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LANDMINE MONITOR FACT SHEET

Prepared by Human Rights Watch

For the Fifth Meeting of the Intersessional Standing Committee
on the General Status and Operation of the 1997 Mine Ban Treaty

Geneva, Switzerland
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Joint Operations (Article 1)

Several States Parties have deployed military forces to Afghanistan. Some of these forces are engaged in a combatant role, others are present as part of an international peacekeeping force. Both situations include the possibility of joint operations with non States Parties. States Parties with military forces currently in Afghanistan include Australia, Canada, France, the United Kingdom, and possibly others.

The ICBL continues to believe that the legality of State Party participation in joint operations with an armed force that uses antipersonnel mines is an open question, and that participation in such operations is contrary to the spirit of the treaty. The ICBL has called on States Parties to insist that any non-signatories do not use antipersonnel mines in joint operations, and to refuse to take part in joint operations that involve use of antipersonnel mines.

In various ways, the ICBL has raised concerns about the possible participation of States Parties in joint military operations with non-States Parties that use antipersonnel landmines. There is serious concern about the consistency of such operations with the treaty's Article 1 obligation for a State Party "never under any circumstance...[t]o assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention." Such joint operations at the least would go against the spirit of a treaty aimed at an end to all possession and use of antipersonnel mines.

In particular, the question has been raised as to what "assist" means in the treaty's Article 1. A number of governments have interpreted this to mean "active" or "direct" assistance in actual laying of mines, and not other types of assistance in joint operations, such as provision of fuel or security. This narrow interpretation of assistance is of concern to the ICBL; in keeping with the spirit of a treaty aimed at total eradication of the weapon, interpretation of assistance should be as broad as possible.

During the meetings of the Standing Committee on General Status of the Convention, the ICBL has emphasized the need for States Parties to reach a common understanding of the term “assist,” especially as it applies to joint military operations, foreign stockpiling of antipersonnel mines, and foreign transit of mines across the territory of a State Party. Full and effective implementation of the treaty will be enhanced if States Parties are clear and consistent with regard to what acts are permitted and what acts are prohibited.

It appears that various States Parties may have significantly different understandings about what acts are permitted. Human Rights Watch prepared and distributed at the Standing Committee meetings in May 2001 a list of questions about joint military operations in order to help determine whether States Parties consider such actions to be prohibited (attached to this fact sheet). The ICBL urges States Parties to clarify their views on the legality of joint operations with non-States Parties using mines, as well as foreign stockpiling and transit of antipersonnel mines.

Though often discussed in terms of potential U.S. use of antipersonnel mines in a NATO operation, this is by no means a problem limited to the NATO alliance. Based on research for the *Landmine Monitor Report 2001*, there are significant questions regarding the position and involvement of Tajikistan, a State Party, toward the use of antipersonnel mines inside Tajikistan (along the border with Afghanistan) by Russian forces stationed in Tajikistan. In addition, it appears that a number of States Parties in Africa have engaged in military operations with (or in support of) armed forces that may be using antipersonnel mines. This would include Namibia (with Angola against UNITA), as well as Uganda, Rwanda and Zimbabwe with various forces in the DR Congo.

All of these States Parties should make clear the nature of their support for other armed forces that may be using antipersonnel mines, and make clear their views with regard to the legality under the Mine Ban Treaty of their military operations with these armed forces. As parties to the treaty, they should state categorically that they will not participate in joint operations with any force that uses antipersonnel mines.

As reported in the *Landmine Monitor Report 2000*, several NATO members have made strong statements rejecting use of antipersonnel mines in NATO operations including France and the Netherlands. A number of countries, including Australia, Canada, New Zealand, and the United Kingdom, have adopted legislative provisions or made formal statements with regard to possible participation of their armed forces in joint military operations with a treaty non-signatory that may use antipersonnel mines. In each of these cases, government officials have stated that the intent is to provide legal protections to their military personnel who participate in joint operations with a non-signatory who may utilize antipersonnel mines.

Several governments have provided new or updated information on Joint Operations at Standing Committee meetings or during the research process for the *Landmine Monitor Report 2001*:

- **Belgium** stated in June 2000 and again in March 2001, “Any Belgian unit engaged in joint operations outside national territory cannot use antipersonnel mines, in any

circumstances, whatever framework and subordination mode this engagement is undergoing.”¹

- **Canada** in May 2001 provided an explicit statement on the issue: “For Canada, this subject is relevant in addressing matters related to interoperability as a member of the North Atlantic Treaty Organization. With this in mind, in 1998—even before the Convention entered in to force—the Chief of the Defence Staff communicated the following to all Canadian Forces personnel:
Participation in Combined Operations: Canada may participate in combined operations with a state that is not Party to the Convention. Canadian contingents may not, however, use anti-personnel mines and the Canadian Forces may not request, even indirectly, the use of anti-personnel mines by others.
Rules of Engagement: When participating in combined operations with foreign forces, Canada will not agree to Rules of Engagement which authorize the use by the combined force of anti-personnel mines. This would not, however, prevent States that are not parties to the Convention from using anti-personnel mines for their own national purposes.
Operational Plans: When engaged in combined operations with foreign forces, Canada will not agree to operational plans which authorize the use by the combined force of anti-personnel mines. While Canadians may participate in operations planning as members of a multinational staff, they may not participate in planning for the use of anti-personnel mines. This would not prevent a state that is not a Signatory to the Convention from planning for the use of anti-personnel mines by its own forces.
Command and Control: The use of anti-personnel mines by the combined force will not be permitted in cases where Canada is in command of a combined Force. Likewise, if Canadian Forces personnel are being commanded by other nationalities, they will not be allowed to participate in the use of, or planning for the use of anti-personnel mines. Were Canadian Forces personnel to engage in such activities they would be liable to criminal prosecution under Canadian law.”²
- The Foreign Ministry of the **Czech Republic** stated “mere participation in the planning or execution of operations, exercises or other military activity” where non-signatories use antipersonnel mines should not render Czech personnel liable to prosecution.³
- The Ministry of Defense of **Denmark** has stated, “in the participation in joint military operations, Denmark does not involve itself in activities that are related to the laying of antipersonnel mines.”⁴
- The Minister of Defense of **France** already declared in 1998 that France “would unreservedly enforce the Ottawa Treaty. France will prohibit the planned or actual use of antipersonnel mines in any military operation whatsoever by its military personnel. Furthermore, France will refuse to agree to rules of engagement in any military operation calling for the use of antipersonnel mines.”⁵ In October 1999, the Minister of Foreign Affairs referred to directives forbidding French military personnel to use antipersonnel

¹ Interview with the Ministry of Foreign Affairs, Brussels, 15 June 2000; Belgian Response to the Landmine Monitor Questionnaire, March 2001, p. 5.

² Canadian delegation, “Intervention on Article 1,” Standing Committee on General Status and Operation of the Convention, Geneva, 11 May 2001. The intervention was made orally, but the written text was provided to Landmine Monitor.

³ Letter from Pavol Sepelák, Ministry of Foreign Affairs, Prague, 15 February 2001; see also *Landmine Monitor Report 2000*, p. 625.

⁴ Letter from Ministry of Defence, 15 January 2001 stating “Ved deltagelse i fælles militære operationer involverer Danmark sig ikke i aktiviteter, der relaterer sig til udlægning af personelminer.” Also letter from K.-A. Eliassen, Ministry of Foreign Affairs, 22 January 2001.

⁵ Extract from speech by Minister of Defense, Parliamentary Debate, Official Journal of the French Republic, unabridged report of Parliamentary sessions of Thursday, 25 June 1998, pp. 5402-5403.

mines, to participate in planning operations employing use of antipersonnel mines, or to give their agreement to any document mentioning possible use.⁶

- The Ministry of Foreign Affairs of **Hungary** states, “Hungarian soldiers are not allowed to use antipersonnel mines abroad during NATO army exercises, and foreign soldiers are not allowed to use antipersonnel mines in Hungary during NATO army exercises.”⁷
- Representatives of **Italy** have stated that Italian forces cannot be involved in activities not compatible with the Mine Ban Treaty, and transit is allowed only for destruction.⁸ Presumably this equally applies to the issue.
- Representatives of the **Netherlands** reiterated in May 2001 that Dutch forces, “will not help in the laying, transporting or in any other way, nor ask for a foreign commander to do so” in joint military operations, and “if asked to do so by a foreign commander, will not do so.” The representative added that this was set out in a parliamentary answer.⁹
- The Ministry of Defense of **Norway** states that Norwegian forces can participate in joint operations with States which are not party to the Mine Ban Treaty, and in such cases may take advantage of cover from already mined areas, but cannot strengthen or renew the mining of these areas.¹⁰
- According to officials from **Portugal**, “it may participate in joint operations with armed forces which use antipersonnel mines, but it won’t gain any benefit from such use. A guarantee that Portugal will not benefit, in such case, would be assured at the operational level. The participation in any military operation comes under national sovereignty.”¹¹ The Ministry of Defense added, “So it belongs to Portugal to decide on this participation, the way it would be processed and to which extent, independent of whether it is an operation with countries that use mines or not.”¹² The Ministry of Foreign Affairs declared, “Portugal being a State Party to the Ottawa Convention, the Portuguese contingent will not use antipersonnel mines in joint operations.”¹³
- **Sweden** is awaiting the outcome of the discussions of Joint Operations in the Standing Committee on the General Status and Operation of the Convention. Sweden is not a member of the North Atlantic Treaty Organization (NATO), but does currently participate in joint peacekeeping operations with States that are not party to the Mine Ban Treaty, such as the US.
- In May 2000 the Ministry of Defense in the **United Kingdom** stated in a Parliamentary Written Answer, “UK armed forces were involved in 15 joint operations involving the use of anti-personnel landmines over the last three years, primarily involving operations in the Balkans. However, in no instances were UK armed forces responsible for their use.”¹⁴ This was subsequently clarified as referring to mines “not laid at that time by our operation partners or the UK Armed Forces but [mines that] were a remnant of war, or previous actions, in the area of operations. As such the 15 operations did not involve the

⁶ Letter to ICBL from Hubert Védrine, Minister of Foreign Affairs, 15 October 1999.

⁷ Letter from Zoltán Pecze, Ministry of Foreign Affairs, Budapest, 12 March 2001, and personal Communication from László Deák, Ministry of Foreign Affairs, Budapest, 29 March 2001.

⁸ Oral remarks to the Standing Committee on General Status and Operation of the Convention, Geneva, 11 May 2001.

⁹ Oral remarks to the Standing Committee on General Status and Operation of the Convention, Geneva, 11 May 2001.

¹⁰ Letter from Ministry of Defense, 9 April 2001. Landmine Monitor translation from Norwegian: “The Norwegian forces can, when taking over positions from foreign forces in the frontline, take advantage of the cover that already put out antipersonnel mines give, but do not have the opportunity to strengthen or renew this cover if it is a question about time-limited/restricted period.”

¹¹ Letter from the Ministry of Defense, 4 January 2001; letter from the Ministry of Foreign Affairs, 9 January 2001.

¹² Letter from the Ministry of Defense, 4 January 2001.

¹³ Letter from the Ministry of Foreign Affairs, 9 January 2001.

¹⁴ Hansard, 17 May 2000, col 161W.

laying of anti-personnel landmines, but their existence in the areas in which operations took place means that their presence was a factor in those operations.”¹⁵

¹⁵ Letter dated 18 October 2000 from John Spellar MP, Minister of State for the Armed Forces, to Dr. Jenny Tonge MP.