

## **Advancing the Ottawa Convention in Northern and Eastern Europe**

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Session 2 – Preventing and Suppressing Prohibited Activities

### **Cornerstones of an Effective National Legislation Implementing the Ottawa Convention: The German Experience**

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### **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.



## Requirements and Implications

- ▶ For Germany—as for most States Parties—, Article 9 entailed the necessity to adopt criminal legislation
- ▶ Significant latitude is left as to the type and form of legal measures a State Party will impose, on whom, and to which degree
- ▶ A State Party is not required to assert compulsory universal jurisdiction over all alleged offenders present within its jurisdiction
- ▶ Article 9 does not explicitly assume extraterritorial jurisdiction beyond acts undertaken by persons or on territory under the jurisdiction or control of a State Party, but there is no impediment to doing so either



## Act Implementing the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction

- ▶ 1998 Federal Law Gazette I-1778
- ▶ “Mixed” legislation
  - ▶ Stand-alone legislation
    - ▶ Article 1: “APMAG” — Act on Certain Implementation Measures Relating to Anti-Personnel Mines
  - ▶ Legislation through amendments to existing provisions in federal law
    - ▶ Article 2: Amendments to the War Weapons Control Act

## **Закон «О порядке выполнения Конвенции о запрещении применения, накопления запасов, производства и передачи противопехотных мин и об их уничтожении»**

- ▶ Вестник федерального законодательства 1998 часть I стр. 1778
- ▶ <http://www.auswaertiges-amt.de/www/de/infoservice/download/pdf/friedenspolitik/abruestung/vordruck-a-anlage3.pdf>

## **“APMAG” – Act on Certain Implementation Measures Relating to Anti-Personnel Mines**

- ▶ Fact-finding missions under the Ottawa Convention
  - ▶ Rights to exercise the powers provided for in the Ottawa Convention
  - ▶ Duties to comply with any request made by fact-finding missions
  - ▶ No specific regulations concerning the privileges and immunities of fact-finding missions, as Article 8(10) of the Ottawa Convention in conjunction with Article VI of the 1946 Convention on the Privileges and Immunities of the United Nations are self-executing in the German legal order
- ▶ Reporting obligations
  - ▶ Enactment authority still unavailed
- ▶ Legal waiver of data integrity

## Authorizing of Fact-Finding Missions

- ▶ Ministerial authorization in respect of fact-finding missions?
- ▶ Authority of the Head of the Accompanying Group?
  - ▶ Vested with constable's authority and entitled to give necessary authorizations and orders?
    - ▶ Possibility for the obliged addressee to have recourse to the civil courts?
  - ▶ General court warrant to search private property or warrants to be obtained *in casu*, should the fact-finding mission wish to inspect or search specific private property?

## Decentralized Authorizing of Fact-Finding Missions

- ▶ As Germany's legislation knows of no—
  - ▶ ministerial authorization in respect of fact-finding missions, the Head of the German Accompanying Group is, in principle, vested with constable's authority and entitled to give necessary authorizations and orders, against which the obliged addressee has recourse to the civil courts (Sections 2 and 3 of APMAG),
  - ▶ general court warrant to search private property, such warrants have to be obtained *in casu*, should the fact-finding mission wish to inspect or search specific private property
- ▶ After having heard the Federal Foreign Office, recourse to the civil courts lacks suspensiveness



## Amendments to the War Weapons Control Act

- ▶ Section 18a: Prohibition of Anti-Personnel Mines
- ▶ Section 20a: Penal Provisions on Anti-Personnel Mines
- ▶ Section 21: Acts Committed outside the Area of Application of this Act



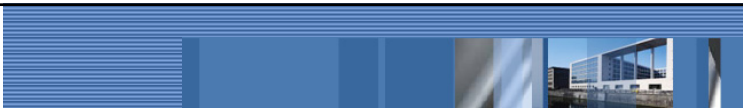
## Section 18a Prohibition of Antipersonnel Mines

- ▶ (1) It is forbidden to—
  - ▶ 1. use, develop, produce or trade in antipersonnel mines, to acquire them from or transfer them to another person, to import or export them, to transport them through or otherwise bring them into or out of federal territory, or otherwise to exercise actual control over them, in particular to convey, stockpile or retain them;
  - ▶ 2. induce another person to commit an act specified in item 1 above; or
  - ▶ 3. encourage an act specified in item 1 above.
- ▶ (2) The definition of antipersonnel mines in Article 2 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction of December 3, 1997 shall apply.
- ▶ (3) Paragraph (1) shall not apply to acts permitted under the provisions of the Convention referred to in paragraph (2) above.



## Section 20a Penal Provisions on Antipersonnel Mines

- ▶ (1) A prison sentence between one and five years shall be imposed on anyone who,—
  - ▶ 1. contrary to section 18a above, uses, develops, produces or trades in anti-personnel mines, acquires them from or transfers them to another person, imports or exports them, transports them through or otherwise brings them into or out of federal territory, or otherwise exercises actual control over them, in particular, conveys, stockpiles or retains them;
  - ▶ 2. induces another person to commit an act specified in item 1 above; or
  - ▶ 3. encourages an act specified in item 1 above.
- ▶ (2) In particularly serious cases the prison sentence shall be not less than one year. A particularly serious case is generally deemed to exist if—
  - ▶ 1. the offender commits an act specified in paragraph (1) above for gain; or
  - ▶ 2. the act specified in paragraph (1) above involves a large number of anti-personnel mines. ▶



## Section 20a Penal Provisions on Antipersonnel Mines

- ▶▶ (3) In less serious cases of the kind specified in paragraph (1) above the sentence shall be between three months' and three years' imprisonment.
- ▶ (4) If the offender acts with negligence in the cases specified in paragraph (1), item 1, above or with gross negligence in the cases specified in paragraph (1), items 2 or 3, above the sentence shall be up to three years' imprisonment or a fine.

## Section 21 Acts Committed outside the Area of Application of this Act

- ▶ Notwithstanding the *lex loci delicti*, section 19, paragraph (2), item 2, paragraph (3), item 2, paragraphs (5) and (6), as well as sections 20 and 20a of this Act shall also apply to acts committed outside the area of application of these provisions if the offender is a German.

## Experiences

- ▶ Germany's legislation on implementing the Ottawa Convention has hitherto not been put to a real test
- ▶ Imposed criminal legislation serves the purpose of general prevention, as there has not been one single case to enforce it
- ▶ Due to a well-functioning cooperation among all actors involved under the guidance of the national point of contact, there was no need so far to stipulate clearly and precisely the scope and contents of reporting obligations
- ▶ Effective implementation of the Ottawa Convention basically presupposes consensus among national actors

**Thank you for your attention!**

**Enquiries are welcome at**

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