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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

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE SIXTH MEETING

Held at the Palais des Nations, Geneva, on
Tuesday, 25 September 1979, at 8.30 p.m.

Chairman:

Mr. VOUTOV

(Bulgaria)

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The meeting was called to order at 10 p.m.

CONSIDERATION OF PROHIBITIONS OR RESTRICTIONS OF USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (agenda item 3) (continued)

Draft resolution on small-calibre weapons systems (A/CONF.95/CRP.1/Rev.1)

1. Mr. JANZON (Sweden) said it would be noted that, in the revised version of the draft resolution Egypt, Jamaica, Mexico and Switzerland had been added to the list of sponsors and the phrase "pending such international agreement" had been deleted in paragraph 7.
2. As his delegation had observed at the second plenary meeting of the Conference, the regulation of small-calibre projectiles was most important in the context of international humanitarian law. While there was clearly no possibility of reaching definite agreement on the prohibition or restriction of the use of those weapons at the present time, considerable progress had been made in establishing a wider factual basis for the discussion of their effects, and the draft resolution recognized that situation. Paragraph 3 reflected the fact that, as the work of the Preparatory Conference had shown, much material was already available concerning the effects of small-calibre weapons systems, so that it would be desirable for research along those lines to be continued.
3. Paragraph 4 reflected the fact that since the Conference of Government Experts at Lucerne in 1974, there had been an increasing degree of openness in the matter of small-calibre weapons, and much hitherto classified data had been made public.
4. His Government was willing to organize the symposium mentioned in paragraph 5 and there was no question of United Nations financing being involved. The symposium should, however, be held under United Nations auspices so as to take advantage of the framework which the United Nations provided; thus, the assistance mentioned in paragraph 6 would mainly involve the use of the world-wide facilities of the United Nations for the purpose of issuing invitations to all interested States.
5. Mr. SANGRI (Mexico) said he continued to think that the study of the possibility of limiting the use of small-calibre weapons systems should continue, in view of the humanitarian importance of avoiding damage to the human body beyond that inherent in armed conflict itself, and the fact that tests showed that small-calibre weapons were capable of producing particularly serious injuries. Further detailed research was needed to limit physical damage and establish standards relating to the severity of bullet wounds and, with those considerations in mind, his delegation had become a sponsor of the draft resolution.
6. Mr. CIVIC (Yugoslavia) said he supported the draft resolution, but thought that the text of paragraph 7 might be amended to make it clear that the resolution referred to conventional weapons systems.
7. Mr. EZZ (Egypt) expressed his delegation's appreciation of the work done by Sweden and its support for the draft resolution. He thought that further scientific studies were needed in order to convince those who still did not realize what effects conventional weapons could produce.

8. Mr. WAGENMAKERS (Netherlands) said his delegation was grateful for the work done by the Swedish delegation and supported the draft resolution, subject to certain editing changes. He inquired what the phrase "as documented by the Conference" meant in paragraph 1 of the draft resolution.
9. Mr. WOLFE (Canada) said that a symposium of the kind recommended in paragraph 5 would be better held under government auspices rather than within the framework of the United Nations, since the latter arrangement might have the effect of broadening the terms of reference of the symposium to include political matters.
10. The draft resolution gave him the impression of being based on the preconceived conclusion that small-calibre weapons definitely had particularly injurious effects and should be outlawed. He did not think the test of paragraph 7 should appeal to Governments to exercise restraint; it should confine itself to asking them to have regard to certain factors when developing small-calibre weapons systems. Further study of the question should be concerned not so much with the effects of certain kinds of weapons as with the question of whether they were beyond the law and if so, what action could be taken in the matter. The text of the proposal might be amended to bring out that point.
11. Mr. CASTRO (Philippines) said there seemed to be some inconsistency between the second preambular paragraph of the draft resolution, which referred to the injurious effects of small-calibre weapons systems, and the fourth preambular paragraph, which stated that it was desirable to establish accurately the wounding effects of such systems.
12. Mr. SIMMONS (United States of America), referring to the third preambular paragraph, said that although it might be desirable to reaffirm that the Hague Declaration of 1899 was applicable, he did not feel that it was appropriate to supplement it at the present time, as the text suggested. He also thought that it would be more appropriate for the proposed symposium to be held under the auspices of the Conference itself.
13. Mr. JONZON (Sweden) said that his delegation had no preconceived views on the effects of small-calibre weapons systems. The aim of the sponsors of the draft resolution had in fact been to give an objective picture of the situation.
14. The phrase "as documented during the Conference" in paragraph 1, to which the Netherlands representative had referred, related to such texts as the report of the Informal Working Group on Small-Calibre Weapons Systems set up at the Preparatory Conference (A/CONF.95/3, annex IV).
15. He had explained why he thought that the proposed symposium should be held within the framework of the United Nations; he cited examples of scientific and technical conferences which had been held under United Nations auspices.
16. He had noted the drafting amendments suggested by various delegations and thought that they could be considered in informal consultations, for which he would be readily available.

17. Mr. CHASPURI (Indonesia) said that he welcomed the humanitarian spirit underlying the draft resolution and believed that the Conference should adopt a text on those lines.

18. Mr. MARSHALL (United Kingdom) expressed appreciation of the work of the Swedish Government on the matter of small-calibre weapons systems. The subject deserved more study, but he doubted whether at the present stage it could be pursued on the scale envisaged in the draft resolution. It was currently being considered in a special group convened by the Conference and he did not think that the Committee of the Whole could take it much further without considering it in the more general framework which those current discussions would no doubt provide.

19. Mr. KORNEEV (Union of Soviet Socialist Republics) said that his delegation would be presenting its views more fully at a later date, but meanwhile it had reservations regarding the text of the draft resolution being considered. Discussion at the Preparatory Conference had concerned the effects of all weapons and not merely small-calibre weapons. In view of that fact and considering also the possible difficulty of deciding whether a weapon fell into the small-calibre category or not, it might be better to adopt a resolution dealing with weapons in a more general sense. Moreover, the text seemed to prejudge any decision which the Conference might take on follow-up action.

20. The CHAIRMAN suggested that consideration of the draft resolution should be deferred to allow time for further informal consultations.

21. It was so agreed.

Draft Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and other Devices

22. The CHAIRMAN drew attention to the text of the draft Protocol which had just been circulated in provisional form in English only and invited the Chairman of the Working Group on Landmines and Booby-traps, to introduce it.

23. Mr. AKKERMAN (Netherlands), Chairman of the Working Group on Landmines and Bobby-traps, said that the draft Protocol was the outcome of consultations which had continued until shortly before the present meeting, and there had unfortunately only been time to produce an English text. In article 2, paragraph (1), the phrase within square brackets "at a range of over [1,000][2,000] metres" should be deleted, and at the end of article 3, paragraph (3) (iv), the phrase "Article 3 bis." should read "that article". In article 3 bis, paragraph 1, the phrase "United Nations field force Commander or head of Mission", should read "head of the United Nations force or mission in that area". In article 4, paragraph 1, "(a)" should be inserted after the word "unless" in the third line, and "(b)" substituted for the word "unless" in the third line. */

*/ The text of the draft Protocol, incorporating the changes indicated in this paragraph and other drafting changes, was subsequently circulated as document A/CONF.95/CW/1.

24. The text was the fruit of intensive co-operation among members of the Group, and reflected the nearest approach to full agreement that it had been possible to achieve within the time available. He hoped that it might be possible to agree on a definitive text for article 3, paragraph (3) (iii), before the end of the Conference.

25. The CHAIRMAN thanked the Chairman of the Working Group for his success in producing a draft text on which agreement came near to being unanimous.

26. Mr. ANT (Turkey) said that although it was regrettable that the Group had been unable to agree on a text for article 3, paragraph (3) (iii), the difficulties were not insurmountable and there were good prospects of a solution being found. There had been some confusion during discussions of that text in the Group, chiefly because the debate had concentrated on the meaning of specific expressions, such as "occupied territory", rather than on the underlying concept. As he saw it, that concept was the obligation of parties to a conflict to make public the location of all minefields after the cessation of active hostilities; such an obligation was not acceptable to his delegation, which took the view that since hostilities, once ceased, might well be resumed, there should be no compulsion to help an adverse party recover its territory.

27. At the Preparatory Conference, a special sub-working group had been set up to study article 3, paragraph (3). Although the report of that group had indicated that only one delegation had found the proposed text unacceptable, other delegations had later declared themselves opposed to it. If discussion on the question was to be reopened, he urged that the Committee should concentrate on the main issue, namely, whether or not a party whose territory was occupied should be obliged to give information concerning the location of minefields to an adverse party. Time might otherwise be wasted on the discussion of side-issues. It seemed to him that it should be possible to formulate the basic concept without the use of controversial expressions. His own delegation's view was that a State should have no obligation to make public the location of minefields situated on occupied parts of its territory.

28. Mr. ROGERS (United Kingdom) said that the original text of article 3, paragraph (3), which had been considered at the Preparatory Conference had been so worded as to imply that the party concerned would have discretion as to whether or not it would reveal information concerning the position of minefields. Proposals had, however, later been introduced to make the provision of such information mandatory. Although he recognized that it was difficult in practice to define the cessation of hostilities, he found it hard to accept arguments against the disclosure of information once peace was established. He shared the view expressed in the Working Group that it was important to distinguish between the use of weapons ad bellum and in bello. Humanitarian law as it applied to armed conflict was not concerned with the legality of a conflict nor with the legality of occupation, but with the protection of victims. That did not imply, however, that the law in any way legitimized an initial resort to force.

29. While there were substantial differences of opinion with regard to article 3, paragraph (3) (iii), it seemed possible that a compromise could be reached on the basis of the second alternative text. It was important that provisions on the control of mines should come into force as soon as possible, and he suggested that consideration of that provision should be deferred to allow time for further consultations in the hope of agreement being reached on a definitive text.

30. Mr. PISSAS (Cyprus) said he could accept the draft Protocol in principle as a welcome sign of progress towards a humanitarian approach to armed conflict. Such an approach should not, however, impair the right of sovereign States to resist aggression and to defend their legitimate interests. It was difficult to see why a country which had been the victim of an attack by another should be obliged to give information which would benefit the attacker. He could not accept the inclusion of a provision such as in the Protocol unless there were a clear definition of the term "cessation of hostilities". There could be no true cessation of hostilities while a single foreign soldier remained on a territory which had been taken by force; only when that territory was restored to its rightful owner could hostilities be said to have ceased. He suggested that the United Nations Office of Legal Affairs should be asked to define the meaning of an effective and permanent cessation of hostilities within the context of the Charter of the United Nations and of those resolutions of the Assembly and the Security Council which called for the immediate withdrawal of forces from occupied territories. Pending such action, he requested that his delegation's reservation on article 3, paragraph (3) (iii), of the draft Protocol should be placed on record.

31. Mr. WOLFE (Canada) said he sympathized with the arguments put forward by the representative of Cyprus but failed to see why States should refuse to disclose information on mines once cessation of hostilities had become effective and permanent. Such a refusal implied that the State concerned not only did not desire a lasting peace, but also was unwilling to protect its own civilian population, and the Conference was constantly being reminded that priority should be given to the protection of civilians. He did not think it was within the competence of the Office of Legal Affairs of the United Nations to define the moment at which hostilities could be deemed to have ceased; that was for the parties concerned to determine. Once hostilities had in fact ceased, however, he did not see why the parties should find difficulty in accepting such a minor obligation in the interests of protecting the populations concerned.

32. He supported the United Kingdom suggestion that further efforts should be made to solve the problem by consultation, but should those efforts not be successful, he proposed that article 3, paragraph (3) (iii), should be deleted so that agreement could be reached on the rest of the draft Protocol.

33. Mr. CIVIC (Yugoslavia) supported the view expressed by the representative of Cyprus. His delegation could not agree to a provision which conferred advantages on an occupying Power.

34. He proposed that, in article 3, paragraph (3) (i), the phrase "other than territory under the occupation or control of their own forces or allied forces" should be deleted. In article 3, paragraph (3) (ii), the word "temporarily" should be inserted before the word "occupied" in the fourth line. Both versions of article 3, paragraph (3) (iii), should be deleted. Article 4, paragraph 1, should read: "The indiscriminate use of remotely delivered mines is prohibited", the rest of the paragraph being deleted.

35. Mr. CHASPURI (Indonesia) suggested that in view of the difficulties encountered over article 3, paragraph (3) (iii), the best solution would be to delete it from the draft Protocol and defer consideration of the question to a future conference.

36. Mr. FISHER (Australia) supported that proposal.

37. Mr. JANZON (Sweden) said he thought that there had been insufficient time to debate some of the issues, in particular the restriction on the use of remotely delivered mines (article 4). It had been clear from the outset that such mines should be fitted with an effective neutralizing mechanism. His delegation had with some difficulty accepted the Italian proposal that in certain circumstances, for instance, where minefields were pre-planned, remotely-delivered mines laid by helicopter should be subject to the same rules as manually-emplaced mines and that, provided their location could be accurately recorded, a neutralizing mechanism might be dispensed with. The present formulation meant, however, that any means of remote delivery could be utilized for laying mines without a neutralizing mechanism if their location could be accurately recorded. An accurate recording might in practice prove impossible, for instance, when mines were dropped from an aircraft and there was enemy counteraction. The meaning of article 4, paragraph 1, was not completely clear, and his delegation would be grateful if the Chairman of the Working Group could explain its implications.

38. The CHAIRMAN suggested that the Chairman of the Working Group should continue his consultations with a view to reaching full agreement on the text.

39. Mr. AKKERMAN (Netherlands), Chairman of the Working Group on Landmines and Booby-Traps, said he thought that, with further discussion, full agreement could be reached on article 3, paragraph (3) (iii). He would be unable to continue the consultations himself, since he would have to devote the rest of his time to drafting the report of the Working Group, although he would be available to give advice. He suggested that the Committee should either continue its debate or transmit the draft protocol to the Conference, which could then take its own decision.

40. The CHAIRMAN said that the Committee of the Whole did not have to take a formal decision but merely to accept the text and transmit it to the Drafting Committee.

41. Mr. MARSHALL (United Kingdom), supported by Mr. WOLFE (Canada), suggested that the Committee of the Whole should avoid adopting a text while there was still a possibility of the problem of article 3 being solved through informal consultations.

42. Mrs. MAZEAU (United States) said she agreed with the suggestion made by the United Kingdom representative. She believed that, with a little more time, it should be possible to reach agreement. Her delegation was prepared to support the deletion of article 3, paragraph (3) (iii).

43. Mr. TALIANI (Italy) proposed that the United Kingdom representative should be asked to undertake the necessary consultations.

44. It was so decided.

The meeting rose at 11.50 p.m.