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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 21st PIENARY MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 23 March 1979, at 10.30 a.m.President:

Mr. ADENIJI

(Nigeria)

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General debate (continued)

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The meeting was called to order at 10.55 a.m.

GENERAL DEBATE (agenda item 3) (continued)

1. Mr. de ICAZA (Mexico) said that he was pleased that the Conference had begun considering substantive questions and that for the first time since 1974 it had before it proposals from all the geographical groups, including the major military alliances. The Conference had already agreed on the prohibition of weapons causing injury through non-detectable fragments.
2. There were, however, two discouraging aspects. The first, and most important, was the absence of many Member States, especially those which were developing countries not belonging to any military alliance, which had made valuable contributions at previous meetings. No doubt some of those absences were due to discouragement at the lack of progress. If the progress of the preceding week was maintained there was every hope that the September Conference would be better attended and more representative of world public opinion.
3. The second discouraging aspect was the time factor. Growing interest in the Conference's work had led to such detailed analysis of the proposals that it sometimes seemed that the Conference was making no headway. Consequently there might not be enough time to give due attention either to all the proposals submitted on specific weapons or to the general legal problems.
4. At the preceding session of the Preparatory Conference Mexico had submitted a preliminary outline of a universally applicable treaty (A/33/44, p. 13), which had been intended to serve as a basis for discussion on the desirability of establishing the prohibitions or restrictions of the use of conventional weapons in a convention on general lines, to which would be added optional protocols on specific weapons.
5. There were three particular features that his delegation thought should be included in the final document. The first was that the document should be such as to enable all countries to accede to a convention on general lines and to those optional protocols that they considered they could sign in the light of their geographical circumstances and their defence responsibilities and needs. Such a structure would mean that at the end of the Conference a convention and probably one or more protocols could be available which all countries could sign, together with other optional protocols whose signatories would increase as the position of the various countries changed.
6. The second feature was closely related to the fact that international humanitarian law might progress more rapidly in some regions than in others, provided that such progress was respected by all. Consequently Mexico wished to emphasize the obligation to respect regional or subregional decisions concerning self-imposed limits on the transfer and use of certain conventional weapons, both for humanitarian reasons relating to armed conflicts and for humanitarian considerations concerning the waste of resources needed for food, health, education and general welfare. There must accordingly be an obligation to respect such voluntary moves to ban or restrict weapons.
7. The third feature the document must have was a system of continuing review to permit periodical analysis of developments and amendment, as required, of existing optional protocols, or the adoption of new protocols dealing with new types of weapon. Mexico, together with other countries, had drawn attention to the need for a review arrangement from the very outset of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, in 1974, but thus far had not received sufficient support. The

General Assembly, however, in its resolution 32/152 convening the Conference on conventional weapons, referred to a system of periodic review. One advantage of the general type of convention he had proposed was that it would facilitate such a review system and enable the convention to be kept in line with any new means of warfare that developed.

8. In addition, the convention might usefully include general definitions to facilitate the interpretation of the protocols on specific weapons, definitions of such notions as "indiscriminate effects", "excessively injurious", "military objectives", etc. Mexico's original proposal did not include any such definitions, which had not appeared necessary at that time, but the course of the debates in the past few days seemed to indicate their desirability.

9. Since the Preparatory Conference had decided to undertake parallel negotiations on procedure and substance, it might save time to undertake also an examination of the general legal questions, without prejudice to the work on specific weapons, in a formal or informal working group. He was convinced that all the participants were aware of the importance of the legal framework for the prohibitions and restrictions that were being discussed.

10. Mr. MIHAJLOVIC (Yugoslavia) said that the use of incendiary weapons was being extensively discussed at informal meetings. Yugoslavia was closely concerned, being a sponsor of the draft proposal in document A/CONF.95/PREP.CONF./L.1/Rev.1 and Add. 1 and 2. There was no contesting the fact that incendiary weapons caused unnecessary suffering and had indiscriminate effects, as the representative of Sweden had pointed out on the preceding day. Moreover, injuries caused by incendiary weapons required long treatment and sophisticated medical equipment. Many small countries lacked the necessary medical centres in time of peace, and were even less likely to have them in time of war. Such weapons also had long-lasting psychological effects.

11. As the representative of Switzerland had pointed out on the preceding day, it was difficult for geographically small countries to separate civilian from military objects, or civilian areas from war theatres. The situation was even more difficult where countries invaded by an aggressor used the system known as the general people's defence, which meant that every citizen and object of importance in the country had a function in the system of defence. Every country had the right to protect its sovereignty and territorial integrity, and Yugoslavia was only one among the countries that used the system of general people's defence. It could not, therefore, agree to legitimize the use of weapons such as incendiary weapons which could be used by an aggressor to kill or maim large masses of the population. The only course was to outlaw the use of incendiaries against civilians and military personnel. He welcomed the readiness of some delegations to include the question of the protection of military personnel in the discussions. Yugoslavia believed that through the general regulation of incendiary weapons it would be possible to strengthen the protection already accorded to the civilian population by Additional Protocol I to the Geneva Conventions of 1949. Proposal 2 of article 35 of the Additional Protocol prohibited the use of weapons and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. There was no doubt that incendiary weapons belonged in that category. By virtue of that provision, military personnel, too, enjoyed a degree of protection.

12. His delegation thought that to seek answers to certain questions might help to narrow existing differences. The first question concerned the protection of civilians and how it could be strengthened beyond what was provided for in Additional Protocol I. The representative of the Federal Republic of Germany had

suggested that the general protection accorded to civilians against dangers arising from military occupation, in article 51, could be made absolute with regard to incendiary weapons, under "specified circumstances". That would be acceptable only if those "circumstances", when defined, would in practical terms provide better protection for civilians. That would be achieved by clearly prohibiting the use of incendiary weapons against military objectives situated within a concentration of civilians. The Indian representative had pointed out the difference between military objectives that were clearly separate from the civilian population and those within a concentration of civilians. The former were military objectives, but, because of the indiscriminate effects of incendiary weapons, the latter could not be attacked with such weapons. That additional measure of protection was essential for the protection of the civilian population. Yugoslavia could not agree to any provision dealing with the civilian population that merely restated the provisions of article 51 of the Additional Protocol. An interesting solution was proposed in article 2, paragraph (a) of the Indonesian proposal (A/CONF.95/PREP.CONF./L.13).

13. The second question concerned protection of military personnel, beyond what was already provided for in article 35, paragraph 2, of Additional Protocol I. The first step should be to specify, in a broad exchange of views, some situations that various delegations thought should be exempted, and the next to consider those cases one by one with a view to reducing their number or eliminating them all. Each situation should be decided on its merits. Even the joint proposal (A/CONF.95/PREP.CONF./L.1/Rev.1) made exceptions for munitions that combined incendiary effects with penetration or fragmentation effects and which were designed for use against aircraft, armoured vehicles and similar targets. The Indonesian proposal indicated other situations where the rules might be bent to include combatants holding positions in field fortifications where the use of alternate weapons would result in more casualties. The proposal by Denmark and Norway (A/CONF.95/PREP.CONF./L.12) suggested that an exception should be made for personnel engaged in combat, or about to be, or being deployed for combat engagements, as also for personnel under armoured protection, in field fortifications, etc. Some speakers had referred to the use of incendiaries for close combat support.

14. Discussion of a few more such situations could help the Conference to formulate a rule governing the use of incendiary weapons which could be based on practical rather than abstract notions, with the maximum regard both for humanitarian concerns and for security and military considerations. Definitions would be a problem; his delegation was particularly concerned about the precise definition of "military objectives". Theoretically it could include such items as food supplies for the civilian population, wheat fields, etc., where incendiaries were particularly effective.

15. Yugoslavia considered that it had made a move to meet the views of those delegations which took a different approach. It now looked for a similar understanding on their part, as the only reasonable way of making further progress on a delicate and important problem.

16. Mr. FISSENKO (Byelorussian Soviet Socialist Republic) said that his Government, true to its peace-loving policy which was aimed at halting the arms race, at strengthening international détente and at the adoption of effective measures to achieve disarmament, adhered to the humanitarian principles underlying The Hague and Geneva Conventions as well as the Additional Protocols to the 1949 Geneva Conventions in the elaboration of which it had taken an active part. In addition, his Government had supported the General Assembly decision to convene a Conference on Prohibitions or Restrictions of use of Certain Conventional Weapons.

17. In his delegation's view, the issues to be considered by the Preparatory Conference were related to the question of disarmament and concerned the security of States. As pointed out in the Final Document of the special session of the General Assembly on disarmament and in a number of other United Nations decisions, any measures relating to disarmament should be taken on an equitable and balanced basis in order to guarantee the security interests of States and to ensure that no State or group of States would have an advantage over others. The Final Document had also stated that the forthcoming Conference should seek agreement on the prohibition or restriction of use of certain conventional weapons in the light of humanitarian and military considerations. Accordingly, any step towards the prohibition or restriction of the use of such weapons must take due account of the security interests of States.

18. His delegation attached great importance to a constructive settlement at the present session of essential questions such as the procedure for the adoption of decisions at the Preparatory Conference and at the forthcoming Conference. In view of the fact that the questions to be discussed concerned the security of States, his delegation considered that decisions should be taken only on the basis of consensus. Any attempt to depart from that vital principal would cause his delegation to reconsider its positive attitude towards the Conference.

19. The questions under consideration were complex and difficult. He was convinced, however, that with goodwill on the part of all, they could be satisfactorily settled. His delegation was prepared to participate in the deliberations of the Conference and to support any proposal which took account of the security interests of all States and was prompted by humanitarian considerations.

The meeting rose at 11.35 a.m.