

AP Mine Ban Convention

Implementing Legislation an Overview

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INTERNATIONAL COMMITTEE
OF THE RED CROSS

Geneva



Article 9 of the Convention

- ▶ "Each State Party shall take all appropriate legal, administrative and other measures,
- ▶ 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."



What type of legislation is adopted?

- ▶ Typically, most common law States (presumably all here, with Vanuatu as a mixed system), adopt stand-alone legislation
- ▶ Titles are typically "Anti-personnel mines Convention Implementation Act (DATE)" (Canada, Malaysia), or "Anti-personnel Mines (Prohibition) Act DATE" (Mauritius, New Zealand)



What are the elements of this legislation?

- ▶ Typically 7 elements (with articles of the Convention to which they refer):
 - ▶▶ Offences definitions (Art. 1, 4)
 - ▶▶ Penal Sanctions (Art. 9)
 - ▶▶ Exceptions (Art. 3)
 - ▶▶ Definitions (Art. 2)
 - ▶▶ Destruction and Clearance (Arts. 4 and 5)
 - ▶▶ Transparency Measures (Art. 7)
 - ▶▶ Fact-finding Missions (Art. 8)



1. Offences

	Does your legislation prohibit and provide punishment for these violations? (Art. 9)*	Is there a prohibition for <i>assisting, encouraging and inducing</i> these violations? (Art. 1 c and Art. 9)*
Use (Art. 1 a)		
Acquisition (Art. 1 b)		
Stockpiling (Art. 1 b)		
Retention (Art. 1 b)		
Transfer , including the physical movement of AP mines into or from national territory, and the transfer of title to and control over the mines (Art. 1 b, and Art. 2(4))		
Development (Art. 1 b)		
Production (Art. 1 b)		



1. Offences

- ▶ Make sure that all seven verbs are covered
- ▶ Make sure that "assisting, encouraging and inducing are covered", ideally in the law, but if the criminal code covers this, then can use criminal code
- ▶ Consider extra-territorial jurisdiction
- ▶ Consider bodies corporate



2. Penal Sanctions

- ▶ Ensure they are adequate
- ▶ Examples include:
 - ▶▶ Canada (10 years, 500,000 \$ max)
 - ▶▶ New Zealand (7 years, 500 000 \$ max)
 - ▶▶ South Africa (25 years, "a fine")
 - ▶▶ United Kingdom (14 years, "a fine")
 - ▶▶ Zimbabwe (10 years, 100 000 \$)



3. Exceptions (Art. 3)

- ▶ Absolute minimum number necessary of mines
- ▶ Permitted for development of and training in mine detection, clearance or destruction techniques, or to destroy the mine
- ▶ Shouldn't normally include "acquiring, producing" in this section
- ▶ Some states include evidentiary purposes in criminal investigations (eg Trinidad and Tobago)
- ▶ Co-operation with mine-using States becomes an issue



4. Definitions (Art. 2)

- ▶ Use those in the Convention
- ▶ Best practice is to put them in the definition section of the Act
- ▶ Can use the ICRC model law
- ▶ Can use the New Zealand "safeguard clause" (section 2.2) giving the meaning in the Convention to the definitions



5. Destruction and Clearance

- ▶ Destruction and forfeiture can be contemplated (eg Australia sections 10, 11)
- ▶ Order to / duty of minister to destroy (eg Canada, section 9, Malaysia section 7)
- ▶ Could reference the timeframes in the Convention (eg South Africa, s. 13)
- ▶ Can have search and seizure provisions (eg UK ss. 8, 9)



6. Transparency measures

- ▶ Can create obligation to assist the Minister whose responsibility it is to forward reports
- ▶ Can contemplate forwarding the report to Parliament as well as UN (eg South Africa, s. 27)
- ▶ May consider some privacy / confidentiality measures re businesses (eg UK s. 19)



7. Fact-finding Missions

- ▶ Grant powers to inspectors (eg Australia ss. 14 and 16), including privileges and immunities
- ▶ Can issue certificates to inspectors (Canada ss. 12 and 13)
- ▶ Can seek to ensure "free access" for inspectors (eg New Zealand sections 17 to 24)
- ▶ Can seek entry, search, seizure powers (eg South Africa s. 21)
- ▶ Can have assistance by the police (eg Trinidad ss.10 to 13)



Tools available

- ▶ ICRC Model Law
- ▶ Examples from other countries, see our database: www.icrc.org
- ▶ Ratification kit, for those yet to accede
- ▶ Can provide electronic versions of these documents





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International Committee of the Red Cross
an independent, neutral organization ensuring humanitarian protection and assistance for victims of war and armed violence.

Iraq: civilians bear the brunt of violence



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At an international conference held in Geneva to discuss the plight of refugees and those displaced by the violence in Iraq, the ICRC's director-general has spoken of how civilians are facing further deprivation by the day. He called for greater respect for international humanitarian law. His appeal follows the publication of an **ICRC report** that found

the humanitarian situation in the country steadily worsening. See also **latest update of ICRC activities**.

Somalia: latest report on ICRC activities



The ICRC has stepped up its humanitarian operations in Somalia to treat the wounded and help those displaced by some of the worst fighting in 15 years. The ICRC remains one of the principal providers of emergency aid to people affected by conflict and natural disaster in Somalia.

Afghanistan: ICRC activities January to March 2007



With a total of sixty delegates and 1,000 national staff, Afghanistan remains one of the ICRC's biggest operations worldwide. The organization continues to focus on a wide range of activities including visits to detainees and support for orthopaedic services.



▶ All worldwide activities

Selected operations

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LATEST NEWS

Somalia - ICRC Bulletin No. 01 / 2007

24-4-2007 ICRC News

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23-4-2007 ICRC News

Cluster munitions: ICRC hosts meeting of experts

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ALL**GENERAL COMMENT****IMPLEMENTING
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by State

by keyword

**NOTE**

This database provides documentation and commentaries concerning the implementation of international humanitarian law at the national level. The number of States included will steadily increase over time.

The content is drawn from information available to the ICRC Advisory Service on International Humanitarian Law. It illustrates possible approaches to incorporating IHL in national legislation but does not seek to provide a comprehensive picture of the situation.

English is used throughout the database (apart from official texts in French and Spanish, which appear in the original language).

Any comments on the database are welcome and should be sent to: International Committee of the red Cross

Advisory Service on IHL
19, av. de la Paix
CH-1202 Geneva
Switzerland

e-mail:

advisoryservice.gva@icrc.org**AVERTISSEMENT**

Cette base de données contient des textes et des commentaires relatifs à la mise en œuvre nationale du droit international humanitaire. Le nombre d'États couverts augmentera progressivement.

Le contenu est fondé sur les informations dont disposent les Services consultatifs en droit international humanitaire du CICR. Il s'agit d'une illustration des différents aspects et possibilités de la mise en œuvre nationale de ce droit et non d'un état des lieux qui se voudrait exhaustif.

La langue utilisée est l'anglais (à l'exception des textes officiels en espagnol ou en français, qui figurent en version originale).

Toute remarque sur la base de données est la bienvenue et peut être adressée à:

Comité international de la Croix-Rouge
Services consultatifs en DIH
19, av. de la Paix
CH-1202 Genève
Suisse

e-mail:

advisoryservice.gva@icrc.org**NOTA**

Esta base de datos contiene textos y comentarios relativos a la aplicación del derecho internacional humanitario a nivel nacional. El número de Estados que abarca aumentará progresivamente.

El contenido se basa en las informaciones de que dispone el Servicio de Asesoramiento en Derecho Internacional Humanitario del CICR. Ilustra distintos aspectos y posibilidades de la incorporación de ese derecho en las legislaciones nacionales, sin pretender ser exhaustiva en la materia.

El idioma empleado es el inglés (con excepción de los textos oficiales en español y francés, que figuran en versión original).

Agradeceremos toda observación sobre esta base de datos, que rogamos envíen a:

Comité Internacional de la Cruz Roja
Servicio de Asesoramiento en DIH
19, av. de la Paix
CH-1202 Ginebra
Suiza

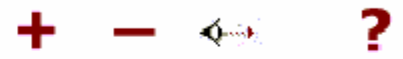
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NATIONAL IMPLEMENTATION

Implementing Laws & Regulations - by State



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National Implementation of International Humanitarian Law (IHL) Advisory Service

What national implementation of international humanitarian law (IHL) means and how the ICRC encourages States to adopt the necessary measures.

Key document | **Annual Report** | **Event** | **International Review of the Red Cross** | **Report**

More in this section

- Treaties and States parties
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- Reaffirmation and development
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DATABASE

IHL - National Implementation:
laws, regulations and case law

About the database

"The High Contracting Parties and the Parties to the conflict shall

International humanitarian law sets out detailed rules that seek to limit the effects of armed conflict. Its main treaties have been accepted by nearly every State in the world. ([Treaties and States parties](#))

However, becoming party to these agreements is only a first step. Efforts must be made to implement humanitarian law, to turn the rules into action.

Some measures will require the adoption of legislation or regulations. Others will require the development of educational programmes, the recruitment and/or training of personnel, the production of identity cards and other documents, the setting up of special structures, and the introduction of planning and administrative procedures.

Areas where the adoption of implementing measures is required include: the protection of the red cross and red crescent [emblems](#), the repression of [war crimes](#), the protection of [cultural property](#), the use of certain [weapons](#), etc.

The ICRC set up its [Advisory Service on International Humanitarian Law](#) in 1996 to step up its support to States committed to implementing IHL. Specifically, the Advisory

About the database

"The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol."

Protocol I, Art. 80.1

FACT SHEETS

protection of **cultural property**, and use of certain **weapons**, etc.

The ICRC set up its **Advisory Service on International Humanitarian Law** in 1996 to step up its support to States committed to implementing IHL. Specifically, the Advisory Service:

- organizes meetings of experts;
- offers legal and technical assistance in incorporating IHL into national law;
- encourages States to set up national IHL committees and assists them in their work (see **National Committees on IHL**);
- promotes the exchange of information (for instance through its **database**);
- publishes specialist documents (for instance: **fact sheets**, **ratification kits**, **model laws**, **biennial report** and **biannual update**).

Key document

31-3-2006

National implementation of international humanitarian law

Biannual update on national legislation and case law, July-December 2005

(Info resources\International Review\2006 - No. 861)

International Review of the Red Cross **Includes PDF**

30-9-2005

National implementation of international humanitarian law

Biannual update on national legislation and case law, January-June 2005

(Info resources\International Review\2005 - No. 859)

International Review of the Red Cross **Includes PDF**

31-7-2004

National implementation of international humanitarian law – 2002-2003 Biennial Report

National implementation of international humanitarian law

(Humanitarian law\National implementation\Publications\Biennial report)

ICRC Publication **Includes Photo, PDF**

30-6-2002

Implementing International Humanitarian Law : from Law to Action

Fact sheet explaining what it means to implement international humanitarian law at the national level, whose responsibility it is to do so, what general measures must be adopted and how this can be done.

(Humanitarian law\National implementation\Publications\Fact sheets)

Fact Sheet **Includes PDF**

Further assistance in drafting legislation:

- ▶ www.icrc.org
- ▶ Contact:
- ▶ **ICRC Sydney**
- ▶ Suite 104A, Level 1
- ▶ 55 Grafton Street
- ▶ Woollahra NSW 2025
- ▶ AUSTRALIA

- ▶ Tel: (00 61) 2 9388 9039
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- ▶ Legal Adviser & Head of Office:
- ▶ **Nicole Hogg**

