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**Fourth Review Conference of the Convention on  
Prohibitions or Restrictions on the Use of Certain Weapons  
Which May Be Deemed to Be Excessively Injurious or to  
Have Indiscriminate Effects**

**Main Committee II**

**16 November 2011**

**Statement by**

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Mr. Chair,

The Canadian delegation explained very well yesterday that there are some fundamental differences in the approaches of delegations in this process. As we enter the discussion in Main Committee II, Austria would like to take the opportunity to reiterate again a few more general points to clarify our position all delegations.

What do we mean when we refer to the complementarity to and compatibility with the CCM? We are strongly committed to the CCM because we are convinced of the compelling humanitarian argument that underpins it. This humanitarian argument has a legally binding effect on the State parties of the CCM. But it also has a powerful de facto norm setting impact that goes beyond the CCM. It goes beyond the CCM membership in political terms and in our view also in legal terms through the incremental creation of customary international humanitarian law. The fact that we are even sitting in this room and agree – at least in principle – on the need to address the humanitarian concerns posed by cluster munitions is in our view a clear demonstration of the strength of this approach.

When some proponents of the so-called Chair's proposal refer to Article I (3) which states that the rights of CCM States Parties would not be affected by this protocol, they may be right in strictly legal terms. However, they have completely misunderstood or chosen to ignore what is a key motivation behind the CCM for Austria and, I believe, a significant number of CCM States Parties.

I understand that some of those States not-Party to the CCM may strongly disagree with the points that I have made but common ground within this body will only be found if these concerns that we have made time and again are also respected.

We look upon the provisions in the Chair's proposal not only in terms of what would be restricted. Of course, we are in favour of the destruction of old stockpiles of cluster munitions. The fundamental – and in our view irreconcilable – problem is that we are being asked to agree to a multilateral endorsement de facto permitting the use of cluster munitions. This is diametrically opposed to the core motivation behind the Oslo Convention.

From a legal point of view, States not-Party to the CCM are, of course, free to take any action on how to deal with cluster munitions. We would very much welcome if some of the measures would be taken at a national level or jointly among some states. It is the requested multilateral endorsement of future use, however, that is not acceptable and that could be seen, quite frankly, as somewhat disrespecting the existence of the CCM. Many states in this room have worked hard since 2000, including this very delegation, to address this issue within the CCW. We all know why progress was not possible and what led in the end to the Oslo-Process. This was not the 1<sup>st</sup> choice but a consequence of the CCW inability to make progress. The CCW should now not be used to try to undermine fundamental principles upon which the CCM is based.

I do not see that this fundamental difference in approach has been taken into account properly and the fact that we are yet again asking to go through the chair's proposal reinforces this concern. We are therefore also doubtful that an attempt to merge the different proposals, as indicated by you, Mr. Chairman, will be able to bridge the existing differences.

However, while our fundamentally different approaches prevent us to agree on what cluster munitions should be prohibited or allowed, there may be significant common ground on agreeing on humanitarian measures to address urgently the humanitarian concerns caused by cluster munitions.

Together with Mexico and Norway, we have tried, to point the way into such a direction and I would like to reiterate that this proposal is on the table as one of the basic proposals according to rule 29 of our Rules of Procedure. We remain ready to work with interested delegations to improve this approach further.

Mr. Chairman,

In general terms, I would like to outline that an outcome of this process that would be complementary to and compatible with the CCM and that would provide meaningful intermediate steps that amount to true added humanitarian value in addressing the problems caused by cluster munitions could have to contain the following provisions:

It would have to contain very clear preambular language that recognizes the grave humanitarian problems caused by cluster munitions and that commits states to do their utmost to urgently address these problems.

It would have to recognize the CCM and clarify that provisions of an intermediate nature are being taken towards its goals.

It could contain very concrete provisions under a clear humanitarian umbrella on the areas of

- stockpile destruction and management (including concrete measures of how to deal with old stockpiles)
- transfers of cluster munitions
- clearance
- victim assistance
- cooperation and assistance
- national implementation
- transparency measures and
- a mechanism to revisit the issue and agree on additional steps to achieve the humanitarian goals.

These issues would provide a menu of meaningful and intermediate measures that – if implemented seriously – would achieve concrete and practical intermediate states with immediate effects on the ground.

An outcome of this process that would be complementary to and compatible with the CCM and that would provide meaningful intermediate steps that amount to true added humanitarian value in addressing the problems caused by cluster munitions would have to contain the following provisions, however, should not include

- Provisions that establish a second definition (or application of the definition) to the CCM.
- It should not attempt to prohibit certain cluster munitions while excluding and, thus, legitimizing the use of large categories of cluster munitions prohibited under the CCM.

I would like to reiterate our belief that a meaningful outcome at this Conference on humanitarian measures would be possible. However, we are of the view that a result at the end of this conference that would be widely seen as undermining existing IHL can ultimately not be in the interest of states truly interested in strengthening IHL and the CCW.

Thank you.