

**Regional workshop to advance the aims of the Convention on
the Prohibition of the Use, Stockpiling, Production and Transfer
of Anti-Personnel Mines and on Their Destruction**

**3-4 May 2007
Port Vila, Vanuatu**

Speaking Notes

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“A Case study in the Establishment of Legislation”

My presentation is divided into two parts:

- First, a brief explanation of the background and processes culminating in the enactment of New Zealand’s Anti-Personnel Mines Prohibition Act 1998; and
- Second, some commentary on a few key elements within that Act.

The Ottawa process

As a member of the inner core group, New Zealand was an active and significant player in the negotiations that developed the text of the Ottawa Convention.

Throughout the Ottawa process, we worked closely with NGO bodies, particularly the New Zealand Campaign Against Landmines (CALM), an umbrella group representing community groups with an interest in banning mines.

Our strong support for the Ottawa Convention was fundamentally in line with New Zealand policy:

- We had renounced the operational use of AP mines in 1996. New Zealand had also never been a producer of AP mines.
- Moreover, there are no Crown stockpiles of mines in New Zealand, and no mined areas under New Zealand’s jurisdiction or control.

New Zealand signed the Ottawa Convention in December 1997.

It was clear early on that New Zealand would need new law in order for us to ratify the Convention. Before the Ottawa Convention, there was no domestic legislation explicitly prohibiting AP mines. AP mines, however, had always been subject to the import and export controls of the New Zealand Arms Act and the Customs Export Prohibition Order.

Draft legislation to implement our obligations under the Ottawa Convention was introduced into our Parliament before the end of June 1998. That was less than seven months after New Zealand had signed the Convention. The legislation was considered by a Parliamentary Select Committee, and was passed following a final reading on 3 December 1998. Coincidentally, this was one year to the day that New Zealand had signed the Convention.

Passage of this legislation was very speedy by the usual standards, reflecting the importance that the Government and the community had placed on banning AP mines at the national level. Nonetheless, no procedural shortcuts were employed. The draft legislation was subject to full consideration by Select Committee and the public were given sufficient opportunity to make submissions.

At the end of the day, New Zealand's Anti-Personnel Mines Prohibition Bill received full support across the political spectrum. All submissions made on the Bill were, perhaps not surprisingly, in favour of Parliament taking positive action on the legislation.

Generally speaking, ratification of most international arms control treaties requiring amendments to New Zealand law usually takes about three years. New Zealand was able to ratify the Ottawa Convention on 27 January 1999, a little over a year following our signature.

Content of the Legislation

Turning now to content of the legislation. The Anti-Personnel Mines Prohibition Act 1998 was a relatively straightforward piece of legislation to put together. A number of government agencies had played a part in the drafting of the law. The Ministry of Foreign Affairs and Trade was the lead agency, with the Ministry of Justice responsible for the actual drafting. Other agencies that provided input into the process included the New Zealand Defence Force, Customs, and Police. As mentioned earlier, NGOs had the opportunity of commenting on the draft law through the Select Committee stage.

The Act is administered by the Ministry of Foreign Affairs and Trade. It does not specify the Minister responsible for administering the legislation, though "Minister" is defined as meaning Minister of the Crown who is under the authority of a warrant or with the authority of the Prime Minister.

I would like to highlight a few key areas of the Act that might be of interest to some of you here.

As you are all aware, the Ottawa Convention prohibits States Parties from using, developing, producing, acquiring, stockpiling, or transferring AP mines, and assisting, encouraging, or inducing any prohibited activity. The Act applies all of these prohibitions anywhere in New Zealand territory.

The definitions used in the Act are by and large based on those agreed in the Convention. For example, the definitions of “mine”, “anti-personnel mine” and “anti handling device” were all carried over from the Convention almost unaltered.

Some definitions were not carried over in their exact form from the Convention. The term “transfer”, for instance, did not adopt the definition provided for in the Convention. We simply defined this term to mean “importation into, and exportation from, New Zealand”.

In yet other cases, certain terms are not defined. Section 2 of the Act refers to the Convention terms that are not defined, for example: “mined area”.

The Act also provides exceptions to the specific prohibitions within the Act. These exceptions are carried over from Article 3 of the Convention, which permits the use and transfer of anti-personnel mines for training purposes. The power to authorise AP mines for such purposes rests with the Minister.

At the time the legislation was being drafted, there was some debate over whether compliance with the Ottawa Convention prevented interaction between the defence forces of States parties and non-State Parties. Our position was that the Convention did not ban interaction between forces.

Section 8(d) of the Act enables members of the armed forces to participate in operations, exercises, or other military activities with armed forces of a state not a party to the Convention that uses AP mines. The only catch here is that the participation in question does not amount to active assistance in the prohibited conduct. Fortunately, we have not yet been put in a position to define the meaning of “active assistance”.

Section 8(d) of the Act was considered necessary to preserve New Zealand’s defence and military ties with non-parties to the Convention, such as Singapore, which do use landmines.

What happens if you are caught carrying out a prohibited activity under the Act? If you do happen to, for example, use an AP mine, and are prosecuted for committing this offence, you could be looking at a maximum term of seven years imprisonment or a fine not exceeding \$500,000.

These penalties were set taking into account the penalties in the Chemical Weapons (Prohibition) Act 1996 and the Arms Act 1983. To the best of my knowledge, no one has ever been prosecuted under the Anti-Personnel Mines Prohibition Act.

As New Zealand neither possesses nor produces AP mines, the reporting requirements that are set out in Article 7 of the Convention are not really relevant to our circumstances. However, if the situation were ever to change – for example, we acquired AP mines for training purposes, the Act does put in place a regime that will ensure that such information is provided.

New Zealand very recently submitted its annual Article 7 report on the Ottawa Convention. Our report, aside from confirming that we don't have or use AP mines in this country, nonetheless provides an opportunity to highlight New Zealand contributions towards mine action activities around the world.

A sizable portion of the Act concerns fact-finding missions. Given that New Zealand has no anti-personnel mines on its territory, we would be highly surprised if a fact-finding mission was sent to New Zealand to examine our compliance. Nonetheless, the Act facilitates these missions by enabling members of a fact-finding mission to carry out inspections and other functions in accordance with the Convention. The search and seizure provisions relating to such missions were carefully scrutinised to ensure consistency with our Bill of Rights legislation.

In conclusion, New Zealand remains a very strong supporter of the Ottawa Convention and on eliminating landmines and addressing the awful impact these weapons continue to have on civilian populations in many parts of the world. I hope that some of the brief insights I've provided on New Zealand's legislative implementation of the Convention have been helpful. I have a copy of New Zealand's Act if anyone is interested in viewing it.

Thank you.