

DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A CONVENTION ON CLUSTER MUNITIONS

CCM/CW/SR/7

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SUMMARY RECORD OF SEVENTH SESSION OF THE COMMITTEE OF THE WHOLE

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

Chair: President O'CEALLAIGH

The meeting was convened at 3.08 p.m

Article 3

The President announced that the Friend of the President, Ambassador Kongstad, had held discussions on Article 3 and was now able to return with a paper following his discussions. The President suggested that following the presentation of the paper, Article 3 would be left with delegations, to be discussed at the Committee of the Whole on the morning of Friday, 23 May.

Ambassador Kongstad introduced his paper on Article 3. He had held two informal open-ended consultations and a number of bilateral discussions. Based on discussion of a revised draft, a second revised draft was now being circulated. Amendments had been made and some new language added, seeking a balance between various considerations. On paragraph 1, there was broad agreement that it was superfluous to maintain a provision on having separate facilities for stockpiles. Paragraph 2 had been amended to accommodate those who wanted a longer initial destruction period; it was now 8 years. Paragraph 3 introduced the possibility of having an extended destruction period of 4 years, which in exceptional circumstances could be renewed. Paragraph 4 strengthened existing transparency measures. Paragraph 5 was based on the Mine Ban Treaty provisions on management of extension requests, in order to save time and effort when the new Convention was implemented. Paragraphs 6 to 8 introduced provisions for the retention, acquisition and transfer of a limited number of cluster munitions for the development of training in detection and clearing, and for the development of counter-measures. Robust transparency measures had also been added, linked to Article 7.

The President then introduced a number of Articles on which the Presidency had undertaken bilateral consultations.

Article 9

A number of delegations had spoken on Article 9, dealing with national implementation measures at the Committee of the Whole on Tuesday, 20 May and one formal proposal had been made. Article 9 requires that measures adopted including penal sanctions shall apply in respect in any act prohibited under the Convention to any person under the jurisdiction or control of a State Party. This means that such measures shall apply to all persons under the jurisdiction or control of a State Party and not only to members of the armed forces of that State Party, and would include civilians or members of non-State armed groups that commit acts prohibited by the Convention. It is therefore broad in scope.

The President was satisfied that there was broad agreement on the text, and proposed that the draft text of Article 9 be issued as a Presidency Text for transmission to Plenary, amended to include the proposal made by the Philippines to insert “to implement this Convention” as follows: “Each State Party shall take all appropriate legal, administrative and other measures, *to implement this Convention*, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control”. The President noted that there were no objections to the proposal.

Article 14

Article 14 on costs was discussed on Wednesday, 22 May, with one proposal for amendment, comprising of a suggestion to add a reference to Article 6 in paragraph 2 of Article 14 as follows: “The costs incurred by the Secretary-General of the United Nations under Articles 6, 7 and 8 of this Convention shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.” After consultation with the delegation concerned, the President was satisfied that their concern could be met by a small change to paragraph 10 of Article 6 which will allow agreement to be reached on Article 14 as it is and to forward unamended to the Plenary. The President noted that there were no objections to the proposal.

Article 20

The President stated that regarding Article 20 on withdrawal, a question had arisen concerning paragraph 4 which provides as follows: “the withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law”. This language had been taken directly from the Mine Ban Treaty and it was intended that those withdrawing from that treaty would still be bound by Additional Protocol II to the Convention on Certain Conventional Weapons unless they withdrew from that Protocol as well. As a result, a similar provision would appear to be redundant in this case. It was also clear that the Vienna Convention on the Law of Treaties set out the principles for the relationship between treaties concerning the same subject matter.

In these circumstances, the President proposed to delete paragraph 4 of Article 2 and to forward paragraphs 1-3 of Article 20 to the Plenary as a Presidency Text. The President noted that there were no objections to the proposal.

Article 10

The President noted that Article 10 on the settlement of disputes provides that when a dispute arises between two or more States Parties relating to the interpretation or application of this Convention, the States Parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of their choice, including recourse to the Meeting of the States Parties and referral to the International Court of Justice in conformity with the Statute of the Court.

One delegation proposed an amendment to make it clear that referral to the ICJ shall be by mutual consent. This would create a difficulty for those States that have already accepted the jurisdiction of the ICJ by prior agreement. The reference to mutual consent would undermine the standing consent that exists as a result of prior agreement. Moreover, the text already makes it clear that the consent of all is required, as it states that “the States Parties concerned

shall consult *together*"; if a dispute is to be referred to the ICJ, both Parties must choose to do so. The text also expressly requires reference "in conformity with the Statute of the Court" and the Statute confers jurisdiction only with the consent of the Parties. The President had spoken to the delegations that had suggested a specific reference to mutual consent and had satisfied them that inclusion of the provision was unnecessary. The President proposed to forward the text of Article 10 unamended to Plenary as a Presidency Text enjoying general agreement. He noted that there were no objections to the proposal.

The President then announced the proposed agenda for the Committee of the Whole on Friday May 23.

The Committee would discuss the text of draft Article 3 which has been provided by Ambassador Kongstad. The President also noted that during the discussion of Article 18 a proposal made by Germany for an amendment, as set out in CCM/46, had been put aside. The proposal of Slovakia contained in CCM/66 had also been put aside. During the discussions of the morning of Thursday 22 May on proposals for additional articles, the proposal of Switzerland, as set out in CCM/50, had been put aside. The President therefore proposed to discuss these three proposed amendments, as set out in CCM/46, CCM/50 and CCM/66, as well as Article 18 at 10 a.m. on Friday 23 May. At 3pm on Friday 23 May the Committee of the Whole would be given a general overview of all Articles of the Convention and the state of play as it would be at 3 p.m. It was hoped at that point to have further reports from the Friends of the President.

The meeting rose at 3.34 p.m.