

1. Could you please provide the extract of the declaration from the Mine Ban Convention which deals with interoperability so that it can be compared with the interoperability provisions under the Convention on Cluster Munitions?

Australia's declaration to the Mine Ban Convention, made at ratification on 14 January 1999, is as follows:

"It is the understanding of Australia that, in the context of operations, exercises or other military activity authorised by the United Nations or otherwise conducted in accordance with international law, the participation by the Australian Defence Force, or individual Australian citizens or residents, in such operations, exercises or other military activity conducted in combination with the armed forces of States not party to the Convention which engage in activity prohibited under the Convention would not, by itself, be considered to be in violation of the Convention.

It is the understanding of Australia that, in relation to Article 1(a), the term "use" means the actual physical emplacement of anti-personnel mines and does not include receiving an indirect or incidental benefit from anti-personnel mines laid by another State or person. In Article 1(c) Australia will interpret the word "assist" to mean the actual and direct physical participation in any activity prohibited by the Convention but does not include permissible indirect support such as the provision of security for the personnel of a State not party to the Convention engaging in such activities, "encourage" to mean the actual request for the commission of any activity prohibited by the Convention, and "induce" to mean the active engagement in the offering of threats or incentives to obtain the commission of any activity prohibited by the Convention.

It is the understanding of Australia that in relation to Article 2(1), the definition of "anti-personnel mines" does not include command detonated munitions.

In relation to Articles 4, 5(1) and (2), and 7(1)(b) and (c), it is the understanding of Australia that the phrase "jurisdiction or control" is intended to mean within the sovereign territory of a State Party or over which it exercises legal responsibility by virtue of a United Nations mandate or arrangement with another State and the ownership or physical possession of anti-personnel mines, but does not include the temporary occupation of, or presence on, foreign territory where anti-personnel mines have been laid by other States or persons."

2. Could you please define what 'awareness training' is? How is this carried out with coalition forces?

Explosive Hazards Awareness Training (EHAT) is provided in Australia to all Defence personnel before they deploy into a theatre of operations. The training is generic in nature and provides personnel with an understanding of the threat posed by explosive remnants of war - which is comprised of unexploded ordnance (UXO) and abandoned explosive ordnance - within an operational area. It is not specific to cluster munitions but if cluster munitions UXO are known to be in that area, then the training will be tailored to highlight the identification features and dangers specific to that hazard.

EHAT is conducted in Australia prior to deployment and other partners in combined operations may attend this training. For example, for Operation ANODE in the Solomon Islands, the Papua New Guinea and Tongan platoons received the same EHAT in Australia as Australian Defence Force (ADF) personnel.

Dependent on the nature of the conflict, ADF personnel may also receive follow up training in the theatre of operations as part of the Reception-Staging-Onforwarding-Integration (RSOI) course which provides an overview of the country of deployment. RSOI may include

mention of explosive hazards (in particular improvised explosive devices) but would not necessarily be a sole focus of the training. This follow on training might be assisted in part by other coalition partners, including United States military members.

3. Is it prohibited under the Convention on Cluster Munitions for an Australian entity to have a share in a company that produces cluster munitions?

The Convention on Cluster Munitions prohibits States Parties from directly or indirectly developing or producing cluster munitions, or assisting, encouraging or inducing anyone to engage in activities prohibited by the Convention. The Convention does not explicitly prohibit investment in companies that develop or produce cluster munitions. The term 'assist' is not defined in the Convention. In the Mine Ban Convention, Australia has interpreted this term to mean actual and direct physical participation in any activity prohibited by the convention. Under that interpretation it is therefore doubtful that investment in companies that develop or produce cluster munitions is prohibited by the Convention on Cluster Munitions.

However, and as indicated in evidence given to the Committee, the government has not yet considered the terms of the legislation to implement the obligations of the convention, and issues such as the interpretation of 'assist' will need to be looked at in the development of the legislation.

4. It appears that under the interoperability clause, Australian personnel may be present in joint operations where cluster munitions are used e.g. may be on a plane that drops cluster munitions. How will such cooperation discourage non-party countries from using cluster munitions (it being one of our responsibilities under the Convention to discourage such use)?

Paragraph 3 of Article 21 of the Cluster Munitions Convention qualifies the prohibitions specified in Article 1 of the Convention. Paragraph 3 enables States Parties to engage in military cooperation and operations with States not party to the Convention who might engage in conduct prohibited under the Convention, such as using prohibited cluster munitions. This circumstance may arise if Australia participated in a major combined operation with a Non State Party against conventional forces - particularly armoured forces – which is the likely event in which our partners and allies may consider using cluster munitions.

However, Article 21 also includes safeguards to ensure that, despite the qualification in paragraph 3, the core objectives of the Convention are not diminished. These safeguards include the requirement in paragraph 2 of Article 21 for States Parties to make their best efforts to discourage States not party to the Convention from using cluster munitions.

The obligation on States Parties to exert their influence where appropriate in discouraging the use of cluster munitions does not preclude their continued ability to engage in military cooperation and operations with States not party to the Convention. State Parties have considerable discretion as to the means of discharging the obligation to discourage States not party from using cluster munitions. Australia will fulfil this obligation as appropriate opportunities arise. This obligation may be discharged in bilateral or multilateral spheres through oral or written communications aimed at dissuading or advising States not party against using cluster munitions.

5. Did Australia lobby for the interoperability clause in the Cluster Munitions Convention in the negotiations over the treaty? If so, was this to avoid the strict terms that apply in the Landmine Convention?

Australia supported the inclusion of an interoperability clause in the Convention on Cluster Munitions. The Government was concerned to ensure that cooperation between nations through peacekeeping and other joint operations with states who may not become parties to the Convention was able to continue - for example, the United States. Such cooperation is a vital pillar of Australia's strategic security and defence arrangements.

Australia's interpretations of interoperability and "use" in regards to the Mine Ban Convention are provided in the answer to Question 1 above.