THE REAY GROUP WORKSHOP
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WORKSHOP SESSION IV:
PREVENTING AND SUPPRESSING
PROHIBITED ACTIVITIES
- ARTICLE 9

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THE TEXT OF ARTICLE 9:

« 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. »
THE PURPOSE AND IMPORTANCE OF ARTICLE 9

- Ensuring respect and compliance
- Accountability
  - for states
  - for individuals (state or non-state actors, or others)

WHICH STATES HAVE OBLIGATIONS UNDER ARTICLE 9?

«…each state party shall…»

- All states parties to the convention.
- Having mines, or mine-affected or not.
- Monist, dualist (Common Law, Civil Law)
- Measures may vary, obligations do not.
WHAT ARE STATES’ OBLIGATIONS?

- GENERAL OBLIGATIONS - « […] ALL APPROPRIATE LEGAL, ADMINISTRATIVE AND OTHER MEASURES […] »
- SPECIFIC OBLIGATION - PENAL SANCTIONS

PENAL SANCTIONS

- STATES’ MUST:
  - IMPOSE INDIVIDUAL CRIMINAL RESPONSIBILITY
  - PERMIT EXCEPTIONS
  - IMPOSE PENAL SANCTIONS
  - ENSURE JURISDICTION EXISTS
PENAL SANCTIONS

CONSIDERATIONS:

- NATIONAL LEGAL CONTEXT:
  - TREATY IMPLEMENTATION PRACTICE
  - LOCAL KNOWLEDGE OF INTERNATIONAL LAW
- NULLUM CRIMEN SINE LEGE
  - (PRINCIPLE OF LEGALITY)

FURTHER CONSIDERATIONS:

- NEED FOR CLEAR DEFINITIONS
  - OF PROHIBITED ACTIVITIES,
  - OF AP MINES,
  - OF EXCEPTIONS.
- LEGAL POLICY CONSIDERATIONS
  - NATIONAL & INTERNATIONAL
GENERAL OBLIGATIONS

ALL APPROPRIATE LEGAL, ADMINISTRATIVE AND OTHER MEASURES.

THIS MAY INCLUDE:

- MEASURES TO FACILITATE DESTRUCTION
- MILITARY DOCTRINE, MANUALS AND TRAINING
- MEASURES FOR INFORMATION-GATHERING
- PROCEDURES FOR FACT-FINDING MISSIONS

GENERAL OBLIGATIONS

AS WELL AS MEASURES FOR:

- PERMITS FOR POSSESSION OF LANDMINES
- NOTIFICATION TO INDUSTRY
- RULES FOR IMPORT/EXPORT PERMITS
- OTHER?
GENERAL OBLIGATIONS

SOME EXAMPLES OF MEASURES:
- COMMANDER'S GUIDE (AUSTRALIA)
- FORMAL INSTRUCTION FOR MILITARY TRAINING AT ALL LEVELS (BRAZIL)
- PERMIT PROCEDURES (UK)

GENERAL OBLIGATIONS

MORE EXAMPLES OF MEASURES:
- OPS & TACTICAL LEVEL.Doctrine (CANADA)
- CORP'NS & CITIZENS GIVING INFO (SPAIN)
- COOPERATION – FACT-FINDING MISSION (CZR)
SCOPE OF ARTICLE 9
OBLIGATIONS

« [...] UNDERTAKEN BY PERSONS OR ON TERRITORY UNDER ITS JURISDICTION OR CONTROL. »
THIS APPLIES TO ALL PROHIBITED ACTIVITY.

MUST APPLY TO ALL TERRITORIES AND PERSONS UNDER JURISDICTION OR CONTROL.
MAY APPLY TO LEGAL PERSONS.
MAY APPLY TO NATIONALS ABROAD – TO HELP AVOID IMPUNITY.
RELATED OBLIGATIONS

- ARTICLE 7 - REPORTS
- ARTICLE 8 - FACT-FINDING MISSIONS
- CCW, AMENDED PROTOCOL II

MEETING THE OBLIGATIONS

KEY QUESTION:

- WILL THE MEASURES TAKEN, IN THEIR TOTALITY, PREVENT AND SUPPRESS ALL OF THE PROHIBITED ACTIVITY?
MEETING THE OBLIGATIONS

SOME SUGGESTIONS:

- FOLLOW A SYSTEMATIC APPROACH
- INVOLVE VARIOUS MINISTRIES
- INVOLVE NATIONAL COMMITTEE ON IHL
- CONSIDER APPROACHES OF OTHER STATES

MEETING THE OBLIGATIONS

RESOURCES AVAILABLE:

- ICRC ADVISORY SERVICE ON IHL (www.icrc.org)
- NGOs (E.G., ICBL, VERTIC, etc.)
- OTHER STATES
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UPDATES & DISCUSSION

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MANY THANKS
FOR YOUR ATTENTION AND PARTICIPATION