

Convention on Cluster Munitions
First Preparatory Meeting for the Second Review Conference
Geneva, 29 June 2020
Statement of the International Committee of the Red Cross (ICRC)
under Item 5 (b) of the provisional agenda
Exchange of views on the preparation of documents
for the Second Review Conference Lausanne Action Plan

Thank you, Mr. President.

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 very good draft documents. We also thank the members of the Coordination Committee, the ISU and all those involved. 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)**. We appreciate that many of the ICRC's written comments on your first outline of LAP were taken on board, and we thank you for the opportunity to share further comments here.

Overall Considerations and cross-cutting elements (sections I and II)

The ICRC fully agrees with the approach highlighted in the Working Paper, notably to retain the overall structure of the Dubrovnik Action Plan and to build on it.

We agree notably with the formulation of "SMART" actions and the intent to include indicators to measure progress in implementation, with a commitment to establish the baseline in the first year after the LAP's adoption. In this respect, the LAP could draw on what was done in the Oslo Action Plan of the Anti-Personnel Mine Ban Convention (APMBC) 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.

We are pleased to see that the Working Paper reflects elements proposed during the consultation process, in particular:

- Regarding the suggestion to include a section on cross-cutting guiding elements, the ICRC is of the view that it should address strengthening and ensuring the respect for existing norms based on international humanitarian law (IHL) and international human

rights law (IHRL), ensuring national ownership and resource sustainability, highlighting the linkage with sustainable development goals, and mainstreaming gender and diversity considerations. Where appropriate, these cross-cutting actions should be mainstreamed by inclusion in individual sections of the plan;

- We agree with splitting 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”. This is important in recognition that risk education is a distinct activity, and has often been neglected;
- We support the goal of actions to strengthen compliance with the Convention. In our view, this should not be done in the universalization section but either combining with a national implementation measures section or in a stand-alone section; and
- We agree with the addition of a section on the CCM architecture. In this regard, in light of current implementation challenges facing the Convention, there may be a need to strengthen its machinery, whether through a separate section in the LAP or by adopting a separate decision at the Review Conference.

Finally, Mr President, we are very pleased to see reference to synergies with the action plans of related treaties, in particular the APMBC. Consideration of synergies with the APMBC should also include synergies on ways of working, with a view to streamlining resources, even if in an informal manner. We also agree with Belgium that synergies with the Convention on the Rights of Persons with Disabilities (CRPD) should be considered.

Universalization of the Convention and its Norms (section III)

ICRC welcomes that universal adherence is identified as a priority for the Review Conference and in Part III of your Working Paper. Universalization is of course critical for achieving a world free of cluster munitions, which is the fundamental humanitarian aim of this Convention. The aim is to universalize the norm of IHL banning cluster munitions.

With regard to subsection a on promoting formal adherence to the Convention by non-parties, the LAP’s commitment to collective action to increase the pace of adherence should refer to States Parties’ obligation under Article 21(1) to promote the universalization of the Convention.

- The ICRC welcomes the proposals made by Germany, Japan, the Philippines and others for regional approaches to promoting universal adherence.

We are pleased that informal mechanisms are being set up, such as groups of States working together, and like others we urge States Parties to consider making use of “Convention champions” and high-profile figures appointed as “ambassadors” of universalization.

We agree with the Working Paper that future actions to promote universal adherence should build on the existing good practice, such as regional approaches and military-to-military dialogue (dialogue of militaries of States Parties with militaries of non-party States). The LAP could also refer to resources and tools to be made available for States with capacity shortfalls to join the Convention.

With regard to subsection b of this section on promoting the universal observance of the Convention’s norms, we strongly believe that efforts should be redoubled in this regard, 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, we encourage States Parties to take a more ambitious approach by elaborating the actions as follows:

- 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 universal observance of the Convention’s norms and to report on actions taken and progress made in Convention meetings.

As mentioned in the ICRC’s previous statement, it is our view that **subsection c** on compliance should be addressed in a separate stand-alone section on compliance or combined with national implementation measures.

Stockpile Destruction (section IV)

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 may request extension in order to complete the destruction of its stockpiled cluster munitions. However, any additional extension may only be requested “in exceptional circumstances”.

We appreciate that many elements of the ICRC’s initial inputs to the LAP have already been included in the Working paper, but would like to emphasize the following key points:

States Parties have begun to request extensions of their stockpile destruction in 2019. 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.

We also agree with the Working Paper that the LAP will 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. To this end, 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. We support the proposal made by the Netherlands that the mandate of the Analysis Group on Article 3 Extensions will be revised to include monitoring of and follow-up on the implementation of granted extensions.

Lastly, we take note that 13 States Parties have reported possession of retained or acquired cluster munitions and explosive sub-munitions for permitted purposes under Article 3(6) of the Convention. We therefore support the inclusion in the LAP of 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.

Survey and Clearance (section V)

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

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, we invite States Parties to consider updating the mandates of the machinery, in particular Coordinators on Clearance and Risk Reduction Education and the Analysis Group for Article 4 Extensions to include follow-up on and monitor of the implementation of granted extensions.

We also support that the LAP will include measures to build capacity of affected States and 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.

Risk Reduction Education (section VI)

As was addressed in the ICRC's previous statement this morning, 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".

We also agree that the phrase "risk reduction education" contained in the Dubrovnik Action Plan is replaced by "explosive ordinance risk education" (EORE) or "risk education", as "risk reduction education" is no longer a reflection of sector good practice or implementation standards and guidelines.

In recognition of the critical importance of protecting civilians from the risks posed by cluster munition remnants pending their clearance, we are pleased to see that the Working Paper suggests to strengthen commitments by integrating in the LAP 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.

For the same considerations, the LAP in this section could be further enriched by having an action to commit any State Party requesting for extension of its clearance deadline to submitting a detailed, multi-year and context appropriate "risk education" plan. The ICRC, together with the International Red Cross and Red Crescent Movement, stands ready to support States Parties to implement related action items.

Victim Assistance (section VII)

Victim assistance remains a key pillar of the Convention. Like Italy, we fully support that the LAP will commit States Parties to assisting cluster munition victims in accordance with the

humanitarian principles of humanity and impartiality, and to ensuring the full, equal and effective participation of cluster munition 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.

As mentioned by Chile and some others, we also support that the LAP will create synergies with other international norms including the Convention on the Rights of Persons with Disabilities, based on the relevant humanitarian and human rights principles. Reference may 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.

Lastly, the ICRC, through its Physical Rehabilitation Programme around the world, including in contexts with significant numbers of cluster munition survivors, has witnessed the challenge of the lack of qualified professionals and structures to provide physical rehabilitation services to persons with disabilities including cluster munition survivors. Therefore, it is important that the LAP includes specific 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.

International Cooperation and Assistance (section VIII)

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, we believe that it is imperative that the LAP includes measures to make the Convention more resilient to resource challenges. We are pleased to see that measures proposed by the Working Paper 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. We agree that donor coordination should be strengthened, for example through in-country coordination platforms and mechanisms. In this respect, States Parties will take stock of the experience of the Country Coalition initiative and encourage more States Parties to join it.

Additionally, we stress the importance of the LAP 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.

National Implementation Measures (section X)

As was addressed in the ICRC's previous statements this morning, 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. This could be achieved either by adding a stand-alone section, or 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 compliance with Article 9 of the Convention.

With respect to actions to be included in the compliance section, in our view, 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, as was proposed by ICBL-CMC, 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.

As pointed out by New Zealand, 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, we support the LAP to 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 recently a checklist, and avails itself for assistance in the drafting and review of national implementation legislation.

Possible additional section on general implementation and the machinery

As was addressed in the ICRC's previous statement this morning, in light of the current implementation challenges facing the 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 a 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 in particular the APMBC, by new ways of working.

Thank you.