



NEW ZEALAND

**CONVENTION ON CLUSTER MUNITIONS
INTERSESSIONAL MEETING
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NATIONAL IMPLEMENTATION

STATEMENT BY AMBASSADOR DELL HIGGIE

29 JUNE 2011

AS DELIVERED

Madame Chair,

As you have reminded us, Madame Chair, Article 9 is a brief but very important part of the Convention. It sets the requirement that states back their ratification of the Convention with the ability to enforce it in their domestic legal system. There are, of course, many different legal systems in our universe and therefore there are a range of different ways of giving legal effect to Article 9. A one-size-fits-all approach is unlikely to be possible.

But let me give some comments about New Zealand's legislation as a practical example of how one particular state party has chosen to meet the requirements of Article 9.

A key requirement of Article 9 – perhaps the most fundamental and essential of all requirements to be met by states parties – is to put in place penal sanctions to prevent and suppress any activity prohibited under the Convention. The Convention, however, does not specify what actual penalty should be set for violations of its terms. That is left to states parties to determine for themselves.

In our view, the guiding principle for this penalty is that it should be severe enough to act as an effective deterrent to carrying out the prohibited activities. In New Zealand's Cluster Munitions Prohibitions Act of 2009, the penalties for a serious violation are a term of imprisonment of a maximum of 7 years, or a fine of up to half a million NZ dollars.

As well as provisions such as those on the direct commission of prohibited acts, the New Zealand statute also deals with the question of what constitutes the "aiding and abetting" of prohibited conduct. For instance, in implementing Paragraph 3 of Article 21 of the Convention, the New Zealand legislation makes it clear that members of the New Zealand Armed Forces do not violate the statute by merely engaging in military exercises with the armed forces of a state that is not party to the Convention.

The Act makes clear that a member of the New Zealand Armed Forces commits an offence if he or she expressly requests the use of cluster munitions when engaged in military activities with the armed forces of a state that is not a party to the Convention and the choice of munitions used is within their exclusive control.

The penal sanctions required by Article 9 of the Convention need, in certain circumstances, to extend extra-territorially. The New Zealand legislation gives effect to this extra-territorial obligation by stipulating that the New Zealand law extends to actions or omissions outside New Zealand by specified categories of New Zealand citizens, people ordinarily resident in New Zealand, members of the armed forces as well as companies incorporated in New Zealand.

A final feature of New Zealand's legislation is that it prohibits intentional or knowing investment in the development of cluster munitions.

I hope these insights into New Zealand's approach are useful as one practical example of how to fulfil the Article 9 obligations. Even more so, I hope that the model law New Zealand is developing specifically to meet the implementation requirements of *small* states, will assist with the very important objective of accelerating the pace of ratification of the Convention, and, therefore, of further progress overall toward universalisation.

Thank you Madame Chair.