

**Advancing the Ottawa Convention
in Northern and Eastern Europe: the Vilnius Seminar**

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**THE NON-USE OF ANTI-PERSONNEL MINES
IN JOINT MILITARY OPERATIONS: LEGAL ASPECTS**

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**LEGAL ASPECTS OF THE TERM
'ASSIST'**

1. Under Article 1, 'each State Party undertakes never under any circumstances (...) c) **to assist**, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.'
2. The activities include using, developing, producing, and otherwise acquiring, stockpiling, retaining or transferring to anyone, directly or indirectly, anti-personnel mines
3. Other than the bans listed above, it has nothing to do with international military operations in general and participation in such operations with a non-State party in particular?
4. The Ottawa Convention does not specify whether the term 'assist' refer to joint military operations.
5. It leaves too much room for interpreting 'direct' and 'indirect' assistance.

TOOLS FOR EXPLANATION

1. Different legal approaches (textual, systematic, and theological-historical)
2. The Vienna Convention contains three articles that incorporate the general rule of interpretation (Art. 31), the supplementary means of interpretation (Art. 32), and the interpretation of treaties in two or more languages (Art.33).

1. with regard to the general rule of interpretation, the term 'assist' is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Ottawa Convention, in its context, and in the light of its object and purpose
2. the context for the purpose of interpretation comprises, in addition to the text, of annexes and a Preamble. The objectives of the Mine Ban Treaty may be found in the Preamble, which is an inherent part of the agreement
3. its essential objective is to stop the use of landmines that may cause superfluous injury or unnecessary suffering and may not make a distinction between civilians and combatants. A tool for achieving this objective is to impose an overall ban on landmines that is set out in the Preamble
4. This can be found in the original intent of the Parties and preparatory works as well

As a result:

1. States Parties seeking to implement a total ban of APLs, are obliged not to assist those using, developing and stockpiling mines. The same ban is also imposed for those participating in joint military operations with Non-State Parties
2. the Ottawa Convention does not allow participation in joint military operations so as not to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention?
3. a clear distinction between participation in joint military operations and involvement in the activities prohibited by the Convention is to be made
4. The Ottawa Convention does not prohibit participation in joint military operations, but it sets limits for such participation

joint military operations do not necessarily include direct combat operations that might be against the spirit of the Convention

All agree that any direct involvement of a State Party in prohibited activities during a joint military operation is wrong and unacceptable.

Nonetheless, indirect and unintentional involvement is possible, and a common understanding about such cases has to be elaborated

to avoid such ambiguous interpretation, supplementary means should be used to determine the meaning in cases where the interpretation leads to a result which is manifestly absurd or unreasonable

some kind of experience of the State Parties with regard to joint military operations could be very helpful

Positions on Joint Military Operations

Will not participate in planning and implementation of activities related to AP mine use in joint operations	Australia, Belgium, Bosnia & Herzegovina, Brazil, Bulgaria, Canada, Croatia, Czech Rep., Denmark, France, Germany, Hungary, Italy, Japan, Luxembourg, Malaysia, Mexico, Namibia, Netherlands, New Zealand, Norway, Portugal, Qatar, Senegal, South Africa, Sweden, Switzerland, Tajikistan, United Kingdom, Uruguay, Zimbabwe
Participation interpreted as 'active' or 'direct'	Australia, Czech Rep., New Zealand, Sweden, United Kingdom, Zimbabwe
Reject operations if its military forces derive direct military benefit from AP mine use	Brazil, Mexico, Switzerland, United Kingdom
Reject rules of engagement permitting AP mine use or orders to use AP mines	Canada, France, Germany, Italy, Sweden, United Kingdom
Obtain written precondition for placing forces under the command of a non-State Party	Norway

According to LANDMINE MONITOR FACT SHEET Prepared by Human Rights Watch for the Ninth Meeting of the Intersessional Standing Committee on the General Status and Operation of the 1997 Mine Ban Treaty Geneva, Switzerland 9 February 2004 //

PROBLEMS REMAIN:

Only some State Parties tend not to participate in planning and implementation of activities related to APLs use in joint military operations. Some of them are obliged to reject Rules of Engagement permitting the use of APLs

State Parties should clarify whether they may participate in joint training with a non-State Party that uses APLs, or to place their forces under the operational command of a non-State Party, etc.

These issues may be solved only after a clear distinction between direct and indirect involvement is made.

RECOMENDATIONS

- During joint military operations, a State Party may not directly assist, encourage or induce in any way anyone to engage in any activity prohibited to a State Party under this Convention.
- A State Party may participate in a joint military operation with a non-State Party in a limited, well-defined framework.
- Following the practice already established by the State Parties, the principle on interpretation which requires supplementary means when the interpretation leaves the meaning ambiguous or obscure; or leads to a result which is manifestly absurd or unreasonable, it is recommended to reject Rules of Engagement permitting the use of APLs and to not participate in planning and implementation of direct activities related to the use of APLs in joint operations. Other indirect involvement is possible due to the complexity of joint military operations.
- the State Parties are encouraged to agree upon this before the Nairobi Meeting.