



Cluster Munitions Prohibition Act 2009

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Date of assent 17 December 2009
Commencement see section 2

Contents

	Page
1 Title	2
2 Commencement	2
Part 1	
Preliminary provisions	
3 Purpose	2
4 Obligations to which persons exercising power or discretion must have regard	2
5 Interpretation	3
6 Meaning of cluster munition	5
7 Meaning of officer	5
8 Act binds the Crown	6
9 Application of Act in New Zealand and elsewhere	6
Part 2	
Activities related to cluster munitions	
Subpart 1—Offences and exceptions related to cluster munitions	
10 Offences relating to cluster munitions	6
11 Exceptions to offences in section 10(1)	7
12 Application of this subpart to certain explosive bomblets	8
Subpart 2—Actions in relation to cluster munitions	
13 Seizure, forfeiture, and destruction of cluster munitions	9
	1

14	Application of Customs and Excise Act 1996 to import and export of cluster munitions	9
15	Minister may authorise cluster munitions for certain purposes	9
	Subpart 3—Information	
16	Purpose of this subpart	10
17	Supply of information	10
	Subpart 4—Miscellaneous provisions	
18	Attorney-General’s consent to prosecutions required	11
19	Regulations	11
20	Consequential amendments to Arms Act 1983	12
	Schedule	13
	Convention on Cluster Munitions	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Cluster Munitions Prohibition Act 2009.

2 Commencement

This Act comes into force on a date appointed by the Governor-General by Order in Council.

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to implement New Zealand’s obligations under the Convention.

4 Obligations to which persons exercising power or discretion must have regard

A person who is exercising a power or discretion under this Act must have regard to New Zealand’s obligations under the Convention.

5 Interpretation

(1) In this Act, unless the context otherwise requires,—

Armed Forces has the same meaning as in section 2(1) of the Defence Act 1990

authorised cluster munition means a cluster munition authorised under section 15

chief executive means the chief executive of the Ministry

cluster munition has the meaning given to it by section 6

Convention means the Convention on Cluster Munitions, done at Dublin on 30 May 2008 (a copy of the English text of which is set out in the Schedule); and includes any amendments to the Convention made in accordance with Article 13 of the Convention that are, or will become, binding on New Zealand from time to time

Customs officer has the same meaning as in section 2(1) of the Customs and Excise Act 1996

dispenser means a container that is designed to disperse or release explosive bomblets, and is affixed to an aircraft at the time of dispersal or release

enforcement officer has the same meaning as in section 2(1) of the Hazardous Substances and New Organisms Act 1996

explosive bomblet means a conventional munition—

- (a) that is not self-propelled; and
- (b) that weighs less than 20 kilograms; and
- (c) that is designed to function by detonating an explosive charge prior to, on, or after impact; and
- (d) that, in order to perform its task, is dispersed or released by a dispenser

explosive submunition means a conventional munition—

- (a) that is designed to function by detonating an explosive charge prior to, on, or after impact; and
- (b) that, in order to perform its task, is dispersed or released by a cluster munition

funds—

- (a) means assets of every kind, whether tangible or intangible, moveable or immovable, however acquired; and
- (b) includes legal documents or instruments (for example, bank credits, travellers' cheques, bank cheques, money

orders, shares, securities, bonds, drafts, and letters of credit) in any form (for example, in electronic or digital form) evidencing title to, or an interest in, assets of any kind

mine has the same meaning as in section 2(1) of the Anti-Personnel Mines Prohibition Act 1998

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

officer has the meaning given to it by section 7

Police employee has the same meaning as in section 4 of the Policing Act 2008

self-deactivating means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component (for example, a battery) of the munition that is essential to the munition's operation

self-destruction mechanism means a mechanism, incorporated into a munition, that—

- (a) secures the destruction of that munition; and
- (b) functions automatically; and
- (c) is in addition to the munition's primary initiating mechanism

transfer—

- (a) includes—
 - (i) importation into, and exportation from, New Zealand; and
 - (ii) the transfer of title to, and control over, cluster munitions; but
- (b) does not include the transfer of territory containing cluster munition remnants

unexploded submunition means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended.

- (2) Unless the context otherwise requires, terms and expressions used and not defined in this Act but defined in the Convention have the same meaning as in the Convention.

6 **Meaning of cluster munition**

A **cluster munition** means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms and—

- (a) includes those explosive submunitions; but
- (b) does not include—
 - (i) a mine; or
 - (ii) a munition or submunition that is designed—
 - (A) to dispense flares, smoke, pyrotechnics, or chaff; or
 - (B) to produce electrical or electronic effects; or
 - (iii) a munition that is designed exclusively for an air defence role; or
 - (iv) a munition that, in order to avoid indiscriminate effects and the risks posed by unexploded submunitions, has all of the following characteristics:
 - (A) each munition contains fewer than 10 explosive submunitions:
 - (B) each explosive submunition weighs more than 4 kilograms:
 - (C) each explosive submunition is designed to detect and engage a single target object:
 - (D) each explosive submunition is equipped with an electronic self-destruction mechanism:
 - (E) each explosive submunition is equipped with an electronic self-deactivating feature.

7 **Meaning of officer**

In this Act, unless the context otherwise requires, **officer** means any of the following persons:

- (a) a Police employee:
- (b) a member of the Armed Forces:

- (c) a Customs officer:
- (d) an enforcement officer.

8 Act binds the Crown

This Act binds the Crown.

9 Application of Act in New Zealand and elsewhere

- (1) This Act applies to all acts done or omitted in New Zealand.
- (2) This Act also applies to all acts done or omitted outside New Zealand by—
 - (a) a New Zealand citizen; or
 - (b) a person who is ordinarily resident in New Zealand but not the citizen of any State; or
 - (c) a member of the Armed Forces; or
 - (d) a body corporate, or a corporation sole, incorporated in New Zealand.
- (3) Nothing in this section limits the application of section 7, 8, or 8A of the Crimes Act 1961.

Part 2

Activities related to cluster munitions

Subpart 1—Offences and exceptions related to cluster munitions

10 Offences relating to cluster munitions

- (1) A person who does any of the following things commits an offence:
 - (a) uses a cluster munition:
 - (b) develops, produces, or otherwise acquires a cluster munition:
 - (c) possesses, retains, or stockpiles a cluster munition:
 - (d) transfers a cluster munition, directly or indirectly, to another person:
 - (e) in any way assists, encourages, or induces another person to engage in any conduct described in any of paragraphs (a) to (d).
- (2) A person commits an offence who provides or invests funds with the intention that the funds be used, or knowing that they

are to be used, in the development or production of cluster munitions.

- (3) A member of the Armed Forces also commits an offence if he or she expressly requests the use of cluster munitions when—
 - (a) he or she is engaged in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention; and
 - (b) the choice of munitions used is within the exclusive control of the Armed Forces.
- (4) A person who commits an offence against subsection (1), (2), or (3) is liable on conviction on indictment to imprisonment for a term not exceeding 7 years or a fine not exceeding \$500,000, or both.
- (5) Subsection (1) is subject to section 11.
- (6) This section does not limit any of the following:
 - (a) the Anti-Personnel Mines Prohibition Act 1998;
 - (b) the provisions of the Arms Act 1983 relating to restricted weapons;
 - (c) the Hazardous Substances and New Organisms Act 1996.

11 Exceptions to offences in section 10(1)

- (1) Despite section 10(1), an officer does not commit an offence by using, acquiring, possessing, retaining, or transferring an authorised cluster munition if he or she is doing so—
 - (a) in the course of his or her employment or duties; and
 - (b) for the purposes of developing, or training persons in, techniques of cluster munition detection, clearance, or destruction; and
 - (c) in compliance with any notice given under section 15.
- (2) Despite section 10(1), an officer does not commit an offence by seizing, receiving, or acquiring a cluster munition if he or she is doing so—
 - (a) in the course of his or her employment or duties; and
 - (b) for the purposes of—
 - (i) destroying it; or
 - (ii) retaining it pending its destruction; or
 - (iii) transferring it so that it can be destroyed.

- (3) Despite section 10(1), a person does not commit an offence in the circumstances set out in subsection (4) by—
- (a) possessing a cluster munition until an officer collects it from him or her or destroys it; or
 - (b) giving the cluster munition to an officer who is to collect it from him or her or destroy it.
- (4) The circumstances are—
- (a) that the person complies with section 17; and
 - (b) that, as soon as practicable after becoming aware that he or she possesses the cluster munition, the person takes all reasonable steps to ensure that it is not used before an officer can collect or destroy it.
- (5) Despite section 10(1), a person does not commit an offence by his, her, or its conduct outside New Zealand in relation to a cluster munition that is—
- (a) for the purposes of—
 - (i) destroying it; or
 - (ii) enabling another person to destroy it; or
 - (iii) rendering it harmless; or
 - (iv) enabling another person to render it harmless; and
 - (b) in accordance with the Convention.
- (6) A member of the Armed Forces does not commit an offence against section 10(1) merely by engaging, in the course of his or her duties, in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention and that has the capability to engage in conduct prohibited by section 10(1).

12 Application of this subpart to certain explosive bomblets

The provisions of this subpart apply, with any necessary modifications, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft, as if those explosive bomblets were cluster munitions.

Subpart 2—Actions in relation to cluster munitions

13 Seizure, forfeiture, and destruction of cluster munitions

- (1) A cluster munition in respect of which an offence against section 10 has been committed—
 - (a) may be seized without warrant by an officer; and
 - (b) if not owned by the Crown, is forfeit to the Crown; and
 - (c) must be either—
 - (i) authorised under section 15; or
 - (ii) destroyed by an officer.
- (2) A cluster munition to be destroyed under subsection (1)(c)(ii) must be retained, pending destruction, as the Minister thinks fit.

14 Application of Customs and Excise Act 1996 to import and export of cluster munitions

The provisions of the Customs and Excise Act 1996 that apply to prohibited imports and prohibited exports (except the penalty for an offence against section 209(1)(a) or (b) of that Act) apply to cluster munitions whose importation into and exportation from New Zealand is an offence against section 10(1) of this Act, as if that importation and exportation were prohibited under Part 5 of the Customs and Excise Act 1996.

15 Minister may authorise cluster munitions for certain purposes

- (1) For the purposes of developing, or training persons in, techniques of cluster munition detection, clearance, or destruction, the Minister may from time to time, by notice in writing, authorise cluster munitions to be used, acquired, possessed, retained, or transferred.
- (2) The Minister must not make a notice under subsection (1) if the making of the notice will result in the total number of cluster munitions authorised by all notices made under subsection (1) exceeding the number determined for the time being by the Minister under subsection (3).
- (3) The Minister must from time to time specify, by notice in the *Gazette*, the number of cluster munitions determined by the

Minister to be the number that for the time being is the minimum number that is absolutely necessary for the purposes referred to in subsection (1).

- (4) A notice made under subsection (1) or (3) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989 or the Regulations (Disallowance) Act 1989.

Subpart 3—Information

16 Purpose of this subpart

The purpose of this subpart is to ensure—

- (a) that the chief executive has knowledge of dealings with cluster munitions that facilitates the making of New Zealand's reports or clarifications under the Convention; and
- (b) that New Zealand is otherwise able to fulfil its obligations under the Convention.

17 Supply of information

- (1) Any person who uses, develops, produces, otherwise acquires, possesses, retains, or transfers a cluster munition must—
- (a) notify the Minister of the cluster munition as soon as practicable; and
 - (b) keep records in relation to the cluster munition and the purpose to which the cluster munition is put; and
 - (c) prepare from those records, and send to the chief executive, periodic reports relating to the cluster munition that are sufficient to enable the Minister to determine whether the Convention, the provisions of this Act, and any regulations made under this Act are being complied with.
- (2) A person commits an offence who, without reasonable excuse, refuses or fails to comply with subsection (1).
- (3) A person commits an offence who, in any document prepared under subsection (1), makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular.

- (4) A person who commits an offence against subsection (2) or (3) is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both.
- (5) Nothing in this section applies to a person whose conduct in relation to a cluster munition is, by reason of section 11(5), not an offence against this Act.

Subpart 4—Miscellaneous provisions

18 Attorney-General’s consent to prosecutions required

- (1) No proceedings for any offence against section 10 may be instituted in any court except with the consent of the Attorney-General.
- (2) However, a person alleged to have committed an offence against section 10 may be arrested, or a warrant for the person’s arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General’s consent under subsection (1) has not been obtained.
- (3) Section 400 of the Crimes Act 1961 does not apply in respect of any offence against this Act.

19 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
 - (a) providing for any matter that is necessary or desirable for the purpose of implementing the Convention:
 - (b) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this Act:
 - (c) prescribing penalties on summary conviction not exceeding \$5,000 for offences against regulations made under this Act:
 - (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Governor-General may from time to time, by Order in Council,—

- (a) amend the Schedule by making any amendments to the text of the Convention set out in the Schedule as are required to bring it up to date;
 - (b) revoke the Schedule and substitute a new schedule setting out in an up-to-date form the text of the Convention.
- (3) An order made under subsection (2) is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

20 Consequential amendments to Arms Act 1983

- (1) This section amends the Arms Act 1983.
 - (2) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:
“**cluster munition** has the meaning given to it by section 6 of the Cluster Munitions Prohibition Act 2009”.
 - (3) Section 3(2)(a) is amended by inserting the following subparagraph after subparagraph (iv):
“(iva) an officer as defined by section 7 of the Cluster Munitions Prohibition Act 2009; or”.
 - (4) Section 5(3A) is amended by adding “or cluster munitions”.
 - (5) Section 18(5) is amended by adding “or a cluster munition”.
 - (6) Section 29(2) is amended by inserting “or a cluster munition” after “anti-personnel mine”.
 - (7) Section 35(5) is amended by adding “or a cluster munition”.
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Schedule

s 5

Convention on Cluster Munitions

The States Parties to this Convention,

Deeply concerned that civilian populations and individual civilians continue to bear the brunt of armed conflict,

Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned,

Concerned that cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years after use,

Deeply concerned also at the dangers presented by the large national stockpiles of cluster munitions retained for operational use and *determined* to ensure their rapid destruction,

Believing it necessary to contribute effectively in an efficient, coordinated manner to resolving the challenge of removing cluster munition remnants located throughout the world, and to ensure their destruction,

Determined also to ensure the full realization of the rights of all cluster munition victims and *recognizing* their inherent dignity,

Resolved to do their utmost in providing assistance to cluster munition victims, including medical care, rehabilitation and psychological support, as well as providing for their social and economic inclusion,

Recognizing the need to provide age- and gender-sensitive assistance to cluster munition victims and to address the special needs of vulnerable groups,

Bearing in mind the Convention on the Rights of Persons with Disabilities which, inter alia, requires that States Parties to that Convention undertake to ensure and promote the full realization of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability,

Mindful of the need to coordinate adequately efforts undertaken in various fora to address the rights and needs of victims of various types of weapons, and *resolved* to avoid discrimination among victims of various types of weapons,

Reaffirming that in cases not covered by this Convention or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law, derived from established custom, from the principles of humanity and from the dictates of public conscience,

Resolved also that armed groups distinct from the armed forces of a State shall not, under any circumstances, be permitted to engage in any activity prohibited to a State Party to this Convention,

Welcoming the very broad international support for the international norm prohibiting anti-personnel mines, enshrined in the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,

Welcoming also the adoption of the Protocol on Explosive Remnants of War, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its entry into force on 12 November 2006, and *wishing* to enhance the protection of civilians from the effects of cluster munition remnants in post-conflict environments,

Bearing in mind also United Nations Security Council Resolution 1325 on women, peace and security and United Nations Security Council Resolution 1612 on children in armed conflict,

Welcoming further the steps taken nationally, regionally and globally in recent years aimed at prohibiting, restricting or suspending the use, stockpiling, production and transfer of cluster munitions,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the global call for an end to civilian suffering caused by cluster munitions and *recognizing* the efforts to that end undertaken by the United Nations, the International Committee of the Red Cross, the Cluster Munition Coalition and numerous other non-governmental organizations around the world,

Reaffirming the Declaration of the Oslo Conference on Cluster Munitions, by which, inter alia, States recognized the grave consequences caused by the use of cluster munitions and committed themselves

to conclude by 2008 a legally binding instrument that would prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and would establish a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation for victims, clearance of contaminated areas, risk reduction education and destruction of stockpiles, *Emphasizing* the desirability of attracting the adherence of all States to this Convention, and *determined* to work strenuously towards the promotion of its universalization and its full implementation,

Basing themselves on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, and the rules that the parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations against military objectives only, that in the conduct of military operations constant care shall be taken to spare the civilian population, civilians and civilian objects and that the civilian population and individual civilians enjoy general protection against dangers arising from military operations,

HAVE AGREED as follows:

Article 1

General obligations and scope of application

1. Each State Party undertakes never under any circumstances to:
 - (a) Use cluster munitions;
 - (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;
 - (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.
2. Paragraph 1 of this Article applies, *mutatis mutandis*, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.
3. This Convention does not apply to mines.

Article 2 Definitions

For the purposes of this Convention:

1. “**Cluster munition victims**” means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities;
2. “**Cluster munition**” means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:
 - (a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
 - (b) A munition or submunition designed to produce electrical or electronic effects;
 - (c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:
 - (i) Each munition contains fewer than ten explosive submunitions;
 - (ii) Each explosive submunition weighs more than four kilograms;
 - (iii) Each explosive submunition is designed to detect and engage a single target object;
 - (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (v) Each explosive submunition is equipped with an electronic self-deactivating feature;
3. “**Explosive submunition**” means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact;
4. “**Failed cluster munition**” means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive submunitions but failed to do so;

Article 2—*continued*

5. “**Unexploded submunition**” means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended;
6. “**Abandoned cluster munitions**” means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use;
7. “**Cluster munition remnants**” means failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets;
8. “**Transfer**” involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over cluster munitions, but does not involve the transfer of territory containing cluster munition remnants;
9. “**Self-destruction mechanism**” means an incorporated automatically-functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated;
10. “**Self-deactivating**” means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example a battery, that is essential to the operation of the munition;
11. “**Cluster munition contaminated area**” means an area known or suspected to contain cluster munition remnants;
12. “**Mine**” means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;
13. “**Explosive bomblet**” means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact;
14. “**Dispenser**” means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release;

Article 2—*continued*

15. “**Unexploded bomblet**” means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.

Article 3

Storage and stockpile destruction

1. Each State Party shall, in accordance with national regulations, separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction.
2. Each State Party undertakes to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article as soon as possible but not later than eight years after the entry into force of this Convention for that State Party. Each State Party undertakes to ensure that destruction methods comply with applicable international standards for protecting public health and the environment.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article within eight years of entry into force of this Convention for that State Party it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munitions for a period of up to four years. A State Party may, in exceptional circumstances, request additional extensions of up to four years. The requested extensions shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 2 of this Article.
4. Each request for an extension shall set out:
 - (a) The duration of the proposed extension;
 - (b) A detailed explanation of the proposed extension, including the financial and technical means available to or required by the State Party for the destruction of all cluster munitions referred to in paragraph 1 of this Article and, where applicable, the exceptional circumstances justifying it;

Article 3—*continued*

- (c) A plan for how and when stockpile destruction will be completed;
 - (d) The quantity and type of cluster munitions and explosive submunitions held at the entry into force of this Convention for that State Party and any additional cluster munitions or explosive submunitions discovered after such entry into force;
 - (e) The quantity and type of cluster munitions and explosive submunitions destroyed during the period referred to in paragraph 2 of this Article; and
 - (f) The quantity and type of cluster munitions and explosive submunitions remaining to be destroyed during the proposed extension and the annual destruction rate expected to be achieved.
5. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 4 of this Article, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate. A request for an extension shall be submitted a minimum of nine months prior to the Meeting of States Parties or the Review Conference at which it is to be considered.
6. Notwithstanding the provisions of Article 1 of this Convention, the retention or acquisition of a limited number of cluster munitions and explosive submunitions for the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques, or for the development of cluster munition counter-measures, is permitted. The amount of explosive submunitions retained or acquired shall not exceed the minimum number absolutely necessary for these purposes.
7. Notwithstanding the provisions of Article 1 of this Convention, the transfer of cluster munitions to another State Party for the purpose of destruction, as well as for the purposes described in paragraph 6 of this Article, is permitted.

Article 3—*continued*

8. States Parties retaining, acquiring or transferring cluster munitions or explosive submunitions for the purposes described in paragraphs 6 and 7 of this Article shall submit a detailed report on the planned and actual use of these cluster munitions and explosive submunitions and their type, quantity and lot numbers. If cluster munitions or explosive submunitions are transferred to another State Party for these purposes, the report shall include reference to the receiving party. Such a report shall be prepared for each year during which a State Party retained, acquired or transferred cluster munitions or explosive submunitions and shall be submitted to the Secretary-General of the United Nations no later than 30 April of the following year.

Article 4

Clearance and destruction of cluster
munition remnants and risk reduction
education

1. Each State Party undertakes to clear and destroy, or ensure the clearance and destruction of, cluster munition remnants located in cluster munition contaminated areas under its jurisdiction or control, as follows:
 - (a) Where cluster munition remnants are located in areas under its jurisdiction or control at the date of entry into force of this Convention for that State Party, such clearance and destruction shall be completed as soon as possible but not later than ten years from that date;
 - (b) Where, after entry into force of this Convention for that State Party, cluster munitions have become cluster munition remnants located in areas under its jurisdiction or control, such clearance and destruction must be completed as soon as possible but not later than ten years after the end of the active hostilities during which such cluster munitions became cluster munition remnants; and

Article 4—*continued*

- (c) Upon fulfilling either of its obligations set out in subparagraphs (a) and (b) of this paragraph, that State Party shall make a declaration of compliance to the next Meeting of States Parties.
2. In fulfilling its obligations under paragraph 1 of this Article, each State Party shall take the following measures as soon as possible, taking into consideration the provisions of Article 6 of this Convention regarding international cooperation and assistance:
- (a) Survey, assess and record the threat posed by cluster munition remnants, making every effort to identify all cluster munition contaminated areas under its jurisdiction or control;
 - (b) Assess and prioritize needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilize resources and develop a national plan to carry out these activities, building, where appropriate, upon existing structures, experiences and methodologies;
 - (c) Take all feasible steps to ensure that all cluster munition contaminated areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means to ensure the effective exclusion of civilians. Warning signs based on methods of marking readily recognizable by the affected community should be utilized in the marking of suspected hazardous areas. Signs and other hazardous area boundary markers should, as far as possible, be visible, legible, durable and resistant to environmental effects and should clearly identify which side of the marked boundary is considered to be within the cluster munition contaminated areas and which side is considered to be safe;
 - (d) Clear and destroy all cluster munition remnants located in areas under its jurisdiction or control; and
 - (e) Conduct risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.

Article 4—*continued*

3. In conducting the activities referred to in paragraph 2 of this Article, each State Party shall take into account international standards, including the International Mine Action Standards (IMAS).
4. This paragraph shall apply in cases in which cluster munitions have been used or abandoned by one State Party prior to entry into force of this Convention for that State Party and have become cluster munition remnants that are located in areas under the jurisdiction or control of another State Party at the time of entry into force of this Convention for the latter.
 - (a) In such cases, upon entry into force of this Convention for both States Parties, the former State Party is strongly encouraged to provide, inter alia, technical, financial, material or human resources assistance to the latter State Party, either bilaterally or through a mutually agreed third party, including through the United Nations system or other relevant organizations, to facilitate the marking, clearance and destruction of such cluster munition remnants.
 - (b) Such assistance shall include, where available, information on types and quantities of the cluster munitions used, precise locations of cluster munition strikes and areas in which cluster munition remnants are known to be located.
5. If a State Party believes that it will be unable to clear and destroy or ensure the clearance and destruction of all cluster munition remnants referred to in paragraph 1 of this Article within ten years of the entry into force of this Convention for that State Party, it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the clearance and destruction of such cluster munition remnants by a period of up to five years. The requested extension shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 1 of this Article.
6. A request for an extension shall be submitted to a Meeting of States Parties or a Review Conference prior to the expiry of

Article 4—*continued*

the time period referred to in paragraph 1 of this Article for that State Party. Each request shall be submitted a minimum of nine months prior to the Meeting of States Parties or Review Conference at which it is to be considered. Each request shall set out:

- (a) The duration of the proposed extension;
 - (b) A detailed explanation of the reasons for the proposed extension, including the financial and technical means available to and required by the State Party for the clearance and destruction of all cluster munition remnants during the proposed extension;
 - (c) The preparation of future work and the status of work already conducted under national clearance and demining programmes during the initial ten year period referred to in paragraph 1 of this Article and any subsequent extensions;
 - (d) The total area containing cluster munition remnants at the time of entry into force of this Convention for that State Party and any additional areas containing cluster munition remnants discovered after such entry into force;
 - (e) The total area containing cluster munition remnants cleared since entry into force of this Convention;
 - (f) The total area containing cluster munition remnants remaining to be cleared during the proposed extension;
 - (g) The circumstances that have impeded the ability of the State Party to destroy all cluster munition remnants located in areas under its jurisdiction or control during the initial ten year period referred to in paragraph 1 of this Article, and those that may impede this ability during the proposed extension;
 - (h) The humanitarian, social, economic and environmental implications of the proposed extension; and
 - (i) Any other information relevant to the request for the proposed extension.
7. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph

Article 4—*continued*

6 of this Article, including, inter alia, the quantities of cluster munition remnants reported, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate.

8. Such an extension may be renewed by a period of up to five years upon the submission of a new request, in accordance with paragraphs 5, 6 and 7 of this Article. In requesting a further extension a State Party shall submit relevant additional information on what has been undertaken during the previous extension granted pursuant to this Article.

Article 5

Victim assistance

1. Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.
2. In fulfilling its obligations under paragraph 1 of this Article each State Party shall:
 - (a) Assess the needs of cluster munition victims;
 - (b) Develop, implement and enforce any necessary national laws and policies;
 - (c) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
 - (d) Take steps to mobilize national and international resources;

Article 5—continued

- (e) Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;
- (f) Closely consult with and actively involve cluster munition victims and their representative organizations;
- (g) Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and
- (h) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Article 6**International cooperation and assistance**

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance.
2. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by cluster munitions, aimed at the implementation of the obligations of this Convention. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis.
3. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision and receipt of clearance and other such equipment and related technological information for humanitarian purposes.
4. In addition to any obligations it may have pursuant to paragraph 4 of Article 4 of this Convention, each State Party in a position to do so shall provide assistance for clearance and

Article 6—*continued*

destruction of cluster munition remnants and information concerning various means and technologies related to clearance of cluster munitions, as well as lists of experts, expert agencies or national points of contact on clearance and destruction of cluster munition remnants and related activities.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled cluster munitions, and shall also provide assistance to identify, assess and prioritize needs and practical measures in terms of marking, risk reduction education, protection of civilians and clearance and destruction as provided in Article 4 of this Convention.
6. Where, after entry into force of this Convention, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a State Party, each State Party in a position to do so shall urgently provide emergency assistance to the affected State Party.
7. Each State Party in a position to do so shall provide assistance for the implementation of the obligations referred to in Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims. Such assistance may be provided, *inter alia*, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent Societies and their International Federation, non-governmental organizations or on a bilateral basis.
8. Each State Party in a position to do so shall provide assistance to contribute to the economic and social recovery needed as a result of cluster munition use in affected States Parties.
9. Each State Party in a position to do so may contribute to relevant trust funds in order to facilitate the provision of assistance under this Article.
10. Each State Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Convention, including facilita-

Article 6—*continued*

- tion of the entry and exit of personnel, materiel and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.
11. Each State Party may, with the purpose of developing a national action plan, request the United Nations system, regional organizations, other States Parties or other competent inter-governmental or non-governmental institutions to assist its authorities to determine, *inter alia*:
- (a) The nature and extent of cluster munition remnants located in areas under its jurisdiction or control;
 - (b) The financial, technological and human resources required for the implementation of the plan;
 - (c) The time estimated as necessary to clear and destroy all cluster munition remnants located in areas under its jurisdiction or control;
 - (d) Risk reduction education programmes and awareness activities to reduce the incidence of injuries or deaths caused by cluster munition remnants;
 - (e) Assistance to cluster munition victims; and
 - (f) The coordination relationship between the government of the State Party concerned and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the plan.
12. States Parties giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programmes.

Article 7

Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party, on:
- (a) The national implementation measures referred to in Article 9 of this Convention;

Article 7—*continued*

- (b) The total of all cluster munitions, including explosive submunitions, referred to in paragraph 1 of Article 3 of this Convention, to include a breakdown of their type, quantity and, if possible, lot numbers of each type;
- (c) The technical characteristics of each type of cluster munition produced by that State Party prior to entry into force of this Convention for it, to the extent known, and those currently owned or possessed by it, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of cluster munitions; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information that may facilitate the clearance of cluster munition remnants;
- (d) The status and progress of programmes for the conversion or decommissioning of production facilities for cluster munitions;
- (e) The status and progress of programmes for the destruction, in accordance with Article 3 of this Convention, of cluster munitions, including explosive submunitions, with details of the methods that will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
- (f) The types and quantities of cluster munitions, including explosive submunitions, destroyed in accordance with Article 3 of this Convention, including details of the methods of destruction used, the location of the destruction sites and the applicable safety and environmental standards observed;
- (g) Stockpiles of cluster munitions, including explosive submunitions, discovered after reported completion of the programme referred to in subparagraph (e) of this paragraph, and plans for their destruction in accordance with Article 3 of this Convention;
- (h) To the extent possible, the size and location of all cluster munition contaminated areas under its jurisdiction or

Article 7—*continued*

- control, to include as much detail as possible regarding the type and quantity of each type of cluster munition remnant in each such area and when they were used;
- (i) The status and progress of programmes for the clearance and destruction of all types and quantities of cluster munition remnants cleared and destroyed in accordance with Article 4 of this Convention, to include the size and location of the cluster munition contaminated area cleared and a breakdown of the quantity of each type of cluster munition remnant cleared and destroyed;
 - (j) The measures taken to provide risk reduction education and, in particular, an immediate and effective warning to civilians living in cluster munition contaminated areas under its jurisdiction or control;
 - (k) The status and progress of implementation of its obligations under Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims and to collect reliable relevant data with respect to cluster munition victims;
 - (l) The name and contact details of the institutions mandated to provide information and to carry out the measures described in this paragraph;
 - (m) The amount of national resources, including financial, material or in kind, allocated to the implementation of Articles 3, 4 and 5 of this Convention; and
 - (n) The amounts, types and destinations of international cooperation and assistance provided under Article 6 of this Convention.
2. The information provided in accordance with paragraph 1 of this Article shall be updated by the States Parties annually, covering the previous calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.
 3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8

Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.
2. If one or more States Parties wish to clarify and seek to resolve questions relating to a matter of compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information that would assist in clarifying the matter.
3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.
4. Pending the convening of any Meeting of States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.
5. Where a matter has been submitted to it pursuant to paragraph 3 of this Article, the Meeting of States Parties shall first determine whether to consider that matter further, taking into account all information submitted by the States Parties concerned. If it does so determine, the Meeting of States Parties

Article 8—*continued*

may suggest to the States Parties concerned ways and means further to clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6 of this Convention.

6. In addition to the procedures provided for in paragraphs 2 to 5 of this Article, the Meeting of States Parties may decide to adopt such other general procedures or specific mechanisms for clarification of compliance, including facts, and resolution of instances of non-compliance with the provisions of this Convention as it deems appropriate.

Article 9

National implementation measures

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 under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10

Settlement of disputes

1. When a dispute arises between two or more States Parties relating to the interpretation or application of this Convention, the States Parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of their choice, including recourse to the Meeting of States Parties and referral to the International Court of Justice in conformity with the Statute of the Court.
2. The Meeting of States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties

Article 10—*continued*

concerned to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

Article 11

Meetings of States Parties

1. The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention, including:
 - (a) The operation and status of this Convention;
 - (b) Matters arising from the reports submitted under the provisions of this Convention;
 - (c) International cooperation and assistance in accordance with Article 6 of this Convention;
 - (d) The development of technologies to clear cluster munition remnants;
 - (e) Submissions of States Parties under Articles 8 and 10 of this Convention; and
 - (f) Submissions of States Parties as provided for in Articles 3 and 4 of this Convention.
2. The first Meeting of States Parties shall be convened by the Secretary-General of the United Nations within one year of entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.
3. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed rules of procedure.

Article 12

Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.
2. The purpose of the Review Conference shall be:
 - (a) To review the operation and status of this Convention;
 - (b) To consider the need for and the interval between further Meetings of States Parties referred to in paragraph 2 of Article 11 of this Convention; and
 - (c) To take decisions on submissions of States Parties as provided for in Articles 3 and 4 of this Convention.
3. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend each Review Conference as observers in accordance with the agreed rules of procedure.

Article 13

Amendments

1. At any time after its entry into force any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Secretary-General of the United Nations, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Secretary-General of the United Nations no later than 90 days after its circulation that they support further consideration of the proposal, the Secretary-General of the United Nations shall convene an Amendment Conference to which all States Parties shall be invited.

Article 13—*continued*

2. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed rules of procedure.
3. The Amendment Conference shall be held immediately following a Meeting of States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.
4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to all States.
5. An amendment to this Convention shall enter into force for States Parties that have accepted the amendment on the date of deposit of acceptances by a majority of the States which were Parties at the date of adoption of the amendment. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14

Costs and administrative tasks

1. The costs of the Meetings of States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not party to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.
2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 of this Convention shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.
3. The performance by the Secretary-General of the United Nations of administrative tasks assigned to him or her under this Convention is subject to an appropriate United Nations mandate.

Article 15

Signature

This Convention, done at Dublin on 30 May 2008, shall be open for signature at Oslo by all States on 3 December 2008 and thereafter at United Nations Headquarters in New York until its entry into force.

Article 16

Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval by the Signatories.
2. It shall be open for accession by any State that has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17

Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the thirtieth instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18

Provisional application

Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally Article 1 of this Convention pending its entry into force for that State.

Article 19 Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20 Duration and withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

Article 21 Relations with States not party to this Convention

1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.
2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions.
3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.

Article 21—*continued*

4. Nothing in paragraph 3 of this Article shall authorize a State Party:
- (a) To develop, produce or otherwise acquire cluster munitions;
 - (b) To itself stockpile or transfer cluster munitions;
 - (c) To itself use cluster munitions; or
 - (d) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

Article 22

Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 23

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention shall be equally authentic.

Legislative history

21 July 2009	Introduction (Bill 52–1)
28 July 2009	First reading and referral to Foreign Affairs, Defence and Trade Committee
30 November 2009	Reported from Foreign Affairs, Defence and Trade Committee (Bill 52–2)
10 December 2009	Second reading, third reading
17 December 2009	Royal assent

This Act is administered by the Ministry of Foreign Affairs and Trade.
