

**Intersessional Meeting of the Convention on Cluster Munitions ,
Geneva, 27 June - 30 June 2011**

**ICRC Statement on National Implementation of the Convention
(Article 9 of the Convention)**

Wednesday 29 June 2011

Thank you Mr Co-Chair

In accordance with the Vientiane Action Plan, States Parties agreed that those which have not already done so will, as a matter of urgency, develop and adopt comprehensive legislative, administrative or other implementing measures, as appropriate, in accordance with Article 9 in order to implement all obligations under the Convention. The Convention is still at an early stage, but it is now that we can most easily ensure that States are complying with their obligations in this regard and are adopting comprehensive legislative and other measures to ensure full implementation of this important convention.

The number of States that have so far adopted legislation - or that have stated, either through Article 7 reports or elsewhere, that they consider their existing legislation to be sufficient, stands at 18, with 11 States having specific cluster munitions law.

A further 7 States, one of which submitted a voluntary report, have reported that they are in the process of adopting legislation.

A further 33 States, have not reported anything on implementation, 6 of which have filed Article 7 reports.

The ICRC welcomes the proposals and actions by Belgium to improve the number and quality of Article 7 reporting as this will help allow more accurate reporting of States' legislative implementing obligations.

In order to ensure full respect for the obligations under this Article of the Convention, it is crucial that legislation be adopted by **each and every State Party**, regardless of whether or not they are affected by or have stockpiles of cluster munitions.

States Parties are obliged to ensure that domestic law is capable of providing penal sanctions for activity prohibited by the Convention. Without adequate domestic legislation, States are not in a position to prosecute offenders for violations of the Convention. The rationale for this requirement is to ensure that the norm prohibiting cluster munitions is enforceable everywhere.

In addition to the measures on repression of violations, national legislation should also include exemptions to offences (if required), the gathering of information and the operationalisation of the compliance mechanisms envisaged by Article 8 of the Convention. States should also ensure they are in a position to facilitate the collection and destruction of cluster munitions, the marking of contaminated areas, and provide assistance to victims.

We urge those States that have reported being in the process of adopting legislation to finalise their work and those that have not initiated a legislative process to do so as a priority.

The ICRC continues to provide assistance for the development of national implementing legislation to States Parties. Legal advisers of the ICRC's Advisory Service both here in Geneva and in 10 of our delegations around the world, stand ready to assist more States in developing national legislation. The ICRC has developed a number of tools to assist States in the development of their national implementing legislation, including a model law.

A table produced by the ICRC looks at the state of legal implementation of States Parties and this, along with a more detailed table with information on individual States, is available outside the room. These are based on reports by States and the ICRC database on national implementation contains existing national legislation. The ICRC welcomes any further information, which States may have to update and complete our information.

As a final point - of growing concern to the ICRC and we hope of concern to all States Parties, is the widening ambit of interoperability clauses in national law. As indicated in the legal commentary on the Convention on Cluster Munitions published in 2010, the underlying concerns behind Article 21 relate to limiting the potential for criminal liability of a State Party's nationals and the potential for international responsibility of a State Party itself for assisting activities performed by a State not party.¹ In the view of the ICRC, the article was not meant to ensure that military cooperation and operations were unaffected by the Convention and that acts prohibited by the treaty would occur in territory under the jurisdiction and control of a State Party.

While Article 21 permits military cooperation and operations between States Parties and States not party, it is equally important to note that the article also seeks to further the goals of the Convention. Paragraphs 1 and 2 of Article 21 require each State Party to promote the norms of the Convention, encourage States not party to adhere to the instrument and to use its best efforts to discourage such States from using cluster munitions.

In the view of the ICRC these two aspects of Article 21 (furthering the goals of the treaty and permitting continued military cooperation and operations with States not party) must be read together and taken into account when developing national implementing legislation and other aspects of national implementation. Excessively broad exceptions or defences in national legislation created under paragraphs 3 and 4 of Article 21 would conflict with and undermine the purpose of paragraphs 1 and 2 and may be, in some circumstances, interpreted as constituting encouragement to use cluster munitions. The ICRC believes that any exceptions or defences to the Convention's prohibitions based on paragraphs 3 and 4 of Article 21, must be construed narrowly so as not to contravene the Convention or undermine the objective of Article 21 and the objectives of the Convention itself.

¹ The Convention on Cluster Munitions, A Commentary, G Nystuen and S. Maslen eds., Oxford Univ. Press 2010, p. 543.