
**Report from the
Wellington Conference on Cluster Munitions
18-22 February 2008**



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Summary

The Wellington Conference on Cluster Munitions, the fourth international meeting of the Oslo Process, took place from 18-22 February 2008. The Oslo Process was initiated in February 2007, when 46 States pledged to negotiate a treaty banning cluster munitions that cause unacceptable harm to civilians, to be concluded by the end of 2008. As the final preparatory meeting before formal negotiations on the treaty begin in Dublin from 19-30 May 2008, the Wellington Conference was a critical step in the Oslo process.

Over 550 delegates from 122 States attended the Conference. The large number of participants, many traveling from great distances to reach Wellington, was in itself a demonstration of the political will and momentum the Oslo Process has generated to see the conclusion of a ban on cluster munitions. A number of States from the Pacific Region joined the Oslo Process for the first time.

With negotiations around the corner, the Wellington Conference had two primary objectives. First, the Conference sought to make progress towards consensus on the scope and content of the treaty in order to create a solid foundation for negotiations in Dublin. Second, a key outcome of the Conference was the endorsement of the Wellington Declaration, the “ticket” to take part in the negotiations in Dublin. By endorsing the Wellington Declaration, States pledge to participate in negotiations on the basis of the Draft Convention (the treaty text) discussed at Wellington.¹

Discussions during the Conference focused on unresolved issues in the Draft Convention. The primary areas of contention were the definition of cluster munition and exceptions for certain types of cluster munitions; concerns about military interoperability (or joint military operations with States not party to a future treaty); a possible transition period; retaining cluster munitions for training purposes; and obligations for past users of cluster munitions. A small number of States, mainly producers and stockpilers of cluster munitions, continued their attempts to weaken the Draft Convention in these areas.

Australia, Canada, the Czech Republic, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Slovakia, Sweden, Switzerland, and the United Kingdom intensified their efforts to dilute the Draft Convention. Calling themselves the “likeminded” group, they circulated or supported proposals on definitions, transition periods, and interoperability. Their aim was to have the Draft Convention revised to include their proposals in the text, and thus be considered as part of the basis for negotiations in Dublin. This group was only likeminded, however, in their agreement that they would not support a comprehensive ban on cluster munitions. Individually, they endorsed contradictory proposals and as a group, were largely unsuccessful in persuading additional States to join their ranks.

¹ This procedure, modeled after the Brussels Declaration in the Mine Ban Treaty process, is designed to prevent a State from introducing new text that would derail the work done over the course of the year in Oslo Process discussions at Lima and Vienna to create the Draft Convention.

A major achievement of the Wellington Conference was that these States failed to have their proposals included in the Draft Convention. Due to the hard work of the Cluster Munition Coalition (CMC) campaigners and the determination of Ambassador Don Mackay of New Zealand, and the other “core group” States driving the Oslo Process, the text of the Draft Convention was not weakened or changed over the course of the week and all proposals were compiled in a separate “Compendium” document.

While it may seem a technical detail, this has great significance for negotiations in Dublin. According to the Rules of Procedure governing the Dublin Diplomatic Conference, in order to be included in the text of the Draft Convention, a proposal that does not have consensus will need the support of a two-thirds majority vote.²

After a week of tough discussions and tense moments, the Conference reached a successful conclusion as over 70 States publicly endorsed the Wellington Declaration. Many states made memorable and colorful interventions affirming their support for the Declaration and the Oslo Process’ fundamental objectives. Others endorsed the Declaration privately and more States are expected to subscribe to the Declaration in the coming weeks before the Dublin Conference.

It was a considerable victory for the Oslo Process that so many States endorsed the Declaration, including the so-called “likeminded” States who do not support the total prohibition envisioned in the Draft Convention. Many of these “likeminded” States, however, agreed to the Declaration with the caveat that they interpreted the Declaration to imply that both the Draft Convention and the Compendium have equal standing as a basis for negotiations.

While the Wellington Conference succeeded in maintaining the integrity of the Draft Convention, negotiations at Dublin will not be easy. The proposals in the Compendium will have to be discussed at the risk of States withdrawing from the Process. As there was still no consensus on many of the key areas of the Draft Convention at the conclusion of the Wellington Conference, it will be a challenge to reach an agreement in Dublin on a treaty that will provide meaningful protection to civilians and keep the “likeminded” group of producers and stockpilers on board.

Opening Ceremony

The opening ceremony of the Wellington Conference on Cluster Munitions was a unique experience. The Conference commenced with a traditional Maori welcoming ceremony called a Powhiri. Representatives from the local Te Atiawa tribe greeted an official party of representatives from the conference with traditional songs, dances, handshakes, and the traditional Maori ‘hongi,’ or greeting by a soft pressing of noses. After words of

² As the overwhelming majority of States in the Oslo Process are strong supporters of a comprehensive ban on cluster munitions, it appears unlikely that a proposal for an exception for cluster munitions with a certain failure rate, for example, would gain the backing of some 90 or so States required.

welcome from a kaumatua, or tribal elder, the powhiri concluded with a song, which all Conference participants joined in singing.³

New Zealand Minister for Disarmament and Arms Control, Mr. Phil Goff, was the first of a series of speakers to address the Conference. Mr. Goff urged participants to make substantive progress during the week in order to lay a solid foundation for formal negotiations in Dublin, with the reminder that the more progress that can be achieved in Wellington, the greater the chance of agreement on a new convention in Dublin. Recognizing the hard work ahead of the Conference to reach agreement on critical issues, he encouraged States to remain open-minded on solutions and possible outcomes, to build on common ground and work together to bridge areas of difference.

Mr. Goff described the devastating effects cluster munitions have on civilian populations and New Zealand's efforts to clear unexploded cluster submunitions. He called on participants to look at the cause of the problem—the use of cluster munitions—and not just remedies for their effects. “It is...now time to put the fence at the top of the cliff, and not simply be the ambulance at the bottom. We need to eliminate the use of cluster munitions which have an unacceptable effect on civilian populations,” Mr. Goff said.

Mr. Goff was followed by a panel of speakers reflecting the human costs of the use of cluster munitions. Mr. Sam Sotha, Secretary General of Cambodia's Mine Action Authority, spoke from the perspective of a country heavily affected with cluster munitions. From 1969 to 1973, over 285 million submunitions were dropped onto Cambodia, Laos, and Viet Nam. 30 years later, Cambodian civilians continue to be maimed or killed by unexploded submunitions on a daily basis, Mr. Sotha said. Recently, cluster munitions have overtaken landmines in causing civilian casualties, a trend which Mr. Sotha feared would be exacerbated as development needs push people into contaminated areas.

Mr. Sotha concretely outlined 6 points that will be essential to make the Convention the strongest possible. Mr. Sotha stated that:

- 1) Strong language is needed on victim assistance, with clear and actionable steps; as well as utilizing the frameworks of the Convention on the Rights of Persons with Disabilities and the Mine Ban Convention;
- 2) All types of submunitions must be banned, without exception;
- 3) Transition periods must be rejected;
- 4) Interoperability is a non-issue and has already successfully been dealt with under the Mine Ban Treaty and Chemical Weapons Convention;
- 5) Stockpiles should be destroyed as soon as possible;
- 6) The commitment from countries able to provide financial and technical assistance should be clearly articulated and ambitious clearance targets must be accompanied by plans for support to affected countries.

³ The Maori have no word in their language for cluster munition. The Te Atiawa decided to name the weapon “taniwha,” their word for monster.

Mr. Sotha concluded that while these 6 issues are critical, the challenges in resolving them are not insurmountable.

Mr. Soraj Ghulam Habib, a 16 year old cluster munitions survivor from Afghanistan, and Mr. Branislav Kapetanovich, a cluster munitions survivor from Serbia, addressed the Conference from their perspectives as survivors, and on behalf of the thousands of others who have been affected and their families and their communities.

Mr. Habib welcomed the progress made in the Oslo Process but challenged participants to “be brave and go further.” At the age of 10, Mr. Habib lost both legs and a finger from a US made BLU 97 submunition. Confined to a wheelchair ever since, he asked participants to stop and reflect on the effects cluster munitions have on people and their communities. “I face all sorts of barriers, material and immaterial, that prevents me from the full participation in community life,” he said. “Cluster munitions destroyed my dreams. People laugh at me and have a negative attitude vis-à-vis me. They see me as a beggar. They pity me. So do you still want to talk to me about transition periods or interoperability? Do you still want to talk to me about exceptions? Please stay focused on what is really important,” Mr. Habib urged delegates.

As a former cluster munitions deminer, Mr. Kapetanovich addressed the Conference from personal experience to say that all cluster munitions are equally dangerous and that no expert would be able to prove with absolute certainty that safe cluster bombs exist. “Discussions on whether some cluster bombs are better than others are only a waste of time for us here, but in the future they could result in a waste of human lives,” Mr. Kapetanovich emphasized. He reminded participants of the fundamental reasons behind the convening of the Conference: that 90% of cluster munition casualties are civilians; that 30 countries and territories continue to struggle with cluster munition contamination; and that in just 1 year after the end of the 2006 war in Lebanon, 45 deminers—people trained to work with cluster munitions—have become victims themselves.

Mr. Steve Goose spoke on behalf of the Cluster Munition Coalition, highlighting the opportunity before the Conference to negotiate an effective and far-reaching instrument of disarmament and humanitarian law.

The CMC believes the existing Draft Convention forms an excellent basis for negotiations in Dublin, Mr. Goose said. The biggest concern is the potential weakening of the text in three critical areas: by including exceptions for certain types of cluster munitions, including provisions for a transition period, and deleting or seriously compromising provisions forbidding States to assist, encourage, or induce others to use, produce, or transfer cluster munitions (the interoperability issue).

Strengthening the integrity of the treaty is the key objective before the Conference, Mr. Goose said. Some participants speak about the tradeoff between the strength of the treaty and who is willing to sign it. This is a trade with a high price, trading away the lives and limbs of cluster munitions victims, Mr. Goose warned delegates.

Ms. Hilde Johnson, Deputy Executive Director of UNICEF, appealed to the Conference to heed UN Secretary General Ban Ki-moon's repeated call on Member States to address immediately the "horrendous humanitarian, development and human rights impact of cluster munitions by concluding a legally binding international instrument," and in the interim, to take domestic measures to freeze immediately the use and transfer of all cluster munitions.

Ms. Johnson emphasized the particular threat that cluster munitions pose to children. 40 percent of all civilians injured or killed by cluster munitions are children. Due to the unusual shapes and sizes of cluster munitions and the innate curiosity of children, a typical pattern emerges where children are drawn to interact with the strange objects they encounter in fields, orchards, schools, and streets, Ms. Johnson said. She provided several alarming statistics on children victims: "two-thirds of cluster munitions casualties in Kosovo were 19 or younger. In Afghanistan, the average age of casualties was between 7 and 14. In Vietnam...children make up about 62 percent of cluster munition casualties compared to 49 percent of landmine and other ordnance casualties."

Many UN agencies, such as UNDP, UNMAS, OCHA, ODA, UNIDIR, UNHCR, OHCHR, and WFP, are currently contributing to addressing the obstacles cluster munitions present for humanitarian aid and development. "From what UN agencies with a presence on the ground have seen, all cluster munitions that have been used and which types are still stockpiled, cause unacceptable harm to civilians. They should be prohibited," Ms. Johnson said. As some delegations have expressed their opinion that a treaty on cluster munitions should be negotiated under the auspices of the United Nations, Ms. Johnson's words served as a reminder that the Oslo Process has the support of the United Nations and that the treaty will be negotiated within the UN framework, although outside of the UN Convention on Certain Conventional Weapons (CCW).

Concluding the opening remarks, Ambassador Petritsch of Austria summarized the progress achieved at the Vienna Conference and Thomas Nash, Coordinator of the CMC, provided an update on recent civil society work in areas of public outreach and research, promoting a parliamentary network, encouraging divestment from cluster munition producers, and regional campaigning. Kia kaha, Mr. Nash said, Maori for stand firm, have strength.

Article 1—General obligations and scope of application

The Conference began with discussions on Article 1 of the Draft Convention, covering the general obligations and scope of application. The Article prohibits States from using, developing, producing, acquiring, stockpiling, retaining, or transferring cluster munitions, under any circumstances—meaning the Article applies to both international and non-international conflicts. Article 1(c) prohibits States from assisting, encouraging, or inducing anyone from engaging in any activity prohibited under the Convention. The Article also contains a new provision, Art 1(2), stating that the Convention does not apply to mines as defined by Amended Protocol II of the CCW.

Discussions on Article 1 focused on two critical issues: concerns over interoperability under Article 1(c) and the possibility of including a transition period as a provision under Article 1.

Interoperability

During discussions on Article 1(c), 18 States expressed concerns that the paragraph could expose their armed forces to criminal liability or would interfere with their ability to maintain military alliances and participate in joint military ventures or UN peacekeeping operations. For these States—most NATO countries or US allies—interoperability was a major sticking point in discussions.

Japan circulated a proposal for revising Art 1(c). Under Japan's text, States would be prohibited from assisting, encouraging, or inducing anyone to “develop, produce or otherwise acquire cluster munitions.” States would, however, continue to be permitted to assist States to *use* cluster munitions. “Such a provision will ensure that the number of cluster munitions to be prohibited under the new Convention will not increase and therefore suits our purpose,” Japan said. It is unclear how such a provision would suit the purpose of the Convention though. Why would States agree to ban cluster munitions, destroy their own stockpiles, but then assist or encourage other States to continue to use weapons they themselves have deemed illegal? Australia, the Czech Republic, Denmark, Germany, France, Italy, Turkey, and the United Kingdom supported the Japanese proposal.

Germany proposed keeping the original wording of Art 1(c), while adding a sentence that the provision “does not preclude the mere participation in the planning or execution of operations, exercises or other military activities by the Armed Forces or by an individual national of a State Party to this Convention, conducted in combination with Armed Forces of States not Parties to this Convention which engage in activity prohibited under this Convention.” Although the German proposal claims to only permit the “mere” participation in planning and execution of an unspecified range of military operations, the proposal does not appear to place any substantial restriction on a State Party's activities in military coalitions. The Czech Republic, Denmark, France, Italy, Slovakia, Spain, and the United Kingdom supported this proposal.

France suggested adding an additional article to the Draft Convention stating that “nothing in this Convention shall be interpreted as in any way preventing military interoperability between States parties and non-States parties to the Convention.”

Canada proposed that States could have the option of declaring not to accept the provisions of Article 1(c) with regards to participating in joint military operations, for an unspecified period of years. “This suggestion would permit states parties to immediately commit to not use cluster munitions or engage in other prohibited conduct, but expressly defer the application of article 1(c) for a finite period of time to permit their continued participation in combined military operations with non-party states while the new universal norm is established,” Canada said. During this period, the State Party involved

in a military operation should try to encourage any Non State Party to ratify the Convention, according to the Canadian proposal.⁴

Australia, Canada, Denmark, Finland, France, Germany, Italy, Japan, Netherlands, and United Kingdom indicated that the proposals from Japan, Germany, France, and Canada should be included in the Compendium and understood as having equal status with the Draft Convention.

Australia circulated a discussion paper on interoperability and implications for international operations. The paper outlined examples of potentially problematic military scenarios for further consideration, such as providing logistics, refueling services, air traffic control, or other forms of support for operations where cluster munitions may be used or may be suspected to be used. The paper claims that while issues pertaining to interoperability have largely been solved in the Ottawa Convention, interoperability will be a more difficult issue to resolve for cluster munitions, as cluster munitions are more likely to be used by certain States in modern coalition warfare. The paper received support from Canada, Czech Republic, Denmark, Finland, France, Germany, Italy, the Netherlands, Sweden, Switzerland, and the United Kingdom.

During discussions Lithuania, Malaysia, and Turkey also expressed concerns about interoperability.

Other States strongly opposed any proposals that would weaken the Draft Convention in regards to interoperability. The ICRC and Norway, supported by Bangladesh, Ecuador, and the CMC, stated that practical solutions could be found to address interoperability issues. Norway recognized that it could foresee difficulties if cooperating States have different obligations once cluster munitions are prohibited, but interoperability is an issue neither new nor unique to cluster munitions. During the Mine Ban Treaty negotiations, interoperability concerns were raised as a major issue, but in practice, the issue has been solved, Norway said.⁵

⁴ The rationale for its proposal, Canada stated, is not unprecedented and “a similar provision is found in Article 124 of the Rome Statute for the International Criminal Court, which permits deferral of the Court’s war crimes jurisdiction for up to seven years. Here, this exemption permitted states with specific concerns to remain part of the larger treaty regime, with the understanding that it was better to accommodate these concerns than to exclude their participation.” Canada reasoned that its proposal “would allow for the establishment of a strong normative regime, with a high number of states parties, stigmatizing the use of cluster munitions.”

⁵ Norway listed other areas of international law wherein interoperability has been a potential concern. One example was the number of countries who had ratified Additional Protocols I and II to the Geneva Convention and interoperability concerns raised regarding the status of combatants and treatment of detainees. Another example was multinational military coalitions where not all contributing States were parties to the International Criminal Court (ICC) Statutes which establish jurisdiction over war crimes. In addition, under the Chemical Weapons Convention (CWC) interoperability issues could exist regarding riot control agents and differing international human rights obligations could present problems regarding the transfer and treatment of detainees. However, in practice, interoperability has not presented problems under these areas, Norway said.

Norway rebutted a point made in Australia's discussion paper that Article 1(c), together with Article 9 of the Draft Convention on individual criminal liability, would impose a "new category of international crimes or universal jurisdiction." Norway wished to underline that Article 9 refers only to sanctions under national domestic law and would not subject service personnel to unwarranted criminal prosecution.

Austria said that as cluster munitions are increasingly questioned as an inappropriate weapon, it will be more difficult to use these weapons in multilateral operations designed to win the hearts and minds of the people. Austria enacted a national law comprehensively banning cluster munitions in January 2008 and continues to participate in UN peacekeeping missions. Austria said that since its national law entered into force, it is still an active participant in operations, but now looks at missions more carefully and requests partners not to use cluster munitions and not to involve Austrian service personnel. It will be possible that in the future Austria will not be able to participate in such operations, Austria stated. However, this will be a conscious choice, Austria said, as it may decide it does not wish to be a participant in an operation where cluster munitions are used.

During the Conference, Bangladesh, Mauritania, Ghana, Indonesia, Senegal, and Sierra Leone supported others saying that the Draft Convention must not be weakened with provisions relating to interoperability.

Transition Period

The second major issue discussed under Article 1 was the possibility of including a transition period. A transition period would allow States to continue to use prohibited cluster munitions while they found ways of replacing them with alternate weapons. Germany, Japan, Sweden, Switzerland, and the UK circulated proposals on transition periods during the Conference session.

Japan stated that countries possess cluster munitions for legitimate security reasons and therefore a transition period is necessary to allow States to fill the gap created in their arsenals by a prohibition on cluster munitions and procure those munitions which are not prohibited. A transition period should not be abused, Japan said, and use of cluster munitions during the transition period should be limited to "only when strictly necessary." Japan's proposal contains two possible versions of a new Article 1(2) on a transition period. Neither version specifies the number of years a transition period would be granted, nor defines when the use of cluster munitions may be deemed "strictly necessary."

The United Kingdom proposed including a new Article 1(2) on a transition period, also for an unspecified number of years.

During the plenary session, Sweden said that a “reasonable” transition period should be introduced to allow states to phase out prohibited cluster munitions. The absence of a transition period would mean that States would have to delay adhering to a new convention, Sweden said. As to the length of the transition period, Sweden suggested that it should not be longer than the limit for stockpile destruction—6 years—with the possibility of applying for a 10 year extension. This proposal, however, was not included in the Compendium.

Germany and Switzerland’s proposals were slightly more restrictive in that during a transition period, only cluster munitions equipped with self-destruct, self-neutralization, or self-deactivation mechanisms would be permitted to be used. These munitions, while ultimately to be prohibited, could be used only in accordance with international humanitarian law and their transfer would be prohibited.

Germany’s proposal adds a transparency requirement, stating that the types, quantities, and deadline for removal from service of these weapons must be provided to the UN Secretary General. During discussions, Germany said that it would consider 7 years as an acceptable length for a transition period, acknowledging that other countries may require more time. Germany’s proposal garnered support from Denmark, France, Italy, Slovakia, Spain, the Czech Republic, and the UK.

Switzerland’s proposal stipulates that during a transition period, only cluster munitions equipped with self-destruct mechanisms could be used for training purposes, as a last resort, or in the case of self-defense.

During the Conference, Bangladesh, Ecuador, Ghana, Indonesia, Laos, Mauritania, Norway, Sierra Leone, and the CMC strongly opposed the inclusion of a transition period. Norway called it a “challenge” to explain a situation where a weapon is considered to be so bad it has to be banned but at the same time be allowed to be used. Laos said that, as an affected country, it was beyond understanding that a transition period might be permitted.

Ghana called a transition period a “paradox.” Ghana and Bangladesh stated that the 10 year period permitted for the destruction of existing cluster munition stockpiles in Article 4 of the Draft Convention would be sufficient to accommodate the demand for a transition period.

For the CMC, a transition period would fundamentally undermine the purpose and integrity of a future treaty. The treaty must stigmatize cluster munitions, not legitimize them. It would be illogical and hypocritical to state that the objective of the Oslo Process is to ban cluster munitions, as a matter of urgency, and then call for a transition period where illegal weapons could still be used.

As additional issues under Article 1, Finland, France, Italy, Nepal, Lithuania, Slovakia, Sweden, Switzerland, and the United Kingdom, suggested that Article 1 on general

obligations and scope of application should be explicitly linked to Article 2 on definitions in the Draft Convention.

As discussions concluded on Article 1, there was a general sense that interoperability concerns could be solved constructively but transition periods would be a more divisive issue. Mr. Steve Goose, on behalf of the CMC, stated that it was unfortunate that the two issues were lumped together. On the subject of a transition period, Mr. Goose said there is no solution or acceptable compromise. However, with regards to interoperability, a fruitful discussion could be possible and a practical solution could be found that would avoid creating a situation where a State would make it easier for its allies to use cluster munitions, Mr. Goose suggested.

Countering the States that wanted to weaken Article 1, many countries expressed their full support for the Draft Convention, or made interventions calling for a complete prohibition on cluster munitions, such as Argentina, Bangladesh, Benin, Chile, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Indonesia, Lao PDR, Lebanon, Nepal, Malaysia, and Norway.

Definitions

Tuesday, February 19th, the second day of the Wellington Conference, was devoted to discussions on the definition of cluster munition to be used in a future treaty. Based on progress made on the issue of definitions at the Vienna Conference, Article 2 on Definitions in the Draft Convention now includes a definition of “cluster munitions victims” which comprises persons directly impacted by cluster munitions, as well as their families and communities. Article 2 also states that cluster munitions or submunitions designed to produce flares, smoke, chaff, electrical or electronic effects are not covered by the Convention, as agreed in discussions in Vienna.

Ambassador Don Mackay of New Zealand, as chair of the session, focused discussions on sensor-fuzed submunitions, but other potential exclusions from the definition of cluster munition were discussed, including self-destruct mechanisms, electronic fuzes, generic guidance systems, and failure rates.

Introductory remarks began with a presentation from explosive ordnance expert Colin King. Mr. King listed several types of cluster munitions, which he called the “worst offenders,” that present great danger to civilians, and are extremely unreliable due to design flaws and faulty fuzing systems. Mr. King noted that these “worst offenders” are the most commonly stockpiled types of cluster munitions in military arsenals across the world. Mr. King emphasized that self-destruct mechanisms will not make these weapons safe. Nor should States rely on testing rates as a benchmark of reliability, Mr. King added. Testing figures do not reflect the operational reality of cluster munitions when used in combat situations and reliance on testing figures also poses serious limitations for verification of a treaty.

Mr. King provided participants with a bit of background on the technical aspects of sensor-fuzed munitions. One sensor fuzed munition, BONUS, contains only 2 submunitions (as compared to several hundred submunitions contained in some common types of cluster bombs). Each submunition is equipped with sensors, which activate at a given height in the submunition's descent. The sensors scan the ground in a circular pattern as the submunitions spin toward the ground. The sensors then identify a target based on its heat source before shooting it. Mr. King explained that while sensor-fuzed munitions may appear to provide advantages in targeting and use lower numbers of submunitions, it is uncertain that sensor-fuzed munitions will be less indiscriminate.

Sladan Vuckovic, a cluster munition survivor and trained professional deminer, reminded participants of cluster munitions' human costs, regardless of their technical components. "Experts, scientists, they gave several definitions on what cluster munitions are. Which one of those is true, is more or less a relative matter," Mr. Vuckovic said. "Why, I cannot understand why and how can someone try to divide these weapons, inhumane weapons for killing of people, killing of civilians, seniors, women and children, how can they try to divide them into safe and unsafe ones. Whom can they be safe for?" Mr. Vuckovic asked.

In the plenary session on definitions that followed, the growing polarization between the small group of "like-minded" States calling for exemptions for certain types of cluster munitions and the majority of States who oppose any exemption or weakening of the Draft Convention became increasingly apparent. The group of States calling for exemptions— Australia, Canada, the Czech Republic, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Slovakia, Sweden, Switzerland, and the United Kingdom—submitted or endorsed several proposals for exemptions for certain types of weapons based on criteria such as sensor-fuze technology, self-destruct mechanisms, certain failure rates, reliability and accuracy considerations, electrical fuzes, or a limited number of submunitions. While these countries could not agree on what cluster munitions would not be prohibited, they were in agreement that they did not support a total ban on cluster munitions. As a number of these States agitatedly insisted that their proposals must be included in a revised version of the Draft Convention, discussions were tense at times. A few of these States appeared to be on the verge of walking out of discussions if their proposals were not incorporated into the Convention's text.

Sensor fuzed munitions

Germany led discussions on sensor fuzed munitions with a presentation on what it calls "point target munitions." Germany circulated a proposal for an exemption for munitions containing a limited number of submunitions, "each designed to engage a point target within a pre-defined area and equipped with a self-destruct and self-deactivation mechanism." The German proposal defines a point target as one that "requires the accurate placement of bombs or fire," as compared to an area target, "consisting of an area rather than a single point." Germany stated that if a munition met the following cumulative criteria—contained less than 10 submunitions, was designed to engage a point target, is equipped with a self-destruct mechanism, then it should not be considered a

cluster munition. Germany's definition also states that "reliable cluster munitions" are those with a failure rate of less than 1 %.

Germany called its definition "the middle of the road" towards a compromise solution. Germany claimed its proposal would establish strict criteria, maximize the protection of the civilian population, and present an alternative to cluster munitions. It will help persuade countries that are not present in the Oslo Process to join, with the assurance that we are aiming at a realistic approach, Germany asserted. This approach is to do away with the old types of cluster munitions, do away with cluster munitions in the near future, and develop alternative weapons, Germany said.

Switzerland submitted a similar proposal providing for exemptions for munitions "designed to engage a point target within a predefined area and contains a self-destruct, self-neutralization or self-deactivation mechanism (namely sensor-fuzed munitions)."⁶

Australia also supported exemptions for sensor fuzed munitions, defined as "a munition that incorporates an advanced sensor fusing capability and which is fitted with failsafe self destruction and self neutralization devices."

Supporting the remarks made earlier by Colin King, the CMC and ICRC were skeptical that sensor fuzed munitions would be an acceptable solution. Steve Goose, on behalf of the CMC, stated that sensor fuzing in itself isn't enough to solve the humanitarian problems associated with cluster munitions. It ignores the broader aspect of concern over the wide area effect of the weapon. For some sensor fuzed munitions, the search area is extraordinarily large and wider than the footprint of certain cluster munitions, Mr. Goose said. The ability of sensor fuzed munitions to distinguish between civilians and military objects is also questionable, Mr. Goose added.

The ICRC raised concerns about sensor fuzed munitions in the context of discussions on automated weapons systems. Several factors question these weapons' capacity to discriminate: for example, if in the launching process, the weapon is no longer aimed or guided by a person, but instead by automated technology; or if it is not an individual unit aimed at a confirmed objective. If the weapon's sensor is as likely to hit a civilian target as a military target and there is no human control, the ICRC would consider it to be an indiscriminate weapon, the ICRC said. At a recent CCW Group of Governmental Experts meeting in January 2008, one manufacturer of a sensor fuzed weapons system confirmed that the weapon would in fact be incapable of distinguishing between a tank and a civilian school bus.

The ICRC also noted the lack of detail and information on the definition and reliability of sensor fuzed munitions. For example, what is meant by a guidance system, the ICRC asked. Would a small fin on the back of a submunition qualify? Governments have not provided the level of detail or proof that sensor fuzed munitions categorically will not cause unacceptable harm to civilians.

⁶ This proposal reflects an apparent change in the Swiss position and would require Switzerland to ban its own stockpiles of cluster munitions—the M85, after a transition period.

Electrical fail safe systems

Sweden suggested that of all the “special features” States have argued qualify munitions for exceptions, such as sensor fuze techniques, accuracy and failsafe mechanisms, “one essential feature, in considering current and – probably more important – future munitions, must be electrical fail safe systems which embrace both self destruct and self deactivation mechanisms. The rationale for electrical systems is that batteries always discharge and render the munitions inoperable,” Sweden stated. In addition to a requirement for electrical self-destruct mechanisms, Sweden said that cluster munitions must also be equipped with an internal guidance system, including sensors, to improve their accuracy.

Canada agreed electrical based fail safe systems would be a way to increase the reliability of cluster munitions.

“Reliable” and “accurate”

Japan and France circulated proposals for exemptions for certain types of cluster munitions based on reliability and accuracy criteria.

Japan’s proposal includes the broadest range of possible exceptions under a future treaty (therefore the weakest proposal from the civil society viewpoint). Under the Japanese proposal, cluster munitions with less than 10 submunitions and “reliable” *or* “accurate” cluster munitions would be permitted. To be considered “reliable” in the Japanese proposal, a cluster munition must be equipped with *either* a self-destruct mechanism, self-neutralization mechanism, or a self-deactivation mechanism *or* have a failure rate of less than 1%. Accurate cluster munitions must have a guidance system *or* be “otherwise effective only within a predefined area.” These requirements are not be cumulative and would permit many types of cluster munitions which have been proven to be extremely dangerous for civilians to continue to be used.

France’s proposal is similar to Japan’s but slightly more restrictive. France emphasized that reliability and accuracy criteria, such as requirements for self destruct mechanisms, failure rate benchmarks, and guidance systems should be cumulative requirements. The French proposal also excludes cluster munitions with less than 10 submunitions from the definition. Under the French proposal, an acceptable munition would have to have either a self-safe mechanism (self-destruct, self-neutralization, or self-deactivation mechanism) *or* a dud rate below 1 % *and* an accuracy requirement that its submunitions be effective only within a pre-defined target area.⁷

⁷ France and Switzerland both provided definitions for “carrier/container” in their proposals. One common definition in their proposals lists the types of munitions covered (“artillery shell, air bomb, guided or unguided missile”). This approach could possibly mean the exclusion other types of munitions from the definition of cluster munition.

The Czech Republic and Slovakia supported Japan's proposal, while the Netherlands supported both the Japanese and French proposals.

Civil society has repeatedly demonstrated that exceptions for cluster munitions based on failure rates and self-destruct mechanisms are flawed approaches if a future treaty is to provide meaningful protection for civilians. At the Vienna Conference, the Norwegian Defence Research Establishment (FFI), Norwegian People's Aid, and C King Associates introduced a comprehensive report analyzing the effects of the M85 submunition, the so-called "benchmark" of reliability and accuracy of submunitions currently in existence. Manufacturers, users and stockpilers of M85s claim that the weapons do not cause unacceptable harm to civilians because they are equipped with self-destruct mechanisms that, according to producers, lower the failure rate of the munition to "only" around 1 or 2%.

The report shows, however, with detailed analysis and field evidence from the recent use of M85s by Israel in Southern Lebanon that the actual failure rate of the M85 is close to 10%. "The current focus on failure rates can also obscure the fact that in the case of cluster munitions, the sheer quantities of submunitions involved means that very large numbers of duds would be produced, even with a figure as low as 1%," the report states.

The report highlights that testing figures relied on by governments as benchmarks for failure rates are dramatically different from the results of the weapons when deployed in conflict situations. Testing figures cannot, therefore, serve as a credible basis for arguments allowing countries to retain certain cluster munitions. The report concludes that "the specific example of the M85 demonstrates that while SD [self-destruct] mechanisms in general may help to lower failure rates, they are not capable of ensuring against post-conflict contamination at an unacceptable level."

Limited number of submunitions

Australia, Canada, Finland, France, Germany, Japan, the Netherlands, and the United Kingdom supported exemptions for cluster munitions with a limited number of submunitions. Many proposed 10 submunitions as a benchmark, while Canada suggested between 5 and 15 would be acceptable.

Austria explained that this makes little sense from a civilian perspective. Using 10 cluster munitions containing 10 submunitions is no different than using 1 cluster munition containing 100 submunitions. Furthermore, weapons with low numbers of submunitions are often packaged together and delivered in larger quantities, meaning that high numbers of submunitions are still delivered to target areas. Numerical limits on submunitions present the added difficulty of where to draw the line in determining a permissible submunitions.

Direct fire munitions

The United Kingdom proposed an exemption for munitions that are “direct fire weapons or which incorporate systems designed to deliver effects within a predefined area or on point targets.”

Direct fire weapons, while not broadly discussed during the Wellington Conference, have been mentioned previously in Oslo Process meetings. While no agreed upon definition for direct fire weapons exists, it is commonly understood as weapon that is fired at a target “within the line of sight” of the gunner that approaches its target at a relatively flat trajectory. The CMC questions why direct fire weapons would be justified for exclusion from a prohibition. The characteristics of direct fire weapons have no relevance to the accuracy or reliability of the weapon, or to the likely number of submunitions that will be left on the ground after an attack.

A narrow interpretation of the Oslo Process objectives

Finland, Slovakia, and the Netherlands did not circulate textual proposals but were adamant that the Oslo Process was not about negotiating a total ban on cluster munitions. Slovakia said that its understanding was, and still is, that we are not pursuing a total ban. On this condition we joined the Oslo Process, Slovakia emphasized, adding that now this situation has drastically changed. A total ban won’t be universalized from a qualitative point and will have doubtful utility on the ground, Slovakia claimed.

Finland echoed these remarks, stating that the aim of the Oslo Process is only to prohibit *those* cluster munitions that pose unacceptable harm to civilians. A total ban is not a solution, Finland said, and would increase civilian harm as States would have to use large amounts of unitary munitions as an alternative. Cluster munitions should be permitted to be used for legitimate defensive purposes and only in a country’s own territory, Finland said.

The Netherlands stated that it agreed with many of the points raised by Finland. The Netherlands has repeatedly said in previous Oslo Process Conferences that it is participating in the process with the understanding that there are certain cluster munitions that pose unacceptable harm to civilians and others that don’t, based on “clear cut” criteria like reliability, accuracy, and low numbers of submunitions.

Additional proposals

Surprisingly, Ireland, Norway, and Peru (all “core group” States driving the Oslo Process) discussed exemptions for certain types of munitions. Peru proposed a rather unspecific exemption for “a munition or sub-munition which has the technical characteristics that allow to limit the area affected and reduce the risk of UXO contamination.”

Norway appeared to be supportive of Germany’s idea of exemptions for point target munitions. The Convention must, as a minimum, ban all weapons that contain and

disperse multiple sub-munitions, even if they are equipped with fail safe mechanisms, Norway said. “However, weapons capable of detecting and engaging point targets and capable of distinguishing between military objectives and civilians, provided that they are also equipped with adequate fail safe mechanisms, should not be defined as cluster munitions because they meet the humanitarian requirements we seek to achieve,” Norway claimed.

In discussions, Ireland stated that while it would remain vigilant to any loopholes that would permit unacceptable cluster munitions to continue to be used, a possible exemption could be made for cluster munitions, based on cumulative criteria, to be included as Article 2(c). Ireland referred to the six criteria for exclusions that have been proposed and claimed that while no single criterion in itself would merit an exemption, if applied in combination, it might sufficiently reduce the humanitarian hazards of cluster munitions to levels commensurate with unitary munitions. However, the actual proposal Ireland included in the compendium on Article 2 does not contain language for an exception in Article 2(c).

Everything and the kitchen sink

In a joint proposal, Australia, Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, and the United Kingdom, stated that the following criteria, either individually or in combination, were proposed as potential descriptors of cluster munitions which do not cause unacceptable harm to civilians: sensor fuzing (multiple, single, point target discriminations, deliver effects within a defined area), fail safe systems (mechanical and electronic), limited numbers of submunitions, delivery by direct fire, failure rates, and accuracy, along with considerations of transition periods. In essence, these States want to ensure that everything remains on the table for negotiations in Dublin.

On the other hand, Austria explained that in the process of formulating its national law banning cluster munitions, it considered each of the above issues from experts’ and security policy experts’ perspectives. Austria said that after a difficult process, it came to a clear decision that only a total ban was acceptable. Austria considered and rejected exceptions for point target munitions, self-destruct mechanisms, failure rates, limited numbers of submunitions, and interoperability as unacceptable.

A total ban without exceptions

Despite tense moments in and outside the plenary session, Tuesday’s discussions on definitions heard one of the largest outpourings of support for the Oslo Process and a comprehensive prohibition on cluster munitions of any previous meeting in the process.

An overwhelming majority of States participating in discussions on definitions resolutely called for a total ban on cluster munitions, without exceptions for certain types of munitions. Countries from across almost every region of the world made strong and clear interventions supporting the Oslo Process. Repeatedly, they stated they were unconvinced

by arguments that technical solutions would solve the humanitarian risks posed by cluster munitions. While many were developing or smaller nations, each country has the same weight in the Oslo Process and it was encouraging to see increasing solidarity between affected countries, developing nations, and regional groups in Wellington discussions.

From Africa

A significant portion of African countries strongly support a comprehensive ban on cluster munitions. Zambia announced that it will hold a regional meeting for African States from 31 March to 1st April 2008, with the aim of formulating a regional position on cluster munitions. Zambia made it very clear that it supports a total ban on cluster munitions, as all cluster munitions cause unacceptable harm. “If any form of harm is acceptable, it would be interesting to see those of us advocating for a partial ban to volunteer themselves as examples for all of us to see just how acceptable harm is,” Zambia questioned delegates. “We have experienced the effects of cluster munitions during the liberation struggles and we did not find anything acceptable about them. All we saw was death and pain. It is time we called a spade the spade it really is,” Zambia said.

Sierra Leone, another affected country, said it would “support the notion for a total ban and nothing less.” Senegal stated that it was opposed to all exceptions for types of weapons relating to the number of submunitions they contain or technical mechanisms meant to limit collateral risk, as such exceptions will seriously compromise the efficiency of the convention. Nigeria said it “remains unimpressed with technical clarifications that seem to suggest that there are good munitions and bad munitions, and that only the bad ones should be put beyond use. That is not good enough for, as we know too well, there is no such thing as half death. Cluster munitions kill or maim, and only the victims should have the final word as to the killing efficiency or accuracy of these weapons.” Mozambique said that “the purpose of our discussions is not to regulate the use of cluster munitions, but in the contrary, is intended to ban them. Because we don’t believe neither in the concept of safe cluster munitions, nor in their categorization, we hold the view that there should be no exemption in their definition.” DR Congo, Ghana, Lesotho, Madagascar, Mauritania, and Morocco also made interventions saying that they would not accept any exceptions in the definition of cluster munitions.

Latin and South America

From the South and Central American region, Argentina, Costa Rica, Guatemala, Honduras, Mexico, and Paraguay came forward in support of a total ban without exceptions. Mexico said that nothing would justify the use of terrible cluster munitions, not self-destruct mechanisms, sensor fuzing, nor more modern munitions. Mexico said that it would only support a total ban, as there are no good or bad munitions.

Asia Pacific Region

Many newcomers to the Oslo Process from the Pacific region enthusiastically advocated for a comprehensive prohibition, such as the Cook Islands, Fiji, Indonesia, Nauru, the Philippines. The Philippines said that it participates in UN peacekeeping missions has many nationals working overseas. “The widespread presence of our peacekeeping personnel and of our citizens, in or near conflict zones worldwide, exposes them to the menace of cluster munitions. A total ban is the only means by which we can ensure their safety and security and those other people who may be facing this danger,” the Philippines reasoned. Given the doubts over the adequacy of exemptions based on technical considerations and given the best available evidence presented so far, “we think that doubts should be resolved in favor of the many cluster munitions victims – and future victims – all over the world,” the Philippines said.

Nauru called the Wellington Conference “an eye opener” for a country such as itself, who is not affected by cluster munitions. While it claimed not to have the capacity to be instrumental in the drafting process, Nauru said it was committed to achieving a total ban and to ensure that cluster munitions “never, never appear in the beautiful Pacific.” The Cook Islands said it was taken aback by the grief, pain, and hurt suffered by civilian populations over the world, highlighted by the survivors participating in the Wellington Conference. The Cook Islands said its position was what any reasonable person would have taken—that enough is enough—and only the total eradication of the use of these weapons was acceptable.

Indonesia echoed other supporters that the objective of the Oslo Process is to ban, (and repeated, to *ban*), not to regulate the use of cluster munitions, in all of their aspects. Indonesia said that two of its peacekeepers had recently become victims of cluster munitions in Lebanon.

Affected Countries

Affected countries, such as Afghanistan, Cambodia, Laos, Lebanon, also declared they would accept nothing less than a total ban. Cambodia explained, “If we are going to use human security as our guiding ideal in negotiating this convention, we must recognize that these so called ‘technology loopholes’ which are being proposed by some countries runs contrary to this principle. Therefore, Cambodia would like to restate its call for a comprehensive definition of cluster munitions, which does not allow exclusions based on unproven technical safeguards.” Laos asked frankly if producers would be willing to use cluster munitions on their own territories.

On behalf of the Nobel Women’s Initiative, Prof. Jody Williams congratulated those States coming forward to say that technical fixes were not a solution and criticized those calling for exceptions, transition periods, or interoperability provisions. States that were not willing to support a comprehensive ban should return to the CCW, rather than weaken the Oslo Process with provisions for transition period or interoperability (which she referred to as making allowances for the United States).

As the first two days of the Wellington Conference concluded, it was evident that there was no consensus on Articles 1 and 2. Discussions on the key issues of interoperability, transition periods, and exceptions in the definition of cluster munitions will carry over to Dublin for negotiation. As a further attempt to make progress on these issues, Ambassador MacKay of New Zealand held three informal consultations on interoperability, while Ambassador Macedo of Mexico held informal discussions on definitions and transition periods. Ambassador MacKay reported that the discussions helped narrow the parameters of the issues, although clearly differences of views still remained.

Clearance and Destruction of Cluster Munition Remnants

The third day of the Wellington Conference began with discussions on Article 4 of the Draft Convention, on clearance and destruction of cluster munition remnants. The article requires States to identify and document contaminated areas, mark and fence where feasible, provide risk education to civilians (a new separate sub-paragraph), and clear contaminated areas within a 5 year deadline (with the possibility of a 5 year extension period in extraordinary circumstances). Article 4(4) contains obligations for past users of cluster munitions to provide technical, financial, material, or human resource assistance to States they have used cluster munitions against. Article 4(4) also specifies that past users must provide information on the types and quantities of cluster munitions used, and precise locations of cluster munition strikes and areas where remnants are known to be located.

Retroactivity and responsibilities of past users

The main issue brought forth in discussions on clearance was disagreement over Article 4(4) on responsibilities of past users and concerns about potential retroactivity—something usually not acceptable in international treaty law. France, Germany, Italy, Japan, the Netherlands, Sweden, and the United Kingdom raised objections to the article.

Italy proposed deleting the Article altogether. Article 4(4) would be counterproductive by potentially creating controversies of a historical or political nature, Italy said. Italy added that the Mine Ban Treaty, a model for the Draft Convention, does not contain retroactive provisions. This choice was instrumental in creating a positive and cooperative environment in the Mine Ban Treaty and a departure from this might create a controversial atmosphere and lead to a path of recrimination, Italy stated.

The United Kingdom supported Italy's proposal. The UK cited that, as currently drafted, the Article "contains a retrospective obligation to clear that would require States Parties to provide assistance dating back to when cluster munitions were first used [in World War II]...In addition, this retrospective nature is not normal within international

conventions.” The UK reasoned that the convention should focus on “future use” and future obligations.

Mr. Ahmed Yassin Najem, injured by a cluster bomb in Iraq in 1991, raised an important point relating to the UK’s comments and the language of Article 4. He said that, “for me, as a cluster munitions victim, it is hard to see that the article on clearance is drafted so that can suggest possible new use [of cluster munitions].”

France and Germany submitted a joint proposal for a new version of the entire Article. Their proposal deletes the original Article 4(4) in favor of language adapted from Protocol V of the CCW. Under France and Germany’s proposal, States that have used cluster munitions, if “in a position to do so...are invited to make available, without delay after the cessation of active hostilities and as far as practicable, subject to these parties’ legitimate security interests,” information for clearance and risk education purposes. Germany claimed that this alternative would be a “good compromise” between those countries who want to delete Article 4(4) and those who wish to retain it.⁸ The Netherlands supported the remarks made by Italy, France, Germany, and the United Kingdom.

Japan stated that Article 4(4) would alienate producers and prevent them from joining the Convention. Sweden echoed Japan’s concerns and said that in weighing the prospects for adherence to a new treaty, one should consider whether it is an added value to insist on retroactivity.

Many affected and developing countries, along with the CMC, ICRC, and UNMAT, strongly supported Article 4 as critical to ensure that civilians will not continue to be killed and maimed from cluster munitions left behind from previous conflicts. Argentina, Bahrain, Chile, Croatia, Honduras, Laos, and Lebanon explicitly endorsed obligations for past users.

In relation to claims about retroactivity under Article 4(4), Bonnie Docherty, on behalf of the CMC, explained that there is ample precedent in existing international law for such an Article. “The UN Human Rights Committee, the European Court of Justice, and the European Court of Human Rights, have held states responsible for harm initiated by them before a treaty entered into force if the harm continues in the present,” Ms. Docherty said. Furthermore, a legal principle exists that parties “have a duty to clear harmful materials they left behind, even before there was a codified legal obligation, if the harm was foreseeable.” Unquestionably, the use of cluster munitions presents both a case of foreseeable harm and a situation where harm continues as long as cluster remnants are left behind. If the primary responsibility for clearance is placed on affected States, then it is a natural corollary that those States responsible for their contamination should provide assistance and information. “Both legal precedent and moral duty call for the inclusion of an article on a user state’s responsibility for clearance of its submunitions, regardless of

⁸ Simon Conway, on behalf of the CMC, noted that this proposal does not specify what information should be provided, and is so full of qualifiers that it merited a “D minus” grade.

when they were delivered. States should keep a version of Article 4(4) in the final treaty text. The law allows it, and morality demands it,” Ms. Docherty said.

Cambodia, Chile, and the CMC referred to the importance of providing cluster munition strike data for clearance operations. The UK, however, said that “the issue of records and data will be challenging. Unlike minefields which have been recorded for many years, no such obligation to record cluster munition firing data was laid upon states prior to entry into force of the CCW Protocol 5.”

Risk Education

Obligations on risk education were included as a separate sub-paragraph under Article 4 in the Wellington Draft Convention after participants in the Vienna Conference agreed on the critical importance of risk education to reduce and prevent civilian casualties from cluster munitions. Risk education had continued support from many countries, including Bangladesh, Cambodia, Chile, Croatia, Nepal, and Laos, during discussions in Wellington, with some countries calling for stronger provisions.

The United Nations Mine Action Team (UNMAT) proposed the name of the entire article be changed to “Clearance and Destruction of Cluster Munition Remnants and Risk Reduction Education” to reflect the importance of risk reduction activities, and added stronger language referring to risk education activities. Croatia stated that in its experience dealing with anti-personnel landmine contamination, risk education was critical to reducing civilian mine victims, for adults and especially children.

Mr. Ahmed Yassin Najem, a cluster munitions survivor from Iraq, stated, “I strongly support specific inclusion of risk education in the Wellington text. Why do I do that? If I had received risk education, I would probably not have handled this bomblet and I would still have my two arms.”

Deadlines

Over the course of Oslo Process meetings, the originally proposed deadline for clearance of contaminated areas has been shortened from 10 to 5 years. Norway, Canada, and Croatia agreed that ambitious deadlines were essential to ensure rapid clearance. International cooperation should be provided to help affected countries achieve a five year goal, and care should be taken to ensure that the extension provision in the article (for an additional 5 years) is not used as an opening for the circumvention of the treaty, Norway said.

However, a few States—France, Germany, and the United Kingdom—thought that the five year deadline was unrealistic. The United Kingdom proposed a 10 year deadline with the possibility of a 10 year extension. France and Germany’s joint proposal also questions the if the 5 year deadline “is more likely to spur quick progress than defining a longer timeline at the beginning of the process,” and argued that the bureaucratic burden that a

series of extension requests would create would outweigh the benefits of an initially short deadline.

Mr. Najem reminded participants from a civilian survivor's perspective, "5 years is a very long period, during which many other civilians, innocent children, women and men like me, will get killed and injured by cluster munitions...During five years, many things can happen, but the clearance work cannot wait. Because of this the clearance activities should start immediately and not wait until the signature of the treaty. Also after the treaty is signed the countries need to start clearance immediately and not wait years before they start clearing the contaminated land."

Existing instruments—relationship with Protocol V of the CCW

Another issue that surfaced in discussions was the relationship between Article 4 of the Draft Convention and Protocol V (PV) of the CCW. France, Germany, Lithuania, the Netherlands, Sweden, and the UK expressed concerns over the need to preserve consistency with PV.

France and Germany's proposal for a revised Article 4 completely redrafts it using language and standards from Protocol V. This would change the article in several significant ways. One example is that Article 4 requires States to "clear *and* destroy cluster munitions remnants," while the French and German proposal uses PV's language of "clear, remove *or* destroy." France said that this choice of language was made to conform to the provisions of Protocol V and that there was no reason to use a different formula. There is a quantitative difference however. France and Germany's proposal would mean that a State could choose to remove unexploded cluster munitions, but not destroy them, potentially with a view to using them again in the future.

The Netherlands believed that an additional general article (not just limited to Article 4) would be necessary to clarify the relationship between the Draft Convention and existing international humanitarian law, such as PV. The Netherlands submitted a proposal for an Article XX which states that "This Convention shall be considered as complementary to any existing international agreement binding on the Parties." Sweden supported this suggestion.

The crux of this issue is that focusing on preserving Protocol V prevents Article 4 from drawing on lessons learned since PV's entry into force and from actual field experiences reported from clearance experts and affected countries. As Norway said, "While we must ensure that surveying, marking, fencing, risk education and clearance is done according to high standards for safety and security, we must ensure that implementation of these provisions are based on field realities, rather than being restricted by meeting all possible requirements of new international protocols."

Victim Assistance

Building on discussions during the Vienna Conference, where participants overwhelmingly supported provisions for victim assistance, the Draft Convention now includes more references on specific obligations to provide victim assistance. The Draft Convention contains a complete preamble with several paragraphs referring to the rights and inherent dignity of victims, provisions for medical care and rehabilitation, psychological support and social and economic inclusion of victims, the Convention on the Rights of Persons with Disabilities, and ensuring nondiscrimination among victims of different types of weapons. Article 2 on definitions now contains a definition of a cluster munition victim, which includes persons directly impacted as well as their families and communities. Articles 6 and 7 contain additional requirements that States in a position to do so should provide international assistance for victims and report on measures taken to provide victim assistance.

Discussions focused on strengthening victim assistance by including specific provisions on involving cluster munitions victims in decision making, including victim assistance in national action plans, strengthening the principle of nondiscrimination between victims, and the scope of the definition of cluster munition victim.

Definition of cluster munitions victim – including families and communities

Positively, victim assistance was one area of the treaty where almost all participants were satisfied or felt the provisions could be even stronger. There was wide support for the new inclusion of a broad definition of cluster munition victims in Article 2. Belgium, Canada, Costa Rica, Canada, Guatemala, Morocco, New Zealand, and Norway, specifically supported its comprehensive approach by including victims' families and communities.

Dejan Dikic, a cluster munitions survivor from Serbia, explained the importance of this approach from personal experience and called for an additional reference to families and communities in Article 5 itself. "My story," he said, "shows that families and communities are those who pay the consequences of the use of cluster munitions, as much as the individual directly injured. After I got injured my wife and children, relatives, friends and neighbors supported me. They paid for my medical, social and economic needs. It was a collective suffering and a collective effort to bring me back to my old life."

Dusica Vuckovic, wife of cluster munitions survivor Sladan, called participants' attention to the suffering of "indirect victims" of cluster munitions. Ms. Vuckovic described her experience when her husband was injured and the effect his accident had on her family and in particular, her children. "I don't know what was more difficult: to watch the torments of my husband, caused by these grave injuries or my children growing up before their time," she said. "It is my opinion, and I am convinced that all women, all mothers, would share this opinion, that it is high time to stop killings and maimings of our children and husbands, it is high time to stop making victims out of our families," she emphasized.

The United Kingdom, however, proposed deleting references to families and communities from the definition. The definition, as currently drafted, “is very wide-ranging – in our view too wide,” the UK stated. “The inclusion of ‘the families and communities’ of those ‘directly affected’ requires particular care and will need definitions of their own if used in a legal text. For example, I live in the community of London – a mere 10 million people,” the UK delegate said.

Canada responded to this comment saying that communities should be included in the definition and that the size of the community was not important, but the extent of its cluster munition damage.

Switzerland proposed deleting the definition of cluster munition victim altogether. Switzerland’s rationale was that “the mention of ‘cluster munition victims’ is redundant with the object of the Convention itself. Furthermore, it inappropriately reinforces the notion that ‘cluster munitions victims’ are a separate group. This contradicts one of the essential principles of Victim Assistance, namely the principle of non-discrimination of the victims by the nature and cause of their disability.”

Nondiscrimination

The idea of nondiscrimination between victims of different types of weapons or persons with disabilities was affirmed by many countries as a fundamental principle underlying victim assistance in the Convention. Albania, Australia, Bangladesh, Canada, the CMC, Croatia, Laos, New Zealand, Norway, Morocco, the UK, and UNMAT supported the principle of nondiscrimination. A few States, however, remained concerned that the Draft Convention did not adequately emphasize nondiscrimination and might create a separate class of cluster munition victims. While nondiscrimination is referred to under the preamble of the Convention, the ICRC suggested including specific language in Article 5(2) that States “shall make no distinction with respect to other victims of armed conflict on any grounds other than medical ones or the rehabilitative, psychological or social-economic needs of the victim,” as a potential solution for those concerned.

National implementation and national action plans

Many participants stressed the importance of ensuring that provisions for victim assistance are undertaken and implemented at the national level. A number of countries, such as Belgium, Cambodia, Laos, Norway, and Spain, referred to encouraging national capacity building for victim assistance and integration with existing national structures, while providing international support when necessary.

The CMC and Cambodia suggested including victim assistance under Article 9 of the Draft Convention on National Implementation Measures to solidify each State’s responsibility to provide for victim assistance through national legislation and policy. The United Kingdom argued that this would be unnecessary, as it felt that Article 9 is understood to apply to all articles in the Convention.

Including survivors in decision making

Bangladesh, Belgium, Cambodia, Chile, the CMC, Croatia, Guatemala, Morocco, Spain, and Switzerland advocated for adding provisions to the Draft Convention that would ensure the inclusion of survivors in decision making processes. Cambodia said “our experience has shown us that the best experts on survivors’ assistance are survivors themselves.” Cambodia suggested that this obligation might be included under Article 9 and include the implementation of national survivor assistance initiatives. Croatia called on States to include survivors in their delegations as a principled and visible first step towards their inclusion.

Additional proposals

The CMC and Bangladesh made a point that victim assistance should be included as a general obligation under Article 1 in order to place victim assistance on equal footing with all other obligations. UNMAT proposed that age, gender, and personal mobility should be considerations when providing medical care, rehabilitation and psychological support. Norway and Spain also proposed incorporating gender based policies. Ecuador, Nepal and Bangladesh called for stronger language in reference to social and economic inclusion for victims.

Discussions on victim assistance concluded with a promising indication that the Article will continue to be strengthened to provide the most effective and comprehensive assistance to victims.

Storage and Stockpile Destruction

Article 3 of the Draft Convention requires States to destroy stockpiles of prohibited cluster munitions within 6 years after the entry into force of the treaty, with a possible 10 year extension period in extraordinary circumstances.

Discussions on Article 3 centered on the feasibility of the proposed deadline for completion of stockpile destruction, the requirement to separate stockpiles marked for destruction from stockpiles of ordinary munitions, and the possibility of retaining live and prohibited cluster munitions for training, research, and developing countermeasures.

Deadlines—16 years?

France, Germany, Japan, Switzerland, Turkey, and the United Kingdom—all possessing stockpiles of cluster munitions—raised concerns that the proposed 6 year, 10 year extension deadline scheme was unrealistic. These countries emphasized that cluster munitions are more difficult and costly to destroy than anti-personnel mines and as only a limited number of facilities for destruction exist, a longer period for stockpile destruction might be necessary. The United Kingdom and France proposed lengthening the initial

deadline to 10 years. Surprisingly, Peru, a core group State without stockpiles, also included a proposal in the Compendium for increasing the minimum deadline to 10 years.

Argentina, Croatia, the CMC, Honduras, Guatemala, Indonesia, Italy, Mexico, Morocco, Norway, Papua New Guinea, Spain, and Sweden strongly supported the proposed 6 year deadline. A clear commitment to destroy stockpiles in the shortest time possible has important implications for the credibility of the Convention, as stockpile destruction is essential to prevent proliferation and to ensure that cluster munitions will not be used in the future. “On this provision, it is vital to the credibility of the convention that parameters for its implementation are both ambitious and realistic,” Norway said. In this context, Norway thought that the 6 year deadline would be more than sufficient, “and probably too long.”

Norway recognized that destroying cluster munitions does present technical, financial, and logistical challenges. The high cost of destruction, however, should not be seen “in isolation from the costs that in any case would incur for stockpilers of these weapons. In reality it is not possible to separate these costs from each other. Any stockpiler of cluster munitions will have costs connected to safe storage, maintenance and final destruction of the stocks. High storage costs is in fact an argument for destruction sooner rather than later as this should bring the total costs down,” Norway explained.

Croatia stated from experience that there is nothing like a deadline to pressure States into action. For two and a half years the Croatian government did nothing in terms of getting rid of its stockpiled anti-personnel mines, but when it became clear that the deadline was approaching, 200,000 mines were destroyed 4 months ahead of schedule, Croatia said. Croatia added scarce funding would be better used towards destroying cluster munitions than paying to maintain stockpiles.

The ICRC noted that a large part of stockpiled cluster munitions are very old. States have known for a decade or so that stockpiles would need to be destroyed as a cost they would face anyhow as a part of the munition acquisition and elimination cycle.

Separate Facilities

France, Germany, the Netherlands, Sweden, Switzerland, and the UK raised concerns that requirements to separate stocks marked for destruction from operational stocks of regular munitions would mean incurring excessive costs or require the construction of new facilities for storage. The CMC clarified that the article is not meant to require the construction of new facilities but is intended to oblige States to take administrative procedures to indicate stocks for destruction as soon as possible.

Retention for Training

Germany circulated a proposal to permit States to retain, acquire, or transfer “a limited number” of cluster munitions and submunitions for the development of and training in cluster munitions detection, clearance, destruction techniques, or for the development of

cluster munition countermeasures. The amount of cluster munitions permitted to be retained is defined as not exceeding “the minimum number absolutely necessary.” Australia, Denmark, Finland, France, Germany, Italy, Japan, Slovakia, Sweden, Switzerland, and the United Kingdom supported this proposal. Belgium, the Netherlands, Japan, Spain, and Turkey also indicated during discussions that they also considered it necessary to retain cluster munitions for these purposes.

Germany said that its proposal would be accompanied by a transparency requirement obliging States to report the number, type, and location of cluster munitions retained. Germany argued that all States supporting its proposal deem it absolutely necessary for military reasons and professional clearance to retain live cluster munitions and their opinions should be taken in good faith. As a further justification for its proposal, Germany added that a similar provision exists in the Mine Ban Treaty.

Any proposal for retaining cluster munitions for training or research purposes was firmly opposed by Argentina, the CMC, Ecuador, Guatemala, Honduras, Indonesia, Mexico, Norway, and Papua New Guinea. Argentina stated that such a provision would be a loophole that would weaken the obligations of the Convention, increase the likelihood of proliferation, and create problems for verification.

The CMC and ICRC explained that experience from the Mine Ban Treaty has shown that allowing States to retain a minimum number of munitions “absolutely necessary” has resulted in widespread abuse. The ICRC noted that small militaries have retained tens of thousands of anti-personnel mines and that any perceived benefit should be weighed against the potential for abuse.

Mr. Rae McGrath, founder of Mines Advisory Group (MAG), a humanitarian demining organization, informed Conference participants that professional clearance organizations do not train with live submunitions. Training with live munitions would break some of the basic training safety rules and should never, ever happen, Mr. McGrath said.

International Cooperation and Assistance

Article 6 on international cooperation and assistance had broad support from a range of affected, developing, and donor countries. Building on the significance placed on international cooperation and assistance in discussions in Vienna, the Article was redrafted to include a paragraph referring to the provision of emergency assistance and provisions for risk education and awareness activities. Angola, Bangladesh, Bosnia and Herzegovina, Cambodia, the CMC, Indonesia, Kenya, Laos, Malawi, Mauritania, Nepal, the Philippines, South Africa, and Viet Nam emphasized the importance international assistance will have in implementing the provisions of the Convention.

A number of these countries highlighted clearance and stockpile destruction as critical areas where they will require assistance to fulfill their obligations under the Convention. Bosnia and Herzegovina said that in light of its decision to enact a moratorium on the use, production, and stockpiling of cluster munitions, announced on 6 February 2008, it

will require assistance for the conversion of facilities previously used to manufacture cluster munitions and to provide care for employees.

Umarbek Pulodov, a cluster munitions survivor from Tajikistan, stated that his country, despite having a national victim assistance plan, was unable to secure victim assistance funding. He recommended several ways Article 6 could be strengthened to make certain that the Convention will ensure adequate provisions on assistance. Amongst these, Mr. Pulodov recommended stronger emphasis on victim assistance in Article 6 and linking assistance with long-term national development plans and national capacity building. It is of particular importance, Mr. Pulodov said, that Article 6 should specifically require the inclusion of disability perspectives.

Mr. Pulodov also called for a clearer reference to the obligation of past users to provide assistance, which has been watered down in Article 6. Italy suggested deleting the minor reference to past users still contained in Article 6, while the UK and Germany raised concerns about its possible implications.

South Africa urged participants to avoid weakening the article and reminded participants that many of its provisions are already phrased as voluntary requirements.

Two traditional donor countries, Germany and Sweden, proposed including a new paragraph in the article requiring recipients of assistance to collect and release relevant data and information, grant favorable entry and visa regimes for international personnel involved in assistance programs, and ensure that no financial or administrative burdens are placed on the import of material and equipment. Denmark, France, and the UK supported this proposal.⁹

Transparency and Compliance

Transparency reporting under Article 7

Article 7 of the Draft Convention requires States to submit a basic report after the entry into force of the Convention and subsequent annual reports on measures taken to comply with the obligations of the treaty.

⁹ Cambodia later responded in discussions on transparency and compliance that it supported efforts of donor partners, including all of the measures mentioned in Germany and Sweden's proposal. However, Cambodia stated that its experiences over the past 15 years "have given numerous examples of some donor behavior that runs contrary to the ideas of transparency, partnership or mutual accountability." Cambodia declared that on many instances, its clear national plans were ignored by "donors who fund efforts bilaterally based on their own particular requirement and/or interests." Emphasizing the importance of cooperation, transparency, and compliance and a "TRUE partnership between states which are providing and receiving assistance," Cambodia added that "if mutual accountability is going to guide our actions in the future, then it is important that it is acknowledged that shortcomings in the relationship have not only been on the side of recipient countries which are also affected."

During discussions, the CMC suggested areas of the article that could be strengthened or clarified, and recommended adding requirements that States Parties should report the amount of resources allocated to clearance, stockpile destruction, and victim assistance, and a requirement for both donors and recipients to report on international cooperation and assistance.

Suliman Saftar, a member of the Ban Advocates team,¹⁰ proposed that civil society, especially cluster munitions victims and their families, should play a role in monitoring the Convention, similar to that of the watch-dog role the Landmine Monitor plays for the Mine Ban Treaty. He emphasized that in order for civil society to assume an important partnership with States Parties in monitoring the Convention, reports submitted under Article 7 must be made available to the public.

Chile suggested that reports could be made available on a website with unrestricted public access.

The United Kingdom and Germany argued for deleting the article's requirements to report on the status of programs for the conversion or decommissioning of facilities used to produce cluster munitions, Article 7(f). The United Kingdom was concerned that this obligation would be problematic if production facilities were privately owned. Additionally, the UK questioned the humanitarian and security benefit of including this information.

Germany proposed deleting Article 7(f) and the requirement in Article 7(g) to report on the status of programs for stockpile destruction, claiming that reporting on the total types and quantities of cluster munitions destroyed, as required under Article 7(h), would be sufficient.

In response, the CMC stated that ensuring the capacity to produce cluster munitions no longer exists was a vital component of the Convention, regardless if the facilities were publicly or privately owned. In addition, reporting on the status and progress of destruction programs, as opposed to reporting only once destruction programs were completed, was critical part of ensuring transparency in the Mine Ban Treaty.

Argentina questioned the logic of deleting a mechanism that will promote compliance with an essential objective of the Convention and added that the fact that destruction facilities might be privately owned did not present an obstacle to reporting requirements, and was a circumstance that existed in regards to other disarmament initiatives.

Samoa, supported by Palau, requested a mechanism to simplify reporting requirements for cluster munitions-free countries and smaller countries with lesser capacities to meet

¹⁰ The Ban Advocates are group of women and men from diverse cluster munitions affected communities who have come together to advocate for a ban on cluster munitions and the full application of the rights of survivors and affected communities. Read individual stories and first-hand accounts from cluster munitions survivors on the Ban Advocates Blog at www.banadvocates.org

reporting obligations, similar to provisions for assistance with reporting obligations under the Mine Ban Treaty and other disarmament treaties.

Additionally, Australia, Denmark, France, Germany, Italy, Sweden, Switzerland, and the United Kingdom included a proposal in the Compendium for a new subparagraph under Article 7 that would require States to report on the total number, types, and locations of cluster munitions retained for research, training, and developing counter measures—as they controversially proposed retaining under Article 4.

Article 8 on Compliance

There was general consensus on the importance of a compliance mechanism as contained in Article 8. Discussions focused on suggestions to enumerate the “other general measures” Meetings of States Parties could decide to adopt for clarifying and resolving instances of non-compliance under Article 8(6).

The United Kingdom proposed that provisions in the Mine Ban Treaty relating to special meetings, fact-finding missions, and mechanisms for reaching decisions at Meetings of States Parties should be included in the Draft Convention. France supported this, highlighting the need for clarification on procedures and in particular on the mechanism for decision making for Meetings of States Parties. The Netherlands added that it would like to see Article 8(6) strengthened to include a more elaborate compliance mechanism, along the lines of the UN Convention Against Corruption, which may establish any appropriate mechanism or body.

Article 9 on national implementation measures

Article 9 of the Convention on national implementation measures was briefly discussed during the Wellington Conference. The CMC stated that the Article could be improved by requiring new comprehensive national legislation and specific domestic laws relating to the Convention, including specific obligations on the national implementation of victim assistance requirements. The UK previously indicated it did not support specific references to victim assistance in Article 9 as it understood Article 9 to apply equally to all provisions of the Convention.

Procedural Articles

On the remaining 13 procedural articles of the Draft Convention, the main issues discussed were the reference to the International Court of Justice (ICJ) under Article 10 on the settlement of disputes and the number of ratifications necessary for the Convention’s entry into force.

International Court of Justice

Article 10 stipulates that States Parties may refer to the ICJ in disputes over the interpretation or application of the Convention. Germany suggested deleting the reference to the ICJ as unnecessary as States are always free to seek the ICJ's jurisdiction. The Netherlands, as the host country of the ICJ, supported the reference, along with Argentina, Austria, Ghana, New Zealand, and Sweden.

The United Kingdom proposed adding a phrase to Article 10 that States could refer to the ICJ "by mutual consent." New Zealand stated that this would be redundant as States cannot refer to the ICJ except by mutual consent.

Ratifications for entry into force

Article 17 sets the number of ratifications necessary for the Convention to enter into force at 20. France said that 20 was unambitious and too small. France claimed that a greater number should be required to ensure the Convention is adhered to by a large number of States. France suggested 60 ratifications as a more realistic number, citing the high number of ratifications the Chemical Weapons Convention and Convention on the Law of the Sea required for entry into force.

The United Kingdom supported France, adding that traditionally, the number of ratifications necessary is approximately 50% of States participating in the negotiation process. The UK said that it had been led to believe that that some 150 States will be participating in negotiations at Dublin, so at least 40 ratifications would be a minimal requirement, if not more, to provide proof of the political will to urgently address the humanitarian concerns caused by cluster munitions. Germany agreed that the minimal number of ratifications should be 40, as in the Mine Ban Treaty, but stated it would prefer requiring 60 ratifications in order to demonstrate universal support for the treaty. This would not delay the Convention's entry into force, Germany claimed, as it did not doubt that with so many States participating, many would ratify the Convention.

Many civil society participants found it difficult to accept these comments without a grain of salt, as perhaps these few countries—some of the main voices of the "likeminded" group seeking to weaken the Convention—were only attempting to make it more difficult for the Convention to enter into force.

Austria, Ghana, Honduras, and New Zealand strongly supported the entry into force of the Convention after 20 ratifications. While the treaty should aim for universality, Austria said, this should not be an obstacle preventing States from implementing the treaty as soon as possible. Austria reminded delegates that Protocol V of the CCW was negotiated by 100 States but only required 20 ratifications for its entry into force.

Conclusion

As the final day of the Wellington Conference began, participants anxiously awaited States to endorse the Wellington Declaration. After of a tough week of discussions, it was

by no means certain that the “likeminded” States calling for exceptions, transition periods, and provisions to weaken the Convention would endorse the Declaration.

At the end of the day, over 70 States publicly endorsed the Wellington Declaration and pledged to attend negotiations at Dublin. Albania, Algeria, Angola, Argentina, Australia, Austria, Bahrain, Belgium, Belize, Benin, Cambodia, Canada, Chile, Costa Rica, Croatia, the Czech Republic, Denmark, the Dominican Republic, Ecuador, Finland, France, Ghana, Germany, Guatemala, the Holy See, Honduras, Hungary, Italy, Indonesia, Ireland, Japan, Kenya, Kuwait, Kyrgyzstan, Laos, Lebanon, Lithuania, Macedonia, Madagascar, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mauritania, Mexico, Montenegro, Morocco, Mozambique, Niue, Nepal, the Netherlands, New Zealand, Norway, Palau, Papua New Guinea, Paraguay, the Philippines, Senegal, Sierra Leone, Slovakia, Slovenia, Spain, Sweden, Switzerland, Sudan, Uganda, the United Kingdom, Uruguay, Vanuatu, and Zambia endorsed the Wellington Declaration, bringing the Conference to a successful and positive conclusion.

Even the “likeminded” group endorsed the declaration, as a “group” and individually. Their endorsements came, however, with significant reservations and strong critique of the transparency of the process behind discussions during the week.

Australia, the Czech Republic, Denmark, Finland, France, Germany, Italy, Japan, Lithuania, the Netherlands, Slovakia, and Switzerland insisted that they viewed the Draft Convention and the Compendium as having equal status as a basis for negotiations in Dublin. Australia stated that the draft Rules of Procedure circulated in advance of the Dublin Diplomatic Conference “need to be brought into line with the Wellington Declaration and usual diplomatic practice” referring in particular to Rule 30 (which holds that the Draft Convention is the basis for negotiations). Italy said, “It is our firm understanding that the Draft Convention text together with the Compendium of proposals will form the basis for our work in Dublin, where Italy will be negotiating on the basis of the proposals contained in these documents.” Each of the other “likeminded” countries made similar remarks.

Canada, however, noted that the draft Rules of Procedure for the Dublin Conference are “consistent with standard rules of procedure for such events, [and] make provision for voting in the event consensus cannot be achieved.” Canada said it “fully support this approach as it is really the only way to avoid producing a product that reflects the lowest common denominator.” Despite this procedural option, Canada strongly urged the Chair to make every effort to achieve consensus.

Each of the “likeminded” States sharply criticized what they saw as a lack of transparency in the Oslo Process—that their proposals were not included in the Draft Convention text. As one example of the frustration expressed by the “likeminded” group, Germany said that “despite the urgency of the humanitarian concerns at stake, those few states steering the [Oslo] process with a regrettable lack of transparency have missed several opportunities to develop the draft Convention text in such a way that it finds the broadest possible consensus. Dozens of proposals submitted by many states in good faith,

particularly in Vienna and Wellington, have simply and systematically been ignored. After one week of intensive and often fruitful deliberations, the Wellington draft Convention text remains unchanged – We think this sends a negative message to the world, in particular to those individuals and countries that have suffered most from the effects of cluster munitions.” Similarly, the Netherlands stated, “In spite of our commitment to the Oslo process, we cannot hide from you, Mr Chairman, or from anybody else in this room, our deep disappointment about the course this conference has taken over the past 4 days and which has led to unnecessary polarization which could and should have been avoided... We welcome the efforts of your good self and of the core group to produce a compendium of our proposals and to forward it to Dublin together with the draft treaty text. We have listened carefully to your introductory statement today and it appears to us that in the words of George Orwell, some proposals are more equal than others. Surely this cannot be the case.”

Others simply did not share this opinion. The proposals submitted by the “likeminded” group were only supported by a small minority of participants and did not enjoy broad consensus amongst the majority of Conference delegations, whereas the Draft Convention has been changed on issues that the core group States identified as having wide agreement.

A few of the “likeminded” countries criticized the role of civil society over the course of the Wellington Conference. Surprisingly, Canada, a State with a history of partnership with NGOs and civil society, had strong objections to what it referred to as NGO “tactics employed to influence the process.” The Canadian delegate protested that “Countries such as my own, and several close allies have been vilified in press interviews and in press releases produced by the CMC... We have been accused of “trying to undermine an international treaty on cluster munitions.” Nothing could be further from the truth. Such accusations are unfounded and unfair. – In my view, such tactics are demeaning and counterproductive. They tarnish the credibility of your organizations and do a disservice to the noble cause you wish to advance. The same cause we are here to advance. The countries you attack today will be among the strongest supporters of a new Convention on cluster munitions, as we are in the Ottawa Convention. – I urge you not to dismiss our concerns, or to attribute ulterior motives for putting them forward. –I urge you to demonstrate the same good faith and respect that you demand of us.”

The Danish delegate supported the words of his Canadian colleague on the role of civil society, and said his Canadian colleague was more eloquent and restrained than he could have been. Germany also agreed with Canada’s remarks, saying they highlighted the positive contributions of civil society as well as the self-imposed limitations of civil society. Slovakia said that it was regrettable that the Conference proceedings had taken place in “an atmosphere of emotional oppression.”

The objections of “likeminded” group were overshadowed by the sheer number of participants who wholeheartedly supported the Wellington Declaration. Country after country took the floor to reiterate their commitment to the Oslo Process and to negotiating a comprehensive ban on cluster munitions in Dublin.

With a strong commitment from all States to the fundamental goal of negotiating a treaty on cluster munitions, regardless of their views on its scope, the Oslo Process made a significant advancement at Wellington. In the interim before negotiations begin in Dublin, work will press on in regional meetings. In Africa, from 31 March – 1 April 2008, Zambia will host an African Regional Meeting for South African Development Community (SADC) countries. Mexico announced it will host a Regional Meeting for States of the Latin American and Caribbean Regions in Mexico City, from 16-18 April and shortly after, a Regional Meeting for ASEAN countries on cluster munitions will be held from 24-25 April in Bangkok. A Meeting of the States of the Arab League will also take place from 8-9 May in Cairo.

Looking forwards towards negotiations at Dublin, Cambodia left participants with a final reminder, “While there are tough issues coming up in the negotiations, this is to be expected and I congratulate the Chairs on your efforts to assist the delegations in working through them. We hope that in the face of particular issues currently under hot debate, we do not lose sight of the fact that we have come an incredible distance in the last year and we just need to keep working at it together. We are here because we share a common belief that Cluster Munitions are inhumane and that we need to protect civilians from their effects. We should keep that clear goal in sight and not get discouraged to the point where we go off track—let us not focus so much on the trees that we miss the forest.”

This important reminder from one of the countries most affected by cluster munitions to focus on the common goal of protecting civilians from the inhumane effects of cluster munitions and work cooperatively to overcome differences is a fitting message from the Wellington Conference that speaks directly to the heart of what must be achieved in Dublin.