Chair of CMC, also refuted the military utility of cluster munitions. Force is the basis of any military activity, but is applied for political purposes, he said. Referencing Sir Rupert Smith, Mr. Conway stated that, whether death and destruction achieve a political purpose depends on the target. Killing civilians does not translate into political capital.

Mr. Conway proceeded to provide a history of the purpose and evolution of cluster munitions from the Korean War until their most recent use in Lebanon. The current irrelevance of cluster munitions stems from the fact that they were originally intended for use as a weapon to combat a massive Warsaw Pact formation. But that war never happened, the Russians never came, Mr. Conway said. He chronicled the disasters and military futility of the use of cluster munitions in Vietnam, Laos, Lebanon, by Morocco against Algerian IDP (internally displaced persons)camps, by Russia in Afghanistan, Iraq, Croatia, Chechnya, Eritrea and Ethiopia, Kosovo, and most recently in Lebanon again. He urged that the military solution was not to try and improve area weapons, but rather to use point target technology. War is now ultimately about imposing order, he said, and the only clear military utility for cluster munitions is to ban them.

Raed Banjak, Clearance Operator for HI Lebanon, told the story of his experience as a cluster munitions clearance operator and the horrors of Israel's cluster munitions attack on Southern Lebanon.

Steve Goose, Director of the Arms Division of Human Rights Watch and Co-Chair CMC, spoke about the objectives for the coming meeting of States involved in the Oslo process. The most important goal will be to generate political will and momentum, he stated. 65 States have registered in Lima, 25-26 of them were not present at Oslo, and

approximately 20 of them not party to the CCW, Mr. Goose added. States must work now to produce agreement on the framework for a treaty.

Mr. Goose was adamant that one of the emerging threats to a new treaty was the CCW process. Despite what participants have heard about complementariness between Oslo and the CCW, he stated that it was difficult to understand why people suddenly thought that the CCW will produce a result when it has failed for so many years. After the failure of the November 2006 CCW Review Conference to take action on cluster munitions, Mr. Goose said he was skeptical about many country's apparent policy shift to agree to discuss cluster munitions in the CCW. He concluded that States are frightened by the Oslo process and uncomfortable with their inability to control it. Mr. Goose declared that suddenly considering a mandate to negotiate in the CCW is more an attempt to deal with the Oslo process and not an attempt to deal with the weapon.

Carlos Cordero, Minister of Foreign Affairs of Costa Rica also addressed participants, discussing Costa Rica's efforts to promote peace in Central America and support for the Oslo process. He reaffirmed Costa Rica's commitment to producing a treaty prohibiting the use, transfer, and stockpiling of cluster munitions. The Minister of Foreign Affairs of Peru, Ms. Liliam Ballon de Amezaga, also expressed Peru's support for the Oslo process and reiterated Peru's commitments and efforts to organize and promote the Lima meeting as a continuation of the Oslo process.

The Regional Forum ended with the CMC's appeal to governments, delivered by Coordinator Thomas Nash. He called on all governments to take urgent and concrete action in the Oslo process and produce a treaty which contains a comprehensive definition, without exceptions for technical fixes, that will address the immediate and after-effects of cluster munitions. The Lima text is the right approach, he said, as it combines a prohibition with positive obligations for victim assistance and international cooperation. He reminded participants of the urgency of the task before them and the necessity of taking preventative action.

Lima Text: Summary and Different Perspectives

The Chair's Discussion Text for the Lima Conference, circulated well in advance of the Conference, was intended as a model of possible elements for inclusion in a future treaty and to provide participants with a common basis for discussion of important aspects of a future instrument.

The Lima text begins by declaring that, because of their unacceptable harm to civilians, States undertake never in any circumstances, to use, develop, produce, acquire, stockpile, retain, or transfer, cluster munitions as defined in Article 2. Article 2 provides a general definition for cluster munitions that are considered prohibited by the treaty, such as air-delivered and surface-launched containers that are designed to disperse explosive submunitions. Cluster munitions weapon systems that are designed to detect and engage point targets, or are meant to produce smoke or flares, are the only permitted exceptions

under the Lima text. The text also contains a final clause exempting munitions which “are regulated or prohibited under other treaties” from the scope of application of the Lima text.

Article 3 contains provisions on storage and stockpile destruction. States are required to separate cluster munitions which are approved for use under the Lima definition and keep those that must be destroyed in separate storage. Each State must destroy prohibited cluster munitions within 6 years after the entry into force of a future instrument, although States may request an extension for up to 10 years. Similarly, for clearance, States are obliged to clear territory as soon as possible but not later than 10 years after the entry into force of the proposed treaty. They must make every effort to identify affected areas in their territory and mark, monitor, and fence areas to protect civilians. States may also apply for an extension for clearance deadlines for an additional 10 year period.

The Lima text’s proposed article on international cooperation and assistance emphasizes the right of each State Party to seek and receive international assistance, where feasible, and says that each State in a position to do so shall provide assistance for clearance operations. States shall also try to facilitate the exchange of information and equipment for clearance and other humanitarian purposes.

Article 6 contains provisions on victim assistance, requiring States to “endeavor to take adequate steps” to provide medical care, rehabilitation, and facilitate the social and economic reintegration of victims, in accordance with applicable international human rights standards and the full realization of victim’s human rights. States also have an obligation to provide assistance for victim assistance programs and for cluster munitions awareness programs.

The Lima text’s provisions on transparency require that States must submit reports on national implementation measures, the number and types of cluster munitions in their possession, and the status of destruction programs. They must also cooperate and consult other States Parties on compliance and are authorized to consider measures to determine non-compliance and possible steps that may be taken. States are also required to implement national legislation, including penal sanctions, to ensure the fulfillment of treaty obligations.

Articles 10-12 deal with procedural aspects of the treaty such as the establishment of dispute settlement mechanisms and scheduling of Meetings of State Parties and Review Conferences. The Lima text states that annual meetings of States Parties will be held along with Review Conferences at 5 year intervals, and international organizations, regional organizations, and relevant NGOs may be invited to attend as observers.

The remaining articles contain provisions for amendments, costs, signature, ratification, entry into force, provisional application, reservations, and the depositary. Specifically, the text proposes that the treaty will enter into force after the 20th instrument of ratification is deposited. It also proposes that reservations to any of the articles will not be permitted and that States may not withdraw from the treaty during armed conflicts.

The Lima text is a useful starting point for discussions on a future instrument. Many participants, however, were not satisfied by certain elements or language contained in the text. Views and opinions tended to align along two opposing poles. The CMC circulated an observation paper on the Lima text, highlighting areas that could be strengthened to improve the clarity, effectivity, and humanitarian protection provided by a future treaty.

On the opposite end of the spectrum, Germany's draft text for a possible Protocol VI on Cluster Munitions within the CCW framework represented an alternative to, or a significant modification of the Lima text, which drastically reduces its scope of application and humanitarian provisions. During the Conference discussions, States tended to either indicate support for the German text or strengthening the Lima text in line with the CMC and NGO suggestions.

The CMC's Perspective on the Lima Text

The CMC's observations on the Lima text summarizes the views held by many NGOs and international organizations present at the Conference. The CMC largely supported the Lima text as it is "a sound basis for further work towards a new convention that will combine a prohibition on a weapon category with positive obligations that ensure states can and do address the humanitarian and socio-economic concerns posed by cluster munitions," however, certain key areas "must be strengthened or modified in order to provide adequate humanitarian protection and socio-economic inclusion."

The CMC supported the "never under any circumstances" approach to the scope of the Convention and was pleased that the Lima text does not contain any exceptions for submunitions equipped with self-destruct mechanisms or submunitions with a certain failure rate. The definition provided in the Lima text should be clarified, however, to specifically address submunitions and components of cluster munitions and better define terms such as 'point target,' 'vehicles,' and the clause 'unless their use is regulated or prohibited under other treaties.' Other provisions, such as risk education in Article 4, and obligations in Article 6 on victim assistance, should be strengthened. Additional provisions should be added to cover joint military operations, special responsibilities for users, foreign stockpiling, and specific national legislation, amongst other things. Language should be changed in Article 11 on Meetings of States Parties to read, "the UN, ICRC, NGOs and others 'shall' be invited to attend these Meetings, rather than 'may' be invited," to emphasize the important partnership between governments and civil society.

The German Draft CCW Protocol on Cluster Munitions

The German Draft CCW Protocol states that 'unreliable' or 'inaccurate' cluster munitions should be prohibited, but contains a provision allowing for 'reliable' and 'accurate' cluster munitions to be used for a period of 10 years. So-called 'reliable' cluster

munitions are defined based on a failure rate of one percent. ‘Unreliable’ cluster munitions are those with failure rates higher than one percent. ‘Accurate’ cluster munitions are those which are “effective only within a pre-defined target area.” Target areas are not defined.

Ultimately, under the German draft text, cluster munitions will supposedly be replaced by alternative weapons, called “Sensor Fused Area Munitions (SEFAM).” These weapons will contain less submunitions and have radar, infrared, or radiometric sensors to improve accuracy to limit the effects of submunitions to the targeted areas. In the future, kinetic submunitions may be used, which do not contain explosives and are inert post-impact.

While sensor fused area munitions may seem like a suitable alternative to cluster munitions, Landmine Action and other civil society groups argue that there is little or no data on these weapons. They are designed to detect and target certain heat sources, which raises several areas for concern. What civilian objects might emit the same level of heat and be targeted by mistake? What margin of error do these weapons have? Will there be commander responsibility to check targets and the presence of civilians or civilian objects in the area? Ultimately, the majority of these weapons are not even available yet. Sensor-fused weapons will do nothing to remedy the current dangers presented by ordinary cluster munitions, still in use and still stockpiled in the billions around the globe.

The CMC summarized its opposition to the German Draft, stating that:

“This new German proposal falls far short of the CMC’s expectations for this process and does not represent an appropriate basis for the work of those states genuinely committed to the protection of civilians. The major shortcomings of the German proposal can be summarised as follows:

Instead of a simple prohibition on cluster munitions the proposal contains two prohibitions, both of which are flawed.

The initial proposed prohibition would be immediate but would only cover cluster munitions defined as ‘inaccurate’ or ‘unreliable.’ Inaccurate is defined as having an impact only in ‘a pre-defined area.’ Unreliable is defined as leaving only 1% of ‘dangerous duds.’

The second proposed prohibition would only take effect after an unspecified transition period and leaves room for advanced sensor-fused weapons without answering key questions on the acceptability of these weapons. Following this approach will mean that cluster munitions continue to be used for years to come – without the safeguards necessary to protect civilians.

In the initial prohibition, the concept of ‘inaccurate’ is left open to interpretation, allowing the use of cluster munitions that blanket large areas because there is no limit on how wide the ‘pre-defined area’ effect can be.

The concept of ‘unreliable’ is based on the percentage of submunitions that fail in testing even though it is clear that the numbers of submunitions that fail in combat are far higher than in testing, as preliminary information on the use of self-destruct equipped cluster munitions indicates from Lebanon.

The concept of ‘unreliable’ also relies on the notion of a ‘dangerous dud,’ which is defined as an unexploded submunition where the fuze is in an armed position. All unexploded ordnance is inherently dangerous and submunitions can become armed when they are handled or disturbed.

Even if a 1% failure rate were achievable, this would still mean that the use of 100,000 submunitions, such as the UK’s use in Iraq in 2003, would leave 1,000 unexploded duds. This is still unacceptable.

The proposal contains no specific reference to or comprehensive obligations on victim assistance, only referring to the obligations in Protocol V on explosive remnants of war, which itself does not go far enough and which is not retroactive. This means the proposal would provide no support or assistance to the people that must already live with cluster munition contamination in and around their communities, or to those people already injured by these weapons.”

Germany, and others who support the German Draft provision, maintain that the Lima draft does not place sufficient emphasis on military necessity. The Lima text lacks provisions for a transition period, which Germany claims is necessary to help countries eliminate stockpiles deemed unacceptable. Germany also argued that the Lima text will not provide incentives for States to improve the technical reliability of cluster munitions. Germany maintained that language should be included that will permit weapons containing less than 10 submunitions and argued that the CCW has the best potential for progress on an international instrument, as it includes the major user and producer countries.

THE LIMA CONFERENCE

The Lima Conference on Cluster Munitions opened on the 23 May 2007 with introductory remarks from Mr. Branislav Kapetanovic, Cambodia, Lebanon, and Peru. The opening speeches provided delegates and participants with a comprehensive overview of the humanitarian suffering caused by the use of cluster munitions, from the perspectives of a cluster munitions survivor and two countries devastated by unexploded cluster munitions. Their remarks impressed upon the Conference the urgency and necessity of concluding a new international instrument by 2008 and taking immediate action in the Conference meetings ahead. During the next three days, participants discussed seven major issues relating to possible elements for inclusion in a future treaty: victim assistance; clearance of unexploded ordnance; storage and stockpile destruction; international cooperation and assistance; transparency, compliance, and national

measures; general obligations, scope of application, and definitions; and procedural items.

IMPORTANT ANNOUNCEMENTS AND REGIONAL PARTICIPATION

Moratoria

During the Conference, Hungary announced a moratorium on the use of cluster munitions until the conclusion of a legally binding instrument and stated it would destroy its stockpiles, with costs assumed by the Hungarian government.¹

Cluster Munitions-Free Zone and Regional Developments

Peru announced its initiative to create the world's first cluster munitions-free zone in Latin America. The presence of Latin American and Caribbean States increased at the Lima Conference with Bolivia, the Dominican Republic, Ecuador, Panama, Paraguay, and Venezuela joining the Oslo process. Two of South America's three cluster munitions producers, Argentina and Chile, are now committed to the Oslo process objectives. Brazil, the third cluster munition producer and stockpiler, however, decided not to attend the Lima Conference in a last-minute decision.

Participation from Asian and Pacific States also increased. Australia, Bangladesh, Lao PDR, and Thailand joined the Oslo process during the Lima Conference. Lao, the country most saturated with tens of millions of unexploded submunitions, and Cambodia, another heavily affected country, provided very valuable contributions to the Conference on their first hand experiences with the humanitarian suffering caused by cluster munitions and clearance operations.

Of the 28 States that joined the process in Lima, the majority were from Africa. Burundi, Chad, Ghana, Guinea Bissau, Lesotho, Liberia, Mauritania, Nigeria, Senegal, Tanzania, Uganda and Zambia all publicly declared their support for the negotiation of a legally binding instrument on cluster munitions. Chad and Guinea Bissau are affected States; Nigeria is a former cluster munitions user; and Guinea Bissau and Nigeria have stockpiles. Statements from most African nations were strong and encouraging, with many supporting a total ban on cluster munitions.

From the European region, Albania, Estonia, and Greece joined the Oslo process. Greece produces and stockpiles cluster munitions. Albania is still affected by unexploded cluster munitions submunitions. Russia attended as an unannounced observer.

Yemen, also a stockpiler of cluster munitions, joined the number of Middle Eastern States supporting the process. Saudi Arabia registered to participate but failed to attend

the Conference. Lebanon reported on its continuing difficulties with clearance operations and the extent of the humanitarian suffering brought on by Israel's dumping of 4 million submunitions in Southern Lebanon in 2006.

ICRC Montreux Meeting

The ICRC provided participants with a short summary of the Montreux meeting in April 2007. The meeting included 32 States with expertise in all major aspects pertaining to cluster munitions. 14 agencies and NGOs active on cluster munitions, several independent experts, one representative from a company producing cluster munitions, clearance operators, military officers, cluster munitions designers, fuzing specialists, and defense scientists responsible for conducting tests also attended. The meeting itself was an initiative of the ICRC, and although mentioned in the final document of the 3rd Review Conference of the CCW, the meeting was intended to contribute to all international fora.

The ICRC reported that the key trends identified in the meeting were the large gap between the reality of cluster munitions on the ground and the theory presented about their supposed effects. The ICRC also stated that militaries must make a better case for the continued necessity of cluster munitions, based on actual experiences in conflict.

CONFERENCE SESSIONS

Agenda Issues

Before the Conference could begin actual discussions, many States raised issues with the Conference agenda and the proposed scheduling of discussions on definitions of cluster munitions late in the Conference, on Friday morning. France, Egypt, the Netherlands, Denmark, Italy, the United Kingdom, Switzerland, Austria, Canada, and Chad emphasized the importance they placed on addressing the issue of definitions and many argued that discussions should commence as early as possible.

The CMC defended the agenda, explaining the logic behind the structure of the Conference. To highlight the Oslo Process' fundamental goal of addressing the humanitarian concerns relating to cluster munitions, the Lima Conference will begin with discussions on victim assistance and clearance, the CMC said.

New Zealand, Cambodia, Norway, Serbia, Senegal, and Lebanon supported the original agenda and the logic behind the schedule, affirming support for the Conference hosts and the humanitarian importance of victim assistance.

The issue was resolved with a compromise, as the Conference Chair decided to accept Austria's suggestion to move the issue of definitions forward in the schedule but begin the Conference with discussions on victim assistance.

CCW versus Oslo

Ambassador Kongstad of Norway introduced the Chair's discussion text for the Lima Conference. As general session commenced on the introduction of the text, Germany immediately sparked the debate over the appropriate forum for the negotiation of a treaty on cluster munitions—the CCW versus Oslo issue. With no major surprises, States aligned themselves along a spectrum between full support for the Oslo process, to a mildly ambivalent commitment to continue work in both fora, and at the opposite end, towards the pursuit of a negotiation mandate on cluster munitions in the CCW.

Germany, Japan, Italy, the Netherlands, Poland, Slovakia, Australia, and Switzerland indicated strong support for the CCW, although all countries were still willing to participate in the Oslo process. Others such as Canada, Lithuania, Spain, Malta, Serbia, Bangladesh, the Holy See, France, and the United Kingdom made less biased statements, declaring their willingness to continue work in both fora. Zambia, Peru, and the CMC made clear statements calling for support of the Oslo process, while Croatia, Venezuela, Thailand, and Indonesia all indicated their support for the creation of a legally binding instrument, without mention of the CCW.

States brought up several arguments to justify their support for the CCW process, such as the need to include major players, the risk of undermining Protocol V, the pursuit of a negotiation mandate and the creation of a new Protocol, and the general “my delegation attaches importance to the CCW.”

Germany stated that it would like to reiterate that the CCW process seems to have, under the present circumstances, the best potential to make a real difference in creating and enforcing humanitarian rules on cluster munitions for the benefit of the civilian population. It is not enough to have good intentions, it must make a difference on the ground. Only the CCW ensures the full participation of main holders and users of cluster munitions. Immediately after the Lima Conference there should be a joint effort to get best result out of GGE meeting in Geneva in June, Germany said.

Japan echoed that without the major players on board, an international instrument will not have the desired effects. Japan added that cluster munitions may remain important for national security and that the Japanese government is seriously considering a negotiating mandate within the CCW framework. Germany, Italy, Australia, and Switzerland stated that they were actively pursuing a negotiation mandate within the CCW. Both Poland and Slovakia also made similar arguments about the necessity of including major players. Italy, the Netherlands, Australia, and Switzerland all voiced their concern that an instrument negotiated in the Oslo process would undermine Protocol V.

Nobel Laureate Prof. Jody Williams once again refuted delegations' arguments in support of the CCW. Governments had done nothing in the CCW in the past, she said, and now we are supposed to believe they found renewed faith. It's very hard for a cynical activist to believe anything but the fact that you are trying to deal with the Oslo process rather than the cluster munitions process. What more do you need? Half the world's producers and half the stockpilers are here, she emphasized. She said she supported protecting Protocol V, but Protocol V did not stop the disaster in Lebanon caused by cluster munitions.

Victim Assistance

As Co-Chair of the session on victim assistance, Austria opened the session saying that the Conference must avoid, from the beginning, the idea that victim assistance is a mere abstraction, as there is nothing more concrete than falling victim to such a weapon. Austria then discussed the evolution of victim assistance mechanisms from the Mine Ban Treaty, to Protocol V of the CCW, to the Convention on the Rights of Persons with Disabilities.

UNICEF, ICRC, Handicap International, Landmine Survivor Network, Austria, Canada, and Yemen all stated that the notion of a cluster munition victim needed to be broadened to include the effects victimization has on families and communities. Austria suggested that this notion could be incorporated in a preambular paragraph, explaining that the term victim implies a broader concept than the term survivor. Canada stated that victim assistance should be linked to even broader considerations of programs for disabled persons.

The idea that an article on victim assistance for cluster munitions should build on the past models of the Mine Ban Treaty and Protocol V was promoted by UNICEF, Lebanon, Norway and the CMC. Norway, along with Lebanon, ICRC, HI, Landmine Survivor Network and the CMC also advocated that the Conference should draft a future article with reference to human rights standards and apply a rights based approach. HI and the ICRC stated the importance of strengthening legal frameworks and ensuring nondiscrimination in access to assistance.

Others, such as Albania, Venezuela, UNICEF, and Mauritania emphasized the importance of risk awareness programs. Albania stated that it is better to prevent than to cure. UNICEF suggested that risk awareness should be made a separate paragraph in the article. Children and education were also singled out as issues of special importance.

Mexico, Peru, and the CMC raised the issue of providing mechanisms allowing States who could demonstrate compliance with their obligations in good faith to extend deadline requirements and receive international assistance. Other issues like local infrastructure and national capacity building were raised by the ICRC. HI mentioned that a referral system should be reinforced and national and local services should replace international

ones. Lebanon advocated that that cluster munitions users should be held liable and responsible for the devastation they cause to victims and their families.

Clearance

Ireland, Co-Chair of the session of the Conference on clearance, began the session saying that clearance of unexploded cluster munitions is crucial to enable affected communities to recover. The quality of clearance operations must be as such to enable residents to resume their activities with confidence. This necessity is already recognized in international law; in the provisions of the Mine Ban Treaty, and Protocol II and Protocol V of the CCW, which comprise a body of language on which the Conference can build. The present text is based on the MBT but should not discard other instruments and ultimately consider both the removal and destruction of cluster munitions. The Irish Ambassador asked participants to consider ways in which cluster munitions and landmines were similar, but as different weapons systems, might require different approaches to clearance.

The major issues considered during the session were provisions for the extension of deadlines and timeline issues, financial assistance, technical support and data transmission, and risk education. The CMC, Canada, Australia, and Norway made interventions discussing the necessity for the allowance of adapting deadlines to fit country-specific needs. At the same time, Australia also emphasized the importance of affected States' ownership of clearance programs and that affected States should be required to take charge of their own circumstances. The CMC stated that deadlines can serve to remind States of their responsibilities and provide useful a framework and goals for clearance. The Conference must also acknowledge that States will face genuine problems and must make it clear in a new instrument that States working in good faith will have the ability to receive extensions.

The UNDP outlined technical support requirements, such as timely and accurate provision of data on strikes, location of personnel, and assistance with providing personnel, training, and equipment. Effective clearance is particularly important for local and national recovery and development, as cluster munition contamination exacerbates poverty, undermines food security through land denial and live-stock losses, creates health and sanitation problems, and loss of livelihoods, such as planting crops and animal husbandry. Canada and Norway reminded the Conference of the necessity to provide adequate financial support along with technical assistance.

Another major issue discussed during the session was the importance of risk education. UNMAS advocated that Article 4 was the most appropriate place to link clearance and risk education. Risk education, however, should be broadened to include risk reduction, entailing a more comprehensive approach integrating clearance and education. The CMC stressed that the language in the text should be strengthened beyond the term risk 'awareness' and should be clearly phrased as an obligation for States Parties.

The UNDP stated that the Conference should avoid language in a new instrument such as ‘dangerous dud,’ as it is an illogical term, as all items containing explosives are permanent threats to life, recovery, and access to land or homes. Simon Conway of the CMC also informed the Conference of the added difficulties supposedly ‘safer’ M85 cluster munitions pose to clearance operations.

The Conference heard accounts from affected countries on their experiences with clearance operations and their most pressing requirements. Lebanon discussed its logistical difficulties and lack of equipment, as well as Israel’s repeated failure to supply records with information about cluster munition strikes. Similarly, Serbia stated it was still waiting for NATO to deliver the GPS coordinates of attacks, which has significantly hindered clearance operations. Both Lebanon and Serbia, along with Chad, expressed the need for continuing financial support from the international community. On a more positive note, Argentina told the Conference that even though it is 25 years after the Falklands War and Argentina is still dealing with unexploded cluster munitions, recently Argentina and the United Kingdom were able to reach agreement on clearance operations.

Ireland concluded the session satisfied that participants had produced a body of material to take forward and had challenging work ahead.

Storage and Stockpile Destruction

Norway Co-Chaired the session of the Conference devoted to storage and stockpile destruction. With 70 countries possessing stockpiles containing billions of submunitions, provisions addressing the numerous challenges presented by destruction of cluster munition stocks will be essential for the effectivity of a future instrument. Technical challenges, provisions on transparency, and appropriate time-lines for destruction were the most important issues discussed by participants.

It was widely acknowledged that cluster munitions are more challenging to destruct than landmines, as they require disassembly instead of simple explosion. Delegations agreed that the added costs and challenges will need to be considered in developing a future article on stockpile destruction. Canada stated that costs of destroying stockpiles will likely depend less on open detonation and open burning and have a higher cost and require more infrastructure. Any cluster munition that would be deemed to be acceptable would need to be properly stored to ensure they do not become unreliable, Canada added.

Due to the higher costs and technical difficulties of destroying stockpiled cluster munitions, several delegations advocated extending the deadline for required stockpile destruction contained in the Lima text. Egypt, France, Germany, the United Kingdom, Spain, and Japan spoke in favor of extending deadlines and providing extensions beyond the 6 year period permitted in the Lima text. The CMC and UNMAS opposed such suggestions, stating that destruction must occur as quickly as possible in view of the precarious conditions of many stockpiles and the risks posed to civilian populations. The

CMC strongly opposed allowing extensions for destructions, maintaining they should be granted only in situations of extreme necessity, on a non-renewable basis, and with strict transparency requirements.

The United Kingdom and Belgium both informed the Conference of their experiences with stockpile destruction. The UK stated that it had taken to withdraw two types of cluster munitions from its inventory for use from March of 2007. The UK said it already had disposal for these munitions pre-planned and pre-funded. Based on that, it will still take 6 years to dispose of these cluster munitions completely, the UK added. The UK said as its inventories are relatively small in relation to others, the Conference should look again at the prohibition under Article 2 and disposal requirements in conceptual terms. The UK said that while it agreed completely with the Coalition that disposal must be done as rapidly as possible, disposal must also be done effectively. Too tight of a deadline could drive it underground. Therefore, the UK said it would argue that there must be some sort of provisions for extensions for those States that either have resource issues, technological issues, or environmental issues, because the facilities for destruction are few and far between in relation to the quantities that the international community will have to deal with.

Belgium, on the other hand, announced that it will complete its deadline targets a year earlier than expected, despite the high costs of its clearance program. Belgium had a 3 year deadline for destruction of its existing stockpiles, set to expire in 2009. Belgium stated that it had already completed its first step—the elimination of air-delivered BL755 cluster munitions, and will complete the second and final step—the elimination of artillery munitions ICM 155, by 2008.

Another contentious issue was the retention of cluster munitions for training and research purposes. Australia proposed that it should be permitted to retain live cluster munitions for such purposes, saying that it maintains the necessity to have the ability to have representative stocks in regard to cluster munitions that cause unacceptable harm to civilians. Australia said that these weapons would not be part of its weapons inventory for operational use and were not intended to be deployed. Australia stated it needed the ability to maintain cluster munitions for training for clearance and rendering safe techniques. This training is crucial for Australia to make a contribution to humanitarian efforts to clear explosive remnants of war and most importantly to make sure of fulfillment of clearance obligations in Protocol V of the CCW, Australia said. The United Kingdom, Germany, France, Belgium, and Ireland also supported retaining stocks.

Canada, Norway, and the CMC firmly opposed any provisions allowing for the retention of cluster munitions for training or research purposes. Canada questioned why a country would want to sprinkle its test areas with ERW. Norway stated that it was unconvinced of the necessity of such a clause, as mine risk education and training is frequently performed by NGOs without the use of live and dangerous mines. The CMC informed the Conference that, in the past, such arguments were used to as a cover-up to allow States to retain large stockpiles.

Far from the spirit of the Lima text, Germany and Finland advocated for the inclusion of a transition period, which would allow States to continue to use certain cluster munitions while building up military capabilities and munitions to replace them. In other sessions, the United Kingdom, France, the Czech Republic, and Japan also supported incorporating a transition period in a future instrument. The CMC and those States calling for a total immediate ban on cluster munitions strongly opposed provisions on a transition period, as it will completely undermine the purpose and effectivity of a prohibition.

Germany stated that its first priority will be to use its limited funds for the acquisition of new weapons and then consider destroying cluster munitions stockpiles with remaining resources.

The CMC raised other issues for consideration for inclusion in future provisions on stockpile destruction, such as a prohibition on stockpiling cluster munitions on another State's territory, a provision to address the potential issue of stockpiles discovered after the formal completion of destruction programs, and the inclusion of a provision allowing transfer of cluster munitions for the purpose of destruction.

International Cooperation and Assistance

There was broad agreement of the essential role of international cooperation and assistance, and the need to ensure that assistance is provided in a comprehensive manner. All participants concurred on the need for special attention to developing and affected States, with a view to national capacity building. Certain obligations should be assumed by affected States, while others should be provided by the international community. Participants agreed that an adequate framework should build on, rather than duplicate, existing structures and that cooperation and assistance has a significant impact on universalization.

Nigeria, Liberia, Argentina, Indonesia, Chad, Peru, and Lesotho stressed the importance of providing assistance to developing countries to enable them to fulfill treaty obligations. Indonesia stated that it attaches great importance to a mechanism for international cooperation and assistance, as it will help convince developing countries that they can implement a future treaty. Obligations to stop use, destroy stockpiles, clear contaminated areas, and provide assistance are not easy for countries with limited resources and it is often not the lack of political will that prevents fulfillment of obligations, but a lack of resources. Provisions for assistance to developing countries will have important ramifications for universalization, as Indonesia explained that its decision on ratification of a future instrument will depend on whether it has enough resources to carry out its obligations under a new treaty.

Norway supported strengthening provisions on the right to seek and receive assistance and emphasized the importance of the partnership between affected countries, humanitarian organizations and the UN. Canada also supported obligations requiring States to provide support, along with the establishment of discrete thematic funds for

sectors such as health, education, agriculture, roads and infrastructure, water, industrial and commercial development, which can be built into national development plans.

The CMC agreed with Norway and Canada's remarks, but added that States should consider language that would impose special obligations on users of cluster munitions. Past users should be required to provide assistance and information on the number and type of munitions used, and geographical coordinates for likely contaminated areas. Lebanon called for the establishment of a compensation mechanism for affected states.

The UNDP also elaborated on the importance of creating a framework for long-term assistance and cooperation for affected countries. The framework should ensure that governments can provide adequate care and rehabilitation to survivors and communities, clear contaminated areas, provide risk education, and ensure destruction of stockpiles, with emphasis on obligations for users and information sharing.

Transparency, Compliance, and National Measures

Discussions on transparency, compliance and national measures were brief but showed broad consensus amongst participants. Canada and Norway spoke about the importance of implementing lessons learned in the Mine Ban Treaty, in particular, replicating its 'family atmosphere' encouraging transparency and compliance. Belgium emphasized the link between transparency and cooperation between States in implementing transparency measures.

The CMC highlighted the importance of timely and accurate reporting and that transparency reports should be publicly available. It suggested that additional language should be included in a future instrument on transparency for stockpiles and destruction, obligations for provision of information on number and type of submunitions, geographic coordinates of use and contaminated areas, as well as language on national funding for clearance, risk education, and victim assistance. Provisions on transparency are particularly important to increase information about the status of cluster munitions in the world today.

Peru, Lebanon, the CMC, and ICRC also supported strengthening measures on national implementation. States should be required to enact national legislation specific to cluster munitions and penal sanctions criminalizing non-compliance. The CMC praised the inclusion of provisions allowing States Parties to determine instances of non-compliance, a mechanism lacking in the Mine Ban Treaty framework.

Procedure

The brief discussions on procedural issues covered the role of Meetings of States Parties, Review Conferences, and the contributions meetings can make towards enhancing frameworks for cooperation and assistance. Canada actively supported the idea of annual

meetings and Review Conferences every five years, and asked if State Parties should hold one or two annual meetings up until the first Review Conference. Canada and the Netherlands agreed that Meetings of States Parties should be coordinated with meetings of the Mine Ban Treaty for practical purposes of conserving limited human and financial resources. Lebanon stated that allowances for convening special emergency Meetings of States Parties should also be included.

There was general agreement that the creation of an implementation support unit, secretariat, and intersessional work program would make vital contributions strengthening a future instrument.

Participants also discussed the appropriate number of ratifications for a future treaty to enter into force. Austria, CMC, Germany, and Canada supported the Lima text's provision that entry into force will occur with the deposit of the 20th instrument of ratification. The Netherlands questioned why the number was not higher, as the number for the Mine Ban Treaty is 40. The CMC replied that 20 was the original number proposed for the Mine Ban Treaty, and while 40 was settled on for the MBT, the idea for the Lima text is to improve upon the Mine Ban model.

Ireland, as Co-Chair of the session, concluded discussions saying that while it was difficult to draw firm conclusions, support for regular Meetings of States Parties was the emerging trend. There was also wide support for the valuable role of an implementation support unit and the question now will be whether provisions will be made in the text of a future instrument or by a decision of States Parties.

Definitions

While the discussions on the majority of the main elements of a future instrument were constructive and showed signs of promising consensus, participants expressed widely divergent views on a proposed definition for cluster munitions to be used in a future instrument. The issue will be the most significant hurdle for the negotiation of a future treaty as it will determine the scope and effectivity of a prohibition.

Ambassador Kongstad of Norway, Co-Chair of the session, emphasized that participants could begin from a common starting point with their mutual agreement on the definition set out in the Oslo Declaration, or the prohibition on cluster munitions which cause unacceptable harm to civilians. It was a positive sign that all delegations agreed on the necessity of banning some types of cluster munitions and acknowledged the grave humanitarian suffering caused by their use.

Ambassador Kongstad said that in creating a definition forming the basis of a prohibition, participants should keep in mind the major characteristics of cluster munitions which harm civilians—duds and the wide area affect of the weapons. Participants could agree that clearly we are talking about a prohibition, a prohibition on cluster munitions that cause unacceptable harm to civilians. Now, how far that prohibition extends throughout

the cluster munitions range is obviously the key question we have to address, Ambassador Kongstad said.

Views ranged across a spectrum of those advocating a total ban, those wishing to draw a line between unacceptable cluster munitions and cluster munitions which can be used responsibly without endangering civilians, and others advocating a more limited ban exempting cluster munitions with self-destruct mechanisms and certain failure rates.

Australia, Egypt, Finland, France, Poland, and Denmark supported a definition which would provide exceptions for submunitions equipped with self-destruct mechanisms.

Australia stated that, like other delegations, Australia regards self-destruct as well as self-neutralize capabilities to be very important, possibly even more important than to discriminate the target or as stated in the definition to automatically aim, detect, and engage. Poland supported the remarks made by Australia.

Finland said that in this process, we should not give up hope that the technical improvements will not make a difference. They do. Cluster munitions with self-destruct mechanisms are different from those that do not have the mechanism. We should not place all of the different 200 cluster munitions in the same bag. Finland added that it would like to see a neutralization aspect be included in the definition.

France emphasized that self-destruct and self-neutralization mechanisms serve to effectively diminish the humanitarian impact of cluster munitions and advocated for the inclusion of additional technical characteristics of cluster munitions, such as whether or not they have a limited life-span, the number of submunitions they contain (this would exempt certain munitions with less than 10 submunitions from the definition), and the lifespan, or maximum operational life above which a cluster munition would be prohibited. Denmark supported the French position.

Egypt circulated comments on the Lima text's proposed definitions, adding new language to exclude submunitions equipped with self-destruct mechanisms from a 'freeze' on production, development, transfer and stockpiling of cluster munitions for a period up to five years.

Japan also mentioned the importance of self-destruct mechanisms and safe deactivation measures in CCW discussions.

The UK said it was not ready to rule out self-destruct mechanisms, or technologies that provide fail-safe mechanisms which are designed to increase reliability and reduce the instance of ERW. It would be a most unfortunate message that we would send to the international community that we were disinterested in fail-safe mechanisms, the UK added.

Norway, Ireland, Lebanon, and the CMC strongly opposed any definition based on self-destruct mechanisms or failure rates. Self-destruct mechanisms do not protect civilians as

claimed, nor do they solve the humanitarian problems posed by the wide-area effect of cluster munitions, or their post-conflict effects. Simon Conway of the CMC explained to the Conference that submunitions equipped with self-destruct mechanisms, such as the M85s dropped on Lebanon by Israel, in effect, fail twice. These M85s are even more dangerous than other bombs because the self-destruct mechanism makes them more problematic to deal with for clearance, Mr. Conway emphasized.

Lebanon, Chad, Senegal, Indonesia, Norway, Ecuador, and Bosnia, in addition to the CMC and other NGOs, made statements supporting a total ban on cluster munitions as proposed in the Lima text. Senegal declared that no munitions are good. No munitions are better than other ones. They are all bad. They are all evil. They kill thousands of civilians, Senegal said.

The Netherlands, United Kingdom, Canada, Spain, and Switzerland called for a ban on certain cluster munitions. The Netherlands said that a distinction should be made and a line drawn between those cluster munitions that cause acceptable harm and those that do not, provided that cluster munitions are appropriately used. Defining that line that divides the world of cluster munitions into two parts is the challenge before the Conference and much more difficult than finding a definition of cluster munitions itself, the Netherlands said. The definition of that dividing line rests on the combination of reliability criteria and precision criteria, which would be interesting and should be properly explored, the Netherlands stated.

The UK supported the Dutch statement, adding that the Lima version is a useful start, but a number of key issues need to be addressed such as accuracy, reliability, submunitions inside containers, transitions, and military necessity.

Canada, Switzerland, and Spain made similar statements about distinguishing cluster munitions that may be used responsibly from those that pose unacceptable harm to civilians. Canada stressed the importance of realistic testing regimes to determine reliability that actually approximate real combat conditions.

Germany made references to the definitions it proposed in its draft CCW protocol text, such as excluding weapons containing less than 10 submunitions from a prohibition and including provisions permitting weapons equipped with targeting mechanisms. Slovakia, Denmark, Italy, and Estonia supported the German draft text, which is a significantly weaker prohibition than the Lima text.

The CMC reiterated its statement that the proper approach to a definition is to start with the assumption that all cluster munitions pose unacceptable harm to civilians and leave it up to governments to prove that the cluster munitions they wish to retain do not harm civilians. While the CMC supported the Lima text and was pleased to see that it does not include provisions on self-destruct mechanisms or failure rates, the Coalition raised concerns that several terms included in the text should be better defined and that containers and submunitions should be separately and explicitly defined.

On the exemption contained in the Lima text for ‘cluster munitions that are able to manually or automatically aim and detect point targets,’ the CMC interpreted this to refer to new sensor fuzed weapons systems. The CMC again stated that the burden of proof will rest on governments to assure the adequate protection of civilians. On the phrase, ‘unless their use is regulated or prohibited under other treaties,’ the CMC raised questions and concerns that if new treaties come about that are weaker than an instrument agreed to in the Oslo process and allow numerous exceptions (such as an instrument created in the CCW) it could possibly undermine the strength of the Oslo process treaty.

The session concluded with Ambassador Kongstad’s remarks and summary. He said that he perceived three fundamental differences of approach—those that view that we should ban all cluster munitions and that the balance of proof should be on states and governments to justify the continuing use of cluster munitions; those that believe that the existing definition is too wide and there should be additional exceptions; and those that attach importance to self-destruct mechanisms and reliability criteria. There is also a need to balance military requirements, military utility, and humanitarian concerns, he stated. Overall, I think that there has been a lot of rich discussion. I think it would be very useful to proceed to the next step by going through and analyzing and engaging with delegations and having delegations engage with each other in regard to the definitions...that would be the sort of process that would be extremely useful when we next meet, Ambassador Kongstad concluded.

CONCLUSION

The Conference closed after concluding remarks by Nobel Laureate Prof. Jody Williams, Nobel Women’s Initiative, Minister Plenipotentiary Alexander Benedict, Department for Arms Control, Disarmament, and Non-Proliferation of Austria, and Dr. Fabian Novak, Vice-Minister of Defense of Peru.

Prof. Williams called on governments to understand that we need human security, not national security. We’ve done our service to humanity by getting rid of landmines, and now we need to do it for cluster munitions, she stated.

Minister Alexander Benedict said that the past three days have produced thorough and constructive discussions on elements of a new treaty and that while there was much work ahead, there was a convergence of views on many issues. He was encouraged by the spirit of partnership and openness of the Conference, citing the collaboration between States, NGOs, and civil society as the key to future work.

Dr. Fabian Novak reminded participants of the important achievements reached during the Conference discussions and positive developments such as the announcement of a Latin American cluster munitions-free zone and a national moratorium by Hungary. He congratulated participants for their hard work and officially closed the Conference.

Steps forward

As the Conference concluded, there was a sense of optimism over the growing number of participants and the increasing demonstration of political will to take action and conclude a legally binding instrument banning cluster munitions which cause unacceptable harm to civilians by 2008. The productive and constructive discussions held during the Lima Conference are encouraging, but there is still much work to be done. Until participants reconvene in Vienna, for the next meeting of the Oslo Process, from 5-7th December 2007, civil society and those concerned about the humanitarian suffering caused by cluster munitions should strive to convince governments to join in the Oslo process. Governments should be encouraged enact national measures and moratoria, abandon arguments in favor of definitions based on self-destruct mechanisms or failure rates, and reaffirm their commitments to the continuation of the fundamental humanitarian objectives set out in Oslo and reinforced in Lima.

ⁱ Switzerland mentioned that it had essentially enacted a moratorium on cluster munitions, saying that, ‘...At the national level, the government of Switzerland has just taken an important decision towards the prohibition of certain cluster munitions. Indeed, the Federal Council stated in a response to a Parliamentary motion that federal law on war materials should be amended with a prohibition on the production, transfer, stockpiling, and use of cluster munitions which cause unacceptable harm to civilians, and that until the entry into force of such prohibition, Switzerland would declare a moratorium on the production, transfer, stockpiling, and use of such cluster munitions.’

The Swiss position, however, is ambiguous. In May, a proposal for a ‘general interdiction on cluster munitions which present a serious humanitarian risk by reason of their unreliability and/or imprecision’ was approved by the executive branch. The proposal stated that a total ban was excessive and that cluster munitions are a diverse set of weapons with differing degrees of humanitarian risks. It also stated that it is in accordance with the political declarations made at the 3rd Review Conference of the CCW on cluster munitions and at the Oslo Conference, as it bans the production, stockpiling, transfer and use or submunitions that because of their unreliability and/or imprecision present grave humanitarian dangers. The proposal requires that, until the entry into force of the proposed partial ban, the Federal Council will declare a partial moratorium on cluster munitions (as defined above).

Yet, the Swiss government has not defined what cluster munitions are covered by the proposal or its partial moratorium. They have set up an inter-agency working group to discuss definitions, which ultimately will be decided by the executive branch, but there is no scheduled time-table for a decision on a definition and discussions will probably continue along side of the Oslo process for quite some time. It is unclear what actual effect the Swiss proposal or ‘partial moratorium’ has on the ground.

Italy also indicated its willingness to enter into regional moratoria on the use of cluster munitions and alluded to pursuing national measures.

PARTICIPATION IN LIMA AND IN THE OSLO PROCESS

67 States participated fully in the Lima conference. The 27 new states that were NOT in Oslo are **bold** and underlined in the list below. Many new states, African states in particular, declared their support for the Oslo declaration. Even without explicitly endorsing the declaration, those 27 new states participated fully in Lima, making a total of 75 countries participating in the **Oslo process**.

AFRICA (14)

Angola, **Burundi**, **Chad**, **Ghana**, **Guinea Bissau**, **Lesotho**, **Liberia**, **Mauritania**, Mozambique, **Nigeria**, **Senegal**, **Tanzania**, **Uganda** and **Zambia**

AMERICAS (14)

Argentina, **Bolivia**, Canada, Chile, Colombia, Costa Rica, **Dominican Republic**, **Ecuador**, Guatemala, Mexico, **Panama**, **Paraguay**, Peru and **Venezuela**

ASIA AND PACIFIC (8)

Australia, **Bangladesh**, **Cambodia**, Indonesia, Japan, **Lao PDR**, New Zealand and **Thailand**

EUROPE (28)

Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, **Estonia**, Finland, France, Germany, **Greece**, Holy See, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Spain, Switzerland and the UK

MIDDLE EAST (3)

Egypt, Lebanon, and **Yemen**.

Notes:

Japan and Poland participated in both the Oslo and Lima meetings, and thus are participating in the Oslo process, but have stated they are not yet prepared to endorse the Oslo Declaration.

Australia, Bolivia, Ecuador, Estonia, Greece, Nigeria, Panama, and Paraguay participated in the Lima meeting, but did not explicitly endorse the Oslo Declaration.

Russia was an observer in Lima but CMC does not consider them a participant in the process.

States that did not attend Lima but were in Oslo and endorsed the Oslo declaration include: Afghanistan, Iceland, Jordan, Latvia, Liechtenstein, Slovenia, South Africa and Sweden.

Participating in the Oslo process we list 75 countries:

AFRICA (15)

Angola, **Burundi**, **Chad**, **Ghana**, **Guinea Bissau**, **Lesotho**, **Liberia**, **Mauritania**, Mozambique, **Nigeria**, **Senegal**, South Africa, **Tanzania**, **Uganda** and **Zambia**

AMERICAS (14)

Argentina, **Bolivia**, Canada, Chile, Colombia, Costa Rica, **Dominican Republic**, **Ecuador**, Guatemala, Mexico, **Panama**, **Paraguay**, Peru and **Venezuela**

ASIA AND PACIFIC (9)

Afghanistan, **Australia**, **Bangladesh**, Cambodia, Indonesia, Japan, **Lao PDR**, New Zealand and **Thailand**

EUROPE (33)

Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, **Estonia**, Finland, France, Germany, **Greece**, Holy See, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland and the UK

MIDDLE EAST (4):

Egypt, Jordan, Lebanon, and **Yemen**.

Of these 75 countries:

19 have produced or recently stopped production of cluster munitions: Argentina, Chile, Belgium, Bosnia and Herzegovina, Egypt, France, Germany, **Greece**, Italy, Japan, Netherlands, Poland, Serbia, Slovakia, South Africa, Spain, Sweden, Switzerland and the UK

34 stockpile cluster munitions: Angola, Argentina, Austria, Belgium, Bosnia and Herzegovina, Canada, Chile, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Guinea Bissau, Hungary, Indonesia, Italy, Japan, Jordan, Netherlands, Nigeria, Norway, Poland, Portugal, Serbia, Slovakia, South Africa, Spain, Sweden, Switzerland, UK, Yemen.

7 states once used cluster munitions, non-state armed groups also used cluster munitions in two of the instances: Bosnia and Herzegovina, Croatia (NSAG), France, Netherlands, Nigeria, Serbia, UK

11 states are affected by cluster munitions: Afghanistan, Albania, Bosnia and Herzegovina, Cambodia, Chad, Croatia, Guinea Bissau, Lao PDR, Lebanon, Serbia, UK (Falklands / Malvinas).

20 states are not party to the Convention on Certain Conventional Weapons (CCW): Afghanistan (signatory), Angola, Bangladesh, Chad, Dominican Republic, Egypt (signatory), Ghana, Guinea Bissau, Iceland (signatory), Indonesia, Lebanon, Mauritania, Mozambique, Nigeria, Tanzania, Thailand, Uganda, Venezuela, Yemen, Zambia

--Source: *The Cluster Munitions Coalition*

STATEMENTS AND DOCUMENTS FROM THE CONFERENCE

The following Statements from the Lima Conference, as well as comprehensive reports from other Oslo Process meetings are available at:

<http://www.wilpf.int.ch/disarmament/clustermunitions/LIMA/limareport.html>

- Archbishop Emeritus Desmond M. Tutu, Statement to the Lima Conference
- Cambodia, May 23rd, Opening Address by H.E. Mr. Sam Sotha
- Cluster Munition Coalition, May 22nd, Appeal
- Cluster Munition Coalition, May 23rd, Opening Address, Mr. Branislav Kapetanovic
- Cluster Munition Coalition, May 24th, Definition, Ms. Grethe Østern
- Czech Republic, General Statement
- Egypt, Comments on the Lima Chair's Draft Discussion Text

- Estonia, General Statement
- France, May 23rd
- France, May 24th, Definition
- France, May 24th, Storage and Stockpile Destruction
- France, Non-paper
- Holy See, General Statement
- Ireland, May 24th, Definition
- Lebanon, May 23rd, Ambassador Gebran Soufan
- Mauritania, General Statement
- Netherlands, May 24th, Definition
- Nobel Women's Initiative, Prof. Jody Williams
- Serbia, General Statement
- Switzerland, Opening Statement, Mr. Daniel Klingele
- United Nations, Ms. Sara Sekkenes
- UNDP, May 22nd, Regional Civil Society Forum, Mr. Paul Eavis
- UNDP, Clearance, Mr. Paul Heslop
- UNDP, Definition, Mr. Paul Eavis
- UNDP, International Cooperation and Assistance, Mr. Paul Eavis
- UNICEF, Chair's Discussion Text, Mr. Reuben McCarthy

Documents:

- Agenda of the Regional Civil Society Forum, May 22nd
- Draft Agenda of the Lima Conference, May 23-25
- CMC Observations on the Lima Chair's Draft Discussion Text
- CMC Key Principles for a future treaty
- Country Checklist- Matrix on cluster munitions, participation
- UN Secretary-General, Mr. Ban Ki-Moon, Message for Mine Action Awareness Day, April 4th
- GICHD Technical Note on Mine Action, Lessons Learned from Cluster Munitions Clearance in Lebanon

Related:

- Germany, Draft CCW Protocol on Cluster Munitions
- Germany, Addendum on Sensor Fused Area Munitions
- Germany, Corrigendum
- France, CCW Working Paper on Cluster Munitions
- CMC Press Release, May 21
- CMC Press Release, May 25
- HRW Press Release, May 25
- Lima Conference Press Release
- ICRC Montreux Report

