

MODEL LAW ON THE CONVENTION ON CERTAIN CONVENTIONAL WEAPONS

**Legislation for common-law States on
the 1980 Convention on Prohibitions or
Restrictions on the Use of Certain Conventional
Weapons which may be Deemed to be Excessively
Injurious or to have Indiscriminate Effects
and on its Protocols**

MODEL LEGISLATION

for common-law States

CONVENTIONAL WEAPONS CONVENTION ACT 20XX

An act to implement the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects and its Protocols

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CONVENTIONAL WEAPONS CONVENTION ACT 20XX

**An act to implement the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons
Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects**

ENACTED by the Parliament of [COUNTRY], as follows—

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects Act of [YEAR].

2. Interpretation

In this Act:

“**amended Protocol II**” means the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention, as amended on 3 May 1996), as set out in the Third Schedule to this Act;

“**anti-handling device**” has the same meaning as in the Anti-Personnel Mines (Prohibition) Act 2001;

“**anti-personnel mine**” has the same meaning as in the Anti-Personnel Mines (Prohibition) Act 2001;

“**armed conflict**” means situations referred to in Articles 2 and 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article 1 of Additional Protocol I to those Conventions;

“**blinding laser weapon**” means a weapon specifically designed, as its sole combat function or as one of its combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices;

“**booby-trap**” means any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;

“**civilian object**” means an object which is not a military objective;

“**component part**” means any identifiable component designed or adapted to form an essential and integral part of any weapon prohibited by this Act;

“**Convention**” means the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1980, which is set out in the First Schedule to this Act;

“**explosive remnants of war**” means unexploded ordnance and abandoned explosive ordnance;

“feasible precautions” means those precautions which are practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations;

“incendiary weapon”:

- (a) means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target;
- (b) includes flame throwers, *fougasses*, shells, rockets, grenades, mines, bombs and other containers of incendiary substances;
- (c) does not include:
 - (i) any munition which may have incidental incendiary effects, such as illuminants, tracers, smoke or signalling systems; or
 - (ii) any munition designed to combine penetration, blast or fragmentation effects with an additional incendiary effect, such as armour-piercing projectiles, fragmentation shells, explosive bombs and similar combined-effects munitions in which the incendiary effect is not specifically designed to cause burn injury to persons, but to be used against military objectives, such as armoured vehicles, aircraft and installations or facilities;

“military objective” means any object which, by its nature, location, purpose or use, makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage, on the understanding that several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective;

“mine”:

- (a) means any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle;
- (b) includes any mine laid to interdict beaches, waterway crossings or river crossings;
- (c) does not include an anti-ship mine used at sea;

“Minister” means the Minister to whom responsibility for the subject of defence is assigned;

“permanent blindness” means irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery;

“Protocol I” means the Protocol on Non-detectable Fragments (Protocol I), 10 October 1980, as set out in the Second Schedule to this Act;

“Protocol II” means the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), 10 October 1980, as set out in the Third Schedule to this Act;

“Protocol III” means the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 10 October 1980, as set out in the Fourth Schedule to this Act;

“Protocol IV” means the Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995, as set out in the Fifth Schedule to this Act;

“Protocol V” means the Protocol on Explosive Remnants of War, as set out in the Sixth Schedule to this Act;

“remotely-delivered mine”:

- (d) means a mine not directly emplaced but delivered by artillery, missile, rocket, mortar, or similar means, or dropped from an aircraft;
- (e) does not include mines delivered from a land-based system from less than 500 metres, provided that they are used in accordance with Article 6 and other relevant Articles of amended Protocol II;

“self-deactivating” means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component that is essential to the operation of the munition;

“self-destruction mechanism” means an incorporated or externally attached automatically functioning mechanism which secures the destruction of the munition into which it is incorporated or to which it is attached;

“self-neutralization mechanism” means an incorporated automatically functioning mechanism which renders inoperable the munition into which it is incorporated;

“serious disability” means visual acuity of less than 20/200 Snellen measured using both eyes.

3. Application of the Act

This Act shall bind the State.

4. Convention and Protocols to have force of law

Notwithstanding any other enactment, the Convention, Protocol I, the amended Protocol II, Protocol III, Protocol IV and Protocol V shall have force of law in [COUNTRY].

PART II - PROHIBITIONS OR RESTRICTIONS

5. Non-detectable fragments

No person shall:

- (a) use, develop, produce, otherwise acquire, stockpile, retain, transfer to anyone, directly or indirectly, import or export any weapon, the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;
- (b) possess, develop, produce, otherwise acquire, stockpile, retain, transfer to anyone, directly or indirectly, import or export a component part of such weapon.

6. Mines, booby-traps and other devices

Without prejudice to the [MINE BAN CONVENTION LEGISLATION], no person shall:

- (a) use or direct any mine, booby-trap or other device:
 - (i) which is designed or of a nature to cause superfluous injury or unnecessary suffering;
 - (ii) which employs a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations;

- (iii) in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:
 - (A) they are placed on or in the close vicinity of a military objective; or
 - (B) measures are taken to protect civilians from their effects under section 10;
- (iv) either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians or civilian objects;
- (v) in an indiscriminate manner:
 - (A) which is not on, or directed against, a military objective;
 - (B) which employs a method or means of delivery which cannot be directed at a specific military objective; or
 - (C) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
- (b) use booby-traps and other devices:
 - (i) which are in any way attached to or associated with:
 - (A) international recognised protective emblems, signs or signals;
 - (B) sick, wounded or dead persons;
 - (C) burial or cremation sites or graves;
 - (D) medical facilities, medical equipment, medical supplies or medical transportation;
 - (E) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
 - (F) food or drink;
 - (G) kitchen utensils or appliances except in military establishments, military locations or military supply depots;
 - (H) objects clearly of a religious nature;
 - (I) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
 - (J) animals or their carcasses;
 - (ii) in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material;
- (c) use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning;

- (d) use remotely-delivered mines, unless:
 - (i) they are recorded in accordance with the provisions of Protocol II; or,
 - (ii) to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when it no longer serves the military purpose for which it was placed in position;
- (e) transfer a mine.

7. Incendiary weapons

No person shall:

- (a) make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons;
- (b) make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons;
- (c) make any military objective located within a concentration of civilians the object of attack by means of incendiary weapons other than air-delivered incendiary weapons, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
- (d) make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

8. Blinding laser weapons

(1) No person shall:

- (a) use, possess, procure, manufacture, stockpile, transfer, deal in, import or export blinding laser weapons;
- (b) possess, procure, manufacture, stockpile, transfer, deal in, import or export a component part of such a weapon.

(2) Every person employing laser systems shall take all feasible precautions to avoid the incidence of permanent blindness to unenhanced vision.

PART III - PROTECTION OF CIVILIANS AND CIVILIAN POPULATIONS AND POST-ARMED CONFLICT MEASURES

9. Military activities

The members of an armed force of another State visiting [COUNTRY] in terms of an international obligation or an agreement between that State and [COUNTRY] shall be bound by this Act.

10. Measures to protect civilians and civilian populations

- (1) The Minister shall ensure that all feasible precautions are taken to protect civilians from the effects of weapons to which this Act applies, in particular but not limited to minimising the risks and effects of explosive remnants of war in post-conflict situations, in accordance with the Sixth Schedule to this Act.
- (2) For the purposes of sub-section (1), the Minister may make such regulations as he thinks fit.

PART IV - GENERAL PROVISIONS

11. Offences and penalties

- (1) Any individual who contravenes sections 5 to 8 shall commit an offence and shall, on conviction, be liable -
 - (a) where the offence involves the intentional causing of death of another human being, to penal servitude for a term not exceeding [MAXIMUM PERIOD OF IMPRISONMENT];
 - (b) in any other case, to imprisonment for a term not exceeding 20 years and to a fine not exceeding [MAXIMUM AMOUNT OF FINE].
- (2) Any corporate body which contravenes sections 5 to 8 shall commit an offence and shall, on conviction, be liable to a fine not exceeding [MAXIMUM AMOUNT OF FINE].
- (3) The court convicting a person of an offence under this Act may, in addition to any other penalty imposed in respect of that offence, order that any weapon, vehicle, uniform, equipment or other property or object in respect of which the offence was committed or which was used for, in or in connection with the commission of the offence, be forfeited to the State.

12. Surrender of prohibited weapons and forfeiture to State

- (1) Every person who is in possession of a prohibited weapon or a component part on the commencement of this Act shall, within 3 months of the commencement of this Act, notify the [POLICE COMMISSIONER] that he is in possession of such weapon or part.
- (2) In the event of any military operational deployment outside [COUNTRY], any person in possession of any prohibited weapon or a component part shall notify the [POLICE COMMISSIONER] forthwith that he is in possession of such weapon or part.
- (3) The [POLICE COMMISSIONER] shall register any notification made under this section, in such manner as may be prescribed and shall cause the prohibited weapon or component part to be seized without delay.
- (4) All weapons or component parts seized pursuant to this section shall be forfeited.

13. Jurisdiction

- (1) A [NAME OF COURT] shall have jurisdiction to try an offence under this Act where the act or omission constituting the offence under this Act was committed in [COUNTRY] or when the offence is alleged to have been committed by:
- (a) a citizen of [COUNTRY];
 - (b) a person who is ordinarily resident in [COUNTRY]; or
 - (c) a company incorporated, or registered as such under any law, in [COUNTRY], outside [COUNTRY].
- (2) No proceedings for an offence under this Act shall be instituted without the consent of the [DIRECTOR OF PUBLIC PROSECUTIONS].

14. Power to require information

- (1) The Minister may, by written notice, require from any person such information as he deems necessary for the administration and enforcement of this Act and compliance with the Convention and its Protocols, within such period and in such manner and form as may be specified in the notice.
- (2) Any person who:
- (a) without reasonable excuse, fails to comply with a notice referred to in sub-section (1);
 - (b) knowingly or recklessly provides false information in relation to such notice,

shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding [MAXIMUM PERIOD OF IMPRISONMENT] and a fine not exceeding [MAXIMUM AMOUNT OF FINE].

15. Guidelines for training

The Minister shall issue general guidelines in respect of the training of any official performing a function pursuant to this Act or the Convention and its Protocols.

16. Regulations

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Regulations made under sub-section (1) may provide for:
- (a) the amendment of any of the Schedules, in order to reflect any changes made to the Convention or its Protocols, or to provide for any other subsequent Protocol which may be ratified or acceded to by the [COUNTRY];
 - (b) the prescription of any matter which may be prescribed under this Act.

17. Commencement

This Act shall come into operation on a day to be fixed by proclamation.

FIRST SCHEDULE

(section 2)

(set out Convention)

SECOND SCHEDULE

(section 2)

(set out First Protocol)

THIRD SCHEDULE

(section 2)

(set out Second Protocol)

FOURTH SCHEDULE

(section 2)

(set out Third Protocol)

FIFTH SCHEDULE

(section 2)

(set out Fourth Protocol)

SIXTH SCHEDULE

(section 10)

(set out Fifth Protocol)