

Convention on Cluster Munitions
Second Preparatory Meeting for the Second Review Conference
Geneva, 4 September 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 **Informal draft of the Lausanne Action Plan (LAP) submitted by the Presidency**. In our view, the draft Action Plan, sets out the key challenges still facing the Convention and identifies appropriate and practical means for addressing them, to achieve the Convention's promise of a world free of cluster munitions. We appreciate that many of the ICRC's comments were taken on board, and we thank you for the opportunity to share further comments here.

Introduction and Guiding Principles and Actions (sections I and II)

In the view of the ICRC, overall, the current draft contains comprehensive action items and corresponding indicators which will provide clear guidance to States Parties and a means of measuring implementation of the Action Plan until the Third Review Conference.

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, we take note that almost all indicators in the current draft are quantitative instead of qualitative. In order to effectively and fully measure implementation, the LAP may be revised to include more qualitative indicators.

We are pleased to see that the section entitled "Guiding principles and actions" have identified a set of cross-cutting actions that will guide the implementation of the LAP. We welcome in particular actions aiming at developing synergies with other instruments of international humanitarian and human rights law, taking into account needs of cluster munition victims and

ensuring their full and equal participation in the decision-making processes of the Convention, ensuring national ownership and resource sustainability, highlighting the linkage with sustainable development goals, and mainstreaming gender and diversity considerations.

Finally, Mr. President, we take note that the LAP, in paragraph 4 of the Introduction section, clarifies that the actions set forth in the LAP are not of a normative nature, but are meant to contain policy commitments to facilitate compliance with States Parties' legally binding obligations under the Convention. However, in our view, some actions in the current draft attempt to recall the normative requirements in the Convention, without using the language that reflects the legally binding nature of these requirements. This is the case of Action#43 regarding the submission of initial and annual transparency reports in a timely manner, and to some extent Actions#38 and 40 in the section on international cooperation and assistance. By presenting a legally binding obligation as an action point, the LAP risks confusing and undermining legal obligations with policy commitments. Further thoughts may be required to harmonize and revise the wording of the relevant action points as well as associated indicators.

Universalization of the Convention and its Norms (section III)

The ICRC welcomes that universalization is identified as a priority for the Review Conference and the LAP. To achieve the Convention's fundamental humanitarian aim of a world free of cluster munitions, it is crucial to promote universal adherence to the Convention by all States and to universalize the norm of the Convention to banning cluster munitions.

With regard to promoting formal adherence to the Convention by non-parties, the ICRC welcomes the Working Paper entitled "Ways forward on universalization of the CCM" submitted by Chile and the Philippines, which contains many valuable elements to inform the discussion and finalization of the "specific decision" to be taken by the Review Conference to accelerate universalization, as referred to in Action#10. The specific decision taken by the Review Conference in this regard should refer to the obligation of all States Parties under Article 21(1) to promote the universalization of the Convention, and ensure that collection action by all States Parties as well as by partner international and regional organizations be conducted in a concerted and sustained manner, including at high level.

With regard to 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. Action#11, building on the relevant action points in the Dubrovnik Action Plan, provides

essential guidance for States Parties' intensified efforts in this regard. In this regard, we echo the Philippines' proposal to include an action for States Parties to engage with States not party regarding adopting and announcing moratoria on any future transfer of cluster munitions outside of their national territories. We also support Germany's proposal with regard to the evolving norm of non-use. Lastly, 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.

Survey and Clearance (section V)

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, entitled respectively "survey and clearance" and "risk education". A separate section on risk education demonstrates the recognition of States Parties of the critical importance of protecting civilians from the risks posed by cluster munition remnants pending their clearance.

In the same vein, we suggest including in the LAP 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, as an integral part of the extension request. The inclusion of this action also aligns with the Oslo Action Plan for the Anti-Personnel Mine Ban Convention. This action can be a standalone action in Section V or incorporated in Action#20.

Measures to Ensure Compliance (section XI)

The ICRC welcomes the introduction of a new section in the LAP entitled "measures to ensure compliance" aiming at ensuring full respect for and strengthening compliance with all provisions under the Convention.

The importance of ensuring full respect for the Convention cannot be overstated. While it is encouraging that there has been no reported or alleged use of cluster munitions by States Parties since the adoption of the Convention in 2008, there have been sporadic instances where further clarification of compliance with certain provisions of the Convention was necessary.

In view of the forward-looking nature of the LAP, it is crucial to have measures in place, in a preventive manner, dedicated to the clarification of any compliance questions and the resolution of any future instances of non-compliance. To this end, we suggest revising Action#49 as follows:

"Clarify any questions relating to matters of compliance with the provisions of the Convention and seek to resolve any instances of non-compliance with due diligence through bilateral discussions,

the use of the good offices of the President or any other means consistent with Article 8, in a cooperative manner.”

Thank you.