



LAWS AND STANDARDS IN MINE ACTION

KEY MESSAGES

- The mine action sector has developed well-defined international legal instruments and a mature set of policy standards.
- The CCW, APMBC and CCM are of particular importance to mine action.
- Information management is central to questions of compliance with laws and standards.
- International Mine Action Standards (IMAS) and National Mine Action Standards (NMAS) provide a framework to improve safety, effectiveness and efficiency in the mine action sector.
- Future developments may address the use of explosives against civilians and toxic remnants of war (TRW).

INTRODUCTION

A number of international laws and standards pertain to mines, cluster munitions, explosive remnants of war (ERW) and ammunition stockpiles. The main international treaties linked to mine action are the:

- Convention on Certain Conventional Weapons (CCW) and its Protocols II, amended, and V;
- Anti-Personnel Mine Ban Convention (APMBC); and
- Convention on Cluster Munitions (CCM).

A number of international standards are also directly focused on mine action, such as the:

- International Mine Action Standards (IMAS); and
- International Ammunition Technical Guidelines (IATG).

Some other laws of relevance to mine action goals and implementation are broader in their focus or primary orientation, such as the Convention on the Rights of Persons with Disabilities (CRPD).

INTERNATIONAL LAW REGULATING OR BANNING CONVENTIONAL WEAPONS

Weapons are governed by two branches of law:

1. **Disarmament law** 'seeks to maintain military stability by limiting or eliminating the numbers or types of weapons that may be lawfully produced, stockpiled or transferred'.¹ Disarmament treaties focus on the regulation or elimination of certain weapons of war.
2. **International humanitarian law** (IHL), also known as the 'law of war' or international law of armed conflict, lays down rules intended to minimise suffering in armed conflict by regulating how hostilities are conducted so as to protect combatants from unnecessary suffering and civilians from the dangers arising from military operations.

The four 1949 Geneva Conventions and their two 1977 Additional Protocols are of central importance in this context as they set out the principal rules regulating the protection of the victims of war and the conduct of hostilities. A fundamental rule is found in Article 48 of the 1977 Additional Protocol I. It states that parties to the conflict shall at all times distinguish between the civilian population and combatants, and between civilian objects (ie schools, hospitals and residential areas) and military objectives.

Accordingly, parties shall direct their operations against military objectives only. The rule of distinction is supplemented by the rule against indiscriminate attacks (Article 51). This rule determines that such attacks are:

- 'those which are not directed at a specific military objective';
- 'those which employ a method or means of combat which cannot be directed at a specific military objective'; and
- 'those which employ a method or means of combat, the effects of which cannot be limited as required by this Protocol'.²

After the Cold War ended the law related to weapons in armed conflicts further developed with a particular humanitarian and developmental focus. The protection of civilians from indiscriminate or inhumane weapons was a driving force. The notion of human security is central to recent developments in this field, as opposed to disarmament treaties negotiated earlier, where protection of strategic national interest and international stability was a core motivation.³

It resulted in the adoption of treaties which can be labelled 'humanitarian disarmament'. In addition to establishing an absolute ban on the use, production, transfer and stockpiling of certain types of weapons these treaties require remedial measures such as clearance of mines and unexploded ordnance, as well as risk education and victim assistance provisions. They are also characterised by a cooperative approach between different actors (States, UN, NGOs) in their monitoring and implementation.⁴ The 1997 APMBC and the 2008 CCM are good examples of this new trend.

Convention on Certain Conventional Weapons (CCW)

The shift from 'traditional' to 'humanitarian' disarmament is not straightforward, as demonstrated by the CCW, which was adopted in 1980. While negotiating the CCW and its protocols, a number of High Contracting Parties⁵ emphasised the need for 'striking a balance between military and humanitarian considerations.'⁶

The CCW is a framework treaty, applicable to situations of armed conflict, which contains generic provisions and protocols relating to specific weapons and their use. It has been built upon the customary rules that regulate conduct of hostilities. These include rules of distinction, proportionality, precautions in attacks, and the prohibition of weapons that are of a nature to inflict gratuitous injury or suffering on combatants.

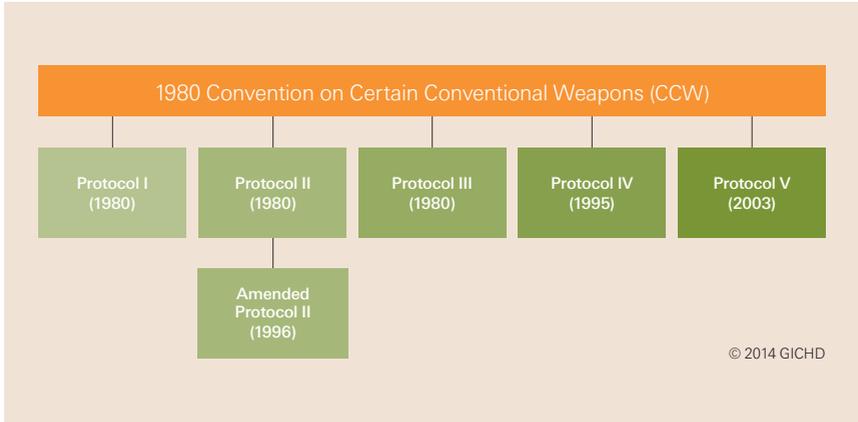
In 1980, states adopted the framework convention and its first three protocols:

1. Protocol I on Weapons with Fragments not Detectable by X-ray;
2. Protocol II on Landmines, Booby Traps, and other Devices; and
3. Protocol III on Incendiary Weapons.

Additional protocols can be added to the CCW to reflect new or emerging humanitarian concerns.⁷ Thus, in 1995, the High Contracting Parties added Protocol IV (on blinding laser weapons). In 1996, Protocol II was amended in an effort to strengthen its provisions. In 2001, the scope of the framework convention was extended to encompass internal as well as international armed conflicts. Two years later, Protocol V on Explosive Remnants of War was adopted.

FIGURE 3

THE CCW OVERVIEW CHART



CCW Amended Protocol II

CCW Protocol II, adopted in 1980, deals with landmines, booby-traps and ‘other devices’. It reflected the state of customary law at that time by limiting the use of these weapons and requiring that some general measures be taken to reduce the dangers to civilians, such as by giving warnings of attacks where feasible.

However, the rules of 1980 Protocol II were later shown to provide inadequate protection to civilians from the effects of anti-personnel mines in particular. In 1996, High Contracting Parties to the CCW adopted Amended Protocol II (AP II) in an effort to strengthen the rules on these devices.

Mines, booby-traps or other devices must not target civilians or civilian objects or be used indiscriminately. AP II prohibits the use of anti-personnel mines and anti-vehicle mines (mines other than anti-personnel mines, MOTAPM), which are designed to explode when mine detection equipment is passed over them.

Although there are certain exceptions, High Contracting Parties and other parties to an armed conflict who use such weapons must:

- remove them following the end of active hostilities;
- take all feasible precautions to protect civilians from their effects;
- give advance warning of any emplacement of these weapons that may affect civilians;

- maintain records concerning the locations of such weapons; and
- take measures to protect forces and peace-keeping missions of the UN, ICRC missions and other humanitarian missions against their effects.⁸

AP II also contains specific rules on anti-personnel mines:

- All anti-personnel mines must be detectable using commonly available metal detection equipment (Article 4). This means that at least eight grams of iron (or equivalent, in terms of detectability) must be incorporated in the mine (AP II Technical Annex).
- Manually-emplaced anti-personnel mines must be equipped with self-destruction and self-deactivation mechanisms, unless they are 'placed within a perimeter-marked area monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area...' (Article 5).
- Remotely-delivered anti-personnel mines must both self-destruct and self-deactivate to a very high standard as set out in the Technical Annex.
- Remotely-delivered anti-vehicle mines must, 'to the extent feasible', be equipped with an effective self-destruction or self-neutralisation mechanism and have a back-up self-deactivation feature (Article 6).
- Transfer of mines, the use of which is prohibited by AP II is unlawful. Transfer of any mine to an unauthorised non-state actor is prohibited.

Improvised Explosive Devices (IEDs), which are especially used by non-state armed groups, play an increasing role in many conflicts. An IED is 'a device placed or fabricated in an improvised manner incorporating explosive material, destructive, lethal, noxious, incendiary, pyrotechnic materials or chemicals designed to destroy, disfigure, distract or harass. They may incorporate military stores, but are normally devised from non-military components'⁹ AP II remains the sole legally-binding instrument which explicitly covers IEDs.

Amended Protocol II only provides minimal restrictions on the use of anti-vehicle mines (MOTAPM). Despite numerous attempts, no consensus has yet been reached on adopting stricter rules on these weapons. However, anti-vehicle mines are of great concern from a humanitarian perspective. In some countries, more injuries and deaths occur due to anti-vehicle mines than anti-personnel mines.

CCW Protocol V

As a result of growing awareness of the consequences of unexploded ordnance (UXO) and cluster munitions on civilians in conflicts such as the one over Kosovo,

the High Contracting Parties adopted Protocol V in 2003. Protocol V defines ERW as unexploded ordnance (UXO) and abandoned explosive ordnance (AXO).

UXO is 'explosive ordnance that has been primed, fuzed, armed, or otherwise prepared for use and used in an armed conflict... and should have exploded but failed to do so' (Article 2, paragraph 2). UXO includes hand grenades, mortar shells, explosive submunitions or bombs that have been used but which have not detonated as intended.

AXO means 'explosive ordnance that has not been used during an armed conflict, but that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it...' (Article 2, paragraph 3).

Under Protocol V:

- The party in control of the affected territory is responsible for the clearance, removal or destruction of ERW (Article 3).
- 'All feasible precautions' to protect civilians from their risks and effects (Article 5) are called for.
- 'In cases where the user of explosive ordnance which has become ERW does not exercise control of the affected territory, that party is required, after the cessation of active hostilities, to provide where feasible, technical, financial, material or human resources assistance either bilaterally or through a mutually agreed third party' (Article 3).
- Each State Party 'in a position to do so' is required to provide assistance for the marking and clearance, removal or destruction of explosive remnants of war, and for risk education to civilian populations (under Article 8).

In the CCW and in particular in Protocol V, a number of obligations are qualified by phrases such as 'to the extent feasible'.¹⁰ One example is Article 3, in which it is stated that, 'after the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control'. Although it was included in the Protocol in order to provide flexibility in the implementation of obligations given the uncertain circumstances that often surround the end of a conflict, such phrases could be subject to abuse as the relevant state or party may claim that action is not 'feasible'.

The CCW may also face the challenge of securing implementation by non-state armed groups.¹¹ As with most IHL, disarmament treaties and more general

international law, ensuring compliance amongst non-state armed groups is an ongoing challenge.

Anti-Personnel Mine Ban Convention (APMBC)

The APMBC was adopted on 18 September 1997 and entered into force on 1 March 1999. It has a clear humanitarian goal. Its preamble opens with a paragraph that highlights the extent of civilian suffering from landmines:

‘States Parties [are] determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement.’¹²

The last paragraph of the preamble makes it clear that the Convention is based on international humanitarian law rules, recalling that the ‘right of parties to an armed conflict to choose methods or means of warfare is not unlimited, and on the principle that prohibits the employment in armed conflicts of weapons ... of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants’.

THE APMBC:

- Prohibits the development, production, use, transfer and stockpiling of antipersonnel mines.
- Requires the destruction of stockpiled antipersonnel mines within four years.
- Requires the clearance of emplaced anti-personnel mines within ten years.
- Requires support for assistance for victims.

The treaty seeks to eliminate the civilian harm caused by anti-personnel mines. To achieve this goal, the Convention adopted comprehensive prohibitions to prevent new use of AP mines as well as remedial measures to address the needs of those who have already suffered from these weapons.

The APMBC prohibits the use of anti-personnel mines ‘under any circumstances’ (Article 1). This includes peacetime and armed conflict and internal disturbances. Parties may not resort to the use of anti-personnel mines in attack or self-defence, even if threatened with imminent military defeat.

The Convention does not permit reservations to any of its provisions. A State must destroy all anti-personnel mine stockpiles it owns or possesses or which are under its jurisdiction or control within four years of joining the APMBC (Article 4).

Each State Party is obliged to clear all anti-personnel mines in mined areas under its jurisdiction within ten years (Article 5). An extension of this deadline can be requested by any State Party not in a position to meet its deadline. These extension requests have to be justified in writing and submitted to States Parties for approval.

Article 6 includes a provision on victim assistance, one of the reasons why the APMBC was considered a ground-breaking normative development, although it is not as detailed or explicit as the later Convention on Cluster Munitions.

To date, more than three-quarters of the world’s countries have ratified the APMBC, and many that have not, do abide by its main provisions, clearly establishing an international norm against anti-personnel mines. The APMBC was instrumental in promoting mine action operations on the ground and prompted an increase in international support in this sector.



[World activists go back to Ottawa to mark Mine Ban Treaty’s 10th anniversary, 2007](#)

Convention on Cluster Munitions (CCM)

The CCM was adopted in May 2008 and entered into force in August 2010. Its structure is similar to the APMBC, with provisions containing obligations on use, clearance, stockpile destruction, reporting, victim assistance and international cooperation. It is also based on international humanitarian law.

THE CCM:

- Prohibits the development, production, use, transfer and stockpiling of cluster munitions.
- Requires the destruction of stockpiled cluster munitions within eight years.
- Requires the clearance of cluster munition remnants (unexploded submunitions or abandoned cluster munitions) within ten years.
- Requires age and gender-sensitive assistance to victims – for those injured by explosive submunitions – as well as their families and affected communities.

The Convention opens by expressing concern that ‘civilian populations and individual civilians continue to bear the brunt of armed conflict’. The purpose of the treaty is then stated: ‘to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned’.

‘Cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years after use.’

Although there are some parallels in the structure and approach of the CCM and the APMBC, these international legal regimes are at different stages of development. The CCM contains a number of provisions that go beyond those required under the APMBC:

- Article 5 has the most far-reaching provisions on assistance for victims ever included in a disarmament or humanitarian law treaty. Each State Party that has cluster munition victims on its territory or under its control must provide for their medical care and physical rehabilitation, psychological support, and social and economic inclusion. In addition, the State must assess domestic needs in these areas and develop plans and mobilise resources to meet them. The definition of victims under the convention is extremely broad, covering not only those who are killed or injured by cluster munitions, but also families and communities that have suffered socio-economic and other consequences.
- Article 9 requires States Parties ‘to take all appropriate legal, administrative and other measures to implement this Convention’ including the positive as well as the negative obligations of the CCM. (The APMBC only requires States Parties to implement national measures to ensure meeting their negative obligations under the Convention).¹³
- Article 21(1) and (2) requires each State Party to universalise the Convention, ‘to promote the norms it establishes and to make its best efforts to discourage states not party to this Convention from using cluster munitions’.

As of January 2014, 84 states have ratified the CCM. This is significant progress, but there is still a long way to go in achieving a more universal adoption of the treaty. Like the APMBC, substantial donor resources will be necessary in the coming decades to achieve CCM clearance and meet stockpile destruction deadlines in the poorest and most severely affected states.



CCM opening ceremony (Oslo, 2008)

Another challenge is the issue of States Parties providing assistance to states not party to the CCM in the context of military cooperation and operations (sometimes referred to as 'military interoperability'). There are signs that CCM states differ in their interpretation of the obligations enshrined in CCM Article 21, which may continue to create tensions between States Parties.¹⁴

Future developments

Well-defined international legal instruments and a mature set of policy standards have been developed in the context of mine action. The APMBC and CCM inspire the international community to move forward in new areas such as the use of explosive weapons and toxic remnants of war (TRW).

Use of explosive weapons in populated areas

The use of explosive weapons in populated areas harms civilians directly (both at the time of use and afterwards – because of failed or abandoned munitions) and indirectly, through damaged infrastructure (such as water supplies and sanitation).

Explosive weapons kill, injure and damage with blast and fragmentation around the point of detonation. These weapons include mortar bombs, artillery shells, aircraft bombs, rocket and missile warheads, submunitions and improvised explosive devices (IEDs). There is increasing evidence of elevated levels of civilian harm, suggesting that more comprehensive and effective responses are needed to ensure civilian protection and to require changes in the behaviour of users of explosive weapons.¹⁵

In 2011, several NGOs concerned about the use of explosive weapons in populated areas formed the International Network on Explosive Weapons (INEW).¹⁶ INEW calls for States and other actors to:

- Acknowledge that the use of explosive weapons in populated areas tends to cause severe harm to individuals and communities and furthers suffering by damaging vital infrastructure.
- Strive to avoid such harm and suffering in any situation, review and strengthen national policies and practices on use of explosive weapons and gather and make available relevant data.
- Work for full realisation of the rights of victims and survivors.
- Develop stronger international standards, including certain prohibitions and restrictions on the use of explosive weapons in populated areas.

As with anti-personnel mines, cluster munitions and other ERW, the UN, ICRC, and civil society through INEW are working to raise awareness to influence governments to change their rules of engagement and to think more about the consequences before using certain types of explosive weapons in order to prevent or at least minimise civilian harm.

Toxic remnants of war (TRW)

Certain military materials and practices can cause environmental damage with potential to affect civilian health and interfere with post-conflict recovery.

While the impact of explosive remnants of war is comparatively well documented and increasingly well managed, less attention has been given to toxic materials released during military activities. TRW are defined as: 'Any toxic or radiological substance resulting from military activities that forms a hazard to humans and ecosystems'.¹⁷

The TRW project is reviewing gaps in states' obligations to:

- Reduce the humanitarian and environmental harm of toxic materials of military origin.
- Examine parallel systems of protection based on environmental and human rights law and peacetime regulatory frameworks.¹⁸

INTERNATIONAL STANDARDS

Coherent global guidelines have been developed to document good practice in the area of international standards and to aid their translation into national standards. Foremost among these are the International Mine Action Standards (IMAS).¹⁹

IMAS

The International Organisation for Standardisation (ISO) and the IMAS define a standard as an agreement containing technical and other information to ensure that processes and services are fit for their purpose.

The IMAS provide guidance, establish principles and, in some cases, define international requirements and specifications. They are designed to improve safety, efficiency and quality in mine action, and to promote a common and consistent approach to the conduct of mine action operations. IMAS are intended to be

the main guide for the development of National Mine Action Standards (NMAS), standard operating procedures (SOPs) and training material in mine action.

The standards provide general information on existing regulations and treaties affecting mine action, particularly those referring to basic human rights, clearance requirements, hazard marking and general safety issues. They draw on the APMBC, CCM and CCW Protocols and assist national mine action authorities in the development of their own national standards.

Five guiding principles shape the IMAS:

1. IMAS are guidelines for national standards within national programmes.
2. Standards should protect those most at risk.
3. Emphasis is on developing national capacity to develop, maintain and apply appropriate standards for mine action.
4. Standards should be consistent with other international norms and standards.
5. Standards should be compliant with international conventions and treaties.

The IMAS were begun during the 1990s through a consultative process with representatives of the broader mine action community including UN agencies, donors, national mine action authorities (NMAA), ISO, militaries, commercial companies and individual experts. These groups continue to come together in the context of the IMAS Review Board, chaired by the UN Mine Action Service (UNMAS) and with secretariat functions provided by the GICHD.

The Review Board:

- guides the development of draft IMAS;
- debates and discusses issues and is responsible for approving draft IMAS; and
- produces technical notes, which provide principles, advice and information relevant to specific IMAS or technical subjects.²⁰

This process is overseen by the IMAS Steering Group. Resulting standards are ultimately endorsed by the UN Inter-Agency Coordination Group – Mine Action (IACG-MA).

IMAS are not legally binding obligations on governments in the way that treaties, such as the APMBC, CCM or CCW Protocols, are for their States Parties. Mine action

takes place in a range of different contexts, all of which have a bearing on how standards are best implemented (eg, during and immediately after armed conflict, during humanitarian emergencies, or even long after conflict in routine civil protection and property development activities).

Treaties lay out legal obligations of States Parties, while IMAS are living documents that evolve and are amended as appropriate. Nevertheless, the IMAS are the main source for the development of national standards, which are legally binding in many countries.

It usually takes time for a NMAA to develop national standards so IMAS are often used in the meantime. In addition, the UN incorporates IMAS into all of its mine action contracts and grants and it encourages militaries to conduct clearance in accordance with IMAS when they are engaged in humanitarian demining. As a result the IMAS have become fundamental to the mine action sector, helping to ensure that work is completed safely and efficiently.

The IMAS framework provides a comprehensive set of standards arranged into fourteen thematic series. They are written to be consistent with other international standards, and to comply with international regulations, conventions and treaties. In addition to the various weapons-related treaties, conventions and protocols, these include International Labour Organization standards for safety in the workplace and ISO guidelines and standards on risk management and the application of quality systems.

FIGURE 4

IMAS FRAMEWORK (AS AT FEBRUARY 2014)

GUIDE FOR THE APPLICATION OF IMAS

01.10 Guide for the application of IMAS

ESTABLISHMENT OF MINE ACTION PROGRAMMES

02.10 Guide for the establishment of a mine action programme

EQUIPMENT TESTING & EVALUATION

03.10 Guide to procurement of mine action equipment

03.20 Procurement process

03.30 Guide to the research of mine action technology

03.40 Test and evaluation of mine action equipment

GLOSSARY OF TERMS AND DEFINITIONS

04.10 Glossary of mine action terms, definitions and abbreviations

INFORMATION MANAGEMENT

05.10 Information management

MANAGEMENT OF TRAINING

06.10 Management of training

MANAGEMENT, ACCREDITATION AND MONITORING

07.10 Guide for the management of demining operations

07.11 Land release

07.20 Guide for the development and management of mine action contracts

07.30 Accreditation of demining organization

07.40 Monitoring of demining organizations

07.42 Monitoring of stockpile destruction

SURVEY

08.10 Non-technical survey

08.20 Technical survey

08.30 Post-clearance documentation

08.40 Marking of hazards

MINE AND ERW CLEARANCE

09.10 Clearance requirements

09.11 Battle area clearance

09.12 EOD clearance of ammunition

09.20 Guidelines for post clearance sampling

09.30 Explosive ordnance disposal – EOD

09.40 Guide for the use of mine detecting dogs

09.41 Operational procedures for MDDs

09.42 Operational testing of MDDs and handlers

09.43 Remote explosive scent tracing – REST

09.44 Guide to occupational health and general dog care

09.50 Mechanical demining

MINE ACTION SAFETY AND OCCUPATIONAL HEALTH – S&OH

10.10 S&OH general principles

10.20 Demining worksite safety

10.30 Personal protective equipment – PPE

10.40 Medical support to demining operations

10.50 Storage, transportation and handling of explosives

10.60 Reporting & investigation of demining incidents

10.70 Safety & occupational health – protection of the environment

MINE/ERW STOCKPILE DESTRUCTION

- 11.10 Guide for stockpile destruction
- 11.20 Open burning and open detonation (OBOD) operations
- 11.30 National planning guidelines for stockpile destruction

MINE AND ERW RISK EDUCATION

- 12.10 Mine/ERW risk education

EVALUATION OF MINE ACTION PROGRAMMES

- 14.10 Guide for the evaluation of mine action intervention

Other international standards

Since the initial development of the IMAS, international standards have emerged in areas adjoining to and overlapping with mine action. These standards may apply to mine action operators, depending on the specific contexts in which they work and the kinds of activities they undertake.

International Ammunition Technical Guidelines (IATG)²¹

In 2008, the need for proper management of surplus ammunition stockpiles became clear. This included:

- Categorisation and accounting systems (essential for ensuring safe handling and storage and for identifying surpluses).
- Physical security systems and surveillance and testing procedures to assess the stability and reliability of ammunition.

The International Ammunition Technical Guidelines (IATG) were prepared by a technical review panel consisting of experts from UN member states, with the support of international organisations and NGOs. The guidelines were completed in late 2011.

The UN reviews the IATG regularly to reflect developing ammunition stockpile management norms and practices, and to incorporate amendments. The IATG deal mainly at the logistic level and cover technical requirements for safe, effective and efficient storage, processing, transport and disposal of ammunition.

International Small Arms Control Standards (ISACS)

Small arms and light weapons (SALW) contribute to armed violence in conflict, post-conflict and other fragile settings. Uncontrolled proliferation, illicit trade and misuse of small arms and light weapons are common.

In July 2008, the UN's inter-agency Coordinating Action on Small Arms (CASA) launched an initiative to develop ISACS along the lines of the IMAS.²² The ISACS were launched in August 2012 to provide clear, practical and comprehensive guidance to practitioners and policy-makers on fundamental aspects of small arms and light weapons control. The ISACS resemble the IMAS in that they have a framework divided into a series of thematic modules including stockpile management, marking, record keeping and destruction of weapons.²³

NATIONAL LEGISLATION AND NATIONAL MINE ACTION STANDARDS (NMAS)

In order to coordinate mine action/ERW activities, a mine-affected state normally establishes a national mine action authority (NMAA) and a mine action centre (MAC). The NMAA coordinates the national mine action programme and promulgates relevant policies, national mine action standards (NMAS) and regulations (and in some cases standard operating procedures).

The MAC coordinates mine action activities on the ground. It carries out the policies of the NMAA and coordinates the day-to-day work of organisations conducting mine action operations.²⁴

In order for the NMAA and the MAC to be credible and to have legal authority to fulfil their responsibilities, legal instruments are normally used to establish them as formal government entities with official responsibilities.

Mine-affected states use different kinds of legal instruments to create a NMAA and/or a MAC and to regulate mine action activities. These include laws passed by parliament, decrees, orders or similar legal instruments issued by the President or Prime Minister. Experience and studies show that it is advisable for states to adopt national legislation to coordinate and regulate mine action.²⁵

National legislation

National legislation typically identifies the roles and responsibilities of the NMAA and MAC. It also indicates which government ministry, department or member

of the executive will oversee the NMAA's various activities, as well as identifying the ministries and/or officials who are to be members of the NMAA – normally officials from the Ministries of Agriculture, Defence, Education, Foreign Affairs, Health, Infrastructure etc.²⁶

Mine action legislation should be designed to address the country's specific mine/ERW problem. It identifies the components of mine action that will take place within the country, such as:

- survey, mapping and marking of mined/ERW-contaminated areas;
- clearance;
- mine/ERW risk education;
- responsibility for quality management;
- stockpile destruction (for states that are a party to the APMBC); and
- victim assistance.²⁷

Legislation is used to authorise the MAC to draft national standards, administrative directives and regulations for approval by the NMAA, and to ensure that once approved, they are applicable to all mine/ERW activities in the country.

In order to ensure that mine/ERW operations are carried out safely and in accordance with national priorities, mine action legislation generally gives clear authority to the MAC to accredit all mine action operators in the country and to monitor their activities on an ongoing basis. It is also through legislation that the MAC is required to use IMAS as a basis for developing NMAS.²⁸ For states that are party to the CCW, APMBC or CCM, mine action legislation is often used as a means to implement the requirements of these treaties.

Further detail on the development of national legislation within the mine action programme life cycle can be found in Chapter 2.

National Mine Action Standards (NMAS)

NMAS are developed to customise IMAS to fit the environment and context of a particular country. They are intended to:

- improve safety and efficiency;
- provide common agreed levels of performance;
- improve coordination;

- ensure national capacity building;
- ensure confidence in mine action; and
- assist states in meeting their treaty obligations.

While drafting the NMAS it is important that the NMAA and the MAC fully understand the mine/ERW problem in the country, engage all stakeholders in the process and respect the principles represented by IMAS.

The NMAS should include norms and policies already in place and any requirements of the NMAA and demining operators in the country.²⁹ They address functional components of mine action (MRE, Survey, Clearance, Stockpiles, Victim Assistance) as well as mine action activities (accreditation, surveying, marking, reporting, clearing, BAC, EOD, handover, monitoring, inspection of mine dogs, machines, medical support etc.)

In most cases, the NMAA delegates responsibility to the MAC to draft the NMAS, while retaining responsibility for their formal approval.

NMAS and liability

NMAS provide an important opportunity to address questions of liability.

In the case of public land, prior to survey and clearance, the national government normally bears responsibility for the hazardous area and any accidents or incidents that occur. During survey and clearance the responsibility usually falls on the organisation carrying out the mine action operations.

It is important that the NMAA and MAC develop policies that detail liability aspects, including the shift in liability from the demining operator to the government or local community when specific criteria have been fulfilled. This necessitates clear standards and procedures for the handover process, and careful documentation throughout demining operations.

Standards should also be in place for the safekeeping of documentation to support future investigations, in the event of any accident or incident, or should any other evidence of unacceptable residual risk be discovered.³⁰

Legal status of NMAS

An important aspect of NMAS is their legal status. Although many states have developed their own NMAS based on IMAS, the legality and overall mandate of

these national standards is sometimes called into question owing to the manner in which they were promulgated and the clarity of the underlying legislation.

In most cases NMAS are recognised and used by elements of the mine action programme, but in a few cases NMAS are used only by the MAC and are neither known of, nor implemented by, other organisations (even including other government departments with responsibility for some aspects of mine action).

National programmes that include a wide variety of organisations and activities, especially those where there is a lot of directly contracted commercial activity in support of civil engineering, minerals and resources industries, are particularly susceptible to such uncertainty. Standards are developed to help sustain confidence in the quality of work. Different actors, apparently working to different standards, make it harder to maintain confidence across all activities. Legislation plays an important part in establishing the credibility, applicability and enforceability of NMAS.

RELEVANCE OF INTERNATIONAL LAW AND STANDARDS TO THE PILLARS OF MINE ACTION

Laws and standards affect the work that is undertaken within each of the pillars of mine action. In particular:

- Land release (including survey and clearance)
- Stockpile destruction
- Victim assistance
- Mine risk education
- Information management in support of the different pillars

Land release (survey and clearance)

Land release 'describes the process of applying all reasonable effort to identify, define, and remove all presence and suspicion of mines/ERW through non-technical survey, technical survey and/or clearance. The criteria for 'all reasonable effort' shall be defined by the NMAA'.³¹

The legal requirements affecting mines, UXO, cluster munitions and ERW are found in the CCW's Protocols II, II amended, and V, the APMB and the CCM.

CCW Amended Protocol II

The first legal requirement to clear, remove and destroy mines, booby-traps and other similar devices is found in Amended Protocol II to the CCW signed in May 1996. Article 10 requires states to clear, remove and destroy all mines, booby-traps, and other devices at the end of hostilities in areas under their control. When these devices were laid by other parties, these parties shall provide information on their use so as to protect civilians from the effects of minefields, mined areas, booby traps and other devices. (See Article 9, CCW amended Protocol II).

CCW Protocol V

Protocol V, Article 3(1) requires States Parties³² to clear ERW from the territories it controls once active hostilities have ended. In areas it does not control a State Party must provide technical, material or financial assistance to facilitate the removal of ERW for which it is responsible.

This obligation applies to ERW that have existed since the entry into force of this Protocol. Assistance may be provided directly to the party in control of the affected territory or through a third party such as the UN, international agencies or non-governmental organisations.

The principal concern of Protocol V is the systematic and controlled clearance of ERW from former combat areas. This is termed battle area clearance (BAC)³³ – it normally involves either surface (visual) clearance or sub-surface clearance.

During clearance, States Parties and parties to an armed conflict are required to take international standards, including the IMAS,³⁴ into account.

APMBC

Under the APMBC, each State Party is obliged to clear all anti-personnel mines in mined areas under its jurisdiction or control as soon as possible, but not later than 10 years after it becomes Party to the APMBC.³⁵ A mined area is defined as any area that is dangerous because of the presence or suspected presence of mines.

Each State Party is also obliged to ‘make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced’ and perimeter-mark, monitor and protect civilians from them. A clearance extension period of up to 10 years is allowed subject to approval by other states parties.

Although there has been considerable progress in land release since the treaty came into effect, the extent of the problem and the lack of knowledge of all known minefields may not have been sufficiently clear when the treaty was negotiated. One of the biggest challenges, in trying to meet treaty requirements on clearing contaminated areas, is the overestimation by certain states of their actual mine problem. The Ninth Meeting of the States Parties to the APMBC held in 2008 specifically stated that ‘for many States Parties reporting mined areas under their jurisdiction or control, imprecise identification and significant overestimation of the size of mined areas had led to inappropriate allocations of time and resources.’³⁶

The result of this has been that States Parties have cleared areas that did not contain anti-personnel mines or other ERW and that did not require clearance. Three main actions can be undertaken to help mitigate this problem – land can be released through:

- Non-technical means
- Technical survey
- Physical clearance.

These methods can cancel or reclassify an area previously recorded as a mined area when there is sufficient confidence that the area does not present a risk from mines or other ERW.

CCM

States Parties are required to clear within 10 years all cluster munition remnants in their territory, ie cluster munitions and explosive submunitions abandoned or left after a strike.³⁷

Highlighting a certain responsibility for the users of these weapons, Article 4(4) ‘strongly encourage(s)’ a State Party that has used cluster munitions in another State Party’s territory to provide assistance with clearance, even if they were used before the Convention entered into force.

Because assistance comes in a variety of forms, including ‘technical, financial, material or human resources’, any user state should be able to provide some assistance. A user state that chooses to assist with clearance must provide information on the types, numbers, and locations of cluster munitions used. Such information can greatly facilitate and speed up clearance.³⁸

In Article 4(3) of the CCM, there is specific reference to States Parties using international standards including IMAS to carry out clearance of explosive cluster munitions.

There are several IMAS which deal with the land release process (IMAS 07.11), non-technical survey (IMAS 08.10), technical survey (IMAS 08.20) and clearance (IMAS 09.10). There is also a technical note which deals with the clearance of cluster munitions.

Liability issues

An important issue associated with land release efforts is the residual risk that exists following survey and clearance operations. It is always possible that one or more mines or ERW may remain after the handover of a released area. These mines or ERW may be missed during clearance or buried more deeply than the employed clearance methods were able to detect. Another possibility is that the area may have been incorrectly released by non-technical or technical survey when it was still contaminated. This last possibility underlines the importance of the NMAA having adequate national standards, including for land release. The issue then arises as to who bears the legal responsibility for any damage and/or injury caused.³⁹

Liability in mine action has become increasingly important because of the formalisation of land release methods and procedures. In certain cases the question of liability in mine action has delayed states in addressing mined areas, and from meeting their international legal obligations. The IMAS cannot stipulate universally applicable conditions for liability for the consequences of explosive hazards discovered in areas released. These conditions have to be adapted to fit the conditions of each country, and be aligned with its existing legal rules, standards and laws.⁴⁰

Land rights

Land rights in conflict and post-conflict contexts are an increasing area of concern in land release. Conflict often causes significant changes to a country's land tenure regime and administration, threatening land rights even after the conflict has ended.

Often, women, internally displaced people (IDPs), returning refugees, migrants and farm labourers are especially vulnerable. The reasons for this include:

- unclear land titling procedures;
- deliberately or accidentally destroyed land records;
- inadequate state capacity to respond to a mass return of IDPs and refugees;
- a lack of, or ineffective, programmes to inform people about land rights;

- an increased demand for arable land;
- the complex, time-consuming and expensive nature of the private registration of land tenure; and
- gender inequalities in land rights.

Secure land rights are a critical issue when it comes to humanitarian response, sustainable peace-building and longer-term economic recovery, particularly in countries where a significant proportion of the population relies on agriculture as its main source of livelihood.

The situation can be even more complex in mine-affected countries, as mine/ERW contamination may cause land to be inaccessible for decades.

Some of the steps they can take to address land rights issues include:

- technical assessment of land issues;
- training of field staff; and
- a review of the national standards and SOPs.

To limit land tensions related to mine action operations mine action organisations can coordinate with humanitarian and development organisations that deal with conflict-affected populations, and national and international organisations dealing with land issues.

Stockpile destruction and ammunition safety management

The legal obligations of states to destroy their stockpiles of anti-personnel mines and cluster munitions are outlined in the APMBC and the CCM. The CCW Protocol V addresses munitions management in its technical annex and the IMAS and the IATG deal with various aspects of stockpile destruction, safe storage and the transportation of explosives.

CCW Protocol V

Protocol V does not require the destruction of stockpiles; although it does provide recommendations on how best to manage ERW stockpiles.⁴¹

States are encouraged to apply best practice with respect to storage, transport, field storage and handling of explosive ordnance in order to ensure its long-term reliability. Advice is also given on the proper training of personnel involved in the

handling, transporting and use of explosive ordnance and in the future production of these materials.⁴²

APMBC

The APMBC⁴³ requires states to destroy all stockpiles of anti-personnel mines that they own or which are in their possession or under their jurisdiction or control 'as soon as possible but not later than four years' after the state adheres to the APMBC. This deadline is not extendable.

Under Article 3, States Parties may retain and transfer 'the minimum number absolutely necessary' of anti-personnel mines for the specific purposes of 'the development of and training in mine detection, mine clearance or mine destruction techniques.' This is intended to promote the APMBC's humanitarian objectives, and does not represent a loophole, provided the provisions of Article 3 are applied in good faith.

States Parties are required to report on the conversion or decommissioning of their anti-personnel mine production facilities.

CCM

The CCM also requires stockpile destruction as soon as possible but not later than eight years after entry into force for the state party.

In spite of the difficulty of destroying cluster munitions, there has been substantial progress as of January 2014, with the destruction of 68 per cent of cluster munitions and 60 per cent of explosive submunitions declared as stockpiled by States Parties.⁴⁴ Similar to the APMBC, States Parties can retain a limited of cluster munitions for purposes of training in and development of detection, clearance, destruction techniques and counter-measures. (Article 3).

IMAS

Series 11 of the IMAS covers stockpile destruction. IMAS 11.10 to 11.30, include a guide for stockpile destruction, open burning and open detonation operations and national planning guidelines for stockpile destruction. IMAS 7.42 deals with the monitoring of stockpile destruction and IMAS 10.50 with the storage, transportation and handling of explosives.

IATG

The IATG also address ammunition safety and disposal:

- IATG 4.10 on Explosive Facilities (storage) (field and temporary conditions);
- IATG 5.10 through 5.60 on Explosives Facilities (storage) (infrastructure and equipment);
- IATG 6.10 through 6.70 on Explosive Facilities (storage) (operations);
- IATG 7.10 on Safety and Risk Reduction;
- IATG 8.10 on Transport of Ammunition; and
- IATG 10.10 on Ammunition Demilitarization and Destruction.

Risk education

Mine risk education (MRE) refers to educational activities that aim to reduce the risk of injury from mines and unexploded ordnance by raising awareness and promoting behavioural change through public-information campaigns, education, training and liaison with communities.

Both the APMBC and the CCM oblige all States Parties to contribute to efforts to minimise the suffering of civilians. According to Article 6 of the APMBC on International Cooperation and Assistance, each State Party must support mine awareness programmes, which reduce the risk to civilians by teaching them about the dangers of landmines. The CCM, Article 4 provides that states shall 'conduct risk reduction education to ensure awareness among civilians living in or around cluster munitions contaminated areas of the risks posed by such remnants.' CCW Amended Protocol II (Art. 9) and Protocol V (Art 5) also require precautionary measures to be taken.

IMAS have a standard for mine/ERW risk education.⁴⁵ In addition, UNICEF has developed international guidelines for landmine and unexploded ordnance awareness education, focusing on issues which are central to mine/UXO and ERW awareness. The guidelines cover four main areas:

- Feasibility studies
- Needs assessments
- Programme planning
- Monitoring and evaluation.

The guidelines emphasise how MRE should be treated as an integral part of overall mine action planning and implementation, not as a stand-alone activity.⁴⁶

Victim assistance

There are four legal documents that provide states with legal obligations to provide assistance to persons with disabilities.

APMBC

The APMBC (Art. 6) – ‘States in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programmes.’

CCW Protocol V

The CCW Protocol V (Article 8) – ‘Parties in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war.’

Protocol V also has a plan of action on victim assistance which closely follows the CCM. It is not legally binding in itself but is an important reference as it outlines specific action on victim assistance.

CCM

The CCM has a separate Article (Art. 5) addressing victim assistance which stipulates that States must provide ‘age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.’ States are obliged to assess the needs of cluster munition victims and develop, implement and enforce any necessary national laws and policies.

Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD provides an important basis for the pursuit of the victim assistance aims of the APMBC, CCM and CCW, with the parties to each of these treaties having recognised the importance of a rights-based approach to ‘victim assistance.’ The purpose of the Convention is clearly stated in Article 1, ‘to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.’⁴⁷

The CRPD does not identify new rights, but provides guidance on how to ensure that persons with disabilities can exercise their existing rights without discrimination. This includes the rights of survivors of mines and ERW. In Article 4 of the Convention, states are obliged to implement legislation that guarantees the rights enumerated in the Convention and to abolish all legislation and regulations that discriminate against persons with disabilities.

The Convention also provides for states to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and promote respect for their inherent dignity. States are required to ensure that persons with disabilities have full and fair access to:

- education at all levels;
- healthcare and rehabilitation;
- vocational training;
- public facilities;
- employment opportunities and entrepreneurship; and
- a range of other social and economic rights.

The Convention also provides in Article 11 that 'States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.'

REPORTING AND INFORMATION MANAGEMENT

Information management is an integral part of all activities in mine action, cluster munitions and ERW.

Efficient and accurate information management ensures that national authorities, mine action managers and other stakeholders have access to optimal information when making decisions.

Without accurate information for land release, stockpile destruction, victim assistance and mine risk education, it is difficult to carry out the activities required under the various treaties and conventions, and states are unable to accurately report on the progress being made.

CCW Amended Protocol II and Protocol V

CCW Amended Protocol II under Article 13(4) says that States Parties are required to submit annual reports covering:

- mine clearance and rehabilitation programmes;
- steps taken to meet the technical requirements of the Protocol;
- legislation related to the Protocol; and
- measures taken on international technical information exchange or on international cooperation on mine clearance.

In the CCW Protocol V, there are specific obligations on the recording, retaining and transmission of information. Article 4 requires States Parties and parties to an armed conflict 'to the maximum extent possible and as far as practicable, record and retain information on the use of explosive ordnance or abandonment of explosive ordnance.'

These obligations are supplemented by a non-legally-binding technical annex. It establishes that a state should record the following information as accurately as possible for explosive ordnance that may have become a UXO:

- the location of areas targeted using explosive ordnance;
- the approximate number of explosive ordnance used in the areas targeted;
- the type and nature of explosive ordnance used in areas targeted; and
- the general location of known and probable UXO.

In addition, when a state has been obliged to abandon explosive ordnance in the course of operations, it should endeavour to leave AXO in a safe and secure manner and record:

- the location of the AXO; and
- the approximate number and types of AXO at each specific site.

The implementation of Article 4 and the reporting on it has been disappointing by some States. To help clarify what is required, the ICRC has released a report of an expert meeting held in 2012 on Article 4 implementation.⁴⁸

APMBC and CCM

Both the APMBC and CCM include reporting requirements under Article 7 – Transparency Measures.

The information required includes:

- the amounts and types of mines and cluster munitions in their stockpiles; and
- the location of mined areas along with the types of mines.

In addition, States Parties are required to report on:

- status of programmes for the destruction of stockpiles;
- types of mines and cluster munitions destroyed from stockpiles;
- measures taken to notify the population about the hazards of mines and cluster munitions; and
- any other issues, on a voluntary basis, such as funding and gender considerations.

The CCM also requires that States Parties report on the national implementation of the Convention's obligations. These reports are to be updated and submitted to the Secretary General annually. In addition, the CCM includes a data collection requirement with regard to victim assistance. Under the CCM States Parties are required to make every effort to collect reliable relevant data with respect to cluster munition victims.

IMAS

The IMAS on Information Management (IMAS 5.10) emphasises the need to integrate all aspects of mine action so that all initiatives are integrated, interactive and mutually supportive. It is also important for MACs to collect information on:

- mine action;
- cluster munitions and ERW;
- mine/UXO and cluster munition awareness education; and
- victim assistance.

IMAS 07.11 Land Release establishes minimum data collection requirements during survey and clearance operations. It states that, in addition to recording the boundaries of suspected hazardous areas (SHAs) and confirmed hazardous areas (CHAs), organisations should record:

- what was found, where and when; and
- what was done, where and when.

The standard also states that when hazard items are discovered mine action organisations should record:

- type of munition (as specifically as possible);
- location of the item (in absolute terms and in relation to other associated items);
- depth at which it was discovered; and
- condition of the item.

Information management challenges

There are several major challenges to information management which affect objective and accurate reporting required under the CCW, APMBC and CCM:

1. The APMBC requires reporting on the number of mines and minefields and area cleared. It is difficult to find good baseline data on contamination and progress made in clearance.
2. There are cases of double counting when different clearance techniques are used. For instance, the same area can be covered by a manual demining contractor and by mine detection dogs. If both operators report the same number of square metres of clearance, there is a good chance that confusing information will be entered into the database.
3. Other questions about what data to collect, and how to report it, are associated with the CCM which requires States Parties to 'collect reliable relevant data with respect to cluster munition victims'. The CCM includes 'family members' in its definition of victims, raising questions about who to count. In many countries there are extended families beyond the traditional nuclear family, leading to uncertainty and a lack of standardisation in the way victims are counted.

Compliance with information management and reporting requirements of the applicable treaties requires careful consideration of what data is required, how it should be defined and how it should be collected and reported. Mine action relies upon information management in every aspect of its work. Managing the quality and consistency of data and information is difficult, but important.

CONCLUSION

Mine action takes place within a context of well-defined international legal instruments and a mature set of policy standards. It is interlinked with other fields of activity oriented toward improving human security.

It is worth noting that certain actors in the mine action field view 'mine action' as too restrictive a term. The ICRC, for example, now characterises mine and explosive ordnance work as dealing with 'weapons contamination' as part of its wider mandate to protect civilians from the effects of armed conflict.⁴⁹

The APMBC and CCM provide legal models showing how the international community can move forward in new areas such as the uncontrolled proliferation and misuse of small arms and light weapons, the use of explosive weapons and toxic remnants of war.

While treaties lay out legal obligations, international standards continue evolving to disseminate best practice on how to satisfy these obligations efficiently and effectively.

The international community has learned from mine action the importance of systematically recording and collating evidence of human harm resulting from different types of weapons. Analysing the data lays the foundation for new policies by states and other actors.

The legal framework around humanitarian disarmament has changed significantly over the past 30 years. There has been a move from pure disarmament, for purposes of protecting the security of states to a humanitarian approach of banning individual weapons and requiring remedial measures to prevent and mitigate suffering caused to civilians by these weapons.

International evidence has accumulated on explosive hazards and other forms of armed violence over this period, and new understandings – reflected in both international legal rules and new standards – have emerged.

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