

**MEETING 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 2nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 November 2008, at 3 p.m.

Chairperson: Mr. AKRAM (Pakistan)

CONTENTS

CONSIDERATION OF THE REPORT OF THE WORK OF THE GROUP OF
GOVERNMENTAL EXPERTS (continued)

PLAN OF ACTION TO PROMOTE THE UNIVERSALITY OF THE CONVENTION,
INCLUDING THE IMPLEMENTATION OF THE CCW SPONSORSHIP PROGRAMME

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF THE REPORT OF THE WORK OF THE GROUP OF GOVERNMENTAL EXPERTS (continued) (CCW/GGE/2008-V/2; CCW/GGE/2008-V/WP.1 and Add.1 and Add.2)

1. Mr. BRASACK (Germany) said it was regrettable that the Group of Governmental Experts had not made greater progress in 2008. In 2006, his Government had been one of the first to request negotiations on the humanitarian impact of cluster munitions. In 2007, it had prepared a draft protocol on cluster munitions that was still relevant. Furthermore, during Germany's presidency of the European Union, his Government had proposed a mandate for the Group to negotiate a legally binding instrument, which, regrettably, had not been accepted. While his delegation would favour a stronger mandate than that ultimately decided on in order to send a signal about the seriousness of the negotiations, it did not share the view that such a mandate was essential to reaching agreement on a protocol.
2. The proposals put forward by the Chairperson of the Group of Governmental Experts in document CCW/GGE/2008-V/WP.1 were not acceptable to his delegation. Any protocol on cluster munitions negotiated under the Convention on Certain Conventional Weapons must meet three basic criteria: it must provide added value in terms of the humanitarian aspects, take effect immediately and be compatible with the Convention on Cluster Munitions, which would be signed by many States in Oslo shortly. Since there had been no consensus on the German proposals, his delegation would show flexibility in the negotiations in 2009. The group must, however, be allocated the required meeting time. One week or less would not be sufficient.
3. Mr. TURCOTTE (Canada) said that he was grateful to the Chairperson of the Group of Governmental Experts for the difficult task he had willingly assumed. Nonetheless, after several weeks of negotiations, no substantive agreement had been reached. The problem lay in the divergence between the wish of the majority of High Contracting Parties to negotiate a protocol, and the mandate of the Group of Governmental Experts to negotiate a proposal.
4. Any further negotiations must have an unambiguous and results-oriented mandate. The only result that would make a difference to innocent civilians was a protocol, not a proposal. The establishment of such a mandate would not prejudice the outcome of negotiations. It would, however, be a clear statement of intent as to what States hoped to achieve. While there were precedents for the negotiation of an international instrument without a mandate, there must, as a minimum, be some explicit agreement on States' objectives.
5. His delegation was prepared to invest more time in negotiations if there was a realistic prospect of success. He therefore appealed to all States to confirm their interest in negotiating a protocol and to work towards achieving results swiftly in 2009. In so doing, they would demonstrate sincerity and clarity of purpose towards addressing urgently the humanitarian impact of cluster munitions, while striking a balance between military and humanitarian considerations.
6. Mr. KOSHELEV (Russian Federation) said that he agreed with the conclusions drawn previously by the representative of the United States concerning future work on the issue of cluster munitions. As to the calls for a stronger mandate, words alone could not resolve the major

differences that had arisen during the negotiations. The document submitted by the Chairperson of the Group of Governmental Experts was already drafted in the form of a protocol. He was therefore not convinced that a stronger mandate would represent a solution. If, however, States could overcome their differences, it should not be necessary to devote more than one day to the topic in 2009. In the meantime, it was important to take stock of the negotiations conducted thus far and decide whether it was possible to reach agreement. If it was not possible, then that should be clearly stated.

7. Mr. DUNCAN (United Kingdom) endorsed the view that the 2008 sessions of the Group of Governmental Experts had been a missed opportunity, and that those who would pay the price were civilians.

8. His Government was a strong supporter of the Oslo Convention and had already implemented some of its provisions by decommissioning certain banned weapons. During the recent negotiations, major users and manufacturers had explained that for reasons of national defence they would not be able to sign the Oslo Convention in the foreseeable future. Nevertheless the same States had indicated their willingness to consider the humanitarian impact of cluster munitions. For the sake of civilians in conflict zones, there must be a collective engagement with them. It must be ascertained how far those States were prepared to go and what constraints they were willing to apply.

9. While the document submitted by the Chairperson of the Group hardly met with general approval, it was undoubtedly a draft protocol. There was thus no need to waste any more time defining it. What was needed were further negotiations, to be concluded as swiftly as possible.

10. Mr. LANDMAN (Netherlands) expressed disappointment that after one year of negotiations no substantive conclusions had been reached. His delegation had been hopeful of success, given the opportunity provided by the CCW framework to bring the main stakeholders on board. From the discussion held at the previous meeting it had emerged that delegations wished to continue the negotiations. However, in order to maintain credibility, the Meeting must amend the Group's mandate. First, the word "proposal" should be replaced with "protocol", since the documents submitted by the Chairperson and the Friends of the Chair clearly referred to a protocol and not to a proposal. Second, a cut-off date should be established, after which it would be acknowledged that the negotiations had or had not succeeded.

11. Mr. STREULI (Switzerland) said that the 2009 negotiations would not be successful unless all States were determined and willing to adopt a protocol based on the results of the negotiations undertaken since July 2008. No delegation seemed to question that a protocol to the Convention was the best way of dealing with the humanitarian impact of cluster munitions. The logical solution was therefore to use the term "protocol" instead of "proposals" in the mandate for 2009, so as to demonstrate the clear will of States to conclude such an instrument.

12. Mr. TARUI (Japan) said that, despite widely diverging views at the outset, considerable progress had been made by the Group of Governmental Experts in 2008, owing to the commendable efforts of the Group's Chairperson. It was therefore unfortunate that agreement on a draft protocol had not been reached because of the lack of enthusiasm of some High Contracting Parties.

13. The adoption of a legally binding protocol within the CCW framework, with the participation of the main possessors of cluster munitions would help to address the humanitarian impact of those weapons. He therefore called on all States to reconvene the Group of Governmental Experts in 2009, to display the utmost flexibility in the negotiations and to adopt a protocol at the earliest possible date.

14. While he would favour a stronger mandate in order to demonstrate that progress had been made, he recognized that the inconclusive nature of the negotiations was not due to the mandate itself. The adoption of a protocol as soon as possible was more important than the wording of the mandate.

15. Mr. IM Han-taek (Republic of Korea) said that, notwithstanding its unique and volatile security situation, the Republic of Korea had participated in the negotiations in a constructive and flexible manner, with a view to concluding a new protocol. Failure to reach agreement had been due to fundamental divergences and an increasingly wide gap between two extreme positions. He supported the idea of continuing negotiations in 2009. The negotiations must be based on the text submitted by the Chairperson - the result of arduous negotiations in 2008 - and be concluded within a reasonable time frame.

16. Mr. ETENSEL (Turkey) said that his delegation stood ready to cooperate and would remain flexible in the hope of reaching consensus. All Parties must take into account, however, the genuine security requirements of the States that had participated in the negotiations, the failure to do so having seemed to be the main obstacle to progress.

17. Ms. PLEŠTINA (Croatia) said it was unfortunate that no agreement had been reached in 2008, given the impact of cluster munitions on civilians. However, it would be more unfortunate still if the Group of Governmental Experts could not reach a compromise, and no protocol was concluded at all. In the meantime, the lack of an instrument should not prevent the Parties from halting their use of cluster munitions. Her delegation agreed that the negotiations should continue, but for a limited time only, and that participants should enter into them with as much goodwill as they could muster.

18. Mr. MANFREDI (Italy) said that a stronger mandate was desirable but not indispensable. What was needed was the political will to reach agreement on a protocol and good faith during the negotiations. His Government would be signing the Oslo Convention shortly but recognized that a protocol to the Convention on Certain Conventional Weapons was necessary in order to put a high political price on any future use of cluster munitions, including by States not party to the Oslo agreement. No more time should therefore be wasted.

19. Mr. DANON (France) said that his delegation would favour a stronger mandate, not least to show the outside world that some tangible progress had been made by the Group of Governmental Experts in 2008. It was convinced that results could be achieved, which made it more determined to continue the negotiations. The Group's working methods must change, however, so as to avoid the levels of frustration witnessed recently. All Parties should have their views heard, and those views should be reflected as far as possible in the text to be considered in 2009. The Group would probably have only one or two weeks at its disposal. Delegations would therefore need to work fast and in a spirit of cooperation and compromise. Their failure to do so would cause suffering to civilians.

20. Mr. JIANG Yingfeng (China) said it was regrettable that the Group had been unable to reach agreement in 2008 despite the hard work of the Chairperson and the Friends of the Chair. The length of future sessions was not the issue; progress would depend on all participants demonstrating sufficient political will. The negotiations could then be concluded in one week. He hoped that in 2009 all sides would adopt a constructive attitude conducive to the adoption of a protocol as soon as possible. They should build on the work done thus far by taking the document submitted by the Chairperson of the Group as a starting point. That text dealt with security and humanitarian concerns in a balanced way and would provide the most practical basis for the negotiations.

21. Mr. LANDMAN (Netherlands) said that delegations could hardly call for flexibility and goodwill while demanding that discussion of the Group's mandate be curtailed, especially as some speakers had expressed uncertainty about the purpose of the Group's work. Some were reluctant even to use the term "protocol", although it was obvious that the Group was working towards one. Indeed, at the previous meeting, one delegation had described the Group as seeking to elaborate some rules of the road. His Government was not willing to use public funds for such a vague exercise. The reasons for investing additional financial and human resources must be clarified.

22. Mr. VARMA (India) said that there was general support among delegations for the continuation of the Group's work in 2009. Furthermore, while the Group had been instructed to report on the progress it had made to the current Meeting of the High Contracting Parties, there had been no understanding that its mandate would then expire. The Meeting should now focus on making practical arrangements for the Group's work in 2009. Any concerns about the mandate could be addressed easily, provided that there was the necessary political will. However, the Meeting should not enter into a detailed discussion on the matter, as the current agenda item was limited to consideration of the report of the Group's work.

23. The CHAIRPERSON said there was consensus that the work of the Group should continue in 2009 and that an effort should be made to conclude an arrangement to address the humanitarian impact of cluster munitions, whether it was called a proposal, a protocol or something else. Noting that different views had been expressed on what the Group's mandate should be, he urged delegations to show flexibility. He would shortly circulate a non-paper, which he believed might be acceptable to all, but he looked forward to receiving delegations' feedback as soon as possible. In the meantime, he took it that the Meeting wished to suspend consideration of the item.

24. It was so decided.

**PLAN OF ACTION TO PROMOTE THE UNIVERSALITY OF THE CONVENTION,
INCLUDING THE IMPLEMENTATION OF THE CCW SPONSORSHIP PROGRAMME
(CCW/MSP/2008/3; CCW/MSP/2008/CRP.1)**

25. The CHAIRPERSON drew attention to the report prepared by the secretariat on the initiatives taken to implement the plan of action to promote the universality of the Convention and its Protocols since the conclusion of the 2007 Meeting of the High Contracting Parties (CCW/MSP/2008/CRP.1). The Convention built on the basic customary rules on the conduct of hostilities. At the same time, it was a dynamic legal instrument that had adapted to meet the

humanitarian challenges posed by advances in weapons technology. Its structure allowed States to accede to all or some of the Protocols, thus ensuring flexibility without compromising the protection provided to civilian populations and combatants against the effects of hostilities. However, the Convention had not yet gained universality. The plan of action had been adopted unanimously at the Third Review Conference in order to address that situation.

26. The plan (CCW/CONF.III/11 (Part II), annex III) represented a flexible and forward-looking strategy for universalizing the Convention. It not only sought to encourage States that had not yet done so to accede to the Convention but also requested the High Contracting Parties to review their own participation in the Convention and its Protocols.

27. Mr. VERROS (Greece), reporting on the progress made towards achieving the universality of the Convention and its Protocols since the 2007 Meeting of the High Contracting Parties, said that in his capacity as Chairperson of the 2007 Meeting he had sent a letter on 10 October 2008 to all the High Contracting Parties emphasizing the importance of universal accession to and strict implementation of the Convention and its Protocols. A similar letter, dated 24 October 2008 and signed by himself, the President of the Ninth Annual Conference of the High Contracting Parties to Amended Protocol II and the President of the First Conference of the High Contracting Parties to Protocol V, had been addressed to the States signatories and the States not parties to the Convention. In addition, two letters dated 17 October 2008 and signed by the Presidents of the aforementioned Conferences, had been addressed to those High Contracting Parties to the Convention that had not yet become parties to Amended Protocol II and Protocol V, respectively, inviting them to do so.

28. The Sponsorship Programme, which sought to enhance participation in meetings and promote a better understanding of the Convention, had made a very important contribution to the universalization efforts. The Programme had received valuable technical assistance from the Geneva International Centre for Humanitarian Demining (GICHD) and had been generously supported by many High Contracting Parties, particularly the members of the European Union. He commended the joint action between the European Union and the Office for Disarmament Affairs to promote the universalization of the Convention, launched in 2007. The joint action was aimed at supporting the implementation of the plan of action by encouraging accession to the Convention, especially by developing and least developed countries.

29. He cited the 47 different instruments of ratification or accession that had been deposited with the Secretary-General, as depositary of the Convention, since the 2007 Meeting of the High Contracting Parties, which showed that the Convention and its Protocols were steadily becoming more universal.

30. Mr. BORISOVAS (Lithuania), introducing the report of the Sponsorship Programme within the framework of the Convention on Certain Conventional Weapons (CCW/MSP/2008/3), recalled that one of the Programme's basic purposes was to provide signatory States and States not yet parties to the Convention and its Protocols with an opportunity to participate in activities related to the Convention, especially States that were least developed countries, States that were on the path towards accession to the Convention and its Protocols and States that were engaged in their own implementation activities. The Programme's informal Steering Committee, of which he was the Coordinator, had considered a number of issues related to the functioning and operation of the Programme, including the criteria for and evaluation of sponsorship. It had made

every effort to carry out the Programme in the most informal and flexible manner and to take all its decisions by consensus. It followed the principle that voluntary requests for sponsorship, whether from High Contracting Parties or States not parties to the Convention, would be seriously considered and would not be turned down unless the Programme faced severe financial constraints.

31. Paragraph 11 of the report provided a breakdown by donor of the total amount available in the Programme account as at 12 November 2008 and data on expenditures, including provisional figures related to the current session.

32. He was grateful to the States that had contributed to the Programme, in particular Australia, Canada, China, Denmark, India, Lithuania, Switzerland and Turkey as well as the European Union. Switzerland, through its general contribution to GICHD, was covering the expenses related to staff, office space and other support for the effective administration of the Programme. Spain had recently donated 30,000 euros to the Programme, and the European Commission and the Netherlands were expected to make additional donations amounting to 147,000 and 20,000 euros, respectively. With the financial support received, the Programme had helped to significantly enhance cooperation, exchange of information and consultation among the High Contracting Parties as well as States not parties to the Convention on many issues related to the Convention and its Protocols.

33. The Steering Committee had met four times since the 2007 Meeting of the High Contracting Parties to the Convention. In the first phase of the Programme, 23 beneficiaries had been selected, on the basis of criteria established at the Third Review Conference, to attend the three CCW meetings and conferences held in November 2007. To date in 2008, 59 delegates had been sponsored, including from States invited by the Steering Committee on the basis of the aforementioned criteria and States that had submitted voluntary requests for sponsorship.

34. Lastly, annexed to the report were the Guidelines for the CCW Sponsorship Fund Administration, which had been modified to reflect the changes in the composition of the staff involved in the day-to-day operation of the Programme, and the financial report on the administration of the Sponsorship Programme by GICHD, which covered activities in 2007. The 2007 accounts had been audited by an external auditor.

35. Mr. HIRANO (Japan) said that the High Contracting Parties should make efforts to promote the universality of the Convention. The plan of action was a meaningful, important document. Bearing in mind the plan of action, particularly Action 3, his Government had contacted 12 States not parties to the Convention in the Asia-Pacific region and encouraged them to accede to it. They had informed the Government of their reasons for not doing so. Some of the States, however, had indicated their understanding of the importance of the Protocols. Japan would continue its efforts to promote the universality of the Convention in future.

36. Mr. MARESCA (International Committee of the Red Cross) welcomed the strengthening of the Convention in recent years, including through the adoption of Protocol V, and the initiatives taken, among them the Sponsorship Programme, to involve States not parties to the Convention as well as the High Contracting Parties themselves in the CCW process. The adoption of the plan of action to promote the universality of the Convention had been another important step. Efforts should focus, in particular, on regions where relatively few States were

parties to the Convention. The regional meetings on universalization were a useful tool for increasing awareness about the Convention. The International Committee of the Red Cross was pleased to participate in the regional effort. It had worked closely with the Department of Disarmament Affairs by providing expertise and sending its legal advisers in the field to attend the regional meetings and ensure follow-up. It would continue to support universalization.

37. Mr. VARMA (India) said that his Government supported the efforts to promote the universality of the Convention as well as the Sponsorship Programme. He suggested that the Chairperson should hold a side event in the First Committee of the General Assembly to promote greater awareness of the objective of universalization.

The meeting rose at 4.40 p.m.