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**National Interest Analysis [2009] ATNIA 5**

**with attachment on consultation**

**CONVENTION ON CLUSTER MUNITIONS  
Adopted at Dublin on 30 May 2008**

**[2008] ATNIF 24**



**NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY  
SUMMARY PAGE**

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**Nature and timing of proposed treaty action**

1. Australia signed the Convention on Cluster Munitions (The Convention) at Oslo on 3 December 2008. It is proposed that Australia ratify the Convention by depositing an instrument of ratification with the Secretary-General of the United Nations in accordance with Article 16.
2. The Convention will enter into force generally six months after it has been ratified by 30 States in accordance with Article 17(1). If Australia is not among the first 30 States to ratify, the Convention will enter into force for Australia six months after the deposit of its instrument of ratification in accordance with Article 17(2). It is proposed that Australia deposit its instrument of ratification as soon as all necessary domestic treaty processes have been completed.

**Overview and national interest summary**

3. The objective of this Convention is to ban cluster munitions as defined within the Convention. The Convention also aims to assist the victims of cluster munitions, their families and their communities and includes provisions on the clearance of cluster munitions. The Convention represents a strong humanitarian outcome, while satisfying Australia's national security concerns. In particular, it allows continued operability with States which are not party to the Convention and for Australia to retain non-operational stocks for counter-measures and training purposes. Support for the Convention is consistent with Australia's long-standing commitment to reducing the humanitarian impact of armed conflict, particularly on civilian populations.

## **Reasons for Australia to take the proposed treaty action**

4. The Convention is a significant new instrument of international humanitarian law. Ratifying the Convention is consistent with Australia's commitment to limiting the impact of armed conflict on civilian populations. Cluster munitions can cause significant and indiscriminate harm to civilians. Cluster munitions as defined by the Convention can randomly scatter submunitions that have no discriminatory targeting abilities and have no self-destruct and self-neutralisation capabilities. The submunitions can remain as unexploded ordnance, posing a long-term threat to civilians for years after hostilities have ceased. The Convention defines and bans cluster munitions that cause unacceptable harm to civilians, while its provisions on clearance and victim assistance, and encouragement of international cooperation in these areas, have the capacity to deliver real improvements to the lives of people affected by cluster munitions.

5. Australia played an active role in the negotiation of the Convention, facilitated compromise texts and was appointed to act as a Friend of the Chair on drafting the Preamble to the Convention at the Dublin Diplomatic Conference. Australia advocated the need to strike a balance between addressing the impact of cluster munitions that cause unacceptable humanitarian harm and legitimate military needs, supported a pragmatic approach to clearance responsibilities and helped to ensure that there were comprehensive and meaningful victim assistance and rehabilitation provisions. Australia's delegations to the Lima (23-25 May, 2007), Vienna (5-7 November, 2007) and Wellington (18-22 February, 2008) meetings that led to the Dublin Diplomatic Conference (19-30 May, 2008), at which the Convention text was adopted, comprised officials from the Department of Foreign Affairs and Trade, Attorney-General's Department and Department of Defence. Australia's Ambassador for Disarmament in Geneva led the Australian delegations to the Wellington meeting and Dublin Diplomatic Conference. Representatives of Australian civil society also participated on the Australian delegations at the Vienna, Wellington and Dublin meetings.

6. A short period of 15 months spanned the initial Oslo meeting (February 2007) hosted by the Norwegian government, which instigated the international process that led to the Convention, and the Dublin Diplomatic Conference (May 2008), which negotiated and adopted the Convention text. The brevity of the process reflected widespread international support for the Convention, and the active and focused negotiations. The Convention was adopted by consensus of participating states at the Dublin Diplomatic Conference, and was opened for signature at a signing ceremony hosted by the Government of Norway in Oslo on 3 December 2008. The Minister for Foreign Affairs, Mr Stephen Smith MP, signed the Convention in Oslo, making Australia one of the original signatories.

## **Obligations**

7. Article 1 obliges States Parties to never under any circumstances use cluster munitions as defined by the Convention, or develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions as defined by the Convention, or assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.

8. Article 2 sets out 15 definitions covering victims, cluster munitions, sub-munitions and related topics. Article 2(2) defines those cluster munitions prohibited under the Convention. Article 2(2)(c) excludes from the definition of a cluster munition those munitions that possess a number of characteristics designed to minimise their humanitarian impact. These characteristics include electronic self-destruct and self-deactivating mechanisms and the ability to detect and engage specific targets.

9. Article 3 obliges States Parties to separate and destroy stocks of cluster munitions as defined under the Convention. A State has eight years to complete this requirement after the entry-into-force of the Convention for that State Party. Provision for four-year extensions to this deadline is included. Australia is already compliant under this Article as it does not possess any cluster munitions as defined by the Convention, other than those non-operational stocks allowed for training and counter-measures purposes (Article 3(6)). Article 3(8) stipulates reporting and transparency requirements relevant to holdings of cluster munitions prohibited under the Convention.

10. Article 4 obliges States Parties to clear and destroy cluster munitions remnants in areas under their jurisdiction and control. States Parties have a maximum of ten years to complete such work, either from when the Convention comes into force for a State Party in control of contaminated areas at the time of entry-into-force of the Convention, or when active hostilities cease in areas under its jurisdiction and control. The Convention provides for extension requests of up to five years. States Parties are required to take all feasible steps to ensure the effective exclusion of civilians from, and marking of, contaminated areas, and conduct risk reduction education among civilians living in and around contaminated areas. In cases where a State Party has used or abandoned cluster munitions in an area that has become within the jurisdiction and control of another State Party, the former State Party is strongly encouraged to provide assistance to the latter State Party for the purpose of clearance and destruction of cluster munitions remnants in that area.

11. Article 5 obliges States Parties to provide assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion, to cluster munitions victims in areas under their jurisdiction or control on a non-discriminatory basis. States Parties are required to develop plans and budgets for such assistance, designate a national focal point for government coordination, and take steps to mobilise national and international resources.

12. Article 6 notes that each State Party has the right to seek and receive assistance, and that States Parties in a position to do so shall provide technical, material and financial assistance across the range of the Convention's provisions. This includes obligations, for States Parties in a position to do so, to fully participate in the exchange of equipment and scientific and technological information, to provide assistance for the clearance and destruction of cluster munitions and to provide assistance for the implementation of the obligations under Article 5. States Parties in a position to do so are required to provide assistance to contribute to the economic and social recovery needed as a result of cluster munitions use in affected States Parties. Australia, through AusAID's Mine Action program, which is underpinned by the Government's Mine Action Strategy (2005-10), already fulfils the provisions of this Article. The Strategy does not distinguish between landmines and cluster munitions in demining activities, takes into account the broader socioeconomic impact of explosive remnants of war (ERW), and incorporates an expanded

definition of victims to include persons directly impacted by ERW as well as their affected families and communities.

13. Articles 7 and 8 oblige States Parties to meet a number of reporting obligations, including national measures to implement the Convention. As Australia does not produce, or possess operational stocks of, cluster munitions as defined by the Convention, many of the provisions of Article 7 are not applicable. Under Article 7.1(n), Australia is required to report on the amounts, types and destinations of international cooperation and assistance provided under Article 6 of the Convention. AusAID regularly reports on its assistance programs that are also relevant to the Convention's implementation.

14. Article 21 obliges States Parties to encourage States not party to the Convention to ratify, accept, approve or accede to the Convention, with the goal of attracting universal adherence. States Parties shall also notify the governments of States not party to the Convention of their obligations under the Convention and, inter alia, make their best efforts to discourage States not party to the Convention from using cluster munitions as defined by the Convention.

15. Article 21(3) allows States Parties to the Convention to engage in military cooperation and operations with States not party to the Convention that might engage in activities prohibited to a State Party under the Convention. This allows State Parties to continue to effectively participate in Coalition operations in which an ally may be using cluster munitions prohibited under the Convention. However, Article 21(4) reaffirms that certain obligations on States Parties set out in Article 1 of the Convention still apply in these circumstances. In particular, Australia would not be permitted to physically use or transfer prohibited cluster munitions in the course of a Coalition operation and would not be authorised to expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control. Australia will continue to work with allies and partners on a common understanding of how Article 21 will operate in practice and in compliance with the Convention by Australia and other States parties.

## **Implementation**

16. Ratification of the Convention will require additional implementation measures in Australian law. In particular, Article 9 of the Convention requires Australia to enact criminal offences to prevent and suppress any activity prohibited to a State Party under the Convention. These offences will reflect the primary obligations contained in Article 1 of the Convention. Amendments to Department of Defence standard operating procedures will also be required.

## **Costs**

17. Ratification of the Convention will not involve any immediate additional financial cost for Australia. The Convention will not require the Australian Defence Force to acquire new weapons or replace or dispose of any existing weapons.

18. Australia may incur costs if assistance is requested of it under the Convention, although acceding to such requests will be a matter for Government. Australia, through its Mine Action program administered by AusAID, is already fulfilling clearance and victim assistance provisions of the Convention.

19. Costs of meetings of States Parties, Review Conferences and Amendment Conferences, and costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 of the Convention, will be borne by States Parties calculated according to the United Nations scale of assessment.

### **Regulation Impact Statement**

20. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulatory Impact Statement is not required.

### **Future treaty action**

21. The Convention provides for amendment under Article 13.

### **Withdrawal or denunciation**

22. Article 20 of the Convention provides that a State Party can withdraw from the Convention by notifying the Depository (the Secretary-General of the United Nations) and giving notice of withdrawal to all other States Parties and to the United Nations Security Council. The instrument of withdrawal shall include a full explanation of reasons motivating withdrawal. Withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depository. 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.

### **Contact details**

Counter-Proliferation Section  
Arms Control and Counter-Proliferation Branch  
International Security Division  
Department of Foreign Affairs and Trade





## **Attachment on Consultation**

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#### **CONSULTATION**

23. The proposed treaty action was notified to the States and Territories through the treaties schedule of the Commonwealth-States-Territories Standing Committee on Treaties (SCOT).

24. To ensure that the views of those in the non-government sector were taken into account, an active dialogue was maintained with civil society, particularly Australian members of the Cluster Munitions Coalition (which had 21 Australian members). Australia included representatives of civil society in its delegations to the Vienna (Austcare), Wellington (Austcare, Australian Network to Ban Landmines) and Dublin (Australian Red Cross, World Vision Australia) meetings.