

FACT SHEET

**Mine Ban Treaty Special Issues of Concern (Articles 1, 2, 3)
1999-2014**

June 2014

Since the inception of the Mine Ban Treaty, the ICBL has identified special issues of concern regarding interpretation and implementation of aspects of Articles 1, 2, and 3. These have included:

- what acts are permitted or not under the treaty's ban on assistance with prohibited acts, especially in the context of joint military operations with states not party;
- foreign stockpiling and transit of antipersonnel mines;
- the applicability of the treaty to antivehicle mines with sensitive fuzes or sensitive antihandling devices; and,
- the inappropriate retention of mines for training purposes.

After the treaty entered into force in 1999, States Parties regularly discussed these issues at the intersessional Standing Committee meetings and Meetings of States Parties, and many tried to reach common understandings, as urged by the ICBL and the ICRC.¹ At the First Review Conference in 2004, States Parties agreed in the Nairobi Action Plan, and in the subsequent Progress Reports from the annual Meetings of States Parties, that there should be ongoing discussion and exchange of views on these matters.² However, few states have expressed their views since the Second Review Conference in 2009, especially with respect to Articles 1 and 2.

While States Parties have not reached formal common understandings on these issues, over the years strong prevailing views and practices have emerged that are very positive. If these trends were to change, however, the ICBL considers that this would be damaging to the integrity and effectiveness of the Mine Ban Treaty.

For detailed information on States Parties' policies and practices on these matters, see annual editions of the *Landmine Monitor*.

¹ The Final Report and President's Action Program agreed upon at the Fifth Meeting of States Parties in Bangkok in September 2003 states that "the meeting called upon States Parties to continue to share information and views, particularly with respect to articles 1, 2, and 3, with a view to developing understandings on various matters by the First Review Conference." The co-chairs of the Standing Committee on the General Status and Operation of the Convention (Mexico and the Netherlands) at the February and June 2004 intersessional meetings undertook significant consultations on reaching understandings or conclusions on these issues, but a number of States Parties remained opposed, and no formal understanding was reached at the First Review Conference.

² The Nairobi Action Plan 2005–2009 indicates that the States Parties will "exchange views and share their experiences in a cooperative and informal manner on the practical implementation of the various provisions of the Convention, including Articles 1, 2 and 3, to continue to promote effective and consistent application of these provisions."

Article 1: Joint military operations and the prohibition on assistance

Article 1 of the 1997 Mine Ban Treaty obligates State Parties to “never under any circumstances ...assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.”

Initially, there was a lack of clarity, however, regarding what types of acts are permitted or prohibited within the context of the prohibition on assistance, particularly with respect to joint military operations with states not party to the treaty. States Parties recognized the need to address ambiguities about the prohibition and over the years have shared views on policy and practice. A general, albeit informal, understanding of how Article 1 applies to joint military operations and the meaning of “assist” has emerged during the years of discussion. More specifically, a prevailing view has emerged that States Parties may not:

- participate in the planning for use of antipersonnel mines;
- agree to rules of engagement that permit use of the weapon;
- accept orders to use, request others to use, or train others to use the weapon;
- knowingly derive military benefit from the use of the weapon by others; or
- provide security, storage, or transportation for antipersonnel mines.

Forty-four States Parties have declared that they will not participate in planning and implementation of activities related to the use of antipersonnel mines in joint operations with a state not party to the Mine Ban Treaty who may use antipersonnel mines:

Albania	Denmark	Mexico	Spain
Australia	Estonia	Moldova	Sweden
Belgium	France	Namibia	Switzerland
Bosnia & Herzegovina	Germany	Netherlands	Tajikistan
Brazil	Hungary	New Zealand	Tanzania
Bulgaria	Italy	Norway	Turkey
Canada	Japan	Portugal	United Kingdom
Chad	Kenya	Qatar	Uruguay
Croatia	Luxembourg	Senegal	Yemen
Cyprus	FYR Macedonia	Slovenia	Zambia
Czech Republic	Malaysia	South Africa	Zimbabwe

From 1999 to 2004, *Landmine Monitor* expressed concerns about a number of serious allegations of States Parties assisting with the use of antipersonnel mines by others, including **Rwanda**, **Uganda**, and **Zimbabwe** with various forces in the Democratic Republic of Congo; **Sudan** with militia in the south of the country; and **Namibia** with Angolan troops before Angola became a State Party. However, there have been no serious allegations that a State Party engaged in any of these activities since that time.

Eight States Parties have declared that only “active” or “direct” participation in joint operations in which antipersonnel mines are used is prohibited: **Australia**, **Canada**, **Czech Republic**, **New Zealand**, **Sweden**, the **United Kingdom**, **Zambia**, and **Zimbabwe**. However, each country’s

understanding of what constitutes “active” or “direct” assistance varies.³ Over the years, the ICBL has raised concerns with these states about their national declarations and/or clauses in their national implementation legislation with respect to joint operations and “assist.”⁴

Foreign stockpiling and transit of antipersonnel mines

With a few exceptions, States Parties have agreed that the Mine Ban Treaty prohibits “transit” and foreign stockpiling of antipersonnel mines. With respect to transit, the main issue is whether a state not party’s aircraft, ships, or vehicles carrying antipersonnel mines can pass through (and presumably depart from, refuel in, restock in) a State Party, including on their way to a conflict in which those mines would be used. Nearly all states that have addressed the issue, as well as the ICBL and ICRC, believe that if a State Party permits transit of antipersonnel mines, it is violating the Article 1 ban on assistance to an act prohibited by the treaty, and possibly violating the Article 1 prohibition on transfer.

Thirty-two States Parties have declared that the Mine Ban Treaty prohibits transit through or foreign stockpiling on national territory:

Albania	Denmark	Mexico	South Africa
Austria	Estonia	Moldova	Spain
Bosnia & Herzegovina	France	Namibia	Sweden
Brazil	Guinea	New Zealand	Switzerland
Cameroon	Hungary	Portugal	Turkey
Croatia	Italy	Samoa	United Kingdom
Cyprus	FYR Macedonia	Senegal	Yemen
Czech Republic	Malaysia	Slovakia	Zambia

With respect to foreign stockpiling of antipersonnel mines, three States Parties required the United States (US) to remove US stocks on their soil: **Italy** (announced in May 2000), **Norway** (November 2002), and **Spain** (November 1999). **Tajikistan** has reported since 2003 that it was negotiating with Russia regarding removal of its 18,200 stockpiled mines. Tajikistan is the only State Party to declare in its Article 7 report the number of antipersonnel mines stockpiled on its territory by a state not party. However, **Germany, Japan, Qatar**, and the **United Kingdom** have stated that US antipersonnel mine stocks in their countries or territories are not under their national jurisdiction or control, and thus not covered by the Mine Ban Treaty.

³ In May 2009, *Landmine Monitor* produced an eight-page fact sheet, “The Prohibition on Assistance in the Mine Ban Treaty (Article 1)” that contains a summary of state practice and the views of the individual States Parties that have addressed the issue. See <http://www.the-monitor.org/index.php/content/view/full/24111>

⁴ A highly regarded legal commentary on the Mine Ban Treaty examined Australia’s National Declaration and a statement by Zimbabwe on the prohibition on “assist,” and concluded that “it is not clear how these interpretations can be legally sustained. Reservations are prohibited by Article 19” of the treaty. The commentary draws particular attention to Australia’s position that the treaty would allow “indirect support such as the provision of security for the personnel of a State not party to the Convention engaging in such [prohibited] activities,” including presumably the laying of antipersonnel mines by the state not party. Stuart Maslen, *Commentaries on Arms Control Treaties*, Volume 1, “The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction” (Oxford: Oxford University Press: 2004), pp. 92–95.

Canada, Germany, Japan, and Norway believe that the Mine Ban Treaty does not prohibit the transit of antipersonnel mines, at least in certain circumstances. **Canada** has stated that it nevertheless discourages the use of Canadian territory, equipment, or personnel for the purpose of transit of antipersonnel mines.

Article 2: Mines with sensitive fuzes and sensitive antihandling devices

Since the conclusion of the negotiations of the Mine Ban Treaty, the vast majority of States Parties that have spoken on the issue have agreed that, according to the treaty’s definitions, any mine—even if it is labeled as an antivehicle mine—equipped with a fuze or antihandling device that causes the mine to explode from an unintentional or innocent act of a person is considered to be an antipersonnel mine and therefore prohibited. This view has also been strongly stated by the ICBL and ICRC.

Twenty-eight States Parties have expressed the view that any mine, despite its label or design intent, capable of being detonated by the unintentional act of a person is an antipersonnel mine and is prohibited:

Argentina	Colombia	FYR Macedonia	Peru
Australia	Croatia	Mexico	Slovakia
Austria	Estonia	Moldova	Slovenia
Bolivia	Germany	Mozambique	South Africa
Bosnia & Herzegovina	Guatemala	Netherlands	Switzerland
Brazil	Kenya	New Zealand	Yemen
Canada	Ireland	Norway	Zambia

In addition, **Albania** has not taken a legal position, but has stated that it is destroying its antivehicle mines with sensitive fuzes.

However, for a small number of States Parties this has been a contentious issue. The **Czech Republic, Denmark, France, Japan, and the United Kingdom** have said that the Mine Ban Treaty does not apply to antivehicle mines at all, regardless of their employment with sensitive fuzes or antihandling devices. Still, *Landmine Monitor* is not aware of the use of antivehicle mines with sensitive fuzes or antihandling devices by any of these countries.

There appears to be agreement, with some exceptions, that a mine that relies on a tripwire, breakwire, or a tilt rod as its sole firing mechanism should be considered an antipersonnel mine. However, the **Czech Republic** has stated it does not consider the use of tripwires with an antivehicle mine to be a violation of the Mine Ban Treaty.⁵ **Sweden** has antivehicle mines with tilt rods, but has not formally expressed a view on their legality under the Mine Ban Treaty.

⁵ The Czech Republic has also acknowledged possessing tilt rod fuzes, but stated in 2004 that the mines that are capable of using them are considered to be obsolete and would be retired within 15 years. Slovenia, while stating that antivehicle mines with fuzes that cause them to function as antipersonnel mines are prohibited, has also acknowledged possessing TMRP-6 mines that are equipped with both pressure and tilt rod fuzes; it said in 2003 that it was considering how to deal with them. Neither country has provided an update in recent years.

Several States Parties have reported that they have removed from service and destroyed certain antivehicle mines and/or ordnance items that, when used with mines, can cause them to function as antipersonnel mines. **Belgium** has banned pressure and tension release firing devices (igniters) used as booby-traps. **Bulgaria** destroyed its stock of antivehicle mines with antihandling devices. **Canada, France, Hungary, Mali,** and the **United Kingdom** have removed tilt rod fuzes from their inventories. The **Netherlands** and the **United Kingdom** retired from service mines with breakwire fuzes. France has destroyed other unspecified pressure and tension release fuzes. **Germany** and **Slovakia** have retired and destroyed antilift mechanisms that could be attached to mines. **Slovakia** has prohibited the use of the Ro-3 fuze as an antihandling device.

Claymore and OZM-72 command-detonated mines

Certain types of mines are not prohibited by the Mine Ban Treaty in all instances because they are designed to be capable of being both command-detonated by electric means or by explosive shock tubes (which is permissible under the treaty) and victim-activated by using mechanical pull/tension release tripwire fuzes (which is prohibited by the treaty). In the past, options for both means of utilization have often been packaged with the mine.

In order to be compliant and fully transparent, States Parties should take steps, and report on them in Article 7 reports, to ensure that the means for victim-activation is permanently removed and that their armed forces are instructed as to their legal obligations.

The most common mines in this category are Claymore-type directional fragmentation munitions. The M18A1 (produced originally by the US but also widely copied or license-produced by other countries), MON series (produced in the former USSR and other Warsaw Pact countries), and the MRUD (produced in FR Yugoslavia) are the most well-known and widely held examples of Claymore-type directional fragmentation mines.

Several States Parties have extended this command and target activation distinction to a type of bounding fragmentation mine, the OZM-72, which also possesses these inherent dual-use capabilities.

Thirty-one States Parties have declared that they retain stocks of Claymore-type and/or OZM-72 mines:

Australia	Denmark	Montenegro	South Africa
Austria	Ecuador	Netherlands	Sweden
Belarus	Estonia	New Zealand	Switzerland
Bosnia & Herzegovina	Honduras	Nicaragua	Thailand
Brunei	Hungary	Norway	Turkey
Canada	Latvia	Papua New Guinea	United Kingdom
Colombia	Lithuania	Serbia	Zimbabwe
Croatia	Malaysia	Slovenia	

Some States Parties have chosen to physically modify the mines to accept only electric or shock tube detonation and some have physically removed and destroyed the tripwire assembly and appropriate blasting cap. **Belarus, Denmark, Lithuania, Moldova, New Zealand,** and **Sweden** have reported on

the measures taken to modify these mines in their Article 7 reports. In 2006, **Belarus** destroyed the victim-activated components of its 5,536 MON mines and 200,826 OZM-72 mines.

Thirty States Parties have declared that they do not possess or have destroyed Claymore-type and/or OZM-72 mines.⁶

The vast majority of States Parties have not declared whether their forces possess these types of mines. While most of these States Parties have declared that they do not possess any antipersonnel mine stockpiles, in some cases it cannot be presumed that this includes dual-use command-detonated mines.

Article 3: Mines retained for research and training

Article 3 of the Mine Ban Treaty allows a State Party to retain or transfer “a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques... The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.”

The ICBL and many States Parties have consistently questioned the need for live mines for training purposes. Eighty-four States Parties have declared that they do not retain any antipersonnel mines, including 30 states that stockpiled antipersonnel mines in the past.

A total of 75 States Parties have reported that they retain a combined total of more than 169,000 antipersonnel mines for training and research purposes. Three (**Finland, Turkey, and Bangladesh**) have each retained more than 12,000 mines. Six retain between 5,000 and 7,000; 33 retain between 1,000 and 5,000; and, 33 retain less than 1,000 (this latter group of states collectively retains a total of 11,828 mines).

On the positive side, since 1999 States Parties have destroyed more than 97,550 mines that were retained for training, including nearly 3,400 in 2013. Most were destroyed during training and research activities, but many were also destroyed when states re-assessed the number actually needed for permitted purposes.

States Parties have had extensive discussions about what constitutes “the minimum number absolutely necessary.” During the Oslo negotiations in 1997 and during Standing Committee discussions since 1999, most States Parties have agreed that, for those that decide to retain mines, the minimum number of mines retained should be in the hundreds or thousands or less, but not tens of thousands.

With strong urging from the ICBL, States Parties agreed at the First Review Conference in 2004 that those retaining mines should report in detail each year on the intended purposes and actual uses of those mines; the agreement was confirmed at the Second Review Conference in 2009. States Parties

⁶ The 30 States Parties that declare not possessing or having destroyed Claymore-type or OZM-72 mines are: Albania, Bangladesh, Belgium, Bolivia, Bulgaria, Cambodia, Chad, Cyprus, Czech Republic, El Salvador, France, Germany, Italy, Jordan, Kenya, Luxembourg, FYR Macedonia, Moldova, Mozambique, Peru, Philippines, Portugal, Qatar, Romania, Slovakia, Tajikistan, Tanzania, Turkmenistan, Uruguay, and Yemen.

agreed in 2005 to a new, voluntary Article 7 form to facilitate such reporting. But only 21 States Parties have over time used this expanded Form D.⁷

In the early years of the Mine Ban Treaty, the ICBL often expressed concern over the high number of mines retained by many States Parties. Those numbers have reduced significantly over the years, alleviating some of the concern. However, some states still appear to retain a high number that may be in excess of the minimum number needed by that state, including **Finland, Turkey, Bangladesh, Greece, Belarus, Algeria**, and others.

As the years have passed, another major concern has emerged and intensified: the large number of States Parties that are retaining mines but apparently not using those mines for permitted purposes. For these States Parties, the number of mines retained remains the same each year, indicating none are being consumed (destroyed) during training or research activities, which is typically the case for most countries, and no other details have been provided about how the mines are being used. Eleven States Parties have never reported consuming any mines retained for permitted purposes since the treaty entered into force for them: **Angola, Bangladesh, Burundi, Cape Verde, Cyprus, Djibouti, Ethiopia, Finland, Nigeria, Senegal, and Togo**. Many others have not reported any consumption for multiple years.

For many, the retained mines appear to be simply sitting in storage—the equivalent to continued stockpiling. The ICBL has called on States Parties to treat this as a compliance issue.

⁷ Argentina, Belgium, Canada, Chile, Croatia, Czech Republic, Ecuador, France, Gambia, Germany, Indonesia, Iraq, Ireland, Japan, Mozambique, Nicaragua, Romania, Tunisia, Turkey, United Kingdom, and Zambia. Some States Parties on this list only used some voluntary elements of Form D.

States retaining more than 1,000 antipersonnel mines in 2013⁸

State	Last Total Declared (for year)	Initial Declaration	Consumed during 2013	Year of Last Declared Consumption	Quantity Reduced as Excess to Need
Finland	16,500 (2013)	16,500	0	None ever	–
Turkey	14,944 (2013)	16,000	97	2013	–
Bangladesh	12,500 (2012)	15,000	0	None ever	–
Sweden	6,235 (2013)	13,948	695	2013	–
Greece	6,142 (2013)	7,224	16	2013	–
Belarus	6,022 (2013)	7,530	8	2012	–
Algeria	5,970 (2013)	15,030	0	2009	6,000
Croatia	5,714 (2013)	17,500	3	2013	–
Brazil	5,251 (2013)	17,000	1,336	2013	–
Venezuela	4,874 (2011)	4,960	Not reported	2010	–
Tunisia	4,770 (2013)	5,000	70	2013	–
France	3,958 (2013)	4,539	35	2012	–
Yemen	3,760 (2012)	4,000	0	Unclear	–
Bulgaria	3,557 (2013)	10,466	115	2013	6,446
Nigeria	3,364 (2011)	3,364	Not reported	None ever	–
Thailand	3,350 (2012)	15,604	24	2012	4,517
Serbia	3,149 (2012)	5,000	0	2011	1,970
Djibouti	2,996 (2004)	2,996	Not reported	None ever	–
Chile	2,925 (2013)	28,647	87	2013	23,694
Cambodia	2,827 (2013)	701	0	Unclear	–
Belgium	2,564 (2013)	5,980	5	2013	–
Indonesia	2,454 (2012)	4,978	0	2009	2,524
Romania	2,395 (2013)	4,000	105	2013	1,500
Czech Rep.	2,301 (2013)	4,859	59	2013	–
Peru	2,015 (2013)	9,526	0	2012	7,487
Sudan	1,938 (2013)	1,938	0	Unclear	–

⁸ An additional 33 States Parties each retain less than 1,000 mines, for a total of 11,979 retained mines: Zambia (907), Argentina (841), Jordan (850), Honduras (826), Mauritania (728) Portugal (694), Italy (628), Mali (600), Colombia (586), South Africa (576), Cyprus (500), Bhutan (490), Zimbabwe (450), Nicaragua (448), Togo (436), United Kingdom (371), Slovenia (361), Republic of Congo (322), Ethiopia (303), Côte d'Ivoire (290), Lithuania (269), Uruguay (260), Cape Verde (120), Eritrea (101), Ecuador (100), Gambia (100), Iraq (87), Rwanda (65), Ireland (61), Senegal (50), Benin (16), Guinea-Bissau (9), Democratic Republic of the Congo (5), and Burundi (4).

**LANDMINE & CLUSTER MUNITION
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State	Last Total Declared (for year)	Initial Declaration	Consumed during 2013	Year of Last Declared Consumption	Quantity Reduced as Excess to Need
Japan	1,930 (2013)	15,000	231	2013	–
Canada	1,909 (2013)	1,781	12	2010	–
Germany	1,880 (2013)	3,006	231	2013	–
Denmark	1,820 (2013)	4,991	12	2013	2,900
Tanzania	1,780 (2008)	1,146	Not reported	2007	–
Uganda	1,764 (2011)	2,400	Not reported	2003	–
Spain	1,710 (2012)	10,000	8	2012	6,000
Namibia	1,634 (2009)	9,999	Not reported	2009	–
BiH	1,624 (2011)	2,405	Not reported	Unclear	–
Netherlands	1,557 (2013)	4,076	193	2013	–
Mozambique	1,363 (2012)	1,427	320	2012	260
Angola	1,304 (2012)	1,460	135	2012	–
Slovakia	1,272 (2012)	7,000	0	2011	5,500
Australia	1,264 (2013)	10,000	0	2011	7,033
Kenya	1,020 (2007)	3,000	Not reported	2007	–
Botswana	1,019 (2012)	1,019	Not reported	Unclear	--
Partial Total	157,325	306,672	3,797		75,849

Note: The category “Quantity Reduced as Excess to Needs” represents the number of mines States Parties have destroyed since entry into force due to a re-assessment of the minimum number absolutely necessary for permitted purposes.