

Presentation to APLC intersessional meeting, June 2011

Ireland's legislation implementing the APLC

- Ireland ratified the Anti-Personnel Mine Ban Convention upon its opening for signature on 3 December 1997. Treaties and international agreements ratified by Ireland do not become part of Irish law unless parliament enacts legislation with this effect. On the contrary, where a treaty requires, for instance, the creation of criminal offences, parliament must enact appropriate legislation before Ireland may become party to that treaty;

We were in a position to sign and ratify the Convention immediately because we had already made legislative provision prohibiting the possession, manufacture, sale, import and transport of anti-personnel mines. This was done in 1996, ***in advance of*** conclusion of the Ottawa Process. It was done by means of a Government decree made under the authority of primary legislation enacted in 1875.

- In 2008, when legislation was being prepared to implement the Convention on Cluster Munitions, the Government took the opportunity also to make much more detailed provision - in primary legislation - for the Anti-Personnel Mine Ban Convention in what subsequently became the *Cluster Munitions and Anti-Personnel Mines Act 2008*. This was done in particular to prohibit investment of public funds in enterprises involved in making or selling anti-personnel mines, and to bring up to date the penalties that could be imposed for violation of the Convention.
- The legislation was drafted and subsequently passed by both Houses of Parliament in a relatively condensed period of about four months, in time for the CCM Signature Conference in Oslo in December 2008.
- The legislation was drawn up in consultation with Ireland's national committee on international humanitarian law, and the Minister for Foreign Affairs also

consulted the International Committee of the Red Cross. The ICRC's model law on the implementation of the APM Convention was a useful resource.

- The main provisions of the Act relating to anti-personnel mines are the following:
 - o Section 2 sets out definitions, including of key terms as defined in the Anti Personnel Mine Ban Convention such as 'mine', 'anti-handling device' and 'anti-personnel mine';
 - o Section 8 allows the Minister for Foreign Affairs to designate by decree that states parties to the Anti-Personnel Mine Ban Convention. Mines may only be transferred to other States Parties to the APM Convention (for the purposes of their destruction, for instance) as provided for in the Convention.
 - o Section 9 (1) makes the use, development, production, acquisition, possession, retention or transfer of an anti-personnel mine an offence. This is in accordance with Article 9 of the Anti-Personnel Mine Ban Convention, which provides that 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."
 - o Under Section 9 (2) of the Act, a person who assists, encourages or induces another to commit one of the offences above is also guilty of an offence. Section 9 (3) extends the scope of the Act beyond the territory of the State to include persons under its jurisdiction such as members of the Defence Forces and persons on board an Irish-registered ship or aircraft;

- In accordance with Article 3 of the Convention, certain exceptions to the prohibitions are permitted, and these are provided for in section 10 of the Act. They include the retention or acquisition of a limited number of anti-personnel mines for development of and training in mine detection, mine clearance or mine destruction techniques. Section 10 also makes provision for their possession in the context of criminal investigations or proceedings and their delivery to the Defence Forces or transfer to another State Party for the purposes of their destruction.

- The Minister for Foreign Affairs may require the production of information necessary for the implementation of the Act or for the purposes of meeting the State's annual reporting requirements under the two Conventions. This provision was directed in particular at non-governmental entities (either private companies or NGOs) that may possess information necessary to meet the State's reporting obligations under the Convention. Section 16 provides that failure to comply with a request for the production of information is an offence. The provision of false or misleading information is also an offence.

- Section 17 provides for penalties to be imposed upon summary conviction (i.e. for minor offences) and conviction on indictment (i.e. for serious offences) of an offence under section 9. The maximum penalty for conviction on indictment is ten years imprisonment or a fine of €1,000,000, or both. This reflects the potential seriousness of the offences concerned.

- Section 18 includes bodies corporate within the categories of persons liable to conviction under the Act;

- Section 19 provides that anything used for the commission of an offence under the Act is forfeit to the State, and if that thing is an anti-

personnel mine, it shall be delivered to the Defence Forces for destruction.

- Schedule 2 to the Act, for ease of reference, sets out the full text of the Anti-Personnel Mine Ban Convention.

- In relation to investments, the Act introduced an innovation in Irish law, with Sections 11-14 providing that the investment of public moneys, including by the National Pensions Reserve Fund, in any company that produces cluster munitions or anti-personnel mines is prohibited. It creates a duty on investors of public moneys to avoid investments (whether direct or indirect) in companies involved in the manufacture of prohibited munitions (including anti-personnel landmines) or components of such munitions.

- In addition, where public moneys are directly invested in a company which is or becomes involved in the manufacture of prohibited munitions or components, the investor must either (a) establish to its satisfaction that the company intends to cease its involvement in the manufacture of prohibited munitions or components, or (b) divest itself of its investment in that company in an orderly manner. The same provisions apply to collective investment undertakings where public moneys are invested.

- The debates on this legislation in both Houses of the Irish Parliament (Oireachtas) was marked by cross-party consensus in support of the provisions of both Conventions, reflecting Ireland's tradition of activism in the development of international humanitarian law and the promotion of disarmament.