

Wellington Conference on Cluster Munitions

Statement on behalf of the United Kingdom

by Phil Tissot,

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Foreign and Commonwealth Office

London, 20 February 2008

ARTICLE 5: VICTIM ASSISTANCE – UK COMMENTS

Mr Chairman:

As we have stated on many previous occasions, the UK fully supports the commitment to victim assistance and the aim behind this Article. This is a sensitive issue and one in which we consider the principle of non-discrimination to be paramount. That said, the need to ensure that victims of cluster munitions receive medical attention and care is self-evident.

As requested by the chair yesterday my delegation refrained from commenting on the draft definition of Cluster Munition victims. But Article 5, the definition contained in Article 2 and paragraphs 6, 7, 8, and 9 of the Preamble are all clearly inter-linked. My comments on this Article are therefore relevant to all these references to cluster munition victims in the current text. I shall revert to the Preamble specifically when we discuss this later this week but would support the inclusion of the aim of the proposed amendment to preambular paragraph 9 proposed by UN Mine Action.

Mr Chairman,

Allow me to begin with the definition contained in Article 2. While there is a certain logic to the proposal made by Switzerland not to include a definition as this might be deemed as discriminatory, in a legally binding document that refers to such victims, it might be legally more prudent to do so. But as currently drafted this is very wide-ranging – in our view too wide. The inclusion of “the families and communities” of those “directly affected” requires particular care and will need definitions of their own if used in a legal text. For example I live in the community of London – a mere 10 million people. The current draft also contains phrases such as “social marginalisation” that although widely used in political terms are not defined in legal instruments. What precisely does this cover?

We are also unclear as to what rights are being referred to in the phrase “substantial impairment of the realisation of their rights”.

There is also a question of whether this definition should cover both civilians and military personnel. My delegation does not have a strong view on this but it might be better to be explicit.

My delegation will therefore submit a proposal for a definition that addresses these issues.

Mr Chairman,

Turning to Article 5, we believe that providing medical care and assistance on the basis of how people were injured is discriminatory. We have a duty to provide care and support for all of those living with disabilities.

It is also true that those who have suffered permanent disability will require long term care and support to rehabilitate and reintegrate in to society. Where possible this should be provided through the National Health systems of affected countries. Where this is not possible, international assistance should support national capacities. and should be provided through wider sectoral support.

As currently drafted, the wording of Article 5 presents some legal difficulties in that we believe that the phrases "in areas under its jurisdiction or control" and "in accordance with international human rights law" do not sit comfortably together. To be specific under the European Convention on Human Rights, States can, in some circumstances, operate outside their territories. By definition, when this happens, the State that has jurisdiction or control over the territory is unable to meet its own obligations.

But the reference to both these principles in the text is important. The proposals put forward by the Landmines Survivors Network on behalf of the CMC referring to "fundamental human rights principles" may help us to overcome this difficulty and we shall therefore be proposing some alternative language that overcomes this difficult legal issue. In an attempt to reduce our impact on the environment, both our proposals for Article 2 and Article 5 and this statement will be sent to the Secretariat and placed on the Conference Website. They will not be circulated on paper.

Finally Mr Chairman, you asked for initial comments on the CMC proposal to include a reference to Victim Assistance in Article 9. My delegation's initial reaction is that this is unnecessary as all Articles should be legally binding in National legislation. The intention behind Article 9 as currently drafted is to ensure that penal sanctions are included in national laws to suppress activities prohibited under this convention.

Thank you Mr Chairman.

UK TEXT PROPOSAL FOR ARTICLE 2: DEFINITION OF CLUSTER MUNITION VICTIMS

"Cluster Munition Victims" means any persons who have suffered physical or psychological injury or economic loss, caused by the use of cluster munitions; cluster munition victims include such persons directly impacted by cluster munitions.

UK TEXT PROPOSAL FOR ARTICLE 5: VICTIM ASSISTANCE

1. Each State Party with respect to cluster munitions victims injured in its own territory shall, in accordance with national laws and practices, provide for their medical care and treatment. Each State Party shall make every effort to collect reliable relevant data with respect to victims of cluster munitions.

2. In fulfilling its obligation under paragraph 1 of this Article each State Party shall ensure that the measures adopted are in accordance with fundamental human rights principles, including non-discrimination, and shall take into consideration relevant guidelines and good practices in the areas of medical care and treatment.