

# DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A CONVENTION ON CLUSTER MUNITIONS

CCM/CW/SR/15

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## SUMMARY RECORD OF FIFTEENTH SESSION OF THE COMMITTEE OF THE WHOLE

Held at Croke Park, Dublin on Wednesday, 28 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 10.22 am.

The President introduced a Presidency Paper containing a consolidated draft of a Convention text. The text of about two-thirds of the Articles was identical to the Presidency Texts already forwarded to the Plenary following discussion in the Committee of the Whole. The text of the other Articles reflected extensive discussion in the Committee of the Whole, in some cases consultations undertaken by Friends of the President, and consultations undertaken by the President or members of his team. In the assessment of the President the text represented the best balance of interests and compromise consistent with the Oslo Declaration. The President outlined some of the main features of the text, including the definition of cluster munitions and the provisions on relations with States not parties to the Convention. He stated that the headline definition of a cluster munition in this text would lead to the prohibition of all cluster munitions that cause unacceptable harm to civilians. It would involve the removal of all cluster munitions from national stocks for a large number of states represented here. On the provision on relations with states not parties to this Convention, the President stated that it would be too much for some but not enough for others.

The President then went through the text, article by article, highlighting any changes that had been made.

### **Preamble**

The Preamble had been discussed in the Committee of the Whole on Monday 26 May, and was the subject of consultations undertaken by Ambassador Millar of Australia as Friend of the President on 26 and 27 May. The text of the Preamble as included in the draft circulated this morning commanded general agreement in Ambassador Millar's consultations.

### **Article 1**

The President stated that the version included in the draft being circulated made two changes mentioned in the Committee of the Whole on the previous day. First, it altered the manner in which mines are excluded from the scope of the Convention.

Secondly, it addressed the anomaly relating to bomblets released from dispensers attached to aircraft. These look and behave like submunitions but they are not, since they do not come from a larger munition. Both informal and bilateral consultations had shown that it was considered important to address this issue at this stage, in order to avoid the Convention's obligations being circumvented by the use of such systems.

### **Article 2**

The President stated that this Article had been the focus of extensive discussion both in the Committee of the Whole and in informal consultations conducted by Friend of the President Ambassador MacKay of New Zealand, assisted by Lieutenant Colonel Burke of the Irish delegation. The version contained in the draft circulated reflected the outcome of their consultations, as well as of those undertaken by the President and by his delegation. The main definition, that of a cluster munition, already quite demanding, had been added to by the inclusion of criteria regarding weight, which the President's consultations showed to enjoy broad support.

### **Article 3**

The President stated that the presented text in the draft was the product of the consultations carried out by Ambassador Kongstad edited to ensure consistency of form and terminology with related matters in the text.

### **Article 4**

The President stated that that Article 4 had been the subject of open informal meetings and bilateral consultations conducted by Lieutenant Colonel Burke. While consensus had not been achieved among all delegations, in the view of the Presidency the text in the draft represented the best compromise available to accommodate the concerns of all interested delegations.

### **Article 5**

The President stated that the text presented in the draft was the same as that contained in Presidency Text, CCM/PT/12.

### **Article 6**

The President stated that the text of Article 6 had been discussed in the Committee of the Whole on Monday 26 May and Tuesday 27 May, and that Canada had undertaken consultations on his behalf in relation to one outstanding matter. Mr. Earl Turcotte of Canada had reported that his consultations had resulted in language that was acceptable to all of the delegations that had concerns on this matter, and this language was reflected in the current draft.

### **Article 7**

The President stated that the wording of this Article had been adjusted to take account of the substantive provisions in Articles 3, 4, 5 and 6, and also to take account of amendments proposed during discussions in the Committee of the Whole, on which consultations had subsequently been carried out.

### **Article 8**

The President informed the Committee that Ambassador Mabhongo of South Africa had reported agreement on the text of this Article to the Committee of the Whole on Monday 26 May.

**Article 9**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/8

**Article 10**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/9

**Article 11**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/1

**Article 12**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/2.

**Article 13**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/3, which including amendments suggested by the UN Office of Legal Affairs and an amendment proposed by the Philippines.

**Article 14**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/10.

**Article 15**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/4.

**Article 16**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/5.

**Article 17**

The President stated that discussions in the Committee of the Whole had revealed differing views on the number of ratifications that should be required in order for the Convention to enter into force. Almost all delegations that spoke favored requiring either 20 or 40 ratifications. Attempting to reconcile these conflicting positions, the figure of 30 had been included in the current draft.

**Article 18**

The President stated that the text of Article 18, and a slight amendment to it proposed by the UN Office of Legal Affairs, had been discussed in the Committee of the Whole the previous week, and no particular difficulties had been identified. The text of the Article as contained in the draft circulated reflected this amendment.

**Article 19**

The President stated that the discussion of this Article in the Committee of the Whole was inconclusive, with some delegations taking the view that they were not in a

position to accept that the articles of the Convention shall not be subject to reservations in advance of agreement being reached on all articles. Confident that agreement on all articles was not far away, the President suggested that the text of this Article follow the text as in the draft Convention.

#### **Article 20**

The President stated that the text in the draft was the same as that contained in Presidency Text, CCM/PT/11

#### **Article 21**

The President stated that this is a new article intended to address the concerns of a considerable number of participating States, from all regions, regarding their ability to continue to participate in military cooperation and operations, including multi-national peace support operations, with States not party to the Convention. The text of the article was based closely, with only one small addition, on the paper circulated yesterday afternoon by the Friend of the President, Ambassador Schraner of Switzerland, which was regarded by almost all delegations as a good basis for work.

#### **Article 22**

The President stated that the text in the draft was the same as that contained in Presidency Text of former Article 21, Presidency Text, CCM/PT/6.

#### **Article 23**

The President stated that the text in the draft was the same as that contained in Presidency Text of former Article 22, Presidency Text, CCM/PT/7.

In summary, the President described the draft text as an ambitious attempt to address the humanitarian concerns associated with the use of cluster munitions, in line with the commitment made in the Oslo Declaration. The President stated that most elements of the paper would be familiar to delegates from discussions in the Committee of the Whole. A restrictive effects-based definition had been used which would prohibit the vast majority of submunition-based weapons systems existing in the world today, and all of those which have been used. The draft contained very strong provisions on victim assistance, which advance international law in this regard, as well as strong provisions on international cooperation and assistance, and the clearance and disposal of cluster munition remnants. No provision had been made for a transition period.

The President asked all delegations to consider the text carefully and to reflect on how far all in the room had come in the past eighteen months. The next Session of the Committee of the Whole was convened for 3 p.m. to hear delegates' reactions to the Presidency Paper.

The meeting rose at 10.40 a.m.