



ICRC

2008 Convention on Cluster Munitions

Ratification kit

STATE ADHERENCE TO AND IMPLEMENTATION OF THE CONVENTION ON CLUSTER MUNITIONS

The Convention on Cluster Munitions provides a comprehensive framework for addressing the long-standing humanitarian issues associated with these weapons. Ensuring that the Convention fulfils its promises requires the widest possible adherence and implementation among States. This paper describes the procedures that most States have to follow in order to ratify or accede to this treaty. It also contains model instruments of adherence to be filed with the depositary. These instruments have been prepared in consultation with the Treaty Section of the United Nations Office of Legal Affairs in New York.

1. SIGNATURE

The Convention opened for signature on 3 December 2008 at a ceremony in Oslo, Norway. Thereafter, and until its entry into force, it can be signed at United Nations Headquarters in New York (contact: Treaty Section, Office of Legal Affairs). Once the Convention enters into force, the period allowed for signatures will be closed.

By signing the Convention, a State is signaling its intention to become a party to the instrument in the future. Once it has signed, a State must not take any action that would undermine the object and purpose of the Convention (see Article 18, *Vienna Convention on the Law of Treaties, 1969*).

Signing the Convention does not make the State a party to the agreement, legally bind it or require it to begin to implement all the provisions of the Convention. To become formally bound by the Convention's provisions, a signatory State must subsequently ratify the instrument. States that do not sign the instrument may also agree to be bound by the Convention through the act of accession.

2. RATIFICATION AND ACCESSION

To become party to the Convention on Cluster Munitions a State must formally declare its consent to be bound by the agreement. This will normally involve two principal steps: action by the national government and a notification to the depositary.

a. Action by the national government

At the national level, a State must agree to adhere to the Convention in accordance with domestic procedures for becoming party to international agreements. This usually requires discussion within the country and action by its parliament and/or its executive.

b. Notification to the depositary

After domestic procedures have been followed and the decision to be bound by the Convention taken, a State will need to prepare an instrument of ratification or accession.

A State that has signed the Convention will generally declare its consent to be bound by preparing an instrument of ratification.

A State that has not signed the Convention will usually declare its consent to be bound by preparing an instrument of accession.

For constitutional reasons, certain States use the terms 'acceptance' or 'approval' to describe their adherence to international treaties. These terms have the same legal effect as ratification and consequently express a State's consent to be bound by a treaty.

Instruments of ratification (acceptance, approval or accession) must be deposited with the treaty's depositary, in this case the Secretary-General of the United Nations (contact: Treaty Section, Office of Legal Affairs, United Nations, New York, NY 10017). The filing of this instrument with the depositary is the action which activates a State's commitments under the Convention and giving them international legal force. Once the Convention is in force, the deposit of an instrument with the UN Secretary-General also creates treaty relations, including rights and obligations, with respect to other States Parties. The Convention does not allow for reservations.

The Convention enters into force six months after 30 States have deposited their instruments of ratification (acceptance, approval or accession). The specific date on which the Convention becomes binding on an individual State is determined as follows:

a) For the first 30 States to deposit instruments with the UN Secretary-General, the Convention will enter into force on the first day of the sixth month after the 30th instrument of ratification (acceptance, approval or accession) is received.

b) For all other States, the Convention will enter into force on the first day of the sixth month after the date on which that State deposited its instrument of ratification (acceptance, approval or accession) with the UN Secretary-General.

In order to reinforce the basic norms laid down in the Convention, Article 18 invites States upon ratification (acceptance, approval or accession) to declare that they intend provisionally to apply its general obligations (contained in Article 1) pending its entry into force. The ICRC encourages States to make such a declaration.

3. NATIONAL IMPLEMENTATION

The Convention (Article 9) requires that States take appropriate legal, administrative and other measures to implement its provisions. This includes the imposition of penal sanctions to prevent and punish any prohibited activity committed by persons or on territory under their jurisdiction or control. Depending on domestic law or procedures, specific criminal legislation to impose legal sanctions may be needed. The ICRC's delegations and its Legal Division in Geneva are available for guidance on preparing such legislation.

Administrative measures - including changes in military doctrine and operating procedures and the notification of companies and entities involved in the development, production and transfer of arms - may also be needed to ensure that violations do not occur.

Besides the prevention and punishment of violations, States need to consider a range of positive measures to ensure implementation of the Convention. These may include:

a. Development and implementation of plans for the destruction of stockpiled cluster munitions

- b. Development and implementation of plans for the clearance of cluster munition remnants
- c. Development and implementation of plans for risk education and victim-assistance programmes
- d. Development and implementation of assistance programmes for a, b and c above in support of other States Parties (Article 6)
- e. Preparation and submission to the depositary of annual reports on implementation and other confidence-building measures (Article 7), the first of which is required 180 days after entry into force of the Convention for the State Party concerned

4. MODEL INSTRUMENTS OF RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

Model instruments to be filed with the depositary are attached. Also attached is a model declaration regarding provisional application, which the ICRC encourages States to consider submitting to the depositary at the time of ratification (acceptance, approval or accession).

The ICRC's delegations throughout the world and its Legal Division in Geneva are available to provide any further information or clarification that may be required.

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MODEL A

For States Signatories

MODEL INSTRUMENT OF **RATIFICATION** [ACCEPTANCE OR APPROVAL]
OF THE
CONVENTION ON CLUSTER MUNITIONS

WHEREAS the Convention on Cluster Munitions was adopted at Dublin on 30 May 2008 and opened for signature at Oslo on 3 December 2008,

WHEREAS the said Convention has been signed on behalf of the Government of _____ on _____,

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs], declare that the Government of _____, having considered the above-mentioned Convention, ratifies [accepts, approves] the same Convention and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of [ratification, acceptance, approval] at _____ on _____.

[signature] + [seal]

This instrument must be signed by the Head of State, Head of Government or Minister of Foreign Affairs.

MODEL B

For non-signatory States

MODEL INSTRUMENT OF ACCESSION
TO THE
CONVENTION ON CLUSTER MUNITIONS

WHEREAS the Convention on Cluster Munitions was adopted at Dublin on 30 May 2008,

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs], declare that the Government of _____, having considered the above-mentioned Convention, accedes to the same Convention and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of accession at _____ on _____.

[signature] + [seal]

This instrument must be signed by the Head of State, Head of Government or Minister of Foreign Affairs.

MODEL C

For both signatory and non-signatory States

Model Declaration of Intent to Apply the Convention Provisionally

Optional Declaration

I [name and title of the Head of State, Head of Government or Minister of Foreign Affairs] declare herewith that the Government of _____ will provisionally apply Article 1 of the Convention on Cluster Munitions, pending its entry into force.

[signature] + [seal]

This declaration may be submitted to the depositary at the same time as the instrument of ratification or accession to the said Convention.

This declaration must be signed by the Head of State, Head of Government or Minister of Foreign Affairs.