Discussions began again on Monday 26 May 2008, the second week of the Dublin Conference. The Conference tackled remaining contentious issues, such as definitions, interoperability, and transition periods, work also progressed on other areas such as the preamble and Articles 3, 6, and 8 (stockpiles, international cooperation and assistance, and compliance). With the goal of finalizing the Convention by Wednesday evening in order to allow time for translation into its authentic texts of French and Spanish, a sense of urgency at the work to be accomplished in the next few days pervaded the Conference rooms.

Definitions were discussed in the Committee of the Whole. While no ground-breaking developments occurred, delegations calling for the deletion of Article 2(c) adopted a more flexible tone. Friend of the President (FoP) Ambassador MacKay’s latest discussion paper on definitions from Friday 23 May, lists 4 cumulative criteria for the exclusion of certain munitions; less than 10 submunitions, point target capability, and electronic self-destruct mechanisms and self-deactivation mechanisms.

Australia, Canada, France, Germany, the Netherlands, Norway, Sweden, and Switzerland supported the FoP discussion paper. France proposed that the FoP paper could be strengthened by including an additional cumulative criterion of weight. Although initially unpopular early on in the Conference discussions, several delegations, such as the ICRC, Malta, Mexico, Germany, Norway, and Senegal were in favor of reconsidering weight as an additional criteria to strengthen Article 2(c). The ICRC supported the inclusion of weight restrictions as a further safeguard that could assist in preventing the miniaturization of submunitions and in “future proofing” the Treaty. Others, such as Chile and Guatemala, raised concerns about the inclusion of weight, while Finland, Slovakia, and Spain rejected the proposal.

For Denmark, Finland, Japan, Slovakia, and Spain the FoP’s proposal for Article 2(c) was already too restrictive. Slovakia stated that the proposal contained too many subjective criteria and it would prefer a broad exception based on the criteria of overall reliability. Both Slovakia and Japan objected to the electronic self-destruct and self-deactivation criteria, with Japan specifically stating that mechanical self-destruct mechanisms would be sufficient to guarantee against humanitarian harm. Spain remained focused on self-deactivation features as an acceptable solution.

Around 20 countries calling for the deletion of Article 2(c), mainly Latin American and African States, said that while they preferred not to have an Article 2(c), if it was to be included, it should provide the strongest
possible effects-oriented approach to preventing humanitarian harm. DR Congo, Honduras, Iraq, Jamaica, and Venezuela, however, emphasized that 2(c) must be deleted.

Lebanon made a compelling intervention on the need to remain focused on the issue of humanitarian harm. The deletion of Article 2(c), while not optimal, is not a redline issue, Lebanon said. Should there be a 2(c), it must comply with the highest humanitarian standards and complimented by the following safeguard provisions: review of exclusions at annual conferences, annual reporting on stockpiles, and consideration for conformity of IHL and effects on civilians.

The CMC stated that, “if there is to be a 2(c) and like many others we would prefer there was not, we must make sure it does not become an exception and that it is kept as clear, unambiguous and restrictive as possible.”

President O’Ceallaigh announced that he will take up work on definitions and hold bilateral consultations tonight, to report back to the Committee of the Whole tomorrow. Numerous delegations thanked Friend of the President Ambassador MacKay and Charlotte Darlow of New Zealand for their exhaustive efforts to identify areas of consensus on definitions during the past week.

A new proposal on interoperability was discussed in an informal session in the afternoon. The proposal is a considerable improvement on the initial proposal considered today in the plenary. It deletes reference to “host” States (the foreign stockpiling issue), and strengthens language in paragraphs 3 and 4. States taking a hard line on interoperability, however, called for returning to the previous draft. While discussions remain stalled, positively, a number of States exhibited more flexibility towards resolving the issue.

Germany reported back on its consultations on transition periods to the Committee of the Whole. While Germany attempted to outline a compromise for a “phasing out” period for use only under “exceptional circumstances,” it is clear that transition periods do not have support from the majority of delegations.

The preamble of the Treaty was discussed for the first time today. Canada, supported by Norway, South Africa, Argentina, and Sweden, suggested including a reference to SC Resolution 1325 on women, peace, and security to address the impact cluster munitions have on gender. Argentina and Canada added that a reference to SC Resolution 1612 on children and armed conflict should be incorporated. Botswana, Canada, the Philippines, and Uganda were in favor of adding a preambular paragraph on non-state actors. The ICRC and CMC
emphasized the importance of including a reference to the effects of cluster munitions both during and after time of use. Other topics such as references to the obstruction cluster munitions cause to social and economic development, stockpile destruction, protection of civilians under IHL, and a reference to the Treaty’s relation with other instruments were also considered. Consultations will continue tomorrow, under the guidance of Ambassador Caroline Millar of Australia.

Article 3 on storage and stockpile destruction was revised a final time and sent to the Plenary as a Presidential Text. The CMC stated that it was concerned that the Article has been weakened with each passing draft, but nevertheless, can still be critical for the implementation of the Treaty, if States adhere to the spirit of the Convention and begin to destroy their stockpiles as soon as possible, rather than waiting for the 8 year plus extension scheme deadlines. The CMC again criticized the Article’s provision for the retention of cluster munitions for training, research, and countermeasures, and called on States to clarify the parameters of the “minimum number absolutely necessary” as allotted under the Treaty for the diplomatic record and warned against intentional abuse.

A revised text of Article 6 on international cooperation and assistance was also discussed. An uncomfortable division between developed and developing countries arose in a debate over a proposal for obligations for countries seeking assistance to release data, grant entry and visas to international personnel involved in assistance programs, and ensure unimpeded import of relevant material and equipment free of financial and administrative burdens. After around 20 countries had concerns that the Article was over-prescriptive or conflicted with domestic laws and matters of national sovereignty, Canada proposed language to specify obligations were to be consistent with national laws. Canada was appointed to conduct bilateral consultations towards finding consensus tomorrow.

On transparency (Article 7), Belgium is working on garnering support for a proposal containing many CMC suggested changes for the article. On a less positive note, France has put forward a proposal to delete requirements to report on foreign stockpiles of cluster munitions kept on a State Parties’ national territory.

Article 8 on compliance was adopted as a Presidency Text and sent to plenary (making a total of 13 finalized articles). The Article does not elaborate additional mechanisms for determining instances of non-compliance, as the CMC had hoped, but does contain a cryptic reference to “other general procedures or specific mechanisms for clarification of compliance, including facts.”
Two exciting lunchtime events were held today. The Ban Advocates, a group of cluster munitions survivors from affected countries around the world, gave a press conference on their impressions of the Dublin Conference. Their determination, dynamism, and remarkable energy has been an invaluable influence throughout this week and the entire Oslo Process. Following the press conference, a panel event on the US and its position on cluster munitions was held. US Senator Patrick Leahy, UK Parliamentarian Lord Dubs, and Nobel Laureate Jody Williams participated.