Tuesday 27 May 2008

Waiting…

The Committee of the Whole met for two very brief sessions today as most of the action took place in bilateral consultations and discussions in the curving stadium hallway. It was a hectic day, with unpredictable bouts of activity punctuated by long periods of waiting around, intensified by the clear sense that the clock is ticking here in Croke Park.

In the Committee of the Whole, President O’Ceallaigh moved quickly through some of the remaining articles in the Convention, trying to finalize the articles close to consensus and send them as Presidency Texts to the Plenary.

On Article 6 on international cooperation and assistance, Canada reported back on its efforts to find agreement on language for a proposed paragraph 9 bis on obligations for countries requesting assistance. Canada had proposed a compromise solution by adding language to the paragraph that States Parties seeking to receive assistance should "facilitate the entry of personnel, material, and equipment, in a manner consistent with national laws and regulations and international best practices." The North-South argument, however, that developed in discussions yesterday persisted. Traditional donor countries, such as Australia, Germany, the Netherlands, and Switzerland strongly supported the proposal's obligations. Germany referred to the paragraph's importance in light of problems providing aid in international natural disaster relief assistance. Indonesia questioned the paragraph's infringement on national sovereignty and national legislation. While Canada noted that it was understood that national law would take precedent over the international best practices mentioned in the paragraph, the sensitivity of a number of States regarding the article's obligations meant that Article 6 will require a further round of consultations.

Canada also noted Austria's proposal for paragraph 7, which requires States Parties to provide assistance for the implementation of obligations on victim assistance as contained in Article 5.

The first full text of the preamble was circulated and discussed in the Committee of the Whole. The initial five paragraphs draw on changes proposed by the ICRC, the UK, and the IFRC. Crucially for the CMC, the area effects of cluster munitions during attacks have been specifically noted as the basis for their prohibition. The previously agreed paragraphs on victim assistance have been added, along with a reference to non-state actors, SC Resolutions 1325 and 1612 on
women, peace and security and children in armed conflict, and an additional reference to the need to provide age and gender sensitive assistance to victims. After consultations on minor changes suggested by delegations, a final draft of the preamble was given to the President.

Outside of the Committee of the Whole, Friend of the Chair Ambassador Schraner held the last informal session on interoperability. Tasked with delivering the President with a final discussion paper by noon, Ambassador Schraner held a brief 45 minute discussion focusing on a revised, and slightly improved, version of Friday's paper on interoperability. Canada, Denmark, France, Italy, Germany, Japan, the Netherlands, and the United Kingdom, along with Albania, Croatia, and Fiji, stated that while they preferred the previous (weaker) draft paper, they were willing to accept the new version as a basis for further work. A number of these countries declared that the article's phrasing of "notwithstanding the provisions of Article 1" [read setting aside the main obligations of the treaty] was fundamentally important to their support of the article.

Austria and New Zealand felt the present language of the Article was an acceptable compromise. Others such as Mauritania proposed deleting "notwithstanding the provisions of Article" while Morocco, Indonesia, Uganda, and Kenya suggested adding a qualifier "notwithstanding the provisions of Article 1(c)."

The crux of the issue for the CMC is threefold. First, the article must not be worded as to allow States Parties to deliberately or intentionally assist Non-States Parties in prohibited actions under Article 1. Second, the article must not permit States Parties to stockpile foreign cluster munitions on its territory (as currently construed under paragraph 4(b) of the article). Third, the language of paragraph 3 reading "notwithstanding the provisions of Article 1 of this Convention" must either (preferably) be deleted, or at an absolute minimum, be changed to specify that paragraph 3 only applies to Article 1(c) of the Treaty, in order to ensure that the fundamental obligations of the Treaty are not undermined. If this option is taken, it would be recommended to delete paragraph 4, which would become obsolete, or even a potential weakness in the Treaty.

Discussions on interoperability continue to be the most contentious area of the treaty. While it was encouraging that States taking a hard line on the issue were prepared to work on the basis of the new proposal, there is still no consensus on how to address interoperability in a manner that provides States an acceptable degree of protection for their armed forces, without fundamentally negating the primary obligations and spirit of the Convention.
The manner in which the discussions were conducted, however, was potentially as flawed as suggestions for interoperability provisions. Held in a small room suitable for around 20 people, delegates packed into the room, which was quickly overflowing and standing-room only. There was no microphone, so unless seated at the table in the center of the room (where the UK, Japan, Denmark, France, Australia and other NATO states were holding court) it was nearly impossible to hear any of the interventions. Many States that were opposed to provisions for interoperability either could not get into the room or could not follow discussions and thus did not make interventions. The result was that the dissenting opinions of many States not part of the NATO and US-allied block were not heard and not reflected in the Friend of the President's final paper.

Definitions were mentioned briefly in the Committee of the Whole. A new draft of definitions under Article 1 was circulated. The draft paper removes Article 1(2) on the definition of mines, eliminating language referring to the CCW's Amended Protocol II. The draft proposal instead states simply that "the Convention does not apply to mines." The draft also included a proposal for a definition of dispenser to be included in the Convention, which would expand its scope to cover submunitions that are dispersed or released from dispensers affixed to aircrafts. This was rejected by the UK and Spain, who were subsequently charged to conduct bilaterals on the issue of dispensers. The CMC view is that dispensers are covered by the definition of cluster munitions, a view shared by the Norwegian Defence Research Establishment.

Also pertaining to definitions, yesterday, Costa Rica questioned why "air defence systems" had been added as an exception under Article 2(a) in Friend of the President Ambassador MacKay's latest discussion paper. The UK (who proposed the inclusion) explained that it considered air defence systems should not be banned under the Treaty. The UK defined air defence systems as ground to air munitions whose effects were contained in the air, and contained internal guidance systems, point target capabilities, and manual and automatic self-destruct mechanisms. Argentina, Austria, Botswana, Chile, Mexico, Morocco, Panama, and the ICRC opposed including air-defense weapons as an exception in the Convention and called for its removal. The ICRC explained that the munition would be banned under the FoP proposal's Article 2(c), making any reference to air defence systems in Article 2(a) unnecessary.

Tailored to defend its own production and stockpiling of one type of cluster munition, Spain circulated a weak proposal for Article 2, which would exclude under Article 2(c) munitions equipped with electronic self-destruct and self-deactivation mechanisms, that would "only address the area encompassed by the intended military objective."
After adjourning the Committee of the Whole early in the afternoon, President O’Ceallaigh embarked on a lengthy series of bilateral consultations in an effort to produce a consolidated draft text of the Convention. At 9:00pm, after nearly five hours of waiting in the halls of Croke Park, President O’Ceallaigh announced that there was no consensus on the consolidated draft. Participants will have to wait a bit longer for the consolidated draft, which the President expects to circulate on Wednesday morning.

Lunchtime events today included talks on "Divestment and a Cluster Munitions Treaty: Two Sides of the Same Coin?" presented by IKV Pax Christi Netherlands and the "Economic Impacts of Cluster Munition Contamination," presented by Richard Moyes and Greg Crowther of Landmine Action UK.

In the evening Nobel Peace Laureates Betty Williams, Mairead Corrigan Maguire, and Jody Williams held a public event on their perceptions of a new international treaty banning cluster munitions.

Now that the work of the Friends of the President is finished, it's up to the President to move the Conference forward.