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Mr. Stephen D. Goose
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UNCLASSIFIED

Dear Mr. Goose,

Further to the recent letter from Canada's Minister of Foreign Affairs, Mr. Lawrence Cannon in response to your letter of 10 March 2010 regarding your report, *Banning Cluster Munitions: Government Policy and Practice*, I take this opportunity to comment upon parts of the report concerning Canada. Abstracts from your report are presented in italics.

"Canada was slow to embrace any international action on cluster munitions and even more so the Oslo Process to prohibit them". Canada was and remains very pleased to have contributed to the establishment of the Convention on Cluster Munitions. Though we were not one of the six core-group countries that initiated the Oslo Process, Canada actively participated in this undertaking from its beginning and was the first state to endorse the Oslo Declaration when Norway proposed its adoption in December 2007. Canada also signed the Convention the day it opened for signature in Oslo in December 2008. It is a requirement in Canada that necessary domestic legislation be enacted to ensure full compliance with any new international treaty, prior to ratification. We are working toward ratification as quickly as possible, while proceeding to destroy the remainder of Canada's stockpile of cluster munitions and encouraging non-signatory states to become party to the Convention.

"Canada was most often associated with a group of states that were participating in the Oslo Process only reluctantly and with serious reservations about both the process and the draft convention text. Canada was prepared to exempt broad categories of cluster munitions from a prohibition, but on the other hand, was a strong advocate on victim assistance issues throughout the process." Thank you for acknowledging Canada's

efforts concerning victim assistance. With respect to “*states with whom Canada was most often associated*”, it should be noted that the so-called “like-minded group” was an extremely loose association of states that was far from like minded on many issues. To my knowledge, the only two points upon which there was full agreement were that diverse positions should be given equal consideration during negotiations, and that interoperability must somehow be addressed in order to preserve critical military alliances with states not party to the Convention. There was a wide range of views within this group as to how this might be done and, as mentioned, on many other issues. For this and other reasons, the so-called like minded group did not negotiate as a bloc. It is important, therefore, that any assessment of the performance of a state be based upon the positions and actions of that state, not those of others with which it might have somehow been associated. Please note that, throughout the Oslo process, Canada consulted at least as closely with several ‘core group’ states and with civil society, including the Cluster Munitions Coalition, with whom we believe we agreed on almost all issues.

Canada was not, at any time, “*prepared to exempt broad categories of cluster munitions from a prohibition*”, rather was among the first states to declare that we would support a total ban on cluster munitions, if states could agree on an appropriate definition of a cluster munition. Canada’s and many other states’ concern, prior to agreement on a definition, was that other weapons with advanced technical and other features that make them considerably more accurate and reliable might be swept up in the prohibition. In the end, we agreed on an appropriate definition and we are extremely pleased that all cluster munitions, as defined, have been banned.

“*At the Wellington conference in February 2008, Canada frequently supported the proposals put forward by the so-called like minded group – proposals that the CMC criticized as weakening the draft text, particularly on the issues of definition (exceptions to the prohibition) a transition period before key provisions obligations (including no use) took effect and interoperability. Canada stepped up its efforts to include provisions addressing interoperability in the treaty text and proposed a transition period during which the prohibition on assistance would not be in effect.*” As mentioned, Canada sought no exceptions to the prohibition on cluster munitions; nor did we seek or support a transition period of any kind. The view shared by every member of our delegation was that states could simply join when they were ready. The reference to Canada and a transition period cited in your footnote 221 concerns a suggestion brought forward by a member of our delegation during an informal session on interoperability which had been convened precisely so that states and the broader community could brainstorm possible ways forward on this sensitive issue. He prefaced his remarks by stating that his suggestion was brought forward as an option for consideration, not as a national position; and literally underlined this point in his written statement. Moreover, his suggestion was for an immediate prohibition on use and all other prohibited activities in the draft text except in article 1C. To report as a national position what was said by an individual during an informal brainstorming discussion, when it was clearly stated that the idea being explored was not his country’s position, is simply inappropriate; it also disregards the terms under which informal sessions are convened and could deny the international community a valuable, facilitative tool in future negotiations.

A final thought on interoperability: as indicated throughout the process, it would have been inconceivable for Canada, and most if not all other NATO member states as well as other

states participating in similar alliances, to have adopted a text that would prevent continued engagement in combined military operations with allies which, for the time being at least, choose not to be bound by the Convention. Our community needed to, and did, find a way to allow for this, while coming to agreement on a ban of these weapons and comprehensive measures to address their impact on civilians. This was, and remains, a major humanitarian achievement.

Hopefully there will come a day when all will have adopted the 'gold standard' that has been established in the Convention on Cluster Munitions.

We would be grateful if you and your colleagues would amend your assessment of Canada's policy and practice with respect to the development of this Convention, in light of the foregoing.

Sincerely,

Earl Turcotte
Senior Coordinator for Mine Action

cc. DFAIT/IDA André François Giroux

cc. DFAIT/IDA John MacBride

cc. DND/Lt. Col. Norman Polenz