
**Report from the
Vienna Conference on Cluster Munitions
5-7 December 2007**



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Summary

The Vienna Conference, the third major international meeting of the Oslo Process to ban cluster munitions, has held from 5-7 December 2007, in Vienna, Austria. The Vienna Conference was the mid-point in discussions to create an international treaty banning cluster munitions which cause unacceptable harm to civilians. This treaty is set to be signed by the end of 2008.

Cluster munitions are weapons that contain between a small handful to several hundred smaller bomblets, or submunitions. These submunitions frequently malfunction and fail to explode on impact. As cluster munitions are wide area weapons, the result is that, when used in conflicts, submunitions are scattered over areas several football fields in size and act as de facto landmines, waiting for innocent victims to accidentally detonate them, even decades after conflicts have ended. 98% of cluster munitions victims are civilians and many of these are children, who represent a particular risk group, as the bomblets are oddly shaped and often look like toys.

Recognizing the inhumane and indiscriminate effects of these weapons, the international community began to take concrete actions to ban cluster munitions. In 2006, Norway initiated what is now called the Oslo Process, wherein States pledged to conclude a legally binding international instrument banning cluster munitions that cause unacceptable harm to civilians, to be signed by 2008. The first major international meeting was in Oslo, in February 2007, and discussions on the shape of a future treaty continued at a second meeting in Lima, Peru in May.

The Vienna Conference convened with the objective to build on the work accomplished at Oslo, Lima, and in other regional meetings in 2007, and continue discussions on elements for inclusion in a future treaty. As the 2008 deadline approaches, the Vienna Conference made important steps forward towards determining the shape and content of a future instrument.

Over the three day meeting, participants discussed the main elements of a future instrument in half-day sessions covering provisions on the definition and scope of application of a treaty; clearance and destruction of cluster munitions remnants; storage and stockpile destruction; victim assistance; international cooperation and assistance; transparency and compliance; and procedural items.

Discussions on definitions and the scope of a future treaty were contentious. Positively, the majority of States present supported a total ban on cluster munitions. However, a small but vocal group of mainly European States—all producers or stockpilers of cluster munitions—continued to make arguments in favor of exemptions for cluster munitions based on failure rates or self-destruct mechanisms, often corresponding to the type of weapons they possess. Canada, the Czech Republic, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Slovakia, Sweden, Switzerland, and the United Kingdom

opposed a total ban on cluster munitions and made various arguments to weaken a future instrument.

Beyond exceptions for cluster munitions based on failure rates or self-destruct mechanisms, certain States proposed exemptions for cluster munitions with limited numbers of submunitions, for provisions allowing for a transition period where prohibited cluster munitions could still be used, and for retaining cluster munitions for training and research purposes. A number of States expressed concerns about interoperability, or joint military operations with States not party to a future treaty who might use cluster munitions. Many of these States also made arguments about the lack of inclusion of major users and producers in the Oslo Process.

Discussions on the other major areas of a future instrument reached a much greater degree of consensus. Provisions on victim assistance gained resounding support, with many countries advocating for even stronger obligations. There was also wide agreement on the proposed article on international cooperation and assistance and recognition of its importance, especially for developing and affected countries. In discussions on clearance and stockpile destruction, many States gave detailed presentations, although there was disagreement over the proposed timeframes for completion of clearance and stockpile destruction requirements.

As many States moved away from making general and vague statements and presented more specific and precise arguments, the Vienna discussions helped to establish a sense of where States stand in the Oslo Process and the work that will need to be accomplished in future meetings. The gap between States in favor of a total ban and those who continued to argue for exemptions for certain cluster munitions was narrowed. With increasingly powerful evidence from NGOs, arguments for exceptions will be harder and harder to support in future meetings. It was also encouraging to see increasing support for the humanitarian aspects of the treaty.

The success of the Vienna Conference and progress made in the Oslo Process were evident in the sheer number of participants who arrived in Vienna. 138 States and over 140 civil society representatives from 50 countries took part in the Conference, indicating that over two-thirds of the world has heard the message that cluster munitions are an inhumane threat to civilians and must be addressed.

During the Conference, several States announced their support for the Oslo Process or participated for the first time, such as Algeria, DR Congo, Equatorial Guinea, Guinea, Kenya, Mali, Sierra Leone, the Seychelles, Sudan, and Tajikistan. A wide range of actors participated in the Conference, from cluster munitions survivors to parliamentarians, reflecting the multifaceted dimensions of the cluster munitions issue. The Conference particularly welcomed the greater participation of cluster munitions survivors and affected States. Their voices are the most powerful in conveying first-hand the horrific effects of cluster munitions and their opinions are critical to ensure that a future treaty can address the needs of those who suffer most.

Developing countries played a larger role in the Vienna Conference than in previous Oslo meetings. Many of these States spoke in favor of a total ban on cluster munitions, with no exceptions. The consolidation of developing countries behind a total ban will help pressure those few States who continue to argue for exceptions allowing them to keep a portion of their weapons. A particular success of the Conference was the announcement of Ghana on behalf of the African Union that it intends to create a common African position for a total ban on cluster munitions. Zambia and Uganda will co-host an African Union conference on cluster munitions in March 2008.

There was strong participation from Latin American States, with many States from the region supporting the creation of a Latin American cluster munitions free zone. The Vienna Conference also had higher participation from States in the Middle East, Northern Africa, and former Soviet States.

During the Conference, Austria announced that it had enacted national legislation unilaterally banning all cluster munitions. Austria joins Belgium, Norway, and Hungary, who have also announced national moratoria on the use of cluster munitions. Croatia, Serbia, and Luxembourg have also indicated that they are in the process of considering national legislation for a ban on cluster munitions.

Another highpoint of the Conference was the introduction of a new report “M85—An analysis of reliability,” co-authored by the Norwegian People’s Aid (NPA), the Norwegian Defense Research Establishment (FFI) and British explosive ordnance disposal expert Colin King. The report is extremely valuable at this point in the treaty process as it provides hard evidence that undermines States’ arguments that certain cluster munitions with self-destruct mechanisms or low failure rates will not harm civilians and should not be banned under a future instrument.

As the Conference concluded, there was a sense of optimism for continuing discussions at the next major meeting of the Oslo Process, which will take place in Wellington, New Zealand from 18-22 February 2008. The dramatic increase in participation and support for the Oslo Process is an acknowledgement of the growing stigmatization of cluster munitions and a sign that the process is irreversible, with the majority of the international community fully supporting a total ban.

Opening Ceremony

The Vienna Conference began on 5 December 2007 with an opening ceremony providing participants with an overview of issues relating to the use of cluster munitions and progress made in the Oslo Process in 2007.

The ceremony commenced with remarks from two cluster munitions survivors, highlighting the fundamental aim of the Oslo Process to negotiate a treaty that provides meaningful assistance to victims of cluster munitions and protection for civilians.

Umarbek Pulodov, a cluster munitions survivor from Tajikistan, recounted his story of being injured by a cluster bomb when he was six years old. The explosion also injured his two younger brothers and his sister, while killing his uncle and brother. Mr. Pulodov reminded delegates of their responsibilities to victims of cluster munitions, saying, 'You who will write the cluster munitions treaty should first see the impact of cluster munitions, how it feels to be a cluster munitions survivor.'

Sladjan Vuckovic, a cluster munitions deminer, was injured at the age of 33. He lost his arms and one leg in the accident. He emphasized the indiscriminate nature of cluster munitions, regardless of their technical performances, and their lasting psychological effects on their victims, their families, and communities. He asked delegates not for pity for cluster munitions victims, but to conclude a treaty which will ensure victims' right to live life.

On behalf of Austria, the host country of the Conference, Ursula Plassnik, Austrian Minister for European and International Affairs, announced that 133 States had arrived to participate in the meeting, indicating that a clear majority of the world supports the goals of the Oslo Process (by the end of the Conference the number of States participating grew to 138.) Just before the opening of the Vienna Conference a group of Austrian schoolchildren and NGOs presented Ms. Plassnik with a petition to ban cluster munitions containing 1.5 million signatures, presenting an unequivocal message to ban these weapons. Only a handful of likeminded countries possessing cluster munitions continue to call for negotiations on cluster munitions in the framework of the UN Convention on Conventional Weapons (CCW). The NGO and civil society community recognizes that advocating for a protocol on cluster munitions in the CCW can be seen as a strategy for States that wish to keep and use cluster munitions to conclude a weak prohibition with large exceptions, or no prohibition at all.

Unlike the consensus ruled CCW, the Oslo Process presents a new form of multilateral diplomacy and a strong partnership between States, parliamentarians, civil society, survivors, experts, mine clearance operators, and other stakeholders who share a moral obligation to ban cluster munitions and ameliorate their affects, Ms. Plassnik said.

Ms. Plassnik announced that the Austrian parliament is adopting a national law that will ban the production, use, stockpiling, and transfer of cluster munitions, including sensor fuzed munitions. The Austrian law does not allow for exceptions for cluster munitions based on self-destruct mechanisms, failure rates, for sensor-fused munitions, or for soldiers participating in joint military operations. Ms. Plassnik expressed her hopes that the law will become a model document for other States. Austria, Belgium, Hungary, and Norway have announced national moratoria on the use of cluster munitions. During the Conference, Luxembourg stated that it is considering draft legislation to be put in place in 2008 banning the use, production, storage, transfer, and financing of cluster munitions.

The opening ceremony continued with a presentation from Mohammad Haider Reza, Program Director, of Mine Action in Afghanistan on landmine and cluster munition contamination and clearance operations in his country. Bianca Jagger, winner of the

Alternative Nobel Prize and Council of Europe Goodwill Ambassador, addressed the Conference with remarks about her experiences with children victims in Bosnia. She emphasized the particularly “cruel and perverse” affects of cluster munitions, as their odd shapes resemble toys, drawing children’s curiosity, making them a tragic and significant portion of cluster munitions victims. She called attention to the impact cluster munitions have in arresting social and economic development in post-conflict areas and appealed for all countries to support the Oslo Process. Quoting Dante, she said, “The darkest place in hell is reserved for those who, in a period of crisis, claim neutrality.”

Kathleen Cravero, of the United Nations Development Program (UNDP) Bureau of Crisis Prevention, further detailed the long term negative impact of cluster munitions and their formidable challenge to sustainable development. Cluster munitions destroy livelihoods, economic sustainability, arable land, and clearance continues to cost the international community hundreds of millions of dollars every year.

Ambassadors from Peru, Costa Rica, Serbia, and Belgium then provided the Conference with updates from international meetings of the Oslo Process held in 2007.

- The Peruvian Ambassador summarized the work of the Lima Conference, which took place in May 2007. The Lima Conference facilitated an exchange of views and better understanding on elements for inclusion in a future treaty, paving the way for work to continue at the Vienna Conference.
- The San Jose Conference in Costa Rica, from Sept 4-5 2007, had 18 out of 19 countries from the region participate and welcomed El Salvador, Honduras, Nicaragua and Uruguay to the Oslo Process.
- The Belgrade Conference took place from 02-04 October 2007 and focused on the problems of affected states and providing assistance to victims.
- In Brussels, on 30 October 2007, all 46 States from the wider European Atlantic area, including many big producers and users, met to discuss crucial aspects of a future treaty such as stockpile destruction and victim assistance. All 27 European Union members participated and Canada, the US, and Russia were invited as observers.
- Lastly, Anna Elisabeth Haselbach of Austria reported on the International Parliamentary Forum, which focused on the engagement of parliamentary representatives in support of the Oslo Process.
- Judith Majlath of Austria also provided an update on the International Civil Society Forum, hosted by the CMC on 4 December.

At the conclusion of the opening ceremony, participants were shown “Unacceptable Harm,” a film by Chris Anderson, which graphically and poignantly demonstrates the impacts of cluster munitions.

The Vienna Discussion Text

After hearing from a range of speakers supporting the Oslo Process during the opening ceremony, the Vienna Conference began with the introduction of the Vienna Discussion Text by Co-Chairs Ambassador Wolfgang Petritsch of Austria and Ambassador Don MacKay of New Zealand. Ambassador Petritsch reminded participants that the Vienna

Conference was not a meeting for the negotiation of a future text, but instead was convened to hold thorough discussions on the provisions in the draft text.

The Vienna Discussion Text, prepared by a ‘core group’ of States firmly committed to the Oslo Process, builds on the Lima Text and reflects some of the outcomes of the Lima discussions. Based on the model of the Mine Ban Treaty, the Vienna Text uses a comprehensive approach, containing both a prohibition and positive obligations on clearance, stockpile destruction, victim assistance, and international cooperation and assistance.

The Vienna Text includes a draft preamble, with preliminary wording on victim assistance, which is to be redrafted at the end of negotiations in the Oslo Process. The Text contains provisions on the key elements of a future treaty such as: general obligations, the scope of a future instrument, clearance, stockpile destruction, victim assistance, transparency, compliance, national implementation, dispute settlement and procedural items. The text also includes an explanatory annex on areas where participants at the Lima Conference expressed a wide divergence of views and on items that were not crystallized to the point where they could be incorporated into the text itself, Ambassador MacKay explained. The annex is an attempt to preserve and identify elements that lacked consensus at Lima and require further work. The objective of the Vienna Conference was to narrow down issues for discussions at the next meeting of the Oslo Process in Wellington and further develop issues and concepts in the treaty.

The CMC believes that the Vienna Text is an improvement on the previous version discussed at Lima, although many areas of the text require strengthening in order to meet the CMC standards.¹

Article 1 of the Vienna Text covers the general obligations and scope of application of the treaty. The CMC believes more general obligations referring to the humanitarian obligations in the treaty could also be included in the Article. The CMC recommends that States Parties should clarify concepts such as a prohibition on use, intentional gaining of military advantages from previously contaminated areas, transit of cluster munitions, prohibition on investments, foreign stockpiling, and activities relating to the use of cluster munitions in joint military operations.²

¹ The following is a brief summary of changes made from Lima to Vienna and the CMC’s comments on the treaty text:

The Vienna Text adds a draft preamble which recognizes the rights of victims and need for providing assistance to victims, their families, and communities, bearing in mind the realization of human rights and rights of persons with disabilities without discrimination of any kind. The preamble will need to be revised at the end of negotiations. The CMC suggests that references be made to the following aspects of victim assistance: international human rights and humanitarian law and relevant international frameworks; participation of victims; non-discrimination; equal opportunity for men and women; linkage between victim assistance and disability and development programs; and the underlying goal of victim assistance to assure the human rights, fundamental freedoms, and respect for inherent dignity of all victims.

² The CMC supports the streamlining of the language in the article from the Lima version to the Vienna draft but notes that the phrase “in any way” has been deleted from the Lima text’s language prohibiting a

Article 2 covers the definition of cluster munitions. The CMC calls the article a “vast improvement” over the Lima text. The Article begins with a general prohibition and then contains placeholders for explicit exceptions for munitions not covered by the treaty. It clarifies that the definition of cluster munitions covers both the container, or parent munition, and submunitions. It also provides definitions for the following terms: explosive submunitions, unexploded cluster munitions, abandoned cluster munitions, cluster munition remnants, and transfer of cluster munitions.

The CMC appeals to participants that the placeholders for exceptions must not be used to allow States to keep cluster munitions with self-destruct, self-deactivation or self-neutralizing features, for submunitions with a certain reliability/failure rate, sensor fuzed munitions, or for “direct fire” submunitions. If a future treaty is to provide meaningful protection to civilians, these exceptions must not be permitted. The CMC also recommends that additional terms be defined under this article, such as: use, assist, clearance, contaminated area, risk education, victim, and victim assistance.

During discussion sessions on the Vienna Text and on Articles 1 and 2 relating to the general obligations, scope of application, and definitions of cluster munitions, many delegations made interventions clarifying their positions regarding whether they would support a total ban on cluster munitions or wanted exceptions for certain weapons. From the Vienna Conference, it is clear that there is no consensus on the scope or the definition of cluster munitions to be included in a future instrument. The majority of States present at the Conference supported the ideals behind the Oslo Process for a complete prohibition on cluster munitions. Yet a small but vocal group of mainly European States continued to argue for a limited definition of cluster munitions with exceptions based on technical aspects such as failure rate and self-destruct mechanisms. A positive outcome of the Vienna discussions was that these States who want to retain the right to use and possess certain cluster munitions presented their views more concretely and in greater detail.

Definitions and Exceptions, Arguments to Weaken a Treaty

Discussions on the Vienna Text, Article 1, and Article 2 (on general obligations, the scope of a future instrument, and definitions of cluster munitions) brought forth issues such as potential types of cluster munitions to be excluded from a ban, work in the CCW forum, the inclusion of major users and producers, a possible transition period, retention of cluster munitions for training purposes, and interoperability in joint military ventures. As many States moved away from making general statements and presented more specific and precise arguments, the Vienna discussions helped to establish a sense of

State Party to “assist, encourage or induce [in any way] anyone to engage in any activity prohibited to a State Party” under the Convention (Article 1, paragraph C). This deletion could be seen as weakening the obligation. The CMC suggests this wording should be reinserted. As a number of States raised the issue of interoperability, or the ability to participate in joint military ventures, as an area of concern during the Conference, the wording of Article 1, paragraph C will be an important issue.

where States stand in the Oslo Process and the work that will need to be accomplished in future meetings.

Encouragingly, the majority of States present in Vienna supported a total ban on all types of cluster munitions. Many States made interventions during the Conference explicitly in favor of a complete prohibition, such as Austria, Argentina, Bangladesh, Cambodia, Croatia, DR Congo, Egypt, Equatorial Guinea, Guinea, Indonesia, Kenya, Lao PDR, Luxembourg, Mali, Mexico, Mozambique, Nigeria, Norway, Senegal, Seychelles, Sierra Leone, Sudan, and Tajikistan.

New Evidence on the M85

Civil society groups and NGOs presented new evidence at the Vienna Conference demonstrating the necessity of a total ban on cluster munitions in order to provide adequate protection to civilians. The Norwegian Defence Research Establishment (FFI), Norwegian People's Aid, and British Explosive Ordnance experts 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 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."

The M85 report has direct relevance for the treaty process. It provides evidence undermining States' arguments and policy positions that a treaty can prevent unacceptable harm to civilians by distinguishing between cluster munitions that leave 'hazardous' and 'non hazardous duds' or have a certain unacceptable failure rate. "It is misleading to draw a distinction between 'hazardous' and 'non-hazardous' duds. All duds are inherently hazardous both to deminers and to the post-conflict civilian populations that are left to deal with them... A 'failure rate approach' will not provide an effective indicator of the risk to civilians that will be produced by specific cluster munitions in combat. A 'hazardous dud rate' approach would be even less useful or effective. An international treaty based on a maximum 'hazardous dud rate' would be even more difficult to implement and monitor than one based on a maximum failure rate – and

would have even less relevance to the post-conflict humanitarian impact,” the report states. In addition, “if a failure rate threshold were to be adopted as an acceptance criterion, there would be no way to accurately assess compliance” with a future treaty.

“Inaccurate” and “Unreliable”

States that argue for a limited prohibition on cluster munitions and the right to use and stockpile certain cluster munitions frequently base their arguments on the ability to distinguish between cluster munitions that cause unacceptable harm to civilians and those that can be used responsibly, on the basis of criteria of “accuracy” and “reliability.” Many States use the terms “accurate” and “reliable” in their definitions of cluster munitions based on the International Confederation of the Red Cross’ (ICRC) position on cluster munitions, arguing that only certain inaccurate and unreliable cluster munitions should be banned.

As the guardian of international humanitarian law, the ICRC is an important voice in the Oslo Process. During the Vienna Conference, the ICRC made an intervention to clarify what it considers inaccurate and unreliable, as many States use the ICRC’s language to justify their positions. The ICRC stated that its interpretation of what is considered “inaccurate” and “unreliable” would apply to the vast majority of cluster munitions and **all cluster munitions used to date**. The burden rests on States to demonstrate that there are cluster munitions that are not unreliable, the ICRC said. States, not the ICRC, have proposed three parameters for acceptable reliability: sensor-fuzed munitions, self-destruct mechanisms, and limitations on the number of submunitions in a parent container. According to the ICRC, none of these parameters adequately protect civilians. To be credible States must apply these criteria as cumulative requirements and must demonstrate that cluster munitions will function as claimed in reality and not just in ideal conditions, the ICRC stated.

Failure Rates and Self-Destruct Mechanisms

Despite the new evidence from NGOs and the ICRC’s statement, which add to a considerable body of previous research, a small group of States continued to argue for exceptions for certain cluster munitions based on self-destruct mechanisms and failure rates. Joining this group were other States who put forth a number of arguments and exceptions which would significantly weaken a future treaty. Canada, the Czech Republic, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Slovakia, Switzerland, and the United Kingdom were the most vocal States who opposed a total ban on cluster munitions and presented proposals and arguments that would change the Vienna Text to allow them to keep and use certain cluster munitions.

Canada, the Czech Republic, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Slovakia, Sweden, and the United Kingdom continued to argue for exceptions for certain cluster munitions, like those containing M85s, based on characteristics of accuracy and reliability. Finland maintained that the humanitarian problems caused by the use of cluster munitions can be tackled by improving the

technical reliability of submunitions and by using cluster munitions equipped with self-destruct mechanisms. Canada announced that it is destroying its last remaining stocks of cluster munitions and while it has no plans to acquire new stocks, it would only consider buying cluster munitions with a 1% failure rate. Germany, under its national policy on cluster munitions, would permit the use of cluster munitions with a 1% failure rate for a period of up to 10 years, while the weapons are being phased out, to be replaced with sensor-fuzed munitions.

These few States were strongly opposed by others calling for a total ban on cluster munitions, who recognize that so-called standards of accuracy and reliability, like failure rates and self-destruct mechanisms will not protect civilians. Norway stated that the terms “inaccurate” and “unreliable” are unworkable as part of a definition. There can be no solution to the humanitarian problems caused by cluster munitions based on failure rates, as even a 1% failure rate is unacceptable, Norway said. Norway added that it will have difficulty accepting any amendments to the Vienna text, such as the proposals by Germany, which are based on failure rates. Austria and other States, such as Cambodia and Senegal, also specifically stated that there can be no exceptions based on failure rates or self-destruct mechanisms in a future treaty.

Avoiding definitions based on standards of accuracy and reliability will be one of the most difficult and contentious issues for negotiation in the Oslo Process and the most critical in determining the amount of protection a future treaty will provide civilians.

Cluster Munitions with Limited Numbers of Submunitions

In addition to exceptions for cluster munitions with certain failure rates and self-destruct mechanisms, the Czech Republic, France, Germany, Italy, the Netherlands, and the United Kingdom proposed exceptions for cluster munitions containing less than 10 submunitions, or a small specified number of submunitions. Norway also stated that this approach may have merit. Colin King, military and explosive ordnance expert, quickly pointed out that limiting the number of submunitions per cluster munition doesn't make sense unless the total number of cluster munitions is also limited. For example, the M73 Hydra Rocket system contains only 9 submunitions, which would be permitted under an exception for cluster munitions with a limited number of submunitions. However, in delivering the weapon, 19 rockets are packaged together in a pod, with a total number of 4 pods. The math results in a total of 684 submunitions being scattered over a wide area, producing the same effects as a cluster bomb containing hundreds of submunitions.

While there was little consensus on major exemptions for certain cluster munitions, States did appear to agree that anti-personnel mines would be excluded as they are already banned by the Ottawa Treaty and that flare, smoke, and chaff munitions, as well as submunitions inert post impact would also be excluded. There was also mention of exemptions for “direct fire” cluster munitions, or cluster munitions that engage targets within line of sight of the gunner.

Transition Period

Denmark, France, Germany, Japan, Slovakia, and the United Kingdom supported including provisions for a transition period of 10 years, during which States would be allowed to use weapons that would be ultimately prohibited under a future treaty. Germany explained its rationale for a transition period, saying, “many states will not accept an immediate total ban on cluster munitions. A step-by-step approach involving a transitional phase is therefore needed.” The step-by-step approach would allow states to continue to use “reliable” and “accurate” cluster munitions (those with a failure rate of 1%) for a limited time period.

It is unclear to NGO activists why a weapon which would ultimately be prohibited as illegal and inhumane under international humanitarian law would be legal to use, even if only for a limited time period. In a worst case scenario, a transition period could even encourage the use of cluster munitions by countries looking to get rid of their stockpiles before obligations for destruction apply.

Retention for Training and Research

Australia, Denmark, France, Germany, Italy, and Switzerland, supported inserting provisions into a future treaty that would allow countries to retain a small number of cluster munitions for research and training purposes. The CMC and civil society believes that retention of cluster munitions for training is unnecessary, as even deminers do not need to train with live munitions. On the contrary, this provision could present States with a potential loop-hole to allow them to continue to stockpile cluster munitions.

Interoperability

Interoperability was another controversial issue in discussions on the scope of a future treaty. Interoperability refers to joint military ventures, wherein a military coalition could be formed between countries bound by obligations not to use cluster munitions, and countries not party to a future instrument on cluster munitions. Paragraph C of Article 1 of the Vienna Text requires that “Each State Party undertakes never under any circumstances to...assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.” Certain States expressed worries that this might mean that their soldiers could be liable if another country not party to a future treaty were to use cluster munitions.

Australia, Canada, the Czech Republic, Denmark, Egypt, France, Germany, Italy, Japan, Lithuania, and the United Kingdom raised concerns about potential issues with interoperability under the Vienna Text. Australia stated that maintaining interoperability is “a red-line issue” for Australia and that the broad language of the Vienna Text could pose significant legal barriers, including for UN mandated operations. The Czech Republic said that the Convention must contain clear provisions to allow for military operability with Non-States Parties, or NATO States would not be able to participate. The Czech Republic added that it could only sign a future treaty if it was sure that the treaty

obligations would not conflict with its NATO responsibilities. Canada said it had substantial and legitimate concerns for any State participating in multi-national operations with Non-States Parties, specifically regarding multinational bases and airfields.

Norway made the point that concern over interoperability is nothing new. Issues regarding interoperability have existed in all operations where different States are bound by different legal regimes, such as the Additional Protocols to the Geneva Convention and the Mine Ban Treaty, and Norway said it had yet to see that interoperability in joint missions has created insurmountable difficulties. As a NATO member, Norway said the discussion was important, but it should not be automatically assumed that a future treaty would be an obstacle to joint military actions. Austria also agreed that interoperability would not be an issue for States Parties to a future treaty. Countries with a total ban on cluster munitions can still contribute to peacekeeping operations and work with international partners, Austria stated.

Major Users and Producers and the CCW

A final issue hindering progress in the Oslo Process towards a complete prohibition on cluster munitions is that a group of States, mainly producers and stockpilers of cluster munitions, argued that for a treaty to be effective, all major producers and users must be on board, or that work should continue in the CCW forum, where major users and producers like the US, China, and Russia would be included. While universality is an important goal for a treaty concluded in the Oslo Process, insisting on the agreement of these few States outside the process will mean weakening the provisions of a treaty to such a degree that it is doubtful if it will provide any meaningful protection to civilians. While the CCW narrowly managed to adopt a vague negotiation mandate to discuss the issue of cluster munitions during the Meeting of States Parties in November 2007, many participants, most notably Russia, were strongly opposed to a total prohibition on cluster munitions. With intense opposition to a prohibition at the outset, it is doubtful that the CCW will achieve a ban on cluster munitions acceptable to civil society and the millions of civilians affected by cluster munitions around the world.

Algeria, Denmark, Egypt, Finland, Japan, Morocco, and the United Kingdom insisted that all major users and producers must participate in the Oslo Process and sign a future instrument for such an instrument to be effective. Denmark stated that it cannot be assumed that Non-State Parties will rally to the Oslo agreement as they have done with regards to the Ottawa Treaty on anti-personnel mines, as Denmark perceives that cluster munitions have a greater military utility than landmines. Japan said that a total prohibition on cluster munitions will mean that major users and producers will not join. Finland agreed, saying that a complete ban is not a solution because major users and producers will not agree to one. Algeria, Morocco, and Turkey, all cluster munitions stockpilers, stated that they favored work in the CCW.

It can only be assumed that countries that continue to use these arguments are not prepared to commit to a total ban on cluster munitions and are looking for ways to keep

their weapons. The argument became increasingly untenable when the CMC pointed out that there were only 4 past users of cluster munitions not present at Vienna; the US, Russia, Israel, and Eritrea. The Oslo Process already includes 16 of the 25 States affected by cluster munitions, 21 of the 34 States producing cluster munitions, and 41 of the 75 States with stockpiles of cluster munitions. The Oslo Process also includes 25 States that are not party to the CCW.

Germany and a Draft CCW Protocol on Cluster Munitions

During the Vienna Conference, Germany presented a detailed outline of its policy position on cluster munitions and suggestions for a future treaty. In short, the German policy is to immediately ban so-called inaccurate and unreliable cluster munitions “whose effects equal that of anti-personnel landmines,” while restricting the use of cluster munitions to exclude targeting civilians. Then, after a transition period where prohibited weapons might still be used (although only as “weapons of last resort”), by 2015, Germany proposes to completely phase out cluster munitions to be replaced by sensor-fuzed area munitions (SEFAM), which it claims will allow States to engage point targets in predefined areas and fulfill requirements of accuracy and reliability. The CMC is opposed to exceptions in an Oslo Process treaty for sensor-fuzed munitions and is extremely skeptical of the allegation that SEFAM will not cause unacceptable harm to civilians. Germany compiled its policy into a proposed draft protocol on cluster munitions in the framework of the CCW, to be added as a future Protocol VI to that Convention.

Germany stated that it wished its proposals to be included in the draft text to be prepared for the Wellington Conference. There was, however, relatively little support voiced in the Vienna Conference for Germany’s proposals. They will remain on the table for consideration but will not be formally incorporated into the Wellington Draft Text, according to the Vienna Conference Co-Chair, Ambassador MacKay.

Discussions on definitions and on the scope of a future instrument will continue in depth at the coming Wellington Conference on Cluster Munitions. While arguments from a handful of States still threaten to weaken a future treaty, discussions at Vienna have undoubtedly helped to clarify participants’ positions and have narrowed areas for future work. Encouragingly, the consolidation of a majority of States, most notably developing and African countries, in support of a total ban on cluster munitions without exceptions, is a positive sign for future negotiations.

Clearance and Destruction of Cluster Munition Remnants

Discussions continued in Vienna on other key areas of a future treaty banning cluster munitions with much greater consensus than on discussions on definitions and scope of a future instrument. One main area of this future treaty is provisions for clearance and destruction of cluster munitions in affected areas. Article 4 of the Vienna Text contains obligations for clearance and destruction of cluster munition remnants. Article 4.1 of the

Vienna Text requires that States Parties must clear and destroy all cluster munition remnants on their territories, or territories under their control, no later than five years after the entry into force of the treaty. The deadline has been shortened to five years from the ten year deadline contained in the Lima text. The Vienna Text also shortens the deadline for a possible extension period for clearance and destruction from ten to five years.

Article 4.2 contains the main obligations of States Parties regarding clearance, such as identifying areas of contamination, marking and fencing affected areas, and actions to protect civilians.³

Article 4.4 includes a new obligation, with language taken from language in Protocol V of the CCW, on the responsibility of past users of cluster munitions to provide assistance for marking, clearance, and the destruction of cluster munition remnants.

Risk Education

The CMC, the UNDP, and several States emphasized the importance of including language on risk education in a future article on clearance. Risk education is critical to protecting civilians, the CMC stated. However, it is not a solution in itself; the only solution is to ensure the complete destruction of cluster munition remnants. In mine clearance operations, it has been found that civilians ignore signs marking minefields or remove the metal signposts to use as roof tiles. In Laos, civilians harvest scrap metal from cluster munitions out of economic necessity even though they are aware of the risks.

Deadlines for Clearance

During discussions on provisions for clearance in a future treaty, the CMC, UNDP, and ICRC strongly supported shortening the deadline for clearance to five years to ensure rapid clearance of contaminated areas. Acknowledging the need for the international community to provide resources and assistance to affected countries, the CMC and UNDP supported a five year deadline as realistic and achievable. Extensions would be applicable in the case of heavily affected countries, such as Laos, who face a genuine problem in regards to clearance. Effective prioritization of funding and coordination with international organizations can insure that clearance operations be carried out within a short time frame.

³ The CMC recommends that risk education for civilians be explicitly mentioned as an obligation for States Parties, along with the obligation to maintain the capacity to conduct and provide assistance for required activities under the article. The CMC and ICRC also stated that obligations in Article 4 for the protection of civilians, such as requirements to survey, assess, mark, monitor, and fence contaminated areas must occur concurrently and not consecutively.

Several countries indicated, however, that a five year deadline for clearance would be unrealistic. Australia, Egypt, France, Norway, and the United Kingdom expressed hesitancy over the proposed five year period. Laos stated that 80 million cluster bombs had been dropped over 87,000 square kilometers of its territory, with up to 12,000 submunitions per square kilometer in the most affected areas, and that a five year deadline for clearance was not feasible. Laos is the world's most heavily contaminated country, however, and would be considered an exceptional circumstance deserving international assistance and an extension period for clearance operations.

Past Users

The United Kingdom stated that Article 4.4, pertaining to the responsibility of users of cluster munitions to provide assistance or clearance, is “too open ended” and that the primary responsibility for clearance should be with the affected States. France also had concerns about retroactive requirements pertaining to past users.

Indonesia and Afghanistan raised issue with Article 4's reference to standards contained in the CCW, as neither country is a State Party to that Convention.

Storage and Stockpile Destruction

Ensuring safe storage and stockpile destruction of cluster munitions is another critical component of a future instrument. Provisions will form the non-proliferation aspect of a treaty and will help make certain that cluster munitions do not fall into the hands of Non-State actors or terrorists, a serious concern of the international community.

The Vienna Text's Article 3 on storage and stockpile destruction requires States Parties to separate cluster munitions from stocks “for potential use” and store them in separate stockpiles for destruction. It maintains that each States Party must destroy all cluster munitions within six years after the entry into force of the Convention for that State Party. If a State Party cannot meet the deadline for destruction, it may submit a request to a Meeting of States Parties for an extension for up to ten years.

The Vienna article improves upon the previous version used at Lima by including language requiring States Parties to ensure that destruction methods comply with “applicable international standards for protecting public health and the environment.” The Article also specifies that the transfer of cluster munitions for the purpose of destruction is permitted.⁴

Deadlines for Destruction—16 years?

Austria, Norway, and the CMC were confident that the proposed deadlines contained in the Vienna Text were realistic and could be even shorter. Austria stated that it will

⁴ The CMC would like language in the article to be clarified from “stocks for potential use,” which could be construed as implying that some cluster munitions are being kept for future use, to reflect the reality that cluster munitions should be separated from other ammunitions stocks.

accomplish its stockpile destruction obligations within three years, demonstrating that stockpile destruction is possible in a safe, environmentally friendly, and timely manner.

The CMC questioned the necessity of allowing States Parties six years for clearance, as the Mine Ban Treaty experience has shown that few States even needed the full four year period allotted to them to complete their destruction. The CMC acknowledged that cluster munitions are more complicated and costly to destroy than landmines, but suggested that shorter deadlines will encourage the complete destruction of dangerous stockpiles. The CMC also objected to allowing States Parties a ten year extension period. The Mine Ban Treaty does not permit an extension period and “that fact has induced many states to expedite their destruction process,” the CMC said.⁵

Norway emphasized that obligations of safe storage and stockpile destruction will be one of the main criteria for assessing the usefulness of a future Convention and determining its credibility. Stockpile destruction is the only safeguard against future use and demonstration of States Parties’ commitments. Recognizing the financial and logistical challenges of destroying cluster munitions, time limits for destruction must reflect this reality but be measured against the danger of undermining the Convention’s credibility and the costs of potential proliferation, Norway said. Norwegian military authorities estimated that destroying shells containing the M85 type of cluster munition costs 40 US dollars for each submunition.

In terms of the proposed deadline for stockpile destruction, Norway stated that the 6 year deadline including the 10 year extension period was realistic, but 16 years in total may be too long, and anything beyond 16 years would have a serious impact on the credibility of the Convention. Norway was opposed to permitting countries to retain cluster munitions for training and research purposes, stating that humanitarian organizations carrying out clearance and destruction programs do not need live cluster munitions for training.

Germany stated it did not support the proposed deadlines contained in the Vienna Text as realistic for stockpile destruction. Morocco, Switzerland, and the United Kingdom were hesitant to support the deadline and emphasized the difficulties and costs associated with stockpile destruction.

Germany gave a detailed power-point presentation on storage and destruction, outlining proposed criteria for safe storage and benchmarks for safe destruction, which it stated should be formulated as best-practice guide for a future instrument. As part of its national policy on cluster munitions, Germany is currently destroying its cluster munitions with a failure rate above 1%. Germany provided statistics on some of its experiences with

⁵ The CMC added that stockpiling cluster munitions in a foreign territory or a Non-State Party should also be prohibited. Stocks discovered after the completion of destruction programs and the expiration of the deadline for clearance operations should also be required to be destroyed as soon as possible and reported in annual transparency reports. The retention of cluster munitions for training and development of clearance and destruction techniques should also be prohibited, the CMC stated, in order to prevent a potential loophole in the treaty.

stockpile destruction to justify its view that a six year deadline for destruction is unrealistic.

In terms of storage of non-operational cluster munitions awaiting destruction, Germany claimed that “one square meter of storage for munitions awaiting destruction costs approximately 250 Euro per year. Each square meter can accommodate about 40 dispensers of cluster munitions of a 155 mm artillery caliber. Thus, for an average quantity of one type of cluster munitions, the annual storage costs might be about half a million Euro per year.” Germany did admit, that “in addition it has to be stated that costs for operational stocks are 25-30% higher for non-operational stocks.”

Given the quantities of stockpiled submunitions, the time required for destruction, the costs of destruction, and the limited number of contractors, Germany questioned if the six year deadline proposed in the Vienna Text would be feasible. In terms of the time necessary for stockpile destruction, Germany used the example of the 155 mm Artillery Round DM 602, which contains 63 submunitions. “For destruction of one cluster munition and its sub-munitions, a minimum of approximately 30 minutes are required. However, additional time will be necessary for initial inspection of received munitions, on site transport, unpacking, and for internal recording, safety and quality management,” Germany said. “To complete the example for an appropriate timeframe for destruction... a German contractor (ISL Facilities in Lübben) destroyed about 17,681 cluster munitions of the type DM 602. It took four years; the destruction included 1,113,903 sub-munitions.”

Germany estimated that the “costs of destruction per dispenser or container including the respective sub-munitions are at a minimum 40 € and at a maximum 70,000 € according to the standards that are used by the German Armed Forces. Depending on the number of dispensers of one type of cluster munition, the budget required for destruction by a contractor could reach many millions of €.”

Germany also stated that the limited capabilities of contractors to destroy submunitions will result in an immediate rise of prices. Germany said that “NAMSA [NATO Maintenance and Supply Agency] recently reported that there were only 12 contractors, which had capacities to destruct in Europe, and that those would clearly be not sufficient to destroy cluster munitions of 25 NATO State Parties within the given time-frame.”

Switzerland mentioned that it considers it essential that stocks waiting for destruction should be suitably secured to avoid falling into the hands of non-state actors. Switzerland also remarked that there are only a small number of contractors available to carry out stockpile destruction and noted that most older cluster munitions systems were not designed to be broken down or for reverse engineering. Switzerland pointed out that it has destroyed its stocks of BL755 cluster munitions in the past.

The United Kingdom discussed its plans for disposal of its stockpiles of M26 cluster munitions. The M26 program will take 7 years and cost 45 million euro, according to the

UK representative. The UK also noted that there are not many facilities in existence that can destroy cluster munitions and might not be able to cope with increased demand.

Retention for Training and Research

Australia, Denmark, Germany, and Switzerland stated that they considered retaining representative samples of cluster munitions necessary for clearance and destruction training. Australia claimed that as it does not manufacture or use cluster munitions, it is not trying to create a loop-hole, or retain weapons. Italy said it would be flexible with regards to the retention of small numbers of cluster munitions for training, but as it could be a risk for circumvention, a ceiling on the number possible for retention should be established. The CMC is strongly opposed to provisions for allowing retention of cluster munitions as unnecessary and dangerous, as it could present a potential loop-hole for States to continue stockpiling weapons.

Victim Assistance

For the Oslo Process, victim assistance is the cornerstone of a future instrument banning cluster munitions. The Vienna Text includes a separate article on victim assistance with stronger language, reflecting consensus reached during the Lima Conference on the critical importance of the issue in a future treaty. The article stipulates that each State Party will provide medical care, rehabilitation, psychological support and social and economic inclusion for victims, in accordance with international human rights standards. It also requires State Parties to make every effort to collect reliable and relevant data with respect to victims.⁶

Ambassador Winter Ignault of Chile, a survivor of an anti-vehicle mine explosion in which he lost both of his legs, introduced the Vienna Conference's session on victim assistance. 'The task of eliminating the threat posed by cluster munitions won't be completed with clearance, but only by returning victims back to their lives,' he said.

The Vienna discussions on victim assistance built on areas of consensus reached at the Lima Conference. There was general agreement at the outset of the Vienna discussions that the term "victim" extended beyond the individual to include their family and community. Other aspects were noted as areas enjoying the support of a majority of participants such as victim assistance being the primary responsibility of affected States, the importance of non-discrimination and utilizing lessons learned in landmine

⁶ The CMC believes that this article could be further strengthened by including a sixth requirement for States Parties on the establishment, enforcement, and implementation of relevant laws and policies, in accordance with the main elements of victim assistance outlined in the Nairobi Action Plan of the Mine Ban Treaty. States Parties should also be obliged to provide community assistance, including providing access to resources such as water, land, and roads. International support should be provided for victim assistance efforts, while recognizing that the primary responsibility for developing national victim assistance programs lies with affected States. The CMC also calls for attention to gender issues and specific measures for children, along with consultation with victims and persons with disabilities in all victim assistance projects, programs, policies, and decision making.

assistance, reference to the Convention on the Rights of Persons with Disabilities, employing a rights based approach, and providing assistance to affected States.

Strengthening Victim Assistance

Several countries spoke in favor of strengthening language in the article and preamble. Many countries advocated for stronger language on human rights standards, the importance of using a rights based approach, and references to existing international instruments like the Convention on the Rights of Persons with Disabilities. Canada said, “We can beef it up,” by strengthening wording in the article and preamble to ensure that the highest international standards are used to ensure a full range of services for victims and their reintegration to society. The ICRC stated that non-discrimination should be explicitly mentioned in the article, as its reference in the preamble alone is insufficient. The ICRC joined a large group of participants who said that non-discrimination should be a primary principle behind victim assistance.

Others such as UNICEF, CMC, Croatia, and Switzerland suggested that the preamble could be strengthened by including language on taking into account gender perspectives and age in victim assistance programs. The CMC also added that a disability perspective should be incorporated by including survivors into decision making processes.

Spain and the Netherlands raised concerns about the language in the preambular paragraph referring to victim assistance. The Netherlands said that the language, with terms like “inter alia,” was very vast and could be counterproductive, as potential liability issues might prevent providing aid. The Netherlands said that there should be a sharper definition of obligations and requirements for victim assistance. Spain stated that there is a need to define who is entitled to the rights outlined in the article and preamble in order to facilitate the provision of international cooperation and assistance and to provide a sense of direction for assistance—whether it should be given directly to the victim or through international organizations to facilitate community assistance.

Data Collection

Many countries approved of the Vienna Text’s obligation for States to collect “reliable relevant data” on victims. Austria, the ICRC, Norway, and Thailand noted the importance of data collection, while Italy stated that the types of data States are required to collect should be specified along with who is responsible for collecting data and who data should be submitted to. Italy suggested that the UN Secretary General could be a possible recipient. Thailand proposed that obligations on data collection could be included as a separate sub-paragraph under Article 5.

Long-term Strategies and Development

Australia, Norway, Switzerland, and the United Kingdom referred to the importance of providing long-term care and support for reintegration of victims by assisting affected

States to build their national capacity and national health care systems. Other States, such as Afghanistan, noted the importance of linking assistance to overall development strategies. Developing States, such as Bangladesh, Guatemala, Sierra Leone, Uganda, Malawi, and Togo also strongly emphasized the importance of international cooperation and assistance for victim assistance programs.

Mauritania mentioned providing micro-grants and training programs as part of the strategy to reintegrate victims into daily life and communities. Bangladesh and Nepal spoke in favor of creating a mandatory fund for victim assistance.

Discussions on victim assistance will carry on in Wellington and Dublin with a firm basis of support from participants for Article 5 and continue to address suggestions to strengthen its language and provisions. As the Oslo Process builds on the Mine Ban Treaty, participants have the opportunity to use lessons learned in the landmine process to create a new treaty that will contain the highest possible standards of human rights and victim assistance.

International Cooperation and Assistance

Friday, December 7th, the final day of the Vienna Conference, began with a session on Article 6 of the Vienna Text on international cooperation and assistance. The Vienna article contains significantly stronger language for obligations to provide assistance than the previous version used in Lima. The Vienna article also includes a specific reference on the responsibility of past users of cluster munitions to provide assistance for clearance and information, lists of experts, and national points of contact for clearance activities.⁷

Responsibilities of Past Users

Participants seemed to largely support the Vienna Text's article on cooperation and assistance. Several delegations attached particular importance to Article 6.4's reference to the responsibility of past users, such as Croatia, Indonesia, UNDP, CMC, Egypt, Laos, and Zambia. Egypt said that language on the special responsibility of users should be highlighted as a separate sub-paragraph. The UNDP, in agreement with the CMC, said that Article 6.4 should also refer to the obligation of user states to provide timely information about cluster munition strikes.

The United Kingdom was less supportive of language on the responsibility of past users, saying that the Conference should be careful about making open ended commitments that would be difficult to implement, especially about actions taken 40 or 50 years ago. The

⁷ The CMC strongly supports the reference to past users and calls for insertion of similar language into other paragraphs of the article, along with a requirement for user states to provide information as to the types of munitions used, their quantities, and the precise locations of strikes. The CMC also advocates for specific language on risk education activities, the role of civil society in developing national action programs, and the inclusion of victims and disability perspectives in cooperation and assistance efforts.

UK suggested looking to language used in Article 3 of Protocol V of the CCW. The United Kingdom used cluster munitions in Iraq in 2003.

Trust Funds

Indonesia, Norway, and South Africa raised questions about the article's reference to "relevant trust funds" for international cooperation and assistance. Norway stated that based on past experiences, it would be cautious to use trust funds, and should instead concentrate on building more effective, more responsible relations between donors and recipients. South Africa also expressed hesitancy about relying on trust funds. Indonesia requested clarification if the article referred to establishing a new trust fund or using existing trust fund from UN Mine Action Service. In response, the UN Mine Action Service stated that the trust fund would be a voluntary fund and un-earmarked donations would be encouraged for use in emergencies as they may occur.

Canada suggested that for Official Development Assistance (ODA) eligible countries, support from the international community might be considered ODA, which would enable donor countries such as Canada to draw on its development budget, which Canada said is larger and more enduring than its thematic budget. Canada also supported integrating assistance into long-term development plans for developing countries, and hoped that recipient countries would exempt assistance from taxes and duties.

Reporting

France stated that it should be required to record efforts made in providing international cooperation and assistance in national reports. Australia said that it would not be practical or useful to require reporting or monitoring of cluster munition specific assistance as it provides mine action assistance for a range of weapons. Tracking donor spending is important for all mine action programs and there should be increasing emphasis on the outcomes of assistance, Australia said.

Developing Countries

Developing countries such as Guatemala, Kenya, and Zambia underlined the importance of assistance. Tajikistan, a new participant in the Oslo Process, stated that meeting its future obligations on cluster munitions clearance will be dependent on external assistance. Indonesia and Bangladesh mentioned including special provisions and assistance for training for countries that contribute to peacekeeping operations.

Transparency and Compliance

The session on transparency and compliance covered the Vienna Text's Articles 7, 8, and 9 on transparency measures, facilitation and clarification of compliance, and national implementation measures.

Article 7 on transparency requires States Parties to submit reports to the UN Secretary-General within 180 days of the Convention's entry into force on the status of its national implementation measures; information on the types and characteristics of cluster munitions it produces or possesses; contaminated areas; the status of programs for destruction; information on clearance; measures taken to warn civilians; measures taken on Article 5 obligations on victim assistance; and information on names and contact details for institutions responsible for carrying out provisions in the article.

The Vienna Text improves on the previous Lima Text's article on transparency by specifically requiring that a State Party must provide information on all cluster munitions stockpiled on its territory, measures taken in regards to victim assistance obligations, and must provide names and contact details for relevant institutions.⁸

Article 8, on facilitation and clarification of compliance, obliges States Parties to consult and cooperate with each other regarding the implementation of the Convention, in a "spirit of cooperation to facilitate compliance." The article enables States to seek to resolve questions on compliance by submitting a Request for Clarification to the UN Secretary-General. Additionally, Meetings of States Parties may consider issues further and may suggest "ways and means further to clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law," or other general procedures for clarification and resolution.⁹

Article 9, on national implementation measures, takes requirements on national implementation a step further than the Lima Text. It strengthens States Parties' responsibility to impose penal sanctions, to prevent and suppress activities prohibited by the Convention, "undertaken anywhere by natural persons possessing its nationality, or by any natural or legal person anywhere on its territory or in any other place under its jurisdiction or control."¹⁰

Discussions in Vienna on transparency and compliance were brief, but raised several key points on suggestions for national reporting, possibilities for including fact-finding

⁸ The CMC believes that while the Vienna article is an improvement, its language should be strengthened to clarify other aspects that States should be required to include in national reports. The CMC suggests that the article should explicitly require information about the types and quantities of submunitions contained in stockpiles, improve language referring to risk education programs, add new language on reporting on destroyed stockpiles, foreign stockpiling, assistance for clearance, and national funding for activities stipulated under the Convention. The reports should also be publicly available and States should assist civil society's efforts for independent monitoring, the CMC said.

⁹ The CMC supports the cooperative compliance approach used in the Vienna Text, which is taken from the Mine Ban Treaty. The types of potential actions that Meetings of States Parties might take to pursue matters relating to non-compliance should be further elaborated, the CMC stated.

¹⁰ The CMC adds that this article should also demand that States parties take measures to ensure the human rights of victims and be encouraged to enact new domestic legislation specific to the Convention.

missions, a follow-up mechanism, and concerns relating to extraterritorial application of penal law.

Reporting

Morocco stated that national reports should be submitted to the Secretariat of the CCW instead of the UN Secretary-General as it believes that the CCW is the most appropriate framework for addressing cluster munitions.

Italy stated that some of the information requested to be included in national reports is considered classified by Italy and would have to undergo declassification. Italy also said that discussions on compliance and eventual verification provisions are premature at this stage as they will have to be adapted to the degree of a prohibition agreed to as the process continues.

Civil Society's Role

The role of civil society in monitoring compliance was also discussed. The CMC stressed the importance of including civil society, to play a role similar to that of the Landmine Monitor for the Mine Ban Treaty. A future instrument in the Oslo Process should give greater influence to the participation of survivors, their families, and the inclusion of opinions from local communities and NGOs. Every survivor should have the ability to address grievances with international institutions in public discussion. Survivors must also have access to documentation quickly and in understandable wording.

Turkey stated that the role of civil society should be as envisioned in the Mine Ban Treaty, but emphasized that this role was contingent on the consent and request of the State concerned.

A Follow-up Mechanism

Mauritania proposed that, with inspiration from the Mine Ban Treaty, a provision should be included in the Oslo Process text for a follow-up mechanism for implementation, which should include representatives of victims, parliaments, affected States, and civil society.

Fact-Finding Missions

Argentina advocated for the inclusion of provisions for the establishment of fact-finding missions, as contained in the Mine Ban Treaty. The CMC stated that fact-finding missions were omitted from the Vienna Text as they only exist on paper in the Mine Ban Treaty and have no support from States Parties.

Argentina also stated it had serious legal objections to the Vienna Text's obligations on penal sanctions, raising the question of the possible extraterritorial application of penal

law. Argentina said it was not prepared to track its citizens on whatever country they misbehave.

Procedural Items

The remaining articles in the Vienna Text cover procedural aspects of the Convention, such as dispute settlement, Meetings of States Parties, Review Conferences, amendments, costs, signature, ratification, entry into force, provisional application, reservations, duration and withdrawal, depositary, and authentic texts.

Small changes have been made in the procedural articles from the Lima to the Vienna Text. Article 10 on dispute settlement includes a new reference to allow for referral of disputes to the International Court of Justice. States can refer to the ICJ by agreement, although it is not a compulsory requirement. Article 11 on the Meetings of States Parties has been amended to include that Meetings of States Parties may “take decisions” on matters relating to the interpretation, application or implementation of the Convention.¹¹ The Vienna Text also keeps the number of ratifications necessary for the entry into force of the Convention at 20.¹² This is the same number necessary for all CCW instruments although a great body of international humanitarian law provides for entry into force after just 2 ratifications to enable the earliest establishment and application of humanitarian norms.

During discussions on procedural aspects, a large number of delegations supported an intersessional work program and convening Review Conferences. The number of ratifications necessary for entry into force was also discussed as well as the inclusion of the ICJ in dispute settlements and complementarity with existing international law such as Protocol V.

Review Conferences

While most delegations expressed support for holding Review Conferences, Egypt suggested that given the expense of Review Conferences, it would be more effective to hold Meetings of States Parties or Intersessional Meetings. Responding to Egypt, Italy stated that Review Conferences are indispensable for reviewing the efficacy of the Convention. Afghanistan, Austria, Canada, and Turkey also emphasized the importance role of Review Conferences.

¹¹ The CMC added comments that under Article 11 on Meetings of States Parties, “it would better reflect reality if it stated that the UN, ICRC, NGOs and others ‘shall’ be invited to attend these Meetings, rather than ‘may’ be invited.” The CMC also suggested that the treaty text should address matters such as an intersessional work program, an implementation support unit, a sponsorship program, and the application of the Convention to non-state armed groups.

¹² The CMC supports the designation of 20 ratifications to trigger the Convention’s entry into force and strongly supports Article 19, which states that no reservations to any articles are permitted under the Convention, and Article 20, which prohibits the withdrawal of any State Party while engaged in armed conflict.

Intersessional Meetings, Implementation Support Unit, Sponsorship Program

Canada recommended that States Parties agree to hold one Intersessional Meeting between Meetings of States Parties. Canada also called for the creation of an Implementation Support Unit, potentially in the Geneva International Centre for Humanitarian Demining (GICHD), and a Sponsorship Program. Austria, Croatia, the CMC, and Turkey supported these suggestions.

The Netherlands and France mentioned that a provision should be included in a future instrument on cluster munitions that specifies its complementarity with Protocol V and the CCW. France also requested clearer phrasing relating to the role of the International Court of Justice.

Entry into Force

On the issue of the number of ratifications necessary for entry into force, Afghanistan, Austria, Canada, Croatia, the CMC, agreed with the proposed number of 20 instruments. Egypt, however, stated that any instrument prohibiting cluster munitions is deemed to remain irrelevant if the major users and producers are not on board and therefore entry into force should be conditional to other States. Italy noted Egypt's comments and said that it is premature to decide on numbers of ratification for entry into force, as the appropriate number will depend on the nature of the engagement of the Convention. The number of ratifications necessary will depend on whether the final document that is agreed on is fundamentally a disarmament document or a humanitarian agreement, Italy said. Canada said that it rejected the view that large numbers of producers and users must be on board initially, as the Mine Ban Treaty process has demonstrated the ability of that Convention to generate new norms.

Conclusion

The Vienna Conference closed with the passing of the gavel from the Vienna Conference Chair, Ambassador Wolfgang Petritsch of Austria, to the incoming Chair of the Wellington Conference, Ambassador Don MacKay and remarks from cluster munitions survivor, Branislav Kapetanovic.

Mr. Kapetanovic left participants with a few final questions. 'How many more thousands of civilians killed and injured do the supporters of so-called smart cluster munitions need before they understand how dangerous these weapons are? And are we not sufficient, we who suffered because of cluster munitions, we who lost our arms, our legs, our eyes, or some other part of our bodies? What else should happen before they realize and make the right decision?' he asked. He called on those present in Vienna, and those not present, to come to Wellington and give new strength to the Oslo Process and negotiate a treaty that will contain a total prohibition on cluster munitions, without exceptions, to provide meaningful protection to civilians.

Since the opening of the Vienna Conference, four additional States joined the Oslo Process, bringing the total number of States participating to 138. This reflects the enormous momentum that the process has generated. “With so many countries now supporting the process to ban cluster munitions and real progress on the key humanitarian issues we are more confident than ever that a strong ban treaty will be signed in 2008 – There is no turning back now,” said Thomas Nash, Coordinator of the CMC. Indeed, with two-thirds of the world participating, the huge conference room in Vienna seemed barely big enough to hold all of the delegates and civil society participants.

The Wellington Conference, the next major meeting in the Oslo Process, will take place from 18-22 February 2007. The Wellington Conference will be the last discussion based Conference before the Dublin Conference, from 19-30 May 2007, wherein participants will begin actual negotiations on the treaty text. According to the CMC, the Wellington Conference will follow a slightly different format and allow smaller groups to discuss ways forward on specific areas of the treaty. Discussions on major issues, such as the definition of cluster munitions and scope of a future treaty, will still occur in general plenary sessions.

A main objective of the Wellington Conference will be to gather endorsements from participants for a “Wellington Declaration.” By agreeing to the Declaration, States will pledge to participate in the negotiations at the Dublin Conference and use the treaty text that emerges from the Wellington Conference as the basis for negotiations.

The Vienna Conference made important progress in increasing consensus on critical areas in a future treaty and in clarifying areas of contention. With broad agreement on achieving the highest possible standards for victim assistance and progress on even the hardest issues, such as definitions and scope, participants left the Conference optimistic that a powerful and effective treaty will be successfully negotiated and signed by the end 2008.

Participation in the Oslo Process

138 States participated at the Vienna Conference on Cluster Munitions. The States that attended are listed below by world region. The States that have endorsed the Oslo Declaration or Oslo Process are in **bold**. As of 7 December 2007 there are 94 States that have explicitly endorsed the Oslo Declaration or indicated their support for the Oslo Process.

In Vienna, 9 countries explicitly endorsed the Oslo Declaration or announced support for the Oslo Process for the first time: Algeria, DR Congo, Equatorial Guinea, Guinea, Kenya, Mali, Sierra Leone, Seychelles and Sudan. Tajikistan announced its support via an official letter to Norway and the CMC in November.

AFRICA (38, of which 24 have supported the Oslo Process)

Angola, Benin, Burkina Faso, **Burundi**, Cameroon, **Chad**, **DR Congo**, Republic of Congo, Côte d'Ivoire, Djibouti, **Equatorial Guinea**, Ethiopia, Gambia, **Ghana**, **Guinea**, **Guinea Bissau**,

Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia.

AMERICAS (22, of which 17 have supported the Oslo Process)

Argentina, Belize, Bolivia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, St Kitts and Nevis, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

ASIA AND PACIFIC (19, of which 9 have supported the Oslo Process)

Afghanistan, Australia, Bangladesh, Brunei Darussalam, Cambodia, Fiji, Indonesia, Jamaica, Japan, Lao PDR, Malaysia, Nepal, New Zealand, Palau, Philippines, Samoa, Sri Lanka, Thailand, Vietnam.

EUROPE, the CAUCASUS, CENTRAL ASIA (49, of which 38 have supported the Oslo Process)

Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lichtenstein, Lithuania, Luxembourg, Macedonia (FYR), Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom.

MIDDLE EAST AND NORTH AFRICA (10, of which 4 have supported the Oslo Process)

Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia.

Notes:

St Vincent & the Grenadines and Yemen have also endorsed the Oslo Process but did not attend the Vienna Conference.

Two thirds (16 out of 25) of the countries affected by cluster munitions support the Oslo Process:

Afghanistan, Albania, Angola, Bosnia and Herzegovina, Cambodia, Chad, Croatia, DR Congo, Guinea Bissau, Lao PDR, Lebanon, Montenegro, Serbia, Sierra Leone, Sudan and Uganda.

More than half (41 out of 76) of the countries stockpiling cluster munitions support the Oslo Process:

Algeria, Angola, Austria, Bosnia and Herzegovina, Bulgaria, Chile, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Guinea, Guinea Bissau, Hungary, Indonesia, Italy, Japan, Jordan, Montenegro, Netherlands, Nigeria, Norway, Peru, Poland, Portugal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Turkey, Uganda, UK, Yemen.

More than half (21 out of 34) of the countries that have produced cluster munitions support the Oslo Process:

Argentina, Chile, Belgium, Bosnia and Herzegovina, Bulgaria, Egypt, France, Germany, Greece, Italy, Japan, Netherlands, Poland, Serbia, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey and the UK.

25 states that support the Oslo Process are not party to the Convention on Certain Conventional Weapons (CCW):

Afghanistan (signatory), Angola, Burundi, Chad, DR Congo, Dominican Republic, Egypt (signatory), Equatorial Guinea, Ghana, Guinea, Guinea Bissau, Iceland (signatory), Indonesia, Kenya, Lebanon, Malawi, Mauritania, Mozambique, Nigeria (signatory), St Vincent & the Grenadines, Sudan (signatory), Tanzania, Thailand, Yemen, Zambia.

Source: The Cluster Munition Coalition