

Ministerie van Buitenlandse Zaken

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Date 03 March 2009  
Re



## Ministerie van Buitenlandse Zaken

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**Our ref.**

DVB-WW/118/09

Date 26 February 2009  
Re Your letter of 30 January on cluster munitions

*Dear Stephen,*

With reference to your letter dated 30 January 2009, I am happy to provide you with information on the Netherlands' policy regarding cluster munitions.

Following the signing ceremony for the Convention on Cluster Munitions (CCM), we initiated the ratification procedure, as minister Verhagen mentioned during his speech in Oslo on 3 December 2008. The Netherlands is fully committed to the quick entry into force of the Convention. We are also committed to convincing partners that have not yet signed the CCM, such as Russia and Georgia, to do so. We are continuing to discuss both the merits of the CCM and the importance of agreement on a significant Protocol VI to the Convention on Conventional Weapons with relevant partners.

The ratification procedure in the Netherlands entails obtaining an advisory opinion from the Council of State and the explicit approval of Parliament. This procedure normally takes 12 to 18 months. Pending the CCM's entry into force, the Netherlands will apply Article 1 of the CCM provisionally.

As a signatory state to the CCM, the Netherlands has started a process to destroy all current stocks of cluster munitions. In 2008, we donated a total of about €20 million to various international organisations, including NGOs, for

the detection, demining and destruction of unexploded ordnance. We will, at the very least, continue this level of support. In view of the deployment of cluster munitions by Dutch aircraft under NATO command in 1999, we also contributed to demining activities in Kosovo.

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The Netherlands currently has stocks of 293 CBU-87 cluster bombs and 1879 M-261 warheads. It also has some stocks of M483 DPICMs. These munitions will be destroyed, with an exception of a limited number of cluster munitions and explosive submunitions for the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques, or for the development of cluster munition counter-measures. The length of time required depends, among other things, on international procedures and industrial capacity. To destroy munitions, a certain procedure will be followed, including the involvement of the NATO Maintenance and Supply Agency (NAMSA). Destruction of the M483 DPICM is already in progress and the Dutch government has already started making preparations for the destruction of the other stocks.

The CCM prohibits the transfer of cluster munitions. There is a distinction, however, between transfer and transit. As in the Ottawa Convention on Anti-Personnel Mines, transfer involves both the physical movement of munitions and the transfer of title to them. Transit, on the other hand, involves the physical movement of munitions without transfer of title. The Dutch government therefore takes the view that the transit across Dutch territory of cluster munitions that remain the property of the third party in question is not prohibited under the Convention.

The Netherlands attached great importance to the inclusion of an article permitting continued military cooperation with States not Party. Under Article 21, States that are Party to the CCM should encourage States not Party to accede to the new Convention and try to discourage them from using cluster munitions. With this best efforts obligation as the starting point, and despite the prohibition set out in Article 1 of the Convention, military cooperation with States not Party is still permitted, including operations where the use of

cluster munitions cannot be ruled out. However, the Convention does set certain conditions. For instance, a State Party is not permitted to explicitly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control. The consequences of this article for NATO operations are currently being clarified.

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13 February 2009

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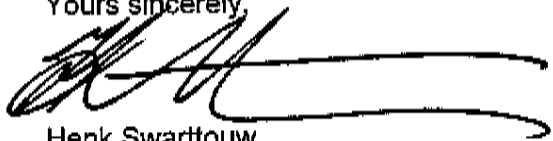
In your letter you also raise the issue of investments in cluster munitions. The Dutch government is cautious about a ban on investments in the production of anti-personnel mines and cluster munitions. The CCM does not impose such a ban on private Dutch parties. This does not alter the fact that such investments run counter to the spirit of the Convention. The government is in favour of giving private parties an opportunity to shoulder their responsibilities, so that funding for the production of anti-personnel mines and cluster munitions ceases. Transparency on investment policy is very important in this regard. Our preference at present is for financial enterprises themselves to refrain from investments that are unethical and at odds with corporate social responsibility, perhaps through the introduction of a code of conduct. A positive development in this regard is that the public debate has helped to bring about a clear change in the investment policy of various institutional investors. The Cluster Munition Coalition has made a significant contribution. Dutch institutional investors are well aware that being associated with the arms industry can damage their reputation. This is particularly pertinent as it shows that parties are recognising their responsibilities. Viewed in this light, a statutory ban would seem to add insufficient value at present.

Finally, I would like to take this opportunity to thank you for your active role in the negotiations on the Convention on Cluster Munitions. I have also appreciated the active role of Human Rights Watch and other international organisations in conflicts such as that between Georgia and Russia where cluster munitions were used by both sides.

**Date**  
13 February 2009

**Our ref.**  
letter of 30 Jan 2009

Yours sincerely,



Henk Swarttouw  
Director Security Policy Department

*All the best,*