Wednesday 28 May 2008:

CONVENTION!!!

Taking campaigners by surprise, delegates agreed to adopt a text of a new Convention on Cluster Munitions on Wednesday evening. The text is a stunning success. It completely bans and requires the destruction of stockpiles of cluster munitions as a category of weapons, including all existing cluster munitions used to date. It does not permit a transition period or any delay. Cluster munitions that have caused so much human suffering in countries around the world will never be used again by States Parties and the treaty will undoubtedly have a huge impact on the ground in improving the lives of victims.

At 10:00 in the morning, the President presented the Conference with a draft consolidated text. President O'Ceallaigh called the draft an "extremely ambitious Convention text" representing the best possible balance of interests and compromise consistent with the Oslo Declaration. The Committee of the Whole then adjourned and bilateral consultations and regional meetings began. As the hours ticked on, campaigners anxiously awaited news and brooded over the text and possible outcomes.

Just after five pm, the President reconvened the Committee of the Whole, announcing that the Convention text was ready for consideration by the Conference. While many participants were unhappy with some areas of the Convention and would have proposed amendments, all delegations felt that opening the text to consider changing any article would risk unraveling the entire Convention and the very delicate balance presented in the text.

Over 70 countries took the floor to declare that they would agree to formally adopt the Convention on Friday morning. The CMC, ICRC, and two observer states also spoke. Even States who called for broad exceptions or exceptions for their national stockpiles in the beginning of the negotiations agreed to adopt the treaty. The UK, one of the countries most strongly opposed to a complete prohibition, endorsed the Convention, following an unexpected announcement from Gordon Brown that the UK would accept a total ban and destroy its remaining two types of cluster munitions.

The CMC made an intervention, summarizing the feelings of many who pushed for a strong Convention this week. Following are excerpts:

"This can only be characterized as an extraordinary convention, one that is certain to save thousands and thousands of civilian lives for decades to come…. This convention is a comprehensive ban on cluster
munitions as a class of weapons. In many ways it is more comprehensive than the 1997 Mine Ban Treaty. It bans not just some cluster munitions, but all cluster munitions. It does not try to differentiate between good cluster munitions and bad cluster munitions, it bans them all…. This is a convention with no exceptions – no exceptions for individual nations' own particular types of cluster munitions, which would have weakened the treaty severely. This is a convention with no delays. There is no transition period, which would have undermined the integrity of the treaty.

The convention contains excellent provisions on victim assistance, which are ground-breaking and historic in their own right. It has very good provisions on clearance, transparency, and international cooperation and assistance, all of which are an improvement on the Mine Ban Treaty, taking advantage of lessons learned over the past decade.

Mr. President, we would have liked to have seen states further improve the text today and tonight. We believe that if the text had been opened up, it would have gotten stronger and not weaker. But we respect your judgment Mr. President and that of so many states that this was not the best way forward.

In our view, Article 21 on interoperability is the only stain on the fine fabric of the treaty text. We are deeply disappointed with the language, which is not clear that foreign stockpiling and intentional assistance with prohibited acts are banned in all circumstances. We call on all states to clarify for the diplomatic record that Article 21 does not allow indefinite foreign stockpiling or intentional assistance. We will be watching very carefully to ensure that no state party engages in deliberate assistance with prohibited acts, or allows foreign stockpiling of cluster munitions on their territory in perpetuity, or undermines the fundamental obligations of the treaty in any way."

Bringing some levity to the otherwise serious tone of the session, Austria said that delegations had formed a bond this week with the text. Like a bond with a child, Austria said, it may not be perfect and it may not be beautiful, but you are proud of it nevertheless.

The status of various articles in the final text is as follows:

Article 1 now includes a definition of "dispensers," eliminating a potential loophole created by bomblets released from dispensers affixed to aircrafts, which although they have the same effects as submunitions, would not have been otherwise covered under the Convention as they are not released from a larger munition.
Article 2 on definitions includes a new criteria on weight, for a total of five cumulative criteria for exclusion of munitions that do not have the effects of cluster munitions – weight restrictions, less than 10 submunitions, capability to detect and engage a single target, and electronic self-destruct mechanisms and self-deactivating features. The minimum weight criterion was reduced from 5 to 4 kilograms, but this does not allow the exclusion of additional existing munitions.

Article 3 on stockpiling and destruction permits the retention of a minimum number of cluster munitions for training, research, and the development of countermeasures. Within the article itself, however, is also an obligation for States Parties to report on the planned and actual use of retained cluster munitions.

Article 4 on clearance of cluster munition remnants kept "4.4" on user responsibility, but weakened the language to state that past users of cluster munitions are "strongly encouraged" to provide technical, financial, material, and human resource assistance, along with information on the type and quantity of cluster munitions used, and the precise locations of cluster munitions strikes. Despite the weakened language, the retention of 4.4 is a success. The deadline for clearance was previously extended from 5 to 10 years.

Article 5 on victim assistance is in many ways the highpoint of the Convention. The article was continually strengthened in discussions during the week, to finally include obligations to prove non-discriminatory, age and gender sensitive assistance, including (but not limited to) medical care, rehabilitation and psychological support, as well as providing for victim's social and economic inclusion, in accordance with international humanitarian and human rights law. The article also requires States Parties to ensure victim assistance is developed and implemented in national laws and policies, develop national plans and budgets for activities, and to closely consult and actively involve cluster munitions victims in carrying out victim assistance.

Article 6 on international cooperation and assistance contains an agreed on version of article 9bis on obligations for States Parties requesting assistance and specifically requires that States shall provide assistance for the implementation of victim assistance.

Article 7 contains many positive improvements to ensure the Convention's effective implementation. It makes obligatory reporting on cluster munitions stockpiles, the status and progress of cluster munition destruction programs, clearance programs including measures to provide risk reduction education and warnings to civilians, and victim assistance. Significantly, it also requires reporting on the known amount
of national resources, including financial, material or resources in kind, allocated for the implementation of victim assistance, clearance, and stockpile destruction programs.

On Article 17 on entry into force, the President set the number at 30 ratifications – a compromise to appease the few countries calling for 40 instruments of ratifications as the majority of countries wanted 20.

The remaining articles of the Convention were mostly unchanged.

The major disappointment in the new Convention, however, is the inclusion of a new Article 21 on the "Relation with States not parties to this Convention," or interoperability. The text of the article is largely the same as the most recent discussion paper from the Friend of the President, despite suggestions from States calling for revising the article to strengthen the prohibition against assistance.

On the positive side, the article requires States Parties to encourage others to join the Convention, to notify Non States Parties of their obligations under the Convention, promote the Convention’s norms, and make "best efforts" to discourage Non States Parties from using cluster munitions. However, the article is not clear that intentional assistance and indefinite foreign stockpiling are prohibited. States need to clarify these points.

Despite this potential loophole in the Convention, the scrutiny of the world will now be focused on States Parties participating in joint military operations and the international recognition that assisting others to use cluster munitions is fundamentally against the spirit of the Convention will go far to ensure that the Article’s provisions are irrelevant in reality.

Looking back just over a year ago to the first meeting of the Oslo Process in Norway, the Convention agreed on today is an unbelievable achievement. President Daithi O’Ceallaigh of Ireland, the Friends of the President, the core States, delegates, and all of the CMC campaigners both present in the Conference and the many more working tirelessly across the world, deserve a huge round of applause and should be extremely proud of such a remarkable, heroic, and historical Convention achieved here in Dublin today.