



IHRC

INTERNATIONAL HUMAN RIGHTS CLINIC
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL

Submission to the Senate Standing Committee on Foreign Affairs and International Trade regarding Bill C-6 to Implement the Convention on Cluster Munitions

**Submission from Human Rights Watch and
Harvard Law School's International Human Rights Clinic
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Introduction

Human Rights Watch and Harvard Law School's International Human Rights Clinic (IHRC) appreciate this opportunity to submit a brief to the Senate Standing Committee on Foreign Affairs and International Trade regarding Bill C-6. The Bill seeks to allow Canada to ratify the Convention on Cluster Munitions by creating offenses for certain acts related to cluster munitions, as required by Article 9 of the convention. The First Review Conference of the convention will be held in September 2015 in Croatia, and we hope to see Canada participating there as a state party.

Human Rights Watch and IHRC thank Canada for its efforts to ratify the Convention on Cluster Munitions and to codify the categorical prohibitions on use, production, transfer, and stockpiling of the weapons and assistance with those activities. We wish, however, to call attention to certain provisions of the Bill that, as written, may fail to achieve, or even run counter to, the convention's goals. We are especially concerned that the Bill:

- Permits assistance with cluster munition-related activities, including use, in the course of joint military operations and cooperation with states not party to the convention;
- Allows stockpiling of cluster munitions in and transit of them through Canadian territory;
- Provides only a limited ban on transfer of cluster munitions; and
- Fails explicitly to prohibit investment in the production of cluster munitions.

The Bill should be amended to prohibit categorically assistance, foreign stockpiling, transit, and investment and to broaden the definition of transfer. In addition, we call on Canada to fulfill its legal responsibility to implement the convention's positive obligations, such as helping other states parties meet their obligations, submitting transparency reports, working to universalize the convention and promote its norms, notifying allies of its convention obligations, and discouraging the use of cluster munitions.

After providing background information on the Convention on Cluster Munitions, we present our comments on and recommendations for specific provisions of the Bill. Our submission concludes with an overview of our organizations and summary of our recommendations. The House of Commons made one change to the original Bill, and we urge the Senate Standing Committee on Foreign Affairs and International Trade to revise the Bill further in order to give strong effect to the Convention on Cluster Munitions and to bring Canada in line with its international commitments.

Background on the Convention on Cluster Munitions

The Convention on Cluster Munitions is a groundbreaking legal instrument that prohibits use, production, transfer, and stockpiling of cluster munitions, as well as assistance with any of these activities. In addition, the convention establishes a set of strong positive obligations. It requires stockpile destruction, clearance of cluster munition remnants, victim assistance, provision of international cooperation and assistance, and transparency reports. It also obligates states parties to work toward universalization of the convention, to promote the convention's norms, to discourage cluster munitions use, and to notify allies of their obligations under the convention.

Under Article 9 of the convention, states parties are obligated to “take all appropriate legal, administrative and other measures to implement this Convention.” States parties must adopt “penal sanctions to prevent and suppress any activity prohibited to a State Party” and implement the positive obligations contained in the convention.

The Convention on Cluster Munitions was opened for signature on December 3, 2008. It entered into force and became binding international law for states parties on August 1, 2010. As of September 15, 2014, 86 states had ratified or acceded to the convention, indicating their intent to be legally bound by all the convention's provisions, and 28, including Canada, had signed it, meaning that they are prohibited from violating its object and purpose.¹

As many states are now in the ratification or accession process, attention has focused on national implementation of the convention's prohibitions. States parties and other international players have expressed special concern about how some national legislation implements provisions related to joint military operations. At the Third Meeting of States Parties in September 2012, the vice president of the International Committee of the Red Cross noted that “more vigilance is needed to ensure that States Parties involved in multinational military operations adopt national implementing legislation that is consistent with both the letter of the Convention and its object and purpose.”² The spokesperson for the UN Inter-Agency Coordination Group for Mine Action also called for upholding “the letter and the spirit of this important Convention,” and stated, “It is critical, in particular, that national legislation prohibit all actions that would, in any way, contribute to the continued use of cluster munitions.”³ Human Rights Watch and IHRC share these concerns.

Recommendations

Below we identify key provisions of Bill C-6 that would benefit from revision or clarification. Our suggestions are aimed at ensuring Canada implements the convention in accordance with the letter and spirit of the law.

I. Prohibitions during Military Cooperation or Combined Military Operations

Recommendations

- Amend the chapeau of Section 11(1) to read: “Section 6 does not prohibit a person who is subject to the Code of Service Discipline under any of paragraphs 60(1)(a) to (g) and (j) of the National Defence Act or who is an employee as defined in subsection 2(1) of the Public Service Employment Act, in the course of military cooperation or combined military operations involving Canada and a state that is not a party to the Convention, from *merely participating in military cooperation or operations with a foreign country that is not a party to the Convention on Cluster Munitions.*” (new language in italics);
- Delete Sections 11(1)(a), 11(1)(b), and 11(1)(c); and
- Delete Sections 11(2) and 11(3).

a. Section 11(1)

As written, Section 11(1) of Bill C-6 allows Canadian military personnel and government officials to assist states not parties with acts—such as using, acquiring, stockpiling, and transferring cluster munitions—that are absolutely prohibited by Article 1 of the convention. Under Section 11(1)(a), for example, Canadian military commanders may direct or authorize the armed forces of another state to use cluster munitions. Section 11(1)(b) allows military personnel to “expressly request[]” the use of cluster munitions by a state not party if the choice of munitions is not within Canada’s “exclusive control.” Given the collaborative nature of joint military operations, Canadian forces will often lack *exclusive* control over the choice of the munitions used during joint military operations, meaning the section essentially grants Canadians permission to request use of banned weapons. Section 11(1)(c) allows Canadians on secondment themselves to acquire, possess, or move cluster munitions. Collectively, these three clauses carve exceptions right through the heart of Article 1.

While the original version of the Bill permitted use of cluster munitions by Canadians on secondment, the House of Commons removed the word “use” in Section 11(1)(c). This amendment represented a positive step toward strengthening the law, but the House of Commons retained the reference to use in Section 11(1)(a). As a result, the Bill is inconsistent and still includes broad exceptions to the prohibition on assistance during joint military operations.

Section 11(1) is meant to implement Article 21(3) of the convention, which allows states parties to engage in joint military operations with states not party but does not provide any exceptions to the absolute prohibitions of Article 1. According to international law, provisions of a treaty—such as Article 21(3)—must be interpreted in light of their context and the object and purpose of that treaty.⁴ Canada’s interpretation, as expressed in Bill C-6, runs counter to that rule on several counts.

Since a joint military operation is an opportunity for the military of one state to assist the military of another, Article 21(3) should be read in conjunction with Article 1's prohibition against assisting with activities banned by the convention. The language on assistance is a categorical prohibition that should apply in all situations, including during joint military operations with states not party. Article 1(1)'s chapeau provides that states parties must "never under any circumstances" engage in activities, such as assistance, that are prohibited by the convention. Paragraph 1(c) under that chapeau broadens the application by proscribing assistance to "anyone" to engage "in any activity" involving cluster munitions. Rather than preserve the convention's unqualified and expansive ban on assistance, Bill C-6 makes unwarranted exceptions for joint military operations.

Canada's proposed implementation of Article 21(3) also runs counter to Article 21(1) and (2). Article 21(1) requires states parties to strive for universalization of the convention. Article 21(2) lays out three further steps states parties must take when relating to states not party: notify states not party of their obligations under the convention, take positive action to promote the norms of the convention, and make best efforts to discourage states not party from using cluster munitions. Article 21 cannot logically be understood to require Canada to discourage use and at the same time allow Canada to assist with use; however, the Bill adopts such a contradictory approach.

Just as the language of the convention calls for a broad understanding of the ban on assistance, so too does its object and purpose. The preamble articulates the goal of the convention: to eliminate cluster munitions and to bring an end to the suffering they cause. Canada's proposed legislation, which would facilitate ongoing use, acquisition, stockpiling, or transfer of the weapons, would directly contravene this aim.

In accordance with the blanket prohibition on assistance in Article 1, the positive duty to discourage use under Article 21, and the object and purpose of the convention, Article 21(3) should be read as authorizing joint military operations only to the extent that the ban on assistance with prohibited acts is maintained. That is, Article 21(3) should be understood as a clarification of—not a qualification of or exception to—Article 1's prohibitions. Article 21(3) clarifies that military personnel may participate in joint military operations; however, it does not give them license to violate the prohibitions of convention. The current language of Section 11(1) takes the opposite approach and adopts language that goes further than Article 21(3). As indicated by the Bill's title of the section, drafters view it as an "exception" for many acts during such operations that on their face violate the convention.

Proponents of the Bill have argued that an exception is necessary to protect Canadian troops from legal liability, especially those that are pinned down and call for close air support from a state not party that might use cluster munitions. The exception is not necessary to protect Canadian troops, however. Even under a law amended as we propose, Canadian military personnel could be held liable for violating the prohibitions in Section 6 only if they had the intent to use or assist with the use of cluster munitions.

Furthermore, the use of cluster munitions to rescue a threatened unit would make little sense because the weapons leave unexploded submunitions that could endanger ground troops after the fact. If Canada believes it essential to clarify the limits on liability, Bill C-6 could be amended by adding the word “knowingly” at the beginning of Section 6(f) so that it read: “*knowingly* aid, abet or counsel another person to commit any act” prohibited under Section 6, including use of cluster munitions.

The legislation of other states provides models Canada could adopt to meet its obligations under the convention without interfering with military partnerships or its ability to participate in joint military operations with states not party. Many states, including four NATO members, address the issue by prohibiting assistance and remaining silent on joint military operations. This approach does not infringe on such operations but implies that states parties cannot engage in prohibited activities during them.⁵ New Zealand’s 2009 implementation legislation, an alternative model, explicitly allows for joint military operations while preserving the convention’s prohibitions. In Section 11(6), the law provides:

A member of the Armed Forces does not commit an offence against section 10(1) [which lays out the prohibitions] merely by engaging, in the course of his or her duties, in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention and that has the capability to engage in conduct prohibited by section 10(1).⁶

The New Zealand law, however, does not create any exceptions to the convention’s prohibitions. This approach remains true to the object and purpose of the convention and allows a state to balance its obligations under the convention with its obligations to any allies that have not yet joined.

At least 37 states have articulated support for this interpretation of the convention’s interoperability provision. For instance, in a government explanation of its implementation legislation, NATO member Norway explained that “the exemption for military cooperation does not authorise states parties to engage in activities prohibited by the convention.”⁷ At least 10 other NATO members have issued similar interpretations: Belgium, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Iceland, Portugal, and Slovenia.⁸ Canada should follow their lead in its implementation legislation.

b. Sections 11(2) and 11(3)

As written, Sections 11(2) and 11(3) provide further defenses for individuals who act contrary to the absolute prohibition on assistance in Article 1 of the convention. These sections are broader than 11(1) because they apply to all persons, not just Canadian military personnel and government officials. Section 11(3) is especially broad because it creates a blanket exception for *all* assistance during joint military operations “if it would not be an offence for that other person to commit that act.” Sections 11(2) and 11(3) run counter to Article 1 and the purpose of the convention by allowing such assistance, and therefore they should be removed from the Bill.

II. Prohibition on Foreign Stockpiling

Recommendations

- At a minimum, amend Section 11 as recommended above.
- In addition, insert in Section 6 a paragraph stating that it is prohibited to “facilitate the stockpiling of cluster munitions, explosive submunitions, or explosive bomblets by states not party on territory under Canadian jurisdiction or control.”

As it now stands, Bill C-6 does not create an express defense for allies stockpiling cluster munitions in Canadian territory, but it could be read to allow Canadian military personnel and government officials to facilitate such stockpiling. Section 11(1)(a), for example, seems to allow Canadian personnel to direct or authorize stockpiling of cluster munitions by states not party in Canadian territory. Section 11(1)(c) permits Canadian officers to possess cluster munitions, arguably including them in foreign stockpile facilities located on Canadian territory, so long as they are on “attachment, exchange or secondment” to armed forces of states not party. Furthermore, Section 11(3) would allow Canadian personnel, “in the course of military cooperation,” to aid another person to possess cluster munitions, so long as “it would not be an offence for that other person to commit that act.” According to a senior government official, the Bill “does not allow stockpiling of cluster munitions on Canada’s territory, including by a State not party to the Convention, as it prohibits all forms of possession.”⁹ If this statement is true, there is no reason the legislation should not make it explicitly clear that foreign stockpiling is prohibited.

Allowing for the hosting of foreign cluster munition stockpiles runs counter to the dictates of the convention. Article 1(1)(c) of the convention forbids states parties from assisting, encouraging, or inducing “anyone to engage in any activity prohibited to a State Party under this Convention.” Facilitating stockpiling of cluster munitions by foreign states in Canada would violate this prohibition because it would assist stockpiling and potentially use of such weapons by states not party. At least 34 states, including at least 10 members of NATO, have issued interpretations clarifying their view that the convention bans the hosting of foreign cluster munition stockpiles.¹⁰ Section 6 of the Bill should add an

explicit ban on the hosting of foreign stockpiles of cluster munitions, and Section 11 should be modified as outlined above.

III. Prohibition on Transit

Recommendations

- At a minimum, amend Section 11 as recommended above.
- In addition, insert in Section 6 a paragraph stating that it is prohibited to “move a cluster munition, explosive submunition, or explosive bomblet into, through, or out of any place under Canadian jurisdiction or control.”

The Bill also does not explicitly prohibit “transit”—the movement of cluster munitions through the territory of a state party. The Bill prohibits in Section 6(c) transfer from one state to another. While the provision could cover some forms of transit, it applies only if there is physical movement *and* the transfer of ownership and control, which means it does not encompass the transit of cluster munitions through Canadian territory by a state not party if the weapons do not change ownership and control.

The exceptions given in Section 11 reinforce that the bill seems expressly to permit transit. As written, Section 11(1)(a) allows for the authorization of movement of cluster munitions by a state not party through Canada. Section 11(1)(c) allows Canadian troops on secondment themselves to move cluster munitions through Canada. Section 11(2) allows any person, in the course of “military cooperation or combined military operations,” to transport cluster munitions through Canada so long as those munitions are owned, possessed, or controlled by a foreign state. Section 11(3) allows any person to aid with the movement of cluster munitions through Canada.

Allowing the transit of cluster munitions through Canadian territory is contrary to the convention and should be expressly prohibited. The prohibition on assistance contained in Article 1(1)(c) of the convention should be read to ban the transit of cluster munitions because transit facilitates acts forbidden by the convention—namely the transfer and use of cluster munitions. At least 34 states have clarified that they believe that the convention bans the transit of cluster munitions through national territory, including at least 10 members of NATO.¹¹ Austria, Switzerland, and NATO member Germany explicitly ban transit in their implementing legislation.¹² Therefore, a general prohibition on cluster munition transit through Canada should be included in Section 6 of the Bill, and Section 11 should be modified as stated above.

IV. *Prohibition on Transfer*

Recommendation

- Amend Section 6(c) to read: “move a cluster munition, explosive submunition or explosive bomblet from *one* state or territory to another state or territory, *or to* transfer ownership of and control over it.” (new language in italics)

The Bill as written adopts a narrow interpretation of transfer. It explicitly proscribes only the movement of cluster munitions “from a foreign state or territory to another foreign state or territory with the intent to transfer ownership of and control over [them].” Under the Bill, persons would be allowed to move cluster munitions across national borders so long as the owner of those munitions never changed. Likewise, they would be allowed to transfer ownership of and control over cluster munitions so long as those munitions never left their present state or territory. To effect the convention’s goal of eliminating cluster munitions, the definition of transfer should be understood to mean that either the physical movement of cluster munitions *or* the transfer of ownership of and control over cluster munitions amounts to transfer. That approach is taken by an Oxford University Press commentary of the Mine Ban Treaty that analyzed state practice and policies.¹³ Section 6(c) of the Bill should thus be amended to encompass both forms of transfer, and Section 11 should be modified as outlined above.

V. *Prohibition on Investment*

Recommendation

- Prohibit all forms of investment of public and private funds in the production of cluster munitions and their key components.

As currently drafted, Bill C-6 includes no explicit prohibition on investment. Rather, the Bill implicitly prohibits investment through its ban on aiding the development or making of cluster munitions as contained in Section 6(f). As one Canadian government official stated, “an investment that is executed with the knowledge and intention that it will encourage or assist cluster munitions production would be captured by the legislation’s prohibition on aiding and abetting any primary offence.”¹⁴ In May 2013, Member of Parliament Deepak Obhrai, parliamentary secretary to the Minister of Foreign Affairs, stated that “liability for aiding and abetting, as set out in the bill, would include investment scenarios in which there is sufficient intention and connection between the investment and the prohibited activity to meet Canadian charter and criminal law requirements.”¹⁵ A clearer prohibition should be added, however.

Article 1(1)(c) of the convention disallows all forms of assistance, and investment in cluster munition production is a form of assistance. The funding of entities that develop and produce cluster munitions or

their key components allows them—and encourages them—to keep doing so. Counting Canada, at least 25 states, including at least seven members of NATO, have stated that they believe investment in cluster munitions is not allowed under the convention.¹⁶ Nine additional states, almost half of them NATO members, have enacted legislation that explicitly prohibits such investment.¹⁷ Therefore, Canada should add to its Bill a provision that explicitly codifies the prohibition on investment.

VI. Positive Obligations

Recommendation

- Implement the positive obligations of the convention through legislation supplemented by other administrative measures or policies; and
- Delete Section 7.

The Bill currently fails to implement any of the positive obligations of the Convention on Cluster Munitions. Positive obligations applicable to Canada include Article 6's mandate to provide "technical, material and financial assistance" to affected states parties and Article 7's requirement to submit transparency reports. They help ensure the convention's other obligations are met. In addition, Article 21(1) and (2) requires states parties to encourage states not party to join to the convention and notify its allies of its obligations under the convention. A state party must also promote the convention's norms and make its "best efforts" to discourage other states from using cluster munitions. Implementing these positive obligations facilitates the spread of the convention's norms and strengthens the stigma against cluster munition use.

Human Rights Watch and IHRC recommend Canada use its legislation to establish mechanisms to implement these positive obligations. Although Canada is an unaffected state, its law could also include provisions requiring clearance of cluster munition remnants and victim assistance in case in the future it becomes contaminated or survivors migrate into its territory. Canada could supplement such legislative measures with administrative rules or other directives that provide more details.

While we welcome Canada's announcement at the Fifth Meeting of States Parties that it has completed destruction of its stockpiles, its legislation could add a provision requiring destruction of additional cluster munitions if they were found in its territory at a later date. Furthermore, the bill should be amended to delete Section 7, which allows retention of cluster munitions for the purposes of training in clearance and development of counter-measures. This provision creates a dangerous loophole that allows continued possession of cluster munitions. Canada announced at the Fifth Meeting of States Parties that it "has not retained any cluster munitions," which makes it unnecessary to include this provision in Canada's implementation legislation.¹⁸

Who We Are

Human Rights Watch is one of the world's leading independent organizations dedicated to defending and protecting human rights and international humanitarian law. The Arms Division of Human Rights Watch in particular has taken a preeminent role in documenting the harm to civilians caused by cluster munitions and landmines, and its research and analysis has informed the international campaigns to ban these weapons.

Harvard Law School's International Human Rights Clinic is a center for critical thought and active engagement in human rights and international humanitarian law. Each year, IHRC partners with local and international nongovernmental organizations around the world to advance these bodies of law through legal and policy analysis, advocacy, field research, and litigation.

Human Rights Watch has played a leading role in the campaign to ban cluster munitions since its inception, and IHRC has been involved since 2005. Both organizations participated actively in the negotiation of the convention during the Oslo Process, which culminated in the treaty's adoption. They have also participated in all subsequent meetings of states parties. They have collaborated on this brief as well as many other projects promoting strong interpretation and implementation of the Convention on Cluster Munitions.¹⁹ They also submitted joint briefs regarding earlier versions of the Bill to the House of Commons Standing Committee on Foreign Affairs and International Development and to the Senate Committee on Foreign Affairs and International Trade.²⁰

In September 2014, Human Rights Watch and IHRC released a report entitled *Staying Strong* that identifies components of strong national implementation legislation and highlights precedent from existing laws.²¹ They also produced a short version of the report in English and French.²² These documents elaborate on their position on what should be included in national legislation implementing the Convention on Cluster Munitions.

Summary of Recommendations

In summary, Canada should amend Bill C-6 as follows:

- In order to clarify that assistance with the use of cluster munitions is not permitted during joint operations, replace Section 11 with the following: "Section 6 does not prohibit a person who is subject to the Code of Service Discipline under any of paragraphs 60(1)(a) to (g) and (j) of the National Defence Act or who is an employee as defined in subsection 2(1) of the Public Service Employment Act, in the course of military cooperation or combined military operations involving Canada and a state that is not a party to the Convention, from *merely participating in military cooperation or operations with a foreign country that is not a party to the Convention on Cluster Munitions.*" (new language in italics);

- Explicitly prohibit the stockpiling of cluster munitions by states not party in Canadian territory;
- Explicitly prohibit the transit of cluster munitions through Canadian territory;
- Define transfer so that it means either the physical movement of cluster munitions *or* the transfer of ownership of and control over cluster munitions;
- Explicitly prohibit investment in production of cluster munitions;
- Implement the convention's positive obligations through legislation and administrative measures.
- Delete Section 7, an unnecessary provision that allows retention of small numbers of cluster munitions.

¹ United Nations Office at Geneva, "Signing and Ratifying States: Convention on Cluster Munitions,"

<http://www.unog.ch/80256EE600585943/%28httpPages%29/67DC5063EB530E02C12574F8002E9E49?OpenDocument> (accessed September 10, 2014). Since that list was published, Belize and the Republic of the Congo acceded to and ratified the convention, respectively, during the Fifth Meeting of States Parties in September 2014.

² Christine Beerli, Opening Statement at the Third Meeting of States Parties to the Convention on Cluster Munitions, Oslo, September 11, 2012, http://www.clusterconvention.org/msp/3msp_2012/day-1-opening-session/ (accessed October 2, 2012).

³ Agnès Marcaillou, Inter-Agency Coordination Group for Mine Action, Statement at the Third Meeting of States Parties to the Convention on Cluster Munitions, September 13, 2012.

⁴ Vienna Convention on the Law of Treaties, adopted May 23, 1969, 1155 U.N.T.S. 331, entered into force January 27, 1980, art. 31. It is considered to articulate a norm of customary international law.

⁵ Human Rights Watch and Harvard Law School's International Human Rights Clinic (IHRC), *Staying Strong: Key Components and Positive Precedent for Convention on Cluster Munitions Legislation*, September 2014, <http://www.hrw.org/reports/2014/09/03/staying-strong>, p. 24. States with implementing legislation that use this approach include *Austria*, the Cook Islands, the *Czech Republic*, *Ecuador*, *Germany*, Italy, Liechtenstein, Luxembourg, *Sweden*, and *Switzerland*. States in italics have also issued interpretive policy statements indicating they do not interpret Article 21(3) as permitting any state party to engage in prohibited activity. International Campaign to Ban Landmines-Cluster Munition Coalition (ICBL-CMC), *Cluster Munition Monitor 2014* (2014), p. 27. The NATO member states are the Czech Republic, Germany, Italy, and Luxembourg.

⁶ Cluster Munitions Prohibition Act 2009, Public Act 2009 no. 68, sec. 11(6) (New Zealand).

⁷ Proposition No. 4 (2008-2009) to the Starting on Consent to Ratification of the Convention on Cluster Munitions, p. 23.

⁸ ICBL-CMC, *Cluster Munition Monitor 2013* (2013), p. 36. The non-NATO states include: Austria, Bosnia and Herzegovina, Burundi, Cameroon, Chile, Colombia, Democratic Republic of the Congo, Ecuador, Ghana, Guatemala, Holy See, Ireland, Lao PDR, Lebanon, Madagascar, Malawi, Mali, Mexico, Montenegro, New Zealand, Nicaragua, Niger, Samoa, Senegal, Sweden, and Switzerland.

⁹ Email from John MacBride, Senior Defence Advisor, Non-Proliferation and Disarmament Division, Department of Foreign Affairs and International Trade, to Human Rights Watch, July 9, 2012.

¹⁰ ICBL-CMC, *Cluster Munition Monitor 2013*, p. 38. These states (with NATO states italicized) are: Austria, *Belgium*, Bosnia and Herzegovina, *Bulgaria*, Burkina Faso, Burundi, Cameroon, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, *Croatia*, *Czech Republic*, Ecuador, *France*, *Germany*, Ghana, Guatemala, Holy See, Ireland, Lao PDR, *Luxembourg*, FYR Macedonia, Madagascar, Malawi, Malta, Mexico, New Zealand, Niger, *Norway*, Senegal, *Slovenia*, *Spain*, and Zambia.

¹¹ ICBL-CMC, *Cluster Munition Monitor 2013*, p. 38. These states (with NATO states italicized) are: Austria, *Belgium*, Bosnia and Herzegovina, *Bulgaria*, Burkina Faso, Burundi, Cameroon, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, *Croatia*, *Czech Republic*, Ecuador, *France*, *Germany*, Ghana, Guatemala, Holy See, Ireland, Lao PDR, *Luxembourg*, FYR Macedonia, Madagascar, Malawi, Malta, Mexico, New Zealand, Niger, *Norway*, Senegal, *Slovenia*, *Spain*, and Zambia.

¹² Federal Law on the Prohibition of Cluster Munition[s], *Federal Law Gazette*, no. 12/2008, as amended in *Federal Law Gazette I*, no. 41/2009, sec. 2 (Austria) (unofficial translation); Loi Fédérale du 13 Décembre 1996 sur le Matériel de Guerre (Federal Law of 13 December 1996 on War

Material), amended March 16, 2012, <http://www.admin.ch/ch/f/ff/2012/3213.pdf> (accessed October 8, 2012), art. 8(1) (Switzerland); Ausführungsgesetz zu Artikel 26 Abs. 2 des Deutschen Grundgesetzes (Gesetz über die Kontrolle von Kriegswaffen) (Act Implementing Article 26(2) of the Basic Law (War Weapons Control Act)), 1961, as amended 2009, <http://www.gesetze-im-internet.de/krwaffkontrg/BJNR004440961.html#BJNR004440961BJNG000404160> (accessed October 8, 2012), sec. 18(a) (Germany).

¹³ Stuart Maslen, *Commentaries on Arms Control Treaties, Volume I: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction*, (Oxford: Oxford University Press, 2005), sec. 2.61.

¹⁴ Email communication from John MacBride, Senior Defense Advisor, Non-Proliferation and Disarmament Division, Foreign Affairs and International Trade Canada, to Human Rights Watch, July 9, 2012.

¹⁵ 41st Parliament, 1st Session, Edited Hansard, volume 146, number 258, May 29, 2013, www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=258&Parl=41&Ses=1&Language=E&Mode=1 (accessed November 20, 2013).

¹⁶ ICBL-CMC, *Cluster Munition Monitor 2013*, p. 41. These states (with NATO states italicized) are: Australia, Bosnia and Herzegovina, Cameroon, Canada, Colombia, Democratic Republic of the Congo, Republic of the Congo, Croatia, Czech Republic, France, Guatemala, Holy See, Hungary, Lao PDR, Lebanon, Madagascar, Malawi, Malta, Mexico, Niger, Rwanda, Senegal, Slovenia, United Kingdom, and Zambia.

¹⁷ Ibid. These states (with NATO states italicized) are: Belgium, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, New Zealand, Samoa, and Switzerland.

¹⁸ Canada Statement at the Fifth Meeting of States Parties to the Convention on Cluster Munitions, San Jose, Costa Rica, September 2-5, 2014, http://www.clusterconvention.org/files/2014/09/Canada_eng.pdf (accessed September 13, 2014).

¹⁹ See, e.g., Human Rights Watch and IHRC, *Q&A on Interoperability & the Prohibition on Assistance*, November 2010, <http://www.hrw.org/en/news/2010/11/06/convention-cluster-munitions>; Human Rights Watch and IHRC, *Fulfilling the Ban: Guidelines for Effective National Implementation Legislation to Implement the Convention on Cluster Munitions*, June 2010, <http://www.hrw.org/node/90721> (detailing the elements that strong implementation legislation should include when incorporating both the positive and negative obligations of the convention); Human Rights Watch, *Staying True to the Ban: Understanding the Prohibition on Assistance in the Convention on Cluster Munitions*, June 2009, <http://www.hrw.org/en/news/2009/06/22/staying-true-ban-cluster-munitions> (arguing for understanding the convention to prohibit assistance absolutely, even during joint military operations).

²⁰ Human Rights Watch and IHRC, *Submission to the House of Commons Standing Committee on Foreign Affairs and International Development regarding C-6 to Implement the Convention on Cluster Munitions*, November 2013, <http://www.hrw.org/news/2013/11/25/submission-house-commons-standing-committee-foreign-affairs-and-international-develo>; Human Rights Watch and IHRC, *Submission to the Senate Committee on Foreign Affairs and International Trade regarding Bill S-10 to Implement the Convention on Cluster Munitions*, October 2012, http://www.hrw.org/sites/default/files/related_material/2012_arms_canadaparlccmsubmission.pdf.

²¹ Human Rights Watch and IHRC, *Staying Strong*.

²² Human Rights Watch and IHRC, *Implementing the Convention on Cluster Munitions*, September 2014, http://www.hrw.org/sites/default/files/related_material/CCM%20Legislation_short%20form_final.pdf; Human Rights Watch et IHRC, *Mettre en oeuvre la Convention sur les armes à sous-munitions*, Septembre 2014, http://www.hrw.org/sites/default/files/related_material/CCM%20Legislation_short%20form_final_FRENCH.pdf.