

DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A CONVENTION ON CLUSTER MUNITIONS

CCM/CW/SR/6

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SUMMARY RECORD OF SIXTH SESSION OF THE COMMITTEE OF THE WHOLE

Held at Croke Park, Dublin on Thursday, 22 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 10.10 a.m.

The President stated that yesterday's discussion of Articles 13-22 in the Committee of the Whole had been useful. Where broad agreement had emerged on certain Articles, the text would be issued to the Plenary as Presidency Texts. These would represent the President's own assessment of where agreement lies. Following yesterday's debate, Presidency Texts had been forwarded on Articles 13, 15, 16, 21 and 22. Articles 11 and 12 had also been forwarded as Presidency Texts yesterday. A total of seven articles had now been sent to the Plenary for consideration, and had been issued to delegates in all three working languages. The President reminded delegates that nothing in the Convention is agreed until everything is formally agreed. He invited delegates to check the different language versions of the Presidency Texts and to raise any errors in translation. The President invited the Committee to now discuss proposals which had been made for additional articles to the Convention. The Netherlands had submitted a proposal, set out in CCM/48, for an additional Article to address the Convention's relationship with other international agreements. The President remarked that the issue of the relationship between a treaty and other rules of international law arises every time a new treaty is created. The President noted that this is generally regulated by the relevant rules of the Vienna Convention on the Law of Treaties.

The **Netherlands** agreed with the President's remarks regarding the Vienna Convention, but nevertheless considered that it would be useful to make explicit provision in the text of the Convention on this matter. The Vienna Convention makes it clear that specific treaties supersede general ones and that later treaties prevail over earlier ones. The inclusion of a specific article of the kind proposed would address the draft Convention's relationship with Protocol V to the Convention on Certain Conventional Weapons, as both instruments would contain provisions on clearance and victim assistance. The Netherlands delegation was not in a position to go into a detailed legal analysis of the proposed article at this time.

Sweden expressed its support for the proposal of the Netherlands. While the Vienna Convention on the Law of Treaties addresses the relationship between related treaties on the same topic, it would be useful to include a specific article in the new treaty given the number of detailed obligations under both Protocol V to the Convention on Certain Conventional Weapons and the draft Convention.

The **United Kingdom** expressed its support for the views of the Netherlands and Sweden.

Austria reminded delegates that they were in the process of creating new international law in adopting the draft Convention. The suggested new article primarily related to the relationship with Protocol V of the Convention on Certain Conventional Weapons, to which Austria is a State Party. A preambular paragraph in the draft Convention refers to Protocol V, and Austria regards that as sufficient. It saw substantive legal difficulties with the Netherlands' proposal. For example, what is the scope and meaning of "any existing international agreement"? Legal uncertainty would arise if all such international agreements were considered to be complementary to the new Convention. Austria regarded the insertion of the proposed clause as unnecessary. At the least, its wording should be improved in order to achieve legal certainty. In Austria's view, the Vienna Convention provides sufficient rules to address the matter.

Norway agreed with the views of Austria. The proposed article was unnecessary as the Vienna Convention adequately regulates the relationship between different international legal instruments.

Australia supported the proposed article, which it regarded as a standard clause contained in several international treaties. In some cases, a specific provision is inserted into a treaty to state that it is intended to amend or contradict a previous international agreement. In other cases, the article states that new treaty is complementary to the existing regime. In the event that no such article is included, there is a presumption that treaties should be read in a manner which is complementary. The Vienna Convention contained a number of provisions that could also be inserted elsewhere. The proposed article would be a clear statement that there are other relevant international commitments elsewhere.

Finland reminded delegates that it had co-sponsored the Netherlands' proposal at the Wellington Conference and wished to confirm its support for the suggested article.

Lithuania agreed with the remarks of Austria and Norway. The suggested provision as formulated raised a number of questions. For example, what is meant by "parties" and "existing international agreement" in the article? When would an international agreement be considered to be "existing"? Lithuania considered that a provision to address the draft treaty's relationship with Protocol V of the Convention on Certain Conventional Weapons might be included in Article 4 rather than as a new article, if at all.

Honduras expressed its support for the views of Finland and others who had spoken in support of the proposal. The Vienna Convention recognises that each international

treaty imposes binding obligations on States Parties. The new proposed article would reflect this.

Sierra Leone stated that it appreciated the intent of the proposal but wished to align itself with the views of Austria and others. The controlling regime of the Vienna Convention is adequate, as well as the prevailing rules of interpretation of international law.

Belize expressed its support for the views of Austria.

Botswana stated that it wished to reserve its position as it was still studying the proposal set out in CCM/48.

Uganda supported Sierra Leone in considering the Vienna Convention to provide adequate rules to regulate this matter.

Nigeria considered that it was not necessary to include the new article. The additional text would be likely to create confusion.

Venezuela supported the views of Austria and Norway. The proposal would cause more difficulties than it would resolve, and might cause problems in the implementation of the Convention.

Albania agreed with Austria in considering the Vienna Convention to be adequate. There was no clarity on the meaning of the proposed article. Each convention stands on its own in international law.

Niger considered that the provision was not required as it would add confusion.

Germany wished to lend its support to the Netherlands' proposal. It considered that proposed new article was in keeping with the inclusion of a reference to Protocol V of the Convention on Certain Conventional Weapons in the Preamble to the draft Convention.

The floor was opened to observer delegations.

The **Cluster Munition Coalition** shared the view of Austria and Norway that the rules of the Vienna Convention are adequate without the inclusion of the proposed new article.

The floor was returned to participating States.

Panama considered that the proposed article would cause difficulties as the meaning of "any existing international agreement" is unclear. What agreements would be considered to be complementary to the draft Convention?

Mexico stated that it was unable to support the proposal.

Burkina Faso stated that it was not willing to support the Netherlands' proposal.

Tanzania stated that it did not support the proposal and considered the Vienna Convention to be sufficient in this regard.

The **Dominican Republic** supported the views of Mexico, Panama and others.

Peru stated its support for the views of Austria.

Zambia did not support the Netherlands' proposal.

The President stated that he would ask his delegation to consult with those that had expressed views on the proposed new article. Following these discussions, the Committee of the Whole could return to discussing the matter.

The President referred to a proposal made by Switzerland, set out in CCM/50, which his team had discussed with the Swiss delegation. This was closely related to another proposal contained in CCM/46 which had been briefly dealt with in the Committee of the Whole yesterday. The President proposed to take up the discussion of CCM/46 and CCM/50 when the Committee returned to consider Article 18.

The Committee had now conducted an initial discussion of all Articles and all proposals for new articles. The President proposed to discuss the Preamble at a later stage as this would be affected by the Articles agreed. Bilateral and informal consultations were ongoing on a number of Articles. A President's Informal Paper on Article 4 was now being circulated to delegates. Members of the President's team were making bilateral contact with delegations on several Articles with a view to later discussion in the Committee of the Whole.

The President indicated that he intended to use the afternoon session of the Committee on Friday, 23 May to conduct an overview of progress to date. This would include reporting by any Friends of the President in a position to do so, and by the President's team, on the progress of consultations and bilateral discussions.

The **United Kingdom** drew attention to a paper it had circulated to delegations, containing the content of remarks by the United Kingdom Prime Minister's spokesperson yesterday on the draft Convention. This affirmed that the United Kingdom was working to ban cluster munitions that cause unacceptable harm to civilians.

The meeting rose at 10.45 a.m.