

DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A CONVENTION ON CLUSTER MUNITIONS

CCM/CW/SR/9

18 June 2008
Original: ENGLISH

DUBLIN 19 – 30 MAY 2008

SUMMARY RECORD OF NINTH SESSION OF THE COMMITTEE OF THE WHOLE

Held at Croke Park, Dublin on Friday, 23 May 2008

Chair: President O'CEALLAIGH

The meeting was called to order at 3.15 p.m.

The President wished to conduct an overview of the draft Convention as it currently stands. This would allow delegations to consider the progress to date and consult further over the weekend. He intended to leave discussion of the Preamble to the end of the negotiations. However, the discussions on Article 5 had dealt with several paragraphs contained in the Preamble addressing victim assistance. These particular paragraphs had been forwarded to the Plenary as a Presidency Text.

Article 1

Article 1 addressed general obligations and the scope of application of the draft Convention. Ambassador Christine Schraner was acting as a Friend of the President in conducting discussions on Article 1, focusing on interoperability. Several other proposals had been made on Article 1, and contacts were being pursued by the President's team with the delegations that had proposed them.

Ambassador Schraner stated that she had carefully consulted with all States. The text she had presented took into account, in so far as possible, the views expressed. In conducting discussions, she was mindful of the humanitarian objective of the Convention, the need to ensure the integrity of Article 1, and concerns about interoperability, the safety of military personnel and the universality of the Convention. The Convention must be capable of the greatest possible accession by States but its purpose and objectives must be stringently safeguarded.

The need for a new article addressing interoperability had been accepted in the informal consultations. There was broad consensus on paragraphs 1 and 2 of the text proposed in Ambassador Schraner's informal paper. More consultations were required on paragraphs 3 and 4.

The President thanked Ambassador Schraner for the text she had presented, and agreed that it may require further elaboration. He invited delegations to consider the text, noting that Ambassador Schraner would be available for bilateral consultations with delegates over the weekend.

Article 2

The President noted that the discussion of the definitions contained in Article 2 had excluded the definition of “cluster munition victims” which had been dealt with in discussing Article 5 on victim assistance. The revised text of the definition of “cluster munition victims” had been forwarded to the Plenary as a Presidency Text. The President invited Ambassador Don MacKay, who had acted as a Friend of the President on Article 2, to take the floor.

Ambassador MacKay stated that his consultations had focused on the most contentious issue of the definition of a “cluster munition”, namely whether an Article 2(c) should be included in the draft Convention. He had held a series of open-ended informal meetings with delegates. A strong divergence of views remained on whether an Article 2(c) should appear. He had initially circulated a list of elements that might be included in Article 2(c). The consultations were measured against the mandate given by the President, and the benchmark of the Oslo Declaration which required the prohibition of cluster munitions causing unacceptable harm to civilians. The draft Convention was intended to address the problem of inaccurate and unreliable cluster munitions. An effects-based approach had been taken in the informal consultations, where the proposed elements had been measured both singly and cumulatively against the need for accuracy and reliability. A list of possible independent elements had been the first basis for discussion by delegates. Several delegations had proposed a cumulative approach whereby several elements in combination might be considered to place a weapon below the threshold of the Oslo Declaration. In light of these discussions, the Friend of the President had prepared an informal paper for this session setting a cumulative approach to the elements of a definition of cluster munitions.

Ambassador MacKay stated that the informal consultations had facilitated a full exchange of views on various elements of the definition. In an informal meeting on the morning of Thursday, 22 May, the Friend had presented a discussion paper, and possible language for Article 2(c) had been discussed. As a result of that discussion, the discussion paper had been revised into the version prepared at today’s meeting. Some delegations had also made proposals on the definition of cluster munitions following the informal consultations.

Ambassador MacKay emphasised that the discussion paper was not an agreed text, but represented the Friend of the President’s own assessment of possible language for Article 2(c), if it is to exist. Fundamental differences remained on an Article 2(c) and whether or not it should be included. A formal proposal had been made for its deletion. The discussion paper was not a compilation of the proposals made in informal consultations, and those proposals receiving little support did not appear in the paper. Ambassador MacKay expressed his appreciation to Lieutenant Colonel Jim Burke of Ireland, who had convened informal discussions on other definitions appearing in Article 2 at his request.

The President invited Lieutenant Colonel Jim Burke to report on progress made on definitions in Article 2, other than that of “cluster munition” and “cluster munition victims.”

Lieutenant Colonel Burke stated that he had chaired two relatively brief sessions on other definitions in Article 2, as open-ended informal meetings. He now submitted a short paper dealing with “other definitions”. Lieutenant Colonel Burke outlined some changes proposed by his informal paper to the existing draft text of Article 2. He proposed that the definition of “explosive sub-munition” should refer to a munition that in order to perform its task separates from a *cluster* munition, rather than from a parent munition as originally proposed. There was no consensus that this definition should refer to a *conventional* munition.

The originally proposed definition of “unexploded cluster munition” had been removed and replaced by two separate definitions of “failed cluster munition” and “unexploded explosive sub-munition.” The definition of “abandoned cluster munitions” had been altered slightly by the addition of the words *left behind* in order to ensure consistency with Protocol V to the Convention on Certain Conventional Weapons (CCW). The definition of “cluster munition remnants” had been changed to reflect the amendments proposed to previous definitions.

The definition of “transfer” had not been changed from the original draft text. This definition was drawn from Amended Protocol II to the CCW and the Ottawa Convention. Some delegations favoured this approach, but more work was required to reach consensus on the definition of “transfer.”

Lieutenant Colonel Burke referred to Norway’s proposal to add definitions of “self-destruct mechanism” and “self-deactivation mechanism” to Article 2, as set out in CCM/72. Other delegations had suggested language based on Amended Protocol II to the CCW. Lieutenant Colonel Burke had set out suggestions for these two definitions, if required, in his informal paper. These definitions were based on the language of Amended Protocol II to the CCW, with some slight changes. The definition of “self-destruction mechanism” proposed was intended to make clear that this function is separate to that of the primary fusing mechanism. With regard to self-deactivation, Lieutenant Colonel Burke commented that this is not, strictly speaking, a mechanism but a feature of a system that will inevitably exhaust itself. The final definition proposed in the informal paper, that of “cluster munitions area”, was based on a proposal made by Indonesia. Lieutenant Colonel Burke said that he would host further informal consultations on the basis of the informal paper on Sunday, 25 May.

The President invited delegations to consider the informal paper over the weekend in advance of further discussions.

Article 3

The President thanked Ambassador Kongstad of Norway for conducting informal consultations on this Article, dealing with storage and stockpile destruction. The Committee of the Whole had had a useful discussion this morning on the basis of an informal paper provided by Ambassador Kongstad.

Ambassador Kongstad stated that he was close to finalising a new draft and would shortly provide the President with a new informal paper for discussion.

Article 4

The President thanked Lieutenant Colonel Burke for acting as Friend of the President in pursuing informal consultations on Article 4, dealing with clearance and destruction of cluster munitions remnants. Lieutenant Colonel Burke had circulated an informal paper for discussion.

Lieutenant Colonel Burke stated that he had held open-ended informal meetings and bilateral consultations on Article 4. The paper submitted was based on these discussions. While there was a large measure of agreement on Article 4, one paragraph in particular had caused difficulties. He outlined some changes from the original draft text of Article 4 which he had proposed in the informal paper. In Article 4(1), the initial period for compliance with the clearance and destruction obligation had been increased from five to ten years. The deadline for the corresponding obligation for clearance and destruction of future cluster munition

remnants had been revised accordingly. In Article 4(1)(c), he suggested a reference to the requirement on States to report on the status of clearance and destruction activities, an obligation which is spelt out in more detail in Article 7. Sub-paragraph (d) proposed requiring States to make a declaration of compliance with these obligations to the Meeting of States Parties.

In Article 4(2), some small changes had been proposed in sub-paragraphs (a) and (b) which were not very substantive. The proposed reference in sub-paragraph (c) to “take all feasible steps” was intended to revise the language of the Ottawa Convention in order to reflect the difference between cluster munitions and landmines. The text proposed had been drawn from language contained in Protocol V to the CCW, as cluster munitions are similar to explosive remnants of war.

Discussions on Article 4(4) had been most difficult. The informal paper proposed two substantive changes and one structural change. The structural change involved placing the requirement for information in sub-paragraph (b) and referring to other forms of assistance in sub-paragraph (a). A reference was proposed in sub-paragraph (b) to information being provided “where available” to reflect possible difficulties in obtaining such information.

The changes proposed in paragraphs 5, 6 and 7 had been discussed in detail in informal consultations where a large measure of agreement had been achieved. Lieutenant Colonel Burke proposed holding bilateral consultations to continue informal discussions on Article 4(4).

The President agreed that Lieutenant Colonel Burke should continue with these bilateral discussions on Article 4(4). The President summarised the progress that had been made to date on the remaining articles of the draft Convention as follows.

Article 5

The Committee of the Whole had held a good discussion on this provision of the Convention on victim assistance, on the basis of text provided by the Friend of the President, Mr. Markus Reiterer. A Presidency Text on Article 5, as set out in CCM/PT/12, would be forwarded to the Plenary in all three languages.

Article 6

Members of the President’s team were conducting discussions with delegations on this Article. The President intended to circulate a Non-Paper on Article 6 this afternoon to facilitate discussions next week.

Article 7

Consultations on this Article by the President’s team were underway. The finalisation of reporting requirements in Article 7 would depend on the outcome of negotiations on Articles 3-6. The Committee of the Whole would discuss Article 7 again next week.

Article 8

Mr. Xolisa Mabhongo, of South Africa, acting as a Friend of the President, reported on the informal consultations which he had pursued with delegations. He had shared a text with delegates and would convene another informal meeting today to continue discussions. He was guided in his efforts by the President’s call for delegations to consider adopting a streamlined text on Article 8.

Articles 9-16

Presidency Texts on each of these Articles had been forwarded to the Plenary for consideration.

Article 17

Different views had been expressed by delegations earlier in the week during the Committee of the Whole's discussion of this issue. The Committee would return to discussing this Article at a later stage.

Article 18

The text of Article 18, including a slight amendment proposed by the UN Office of Legal Affairs, had been discussed earlier this week. Germany had made a proposal for a transition period to be included in Article 18. Two other delegations had made proposals for an additional article providing for a transition period. A wide gap had emerged between delegations in discussions during the Eighth Session of the Committee of the Whole on this point. As the first State to formally make this proposal at the Wellington Conference, Germany had been asked by President to consult delegations on proposals for a transition period and report on discussions on Monday.

Article 19

Discussion on Article 19 had been set aside pending the outcome of negotiations on other Articles.

Articles 20-22

Presidency Text had been transmitted on these Articles to the Plenary for consideration.

The Netherlands stated that it had made a proposal for an article addressing the new Convention's relationship with other international agreements. It was in the course of conducting consultations with delegations and would revert early next week.

The meeting rose at 3.50 p.m

