

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. »



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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



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PENAL SANCTIONS

STATES' MUST:

- ▶ IMPOSE INDIVIDUAL CRIMINAL RESPONSIBILITY
- ▶ PERMIT EXCEPTIONS
- ▶ IMPOSE PENAL SANCTIONS
- ▶ ENSURE JURISDICTION EXISTS



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PENAL SANCTIONS

CONSIDERATIONS:

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



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PENAL SANCTIONS

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



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GENERAL OBLIGATIONS

AS WELL AS MEASURES FOR:

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



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GENERAL OBLIGATIONS

SOME EXAMPLES OF MEASURES:

- ▶ COMMANDER'S GUIDE (AUSTRALIA)
- ▶ FORMAL INSTRUCTION FOR MILITARY TRAINING AT ALL LEVELS (BRAZIL)
- ▶ PERMIT PROCEDURES (UK)



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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.



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SCOPE OF ARTICLE 9 OBLIGATIONS

- ▶ *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.



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RELATED OBLIGATIONS

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



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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



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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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WORKSHOP SESSION IV
- ARTICLE 9

MANY THANKS
FOR YOUR ATTENTION
AND
PARTICIPATION



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