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PREPARATORY CONFERENCE FOR THE UNITED NATIONS CONFERENCE ON
PROHIBITIONS OR RESTRICTIONS OF USE OF CERTAIN CONVENTIONAL
WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS
OR TO HAVE INDISCRIMINATE EFFECTS

Second session

SUMMARY RECORD OF THE 24th PLENARY MEETING

held at the Palais des Nations, Geneva,
on Monday, 9 April 1979, at 3.40 p.m.

President: Mr. ALENJI (Nigeria)

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General debate (continued)

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The meeting was called to order at 3.40 p.m.

GENERAL DEBATE (agenda item 3) (continued)

1. Mr. de ICAZA (Mexico), summarizing the work of the Conference three days before its closure, said that even if some delegations did not consider that the results constituted the best possible foundation on which to build, they did at least represent what it had been possible to achieve, although a great deal remained to be done if the Conference in September was to be a step forward for humanitarian law in the world.
2. Reviewing the various questions discussed, he expressed satisfaction with the favourable reception given to the Mexican proposal containing a preliminary outline of a general and universally applicable treaty on conventional weapons and optional protocols on specific types of weapons. The treaty should include definitions and general principles concerning the prohibitions or restrictions mentioned in the additional protocols, in particular, with regard to respect for international humanitarian law applicable in armed conflicts, the need to settle conflicts by peaceful means and rejection of the concept of a just war.
3. With regard to the obligation to respect regional or subregional decisions on self-imposed limits, the Mexican delegation was convinced that it was no longer possible to take action in one particular region when the destinies of all peoples were so closely linked.
4. The control mechanism needed to follow action undertaken to prohibit or restrict the use of certain conventional weapons must be efficient; that would exclude organizations already in existence as they were perhaps not in a position to give the problem the attention its importance or urgency required. The conditions of accession to the general treaty and to the optional additional protocols would have to be studied closely.
5. It was regrettable that the proposal for outright prohibition of incendiary weapons, submitted in 1974 by Mexico and several other countries, continued to meet with opposition, though no one denied its merits, humanitarian spirit and logic. However, in a spirit of political realism, Mexico would make a start by supporting a text of more limited scope, provided that it represented real progress and was only a beginning. For certain delegations the legitimacy of a weapon evidently depended on its military effectiveness, while in humanitarian law applicable to armed conflicts it depended on its effects. Incendiary weapons caused indiscriminate damage and it had been proved that they had excessive traumatic effects. The fact that they had been used for centuries was not a valid argument. Any attempt to limit the use of such weapons was an illusion if the goal of total prohibition was not kept in view. In addition to the fact that it would necessarily be difficult to enforce prohibition or restriction, it was obvious that to prohibit, for example, the release of incendiary bombs from aircraft would in fact be tantamount to encouraging the development of ways of achieving the same results without using aircraft.

6. The discussions had demonstrated that the flexibility shown by the Mexican delegation had not been matched by delegations from countries which insisted that incendiary weapons were indispensable for their security, although they were used in developing countries which, like Mexico, wished to prohibit or strictly limit their use. The two positions were, therefore, diametrically opposed and he had felt obliged to request that the complete text of the Mexican proposal for total prohibition of the use of incendiary weapons should be submitted to the Conference in September.
7. On the other hand, the draft proposal concerning non-detectable fragments had met with general approval. He welcomed that approval, at the same time regretting that the proposal concerning incendiary weapons, which were more commonly and more frequently used, had not received similar support.
8. Concerning mines and booby-traps, there was reason to be satisfied with the result achieved in finally drawing up a text which, although not yet unanimously accepted, should constitute a solid basis for work at the Conference. That demonstrated what could be done when all delegations showed flexibility, realism and humanitarian feelings. The document did, however, have two serious disadvantages: it was too long and too complex for those who were not conversant with legal questions; in addition, it was open to various interpretations and could, in certain cases, result in the authorization of uses which were at present prohibited under the law applicable to armed conflicts.
9. It was regrettable that, due to lack of time, it had not been possible to agree on a text concerning small-calibre weapons. The proposal submitted by Mexico and Sweden referred to "weapon systems"; because the sponsors considered that the projectile and the weapon were one and could not be used one without the other. It also emphasized the concept of energy transfer because recent studies had shown that it was the intensity of such transfer which governed the amount of needless suffering inflicted. The proposal therefore demonstrated the way in which problems evolved and the need to set up a mechanism to promote humanitarian law in the light of advances in war techniques.
10. Lastly, in order to permit the Conference to fulfil the mandate given to it by the General Assembly, the Mexican delegation had submitted proposals on such cruel weapons as anti-personnel fragmentation weapons, flechettes and fuel-air explosives. Due to lack of time, those proposals had not been studied, but the Mexican delegation hoped that the main Conference would examine them in detail.
11. The problem of decision-making had divided participants into two distinct camps, consisting of participants who favoured general agreement or consensus, and those who advocated the adoption of a formula in conformity with the rules of procedure of the General Assembly. The Mexican delegation considered that the nature of the agreements sought required the adoption of universally acceptable formulas, but that, had the General Assembly wished to recommend the formula of general agreement, it would have done so. However, resolution 32/152 referred only to the need to "seek the broadest possible agreement". To insist on the formula of consensus would, therefore, be to stretch the meaning of the terms of reference of the Conference, something which the Mexican delegation refused to do.

12. While it was true that the consent of the great Powers was important, it was no less true that in the sphere of the prohibition or restriction of the use of specific conventional weapons, the will of the developing countries was essential, since it was principally they who were most seriously affected by the consequences. It was therefore necessary to seek the widest possible agreement on the decisions to be taken; however, if that objective could not be achieved, the formula of adopting decisions by two-thirds majority should satisfy both military security requirements and humanitarian principles. It was in any event encouraging that an effort had been made to resolve that question through consultations, without making it the centre of discussions, so that it had been possible to make progress in the consideration of substantive matters. It could therefore be hoped that that political will would continue and that agreement would be possible on some issues without it being absolutely necessary to decide on a particular formula for decision-making.

13. Mr. ALVAREZ (Venezuela) recognized that certain countries could not support proposals which might subsequently harm their economic interests or national security. For their part, small countries did not perhaps appreciate the extent of the military commitment of the great Powers. However, the entire world looked to the United Nations to restrict or prohibit the use of criminal weapons against peoples and expected from it the solution to many problems. In view of the difficulty of an agreement on that question, he appealed to the members of the Preparatory Conference to realize their responsibilities to the world and to endeavour to strike a balance between their national interests and the need to restrict, for humanitarian reasons, the use of certain weapons. Of course, the results which could be obtained at the current Conference could be only limited, but no opportunity must be lost to bequeath to future generations a more humane world in which spiritual values would play a greater role. For its part, Venezuela had never used arms outside its borders except for the purpose of liberating fraternal countries; it would support any proposal to restrict or prohibit the use of incendiary weapons, which were particularly cruel and inhumane, and it therefore endorsed the proposals of Mexico, Sweden and other countries which had taken similar positions. In addition, his delegation stressed the need for an effective body which would make it possible to implement the conventions that the main Conference might adopt in September.

14. With regard to decision-making, his delegation reaffirmed the need to obtain a consensus in respect of all agreements or, failing that, to adopt proposals by a majority vote, in accordance with usual United Nations practice.

15. Mr. MORENO (Italy) said that his Government sincerely shared the desire to render armed conflicts less cruel by providing civilian populations and combatants with the broadest possible legal and material protection; it was in that spirit that Italy had been one of the first countries to sign Protocol I additional to the Geneva Conventions of 12 August 1949. Since it was not possible to eradicate war, the task of the Conference consisted in reconciling humanitarian requirements and the military needs which national security imposed on every State. That was a delicate mission since, while everyone agreed on the need to protect civilian

populations against needless suffering, there was no doubt that situations existed in which the use of incendiary weapons in an armed conflict was desirable from a military standpoint. It was therefore necessary to be realistic and to try to formulate rules which could be applied by all parties. In his delegation's opinion, of all the proposals submitted at the Conference, the draft in document A/CONF.95/PREP.CONF/L.15, submitted by Australia and the Netherlands, best fulfilled those conditions and appeared to be most likely to obtain general approval. The text struck a balance between what was desirable and what was possible and was a felicitous initiative aimed at bringing the various points of view closer together and at avoiding the danger of a deadlock. It was certainly in that direction that a reasonable compromise endorsed by all must be sought.

16. Mr. NAZARKIN (Union of Soviet Socialist Republics) said it was regrettable that the negotiations had not enabled standards acceptable to all delegations to be submitted and that the use of incendiary weapons was not restricted by any agreement, with the exception of Protocol I additional to the Geneva Conventions of 12 August 1949, which covered all types of conventional weapons. His delegation considered it necessary to prepare an agreement dealing specifically with incendiary weapons and it had therefore supported, at the first session, the first draft submitted by Australia and the Netherlands (A/CONF.95/PREP.CONF./L.11). The draft revised at the second session extended the scope of the prohibition of the use of incendiary weapons, particularly against military objectives situated within a concentration of civilians, and might constitute a good point of departure for the future work of the Conference.

17. Mr. ODE (Nigeria) expressed great concern over the fact that the negotiations on incendiary weapons had not yielded positive results. An agreement on that particular class of weapons was of course not easy, but the incalculable damage and psychological effects they inflicted on human beings should cause participants in the Preparatory Conference to redouble their efforts to find a happy medium between humanitarian considerations and national security requirements.

18. The method of work which had been adopted, that of informal meetings, enabled delegations to express their views on the proposals submitted and helped to narrow differences. However, if an agreement was to be reached, all the proposals should take account of all the views expressed. From that standpoint, the President's proposal, which was more balanced than the others, offered adequate protection for the civilian population; it could therefore satisfy delegations and should be used as a working basis.

19. The African countries were particularly concerned about the question, because they had suffered most from incendiary weapons since the Second World War. Those weapons had been used by the colonialists in the national liberation wars in Guinea Bissau, Mozambique, Cape Verde and Angola, and were currently being used by the apartheid régimes in South Africa and Rhodesia. Not only had they inflicted serious physical and psychological damage on countless Africans, but large expanses of farmlands and civilian settlements had been set on fire, as could be seen from many statements including, in particular, that made by the representative of the Patriotic Front of Zimbabwe at the first session of the Preparatory Conference.

Their inhuman effects had been denounced in many resolutions of the General Assembly which had called on States to study the effects of napalm and other incendiary weapons with a view to their condemnation and complete prohibition, and in particular in resolutions 2852 (XXVI), 2819 (XXVII), 2932 A (XXVII) and 3076 (XXVIII). In 1974, the General Assembly, in resolution 3255 D (XXIX), had condemned the use of napalm and other incendiary weapons in circumstances where it might affect human beings or might cause damage to the environment or natural resources and had urged all States to refrain from the production, stockpiling, proliferation and use of such weapons. Furthermore, the studies and reports of the United Nations and other bodies showed clearly the inhuman nature of napalm and other incendiary weapons.

20. The African countries therefore greatly hoped that the Preparatory Conference would provide the main Conference with documents that could form the basis of a treaty or convention restricting or prohibiting certain conventional weapons deemed to be excessively injurious or to have indiscriminate effects.

21. Mr. CEIEM (Turkey) said it was regrettable that, as the session drew to an end, certain questions, in particular that of incendiary weapons, remained unresolved, although an agreement on such weapons, which would contribute to the success of the main Conference was desirable. To that end, it was necessary to be very realistic; in that regard, the proposal of Australia and the Netherlands submitted on 5 April (A/CONF.95/PREP.CONF./L.15) was the one which could obtain the broadest support.

22. Mr. IPSEN (Federal Republic of Germany) said that he shared the disappointment expressed by several delegations in connexion with the progress of work. It had been predictable from the outset that the only way of achieving satisfactory results would be to adhere strictly to the mandate that had been prepared so carefully for the Preparatory Conference. In the statement it had made on 26 March during the general debate, his delegation had stressed that that mandate was the only acceptable basis for further discussions, since it represented a common denominator already accepted by the General Assembly. Unfortunately, there had been repeated attempts to depart from it, and that was the main cause of the current difficulties.

23. Proposals for a total ban or a ban with explicit exceptions were not in conformity with the mandate set out in General Assembly resolution 32/152; he drew attention to paragraph 2 of that resolution and emphasized the phrase "taking into account humanitarian and military considerations". The wording of the mandate reflected the long discussions that had taken place in the Ad Hoc Committee of the Diplomatic Conference and in the conferences of government experts held at Lucerne and Lugano, as well as the summary given in the report of the Ad Hoc Committee (CDDH/408/Rev.1 of 1 December 1977); it also took account of the disappointments experienced at the Diplomatic Conference. The proposal for a total ban was not only inconsistent with the mandate but was based on an unproven hypothesis, namely that incendiary weapons were excessively injurious under all circumstances. The exceptions, for their part, would give rise to a definite paradox since, if there was not excessive injury under all circumstances, it was illogical to start from the idea of a total ban.

24. There was an urgent need to return to the approach recommended in the mandate, since that was the only way to make progress towards a solution that was acceptable to all delegations. The objective was to determine the extent to which incendiary weapons were excessively injurious and to decide how to use the concept of excessive injury as set out in article 55, paragraph 2 of Protocol I in order to restrict the use of incendiary weapons. The objective judgement that would have to be made in that connexion must be based on both humanitarian and military considerations. The issue to be considered was not so much the extent of the injuries caused by incendiary weapons as the relationship between the extent of those injuries and the military advantages of using such weapons.

25. In his country's view, the proposal submitted by Australia and the Netherlands provided convincing evidence that the international law deriving from Protocol I could be improved with respect to the protection of combatants against incendiary weapons.

26. Mr. AFENDULI (Greece) said that his delegation supported the proposal submitted by Australia and the Netherlands (E/CONF.95/PREP.CONF./L.15).

27. Mr. CUNY (France) said that his delegation also supported the proposal of Australia and the Netherlands, since it was the largest common denominator on which general agreement could be reached.

28. Mr. SKALA (Sweden) said that his delegation endorsed the comments of the representative of Mexico but could not accept the interpretation of the mandate of the Preparatory Conference given by the representative of the Federal Republic of Germany.

29. Mr. MARK (Switzerland) and Mr. GRIESZLER (Austria) endorsed the view expressed by the representative of Sweden.

30. Mr. WOLFE (Canada) said he, too, thought that the proposal submitted by Australia and the Netherlands offered the best chance of progress with regard to incendiary weapons.

31. Mr. MIHAJLOVIĆ (Yugoslavia) said that his delegation endorsed the working paper submitted by the President (Incend./1/Amend.2); his delegation could not accept the interpretation of the mandate given by the representative of the Federal Republic of Germany.

32. Mr. MARTIN HERRERO (Spain) said it was regrettable that the discussion had become bogged down; however, the proposal submitted by Australia and the Netherlands offered a reasonable chance of progress. The Preparatory Conference might have to give up the idea of settling substantive issues and confine itself to transmitting, through its President, the proposals that had been submitted, particularly that of Australia and the Netherlands.

33. Mr. TINCA (Romania) said that his delegation had been one of the sponsors of a proposal for a total ban at the first session of the Preparatory Conference. He hoped that an area of agreement would eventually be found and stressed how useful the President's working paper could be for the Conference in September.

34. Mr. KUMI (Ghana) endorsed the working paper submitted by the President; he could not accept the interpretation of the mandate of the Preparatory Conference given by the representative of the Federal Republic of Germany.

35. Mr. AMBEVA (Kenya) said that the working paper submitted by the President provided the broadest working basis for future deliberations.

36. Mr. ABOU-ALI (Egypt) said he hoped that the proposal referred to by the representative of Romania would be submitted to the Conference; he was also able to accept the proposal made by Spain to transmit to the Conference all the documents that had been submitted.

37. Mr. ABDINE (Syrian Arab Republic) endorsed the comments made by the Mexican delegation and said that the working paper submitted by the President provided the best basis for reconciling the ideas put forward.

38. Mr. AMERI (Iran) endorsed the comments made by the representatives of Sweden and Mexico.

39. Mr. ARRANSSEN (Morocco) said he agreed with the representative of Spain that all the documents that had been submitted should be transmitted to the Conference.

40. The PRESIDENT pointed out that the Preparatory Conference must choose not so much between two documents as between two possible approaches: either it could simply transmit the documents or it could reach a compromise between those documents in order to accelerate the work of the Conference. The second approach was to be preferred; it was important not to despair but to continue trying to reconcile the various points of view. That was what he had endeavoured to do in submitting his working paper (Incend./1/Amend.2). For the time being, it was essential to pursue such efforts and, in particular, to determine what common ground could be found with the proposal submitted by Australia and the Netherlands, possibly leaving square brackets round those parts on which agreement could not be reached. It would also be possible, for the information of the Conference, to annex to the report all the proposals that had been made. There was still enough time left for that.

The meeting rose at 5.25 p.m.