

HUMAN RIGHTS WATCH

1630 Connecticut Ave., NW, Suite 500
Washington, DC 20009
Telephone: 202-612-4321
Facsimile: 202-612-4333
E-mail: hrwdc@hrw.org
Website: <http://www.hrw.org>

ARMS DIVISION

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Program Director
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Senior Military Advisor
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Senior Advocate
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JOINT OPERATIONS AND THE MINE BAN TREATY

MEMORANDUM FOR DELEGATES

to the

Fourth Meeting of the Intersessional Standing Committee on the
General Status and Operation of the Mine Ban Treaty

Geneva, Switzerland

11 May 2001

PURPOSE

Human Rights Watch, one of the founders of the International Campaign to Ban Landmines (ICBL), has repeatedly asked States Parties to come to a common understanding of what acts are and are not permitted under Article 1(c) of the Mine Ban Treaty. This provision obligates each State Party never to undertake under any circumstances to assist, encourage, or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention. In particular, Human Rights Watch and the ICBL have called for States Parties to reach a common interpretation of the term "assist," especially relative to (a) the use of antipersonnel mines by non States Parties in joint operations with States Parties and (b) the stockpiling and transit of foreign antipersonnel mines.

It appears that various States Parties may have significantly different understandings about what acts are permitted. Human Rights Watch has prepared the following list of questions about joint military operations in order to help determine whether States Parties consider such actions to be prohibited. Human Rights Watch urges States Parties to clarify their views on the legality of joint operations with non States Parties using mines, as well as foreign stockpiling and transit of antipersonnel mines.

BACKGROUND

CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTIPERSONNEL MINES AND ON THEIR DESTRUCTION, 18 SEPTEMBER 1997

Article 1

General obligations

1. Each State Party undertakes never under any circumstances:
 - a) To use antipersonnel mines;
 - b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, antipersonnel mines;
 - c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

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;

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.

PLANNING

- Do States Parties specifically consider antipersonnel mines during their national review of alliance mission requirements and force structure?
- Do State Parties agree to adopt plans that include antipersonnel mines as an element of collective self-defense operations, e.g. NATO Article 5 Operations?
- Are there different mechanisms to review plans or mission requirements for national formations contributed to operations by a State Party as opposed to their national forces committed to a multinational formation?
- Can a member of an international military staff who is a national of a State Party participate in planning for an alliance contingency or crisis operation that includes the use of antipersonnel mines?
- Can an official of a State Party participate as a member of a joint engineering panel, such as NATO's Engineering Panel (Panel 9), when antipersonnel mines are addressed?

- Can a State Party review or approve changes to manuals or guidelines regarding antipersonnel mines, such as NATO's:
 - STANAG 2036. "Land Mine Laying, Marking, Recording and Reporting Procedures." Edition 5. 2 February 1987.
 - STANAG 2889. "Marking of Hazardous Areas and Routes Through Them." Edition 3. 26 March 1984
 - STANAG 2990. "Principles and Procedures for the Employment in Land Warfare of Scatterable Mines With a Limited Laid Life - ATP-50." Edition 1. 15 September 1988.

COMMAND AND CONTROL

- What authority does a commander of a multinational unit, who is a national of a State Party, have regarding the use of antipersonnel mines by non State Party forces under their command?
- Is there specific national or ministerial guidance by States Parties regarding the role and actions that officials who are their nationals can take in a multinational headquarters regarding antipersonnel mines?
- Can a commander from a State Party approve rules of engagement that permit the use of antipersonnel mines by the military forces of a non State Party?
- Is there a specific national review procedure among States Parties regarding antipersonnel mines for the transfer of command authority from a national commander to a multinational commander?
- Is there similar consideration for *ad hoc* cross-assignment (task-ordering) of national forces of States Parties to non State Party military formations during the course of combat operations?

LOGISTICS

- Must a non State Party declare the types of ammunition it transfers at the point(s) of entry/exit to a State Party?
- Can a company performing maintenance or security services on ammunition stockpiles, which include antipersonnel mines belonging to a non State Party, legally operate in a State Party? Is the answer different if this company is a locally owned subsidiary, a subcontractor, or a foreign owned entity?
- Can a national of a State Party perform maintenance or security services on a non State Party's ammunition stockpile that includes antipersonnel mines?
- Can an aircraft or merchant vessel of a State Party, whether routinely or taken up from trade during an emergency, transport ammunition stores that contain antipersonnel mines under contract to a non State Party?
- Can a State Party hosting a non State Party's stockpile of antipersonnel mines allow that non State Party to transfer those antipersonnel mines for contingency military operations in another region?
- Can the forces of State Party "supply" antipersonnel mines to a combat unit of a non State Party while serving as part of an organic combat service support component in a multinational combat formation?
- Can military personnel from a State Party posted as part of a reciprocal cross-national support assignment to a military unit of a non State Party perform routine

job functions such as the issue and receipt, maintenance, or security of antipersonnel mines?

- Can a merchant ship flagged to a non State Party or a vessel in the naval service of a non State Party that carries ammunition stores that include antipersonnel mines enter or transit the territorial waters of a State Party? Can such vessels berth or take on fuel or supplies at port facilities of a State Party? Can nationals of a State Party board or serve aboard such vessels? Can a tugboat or pilot from a State Party assist such vessels?

OPERATIONS

- Can a crewmember from a State Party in a multinational airborne early warning and control aircraft (AWAC) provide in-flight guidance and control to combat aircraft of a non State Party whose mission is to deploy antipersonnel mines?
- Can State Party members of a multinational target selection (weaponeering) staff participate in the planning for operations that involve the use of antipersonnel mines? Can such personnel promulgate a tasking order to execute such a mission even if aircraft from a non State Party carry it out?
- Can a State Party provide tactical intelligence information to support the use of antipersonnel mines by a non State Party?
- Can a tanker aircraft of a State Party perform in-flight refueling for aircraft of a non State Party carrying antipersonnel mine dispensers?
- Is a State Party permitted to use for combat operations an airfield on the territory of a non State Party that is protected by antipersonnel mines?
- Can the military forces of a State Party participate in exercises that include the use of antipersonnel mines on the territory of a non State Party?
- Can a State Party host a command post exercise that includes the use of antipersonnel mines by a non State Party?
- Is military advantage derived from antipersonnel minefields emplaced prior to entry-into-force of the treaty? Do national forces of a State Party serving under the United Nations flag derive such benefit? Does the same apply to members of a multinational observer forces?
- Do military trainers of a State Party performing advisory missions in a non State Party derive benefit from the use of antipersonnel mines by the forces of that non State Party? Can such trainers provide military advice regarding antipersonnel mines to the forces of the non State Party?
- Can an exchange officer from a State Party teach a class on antipersonnel mine warfare tactics while posted to a service school of a non State Party?
- Can an exchange officer from a State Party serving in a combat unit of a non State Party participate in training or mission planning involving the use of antipersonnel mines?
- Do the military forces of a State Party derive, albeit temporarily, military advantage during the course of combat operations by sheltering behind antipersonnel minefields emplaced by enemy forces?
- Can the military forces of a State Party conduct a “relief in place” operation of the military forces of a non State Party whose positions protected by antipersonnel mines?