

## THE OTTAWA CONVENTION ON THE PROHIBITION OF ANTI-PERSONNEL MINES



ICRC

### Implementing legislation: Some elements

- ▶ Individual responsibility and sanctions
- ▶ Definitions
- ▶ Destruction of stockpiles and mine-clearance
- ▶ Reporting procedures
- ▶ Inspection missions



ICRC

## Ensure respect of the prohibitions: For each State party

"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 9)



ICRC

## Prohibited activities

- ☒ Use
- ☒ Production
- ☒ Development or acquisition
- ☒ Stockpiling
- ☒ Transfer

never under any circumstances

→ **Exceptions:** retention or transfer of a for the development of and training in mine detection, mine clearance, or mine destruction techniques.



ICRC

## Ensure respect of the prohibitions: Penal sanctions

"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 9)



## Penal sanctions



- ✗ Use
- ✗ Production
- ✗ Development
- ✗ Stockpiling
- ✗ Transfer
- ✗ Otherwise acquire



## Penal sanctions



- ✗ Assisting
- ✗ Encouraging
- ✗ Inducing



ICRC

## Penal sanctions



→ all individuals (military and civilian) to be held accountable for violations of the Convention

→ At all times: not only in times of armed conflicts



ICRC

## Applying consistent definitions: anti-personnel mines

" ... 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."

(Article 2(1))



ICRC

## Anti-handling devices

- ▶ The application of anti-handling devices are authorised by the Convention as long as they can never detonate unless the manipulation is intentional and does not result from innocent or involuntary contact.
- ▶ Very sensitive anti-handling devices attached to anti-tank mines which are able to be detonated due to the presence, proximity and / or contact with a person are forbidden.



ICRC

## Ensure respect of the prohibitions: Jurisdiction

"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 9)



ICRC

- ▶ Criminalization of prohibited activities
  - » including assisting, encouraging others or inciting them to engage in prohibited activities
  
- ▶ To consider
  - » retention or transfer for the development of and training in mine detection, mine clearance, or mine destruction techniques
  - » application to legal persons
  - » extraterritorial jurisdiction
  - » proportionality of penalties
  - » other penalties: confiscation of AP mines or other prohibited objects, used to commit another crime



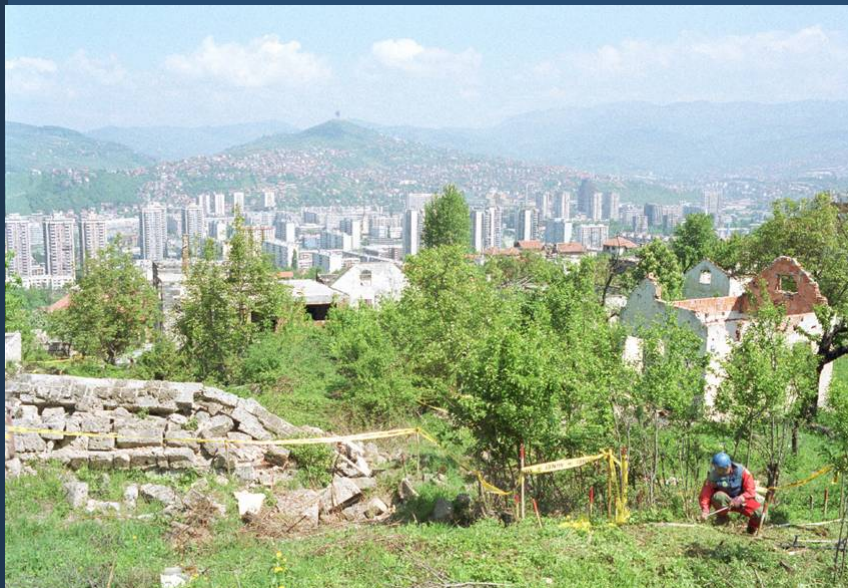
ICRC

## Destruction of stockpiles

- ▶ All mine stocks to be destroyed as soon as possible ( $\Rightarrow$  4 years).
- ▶ Right of entry into buildings and to take mines, and to authorise the collection and the transfer of AP mines in order to destroy them.
- ▶ Determination of stocks retained for training.



## Mine clearance



## Reporting

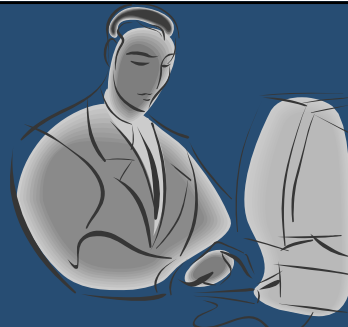


- ▶ Reporting to the UN Secretary General
  - ▶ Initial report 180 days after entry into force
  - ▶ Annual report on the 30th April of each year



ICRC

## Reporting



- ▶ Confer powers relating to the collection of information to the Minister in charge of establishing the reports, and which requires providing him or her with information on AP mines.



ICRC



## Fact-finding missions

- ▶ Request for clarification : "to clarify and seek to resolve questions relating to compliance with the Convention"
  - » submitted by one or more States through the UN Secretary-General
- ▶ Fact-finding mission
  - » Decision of Meeting of the States Parties by consensus or by a majority of States Parties present and voting
  - » up to 9 experts (established list)
  - » 14 days max. (7 days max. per particular site)



## Fact-finding missions

- ▶ Guarantee the privileges and immunities to the members of the mission.
- ▶ Receive, transport and house the mission.
- ▶ To the extent possible, ensure the safety of the mission.
- ▶ Permit the mission to carry with them all necessary equipment for the collection of information on the alleged non-respect of the Convention.



## Fact-finding missions

- ▶ Give to the Mission the possibility to speak with all persons capable of providing relevant information.
- ▶ Provide the Mission access to all of the areas and installations controlled by the State.
- ▶ Provide for sanctions for those who obstruct or provide false declarations to a Mission.
  - + subject to any arrangements that the requested State Party considers necessary for:
    - ...
    - 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



## To implement the Convention ...

- ▶ special or specific piece of legislation; or
  - ▶ amendment to existing legislation; or
  - ▶ combination of the above
- 
- ▶ The following may also be required
    - » Regulations (procedures for destruction of stockpiles, identification, mine clearance, fact-finding missions, assistance to mine victims)
    - » Directive/command to the armed forces
    - » Review of military doctrine
    - » Revision of training programmes



## Check list ...



- ▶ Does legislation prohibit and provide punishment for violations of the Convention?
  - » Use
  - » Acquisition
  - » Stockpiling
  - » Retention
  - » Transfer
- ▶ Is there a prohibition for assisting, encouraging and inducing these violations?
- ▶ Other appropriate legal, administrative and other measures:
  - » Is destruction of AP mines provided for by law, regulation or by other measure?
  - » How would a fact finding mission be facilitated: under what law, regulation, or other measure?
  - » Is there legislation, regulation or other measure to assist the Ministry or Department responsible for annual reports, for example by requiring all persons, including other government officials, to provide the necessary information?

## 59 States Parties report having adopted legislation to implement the Convention (of 156)



Albania	Costa Rica	Jordan	St. Vincent and the
Australia	Croatia	Latvia	Grenadines
Austria	Cyprus	Liechtenstein	Senegal
Belarus	Czech Rep.	Lithuania	Seychelles
Belgium	Djibouti	Luxembourg	South Africa
Belize	El Salvador	Malaysia	Spain
Bosnia and Herzegovina	Estonia	Mali	Sweden
Brazil	France	Malta	Switzerland
Burkina Faso	Germany	Mauritania	Trinidad & Tobago
Burundi	Guatemala	Mauritius	Turkey
Cambodia	Honduras	Monaco	United Kingdom
Canada	Hungary	New Zealand	Yemen
Chad	Iceland	Nicaragua	Zambia
Colombia	Italy	Niger	Zimbabwe
Cook Islands	Japan	Norway	
		Peru	

## 30 States Parties **report** considering existing laws to be sufficient to give effect to the Convention

Algeria	Moldova
Andorra	Macedonia
Argentina	Montenegro
Bulgaria	Netherlands
Central African Republic	Papua New Guinea
Denmark	Portugal
Estonia	Romania
Greece	Samoa
Guinea-Bissau	Slovakia
Holy See	Slovenia
Indonesia	Tajikistan
Ireland	Tanzania
Kiribati	Tunisia
Lesotho	Ukraine
Mexico	Venezuela



## 22 States Parties report being **in the process** of adopting legislation to implement the Convention

Bolivia	Kenya	Nigeria	Saint Lucia
Brunei	Kuwait	Palau	Suriname
Chile	Madagascar	Panama	Thailand
D.R. Congo	Malawi	Paraguay	Uganda
Ecuador	Mozambique	Philippines	Vanuatu
Jamaica		Rwanda	



## 17 States Parties for which no progress has been reported in implementation

Afghanistan	Gabon	Timor-Leste
Bangladesh	Guinea	Togo
Benin	Namibia	Uruguay
Botswana	Nauru	
Cameroon	Sierra Leone	
Congo	Solomon Islands	
Côte d'Ivoire	Swaziland	



## 28 States for which there is no information, or the information is unclear

Angola	Eritrea	Maldives
Antigua and Barbuda	Ethiopia	Niue
Bahamas	Fiji	Qatar
Barbados	Gambia	Saint Kitts & Nevis
Bhutan	Ghana	San Marino
Cape Verde	Grenada	Sao Tome & Principe
Comoros	Guyana	Sudan
Dominica	Haiti	Turkmenistan
Dominican Republic	Iraq	
Equatorial Guinea	Liberia	



## Tools

- ▶ ICRC / ICBL / Gov. of Belgium, *Information Kit on the Development of National legislation to implement the Ottawa Convention*  
(English, French, Spanish, Russian)
- ▶ ICRC, *Model Legislation for Common Law States*  
(English)
- ▶ ICRC, *Table of National Implementation Measures and Checklist*
- ▶ ICRC IHL National Implementation Database

[www.icrc.org](http://www.icrc.org)

- ▶ ICRC's Advisory Service may provide technical assistance for the development of to implementing legislation



# ICRC

Thank you for your attention!

