
Convention on Cluster Munitions

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General status and operation of the Convention

National implementation: checklist of measures needed by States to implement the Cluster Munitions Convention

Submitted by New Zealand

While the number of States that have become party to the Convention on Cluster Munitions is encouraging, the rate of its implementation in domestic legislation is slow. This paper aims to give practical assistance especially to small States Parties or small States considering becoming parties to the Convention. The checklist below provides information on what is required for implementation of the Convention in domestic law and on resources that are available to assist parties to meet their article 9 obligations.

Article 9 of the Convention reads: “Each State Party *shall take* all appropriate *legal, administrative and other measures to implement* this Convention, including the imposition of *penal sanctions* to prevent and suppress any activity prohibited to a State Party ... undertaken by persons or on territory under its jurisdiction or control”¹ (emphasis added).

¹ www.clusterconvention.org/files/2011/01/Convention-ENG.pdf
www.clusterconvention.org/files/2011/01/Convention-FRE.pdf
www.clusterconvention.org/files/2011/01/Convention-SPA.pdf



<i>Legal measures</i>	
<i>Measure required</i>	<i>Comments/Sources of assistance</i>
<i>Domestic legislation</i>	
<p>The obligation to prohibit various activities under the Convention necessarily requires the creation of offences and penalties for anyone convicted of such an offence. This obligation can be implemented by amending existing legislation (such as criminal codes) or through dedicated new statute law.</p>	<p>New Zealand, as friend of the President for national implementation, has prepared model legislation for the assistance of small States that do not possess cluster munitions and are not contaminated by them.</p> <p>The purpose of the legislation is to set out the core requirements likely to be required by small States in order to implement the Convention in their domestic law. Accordingly, it prohibits future possession of cluster munitions and outlaws trade in them, or their transfer or transit.</p> <p>The International Committee of the Red Cross (ICRC) has prepared more wide-ranging “model legislation” (able to meet the circumstances of <i>any</i> State, including those contaminated by cluster munitions), suitable for use in common law jurisdictions.</p> <p>That model legislation can be found at www.icrc.org/eng/resources/documents/misc/cluster-munitions-model-law-010109.htm.</p> <p>ICRC also maintains a database of national implementation measures (see www.icrc.org/ihl-nat).</p> <p>If these models do not suit a particular jurisdiction, a more apt precedent may be found by searching the database. For instance, for the French legislation see <i>Loi du 20 juillet 2010 tendant à l'élimination des armes à sous-munitions</i> in the database.</p> <p>Further information is available at: ICRC Advisory Service on International Humanitarian Law avenue de la Paix 19, CH-1202 Geneva Switzerland e-mail: advisoryservice.gva@icrc.org.</p>

<i>Legal measures</i>	
<i>Measure required</i>	<i>Comments/Sources of assistance</i>
Coverage of any standing armed forces or personnel involved, inter alia, in clearing cluster munitions in third countries.	If a small State which opts to use the New Zealand model draft legislation possesses armed forces or has personnel involved, inter alia, in clearing cluster munitions in third countries, it may wish to add the sections contained at the end of the model.
<i>Consequential legislation</i>	
Whether or not dedicated law (such as the New Zealand small State model, or the ICRC generic model) is used, consideration may need to be given to amending relevant existing legislation.	Existing laws that may be relevant for national implementation purposes (including amendment) might include arms legislation, criminal law or customs legislation dealing with prohibited imports or exports.
<i>Administrative regulations</i>	
It might be necessary to confer power on the national regulation-making authority to make regulations to facilitate implementation of the Convention.	See section 15 of the ICRC model.
	For more general information on implementing international humanitarian law in domestic legislation, see the ICRC website at: www.icrc.org/eng/war-and-law/ihl-domestic-law/overview-domestic-law.htm .
<i>Administrative measures</i>	
<i>Measure required</i>	<i>Comments/Sources of assistance</i>
Any military manuals may need to be amended to reflect new obligations assumed under the Convention.	
Appointments of officials designated under new legislation to carry out specific tasks, e.g. in connection with the collection and destruction of cluster munitions, may need to be made.	See definition of “officer” in section 4 of the New Zealand model. See sections 6 and 7 of the ICRC model.

<i>Other measures</i>	
<i>Measure required</i>	<i>Comments/Sources of assistance</i>
Reporting, not later than 180 days after entry into force for a State Party.	Article 7 requires the State Party to report to the Secretary-General of the United Nations (via the United Nations Office for Disarmament Affairs, Geneva) on the national implementation measures taken under article 9 (see address below).
Reporting annually, where relevant, on such matters as: <ul style="list-style-type: none"> • The types and numbers of cluster munitions destroyed • The extent and location of areas contaminated by cluster munitions • The status of clearance programmes • The provision of risk education and warnings to civilians • The status of programmes for providing assistance to victims • Any measures taken domestically to prevent and penalize violations of the Convention 	<p>Also under article 7, the State Party is required to report to the Secretary-General of the United Nations (via the Office for Disarmament Affairs, Geneva) by 30 April each year on relevant matters arising during the previous calendar year.</p> <p>After the first such report, it is sufficient to update it each year, reflecting any new developments.</p> <p>The reporting form is contained in CCM/MSP/2010/WP.4. It is available in the languages of the Convention at the United Nations Office for Disarmament Affairs website: www.unog.ch/80256EE600585943/(httpPages)/88E41D6ACBB90D8EC125781F003C2544?OpenDocument.</p> <p>The address for article 7 reports is: ccm@unog.ch</p> <p>or:</p> <p>United Nations Office for Disarmament Affairs, Geneva Branch, Palais des Nations, Room C-113.1, Avenue de la Paix 8-14, 1211 Geneva 10, Switzerland Fax: 41-22-917-0034</p>
Attendance at meetings of States Parties to review the effectiveness of the Convention, its ongoing implementation, and to discuss best practices and resolve implementation issues and compliance.	Attendance at meetings is not obligatory but is desirable, especially at the review conferences held every five years. Internal budgetary planning for travel and attendance may be necessary. Limited resources to assist with travel may be available under a sponsorship programme which is being established for that purpose.

<i>Other measures</i>	
<i>Measure required</i>	<i>Comments/Sources of assistance</i>
	<p>For more general information of relevance to implementing the Convention, see the ICRC website:</p> <p>www.icrc.org/eng/resources/documents/misc/cluster-munitions-questions-and-answers-130109.htm.</p>
<i>Note</i>	
<i>Ratification/accession</i>	<p>For observer States yet to ratify the Convention, ICRC has developed a ratification kit which is available at:</p> <p>www.icrc.org/eng/resources/documents/misc/cluster-munitions-ratification-kit-181208.htm.</p>