

Intersessional Meetings on the implementation of the Convention on Cluster Munitions, WMO, Geneva, 15-18 April 2013

**Statement of the International Committee of the Red Cross
National implementation measures**

On behalf of the International Committee of the Red Cross (ICRC), I would like to begin by thanking you for your efforts to encourage States to adopt national legislation and take other national measures to implement the Convention. We welcome the fact that some progress has been made in the number of States that have adopted national legislation or that have indicated that they consider their existing legislation to be sufficient. This provides useful clarity on the extent to which Article 9 of the Convention is being implemented by States Parties.

Yet, while progress has been made, only a quarter of States Parties have adopted implementing legislation or indicated how the repression of violations of the Convention is addressed under national law. We hope to hear more from other States Parties during this session or at the Meeting of States Parties later this year. The ICRC encourages all States that have not already done so to adopt domestic legislation to give effect to their obligations under the Convention, especially the establishment of penal sanctions to prevent and repress violations. As has been highlighted in previous meetings, the ICRC has a variety of tools, including model legislation, to assist States Parties in the development of national implementing legislation. Our regional legal advisers are also available to assist States in these endeavours.

In the view of the ICRC, one of the main issues linked to the drafting of national legislation is how some States are implementing the Convention's provisions on interoperability (Article 21). In our view, Article 21 essentially allows a State Party to engage in combined military operations with States not party, as long as the acts carried out by the States Parties forces in the context of such operations do not amount to violations of Article 1. A number of States that have adopted domestic laws to criminalize activities prohibited by the Convention have provided in their legislation defences or justifications that would exclude or limit criminal liability for

acts that may occur as part of military cooperation and operations with States not party to the Convention but that the State Party considers do not violate the Convention.

The ICRC remains concerned about the scope of the exceptions allowed in some national implementing legislation, and more specifically, about exceptions that would permit members of the armed forces to be directly involved in the use, possession, stockpiling and transit of cluster munitions. The ICRC also alarmed by the inclusion of language in national legislation that would seem to allow a non-party State to stockpile cluster munitions on territory under the jurisdiction or control of a State Party. As we have mentioned in previous statements excessively broad exceptions or defences in national legislation are a concern because they can undermine the object and purpose of the Convention as stated in its preamble “to put an end for all time to the suffering and casualties caused by cluster munitions“. Such exceptions contribute to the continued use of cluster munitions rather than their elimination. They can also, in our view, also have a negative effect on efforts to universalize the Convention.

The ICRC believes that Article 21 must be construed very narrowly so as to take into account the humanitarian goals of the Convention and to avoid any contravention of the obligations it contains. Several States Parties have sought to do this by clarifying how their laws would be understood and applied with regard to the transit of cluster munitions and the stockpiling of cluster munitions on their territory by foreign forces. These statements are a welcome step but concerns remain about these and other types of activities. The ICRC’s analysis of this issue is explained in more detail in a paper distributed at the 3rd Meeting of States Parties. That paper is available today outside of the room for interested delegations.

Thank you.