

LAW campaign

Final talks on cluster munition ban treaty

States should resist weakening treaty in any way

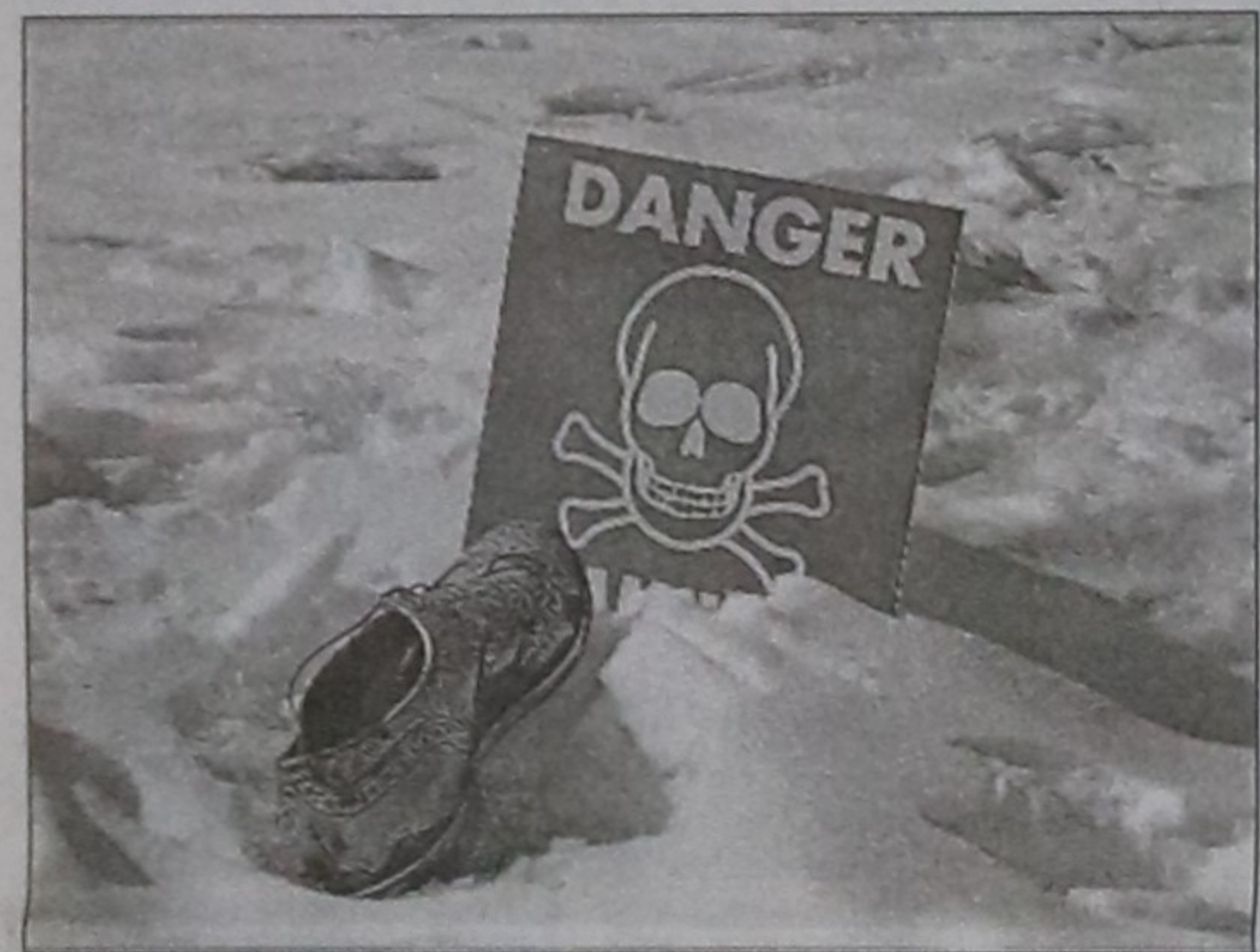
The more than 100 countries that will gather in Dublin, Ireland on May 19 to negotiate a new international treaty aimed at banning cluster munitions should reject attempts to weaken the treaty, Human Rights Watch said today. Participating countries are scheduled to adopt the final text of the treaty on May 30.

Some countries will likely lobby to exempt certain weapons from the treaty, to insert a transition period postponing the ban for several years, or to secure the ability to assist others using cluster munitions in joint military operations. "As it stands, the draft treaty is a strong, comprehensive ban on cluster munitions. Any attempts to water it down should be rejected completely," said Steve Goose, director of the Arms division at Human Rights Watch and co-chair of the international Cluster Munition Coalition.

"Those kinds of revisions will only undermine the intended purpose of the ban, which is to save lives." Cluster munitions are large weapons that open in mid-air and randomly scatter dozens or hundreds of individual submunitions (or "bomblets") over a large area. Countries are agreeing to ban them because they kill and injure too many civilians during combat due to their wide area effect, and continue to pose a threat long after an attack because so many fail to explode on impact but remain dangerous, functioning like antipersonnel mines.

The draft treaty prohibits the use, production, and trade of cluster munitions, and establishes a six-year deadline for the destruction of all existing stocks of the weapon. But it also goes far beyond the ban by requiring the clearance of contaminated areas with a deadline as well as assistance to victims and affected communities.

"The treaty is a powerful mix of disarmament and humanitarian law, with specific requirements for on-the-ground humanitarian actions," said Goose. "It has the potential to save countless lives now and for generations to come." The treaty process was launched in Oslo, Norway in February 2007 when 46 nations agreed to conclude by the end of 2008 an agreement prohibiting cluster munitions "that cause unacceptable harm to civilians." The treaty text was developed during international meetings in Peru,



Austria, and New Zealand, with more than 140 countries participating in at least part of the process.

There will likely be three main areas of contention during the two-week negotiations. First, some states most notably Denmark, France, Germany, Japan, the Netherlands, Sweden, Switzerland, and the United Kingdom are seeking exceptions from the ban for certain weapons in their own arsenals, claiming they are still needed militarily and that they will not cause as much harm as other cluster munitions. Second, some countries are seeking a "transition period" of more than seven years during which they would still be able to use banned cluster munitions, claiming that they cannot give up the weapons until they have developed military alternatives. The strongest calls for a transition period are likely to come from France, Germany, Japan, Switzerland, and the United Kingdom, all of whom acknowledge that the weapons cause unacceptable harm to civilians.

Third, some states are seeking to delete or gut a provision in the treaty that prohibits states parties from assisting others firing cluster munitions during joint military operations. Those most vocal on the "interoperability" issue include Australia, Canada, Japan, and the United Kingdom. The United States has been pressuring many of its allies on this matter behind the scenes.

The negotiating countries include most of the world's users, producers, and stockpilers of cluster munitions. Among the notable no-shows are the United States, China, Russia, India, Pakistan, and Israel, all of which are major producers and stockpilers of cluster munitions. "It is regrettable that the US and a handful of other states continue to insist on their need to use a weapon that the rest of world is banning because it causes unacceptable harm to civilians," said Goose. "But we believe that a strong new treaty will stigmatize cluster munitions to such a degree that it will be difficult for any country to use them without international condemnation."

Once the participating states adopt the final text of the treaty on May 30, no further changes can be made. The treaty will then be opened for signature to all countries even those not present during the negotiations in Oslo, Norway on December 2-3, 2008. After signing the treaty, countries still need to ratify it, usually through legislative approval, before it becomes legally binding.

Source: Human Rights Watch.

LAW lexicon

Custody - Detaining of a person by lawful process or authority to assure his or her appearance to any hearing; the jailing or imprisonment of a person convicted of a crime.

Damages - Money awarded by a court to a person injured by the unlawful actor negligence of another person.

Debtor - One who owes a debt to another; a person filing for relief under the Bankruptcy Code.

Decision - The opinion of the court in concluding a case at law.

Declaratory judgment - A statutory remedy for judicial determination of a controversy where plaintiff is in doubt about his legal rights.

Decree - An order of the court. A final decree is one that fully and finally disposes of the litigation. (See interlocutory.)

Defamation - That which tends to injure a person's reputation. (See libel and slander.)

Default - Failure of the defendant to appear and answer the summons and complaint.

Default judgment - A judgment entered against a party who fails to appear in court or respond to the charges.

Defendant - The person defending or denying a suit.

Defense of property - Affirmative defense in criminal law or tort law where force was used to protect one's property.

Deficient - Incomplete; defective; not sufficient in quantity or force.

Source: Jurist International.

HUMAN RIGHTS advocacy

Role of legal aid clinic

RUBAIYAT RAHMAN

OUR Constitution in its preamble and Fundamental Principles of State Policy speaks about social justice which is the key pillar of the Constitution. But it is regretful that even after 37 years of our sovereignty, a magnitude of people are not conscious about their constitutional and statutory rights. As a result the concepts "equality before law", "equal protection of law" which we comprehend in our learning period appear futile. However legal institutions can help the situation by involving their pupils in legal aid clinic.

Legal aid is for them who cannot afford expenses but seek justice. It is of great help to the poor, helpless and deprived. Millions of downtrodden people are pushed out of the judicial system not only for its expensiveness and delay but because of the nature of the legal and judicial process.

The young lawyer or student, recently graduated from law school, usually realizes that his legal education has equipped him with facts but not the technique of the profession. A lawyer is a social engineer and this deficiency obstructs him from contributing in the social development.

The educational advantages of legal aid clinic work seem manifold. The student meets real clients and works on real cases. He receives instruction in practice and at the same time is forming some conception of office organization and of how to win the confidence of those whom he serves.

In the ordinary law school training, some of the common factors which are neglected are:

(1) the effective examination of clients and witnesses in interview; (2) the correct and efficient assembling of material evidence and determination of its probative value; (3) the processes and practice of draftsmanship; (4) the production of office memorandums, trial briefs, appellate briefs, pleadings, and legal

instruments; (5) advocacy, including trial methods and technique, and the development of a realistic approach presented by the attitude of judges.

To make the most of the opportunities presented by clinical work, the student must have adequate instruction and supervision. With it, he derives untold benefit; without it, there is no essential advantage of clinic work over actual practice, except in the immediate availability of clients. On the other hand, the clients must not become legal guinea pigs. They must derive a substantial benefit from the work that is being done, and should be protected from the mistakes of students.

In legal clinic work the law student has experiences which cut across class lines. He has a chance to see the economic as well as the legal problems of many people. He deals with the educated and the uneducated; with those who are handicapped in society by race or color, and with those whose indigency is accompanied or caused by lack of ability or education, or by human frailty.

The writer is Research Assistant, CCB Foundation.



PHOTO: BRAC.NET

HUMAN RIGHTS analysis

Strong governance needed to protect human rights: US Official

Respect due process and transparency in all cases

In a recent meeting with journalists, visiting US Deputy Assistant Secretary of State for Democracy, Human Rights and Labour, Erica Barks-Ruggles stressed on developing strong institutions of governance to address corruption, protect human rights and promote labour rights.

On May 21, 2008 during an hour-long discussion at the American Club in Gulshan Barks-Ruggles said, "the military had assured her that there would be no military takeover in Bangladesh". They discussed the electoral preparations, processes of voter registration and crosschecking of the draft list and election observations that all lead to holding a transparent election. "We're happy that all the process and preparations are going on and going well," she said.

Over the past several days, she met many government officials and appreciated their efforts on restoring democracy. "The caretaker Government has done much to prepare the nation for the upcoming elections and to implement long overdue reforms," she said.

Addressing Bangladesh as a strong partner, she said that the country has a strong role to play in this region and for its growth democracy and good governance is a must. Strong institutions are necessary to ensure that the reforms being undertaken now will continue after the election. This election will also promote

effective government bodies that respect due process and provide international standards of human rights.

"The US Government supports for a free, transparent and credible parliamentary election before the end of 2008", she added. "We look forward to the process (lifting emergency) and hopefully as soon as possible", added Barks-Ruggles, who is the third high-ranking official from

Washington.

The US official also stressed on the significance of having active free media and role of civil society for transparent and credible election, ensuring the successful transition back to democracy. She also urged that fair and transparent trail of the corrupt political leaders and others should also be ensured at any means.

-Law Desk



U.S. Deputy Assistant Secretary of State for Democracy, Human Rights and Labor Ms. Erica Barks-Ruggles speaks at a press meet. Harvey W. Semovitz, Deputy Director of the American Center, sits beside her.

FOR YOUR information

Intellectual Property Rights

Bangladesh is a State party to the Universal Copyright Convention (since 1975) for the protection of literary, scientific and artistic works, the Paris Convention for the Protection of Industrial Property (since 1991), and the Bern Convention for the Protection of Literary and Artistic Works (since 1999). Bangladesh has also been a member of the WIPO since 1985.

Patents, trademarks and copyrights are governed by the following legislative framework:

- Patents and Designs Act, 1911 and the Patents and Designs Rules, 1933
- Trade Marks Act, 1940 and the Trade Marks Rules, 1963
- Copyright Ordinance, 1962, as amended by the Copyright

try and that are either new or original or both.

Patents are granted for new processes for the manufacture of chemical compounds, pharmaceutical compositions and microorganisms, but product patents are granted for chemical compounds only if they are produced by new processes. Chemical products without specific reference to the process of manufacture, mathematical theory, nuclear fission, inventions that are considered to be against national law or morality and microorganisms, as products only are not protected by patent. Currently, the patentability of pharmaceutical and agricultural chemical products and of plant varieties is not covered.

There is a provision for com-

and not services. The draft trademark legislation proposes to include provisions for the registration of service marks, as well as collective marks.

Applications for registration must be filed with the Trade Mark Registry, under the Ministry of Industries, and after examination they are advertised in the Trade Marks Journal. If they are untested, registration certificates are issued within a period of four months. The registration grants an exclusive right to the proprietor to use the registered marks for 7 years, which may be renewed for further periods of 15 years. Parallel imports are not permitted.

Most of the provisions in the existing Trade Mark Act, 1940 are in conformity with the TRIPS Agreement. Remaining provisions are to be incorporated or amended in a new Trade Mark Act, which is now under consideration, by the Government. The proposed act also includes provisions for the protection of geographical indication, which is not provided for under the 1940 Act.

Copyrights and related rights

Copyright registration is optional. Those who wish to register can file an application with the Copyright Office under the Ministry of Cultural Affairs. The registration certificate is granted within 30 days from the date of application.

The term for copyright protection in published literary, dramatic, musical and artistic works is the life of the author plus 50 years. In the case of films, records, government works, works of international organizations and photographs, the term of 50 years is from the date of publication. In the case of broadcasts, the term of 25 years starts after the first fixation.

Copyright legislation is in the process of being amended. The new draft law includes the extension of copyright protection to computer programs, the recognition of rental rights for computer programs, sound recordings and films, and the recognition of rights of performers, in addition to rights of phonogram producers and broadcasting organizations. Provisions concerning licensing are to be included and the role of performing rights societies, which will be replaced by copyright societies, is expected to be enhanced. Additionally, new provisions on compulsory licensing of unpublished works will also be included.

Source: United Nations and Social Commission for Asia and the Pacific.

LAW week

Hasina's trial starts at special court

A special court started trial of the barge-mounted power plant graft case against former premier Sheikh Hasina and seven others with deposition of plaintiff Anti Corruption Commission (ACC) Deputy Director SM Sabbir Hasan.

As Hasina's counsels started cross-examining the plaintiff, Judge Firoz Alam of the Special Court-1 set up on the Jatiya Sangsad Bhaban premises adjourned the proceedings at 12:25pm and fixed Thursday (today) morning for further proceedings. Earlier, Sabbir submitted his statement and identified Hasina and former power secretary Dr Toufik-e-Elahi Chowdhury as the accused after they were hauled before the court at 10:10am.

Hasina's lawyers advocates Yusuf Hossain Humayun, Shahara Khatun and Kamrul Islam later told newspersons the plaintiff's statement was "false and fabricated" and there were no specific evidence, documents or papers supporting the allegations. -The Daily Star, May 22, 2008.

Nizami behind bars

Jamaat-e-Islami Ameer Motiur Rahman Nizami was sent to jail after being produced before the Chief Metropolitan Magistrate's (CMM) Court of Dhaka in connection with the Gato graft case.

Police produced Nizami before the court of Metropolitan Magistrate Mohammad Waliul Islam under tight security, where his lawyers submitted three petitions. The petitions included a bail petition, another for providing him with first class division and the other for granting him proper treatment in jail custody. Meanwhile two murder cases against Nizami, filed for killing freedom fighters and general public during the Liberation War in 1971 with Keraniganj and Pallabi police are currently under investigation. -The Daily Star, May 20, 2008.

Grafts reign supreme in import trade

The system for pre-shipment inspection (PSI) of imports has become riddled with corruption, and plagued by tax dodging and money laundering, depriving the country of huge amounts of revenue, reveals an investigation by The Daily Star.

Behind the large scale corruption is a nexus of some businessmen, politicians, taxmen and PSI staff who have plundered government revenues since the system was made mandatory in 2000. The exact amount the scams have cost the country is difficult to know, but businessmen and revenue experts believe the sum is well in excess of 1,000 crore taka a year. -The Daily Star, May 20, 2008.

Power Plant Graft Charge

A special court framed charges indicting detained former premier Sheikh Hasina and seven others in the Tk 3 crore graft case in connection with setting up 100MW barge-mounted power plant in Khulna. Judge Firoz Alam of the Special Court-1 set up on Jatiya Sangsad Bhaban premises also fixed May 21 for starting deposition of witnesses in the case. -The Daily Star, May 19, 2008.

Stranded Biharis now Bangladesh citizens

The High Court (HC) ruled that about three lakh Biharis living in

different parts of the country are citizens of Bangladesh. Responding to a writ petition filed by 11 Urdu-speaking people, an HC bench comprising Justices Mohammad Abdur Rashid and Ashfaqul Islam also directed the Election Commission (EC) to include the petitioners' names in the voter list.

According to a publication of Refugee and Migratory Movements Research Unit of Dhaka University, these Biharis first moved to Pakistan from India in 1947. Then 74,000 of them migrated to the former East Pakistan and the migration continued up to 1952. Around 4.26 lakh Biharis left Bangladesh during and after the Liberation War in 1971 while around 4 lakh opted to stay on. Following an agreement in 1974, Pakistan took back over 1 lakh of them. The number of Biharis repatriated so far stands at 1.61 lakh.

Later, Pakistan stopped accepting applications from those willing to return and terminated the repatriation process. -The Daily Star, May 19, 2008.

Khaleda files petition for quashing Niko graft case

Detained former prime minister Khaleda Zia filed a petition with the High Court (HC) for quashing the proceedings against her in the Niko graft case filed by the Anti-corruption Commission (ACC).

On December 9 last year, the ACC filed the case with Tejaan Police Station against the BNP chairperson and several others on charge of abusing power in awarding a gas exploration and extraction deal to Canadian company Niko. On May 5, the commission pressed charges against Khaleda Zia and 10 others in the case. Former law minister Moudud Ahmed and former state minister for energy AKM Mosharraf Hossain are among the other charge-sheeted accused. Sources said Barrister Nowshad Zamir may move the petition on behalf of Khaleda Zia. -The Daily Star, May 19, 2008.

Gato Graft Case, Arrest warrants reach police stations

Arrest warrants against the 12 'absconding' accused in the Gato graft case reached the police stations, said police sources. Officers-in-charge however declined to say anything about the matter.

A Dhaka court issued the warrants against the 12 including former BNP ministers M Saifur Rahman, Abdul Mannan Bhuiyan, MK Anwar, M Shamsul Islam and Amir Khasru Mahmud Chowdhury, and Jamaat Ameer Motiur Rahman Nizami. The other fugitive accused are former shipping secretary Zulfikar Haider Chowdhury, Gato directors AKM Musa Kajol, Ehsan Yusuf, Shahjahan M Hasib, former member of Chittagong Port Authority (CPA) AK Rashid Uddin Ahmed and former shipping minister and late BNP leader Col (ret) Akbar Hossain's wife Jahanara Ansar. Saifur, who is also the top leader of the pro-reform BNP faction, is in Singapore now for treatment. Amir Khasru left the country immediately after the army-led joint forces launched the crackdown on corruption suspects. -The Daily Star, May 18, 2008.

Corresponding with the Law Desk

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