

Chairs' discussion text on a legally binding international instrument that will prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians

Lima 23-25 May 2007

Preamble.....

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Have agreed as follows:

Article 1 - General obligations and scope of application

Because of their unacceptable harm to civilians and civilian objects during and after use, each State Party undertakes never under any circumstances:

- a) To use cluster munitions as defined in Article 2.
- b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions as defined in Article 2.
- c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this convention.

Article 2 - Definition

The following weapons systems shall be considered prohibited cluster munitions under this treaty:

Air carried dispersal systems or air delivered, surface or sub-surface launched containers, that are designed to disperse explosive sub-munitions intended to detonate following separation from the container or dispenser, unless they are designed to, manually or automatically, aim, detect and engage point targets, or are meant for smoke or flaring, or unless their use is regulated or prohibited under other treaties.

Article 3 – Storage and stockpile destruction

1. Each State Party undertakes to separate cluster munitions as defined in Article 2 from stocks for potential use, and keep in separate stockpiles for the purpose of destruction.
2. Each State Party undertakes to destroy or ensure the destruction of all cluster munitions as defined in Article 2 under its jurisdiction or control, as soon as possible but not later than six years after the entry into force of this Convention for that State Party.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munitions, for a period of up to ten years.
4. Each request shall contain:
 - a) The duration of the proposed extension;
 - b) A detailed explanation of the reasons for the proposed extension, including the financial and technical means required for the destruction of all the cluster munitions referred to in paragraph 1,
 - c) A plan for how and when stockpile destruction will be completed.
5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.
6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 4 – Clearance of unexploded ordnance from cluster munitions

1. Each State Party undertakes to clear all unexploded ordnance from cluster munitions in areas under its jurisdiction and control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.
2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which cluster munitions are known or suspected to be present and shall ensure as soon as possible that all cluster munitions in such areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all cluster munitions contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

3. If a State Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munitions, for a period of up to ten years.

4. Each request shall contain:

a) The duration of the proposed extension;

b) A detailed explanation of the reasons for the proposed extension, including:

i) The preparation and status of work conducted under national clearing/demining programs;

ii) The financial and technical means available to the State Party for the destruction of all the cluster munitions; and

iii) Circumstances which impede the ability of the State Party to destroy all the cluster munitions in contaminated areas;

c) The humanitarian, social, economic, and environmental implications of the extension; and

d) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 5 - International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision of clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for clearance of cluster munitions and related activities. Such assistance may be provided, inter alia, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled cluster munitions as defined in Article 2.

5. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national program to determine, inter alia:

a) The extent and scope of the contamination of unexploded ordnance from cluster munitions;

b) The financial, technological and human resources required for the implementation of the program;

c) The estimated number of years necessary to clear all unexploded ordnance in contaminated areas under the jurisdiction or control of the concerned State Party;

d) Awareness activities to reduce the incidence of injuries or deaths caused by unexploded ordnance from cluster munitions;

e) Assistance to victims from cluster munitions;

f) The relationship between the Government of the concerned State Party and the relevant governmental, inter-governmental or non-governmental entities that will work in the implementation of the program.

6. Each State Party giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programs.

Article 6 – Victim assistance

1. Each State Party shall, in accordance with applicable international human rights standards, endeavour to take adequate steps such as providing medical care and rehabilitation as well as facilitating social and economic reintegration of victims of cluster munitions, in order to ensure the full realisation of their human rights and respect for their inherent dignity.

2. Each State Party in a position to do so shall provide assistance for the medical care and rehabilitation as well as social and economic reintegration of victims of cluster munitions and for cluster munitions awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

Article 7 - Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

- a) The national implementation measures referred to in Article 9;
- b) The total of all stockpiled cluster munitions as defined in Article 2 owned or possessed by it, or under its jurisdiction or control, to include a breakdown of their type, quantity and, if possible, lot numbers of each type;
- c) To the extent possible, the location of all areas that contain, or are suspected to contain, unexploded ordnance from cluster munitions under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of cluster munitions in each affected area and when they were used;
- d) The status of programs for the conversion or de-commissioning of production facilities for cluster munitions as defined in Article 2;
- e) The status of programs for the destruction, in accordance with Article 3, of cluster munitions as defined in Article 2, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
- f) The types and quantities of all cluster munitions destroyed in accordance with Article 3, after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of cluster munition destroyed;
- g) The technical characteristics of each type of cluster munition as defined in Article 2 produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of cluster munitions; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate the clearance of unexploded ordnance caused by these munitions; and
- h) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified to be contaminated by unexploded ordnance from cluster munitions.

2. The information provided in accordance with this Article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8 - Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. The Meeting of States Parties may consider and approve further procedures and mechanisms for determining instances of non-compliance with the provisions of this Convention and on the steps that may be taken in such instances.

Article 9 – National implementation measures

Each State shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10 - Settlement of disputes

1. The States Parties shall consult and cooperate with each other to settle any dispute that may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

Article 11 - Meetings of States Parties

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:

- a) The operation and status of this Convention;
- b) Matters arising from the reports submitted under the provisions of this Convention;
- c) International cooperation and assistance in accordance with Article 5 and 6;
- d) The development of technologies to clear unexploded ordnance from cluster munitions;
- e) Submissions of States Parties under Article 8 and 10;
- f) Decisions on submissions of States Parties as provided for in Article 3 and 4.

2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

Article 12 - Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

- a) To review the operation and status of this Convention;
- b) To consider the need for and the interval between further meetings of the States Parties referred to in paragraph 2 of Article 11;
- c) To take decisions on submissions of States Parties as provided for in Article 3 and 4.

3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

Article 13 - Amendments

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Depositary no later than 30 days after its circulation that they support further consideration of the proposal, the Depositary shall convene an Amendment Conference to which all States Parties shall be invited.
2. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.
3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.
4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.
5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14 - Costs

1. The costs of the Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.
2. The costs incurred by the Secretary-General of the United Nations under Article 7 and 8 of this Convention shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

Article 15 – Signature

This Convention, done at (...), on (...), shall be open for signature at (...), by all States from (...) until (...), and at the United Nations Headquarters in New York from (...) until its entry into force.

Article 16 - Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval of the Signatories.
2. It shall be open for accession by any State which has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17 - Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 20th instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 20th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18 - Provisional application

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally Article 1 of this Convention pending its entry into force.

Article 19 – Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20 - Duration and withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six- month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

Article 21 – Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 22 - Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.