



**CMC Statement to the Sofia Regional Conference on the Convention on Cluster Munitions
Thursday 18 September 2008
Delivered by Thomas Nash, CMC Coordinator**

Thank you Dr. Petev,

Just over a year ago I was in another hotel similar to this in Belgrade, addressing a group of people who were more committed to banning cluster munitions than anyone in the world. At that meeting, the Belgrade Conference of States Affected by Cluster Munitions, something got a hold of the Oslo Process. This diplomatic negotiation became infused with a sense of humanity, a sense of urgency and a sense of possibility. This spirit drove us forward all the way to Dublin and it is because of so many of you in this room and your governments and institutions that we came out of Dublin with a treaty that is so strong and that will make such a difference. We have heard in this session from three speakers from outside the region but this convention exists because of you and belongs to all of us. Before I go on I would like to acknowledge that we are speaking in English, to thank those for whom English is not your first language and to express my admiration. We should not take this for granted.

On behalf of the members of the CMC in over 80 countries, I would like to warmly congratulate Bulgaria for hosting this conference. In preparing for the meeting we have been pleased to continue the close partnership between states, civil society and international organisations that has been a key hallmark of this process. It has been a great honour to work with Norway and the other core group countries, with UNDP and the other UN agencies and with the ICRC and all of the Red Cross and Red Crescent movement. The CMC has come to Sofia with 26 campaigners from 15 countries and 7 in the region to promote signature of the Convention in Oslo on 3 December and we urge all states here to use this opportunity to announce your intention to sign. We are all looking forward to having in depth discussions with you over the next two days. You may be able to recognise many of us by our orange badges carrying our main message: sign the treaty this December.

Much has already been said about the importance of the CCM and how it will build a stigma against these weapons but I would like to talk about some of the standard setting aspects of the CCM. As others have noted, we believe the CCM will become the standard by which all states are judged in what they do and in what they do not do. We believe the already powerful stigma against cluster munitions will become so strong that it will eventually prevent their use entirely. As Ambassador O'Ceallaigh pointed out, both Russia and Georgia used the weapon in their recent conflict. But as has been noted, the response from the media, the public and governments was widespread condemnation. This, as well as the response by Russia and Georgia themselves, denying use and recognising the need to sign up to a ban, only served to reinforce the stigma against the weapon. We are also convinced that the treaty's strong humanitarian obligations will become the benchmark for all international action to support affected communities through clearance and assistance to survivors.

Amongst the many important elements of the treaty I will touch on the categorical prohibition; the definition and its effects based approach; the precautionary approach of the negotiations and the powerful victim assistance standard. There may be some elements of repetition in my presentation but I think it is worthwhile being absolutely clear about these important elements that set new standards internationally. So in this regard you'll be pleased to hear I won't be talking about transition periods or interoperability.

The CCM bans cluster munitions as a category of weapons. That has only happened 6 times previously in history (exploding (or dumdum) bullets; weapons that leave undetectable fragments in the human body; biological weapons; chemical weapons; blinding lasers; and anti-personnel landmines.) Indeed the CCM is even stronger than the mine ban treaty since it prohibits the entire class of weapons, not just

those designed for an anti-personnel purpose. As the Norwegian Foreign Minister noted in his invitation to Oslo, this is “the first international treaty to ban an entire category of conventional weapons.” This is hugely important for the stigmatisation of cluster munitions. If states had decided to allow some cluster munitions or only regulate certain types, then those countries outside the new treaty would look in and say: “why should I feel influenced by a weak treaty that is full of loopholes?” As it stands there is one clear standard, one clear prohibition and one clear moral imperative that all states must follow. The CMC calls on all states to sign up to this standard in Oslo and we expect you to work hard against any efforts to re-legitimise cluster munitions either through national declarations or through the possible products of discussions at the Convention on Certain Conventional Weapons in Geneva which are designed to allow future use.

The definition of a cluster munition in the CCM is also extremely comprehensive and groundbreaking in the way it focuses on the effects of the weapon. The simple choice would have been to define a cluster munition as anything with a submunition as Dr. Nystuen pointed out. But this would have been a failure to recognise and focus on the precise effects of the weapon, which are after all the reason we are banning them. The CCM recognises that cluster munitions are unacceptable for two main reasons. They are indiscriminate during attacks because they scatter many submunitions over a wide area. They are indiscriminate after attacks because they leave many unexploded duds that kill and maim long after a conflict. This is recognised in the preamble but it is also explicitly recognised in the definition.

I want to explain this. In order to be precise the definition of a cluster munition had to recognise that certain submunitions exist and might exist in the future that do not act like cluster munitions. These submunitions had to be excluded from the definition so that the prohibition would be clear and comprehensive. Excluding these submunitions made the CCM stronger, not weaker, because by describing the submunitions that were allowed – in article 2.2.c – the definition very precisely captures all of the key problems posed by cluster munitions.

Each of these problems is safeguarded against by the five cumulative criteria in the definition. The limit to 10 submunitions counteracts their wide area effect. The requirement for a point target capacity counteracts their inaccuracy. The electronic self-destruct mechanism counteracts their risk of UXO. The electronic self-deactivation mechanism counteracts their long-term dangers from UXO. Finally the minimum weight limit counteracts their small size and attractiveness to children. Cluster munitions are rightly defined as all weapons with submunitions that have any, any single one, of these five problems. Weapons with submunitions that do not have any of these problems are not cluster munitions. So it is a very impressive humanitarian definition banning an entire category of conventional weapons on the basis of their wide area effect and excessive risk of UXO.

During the Oslo Process a precautionary approach prevailed in the crafting of the prohibition. While some states sought broad exceptions for their weapons based on dubious unproven technical fixes such as the failure rate approach whose flaws Norway has pointed out today. Others argued that the burden of proof rested with those states seeking exceptions to prove they were justified. We said: “if you want to keep these weapons then prove to us that they do not cause unacceptable harm to civilians. Throughout the process none of these exceptions could be justified and so they were rejected and a comprehensive prohibition was adopted by all states present in Dublin. This is very significant. By starting from a position of maximum protection to civilians and by maintaining a critical eye on all calls for exceptions, we were able to come out with a treaty that will offer the ultimate protection to civilians in the future. We believe that this precautionary approach should be the model for future weapons prohibition efforts and indeed for all international efforts to protect civilians and promote humanitarian imperatives.

Lastly but equally importantly the victim assistance standard is a monumental triumph for the advocates, many of whom are here, that pushed so hard for it. It is a human rights based standard and is the first application in international law of the recently adopted Convention on the Rights of Persons with Disabilities. It is the clearest and strongest legal obligation yet for victim assistance in an arms control treaty. Its broad definition of a victim ensures that all those affected have the right to receive assistance, not just those directly injured but also their families and communities. The strict requirement to gather data on survivors of cluster munitions and to report on actions taken to improve their lives means that we will be able to measure the gains it must provide, and we will be working closely with states to ensure these obligations is fully implemented. Very importantly this article of the treaty was largely shaped by

survivors themselves who worked with the Friend of the Chair, who advocated strongly throughout the process and who even wrote some of the language of the provisions. That involvement of those directly affected is a key reason why this article is so strong and as Ambassador O'Ceallaigh noted, this article establishes a new norm of international law.

These groundbreaking aspects of the CCM are just some of the elements that we believe will now become the benchmarks for international action. The categorical prohibition of a weapon sends the strongest possible signal that any derogation from this standard will be strongly condemned. The effects based definition ensures that the prohibition is future proofed and offers a basis to argue against the use of any weapons that have an indiscriminate area effect or pose excessive risks of UXO. The precautionary approach builds the case for future negotiations to shift the burden of proof to those promoting a weaker standard. The victim assistance standard stands as a shining light in the convention. It will pull all other victim assistance efforts up to meet it and reinforce the importance of having beneficiaries lead the way on policy.

I would like to refer briefly to the CMC's call to governments and our briefing paper on the CCM. Our key messages are:

- States should sign the Convention on Cluster Munitions at the Oslo Signing Conference on 3 December in Oslo, Norway.
- States should take national steps to begin to implement the Convention, even before it is signed, including:
 - Developing national legislation to ratify the Convention swiftly enabling quick entry into force
 - Starting the process of stockpile destruction and making clear what types and quantities of cluster munitions your country has in its stockpiles, if any.
 - Establishing a national action plan to implement victim assistance, or ensure that existing ones cover and include victims of cluster munitions, involving survivors of cluster munitions in this process, and assign a focal person to coordinate this work.
 - Announcing progress made on clearance efforts and work and the remaining time it will take to complete clearance.
- State should not endorse, adopt or subsequently ratify a lower standard on cluster munitions in the CCW

As noted already, the CMC also welcomes announcements confirming that states will sign the Convention at the Oslo Conference on 3 December. The CMC call and the CMC briefing paper on the CCM are both available outside the room.

We have been inspired by this convention and we hope you will be too. We look forward to working with you over the next two days and we count on seeing you all in Oslo.

Thank you.