

# Fourth Review Conference of the High Contracting Parties 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

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## **Summary record of the 1st meeting**

Held at the Palais des Nations, Geneva, on Monday, 14 November 2011, at 10 a.m.

*Temporary President:* Mr. Sareva (Deputy Secretary-General of the Conference on Disarmament and Director of the Geneva Branch of the Office for Disarmament Affairs)

*President:* Mr. Ganev .....(Bulgaria)

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*The meeting was called to order at 10.15 a.m.*

#### **Opening of the Fourth Review Conference**

1. **The Temporary President**, acting on behalf of the United Nations Secretary-General, Depositary of 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 and the Protocols thereto, declared open the Fourth Review Conference of the Parties to the Convention. In a world where armed conflicts were a daily reality, the Convention had in the past played and must continue to play its part in addressing conventional weapons which were deemed to cause excessive suffering to combatants or indiscriminate harm to civilians. The Convention and its five Protocols established a regime which, in applying to both international and non-international armed conflicts, was a sound legal and innovative framework for addressing the suffering caused by conventional weapons. The Fourth Review Conference was an opportunity for States to make full use of the Convention. Since the Third Review Conference, 14 new High Contracting Parties had become parties to the Convention: Antigua and Barbuda, Cameroon, Dominican Republic, Gabon, Guinea-Bissau, Iceland, Jamaica, Kazakhstan, Madagascar, Montenegro, Qatar, Saudi Arabia, Saint Vincent and the Grenadines and the United Arab Emirates. He welcomed the new High Contracting Parties, along with the participants in the Sponsorship Programme, Signatory States and observer States. The Fourth Review Conference would take place from 14 to 25 November 2011 in Geneva in accordance with the decision of the High Contracting Parties at their meeting in 2010 (CCW/MSP/2010/5, para. 36) and with General Assembly resolution 66/62, which “requests the Secretary-General to render the necessary assistance and to provide such services, including summary records, as may be required for the Fourth Review Conference of the High Contracting Parties to the Convention”. The First and Second Review Conferences had agreed that review conferences should continue to be held on a regular basis and that that agreement had been recalled at the Third Review Conference.

#### **Confirmation of the nomination of the President-designate**

2. **The Temporary President** pointed out that, in accordance with rule 6 of the draft rules of procedure (CCW/CONF.IV/2), the Conference should elect a president from among the Parties participating in the Conference. At their meeting in 2010, the High Contracting Parties had decided to designate Ambassador Gancho Ganev of Bulgaria as President of the Fourth Review Conference (CCW/MSP/2010/5, para. 39). He took it that the Conference wished to confirm the nomination of Mr. Ganev.

3. *Mr. Ganev (Bulgaria) was elected President of the Conference by acclamation.*

4. *Mr. Ganev (Bulgaria) took the Chair.*

5. **The President** said that it was an honour to serve as President of the Fourth Review Conference, which was a significant moment in the life of the regime established by the Convention. Review conferences were an opportunity to celebrate successes and acknowledge where progress had not been forthcoming. There was much work to do over the coming two weeks and he looked forward to working with all participants to ensure a successful conclusion to the Conference.

#### **Adoption of the agenda**

6. **The President** took it that the Conference wished to adopt the provisional agenda issued under the symbol CCW/CONF.IV/1, submitted on the recommendation of the Group of Governmental Experts.

7. *The agenda was adopted.*

### **Adoption of the rules of procedure**

8. **The President** said that the Group of Governmental Experts had agreed at its third meeting held in 2011 to recommend for adoption by the Fourth Review Conference the draft rules of procedure issued under the symbol CCW/CONF.IV/2, namely, *mutatis mutandis*, the same rules of procedure that had been applied at the Third Review Conference. He pointed out that, with regard to rule 34 of the rules of procedure, and following the practice of previous review conferences, the High Contracting Parties proceeded on the basis of consensus, and no decisions were taken by vote in deliberations and negotiations relating to the Convention and its annexed Protocols.

9. *The rules of procedure, as amended, were adopted.*

### **Confirmation of the nomination of the Secretary-General of the Conference**

10. **The President** said that, in accordance with rule 14 of the rules of procedure, a secretary-general of the Conference should be appointed. The Secretary-General of the United Nations had nominated Mr. Bantan Nugroho, Head of the Implementation Support Unit for the Convention, to serve as Secretary-General of the Conference. He took it that the Conference wished to confirm the nomination of Mr. Nugroho.

11. *Mr. Nugroho was confirmed as Secretary-General of the Review Conference.*

### **Organization of work, including that of the subsidiary bodies of the Conference**

12. **The President** pointed out that, in accordance with the rules of procedure it had just adopted, the Conference was to set up a General Committee, two Main Committees, a Drafting Committee and a Credentials Committee. Referring to rule 10 of the rules of procedure on the composition of the General Committee, he said that the Committee would meet as required. In accordance with rule 35 and following the practice of previous review conferences, the President suggested that the work should be divided between the two Main Committees in the following way. Main Committee I would be responsible for reviewing the scope and operation of the Convention and its Protocols, namely considering the report on universality, reviewing the plan of action to promote the universality of the Convention and considering the report of the Sponsorship Programme established within the framework of the Convention, the compliance mechanism applicable to the Convention and its annexed Protocols and the report of the Implementation Support Unit. It would also be responsible for consideration of any proposals concerning the Convention and its existing Protocols and consideration of procedural matters and follow-up. Main Committee II would be responsible for considering proposals for additional protocols to the Convention, namely a protocol on cluster munitions. To that end, he submitted two provisional agendas (CCW/CONF.IV/MC.I/1 and CCW/CONF.IV/MC.II/1).

13. The rules of procedure also provided for the establishment of a Drafting Committee. He recalled the provisions of rule 36, which set out the Committee's tasks.

14. With respect to working methods, he said that in accordance with rule 44 of the rules of procedure, plenary meetings of the Conference and the meetings of the Main Committees should be held in public, unless the body concerned decided otherwise, for instance for the negotiation of proposals. He expressed the hope that the Conference would, as far as possible, operate in an open and transparent manner.

15. If there was no objection, he would take it that the Conference endorsed the proposals he had just outlined on all those points.

16. *It was so decided.*

17. **The President** drew the attention of the delegations to the provisional programme of work for the Conference, which had been issued under the symbol CCW/CONF.IV/3, pointing out that the programme could be modified as needed. He encouraged delegations to make the most of the time available and agree to move on directly with the programme of work if they completed consideration of a particular item more rapidly than expected. It was his intention to hold plenary meetings to take stock of progress in the work of the Main Committees. If there was no objection, he would take it that, in the light of the information he had just outlined, the Conference approved the provisional programme of work.

18. *It was so decided.*

19. **The President** said that he had been informed that, as members of the secretariat, Mr. Nugroho would be the focal point for Main Committee I and the Drafting Committee and Ms. Loose would be the focal point for Main Committee II and the Credentials Committee. He invited delegations to submit their credentials to the secretariat as soon as possible.

#### **Election of Vice-Presidents of the Review Conference, Chairpersons and Vice-Chairpersons of the Main Committees, the Drafting Committee and the Credentials Committee**

20. **The President** said that, in accordance with rule 6 of the rules of procedure, the Conference was required to elect from among the States parties participating in the Conference 10 Vice-Presidents, as well as the Chairperson and a Vice-Chairperson for each of the Main Committees, the Drafting Committee and the Credentials Committee. They should be elected so as to ensure the representative character of the General Committee provided for in rule 10.

21. The representatives of the following States were candidates for the 10 posts of Vice-President of the Conference: Australia, Belarus, China, Cuba, Ecuador, Lithuania, Sri Lanka, Switzerland, the former Yugoslav Republic of Macedonia and the United States of America.

22. He had received the following nominations for the offices of Chairperson and Vice-Chairperson of the various subsidiary bodies: Mr. Domingo (Philippines) and Mr. Jackson (Ireland) as Chairperson and Vice-Chairperson, respectively, of Main Committee I; Mr. Danon (France) and Mr. Gailiunas (Lithuania) as Chairperson and Vice-Chairperson, respectively, of Main Committee II; Mr. Seck (Slovakia) and Mr. Shen (China), as Chairperson and Vice-Chairperson, respectively, of the Drafting Committee; and Ms. Rahamimoff-Honig (Israel) and Mr. Singh Gill (India), as Chairperson and Vice-Chairperson, respectively, of the Credentials Committee.

23. *Those candidates were elected to the posts in question by acclamation.*

#### **Appointment of the Credentials Committee**

24. **The President** said that, in accordance with rule 4 of the rules of procedure, the Credentials Committee was made up of five members elected by the Conference on the proposal of the President. As the Chairperson and Vice-Chairperson of the Committee had just been elected, he proposed that representatives of Cuba, Germany and Romania fill the three remaining posts.

25. *Representatives of Cuba, Germany and Romania were elected as members of the Credentials Committee by acclamation.*

### Message from the Secretary-General of the United Nations

26. At the invitation of the President, **Mr. Tokayev** (Director-General of the United Nations Office at Geneva and Secretary-General of the Conference on Disarmament) read out a message addressed by the Secretary-General of the United Nations to the Fourth Review Conference.

27. In his message, the Secretary-General recalled that the Convention on Certain Conventional Weapons, signed 31 years previously, continued to serve as a cornerstone of international humanitarian law and humanitarian action. The flexible and dynamic framework it established made a tangible difference in the lives of persons caught in the cross hairs of conflict. He noted with satisfaction that the work of the Fourth Review Conference would focus on finding solutions to the horrendous impact of cluster munitions. The various specialized agencies of the United Nations, in their wide-ranging work on the ground, had come across many types of cluster munitions. Having gained that experience, those agencies had conveyed a clear message: cluster munitions caused unacceptable harm to civilians. He urged participants to keep that in mind when discussing the balance between military needs and humanitarian concerns, which remained the cornerstone of the regime established by the Convention.

28. Looking beyond the Review Conference, there were two fields in which the United Nations would highly value further progress. First, anti-vehicle mines continued to cause many casualties, and those casualties were increasingly among civilians. They restricted movement of people and aid, made land unsuitable for cultivation and denied citizens access to water, food, care and trade. Second, he noted with increasing alarm the use of explosive weapons in populated areas, leading to profound suffering among civilian populations. At the same time, accelerating progress on universalizing the Convention and ensuring its full and effective implementation continued to be high priorities. Progress in all those areas would represent a significant advance in international humanitarian law. Lastly, he called on all States, international organizations and civil society to continue the quest for solutions in diminishing the burden of conflict on citizens. He wished the Conference every success.

### Submission of the report of the Group of Governmental Experts

29. The President, introducing the report of the Group of Governmental Experts for 2011 (CCW/GGE/2011-III/3), said that much work had been done at the meetings of the Group over the previous year. In 2010, the meeting of the High Contracting Parties had decided that the Group of Governmental Experts would continue its negotiations informed by the Chair's Text on a draft protocol on cluster munitions, and taking into account other past, present and future proposals by delegations; it should do so with a view to making a recommendation for consideration by the Fourth Review Conference, to address urgently the humanitarian impact of cluster munitions, while striking a balance between military and humanitarian considerations. The High Contracting Parties also decided that the work of the Group would be supported by experts on relevant issues (CCW/MSP/2010/5, para. 35). As the report and its annex had been drafted by the Group of Governmental Experts and mainly addressed the negotiations on cluster weapons, he suggested forwarding it to Main Committee II. If there was no objection, he would take it that the Conference endorsed the suggestion.

30. *It was so decided.*

### General exchange of views

31. **Mr. Varvuolis** (Lithuania) said that the Review Conference should reinforce the fundamental principle of international humanitarian law that the right of the parties to an

armed conflict to choose methods or means of warfare was not unlimited. Lithuania fully supported that principle, which had guided the work of the international community when adopting, implementing and further developing the Convention and its annexed Protocols.

32. The prohibitions and restrictions of the Convention and its annexed Protocols set minimum standards that should be applied in all armed conflicts. Lithuania called upon all States that had not yet ratified or acceded to the Convention and its annexed Protocols to do so without delay. In 2011, Lithuania had for its part ratified the Convention on Cluster Munitions, which set the highest standard of international humanitarian law in that area.

33. Strengthening international humanitarian law was an evolving process: for instance, the international community had taken action to ensure that the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction extended in practice to all explosive remnants of war and cluster munitions. Lithuania had taken note of the draft protocol on cluster munitions submitted by the Chairperson of the Group of Governmental Experts. Despite the considerable efforts made, the draft protocol still had significant shortcomings. Such a protocol would be of more benefit if it brought together the largest producers and users of cluster munitions that were not yet ready to accede to the Convention on Cluster Munitions. In the meantime, bearing in mind the most urgent humanitarian concerns and the need to make a real impact on the ground, Lithuania was convinced that an agreement on a legally binding instrument during the Review Conference would be an additional step towards the total prohibition of cluster munitions.

34. **Mr. Fasel** (Switzerland) said that there had been major developments in the area of conventional disarmament since the previous Review Conference in 2006, with the adoption of the Convention on Cluster Munitions and the growing importance of the Anti-Personnel Mine Ban Convention. The Fourth Review Conference was therefore an opportunity to examine the status of the Convention and its annexed Protocols in the light of the new situation and to determine the role that the Convention should play in the future.

35. Although the number of Parties to the Convention had continued to increase, the goal of universality set by the Third Review Conference was still far from being achieved. Switzerland took the opportunity to reaffirm its support for action to promote the universalization of the Convention and initiatives to strengthen the associated plan of action. Switzerland welcomed the broad participation in the Sponsorship Programme and the establishment of the Implementation Support Unit for the Convention, which ensured continuity in the implementation of the Convention and its annexed Protocols and preserved its institutional memory. However, the work of the Unit should be assessed in order to identify any remaining challenges and to ensure that it had sufficient resources to fulfil its mandate.

36. National reports, submitted in a coordinated and transparent manner, were key to implementation of the Convention. Provided that they were carefully drafted and submitted on time, reports made it possible to improve cooperation, coordinate assistance to affected States much more effectively and, at the same time, to develop local capacities in a sustainable and targeted way while strengthening implementation of the Convention in the fields of victim assistance, the clearance of explosive remnants of war and preventive measures.

37. Switzerland had initiated the process of ratifying the Convention on Cluster Munitions. At the same time, it had continued to work hard to support the negotiation process on cluster munitions within the framework of the Convention. The Convention and its annexed Protocols remained key instruments of international humanitarian law by virtue of the balance they struck between humanitarian concerns and military considerations. Switzerland regretted that the draft protocol under consideration failed to meet its

expectations, as it left the way open for the use of certain cluster munitions that, as experience had shown, had an unacceptable humanitarian impact, and such an instrument would not have an immediate and measurable impact on the ground. Specifically, Switzerland expected such a protocol to prohibit the use — in particular in populated areas — of all cluster munitions, as well as their stockpiling and transfer, within more ambitious and pragmatic time frames and to include appropriate measures and procedures to verify compliance with existing rules regarding cluster munitions whose declared failure rates were 1 per cent or less.

38. **Mr. Gerasimovich** (Belarus) said that four years of negotiations within the Group of Governmental Experts on a draft protocol on cluster munitions had reconciled positions and prepared the ground for a compromise, in the form of the text proposed by the Chairperson of the Group.

39. Belarus, which was party to all the Protocols annexed to the Convention, was tireless in its efforts to apply their provisions at the national level. It submitted its reports in a timely manner and was refining its domestic legislation in the field of international humanitarian law. The Government had established a commission on the application of international humanitarian law with the participation of representatives of all Government departments and experts from the International Committee of the Red Cross (ICRC); seminars were also organized with the assistance of the ICRC to raise awareness among both the armed forces and civil society of the implementation of international humanitarian law. Furthermore, Belarus took part every year in the international conference on issues related to the application of international humanitarian law for representatives of countries of the Commonwealth of Independent States (CIS).

40. With 114 Parties to the Convention, the goal of universality could not be regarded as having been achieved, and the pace of accessions to the Protocols was hardly any more encouraging. Belarus therefore urged both States and regional intergovernmental and non-governmental organizations to redouble their efforts in their respective regions to help progress towards universalization. Belarus was planning to organize a regional seminar in Minsk in 2012 for representatives of the CIS countries. In addition, the poor rate of submission of national reports called for practical measures to be taken and, possibly, the appointment of a coordinator on the issue. Likewise, it would be most useful if a compendium of best practices were compiled. Regarding the future of the Group of Governmental Experts, Belarus was of the view that it should be maintained if a large number of Parties supported the idea. Lastly, Belarus was ready to consider the usefulness of reviewing the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), which NGOs had called for during the previous year.

41. **Mr. Yermakov** (Russian Federation) said that, within the framework of the Convention — a unique instrument to which the Russian Federation was committed — complex and sensitive issues were resolved concerning both international and national security guarantees for each State and the protection of the civilian population and members of the armed forces. Over the 30 years of its existence, the Convention had time and again demonstrated its relevance and vitality; it had become a well-adjusted and thorough disarmament mechanism functioning within the framework of international humanitarian law. It was no secret that it was not possible to adopt a new protocol without in-depth consideration of its provisions by experts and the approval of all Parties to the Convention. In the current circumstances, the most important task was achieving the universality of the Convention and its annexed Protocols and ensuring their implementation in good faith by all Parties.

42. Although it considered that the text prepared by the Group of Governmental Experts provided the basis for an agreement on cluster munitions, the Russian Federation still had concerns about some of its provisions. The costs arising from a prohibition on cluster

munitions produced before 1980 would total several billion US dollars. Given that the major producers and users of cluster munitions were taking part in the current negotiations, the solutions considered would undoubtedly have enormous financial implications, but because such solutions must be consensual in nature, they were protected from partisan politics. Solutions acceptable to all must necessarily take account of several factors: the need to maintain a reasonable balance between humanitarian concerns and legitimate defence interests; mutual readiness to compromise; the unequal role played by cluster munitions in the defence interests of different countries with differing economic approaches and military and technical capabilities; and the fact that possible agreements on cluster munitions concluded within the framework of the Convention, with the participation of the major producers, could go far beyond the decisions taken within the Oslo process.

43. **Mr. Maimeskul** (Ukraine) said that Ukraine, which strongly supported the regime established by the Convention on Certain Conventional Weapons, considered that the Fourth Review Conference was an important opportunity for the High Contracting Parties to take stock of the significant progress made. With regard to the universalization of the Convention and its annexed Protocols, Ukraine supported the idea of establishing the issue as a standing agenda item of the annual meetings of the High Contracting Parties to the Convention. As to compliance, Ukraine, which duly fulfilled all its relevant international obligations, was disappointed that the number of States submitting their national reports under the Convention remained modest, and much lower than under Protocol V or amended Protocol II. It was therefore difficult to determine how many Parties had, for example, issued instructions to their military authorities on the Convention and its annexed Protocols. There was thus a need to enhance the transparency of reports and refocus on national legislation and the implementation of annual discussions on the status and operation of the Convention.

44. Ukraine fully supported efforts to resolve the cluster munitions issue within the framework of international humanitarian law. However, it considered cluster munitions to be legal weapons which remained an important component of its defence capabilities. It was therefore necessary to strike a balance between humanitarian concerns and legitimate national security interests. The latest version of the draft protocol submitted by the Chairperson of the Group of Governmental Experts (CCW/GGE/2011-III/3, annex I) was, in that regard, balanced and generally acceptable. Ukraine was committed to maintaining the provisions relating to the possibility of deferring compliance with the prohibition of use, and extending the period of deferred compliance (art. 5, para. 3); the possibility of stockpiling and retaining for subsequent destruction cluster munitions removed from operational stocks (art. 5, para. 8); international assistance in the clearance of cluster munition remnants (art. 8); and an effective system of cooperation and assistance (art. 12).

45. **Mr. German** (Chile) said that he was extremely concerned about the course of the negotiations on a protocol on cluster munitions. Chile considered that more attention should be given to the humanitarian dimension of instruments aimed at safeguarding international security, and that it would be unthinkable to adopt a protocol that undermined the Convention on Cluster Munitions. However, many of the provisions of the draft protocol submitted by the Chairperson deviated from the letter and the spirit of that Convention. Like many of the delegations that had spoken on the issue, Chile considered that adopting the present draft protocol would restore legitimacy to a category of weapons that the international community had succeeded in prohibiting and condemning. His delegation hoped that the Review Conference would be able to refocus on human beings as the main beneficiaries of disarmament architecture and security policies.

46. **Mr. Amano** (Japan) said that the Convention and its annexed Protocols were the only universal, legally binding instruments that sought to protect civilians and combatants from the effects of certain types of conventional weapons by striking a balance between



humanitarian concerns and security requirements. Japan was of the view that the Convention and its Protocols provided the international community with a highly useful and appropriate multilateral framework for discussing issues related to the regulation, restriction or prohibition of certain types of conventional weapons. For that reason, Japan attached particular importance to the implementation of the Convention and to the work done in that framework.

47. Japan had been actively involved in work to draft a protocol on cluster munitions that was truly effective and that included the major producers and possessors of such weapons. It was regrettable that persistent differences of opinion on some important points had as yet prevented the adoption of a protocol that adequately addressed the humanitarian concerns raised by cluster munitions. Japan remained hopeful that it would be possible to conclude the negotiations during the Review Conference.

48. The universalization of the Convention and its annexed Protocols was a crucial factor in their effectiveness. Japan noted with satisfaction that 14 States had become Parties to those instruments over the previous five years; it had itself promoted accession to the Convention, in particular in the Asia-Pacific region. It planned to continue to work along those lines, while paying close attention to other treaties regulating similar types of weapons, such as the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions. He expressed the hope that the Review Conference would also be successful in that regard.

49. **Mr. Dengo** (Costa Rica) said that he was speaking on behalf of the following High Contracting Parties: Austria, Burkina Faso, Chile, Colombia, Costa Rica, Democratic Republic of the Congo, Djibouti, Ecuador, El Salvador, Guatemala, Guinea-Bissau, Holy See, Iceland, Lao People's Democratic Republic, Lebanon, Madagascar, Mali, Mexico, Mozambique, New Zealand, Nicaragua, Niger, Norway, Senegal, South Africa, Spain, Togo and Uruguay.

50. Those countries noted that, according to the report of the Group of Governmental Experts, there was no consensus on a draft protocol VI. In their view, that conclusion appeared to correctly reflect the outcome of the Group's work on the issue. They considered that they had worked constructively throughout the process without their concerns and disagreements being addressed in a satisfactory manner. The present text submitted by the Chairperson of the Group failed to adequately address the humanitarian problems caused by cluster munitions.

51. The countries in question shared the humanitarian and legal concerns regarding the Chairperson's text expressed by ICRC, United Nations agencies and civil society. They had taken note of the concerns of the victims and States affected by the problem of cluster munitions. They welcomed all efforts to address that problem taken at the national level by States that were not yet parties to the Convention on Cluster Munitions, and encouraged those States to become parties to that Convention as soon as possible.

52. Those countries were concerned that the draft protocol, in its present form, might leave room for decisions and policies that undermined the Convention on Certain Conventional Weapons and diminished its relevance for international humanitarian law. They hoped that the Review Conference would do its utmost to safeguard international humanitarian law and protect the fundamental rights of victims.

53. **Mr. Demiralp** (Turkey) said that the Convention was an indispensable element of international law on conventional weapons with indiscriminate effects and its universalization should remain a key objective. Accordingly, Turkey seized every opportunity to encourage accession to the Convention and its annexed Protocols. It welcomed the accession of 14 States since the Third Review Conference, and noted with satisfaction that the Sponsorship Programme had promoted interest in the Convention on

Certain Conventional Weapons in the international community and had facilitated the participation of States that were not parties to the Convention in activities organized within its framework. Furthermore, the compliance mechanism applicable to the Convention, established pursuant to a decision taken at the Third Review Conference, had proved its worth. The inclusion on the agenda of the annual meetings of an item on the status of implementation of, and compliance with, the Convention had provided Parties with an opportunity to comment on issues raised by the implementation of the Convention. Turkey, for its part, was fully implementing the Convention and its annexed Protocols, to which it was party. It submitted the required reports regularly and encouraged all Parties to do the same, since those reports contributed to transparency, confidence-building and understanding among States.

54. As to the draft protocol on cluster munitions, Turkey supported the text prepared by the Chairperson of the Group of Governmental Experts, which it believed struck the best possible balance between diverging views and was therefore a good basis for future work. The draft protocol would strengthen the United Nations disarmament machinery as a whole. It would help to mitigate the humanitarian problems arising from cluster munitions, and it would have a tangible impact on the ground. Lastly, it would address 90 per cent of cluster munition stockpiles, which would otherwise remain unregulated. Turkey hoped that all Parties would do their utmost to overcome their differences, while bearing in mind the challenges the international community would face if they failed to agree on such a protocol.

55. **Mr. Spector** (United States of America) said that the United States of America was participating in a review conference for the first time as a Party to the Convention and its five annexed Protocols. His country supported without reservation the plan of action to promote the universality of the Convention and its Protocols. As to the work undertaken within the framework of the Convention, the United States, unlike some other participants in meetings and conferences, did not believe it was necessary to reopen the Protocols annexed to the Convention, which undeniably already had substantial humanitarian value. Other proposals had been made that would open up new areas for Parties to explore, some of which were simply inappropriate for the Convention. Instead, what was needed was simply to implement the existing protocols and ensure that the Convention remained a robust framework within which States could strike a balance between their military needs and humanitarian concerns.

56. As to the draft protocol on cluster munitions, the United States considered that a protocol based on the most recent text submitted by the Chairperson of the Group of Governmental Experts offered the only chance of bringing together the major users and producers of such weapons that were not in a position to accede to the Oslo Convention, and of placing most (between 85 and 90 per cent) of the world's stocks of cluster munitions under a coherent and legally binding set of prohibitions and restrictions.

57. As drafted, the protocol would have an undeniably positive impact. Firstly, as soon as the protocol came into force, the ban on cluster munitions produced before 1980 would affect one third of the stockpile of the United States, namely 2 million cluster munitions, and a similar number in Ukraine and the Russian Federation. The protocol would thus have, from the outset, an infinitely greater impact than the Oslo Convention. Secondly, the protocol would immediately prohibit the transfer of all cluster munitions that did not possess a safeguard and, in due course, would ban all such weapons outright. That ban would affect the majority of the remaining operational stocks of the United States. Thirdly, the draft protocol would place all remaining cluster munitions under an extensive set of legally binding restrictions and establish additional rules for States, including obligations with regard to clearance, transparency, international cooperation, victim assistance and technology assistance. Fourthly, the draft protocol was designed to evolve, since it was

built around technical annexes that could adapt to developments that would inevitably occur, so as to enhance the protection of civilian populations. The United States considered that the proposed protocol was designed to be fully complementary with the Oslo Convention. It did not detract from that Convention at all, and neither did it diminish existing international law in any way. It did not of course satisfy all the negotiating parties, but it did strike a balance.

58. **Mr. Martínez Alvarado** (Guatemala) said that his country hoped that the Conference would deliver real progress within the framework of its review of the Convention on Certain Conventional Weapons and its annexed Protocols, in particular with respect to its universalization and compliance with the various instruments. Furthermore, Guatemala was in favour of drafting and concluding, within the framework of the Convention, a protocol on cluster munitions, provided that the protocol prohibited as extensively as possible the munitions concerned in line with the standards established by other relevant instruments and that it accelerated the destruction of the stockpiles of such weapons and strengthened respect for the rules of international humanitarian law. The protocol should clearly define what was meant by “victims of cluster munitions”. Furthermore, Parties should not be allowed the option of declaring that they would defer compliance with the protocol during a given period or even of extending that period and, lastly, prohibitions should be based on the reliability of cluster munitions rather than their date of manufacture. Generally speaking, Guatemala, as a State party to the Convention on Cluster Munitions, could not allow the rules set by that Convention to be weakened by the proposed protocol. The main concern of the Review Conference should be the protection of human beings.

59. **Mr. Combrink** (South Africa) said that his country remained committed to the full implementation and universal application of the provisions of the Convention and its five Protocols. South Africa, which had acceded to the Convention in 1996, was currently party to Protocols I, III and IV and amended Protocol II. It would soon also be party to Protocol V and amended article 1 of the Convention. It had submitted all the national reports required under those instruments.

60. As a former producer of cluster munitions, South Africa had participated actively in the work of the Group of Governmental Experts on that issue. However, it had doubts as to the usefulness of continuing that work, as a consensus had not been achieved on a text after four years. It was regrettable that some Parties had throughout the process insisted on provisions that would erode the credibility of the Convention on Certain Conventional Weapons and even of international humanitarian law. The most recent version (CCW/GGE/2011-III/3) continued to fall short of urgently addressing the humanitarian problems caused by cluster munitions. He welcomed the introduction in article 4 of provisions that would ban the use, acquisition, stockpiling or retention of cluster munitions produced before 1 January 1980, but the main possessors of such munitions had never provided detailed information on their stocks. South Africa was particularly concerned about the impact of article 5, paragraph 3, under which the High Contracting Parties would be free to defer compliance with the prohibition of the use, stockpiling and retention of cluster munitions produced on or after 1 January 1980 for a period of up to 12 years from the entry into force of the protocol. As those munitions were known to have indiscriminate effects, why should their use be allowed for another 12 years? The option of deferring compliance with such provisions would serve only to legitimize the use of cluster munitions, that were indiscriminate, and would not advance the ultimate objective of protecting civilians during and after armed conflict. At the very least, the option of deferring compliance with the ban on the use of such weapons should be removed. The latest version of the draft protocol seemed to focus primarily on the interests of the producers and possessors of such weapons, and only peripherally on those of the victims.

61. There were other important issues that required the attention of the High Contracting Parties during the coming years, including the strengthening of existing protocols, taking into consideration continuing developments in the field of conventional weapons. South Africa was ready to participate in work on any issue that would have an immediate and lasting effect on the protection of civilians who were the victims of armed conflict.

62. **Mr. Lusiński** (Poland) said that his country attached great importance to the Convention on Certain Conventional Weapons and the work done within its framework, which brought together not only the States that were the producers and users of such weapons, but also international and non-governmental organizations, as well as the victims of the use of those weapons. Poland was currently party to all the Protocols annexed to the Convention. It was convinced that the time had come to adopt a new protocol that would restrict the production, use, transfer and stockpiling of cluster munitions and have an immediate, durable and meaningful impact on the ground. At the same time, the protocol should allow countries that were not in a position to ratify the Convention on Cluster Munitions, but which nonetheless shared its humanitarian concerns, to take a step in the right direction while preserving their national sovereignty. Poland considered that the latest draft protocol presented by the Chairperson of the Group of Governmental Experts, albeit imperfect, was a solid basis for negotiations. It took into account a wide range of concerns and interests, and it could lead to compromise solutions. The opportunity to tangibly mitigate the humanitarian problems caused by such weapons should not be squandered.

63. **Ms. Mehta** (India) said that the Convention on Certain Conventional Weapons provided the international community with a framework in which it could, through consensus and cooperation, progressively limit certain categories of weapons and mitigate the impact of weapons on humanitarian situations while taking into account their military necessity. India, which was party to the five Protocols annexed to the Convention and its amended article 1, welcomed the progress made since the last Review Conference towards universalization of all those instruments. The High Contracting Parties should redouble their efforts in that regard to ensure that those instruments had a tangible humanitarian impact. The plan of action to promote the universality of the Convention and the decision on the establishment of the Sponsorship Programme, adopted in 2006, were particularly important in that regard. As to the compliance mechanism applicable to the Convention, also established in 2006, only about 30 High Contracting Parties, including India, submitted reports under the mechanism each year. Measures should be taken to improve the rate of submission of reports and to synchronize the dates of submission of the reports required under the Convention, amended Protocol II and Protocol V.

64. When fully implemented by a wide cross section of countries, Protocol V would contribute greatly to mitigating the humanitarian problems associated with explosive remnants of war. India called on States that had not yet become parties to the Protocol to do so without delay. India had fulfilled its obligations under amended Protocol II, in particular by halting production of non-detectable mines and fitting detection mechanisms on all anti-personnel mines. It also observed a moratorium on the export and transfer of landmines. India was fully committed to the eventual elimination of such mines, and was convinced that alternative technologies that could replace landmines in their defensive function would facilitate the achievement of that goal. India had ratified the Convention on the Rights of Persons with Disabilities, thereby demonstrating its commitment to assisting mine victims. It had sent military personnel to participate in demining operations in Cambodia, Angola and Afghanistan, in addition to providing support to two non-governmental groups to enable them to undertake mine clearance in areas of Sri Lanka that had been the scene of armed conflict.

65. With respect to issues of more direct concern to the Review Conference, India considered that the High Contracting Parties should continue to address the issue of

improvised explosive devices that killed and maimed many civilians and military personnel and had a growing impact on humanitarian situations. The possibility of drawing up a set of best practices in that area should be explored. As to cluster munitions, India considered that States could legitimately use such weapons, provided that they complied with international humanitarian law. It supported the negotiation of an instrument that would strike a balance between humanitarian considerations and military concerns. The High Contracting Parties should conclude their negotiations on the draft protocol during the current Review Conference. In addition, India considered that it was time for the international community to continue the codification and progressive development of the rules of international law applicable to advanced conventional weapons that had devastating effects on populations and the environment, or that hindered post-conflict peacebuilding efforts. The Convention on Certain Conventional Weapons provided an appropriate framework for initiating consultations in that regard and preparing the ground for a larger initiative at the United Nations. Lastly, the representative of India thanked ICRC and the relevant NGOs for their active participation in the work undertaken under the Convention.

66. **Ms. Liufalani** (New Zealand) said that, although her delegation considered that the Convention on Cluster Munitions remained the document of reference, it continued to support efforts within the framework of the Convention on Certain Conventional Weapons to reach an agreement on a draft protocol to alleviate the suffering caused by cluster munitions. New Zealand had consistently made it clear that for the draft protocol to be acceptable, it should be compatible with, and complementary to, the Convention on Cluster Munitions, have an immediate positive effect on the ground and serve to bolster, not diminish, international humanitarian law. As noted by several delegations, as well as ICRC, the draft text prepared by the Chairperson of the Group of Governmental Experts failed to meet those criteria, despite the improvements made to it. New Zealand regretted that after more than four years of negotiations, it had not been possible to achieve a consensus on the text. That was a clear indication of the disparate views that continued to exist. It was unclear to the New Zealand delegation whether those differences could be bridged at the current juncture or whether consideration of the issue should be postponed.

67. Although progress on the cluster munitions issue within the framework of the Convention on Certain Conventional Weapons had been limited, there had been welcome progress in other areas covered by the Convention during the period under consideration. Technical discussions under amended Protocol II and Protocol V had bolstered the implementation of both Protocols.

68. With respect to the future programme of work under the Convention, the New Zealand delegation continued to see value in a targeted intersessional process that supported strengthened implementation of the Convention and its annexed Protocols. Given that the Implementation Support Unit provided useful support to the High Contracting Parties, New Zealand would like its mandate to be extended.

69. **Mr. Kongstad** (Norway) said that the Review Conference should give serious consideration as to whether it should continue meetings that were no longer justified by the results obtained within the framework of the Convention, in view of the overall financial constraints of States. The High Contracting Parties should review the entire schedule of official and informal meetings with a view to establishing a set of criteria for convening future meetings.

70. Norway considered the 2008 Convention on Cluster Munitions to be the necessary standard and framework to address the humanitarian and environmental impact of the use of cluster munitions. It would be a major mistake to adopt within the framework of the Convention on Certain Conventional Weapons a new protocol on cluster munitions that would set a lower standard than the one already adopted by the 111 States that had so far

become parties to the Convention on Cluster Munitions, two thirds of whom were also parties to the Convention on Certain Conventional Weapons.

71. The current draft protocol, as submitted by the Chairperson of the Group of Governmental Experts, failed to take account of the humanitarian impact of cluster munitions, and did not attract consensus. If adopted, the draft protocol would represent an unprecedented step backwards in the protection afforded by international humanitarian law to civilian populations. Its adoption would jeopardize the credibility of the Convention on Certain Conventional Weapons and weaken its relevance. Furthermore, the draft protocol remained incompatible with the Convention on Cluster Munitions as it legitimized the continued use, production and stockpiling of cluster munitions, while the Convention on Cluster Munitions clearly prohibited such activities.

72. Ninety per cent of the reported victims of cluster munitions were civilians. States could not ignore such facts, which were documented by ICRC, United Nations agencies and civil society.

73. There could be no agreement on a new protocol without the adoption of an approach that was complementary to the Convention on Cluster Munitions and that focused on strengthening the protection of civilians. If the High Contracting Parties considered it appropriate to continue discussions on a new legal instrument, consideration should be given to all the proposals submitted, including the proposals made by France and Pakistan, as well as Austria, Mexico and Norway.

74. **Mr. Gómez Camacho** (Mexico), speaking on the issue of cluster munitions, said that the Mexican delegation had submitted specific ideas on its own behalf, but also together with other countries, in order to find solutions that were acceptable to the various High Contracting Parties to the Convention on Certain Conventional Weapons. Mexico had also demonstrated flexibility and the will to compromise by approving the extension of the mandate of the Group of Governmental Experts every year, despite the considerable human and financial resources required and the lack of real progress and movement in the right direction. In view of the scant progress made within the Group of Governmental Experts, some countries, including Mexico, had joined the Oslo process.

75. The countries producing cluster munitions had announced their intention to make progress in limiting the use of such devices. Their genuine concern in that regard would apparently be reflected in an undertaking to supplement, and not erode, the set of existing standards. Mexico stood ready to contribute fully to the adoption, within the Convention on Certain Conventional Weapons, of a legally binding instrument on cluster munitions, provided that it represented a genuine contribution to international humanitarian law that would lead to an effective reduction of the harmful effects of such weapons both during and after armed conflicts. The draft submitted by the Chairperson of the Group of Governmental Experts in his personal capacity failed to meet those requirements, and was tantamount to explicitly authorizing the use of weapons prohibited by another international instrument. The adoption of a protocol based on the Chairperson's draft would have the effect of retreating from the level of protection of civilians provided for in the instrument already in force. Mexico therefore called on the High Contracting Parties during the present Review Conference to remain faithful to the objective of stopping the use of weapons that caused excessive injuries or had indiscriminate effects, regardless of their expected military benefits.

76. **Mr. Mallikourtis** (Greece) said that Greece, which maintained its categorical support for the full implementation of the Convention on Certain Conventional Weapons, reiterated its strong commitment to negotiating a legally binding instrument on cluster munitions within the framework of the Convention. The negotiation process should be carried out under the auspices of the United Nations to ensure the participation of the major

users and producers of such weapons. The adoption of a new protocol would help strengthen the regime established by the Convention, while striking a balance between humanitarian requirements and military needs. Greece considered that the current draft protocol constituted a good basis and the Greek delegation stood ready to help find a satisfactory compromise by participating in constructive negotiations.

77. **Mr. Zakov** (Bulgaria) said that, since the Third Review Conference in 2006, a lot of progress had been made in striking a balance between military and humanitarian considerations with regard to cluster munitions. Bulgaria supported the conclusion during the Review Conference of negotiations on a protocol on cluster munitions within the Convention on Certain Conventional Weapons, and hoped that the new instrument would have a significant humanitarian impact in the near future. The provisions of the protocol should be complementary to the Convention on Cluster Munitions, regardless of the differences between the two instruments.

78. As a State party to the Convention on Cluster Munitions, Bulgaria understood and to a certain extent shared the concerns expressed by some NGOs and High Contracting Parties to the Convention on Certain Conventional Weapons with regard to the draft protocol on cluster munitions. However, it could not accept an “all or nothing” approach, and it therefore called on all delegations to show a high level of flexibility in order to reach a compromise. Bulgaria was of the view that there was a good chance of concluding a protocol that could be regarded as a step in the right direction.

79. Negotiations on cluster munitions were not the only issue for consideration by the Review Conference on the Convention on Certain Conventional Weapons. The High Contracting Parties had an obligation to strengthen the Convention. In that regard, Bulgaria was ready to support any proposal aimed at promoting the values of the Convention and the Convention itself. It considered that the High Contracting Parties should make better use of the Sponsorship Programme, and was ready to explore further possibilities in that area. Bulgaria supported the proposal to establish a standing agenda item on universalization at the annual meetings of the High Contracting Parties.

80. Bulgaria would appreciate an in-depth discussion on the possible options for streamlining and reducing the reporting burden on the Parties. It was also ready to support the proposal for synchronizing the deadlines for submission of annual reports with the deadlines for reports under amended Protocol II and Protocol V. The proposal to change the periodicity of reports also warranted consideration.

81. **Mr. Kwon** Haeryong (Republic of Korea) said that much remained to be done in terms of universalizing the Convention on Certain Conventional Weapons and its five Protocols and increasing the number of States regularly submitting compliance reports. He hoped that in-depth discussions of those issues could be held during the Conference.

82. Despite the unique and volatile situation it faced, the Republic of Korea had actively participated in the work of the Group of Governmental Experts on cluster munitions in a constructive manner. Following intense negotiations since 2008, it was exploring ways to move the discussions forward in the most effective way, and hoped that it would be possible to find common ground based on the draft submitted by the Chairperson of the Group of Governmental Experts.

83. **Ms. Silde** (Estonia) said that Estonia attached particular importance to adopting a sixth protocol, on cluster munitions. It strongly supported the text submitted by the Chairperson of the Group of Governmental Experts, which it considered a good compromise. Despite remaining disagreements, significant improvements had been made to the text during the previous year, such as the ban on cluster munitions produced prior to 1980, the immediate ban on certain transfers and the adoption of an endeavour clause.

84. **Mr. León Collazos** (Peru) said that Peru, as a signatory to the Convention on Cluster Munitions, was firmly attached to the principles on which it was based. The text of the draft protocol submitted by the Chairperson of the Group of Governmental Experts needed to be improved, especially if solutions to the problems posed by such weapons were to be found quickly. Given that it was necessary to draft a sufficiently ambitious protocol that was without prejudice to the Oslo Convention or international humanitarian law, Peru called on the High Contracting Parties to show flexibility in order to arrive at a balanced text.

*The meeting rose at 12.55 p.m.*