Tuesday 20 May 2008

The Nitty-Gritty

By Katherine Harrison  Off to a good start, on Tuesday 20 May 2008, the second day of the Dublin Diplomatic Conference on Cluster Munitions, work began in earnest on the substantive issues before the Conference. Informal discussions were held by the Friends of the Chair on the two critical issues of interoperability and definitions. Work continued simultaneously in the Committee of the Whole, where President O'Ceallaigh concluded the article by article discussion on the remainder of the Treaty, covering Articles 4 through 22. In the informal discussions on Article 1 and interoperability, States made constructive interventions (at least rhetorically). A significant majority of States who expressed concerns over interoperability emphasized that they sought a solution that would not undermine the comprehensive obligations in Article 1 or in any way condone the use of cluster munitions by States outside the Treaty. A number of States rejected the idea that interoperability concerns pertaining to cluster munitions could be solved by adopting national declarations, as was done under the Mine Ban Treaty regime. A large portion of States suggested that additional language addressing interoperability should be added as a separate article in the Treaty. The Friend of the Chair on interoperability, Ambassador Schraner Burganer, held closed consultations with a selection of delegations. Despite the number of affirmative assurances that the Treaty would not be weakened, new treaty text on interoperability is expected to be tabled tomorrow. This is disappointing for the CMC and those who support the present formulation of the Treaty and its strong prohibition on assistance. On the brighter side, however, no State proposed deleting Article 1(c) and negotiations seem to be progressing rapidly, which may set a precedent that consensus can be achieved on contentious issues. Friend of the Chair Ambassador MacKay held three informal sessions on definitions. Long, but lively, the sessions lasted until 8:30 pm as Ambassador MacKay held structured discussions on a point by point review of elements to be considered as criteria for excluding certain munitions under Article 2(c). A number of other States continued to question the need for a 2(c) and expressed concerns this could lead to an exception for weapons with the same effects of cluster munitions. The CMC was an active participant in the informals on definitions, intervening on every point in MacKay's structure document. Canada and Germany made encouraging interventions calling for a complete prohibition on all cluster munitions, with exclusions only for weapons based on cumulative criteria such that they would not have the same negative effects as cluster munitions. Canada noted that the burden was on
States to demonstrate the reliability and accuracy of any weapon they sought to exclude. France stated it supported the cumulative approach suggested by Germany (point target capability, self-destruct, self-deactivate, and low number of submunitions), even though it would lead to an immediate ban of more than 80% of its national stockpiles of cluster munitions. The Netherlands' position appeared to be moving in a positive direction as it questioned the acceptability of reliability criteria, while South Africa also seemed to be heading towards the right camp when it stated that an approach based only on a limited number of submunitions was not acceptable. The UK, however, looked increasingly isolated. Responding to Germany and Canada, the UK emphasized that the purpose of the Oslo Process, as it understood it, was not to ban all cluster munitions, that in essence there are good cluster munitions and bad cluster munitions. The UK might soon find itself in the company of the Czech Republic, Denmark, Finland, Japan, and Slovakia—the only States who continue to call for broad exceptions. On a low note, Spain tabled a proposal for an exemption, tailored to its own cluster munitions, for submunitions with a "self-safe mechanism that...guarantees that the number of remaining dangerous duds that can cause unacceptable harm to non-combatants is in practice equal to zero." This return to an approach based on a dangerous dud rate is extremely alarming (as well as unrealistic).

Overall, the outlook for definitions is optimistic. It appears that if there is an exclusion for certain munitions, it will be through a cumulative approach. The treaty will not contain a blanket exemption based on any one criteria in itself. Another testament to how far the Oslo Process has come this year, not a single State claimed that the presence of a self-destruct or self-deactivation device or a certain failure rate was justification for an exemption. Informals will continue on definitions tomorrow morning. A brief, hour-long informal consultation was held on Article 3 on stockpile destruction. Poorly attended, Friend of the Chair Ambassador Kongstad of Norway went through the text of the article during the session. A revised draft text of the article will be presented tomorrow. To the dismay of the CMC, it appears there is widespread support for an extension period for the destruction deadline, and for the addition of a provision allowing retention of some submunitions for training, development, and military countermeasures. In the review of the remaining articles in the Committee of the Whole, 15 delegations made interventions on clearance obligations. Discouragingly, 7 of these States—Australia, Canada, France, Germany, Italy, Japan, and the United Kingdom—proposed deleting obligations for past users of cluster munitions contained in Article 4.4. Bilateral consultations on Article 4 will take place tomorrow.

While States opposed obligations on past users in Article 4, Kenya and Zambia, supported by a number of developing countries, supported provisions on user responsibility in discussions on Article 6 on
international cooperation and assistance. Discussions on Article 6 appear to be progressing smoothly and the President did not feel it necessary to appoint a Friend of the Chair. 29 States made interventions on Article 5 on victim assistance, highlighting the article's importance to many delegations. The article was strongly supported by African and Latin American States. Several Latin American delegations proposed treaty language based on CMC proposals. Informal consultations will begin tomorrow on victim assistance under the guidance of Friend of the Chair Markus Reiterer of Austria. The remaining articles were covered briefly, with the understanding of the President that the articles will be revisited once the definition and scope of the Treaty become clearer as negotiations move forward. Belgium and Canada proposed amendments based on CMC language for improving Article 7 on transparency. Informal bilateral consultations are scheduled for Article 7. On Article 8 on compliance, Argentina proposed the inclusion of fact-finding missions. South Africa was appointed Friend of the Chair and will conduct individual consultations and if necessary will meet as a group. Detailed discussions on Article 9 on national implementation were set aside in order to allow for further development of the Treaty. Botswana made an intervention referring to non-state actors, to which Ethiopia aligned itself. The CMC also made a statement. On Article 10, the UK proposed adding that referral to the ICJ should be "by mutual consent" and made a plea for the rationalization of meetings under Article 11. The United Nations proposed language regarding their role under Articles 13 through 22. A lunchtime panel debate "Looking Survivors in the Eye: What Will Make Victim Assistance Really Work" was presented by Survivor Corps and Handicap International, followed by a film screening of "Bomb Harvest," a Lemur Films production by Kim Mordaunt and Sylvia Wilczynski, presented by Austcare. At the end of the second day of the Conference, a message to the media was that negotiations are on track and moving in the right direction as Friends of the Chair work towards developing text to be presented at the end of the week. Yet while things appear to be going well, the CMC anticipates that some may seek a trade-off between a comprehensive prohibition and a lengthy transition period. It will be critical to work now to prevent this and ensure that governments do not accept any type of transition period. The Diana, Princess of Wales Memorial Fund hosted a reception in the evening where Umarbek Pulodov, a cluster munition survivor from Tajikistan spoke of his work in support of the treaty process.