Mr President

Many thanks for your and the Secretariat’s hard work in producing this new text.

I have two comments – questions, really – of a legal nature regarding the new legally-scrubbed text and a further remark simply of a drafting nature. I will not repeat New Zealand’s ongoing substantive concerns with the 26 July text and which are carried over to this new scrubbed text. I am commenting only on drafting changes in your text of last night.

The first question of a legal nature concerns the Prohibitions section now contained in Article 4. There seems to me to be an unfortunate – and no doubt unintended – consequence of the deletion of the previous reference to “conventional arms within the scope of this treaty” and its replacement in this Article – Article 4 - by the reference to “conventional arms covered under Article 2 (1)”.

This is that the ‘scope’ of the prohibitions would now seem to exclude transfers relating to ammunition/munitions - as well as parts and components.

As one illustration of why the narrowing of the application of this Article is unfortunate, I note that UNSC arms embargoes under Chapter VII can almost always be expected to include, as well, an embargo on the supply of ammunition/munitions and parts and components. Accordingly, as it is now set out, Article 4.1 does not repeat the legal obligation to respect a Chapter VII embargo in its usual entirety.

The question I would therefore ask is whether the language in Article 6 serving to extend the prohibitions of Article 4 to ammunition etc is really appropriate for Chapter VII circumstances. A State Party should not be permitted to go through a process of “applying the provisions of Article 4 ... prior to authorising an export of ammunition” in relation to an export to a state under a Chapter VII embargo”.

There is a question to similar effect, no doubt, with regard to the applicability of ammunition etc to the circumstances outlined in the other two Article 4 ‘Prohibition’ paragraphs.

My second question relates to the insertion of the language “under its jurisdiction” e.g. in Article 6 dealing with exports and Article 7 on imports.
I see this as introducing a confusing element – or potentially a jurisdictional gap - into the text. If a country is not controlling the physical exports or imports of items from its territory – then who is, and who is it that would be responsible for ensuring compliance with the provisions of the ATT?

I note that in the WTO context – which sets the broad rules for all global trading relationships – references to “imports” or “exports” are not qualified by any reference to “under the CP’s jurisdiction” (e.g. see GATT 1994 Articles, I, II, III or VIII). Similarly if we take a less far-reaching example, CITES, the Convention on International Trade in Endangered Species, refers to import and export without any reference to jurisdiction. We would not wish by this additional language to open up the possibility that States Parties could opt out of the need to control, for example, exports from any duty-free, or similar bonded or Inwards Processing Regime arrangements they may have entered into.

It is not clear to me, Mr President, why the ATT should need a different jurisdictional qualifier for exports and imports than is applied, for example, in the WTO, or in a more specific, widely-accepted, regime such as CITES. States must not be able to opt out from their obligations under the ATT.

Finally Mr President, a comment simply of a drafting nature in relation to Article 13 entitled “International Cooperation”. Article 13(1) now reads “States Parties shall co-operate with each other to effectively implement this Treaty consistent with their respective security interests and national laws”. I assume, Mr President, that the intention is that it is co-operation which should be subject to “security interests and national laws” – rather than that the effective implementation of the Treaty be subject to “security interests and national laws”. If there is indeed a need to limit international cooperation and assistance to security interests then it would seem to us that this could better be captured as follows:

“States Parties shall co-operate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty”.