

Session II: Update on National Implementation Measures and Cooperation and Assistance

New Zealand: Presentation on tools to support the application of national implementing measures

Mr Chairman,

New Zealand would like to again thank the Government of Chile for giving us the opportunity to address the workshop on the vital issue of national implementation.

Treaty basis

As my colleague from the ICRC has so clearly elaborated, Article 9 is our touchstone on matters of national implementation.

Although it is a brief provision, it has a very important impact on the successful operation of the Treaty. It ensures that the Convention's prohibitions will be properly enforced- with the backing of penal sanctions- through the operation of domestic laws. It is for this reason that a good exchange between States Parties as to how they have chosen to implement Article 9 can provide new States Parties- and indeed us as Coordinator- with valuable insights into how implementation can be achieved.

Article 9 is not prescriptive on how States Parties should give effect to their obligations- and that is a proper recognition of the many different legal and administrative systems that exist around the world. What the Convention does make very clear however, is that each State Party must at least have in place sufficient legal penalties to prevent and suppress any activity prohibited under the Convention.

Challenges to implementation

Through our role as Coordinator for National Implementation Measures, New Zealand continues to observe that the main challenge with respect to national implementation is ensuring that all States Parties swiftly develop and adopt whatever legislation may be required for effective implementation of the Convention.

More than 30 States Parties- over one third of the Convention's membership- have reported under Article 7 that either that they have adopted legislation to implement the Convention, or that they consider their existing legislation to be sufficient. An additional 13 State Parties have reported that they are in the process of developing implementation legislation. These are positive developments, and progress indeed has been made over the past year- but much remains to be done.

For many States Parties, competing priorities, resource constraints and lengthy domestic procedures are just some of the barriers to the enactment of legislation.

Resource constraints are certainly a very real restriction on the ability of States Parties and it is for this reason that the simplified tools available to assist in drawing up national legislation can be very helpful in enabling States to short circuit some of the very time demanding aspects of adopting national laws.

This afternoon, I would like to outline some of those tools.

First, I will briefly give an overview of the ICRC's comprehensive model legislation – a model which is aimed in the main at common law countries.

Next, I will discuss the model legislation for small states, which have not produced or stockpiled cluster munitions nor been contaminated by having them used on their soil.

Lastly, I will look forward to some future model legislation shortly to be under consideration by African countries.

ICRC model legislation

I would first of all like to acknowledge my colleague Mr Zahn's intervention and the excellent work of the ICRC in the area of National Implementation.

As Mr Zahnd has just mentioned- the ICRC has developed comprehensive model implementation legislation - applicable in the main to common law countries. It is a longer model than that produced by NZ including because it covers the entire range of provisions in the Convention and which need to be implemented by States Parties who have produced, stockpiled or been contaminated by cluster munitions.

The ICRC's model legislation is available on the Convention's website. I also encourage you to approach Mr Zahnd discuss its expansive model legislation with him.

Small state model legislation

At the 2nd Meeting of States Parties in 2011, New Zealand tabled a simplified model of legislation for small states not possessing cluster munitions or contaminated by cluster munitions.

We initially prepared our model legislation with the circumstances of our own neighbourhood in mind. Our country, and indeed most of our small island neighbours in the Pacific, have never produced or possessed cluster munitions, and have not been contaminated by them.

We prepared the model legislation specifically in response to the request of small states who felt that current legislative models and precedents, tended to cater for countries in different circumstances to their own (notably countries contaminated by cluster munitions).

Our model legislation is very short- just two pages long. It includes only those elements that are absolutely necessary- fulfilling the Convention obligations for non-possessor, non-contaminated states by prohibiting future possession of cluster munitions as well as outlawing their trade, transfer and transit.

A frequent complaint that we hear in our role as National Implementation Coordinator, is that it is not only difficult to get legislation drafted but that it is also very challenging to get legislative support for its passage. Our short model legislation- although designed essentially for small states in our part of the world- is intended to emphasise that for states who have not produced or stockpiled and are not contaminated by cluster munitions- the required legislation does not have to be complicated, and does not have to take up too much space on tight legislative programmes.

Our small states model is not intended as a definitive guide- it is but one possible way to implement the obligation of Article 9 of the Convention. However, it has proven, and we hope that it will continue to prove useful as a means to fast track the accession of small states to the Convention.

I have paper copies here today of the small states model legislation in both Spanish and English and would be delighted to meet with any of you who are interested to discuss this further.

Pan-African legislation

Finally, I would like to look forward towards some further model legislation that is set to come down the pipeline- a pan-African text of model legislation.

New Zealand has provided support, and looks forward to attending, a workshop in Ghana next year to design model elements of implementation legislation suitable specifically for the African context. The workshop will aim to develop elements of legislation that are

applicable to both common law and civil law countries, and to countries who have produced, stockpiled and/or been contaminated by cluster munitions, as well as those who have not.

Of the 30 States Parties who have reported that they have adopted legislation or that they consider their existing legislation to be sufficient to meet the domestic implementation requirement, most are developed countries and very few are from Africa. Africa also represents the largest concentration of states that have signed the Convention on Cluster Munitions but not yet ratified it – so national implementation will be a key priority for many African states over the coming years.

New Zealand welcomes this initiative, and its aim to produce elements of model law which are specifically matched to the implementation challenges faced by African countries.

Concluding statements

As Coordinator on National Implementation measures, New Zealand has been a very strong supporter of model legislation.

We believe that the value of these models is two-fold. They facilitate the development of the necessary legislation, and in doing so, they hold the potential to quicken the pace not only of the fulfilment of Article 9, but also of the universalisation of the Convention.

The ICRC, small states and the upcoming African model legislation all meet a range of needs.

Not all of us here today are at the same stage of engagement with the Convention on Cluster Munitions. Many of you, like NZ, are States Parties, others have not yet signed the Convention, and others still have not yet ratified the Convention.

We encourage States who are yet to meet their implementation obligations to review the existing forms of model legislation, and think about whether they could prove useful in your own domestic context.

It would be very valuable for New Zealand in its National Implementation role if I could speak over the course of our meeting here with those of you who have implemented the Convention domestically- to hear from you about the form of legislation you may have adopted, and the various challenges that you faced along the way.

I would also be especially interested to speak to those of you who have not yet implemented your obligations domestically. As Coordinator on National Implementation Measures, we are interested to hear whether your reasons relate to resourcing or administrative issues. Are either of the existing forms of model legislation helpful? Can we provide assistance on adoption of those models? And can we help with anything else?

As Coordinator for National Implementation Measures, New Zealand stands ready to assist States with the important task of implementation. I am available and would be delighted to speak with any of you who would like to discuss the assistance that New Zealand has to offer.