

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.

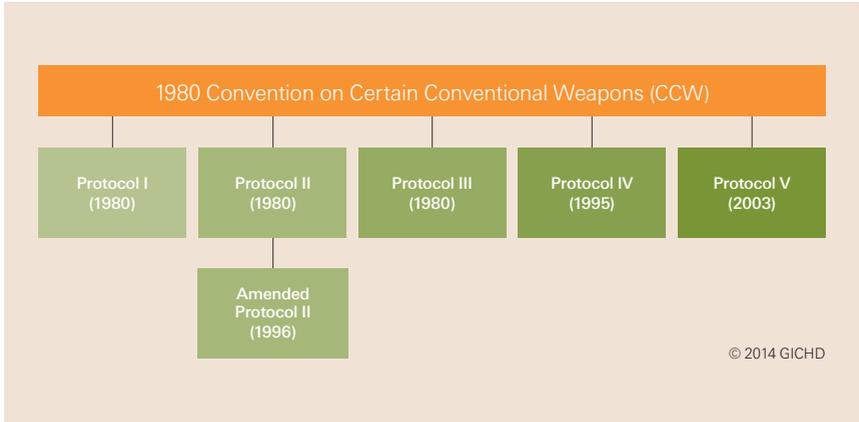
In 1980, states adopted the framework convention and its first three protocols:

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.