

Oslo Conference on Cluster Munitions, 22-23 February, 2007

Intervention by Sweden on Friday 23 February -"Scope of a future instrument"

Let me start by thanking Foreign Minister Støre, Ambassador Kongstad and our other Norwegian hosts and colleagues for arranging this Conference, the aim of which is to deal effectively with the problems linked to the use of cluster munitions.

The many presentations and interventions yesterday leave no doubt about our common concerns and our belief that we have a problem to solve.

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Various types of cluster munitions have caused and continue to cause unacceptable human suffering. At this meeting and well before we have acknowledged detailed and ample information provided by governments, IGO's and NGO's relating to experience from conflicts over several decades. I wish to pay particular tribute to the valuable work performed by the NGO community in this matter. The fact and figures speak for themselves. The most recent example is of course last summers' conflict between Israel and Lebanon.

We share the deep concern of governments and international organisations alike about the serious humanitarian hazards posed by cluster munitions. Sweden has been very active throughout the history of the CCW. Inter alia we chaired the 2nd Review Conference and we participated actively in the negotiations leading up to the adoption of Protocol V of the CCW in 2003, which we were also the first to ratify. Like others we welcomed its entry into force last November but we also shared the view of many that it was not enough and we have since tried to advance the cluster munitions issue within the CCW. We have also carried out our own evaluation of the CCW Third Review Conference.

If work on a new international instrument on cluster munitions is to be successful it must build on a proper balance between military and humanitarian interests, as has always been the case with previous instruments in the area of international humanitarian law. Military and humanitarian interests are not mutually exclusive neither in the political nor in the military context. On the contrary, they often coincide. It is a normal military objective to have a maximum effect of any weapon deployed. A dud rate of 10-30 % means 10-30 % less efficiency on the intended targets. Similarly, high dud rates pose problems for military forces, which may have to advance through terrain where cluster munitions were used, or where military forces remain for peacekeeping missions. These are indisputable facts. They have been taken into account by our armed forces. And we believe that is in the interest of all armed forces to do likewise.

On the other hand, the humanitarian concerns and arguments in favour of a specific regulation concerning the use of cluster munitions are equally obvious, well founded and have been described in detail, most recently in the presentations yesterday inter alia by the UNDP, the ICRC and the CMC.

If we wish to attract an ever-growing number of states to a new convention, several legitimate concerns must therefore be met. What is legitimate in this context? Well this is a core topic of

discussions at this conference and beyond. We will listen attentively to what others have to say in this respect.

In November last year in Geneva, a good number of government delegations rallied behind a declaration that you are all familiar with and which called for an international agreement which - inter alia - should:

- a) Prohibit the use of cluster munitions within concentrations of civilians.
- b) Prohibit the development, production, stockpiling, transfer and use of cluster munitions that pose serious humanitarian hazards.
- c) Assure the destruction of stockpiles of such munitions that pose serious humanitarian hazards.

As this Conference aims at setting an agenda for forthcoming work, it is necessary to be clear about the contents of that agenda. The "17 November Declaration" set a good frame for what should be accomplished and which could perhaps be described as the "three D's", i.e.

- *Deployment*: meaning when and where can cluster munitions be used.
- *Description*: meaning how to go about drafting the best possible regulation and finally
- *Definition*: meaning what are we talking about in technical terms?

Deployment

Regarding *deployment* we note that while cluster munitions so far are not prohibited under international humanitarian law their use is of course subject to the rules and principles of international humanitarian law in general and of the laws of war in particular

The Swedish Armed Forces are equipped with cluster munitions called BK 90 and expect to keep them for the time being. The BK 90 holds a very high quality, a dud rate of 1-2 % and is equipped with self-destruction mechanisms **and** self-deactivation. The result is that there are no dangerous duds left in the area.

Experts in international humanitarian law have debated whether existing IHL is sufficient regarding cluster munitions. We belong to those who believe that specific rules concerning cluster munitions would represent an important added value in order to remedy the serious humanitarian hazard posed, in particular by certain types of cluster munitions.

Description

When it comes *description*, one may look at precedents within the CCW. Protocol III of the Convention regulates the use of incendiary weapons and its art 2 focuses on the protection of civilians and civilian objects.

Given the special characteristics of incendiary weapons the authors of Protocol III paid due attention to differences between air and ground launched attacks. However, because of their "large footprint", such a distinction between air- or ground-launched munitions does not seem

quite appropriate when it comes to cluster munitions. In that respect, the "large footprint" complicates a "loan" of text from Protocol III.

Article 2, para 3 of the Protocol deals with other than air-delivered weapons but in real life, as all cluster munitions are "air-delivered, the manner in which the materia of incendiary weapons is delivered is different from the manner of delivery of cluster munitions. In retrospect, the reason that some incendiary weapons were allowed after all was - at least partly - because they have a smaller area effect and because the user is much closer and therefore has a much better view of the potential target.

When Protocol III, under certain circumstance, does allow for the use of incendiary weapons in an area with civilian population, it is on condition that "the military objective is clearly separated from the concentration of civilians and all other feasible precautions are taken with a view to avoiding, and in any event minimising, incidental loss of life, injury to civilians and damage to civilian objects". Again, considering the different effects and features of incendiary weapons and cluster munitions, the exceptions agreed for incendiary weapons may be difficult to transform as such into a new regulation for cluster munitions.

As we move forward, we are also likely to encounter references to current technological developments concerning precision guided munitions, targeting devices, forward airborne controllers, unmanned aerial vehicles, and indeed the use of special forces operating in enemy controlled territory with man held targeting devices.

At some point, we shall therefore have to see to what extent - if any - that those developments should allow for exceptions to an otherwise unconditional prohibition of the use of cluster munitions in or near a populated area.

If we were to choose the alternative of a prohibition without exceptions it would have the character of a prohibition of a means of warfare and a disarmament measure where the objective is not to protect the military from the effects of the ammunition but the civilian population and civilian objects.

If, on the other hand, we were to choose the alternative of a prohibition with exceptions, it is rather the specific use which is not allowed and therefore a restriction of the method of warfare.

Lest it be forgotten, there are of course other elements concerning self-destruction devices and self-deactivation regarding landmines in Amended Protocol II which may be of interest in our forthcoming discussions on technical aspects.

We have been informed of the introduction, on 14 February, of the "Cluster Munitions Civilian Protection Act", sponsored by US Senators Dianne Feinstein and Patrick Leahy, which would prohibit the use of cluster munitions in populated areas and prohibit the use and transfer of cluster munitions with sub-munitions that have a failure rate of 1 percent or more. We have not yet had time to take a closer look at that proposal but it may contain features which could be of interest in our forthcoming deliberations.

Definition.

Finally, we are of course also aware that a new instrument on cluster munitions eventually must comprise a proper *definition*. "The 17 November Declaration" was not primarily meant to provide a formal definition but most of us can probably agree that the wording it employed holds central elements of what a definition could look like.

As our hosts have already mentioned in the background paper for this Conference, the lack of a formal definition should not be an obstacle to our continued work. I know that many already have a proposal in their pockets. So do we. And in due time we will find a good solution, perhaps following the ICRC meeting in April.

In any event, we believe that a definition should be simple and clear and that we should avoid including, already in the definition, a series of exceptions and modifications which may be well motivated but should be spelled out separately.

Let reiterate our conviction that if work on - and adherence to - a new effective international instrument of the regulation of cluster munitions is to be successful and make a difference on the ground it must build on a proper balance between legitimate humanitarian and military interests, as has been the case with previous instruments in the area of international humanitarian law.

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Let me finally say that the political undertaking to conclude an international agreement on a regulation of cluster munitions by 2008 is laudable. If all goes well it may be possible to reach that goal. However, for my government, as I assume for many others, the first and foremost concern will be to agree and accept the contents of a draft new international instrument before accepting a fixed time frame. Therefore, I believe that my government will regard 2008 as an ambition rather than an absolute deadline.