

ANZCMC Report on Activities: Dublin Conference on Cluster Munitions 19-30 May 2008



By Mary Wareham, Coordinator
Aotearoa New Zealand Cluster Munition Coalition
July 2008



About the Report

This report on activities includes: 1) an overview of the proceedings at the Dublin Diplomatic Conference on Cluster Munitions; 2) a review of the principal outcome of these negotiations, the Convention on Cluster Munitions; 3) a description of campaign activities by civil society in Dublin; and 4) a summary of New Zealand's role and domestic advocacy considerations. It was drafted by ANZCMC Coordinator Mary Wareham, who also took the accompanying photographs.

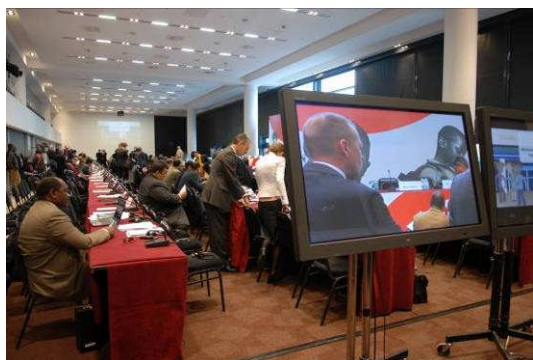
I. Dublin Diplomatic Conference on Cluster Munitions, 19-30 May 2008

The Dublin Conference was held at Croke Park, a massive (85,000-seat) Gaelic football stadium in the north of the city. It was a very different set-up from the Wellington Conference: the NGO space was located at the opposite end of the venue (a 7 minute walk) from the diplomatic talks and only four civil society representatives were permitted to sit behind the CMC nameplate in the formal deliberations (a situation overcome by sitting with friendly government delegations).

The Conference opened on 19 May 2008 with a brief plenary session, then the President of the Conference, Irish Ambassador Daithi O'Ceallaigh, quickly got down to business. After the Rules of Procedure were adopted with no objections, President O'Ceallaigh read through the draft treaty text article by article.

Any government could intervene during this reading and request amendments to the text. If the President felt there was sufficient demand for amendments, he appointed a Friend of the President to convene informal consultations or bilateral meetings on the subject, or he delegated a member of his conference team to discuss the issue with the state concerned.

By the time the reading of the text was completed at 4.00pm on the second day, a series of informal consultations had been convened by diplomats (typically ambassadors) on: definitions (convened by New Zealand Ambassador Don MacKay), interoperability (Switzerland), storage and stockpile destruction (Norway), victim assistance (Austria), and compliance (South Africa). Additional discussions were held on clearance and destruction of cluster bomb remnants, while the Irish team held discussions with delegates on transparency measures, national implementation measures, settlement of disputes, and meetings of states parties.



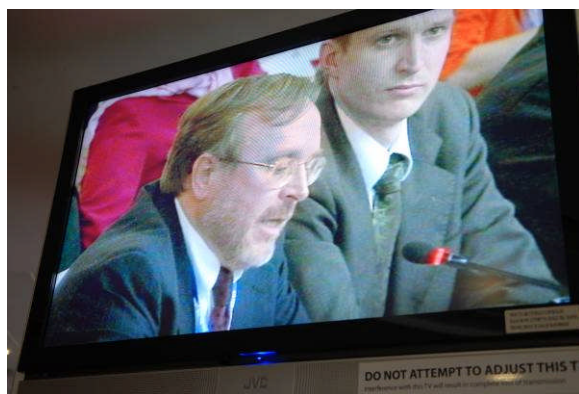
The Conference then split into a series of smaller meetings to enable the diplomats to discuss the issues in-depth. By the beginning of the second week, the Friends of the President were starting to wrap up their consultations and submit new language for the draft treaty text to the President. At 10:00am on Wednesday 28 May, the President O’Ceallaigh presented the Conference with a draft consolidated “president’s text,” which he described as “extremely ambitious,” representing the best possible balance of interests and compromise consistent with the Oslo Declaration. The plenary adjourned and bilateral consultations and regional meetings began. The CMC convened an emergency plenary for the civil society delegation to discuss the new text.



Just after 5.00pm that same day, the Conference reconvened and President O’Ceallaigh made an emotional plea to delegates challenging them to indicate if they could agree to adopt the draft text on Friday 30 May. He indicated that he was no longer seeking amendments to the text, rather confirmation that the president’s text should be adopted.

The first twenty states that spoke were representative of larger blocks of countries (such as Zambia for Africa states, Mexico for states from Latin America and the Caribbean, Philippines and Indonesia for Asia, Fiji for the Pacific). Or, they were powerful/problematic states that had made their specific concerns about the treaty text crystal clear during the talks (Australia, Canada, France, Japan, South Africa, Switzerland, and the UK). New Zealand was the second state to speak and indicate its support for the adoption of the president’s text.

After none of these governments suggested further text amendments or objected to the treaty being adopted Friday, the momentum in the room became unstoppable. Country after country spoke in support of the treaty text. A few states, such as Japan, were non-committal and said they needed to send the treaty text back to capitals, but did not object to the adoption or request more changes. After 70 countries had spoken with none objecting to the adoption of the text, it was the turn of the observers to provide their views.



I watched the statements on closed circuit televisions in the coffee area outside the plenary, where it got louder and louder as delegates stepped out for a break. The room suddenly fell completely silent, however, when Steve Goose from Human Rights Watch spoke on behalf of the Cluster Munition Coalition to give civil society’s verdict on the text. The diplomats seemed to be holding their breath since they knew that if civil society rejected the deal they could take the media with them and declare the whole initiative a waste of time.

While the CMC stated that it would have liked to have seen further improvements to the text and its belief that the agreement would have gotten stronger and not weaker, the CMC respected the judgment of the president and majority of states that this was not the best way forward. Goose's statement is available [online](#) and extracts are included in the following description of the new Convention.



On Thursday 29 May 2008, the conference was adjourned so that delegates could consult with capital on the proposed convention and get approval to adopt the text on Friday. On Friday 30 May 2008 the new convention was officially adopted by 111 states that were full participants at the meeting. The Convention on Cluster Munitions will be opened for signature in Oslo, Norway on 3 December 2008 (which is also the International Day for Persons with Disabilities and same day/month that the 1997 Mine Ban Treaty was opened for signature a decade ago).

► Official Dublin Conference website: www.clustermunitionsdublin.ie/

II. The 2008 Convention on Cluster Munitions

The CMC described the new treaty text as, “an extraordinary convention” that “is certain to save thousands and thousands of civilian lives for decades to come.” The new treaty represents the most significant advance in the field of disarmament law since the 1997 treaty banning antipersonnel mines. The following description of the Convention, which is available [online](#), draws from CMC statement and daily updates:

- Article 1 outlines the prohibition on use, production, stockpiling, transfer and assistance meaning this is a comprehensive ban on cluster munitions as a class of weapons.
- Article 2 contains the definition of a cluster munition. According to this definition, the Convention bans not just some cluster munitions, but all cluster munitions. It does not differentiate between good cluster munitions and bad cluster munitions, it bans them all. All cluster munitions that have been used to date are banned by this definition along with almost all cluster munitions in the arsenals of countries expected to sign the Convention. There are no exceptions for individual nations' own particular types of cluster munitions, which would have weakened the treaty severely.
- Article 2c lists a total of five cumulative criteria for exclusion of munitions that do not have the effects of cluster munitions: a minimum weight of 4 kilograms; less than 10 submunitions; capability to detect and engage a single target; electronic self-destruct mechanisms; and self-deactivating features.
- Article 3 contains an eight-year timeframe for destruction of stockpiled cluster munitions; though many states are expected to complete destruction well before

the deadline (the UK and Germany announced their intent to begin destruction immediately). This article permits the retention of a minimum number of cluster munitions for clearance training and research, but requires reporting on the planned and actual use of these retained cluster munitions.

- Article 4 contains a ten-year deadline for clearance of cluster munition remnants. Past users of cluster munitions are “strongly encouraged” to provide technical, financial, material, and human resource assistance, along with information on the type and quantity of cluster munitions used, and the precise locations of cluster munitions strikes. This article and others include language that significantly improves on the 1997 Mine Ban Treaty, thus showing the lessons learned over the past decade.
- Article 5 contains what the CMC has described as “ground-breaking and historic” provisions on victim assistance. The article obliges states to provide non-discriminatory, age and gender sensitive assistance, including (but not limited to) medical care, rehabilitation and psychological support, as well as providing for victim’s social and economic inclusion. The victims’ rights-based language is a first for any disarmament treaty.
- Article 6 requires those states in a position to do so to provide international cooperation and assistance (i.e. funding) to assist other members to implement the Convention.
- Article 7 requires annual transparency reporting including on cluster munitions stockpiles and programs for their destruction, field clearance and victim assistance efforts, and the financial, material or resources allocated for the implementation of these measures.
- Article 8 details standard measures to facilitate and clarify compliance, but is perhaps weighted a little too heavily in support of the state that is believed to have violated the prohibitions of the Convention.
- Article 9 requires states to take legislation and other measures to implement the Convention including penal sanctions.
- Article 15 states that the Convention will be opened for signature in Oslo, Norway on 3 December 2008 and then made available for signature at UN HQ in New York.
- Article 17 requires 30 ratifications for the treaty to then enter into force six months later. The majority of countries wanted 20, but a few urged 40 ratifications so this represents a compromise.
- Article 21 on the “Relation with States not parties to this Convention,” or interoperability is a major disappointment for the CMC, which memorably described it as “the only stain on the fine fabric of the treaty text.” Referred to by many campaigners as the “U.S. article,” the text is largely a repeat of language proposed by the Swiss Friend of the President, despite many calls to strengthen the prohibition against assistance. The article is not clear that intentional assistance and indefinite foreign stockpiling are prohibited. It does, however,

require that states to encourage others to join the Convention and promote the prohibitions, as well as make “best efforts” to discourage non members from using cluster munitions.

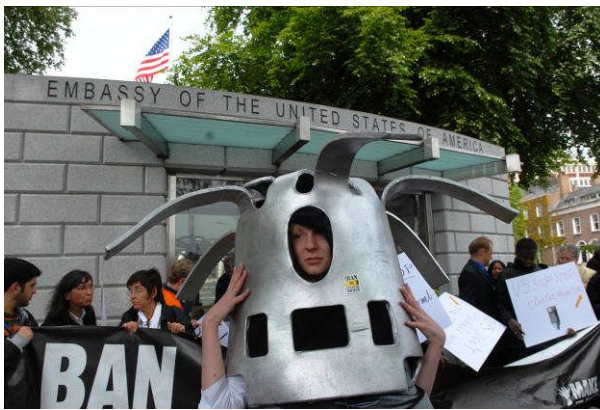
► Full treaty text: www.clustermunitionsdublin.ie/pdf/ENGLISHfinaltext.pdf

III. The Role of Civil Society in Dublin

The Cluster Munition Coalition delegation to the Dublin Conference was comprised of 284 campaigners from 61 countries, including cluster bomb survivors from Afghanistan, Cambodia, Iraq, Serbia, Tajikistan, Vietnam, and Western Sahara. The CMC held an array of events in conjunction with the Conference including lunchtime seminars, twice-daily campaign debriefings, a planning forum, an interfaith service, and media stunts. CMC members provided technical advice to the diplomats, organized lobby outreach regionally and thematically, and made interventions in the formal sessions. Over the course of the conference, significant lobbying by campaigners in London, Berlin, Tokyo and elsewhere paid off when these states agreed to relinquish their cluster munitions and approve the proposed treaty.



In one of its conference newsletters, the CMC described the United States as “the elephant not in the room” in Dublin. The U.S. Department of State held a [press briefing](#)



during the first week of the Conference in which a spokesperson made the audacious claim that the draft treaty would jeopardize U.S. participation in joint peacekeeping and disaster relief operations. By the start of the second week reports were coming in of telephone calls by U.S. Secretary of State Condoleezza Rice to lobby leaders of countries participating in the Dublin Conference. Several efforts were made to counter the U.S. offensive against the

treaty including media work by Nobel Laureate Jody Williams and cluster bomb survivors, a demonstration outside the U.S. embassy in Dublin, and a visit to the talks by Patrick Leahy, a senior Democratic Senator in the U.S. Congress. While U.S. allies participating in the Conference stood strong and endorsed the treaty, they also won a concession for the U.S. in the form of the new article on interoperability.

In Dublin, Mary Wareham was responsible for several items including editing the CMC newsletter (*Ban Clusters News*), drafting the CMC action plan for rapid entry into force of the Convention (see Annex II), launching the *Banning Landmines* book, assisting the delegation of Nobel Peace Prize laureates, taking the [photographs](#) of the global

campaign's events, lobbying Pacific and other government delegates, writing daily conference updates for the ANZCMC [website](#), disseminating the ANZCMC's Wellington Conference [Report](#) on Activities.

Other non-governmental New Zealanders involved in the Dublin Conference include London-based CMC coordinator Thomas Nash, Oxfam NZ's conference organizer Jamila Hodayun, editor James Meikle who produced the CMC [YouTube](#) updates, and Raechel Rees who shot footage for these video clips.

► Ireland CMC website: www.stopclusterbombs.ie/

New Zealand's Role

New Zealand's Ambassador Don MacKay has received accolades from the CMC and others for his careful chairing of the consultations on the definitions article, which resulted in a very strong definition. The new treaty's language on victim assistance draws much strength from the Convention on the Rights of People with Disabilities, which Ambassador MacKay was also deeply involved in. At a CMC meeting on 29 May 2008, McKay thanked the campaign for its role in creating the Convention and called for action to ensure legislation is passed to ensure the treaty quickly enters into force (see Annex I).



While New Zealand played a mostly positive role in the diplomatic negotiations, it did support Article 21 on interoperability. During the negotiations, Ambassador McKay said the ANZCMC should not be surprised at this stance; it was apparently a long-standing position made clear by the Minister in his statements. At a 19 June 2008 MFAT debriefing on New Zealand's recent disarmament activities, an official further elaborated:

“We need to consider the overall risk to NZDF personnel [who do not receive close air support in the Afghanistan peacekeeping mission]. We didn't feel the Ottawa Convention [Mine Ban Treaty] gave sufficient clarity on this [interoperability with non States Parties]. We are pleased with the outcome [Article 21]. It is an expression of the reality that United Nations operations have different obligations for the parties that participate. The Ottawa Convention was ambiguous. This is a strong provision because it encourages a very specific dialogue between coalition partners. It is black and white, and transparent. NGOs can lobby when states enter into coalition negotiation. We don't know how it [Article 21] will work in practice, but it is necessary for New Zealand to participate in peacekeeping operations.”

On Article 21, the CMC is calling on all states to clarify for the diplomatic record that the article does not allow indefinite foreign stockpiling or intentional assistance. The CMC says it will be “watching very carefully to ensure that no state party engages in deliberate assistance with prohibited acts, or allows foreign stockpiling of cluster munitions on their

territory in perpetuity, or undermines the fundamental obligations of the treaty in any way.”

One commentator has noted that the scrutiny of the world will now be focused on States Parties participating in joint military operations. The international recognition that assisting others to use cluster munitions is fundamentally against the spirit of the Convention will go far to ensure that the Article’s provisions are irrelevant in reality.

Given the active leadership role that New Zealand played in creating the Convention on Cluster Munitions, the ANZCMC fully expect the government to sign the agreement when it is opened for signature on 3 December 2008 in Oslo, Norway. Six states from the Pacific played a particularly supportive role in the Dublin negotiations: Cook Islands, Fiji, Palau, Papua New Guinea, Samoa, and Vanuatu. The ANZCMC is working with its Pacific counterparts to ensure that Pacific states are well represented at the Oslo signing ceremony.

► ANZCMC website: www.banclusterbombs.org.nz



ANNEX I

Dublin Wrap-Up – Diplomats' Views

After the Convention on Cluster Munitions was agreed and before it was adopted, the campaign held an internal meeting on Thursday 29 May 2008 to evaluate the new treaty and plan for its rapid entry into force. The Irish director of Amnesty International, Colm O’Gorman, chaired this session, which began with some words from four diplomatic leaders of the Oslo Process who subsequently received a standing ovation from the 200 campaigners present. These notes of their remarks are partial and not necessarily accurate so please do not cite them elsewhere without first checking with the person concerned. – Mary Wareham, Oxfam NZ

Amb. Daithi O’Ceallaigh, Ireland (President of the Dublin Conference)

There are some extremely strong, progressive, and helpful articles in this treaty.

[Sorry, do not have the rest of the notes, but Daithi’s statement to the closing plenary of the Conference is available here -

<http://www.clustermunitionsdublin.ie/pdf/Ireland.pdf>



Amb. Steffen Kongstad, Norway

It is a great honor to be here. I have worked with many of you for some years and express to all of you my gratitude and admiration for your strong commitment and dedication. I have been asked many times if I am proud. I am grateful it was possible and it has been a gift to work with people like you through this process. It doesn’t end here. This is the beginning. We need to ensure entry into force and then start implementation. That is a long haul.



From my perspective, two things are important. First, this treaty exceeds our expectations. It is a really good, solid, robust text. This will be a good treaty. It will make a difference. Secondly, from my perspective as a civil servant in a relatively small country, the partnership that we have with civil society is a way for us to exercise influence that would otherwise not be possible. The most important winners this week are all the people who will not be killed or maimed by cluster munitions. That is the most important achievement. What we do matters and we must do it together.

Amb. Don MacKay, New Zealand

I echo the comments made already. I think this has been a really fantastic partnership between states as well as between civil society. I’ve been involved in two processes where civil society has played an important role, this one and disability rights. Look at your role in this process. You are empowered. Everyone knows if you hadn’t done what you did this would never have happened. This is an outcome we can all be proud of. This

Convention has already made a difference. In the UK it has made a significant difference. In the past 24 hours in Germany. As the negotiations have gone on the positions of delegations have changed so consistently making a difference since Oslo.

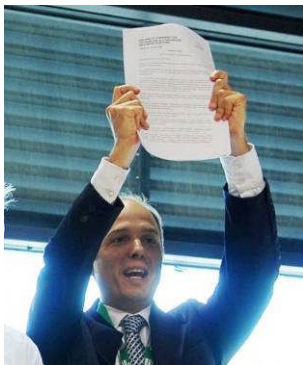
I think it's a very good treaty. It is not only is the best treaty we could get at this time, but if you look at what is in it is the best treaty. It is inevitable that we could have done a couple, but not a lot, of things differently. There's not point in having a treaty of true believers. Most of us are small countries. New Zealand never had and will never have cluster munitions. Countries like Germany, UK, and France accomplished what we wanted very quickly. This is about stigmatizing a weapon. It's been stigmatized in UK, in Germany, and elsewhere.



When people look at how this was achieved they tend to focus on the political impact of the Cluster Munition Coalition, but I want to thank you for expertise and contribution on the technical side. We [New Zealand] don't have cluster munitions and don't have technical expertise, but you provided that and brought a huge amount of credibility to the technical discussion. I always knew there was a credible impartial source of advice available in the room. So thank you, especially Colin King and Richard Moyes.

Amb. Alexander Marschik, Austria

When I was asked a year ago to head up our disarmament department I was skeptical because everyone knows nothing ever happens in disarmament. I'm glad we have dispelled that view. It was a great experience to work with so many wonderful people in government, parliament, and civil society. I have never seen so many hardworking, strategically smart, great lobbyists. I am honoured to have had the pleasure to work with you.



At the end of the day it was a question of the strongest text or the strongest impact possible. We got the strongest impact of the treaty and this process. It wasn't an easy decision but it was a right one. Look back at other negotiations. We might have the perfect text, but once it adopted it becomes a living regime that develops a life of its own and continues to resolve. Once this treaty enters into force it will be a regime in progress like International Criminal Court and the Mine Ban Treaty. We will keep putting pressure on for strongest prohibition and assistance to victims. We will all work together. You are wonderful people. Thank you very much.

Q: In the definition how did issue of weight come about?

Don – This was alluded to previously in the Wellington plenary by Norway. So the discussion was in the background. A number of us always thought it might come through and be useful. We significantly strengthened the definition by adding other criteria that has to be satisfied. There are three lines of text on the definition and ten lines of text on the exclusion. "More is better" in this context.



Q: What needs to be done between now and Oslo?

Don - We need to change our legislation to create a criminal offense for a New Zealand citizen to be involved in assisting with cluster munitions. This will be competing against a lot of other legislation. You [civil society] need to keep on this and ensure it stays on the top of the legislative programme.

Steffen – We need to get as many countries to Oslo in December as possible. We need to maintain the momentum that has been created in last two weeks and past 15 months.

Axl – Go to your ministries and identify potential legal problems that might arise [in ratification and implementation legislation] so that we can ensure the treaty enters into force as soon as possible. I would not do a review process right now. We should work first on getting states on board in the highest numbers possible, then tighten the screws.

ANNEX II

CMC ACTION PLAN

To Achieve Rapid Entry into Force of the Convention on Cluster Munitions

30 May 2008

Dublin, Ireland

The Cluster Munition Coalition (CMC) is a global movement of non-governmental organisations established in November 2003 to campaign for a comprehensive ban on cluster munitions and for strong assistance to those affected by this weapon. The CMC delegation to the Dublin Diplomatic Conference on Cluster Munitions is comprised of 284 campaigners from 61 countries.¹

We have worked tirelessly to obtain a strong and effective agreement banning cluster munitions. Over the past two weeks, members of the CMC have discussed a signature and ratification campaign to achieve rapid entry into force of the Convention on Cluster Munitions. Under Article 17, the Convention will enter into force six months after ratification by the thirtieth country. The Convention will be opened for signature in Oslo, Norway on 3 December 2008, then available for signature at the United Nations in New York.

The CMC views rapid entry into force of the Convention on Cluster Munitions as crucial to preventing future casualties of cluster munitions. We invite governments, international agencies, media, and the public to join with the CMC to meet the ambitious goals set out in this Action Plan. Help make this Convention a reality as quickly as possible.

Dublin to Oslo: From Adoption to Signature

The CMC challenges every country in the world to sign the Convention on Cluster Munitions. We expect every country who participated in the Oslo Process to sign the Convention. We aim for at least 123 governments to come to Oslo for the Convention on Cluster Munitions signing ceremony on 3 December 2008. In particular, we urge countries affected by cluster munitions—including Afghanistan, Bosnia and Herzegovina, Cambodia, Croatia, Ethiopia, Guinea Bissau, Iraq, Laos, Lebanon, Serbia, Sierra Leone, and Vietnam—to be among the first states to sign the Convention this December.

¹ Afghanistan, Algeria, Argentina, Australia, Austria, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Cambodia, Canada, Chile, Colombia, Denmark, DR Congo, Egypt, Ethiopia, Fiji, Finland, France, Gambia, Germany, Ghana, Guatemala, India, Iraq, Ireland, Italy, Japan, Lebanon, Mali, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Senegal, Serbia, Sierra Leone, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Tanzania, Thailand, Turkey, Uganda, UK, Uruguay, USA, Vietnam, Zambia.

We challenge governments, where possible, to complete their ratification process before the treaty is opened for signature in order to present their instruments of ratification at the signing ceremony in Oslo, Norway. If thirty governments ratify the Convention by 1 June 2009 (one year after adoption), this would trigger entry into force by the beginning of 2010. Such an achievement could make the Convention on Cluster Munitions the fastest multilateral humanitarian law agreement to enter into force in history.

When CMC campaigners return home from Dublin next week, we will urge our governments to sign the Convention on Cluster Munitions in December 2008. We will inform and work with media, NGOs, parliamentarians, government officials, and the public to accomplish the goals outlined in this Action Plan. We will encourage our governments to promote the Convention's rapid entry into force in their statements, resolutions, and other actions between now and the December 2008 signing ceremony.

In Oslo this December, we intend to convene a campaign meeting to consider implementation and monitoring of the Convention. We would like to work closely with governments and others interested in ensuring the effective functioning of the Convention following its entry into force.

Oslo to Entry into Force: From Signature to 30 Ratifications

We challenge signatory states to ratify the Convention without delay to enable it to take effect as soon as possible. The CMC will launch a public campaign for "The First Thirty," the critical number of ratifications necessary to trigger entry into force. Who will be the first to ratify? Who will be the 30th, triggering entry into force?

Until the Convention enters into force, the CMC will emphasise that according to international law (Article 18 of the Vienna Convention), all signatories should consider themselves bound by the object and purpose of the Convention on Cluster Munitions.

2008 Calendar

We encourage governments and others to work with the CMC to promote signature of the Convention on Cluster Munitions throughout 2008. The following calendar highlights key dates, planned events, and promotional opportunities for a signature campaign. Please check the CMC website (www.stopclustermunitions.org) for this calendar, which we will regularly update and amend in the lead-up to the signing ceremony this December.

In addition to the following list, several regional and other meetings on the Convention on Cluster Munitions are tentatively planned in countries including Bosnia and Herzegovina, Bulgaria, Lebanon, and Uganda.

May

30: Launch of the People's Treaty in Dublin

June

2-7: Intersessional meetings of the Mine Ban Treaty

26-28: Conventional weapons meeting in Lithuania

TBA: ECOWAS meeting

July

7-25: Convention on Conventional Weapons in Geneva

7-9: G8 Summit in Japan

14-18: Biennial Meeting of the UN Programme of Action on Small Arms in New York

August

13: Second commemoration of the cluster bombing of South Lebanon

18-21: Pacific Island Forum annual leaders meeting in Niue (civil society side meeting in Auckland)

21-25: Rehabilitation International Conference in Quebec, Canada

September

16: Opening of the United Nations General Assembly

21: International Day of Peace

29 Sep–1 Oct: Africa-wide Convention on Cluster Munitions meeting in Kampala, Uganda

October

27: Global Week of Action against Cluster Bombs

TBA: Launch of Ban Bus to Oslo

November

2: One month countdown to the Convention's signing ceremony

- 3-14: Convention on Conventional Weapons in Geneva
9-13: IFAPA (Interfaith Action for Peace in Africa) Summit meeting in
Kampala, Uganda
21: Launch of Landmine *Monitor Report 2008* in Geneva
24-28: Ninth Meeting of States Parties of the Mine Ban Treaty in Geneva

December

- 3: Opening for signature of the Convention on Cluster Munitions in
Oslo, Norway
3: International Day for Persons with Disabilities
10: Human Rights Day

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