



# **Anti-Personnel Mines Convention Act 1998**

**No. 126, 1998**



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**An Act to implement the Convention on the  
Prohibition of the Use, Stockpiling, Production and  
Transfer of Anti-Personnel Mines and on their  
Destruction, and for related purposes**

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**An Act to implement the Convention on the  
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Destruction, and for related purposes**

*[Assented to 21 December 1998]*

The Parliament of Australia enacts:

## **Part 1—Introduction**

Section 1

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**1 Short title**

This Act may be cited as the *Anti-Personnel Mines Convention Act 1998*.

**2 Commencement**

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation, being a day not earlier than the day on which the Convention enters into force for Australia.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which the Convention enters into force for Australia, it commences on the first day after the end of that period.

**3 Simplified outline**

The following is a simplified outline of this Act:

- This Act implements the Anti-Personnel Mines Convention.
- It is an offence to place, possess, develop, produce, acquire, stockpile or transfer anti-personnel mines.
- If a fact-finding mission to Australia is authorised under the Convention, the Minister must appoint each member of the mission as an inspector. Inspectors may enter premises, and exercise powers of inspection, for the purpose of finding out whether the Convention has been complied with.
- The Minister may require a person to give information that is relevant to Australia's reporting obligations under the Convention.

## 4 Definitions

In this Act, unless the contrary intention appears:

***anti-handling device*** means a device that:

- (a) is intended to protect a mine; and
- (b) is part of, linked to, attached to or placed under the mine; and
- (c) activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.

***anti-personnel mine*** means a mine that:

- (a) is designed, intended or altered so as:
  - (i) to be placed under, on or near the ground or other surface area; and
  - (ii) to be exploded by the presence, proximity or contact of a person; and
- (b) is capable of incapacitating, injuring or killing one or more persons.

However, a mine that is designed, intended or altered so as to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, and that is equipped with an anti-handling device, is taken not to be an ***anti-personnel mine*** as a result of being so equipped.

Note: A mine that has been permanently deactivated is not an anti-personnel mine since it is not capable of incapacitating, injuring or killing a person.

***Australia***, when used in a geographical sense, includes the external Territories.

***Convention*** means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (a copy of the English text of which is set out in Schedule 1), as amended by any amendment of the Convention that has entered into force for Australia (a copy of the English text of which is set out in the regulations).

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***inspector*** means a person appointed as an inspector under section 12.

***mine*** means a munition (other than a command-detonated munition) designed, intended or altered so as:

- (a) to be placed under, on or near the ground or other surface area; and
- (b) to be exploded by the presence, proximity or contact of a person or a vehicle.

***munition*** has the technical meaning generally accepted within the defence community.

***occupier***, in relation to premises, includes a person present at the premises who is in apparent control of the premises.

***police officer*** means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the police force of a State or Territory.

***premises*** includes the following:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built on or not);
- (c) a part of a thing referred to in paragraph (a) or (b).

***transfer ownership or control***, in relation to an anti-personnel mine, does not include the transfer of the ownership or control of land containing emplaced anti-personnel mines.

## 5 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.



**6 External Territories**

This Act extends to all the external Territories.

## Part 2—Offences relating to anti-personnel mines

### 7 Offence to place, possess, develop, produce, acquire, stockpile or transfer anti-personnel mines

#### *Offence*

- (1) A person is guilty of an offence if:
- (a) the person places an anti-personnel mine under, on or near the ground or other surface area; or
  - (b) the person is knowingly in the possession of an anti-personnel mine; or
  - (c) the person develops, produces or otherwise acquires an anti-personnel mine; or
  - (d) the person stockpiles anti-personnel mines; or
  - (e) the person physically moves an anti-personnel mine; or
  - (f) the person transfers ownership or control of an anti-personnel mine, whether directly or indirectly, to another person.

#### Penalty:

- (a) if the offender is an individual—600 penalty units or imprisonment for 10 years, or both; or
- (b) if the offender is a body corporate—10,000 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### *Exceptions*

- (2) Subsection (1) does not apply to:
- (a) the placement, possession, production, acquisition, physical movement or transfer of ownership or control of an anti-personnel mine in accordance with a permission in force under section 8; or

- (b) the possession, acquisition, physical movement or transfer of ownership or control of an anti-personnel mine for the purpose of its destruction or permanent deactivation; or
- (c) the possession, acquisition, physical movement or transfer of ownership or control of an anti-personnel mine by a person in the course of the person's duties as a member of the Australian Defence Force, or as a police officer, for:
  - (i) the purpose of the conduct of criminal proceedings; or
  - (ii) the purpose of rendering the mine harmless.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) does not apply to anything done by way of the mere participation in operations, exercises or other military activities conducted in combination with an armed force that:
  - (a) is an armed force of a country that is not a party to the Convention; and
  - (b) engages in an activity prohibited under the Convention.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (3) applies to operations, exercises or other military activities, whether or not conducted under the auspices of the United Nations.

*Extraterritorial operation*

- (5) This section extends outside Australia, but does not apply in relation to any person outside Australia unless that person is:
  - (a) an Australian citizen; or
  - (b) a member of the Australian Defence Force.

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**8 Minister for Defence may grant permission to retain anti-personnel mines for the development of, and training in, mine detection techniques etc.**

*Grant of permission*

- (1) The Minister for Defence may, by writing, grant permission for specified anti-personnel mines to:
- (a) be placed under, on or near the ground or other surface area, or
  - (b) be possessed; or
  - (c) be produced or otherwise acquired; or
  - (d) be physically moved; or
  - (e) be the subject of a transfer of ownership or control;
- for the purposes of the development of, and training in, any or all of the following:
- (f) anti-personnel mine detection techniques;
  - (g) anti-personnel mine clearance techniques;
  - (h) anti-personnel mine destruction techniques;
  - (i) anti-personnel mine deactivation techniques.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) The Minister for Defence must ensure that the total number of anti-personnel mines that are the subject of permissions under subsection (1) does not exceed the minimum number absolutely necessary for the purposes of the development of, and training in, any or all of the techniques referred to in that subsection.

*Decision-making principles*

- (3) The Minister for Defence must, by writing, formulate principles to be complied with by the Minister for Defence in exercising the power conferred by subsection (1).

- (4) Before formulating the principles under subsection (3), the Minister for Defence must consult the Minister administering this Act.
- (5) In exercising the power conferred by subsection (1), the Minister for Defence must comply with the principles formulated under subsection (3).
- (6) Principles formulated under subsection (3) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **9 Offence not to deliver up anti-personnel mines**

### *Offence*

- (1) A person is guilty of an offence if:
  - (a) the person is knowingly in the possession of an anti-personnel mine; and
  - (b) the person does not deliver the mine, without delay, to a member of the Australian Defence Force, or to a police officer, for destruction or permanent deactivation.

### Penalty:

- (a) if the offender is an individual—600 penalty units or imprisonment for 10 years, or both; or
- (b) if the offender is a body corporate—10,000 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### *Exception*

- (2) Subsection (1) does not apply if the person is in the possession of the anti-personnel mine in circumstances that are not prohibited by section 7.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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**10 Destruction or deactivation of anti-personnel mines**

- (1) If an anti-personnel mine is delivered to a member of the Australian Defence Force, or to a police officer, in accordance with section 9, the member or officer, as the case may be, must ensure the destruction or permanent deactivation of the mine.
- (2) The requirement under subsection (1) does not apply to:
  - (a) an anti-personnel mine that becomes the subject of a permission under section 8 after the mine is delivered to the member or officer; or
  - (b) an anti-personnel mine that is required to be kept for purposes in connection with the conduct of criminal proceedings.

**11 Forfeiture of anti-personnel mines**

- (1) If a court:
  - (a) convicts a person of an offence against this Part; or
  - (b) makes an order under section 19B of the *Crimes Act 1914* in respect of a person charged with an offence against this Part;the court may order forfeiture to the Commonwealth of any anti-personnel mine used or otherwise involved in the commission of the offence.
- (2) An anti-personnel mine ordered by a court to be forfeited under this section becomes the property of the Commonwealth and must be destroyed or permanently deactivated unless it becomes the subject of a permission under section 8.

## **Part 3—Powers of fact-finding missions**

### **12 Appointment of inspectors**

#### *Members of fact-finding mission*

- (1) If a fact-finding mission to Australia is authorised under Article 8 of the Convention, the Minister must, by instrument in writing, appoint each member of the mission as an inspector.

#### *Domestic inspectors*

- (2) The Minister may, by instrument in writing, appoint any of the following persons as an inspector:
  - (a) a person who is appointed or employed by the Commonwealth;
  - (b) a person who is appointed or employed by a State or Territory.

Note: Inspectors appointed under subsection (2) are not part of fact-finding missions.

- (3) In exercising powers or performing functions as an inspector, an inspector appointed under subsection (2) must comply with any directions of the Minister.
- (4) A person appointed as an inspector under subsection (2) must not exercise powers or perform functions as an inspector unless the person is accompanied by an inspector appointed under subsection (1).
- (5) Before exercising the power conferred by subsection (2), the Minister must consult the Minister for Defence.

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### *Identity cards*

- (6) The Minister must issue an identity card to an inspector, in the form prescribed by the regulations. The identity card must contain a recent photograph of the inspector.
- (7) A person is guilty of an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an inspector; and
  - (c) the person does not immediately return the identity card to the Minister.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (8) An inspector must carry the identity card at all times when exercising powers or performing functions as an inspector.

## **13 Conditions of appointment as an inspector**

- (1) An appointment of an inspector under subsection 12(1) is subject to such conditions (if any) as are specified in the instrument of appointment.
- (2) The Minister must not impose any conditions under subsection (1) unless the Minister is satisfied that it is necessary to do so for:
  - (a) the protection of sensitive equipment, information or areas;
  - or
  - (b) the physical protection and safety of the inspector.
- (3) A condition of appointment may provide that the inspector is not authorised to enter specified premises.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (4) A condition of appointment may provide that the inspector is not authorised to exercise specified powers while on specified premises.



Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (5) Subsections (3) and (4) do not limit subsection (1).
- (6) Before exercising a power conferred by this section, the Minister must consult the Minister for Defence.

#### **14 Powers available to inspectors for monitoring compliance**

- (1) For the purpose of finding out whether the Convention has been complied with, an inspector may:
  - (a) enter any premises; and
  - (b) exercise the powers set out in subsection 16(1).
- (2) An inspector is not authorised to enter premises under subsection (1) unless:
  - (a) the occupier of the premises has consented to the entry; or
  - (b) the entry is made under a warrant issued under section 20.
- (3) This section has effect subject to section 13.

#### **15 Inspector must produce identity card on request**

An inspector is not entitled to exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

#### **16 General powers of inspectors in relation to premises**

- (1) The powers an inspector may exercise under paragraph 14(1)(b) are as follows:
  - (a) to search the premises and anything on the premises;

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- (b) to inspect, examine, take measurements of, or conduct tests (including by the taking of samples) concerning, anything on the premises that relates to an anti-personnel mine;
  - (c) to take photographs or make video or audio recordings or sketches of the premises or anything on the premises;
  - (d) if the inspector was only authorised to enter the premises because the occupier of the premises consented to the entry—to require the occupier to:
    - (i) answer any questions put by the inspector; and
    - (ii) produce any book, record or document requested by the inspector;
  - (e) if the inspector was authorised to enter the premises by a warrant under section 20—to require any person in or on the premises to:
    - (i) answer any questions put by the inspector; and
    - (ii) produce any book, record or document requested by the inspector;
  - (f) to inspect any book, record or document on the premises;
  - (g) to take extracts from or make copies of any such book, record or document;
  - (h) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises.
- (2) A person is guilty of an offence if:
- (a) the person is subject to a requirement covered by paragraph (1)(e); and
  - (b) the person recklessly contravenes the requirement.

Penalty: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**17 Details of warrant to be given to occupier etc.**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector must make available to that person a copy of the warrant.
- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

**18 Announcement before entry**

- (1) An inspector must, before entering the premises under a warrant:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to prevent serious damage to the environment; or
  - (c) to ensure that the effective execution of the warrant is not frustrated.

**19 Occupier entitled to be present during search**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.

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- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

### **20 Monitoring warrants**

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of finding out whether the Convention has been complied with. This subsection has effect subject to subsection (3).
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
- (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in subsection 16(1) in relation to the premises; and
  - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

### **21 Offences relating to warrants**

A person is guilty of an offence if:

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- (a) the person makes a statement in an application for a warrant under section 20; and
- (b) the statement is false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## Part 4—Information-gathering powers

### 22 Minister may obtain information and documents from persons

- (1) This section applies to a person if the Minister has reason to believe that the person has information or a document that is relevant to:
  - (a) the administration or enforcement of this Act; or
  - (b) Australia's obligation to report under Article 7 of the Convention; or
  - (c) Australia's obligation to provide information under Article 8 of the Convention.
- (2) The Minister may, by written notice given to the person, require the person:
  - (a) to give to the Minister, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Minister, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Minister, within the period and in the manner specified in the notice, those copies.
- (3) A person is guilty of an offence if:
  - (a) the person is subject to a requirement covered by subsection (2); and
  - (b) the person recklessly contravenes the requirement.

Penalty: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**23 Copying documents—reasonable compensation**

A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph 22(2)(c).

**24 Self-incrimination**

(1) An individual is not excused from giving information or producing a document or a copy of a document under this Part on the ground that the information or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

- (a) giving the information or producing the document or copy; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;

is not admissible in evidence against the individual in criminal proceedings other than proceedings under, or arising out of, subsection 22(3) or section 25 or 26.

**25 Giving false or misleading information**

A person is guilty of an offence if:

- (a) the person gives information under section 22; and
- (b) the information is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**26 Provision of false or misleading documents**

(1) A person is guilty of an offence if:

- (a) the person produces a document, or a copy of a document, under section 22; and
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- (b) the document or copy is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Subsection (1) does not apply to a person who produces a document, or a copy of a document, that, to the knowledge of the person, is false or misleading in a material particular if the document or copy is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
  - (a) stating that the document or copy is, to the knowledge of the person, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document or copy is, to the knowledge of the person, false or misleading.

### 27 Copies of documents

- (1) The Minister may inspect a document or copy produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The Minister may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 22(2)(c).

### 28 Minister may retain documents

- (1) The Minister may take, and retain for as long as is necessary, possession of a document produced under this Part.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Minister to be a true copy.



- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Minister must, at such reasonable times and places as the Minister thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

## Part 5—Miscellaneous

### 29 Delegation by Minister or Minister for Defence

#### *Delegation by the Minister*

- (1) The Minister may, by writing, delegate to:
  - (a) the Secretary to the Department; or
  - (b) a person holding or performing the duties of a Senior Executive Service office or position (whether or not in the Department);all or any of the Minister's powers under this Act.
- (2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Minister.

#### *Delegation by the Minister for Defence*

- (3) The Minister for Defence may, by writing, delegate to:
  - (a) the Secretary to the Department of Defence; or
  - (b) the Secretary to the Department; or
  - (c) the Chief of the Defence Force; or
  - (d) a person holding or performing the duties of a Senior Executive Service office or position (whether or not in the Department); or
  - (e) an officer of the Navy who holds the rank of Commodore or a higher rank; or
  - (f) an officer of the Army who holds the rank of Brigadier or a higher rank; or
  - (g) an officer of the Air Force who holds the rank of Air Commodore or a higher rank;the power conferred on the Minister for Defence by subsection 8(1).

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- (4) A delegate covered by paragraph (3)(a), (c), (e), (f) or (g) must not exercise the power delegated under subsection (3) unless the exercise of the power relates to the operation of the Australian Defence Force.
- (5) A delegate is, in the exercise of a power delegated under subsection (3), subject to the directions of the Minister for Defence.

**30 Privileges and immunities**

- (1) This section applies to a fact-finding mission to Australia that is authorised by Article 8 of the Convention.
- (2) The regulations may confer on the members of the mission such privileges and immunities as are necessary or desirable to give effect to, or facilitate the operation of, that Article.
- (3) The privileges and immunities conferred by the regulations are privileges and immunities in relation to the operation of the laws of the Commonwealth and of the laws of the States and Territories.
- (4) This section does not limit the *International Organisations (Privileges and Immunities) Act 1963*.

**31 Powers to be exercised in accordance with Convention**

- (1) A person may exercise a power or perform a duty under this Act only to the extent that the exercise or performance is not inconsistent with Australia's obligations under the Convention.
- (2) A person must, in exercising a power under this Act, have regard to Australia's obligations under the Convention.

**32 Offences**

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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**33 Compensation for acquisition of property**

- (1) If:
- (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay the person a reasonable amount of compensation in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**34 Regulations**

- The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## **Schedule 1—Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction**

Note: This is the copy of the Convention referred to in the definition of *Convention* in section 4 of this Act.

### **Preamble**

The States Parties,

Determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

Believing it necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

Wishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

Recognizing that a total ban of anti-personnel mines would also be an important confidence-building measure,

Welcoming the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to 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, and calling for the early ratification of this Protocol by all States which have not yet done so,

Welcoming also United Nations General Assembly Resolution 51/45 S of 10 December 1996 urging all States to pursue vigorously an effective, legally-binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

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Welcoming furthermore the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world,

Recalling the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant fora including, inter alia, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of 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,

Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

## **Article 1**

### **General obligations**

1. Each State Party undertakes never under any circumstances:
  - a) To use anti-personnel mines;
  - b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
  - c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.
2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

## **Article 2**

### Definitions

1. “Anti-personnel mine” means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.
2. “Mine” means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle
3. “Anti-handling device” means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.
4. “Transfer” involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines
5. “Mined area” means an area which is dangerous due to the presence or suspected presence of mines.

## **Article 3**

### Exceptions

1. Notwithstanding the general obligations under Article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.
2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

## **Article 4**

### Destruction of stockpiled anti-personnel mines

Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or

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possesses, or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

### **Article 5**

#### Destruction of anti-personnel mines in mined areas

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.
2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to 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.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.
4. Each request shall contain:
  - a) The duration of the proposed extension;
  - b) A detailed explanation of the reasons for the proposed extension, including:
    - (i) The preparation and status of work conducted under national demining programs;
    - (ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and
    - (iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;
  - c) The humanitarian, social, economic, and environmental implications of the extension; and
  - d) Any other information relevant to the request for the proposed extension.
5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request



and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

## **Article 6**

### International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, inter alia, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.

6. Each State Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

7. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia:

- a) The extent and scope of the anti-personnel mine problem;
- b) The financial, technological and human resources that are required for the implementation of the program;
- c) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;
- d) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;
- e) Assistance to mine victims;
- f) The relationship between the Government of the concerned State Party and the relevant governmental, inter-governmental or non-governmental entities that will work in the implementation of the program.

8. Each State Party giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programs.

#### **Article 7**

##### Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

- a) The national implementation measures referred to in Article 9;
- b) The total of all stockpiled anti-personnel mines owned or possessed by it, or under its jurisdiction or control, to include a breakdown of the type, quantity and, if possible, lot numbers of each type of anti-personnel mine stockpiled;
- c) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were emplaced;
- d) The types, quantities and, if possible, lot numbers of all anti-personnel mines retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques, or transferred for the purpose of destruction, as well as the institutions authorized by a State Party to retain or transfer anti-personnel mines, in accordance with Article 3;

- e) The status of programs for the conversion or de-commissioning of anti-personnel mine production facilities;
  - f) The status of programs for the destruction of anti-personnel mines in accordance with Articles 4 and 5, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
  - g) The types and quantities of all anti-personnel mines destroyed after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of anti-personnel mine destroyed, in accordance with Articles 4 and 5, respectively, along with, if possible, the lot numbers of each type of anti-personnel mine in the case of destruction in accordance with Article 4;
  - h) The technical characteristics of each type of anti-personnel mine produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of anti-personnel mines; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate mine clearance; and
  - i) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of Article 5.
2. The information provided in accordance with this Article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.
  3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

## **Article 8**

### Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.
  2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party
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shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one-third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.

6. The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.

7. All States Parties shall cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorized in accordance with paragraph 8.

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8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorize such a mission. The mission, consisting of up to 9 experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

9. The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.

10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.

11. Upon at least 72 hours notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.

12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilize in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

- a) The protection of sensitive equipment, information and areas;
- b) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
- c) The physical protection and safety of the members of the fact-finding mission.

In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than 7 days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6.

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20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

#### **Article 9**

##### National implementation measures

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.

#### **Article 10**

##### Settlement of disputes

1. The States Parties shall consult and cooperate with each other to settle any dispute that may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

3. This Article is without prejudice to the provisions of this Convention on facilitation and clarification of compliance.

#### **Article 11**

##### Meetings of the States Parties

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:

- a) The operation and status of this Convention;
- b) Matters arising from the reports submitted under the provisions of this Convention;
- c) International cooperation and assistance in accordance with Article 6;
- d) The development of technologies to clear anti-personnel mines;
- e) Submissions of States Parties under Article 8; and
- f) Decisions relating to submissions of States Parties as provided for in Article 5.

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2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.
3. Under the conditions set out in Article 8, the Secretary-General of the United Nations shall convene a Special Meeting of the States Parties.
4. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

**Article 12**

Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.
  2. The purpose of the Review Conference shall be:
    - a) To review the operation and status of this Convention;
    - b) To consider the need for and the interval between further Meetings of the States Parties referred to in paragraph 2 of Article 11;
    - c) To take decisions on submissions of States Parties as provided for in Article 5; and
    - d) To adopt, if necessary, in its final report conclusions related to the implementation of this Convention.
  3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental
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organizations may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

### **Article 13**

#### Amendments

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Depositary no later than 30 days after its circulation that they support further consideration of the proposal, the Depositary shall convene an Amendment Conference to which all States Parties shall be invited.
2. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.
3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.
4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.
5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

### **Article 14**

#### Costs

1. The costs of the Meetings of the States Parties, the Special Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 and the costs of any fact-finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

### **Article 15**

#### Signature

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 until 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

### **Article 16**

#### Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval of the Signatories.
2. It shall be open for accession by any State which has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

### **Article 17**

#### Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

### **Article 18**

#### Provisional application

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

### **Article 19**

#### Reservations

The Articles of this Convention shall not be subject to reservations.

### **Article 20**

#### Duration and withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.
4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

### **Article 21**

#### Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

### **Article 22**

#### Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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*[Minister's second reading speech made in—  
House of Representatives on 12 November 1998  
Senate on 30 November 1998]*

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