

National Implementation and Interpretation of the Convention on Cluster Munitions

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Obligations and Commitments

- Article 9: States parties must implement all negative and positive obligations in the convention
- Vientiane Action Plan: “States Parties that have not adopted national implementation measures will as a matter of urgency develop and adopt comprehensive legislative, administrative, or other implementing measures in accordance with Article 9.”



National Implementation Legislation

- Legislation is the strongest means of implementation because it is binding, unequivocal, and enduring
- Stand-alone legislation is better than an amendment to a previous law
- Other types of measures (Rules of Engagement, policies, etc.) can supplement legislation



14 States Have Implemented National Legislation

1. Austria (2008)
2. Belgium (2006)
3. Cook Islands (2011)
4. Czech Republic (2011)
5. France (2010)
6. Germany (2009)
7. Ireland (2008)
8. Italy (2011)
9. Japan (2009)
10. Luxembourg (2009)
11. New Zealand (2009)
12. Norway (2008)
13. Spain (2010)
14. United Kingdom (2010)

National Policy Statements

- Offer insight into state interpretations
- Come in variety of forms:
 - Conference interventions
 - Official letters
 - Article 7 reports
 - Parliamentary discussions

Negative Obligations (Prohibitions)

- At a minimum, legislation should impose penal sanctions on those who commit acts prohibited by the convention
- National laws should ban:
 - Use
 - Production
 - Transfer
 - Stockpiling
- “Under any circumstances,” transfer to “anyone”



Prohibition on Assistance

- Legislation should also ban assistance
- Article 1(1)(c):
 - “Each state undertakes never under any circumstances to assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.”

Interpretative Issues

- Interoperability
- Transit
- Foreign Stockpiling
- Investment



Interoperability

How the convention's obligations apply during joint military operations with states not party



Interoperability: Article 21

- States are required to work for universalization, promote norms of the convention, and discourage use
- States parties may participate in joint military operations with states not party



Interoperability: Article 21

- Some states argue that Article 21 creates exception to prohibition on assistance
- Flawed interpretation because:
 - Goes beyond language of Article 21
 - Contravenes object and purpose of the convention
 - Makes Article 21 internally inconsistent

Interoperability: Article 21

- Article 21 simply clarifies that joint operations are permissible
 - Prohibition on assistance applies “under any circumstances,” including during joint military operations



States in Agreement



Norway

- “The exemption for military cooperation does not authorise States Parties to engage in activities prohibited by the Convention.”



Ireland

- “Any deliberate assistance in the commission of an act prohibited by the Convention in the context of military co-operation with a state not party will be inconsistent with this obligation [to discourage use of cluster munitions].”

Other Supporting States

- Bosnia and Herzegovina, Ecuador, Ghana, Holy See, Hungary, Iceland, Laos, Lebanon, Madagascar, Malawi, Mexico, and Nicaragua
- Colombia, Guatemala, and Slovenia have gone even further

Transit

- Movement of cluster munitions across a state party's territory or through its airspace or territorial waters



- Transit represents a form of assistance
 - Facilitates use and transfer
- Prohibited under Article 1

States in Agreement

- Legislation
 - Austria and Germany both explicitly ban transit
- National policy statements
 - In 2011, Belgium, Bosnia and Herzegovina, Comoros, Croatia, France, Holy See, Laos, FYR Macedonia, and New Zealand stated that transit is prohibited
 - Previously, at least 15 states stated that transit and/or foreign stockpiling are prohibited

Foreign Stockpiling

- Stockpiling of cluster munitions by a state not party on a state party's territory



- Hosting of foreign stockpiles is form of assistance
 - Facilitates stockpiling and potentially use of cluster munitions
- Like transit, prohibited under Article 1

States in Agreement

- In 2011 alone, Bosnia and Herzegovina, Croatia, Laos, FYR Macedonia, Senegal, and Spain stated foreign stockpiling prohibited



Investment

- State parties should interpret the convention to ban investment as a form of assistance with cluster munition production
 - Should apply to manufacturers of cluster munitions and component parts
 - Should extend to public and private funds



States in Agreement

- States support ban on investment in legislation and policy statements
- For more information, see experts at IKV Pax Christi
 - Side event on
disinvestment:
Monroe Hotel Ballroom
Friday, 12:00 p.m.



Conflicting Interpretations



United Kingdom

- United Kingdom “could facilitate operations where [cluster munitions] might be used by a partner.”

Conflicting Interpretations



Australia

- Proposed legislation would allow Australia to jointly plan and to provide logistical support and intelligence for attacks that may use cluster munitions
- Bill creates exceptions so that military personnel from states not party cannot be prosecuted for the transit or stockpiling of cluster munitions
- Bill is not yet passed, so still time for Parliament to amend these problematic provisions

Conflicting Interpretations



Canada

- No bill tabled, but statements reflect weak interpretation of Article 21
- Internal disagreement over Article 21:
 - Has delayed ratification
 - Led to the resignation of the head of Canada's Oslo Process negotiating team

Conflicting Interpretations

- These governments still have the opportunity to strengthen their stance
- Other governments should follow the lead of the states who have implemented and interpreted convention in a way that will better protect civilians



Positive Obligations

- States parties are required to implement positive as well as negative obligations in the convention
 - Positive obligations should be included in legislation and supplemented with national measures



Positive Obligations Examples

- Belgium and Austria
 - Set 3-year deadlines for stockpile destruction
- Italy
 - Requires promotion of universalization
 - Budgets for stockpile destruction, victim assistance, and clearance
- Italy and France
 - Codify certain reporting requirements

Breadth of Coverage

- Legislation should also apply to explosive bomblets
 - Can be done two ways, both effective
 - Examples: Cook Islands, France, Ireland, New Zealand, UK



Breadth of Coverage

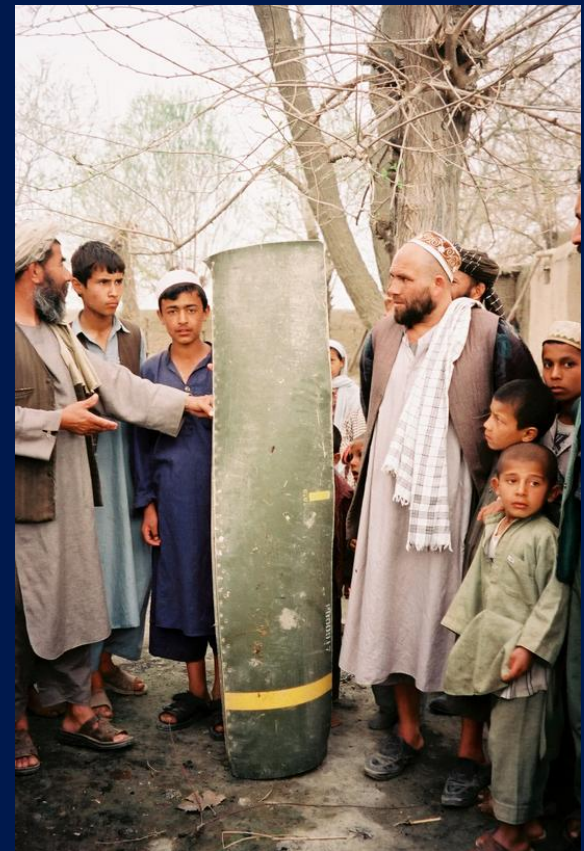
- Extraterritoriality
 - Examples: Cook Islands, New Zealand, UK
- Application to corporations as well as people
 - Examples: Cook Islands, Czech Republic, France, Luxembourg, New Zealand, UK

Status of Implementation

- 14 states have implemented the convention already, but many more remain
- 9 states are in the process while 14 have stated they intend to prepare legislation
- These states should continue their work with urgency
- Others should begin the process as soon as possible

Recommendations

- Look to the examples of strong implementation and interpretation discussed today
- Adopt legislation
- Issue policy statements
- Make statements this week



Tools

- Human Rights Watch specialists
(docherb@hrw.org)
- Human Rights Watch publications, including:
 - *Fulfilling the Ban* (2010)
 - *Promoting the Prohibitions* (2010)
- Cluster Munition Monitor and Interoperability Fact Sheet
- ICRC Model Legislation
- New Zealand's Model Legislation

The logo for Human Rights Watch, featuring the words "HUMAN RIGHTS WATCH" in white, uppercase, sans-serif font, arranged in three lines within a solid blue square.

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The logo for the Cluster Munition Monitor, featuring the words "LANDMINE & CLUSTER MUNITION" in red, uppercase, sans-serif font, and the word "MONITOR" in large, bold, black, uppercase, sans-serif font, both within a white square.

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