

Convention on Cluster Munitions

First Preparatory Meeting for the Second Review Conference

Geneva, 29 June 2020

ICRC statement under Item 5 (b) of the provisional agenda

Exchange of views on the preparation of documents

for the Second Review Conference Lausanne Action Plan

The ICRC joins others in congratulating Switzerland – and congratulating you and your team -- for all the work that has gone into preparing the Review Conference and the documents to record progress made since the last Review Conference, current implementation challenges facing the Convention, and the actionable commitments of States Parties for the next five years. We also thank members of the Coordination Committee, the ISU and all those involved for these efforts. The ICRC is honoured to have been able to contribute to these efforts.

The ICRC welcomes the Working Paper submitted by the Presidency on Elements for the Lausanne Action Plan (LAP), which identifies and summarizes key elements for the drafting of the LAP with a view to providing appropriate and practical means to address current implementation challenges and provide guidance to overcome these challenges in the next five years, to achieve the Convention's promise of a cluster munition-free world.

I. Overall Considerations

In our view, building on the Dubrovnik Action Plan, the LAP should be forward-looking, concise, practical, actionable and measurable. In particular, it should:

- Include cross-cutting actions and indicators in a dedicated section addressing, inter alia, strengthening and ensuring the respect of norms (based on IHL and IHRL), ensuring national ownership and resource sustainability, highlighting the linkage with sustainable development goals, and mainstreaming gender and diversity considerations. Where appropriate, the cross-cutting actions should be mainstreamed by inclusion in individual sections of the plan;
- Introduce SMART indicators to measure progress in implementation, with a commitment to establish the baseline in the first year of its adoption. In this respect, the LAP could draw on the example of the Oslo Action Plan of the Anti-Personnel Mine Ban Convention

where possible, while making sure the indicators in the LAP are specific to the nature of cluster munition. For the ease of reporting, the indicators in the LAP should be concise and practical;

- Split the section on “clearance and risk education” in the Dubrovnik Action Plan in two different segments, with one on “survey and clearance” and another on “risk education”, in recognition that risk education is a distinct activity, and has often been neglected; and
- Reinforce actions in relation to strengthening compliance with the Convention, by way of replacing the section on “national implementation measures” in the Dubrovnik Action Plan with a section on “measures to strengthening compliance” which comprises actions to address key compliance issues including national implementation measures in accordance with Article 9 of the Convention. In this respect, the LAP could draw on the example of the Oslo Action Plan to ensure consistency;

In light of the current implementation challenges facing Convention, and with a view to rekindling political attention and resources to the Convention, further thoughts should be afforded to strengthening the Convention’s machinery, whether by adding a separate section in the LAP or through adopting a separate decision at the Review Conference.

II. Content of the Lausanne Action Plan

No specific comments.

III. Universalization of the Convention and its Norms

Universal adherence is critical for the Convention on Cluster Munitions to be fully effective. To this end, the LAP should include commitment to collective action to increase the pace of adherence, including further reminding all States Parties of their obligation under Article 21 (1) to promote the universalization of the Convention.

Building on the existing good practice, such as regional approaches and military-to-military dialogue, various ways may be considered in this regard, for example, setting up a working group or similar mechanism to coordinate and follow up on efforts of States Parties and other stakeholders, and considering making use of high-profile figures appointed as “ambassadors” of universalization. Resources and tools, including the ICRC ratification kit, should be made available for States with capacity shortfalls to join the Convention.

Efforts should be redoubled in promoting the universal observance of the Convention’s norms, in light of reported uses of cluster munitions in several contexts by States not party in recent

years. It is critical that the LAP condemns in unequivocal terms any use of cluster munitions by any actor in any armed conflict.

Drawing on the obligation under Article 21(2) of each State Party to promote the norms of the Convention and make its best efforts to discourage States not party from using cluster munitions, the LAP should appeal to all States not party to immediately cease the use and transfer of cluster munitions outside of their own territory due to their well-known and unacceptable humanitarian impacts, and to adopt and announce moratoria on any future transfer of cluster munitions outside of their national territories.

States Parties may also consider mandating the Convention machinery in particular the Presidency to engage with States not party and promote the above objectives through concerted action. Actions taken and progress made will be reported to future meetings of the Convention.

As was addressed in the ICRC's previous statement, it is our view that measures on compliance should be addressed in a separate section combining with national implementation measures.

IV. Stockpile Destruction

Article 3 of the Convention commits each State Party to destroy or ensure the destruction of stockpiled cluster munitions as soon as possible but no later than eight years after the Convention entered into force for that State Party. A State Party with outstanding stockpile destruction obligation may request extension in order to complete the destruction of its stockpiled cluster munitions. However, additional extension may only be requested "in exceptional circumstances".

States Parties have begun to request extensions of their stockpile destruction in 2019. The ICRC is concerned that extensions have been requested in cases where greater progress since entry into force and fulfilment of Convention deadlines would have been expected.

Building on the *Guidelines for CCM Article 3 extension requests* and the *Methodology for requests of deadline extensions under Articles 3 and 4 of the Convention on Cluster Munitions* adopted respectively at the 8MSP and 9MSP, the LAP should stress on the essential information to be provided in an extension request, including, among others, a detailed, multi-year and concrete workplan. The LAP should also commit concerned States Parties to report on implementation progress on a yearly basis and provide detailed work plans for the remainder of the extension period.

States that have been granted an extension on their stockpile destruction deadline should maintain discussions with Coordinators on Stockpile Destruction and Retention as well as the Analysis Group on Articles 3 Extensions, and submit an annual workplan and detailed progress report on an annual basis. The mandate of the Analysis Group on Article 3 Extensions should be revised to include monitoring of and follow-up on the implementation of granted extensions.

With regard to the retention and acquisition of cluster munitions and explosive sub-munitions for permitted purposes under Article 3(6) of the Convention State Parties, we take note that 13 States Parties have reported possession of retained or acquired cluster munitions and explosive sub-munitions. The LAP should introduce measures, such as annually reviewing the number of retained or acquired cluster munitions and explosive sub-munitions, and annually reporting on progress made in destroying those exceeding the minimum number absolutely necessary for permitted purposes.

V. Survey and Clearance

While acknowledging progress that has been made in several States Parties affected by cluster munition remnants, the ICRC is concerned with the slow pace in clearance in some contexts.

States Parties started to review extension requests for clearance in 2019. Building on the *Guidelines for CCM Article 4 extension requests* and the *Methodology for requests of deadline extensions under Articles 3 and 4 of the Convention on Cluster Munitions* adopted respectively at the 8MSP and 9MSP, the LAP should stress on the essential information to be provided in an extension request, including, among others, a detailed, multi-year and concrete workplan. The LAP should guide States Parties to take appropriate steps to improve the effectiveness and efficiency of survey and clearance, including by applying best land release practices in line with IMAS.

The LAP should also commit any State Party requesting for extension of its clearance deadline to submitting a detailed, multi-year and context appropriate “risk education” plan, in view of minimizing risks posed by cluster munition remnants pending clearance.

With a view to avoiding any delay in implementation or repeated extension requests, concerned States Parties should report on progress on a yearly basis, as well as update its annual workplan. Concerned States Parties should be engaged with early-on at all levels. To this end, mandates of the machinery, in particular Coordinators on Clearance and Risk Reduction Education and Analysis Groups for Article 4 Extensions should be updated to include follow-up on and monitoring of the implementation of extension requests.

VI. Risk Reduction Education

As was addressed in the ICRC’s previous statement regarding “overall considerations” for the LAP, we welcome the subdivision of the section entitled “Clearance and Risk Reduction Education” in the Dubrovnik Action Plan into two separate sections in the LAP as well as in future reporting and implementation discussions, entitled respectively “survey and clearance” and “risk education”.

The phrase “risk reduction education” is no longer a reflection of sector good practice or implementation standards and guidelines, therefore should be replaced by “explosive ordnance risk education” (EORE) or “risk education”.

In recognition of the critical importance of protecting civilians from the risks posed by cluster munition remnants pending their clearance, the LAP should strengthen commitments by integrating detailed, multi-year and context appropriate “risk education” programs, in accordance with the IMAS, as well as guidance to establish a baseline against which to assess progress.

The LAP should commit any State Party requesting for extension of its clearance deadline to submitting a detailed, multi-year and context appropriate “risk education” plan, in view of minimizing risks posed by cluster munition remnants pending clearance. The ICRC stands ready to support States Parties to implement related action items.

VII. Victim Assistance

Victim assistance remains a key pillar of the Convention. The LAP should commit States Parties to assisting mine victims in accordance with the humanitarian principles of humanity and impartiality, and to ensuring the full, equal and effective participation of mine victims in society, based on respect for human rights principles of inherent dignity, equality and non-discrimination, as well as principles of diversity, accountability and transparency.

Synergies should be created with other international norms including the Convention on the Rights of Persons with Disabilities, based on the relevant humanitarian and human rights principles. Reference should also be made to the new IMAS on victim assistance which was adopted earlier this year.

For the purposes of better planning, coordinating and monitoring implementation at national level, national ownership and capacity should be strengthened by designating national focal points and developing national victim assistance frameworks.

In addition, in order to address the challenge of the lack of qualified professionals and structures to provide physical rehabilitation services to survivors in contexts with significant numbers of cluster munition survivors, the LAP should include actions and associated indicators to commit States Parties to increase the availability of multidisciplinary, skilled and qualified rehabilitation workforce, and resources should be guaranteed to provide training and official recognition to qualified physical rehabilitation professionals.

VIII. International Cooperation and Assistance

In light of the resource constraints experienced by the Convention in recent years and the potential impact of the COVID-19 pandemic in the years following the Review Conference, the

LAP should include measures to make the Convention more resilient to resource challenges. These measures aim to ensure sustained resource mobilization by donor States Parties to allow swift and effective implementation, with a view to best supporting individual States Parties to fulfil their core obligations while increasing their national ownership. Donor coordination should be strengthened, for example through in-country coordination platforms and mechanisms. In this respect, the LAP should take stock of the experience of the Country Coalition initiative and encourage more States Parties to join it.

The LAP should contain commitments to ensure sustained financial and other resources for the implementation support and smooth operation of the Convention. It is important to ensure that resources are allocated to the implementation of all core obligations of the CCM, including but not limited to clearance, victim assistance and risk education.

IX. On Transparency Measures

No specific comments.

X. National Implementation Measures

As was addressed in the ICRC's previous statement regarding "overall considerations" for the LAP, in light of the current implementation challenges facing the Convention and with a view to ensuring continued robust compliance with the Convention obligations, the LAP should reinforce actions in relation to strengthening compliance with the Convention, by way of replacing the section on "national implementation measures" in the Dubrovnik Action Plan with a section on "measures to strengthening compliance" which comprises actions to address key compliance issues including national implementation measures in accordance with Article 9 of the Convention.

The LAP should reflect discussions covering full respect for all core obligations under the Convention such as Articles 1, 3, 4 and 5 – which is essential to achieve the object and purpose of the Convention, as well as obligations under Articles 7 and 9 to facilitate compliance with the above-mentioned core obligations.

Notably, with a view to avoiding any delay in implementation or repeated extension requests under Articles 3 and 4, States Parties should consider including in the LAP the establishment of measures or a mechanism, such as an "early-warning mechanism" to deal with situations of States Parties with outstanding obligations of stockpile destruction and/or clearance that do not report progress over a prolonged period of time.(for example two consecutive years), in order to engage with these States Parties early-on at all levels.

There remains over 40% of States Parties that have not adopted domestic measures to implement fully the Convention, as required by Article 9. Mindful of the link between national

legislation and compliance concerns, the LAP should contain a time-bound commitment for the adoption of national implementation measures, based on existing tools and technical support. In this respect, the ICRC has developed model law and checklist, and avails itself for assistance in the drafting and review of national implementation legislation.

XI. Possible additional section on general implementation and the machinery

As was addressed in the ICRC's previous statement regarding "overall considerations" for the LAP, in light of the current implementation challenges facing Convention, and with a view to rekindling political attention and resources to the Convention, further thoughts should be afforded to strengthening the Convention's machinery, whether by adding a separate section in the LAP or through adopting a separate decision at the Review Conference.

These issues may include but are not limited to: strengthening the role of the Presidency including in financial aspects, updating and clarifying the respective mandates of the Coordination Committee, the thematic coordinators and the Analysis Groups on Articles 3 and 4 extensions, increasing communication between the Convention's machinery and States Parties with outstanding obligations, and exploring new ways (such as informal working group or similar mechanism, appointing Convention "ambassadors" or high-level envoys) to promote the Convention's universalization. This may also include identifying areas in which the Convention's implementation and monitoring mechanisms can be made more efficient, including through synergies with similar conventions, by new ways of working.

Thank you.