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 Parties[5] emphasised the need for 'striking a balance between military and humanitarian considerations.'[6]

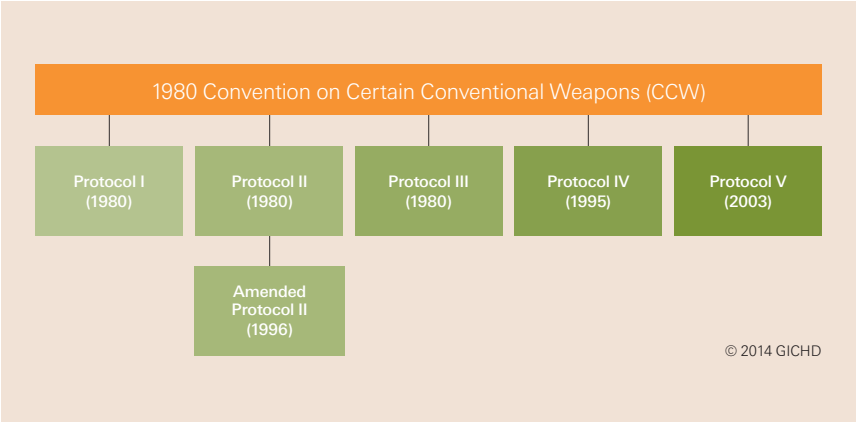
The CCW is a framework treaty, applicable to situations of armed conflict, which contains generic provisions and protocols relating to specific weapons and their use. It has been built upon the customary rules that regulate conduct of hostilities. These include rules of distinction, proportionality, 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