



ICRC

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Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
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**VIEWS AND RECOMMENDATIONS ON
IMPROVISED EXPLOSIVE DEVICES FALLING WITHIN THE SCOPE OF THE ANTI-PERSONNEL MINE BAN
CONVENTION**

Introduction

The increasing use of **anti-personnel mines of an improvised nature (hereinafter referred to as ‘improvised anti-personnel mines’)** in recent conflicts has resulted in rising numbers of civilian casualties in many contexts, such as Afghanistan, Iraq, Syria, Mali, Colombia and the Philippines, amongst others.¹ Impacts on civilian populations also include socio-economic consequences, and persist long after these mines have been emplaced, as they may remain undetected or become dislocated for example as a result of flood, landslides or other disasters.

In different fora by different actors, including certain States, international organizations, humanitarian and commercial demining operators and civil society organizations, these mines have been referred to as ‘improvised explosive devices’ (IEDs) to reflect the improvised nature of these munitions. However, due to the lack of an internationally agreed definition of the term ‘IED’ and the broad use of this term to describe a range of weapons spanning from improvised rockets and mortars to improvised anti-personnel mines and remotely controlled explosive devices, there has been some confusion about which IEDs fall within the definition of anti-personnel mines for the purpose of the Anti-Personnel Mine Ban Convention (the ‘Convention’). This lack of clarity has implications for the implementation by States Parties of their obligations under the Convention, notably Article 5 (destruction of anti-personnel mines in mined areas), Article 7 (transparency measures) and more broadly Article 1 (general obligations).

¹ In 2017, for a second year in a row, the Landmine Monitor recorded a high number of civilian casualties caused by improvised anti-personnel mines and the highest number of child casualties recorded in a year. ICBL, *Landmine Monitor 2018*, p. 49.

This paper offers the International Committee of the Red Cross (ICRC)'s views and recommendations on IEDs that fall within the scope of the Convention, finding that: (I) the Convention applies to both manufactured and improvised anti-personnel mines alike; and (II) certain IEDs constitute anti-personnel mines falling within the scope of the Convention. Drawing on the ICRC's practical experience, the paper proceeds with (III) giving practical examples of when IEDs constitute anti-personnel mines; and concludes with (IV) recommendations to States Parties on specific measures to take with a view of fulfilling obligations under the Convention.

I. Improvised anti-personnel mines within the meaning of the Convention

Article 2(1) of the Convention defines an anti-personnel mine as 'a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.' Pursuant to Article 2(2) of the Convention, the term 'mine' refers to 'a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.' None of the elements in the definition draws a distinction between manufactured and improvised anti-personnel mines, nor do they exclude improvised anti-personnel mines from the scope of the Convention.

The negotiating history of the Convention's definition of anti-personnel mines shows that States did not intend to distinguish between manufactured and improvised anti-personnel mines.² In negotiating the Convention, a proposal to amend the text so as to explicitly proscribe the improvisation of explosive devices for use as anti-personnel mines was rejected by States, as they considered these weapons to already be covered by the definition of anti-personnel mines.³

Recent Meetings of the States Parties have reaffirmed that improvised anti-personnel mines fall within the scope of the Convention. Notably, the final documents of the 16th and 17th Meetings emphasized that States Parties affected by improvised anti-personnel mines must address these as part of their fulfilment of obligations under Articles 5 and 7 of the Convention, as 'the definition contained in Article 2(1) makes no distinction between an anti-personnel mine that has been "manufactured" and one that has been "improvised"'.⁴

² 16th Meeting of the State Parties, *Final Report*, APLC/MSP.16/2017/11, 22 December 2017, para. 33; Committee on Article 5 implementation, *Conclusions*, APLC/MSP.16/2017/3, 13 October 2017, para. 33. See also S. Maslen, *The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, Oxford University Press, 2004, p. 112.

³ See Maslen, p. 118.

⁴ APLC/MSP.16/2017/11, para. 33; Committee on Article 5 implementation, *Reflection Paper*, APLC/MSP.17/2018/10, para. 8; 17th Meeting of the States Parties, *Final Report*, APLC/MSP.17/2018/12, para. 33.

Nor does the text of the Convention distinguish between manufactured and improvised anti-personnel mines. While the Convention does not define the term ‘munition’, relevant international instruments and domestic legislation indicate that ‘munition’ is a military-technical term, synonymous with ammunition.⁵ Ammunition, or munition, can be understood as ‘a complete device charged with explosives; propellants; pyrotechnics; initiating composition; or chemical, biological, radiological, or nuclear material for use in operations including demolitions’.⁶ This definition places emphasis on the charge of the device, and its use. It does not, however, specify how the device is to be constructed, other than requiring it to be complete. **A device is complete where it contains all the components necessary for its function,⁷ irrespective of it being manufactured or improvised.**

The Convention does not specify under which circumstances a mine is *designed* ‘to be exploded by the presence, proximity or contact of a person’. Within its ordinary meaning in the context of the Convention, the term ‘design’ refers to the normal functioning of a weapon, and is broader than the term ‘manufacture’.⁸ In interpreting the term, States have voiced differing views on whether the Convention refers to the intent of the ‘designer’ or the actual functioning of the mine.⁹ Irrespective of whether a mine is manufactured or of an improvised nature, **as long as the design is such that it would, through its normal functioning, be exploded by the presence, proximity or contact of a person and generate the same design-dependent effects of incapacitating, injuring or killing one or more persons, it fits the definition of an anti-personnel mine** under Article 2(1) of the Convention.

An anti-personnel mine is exploded ‘*by the presence, proximity, or contact of a person*’. In practice, an anti-personnel mine could be exploded by the pressure of an ordinary footfall, or the triggering of a tripwire, break-wire or tilt rod by a person, or even, in exceptional cases, by the presence or proximity of body heat effecting the explosion.¹⁰ The term ‘contact’, albeit not defined in the Convention, means, in its ordinary meaning, ‘the state or condition of touching; an instance of touching’, which indicates

⁵ Article 3 of the Arms Trade Treaty (ATT) in its English authentic version refers to munition and ammunition interchangeably. The French authentic version of the ATT uses the term “*munitions*”, suggesting that this covers both the ammunition and munition referred to in the English version. Similarly, some States Parties use the terms ‘munition’ and ‘ammunition’ interchangeably in their domestic legislation and doctrine, see Netherlands, *Humanitair Oorlogsrecht: Handleiding, Voorschrift No. 27-412*, Koninklijke Landmacht, Militair Juridische Dienst, 2005, para. 0431, and Cambodia, *Law Banning Anti-Personnel Mines*, 1999, section 2; Uruguay, *Law on the Cooperation with the International Criminal Court*, 2006, section 26.3.43. See further International Mine Action Standards (IMAS), *Glossary of mine action terms, definitions and abbreviations*, IMAS 04.10, 2nd ed., 2003, amended 2019, para. 3.196.

⁶ See, for example, United States, Department of Defense, *Dictionary of Military and Associated Terms*, February 2019, p. 153; NATO, *Glossary of Terms and Definitions*, AAP-06, 2018, p. 84.

⁷ NATO, p. 30.

⁸ Australia, *Anti-personnel Mines Convention Act 1998*, section 4: ‘anti-personnel mine means a mine that is designed, **intended or altered** so as to be placed under, on or near the ground or other surface area; and is to be exploded by the presence, proximity or contact of a person; and is capable of incapacitating, injuring or killing one or more persons’ [emphasis added]; Kenya, *The Prohibition of Anti-Personnel Mines Act 2015*, Article 2(1), to the same effect. See also Maslen, p. 111; W. H. Boothby, *Weapons and the Law of Armed Conflict*, 2nd ed., Oxford University Press, 2016, p. 179.

⁹ Maslen, p. 112.

¹⁰ UNMAS, *Landmines, Explosive Remnants of War and IED Safety Handbook*, 3rd ed., United Nations, 2014, p. 11; Maslen, p. 115; C. King (ed.), *Jane’s Mines and Mine Clearance*, 5th ed., 2000-2001, Section 2.

that actual disturbance of the mine is not required. This element of the definition therefore only describes the acts that trigger the explosion, but does not address the technical features of the component of a mine nor how it is constructed. **Consequently, it is irrelevant whether the mine was manufactured or improvised, as long as the explosion is triggered by a person.**

Finally, the explosion of an anti-personnel mine must be capable of *'incapacitating, injuring or killing one or more persons'*. This element of the definition revolves around the impacts on persons of the explosion. Indeed, both manufactured and improvised mines will generate these effects, irrespective of how they were constructed.

II. IEDs as anti-personnel mines within the scope of the Convention

IEDs can take many forms and the term has been used to describe a panoply of different improvised weapons (1). Certain improvised weapons constitute anti-personnel mines within the scope of the Convention, requiring States Parties to fulfil their obligations under the Convention with respect to these mines (2).

1. *The breadth and ambiguity of the term 'IED'*

The confusion of certain States, demining operators and other stakeholders that has arisen from the use of the term 'IED' stems to some extent from the ambiguity and breadth of this term. There exists no internationally agreed definition of IEDs, and definitions of the term adopted by some States and organisations, albeit mostly distinct and not universally accepted, are broad and cover many different types of IEDs as improvised weapons,¹¹ such as anti-personnel and anti-vehicle mines of an improvised nature; roadside bombs; body-borne or vehicle-borne IEDs used in suicide attacks; shoulder-fired recoilless rocket launchers; improvised claymore mines; and improvised mortars and rockets.¹²

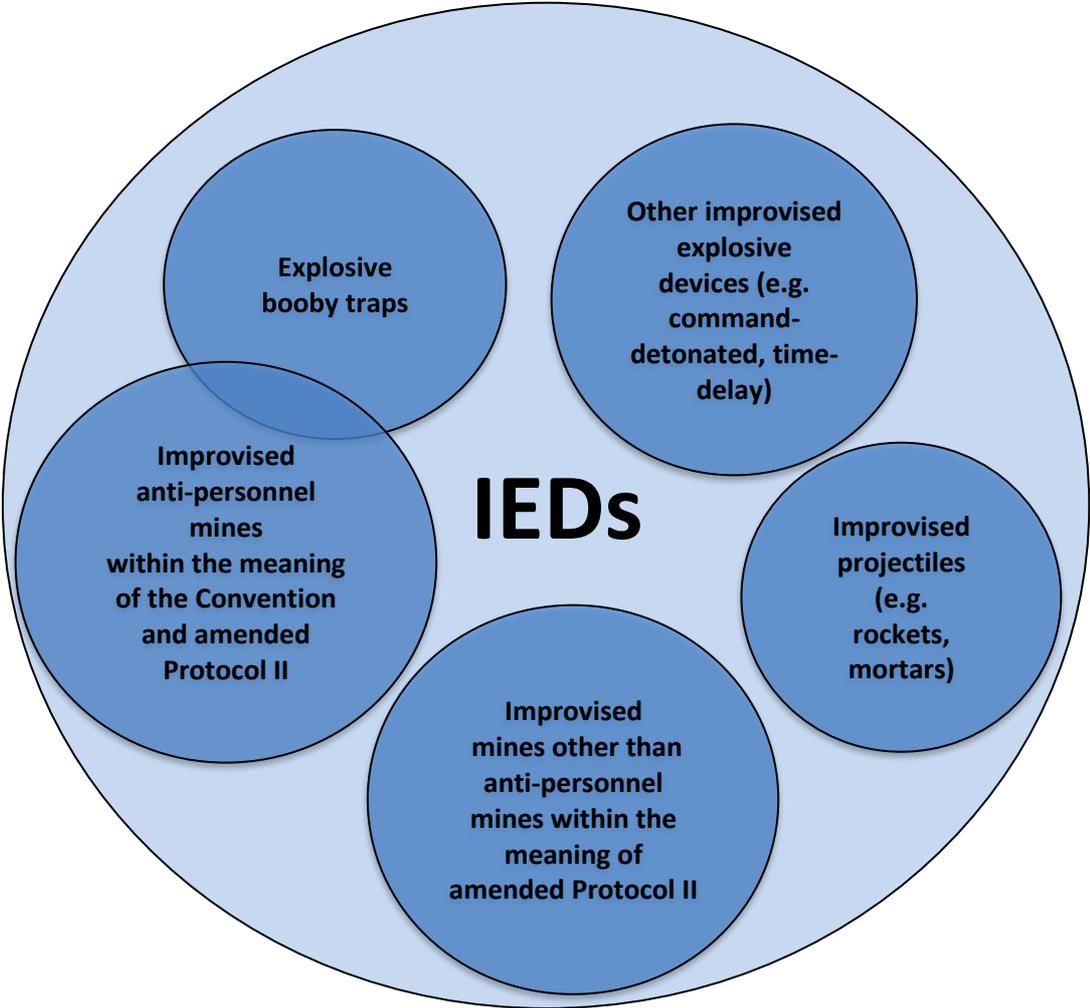
Amended Protocol II to the Convention on Certain Conventional Weapons ('amended Protocol II') is the only international treaty referring to IEDs. Article 2(5) defines the term 'other devices' as 'manually-emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are activated manually, by remote control or automatically after a lapse

¹¹ IMAS defines an IED as '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'. IMAS also notes that '[a]n IED may meet the definition of a mine, booby trap, and/or other type of explosive ordnance depending on its construction. These devices may also be referred to as improvised, artisanal, or locally manufactured mines, booby traps, or other types of explosive ordnance.' IMAS, para. 3.138. See also United Nations, *International Ammunition Technical Guidelines*, 2nd ed., United Nations, 2015, 01.40, para. 3.140, containing the same definition.

¹² See, for example, UN Secretary-General, *Countering the threat posed by improvised explosive devices*, UN doc. A/73/156, 12 July 2018, paras. 8, 16-17, taken note of by the General Assembly, in Resolution 73/67, adopted without a vote. See also 20th Annual Conference of the High Contracting Parties to Amended Protocol II, *Report on improvised explosive devices*, CCW/AP.II/CONF.20/2, 30 October 2018, paras. 10-13.

of time'. Today, the discussions under amended Protocol II on IEDs are not restricted only to those constituting 'other devices' within the meaning of Article 2(5), but have focused more broadly on the use in current conflicts of improvised (as opposed to industrially manufactured) explosive devices that are either command or remotely detonated, with time delay fuzing or activated by a vehicle or a person, the latter of which can be anti-personnel mines.¹³

In brief, as illustrated in the figure¹⁴ below, the term 'IED' has not only been used to refer to command or remotely controlled IEDs, or those with time delay fuzing, but to label a wide variety of weapons manufactured outside industrial standards, including improvised anti-personnel mines.



¹³ CCW/AP.II/CONF.20/2, para. 4.

¹⁴ This figure is intended to be an illustrative graph, which does not purport to be exhaustive.

2. IEDs as anti-personnel mines within the meaning of the Convention

The legality of the use of IEDs must be assessed on a case-by-case basis, and will depend on how these improvised weapons are designed, how the parties are using them and the environment in which they are used. In particular, the use of IEDs must be assessed against international humanitarian law (IHL), and its rules on distinction, proportionality and precautions in attack, as well as treaties that contain specific prohibitions or restrictions on certain weapons, such as the Convention when applicable.¹⁵

IEDs fall within the scope of the Convention if and when they constitute anti-personnel mines as per the definition in Article 2(1), i.e. a mine designed to be detonated by the presence, proximity or contact of a person.¹⁶

In the ICRC's view, an IED that is designed to be a booby-trap, i.e. disguised as or hidden in an innocuous object and/or triggered by an innocuous act, can also be an anti-personnel mine within the scope of the Convention, as long as it is a mine designed to be detonated by the presence, proximity or contact of a person.¹⁷

The object and purpose of the Convention is to **put an end to the suffering and casualties caused by anti-personnel mines, and to give effect to the prohibition of attacks employing a weapon that cannot be directed at a specific military objective.**¹⁸ Where IEDs are hidden in or disguised as objects typically used by civilians, or in civilian areas or premises, they are as incapable as manufactured mines of distinguishing between civilians and combatants, and raise the same concerns to which the

¹⁵ For example, IEDs can meet the definition of cluster munitions within the meaning of the Convention on Cluster Munitions, and/or create explosive remnants of war within the meaning of the Protocol V to the Convention on Certain Conventional Weapons.

¹⁶ See also, for example, Colombia, *Política nacional de acción integral contra minas antipersonal, municiones sin explotar y artefactos explosivos improvisados*, 2009, p. 15: 'Las minas antipersonal de fabricación artesanal son conocidas como Artefactos Explosivos Improvisados (AEI)' [Artisanal anti-personnel mines are known as improvised explosive devices (IED), ICRC translation]; Zambia, *The Prohibition of Anti-Personnel Mines Act*, 2003, Article 2: 'anti-personnel mine means (a) a mine designed to be exploded by the presence, proximity or contact of a person and to incapacitate, injure or kill one or more persons [...] **or any other mine or device which performs in a manner consistent with paragraph (a)**' [emphasis added]. See further Australia, *Anti-personnel Mines Convention Act 1998*, section 4; Kenya, *The Prohibition of Anti-Personnel Mines Act 2015*, Article 2(1).

¹⁷ A booby trap within the meaning of Article 2(4) of amended Protocol II is defined as 'any device or material which is designed, constructed or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.' In processes prior to the adoption of the CCW and its protocols, government experts pointed out that a munition that constitutes an explosive-type booby-trap does not automatically preclude it from also constituting an anti-personnel mine. ICRC, *Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects: Report on the Work of Experts*, ICRC, 1973, para 152. In national legislation and/or military manuals of a number of States Parties, the definition of an anti-personnel mine includes explosive devices inflicting injury or death when an innocuous act is carried out: See e.g. Canada, Office of the Judge Advocate General, *The Law of Armed Conflict at the Operational and Tactical Levels*, 2001, para. 511.3 ; and Côte d'Ivoire, Ministère de la Défense, *Droit de la Guerre, Manuel d'Instruction, Livre IV: Instruction du chef de section et du commandant de compagnie, Manuel de l'élève*, 2007, p. 52.

¹⁸ Preamble to the Convention.

Convention was adopted to respond, and thus must be addressed in the same manner as manufactured anti-personnel mines.

III. Practical examples of IEDs as anti-personnel mines

The ICRC, through its field operations, has encountered in a number of contexts IEDs that fit the definition of anti-personnel mines as per Article 2(1) of the Convention. Such devices were placed under, on or close to the ground or surface area, and equipped with trigger mechanisms also commonly used in manufactured mines, including but not limited to pressure plates;¹⁹ trip wires;²⁰ crush wires;²¹ and pull-switches.²² They explode upon contact with or initiation by a person, such as the application or release of pressure exerted by body weight, or in the person's proximity or presence such as through passive infrared sensors.²³ For example, it has been reported that pressure-plate IEDs are often activated by 10 kilograms of pressure, the weight of a young child.²⁴ Further, the ICRC is aware of the use of IEDs with pressure plates emplaced directly beside the main charges causing maximum damage to the person activating it.

The ICRC, as well as many others, have all-too-often witnessed improvised anti-personnel mines hidden in doorways in civilian houses or facilities such as water cleaning plants and schools, with charges concealed in containers storing food and other everyday items used by civilians.²⁵

Improvised anti-personnel mines are, in the ICRC's experience, often artisanal or home constructed or adapted. Everyday items such as nail polish and fuel have, for example, been used as explosives. The ubiquity of components enabling the construction, combined with the innocuous nature of acts that often cause explosions, contribute not only to the increased use of improvised anti-personnel mines, but more critically to the rising number of civilian casualties in recent conflicts. Their construction outside of industrial standards makes clearance operations even more difficult, thus exacerbating the risk to humanitarian organizations working on the ground including demining operators.

¹⁹ See Small Arms Survey, *Everyday Dangers*, Cambridge University Press, 2013, p. 221. Pressure plates may function via pressure or pressure release, that is a method for activating the device that occurs as a result of either application or reduction of pressure. UNMAS, *IED Lexicon*, United Nations, undated, p. 25.

²⁰ Trip wires include, for example, grenades to which a wire is attached such that when the wire is snapped by the movement of a person, the pin is removed and the grenade detonates: Maslen, p. 118. See also Small Arms Survey, p. 221.

²¹ A crush wire consists of contact point(s) spanning a length of wire that functions as an IED when crushed. UNMAS, p. 24.

²² A pull-switch functions when a person applies tension to a firing mechanism – such as pulling a spring. The tension causes an action that releases a firing pin or activates an electrical or electronic switch. UNMAS, p. 25.

²³ See Small Arms Survey, p. 221.

²⁴ Small Arms Survey, p. 228.

²⁵ See for example Government of Canada, *Cleaning Up Daesh's Explosive Legacy in Iraq*, 18 April 2018: https://international.gc.ca/world-monde/stories-histoires/2018/cleaning_daesh_legacy-nettoyer_heritage_daech.aspx?lang=eng. See further UNIDIR, *Addressing Improvised Explosive Devices: Options and Opportunities to Better Utilize UN Processes and Actors*, UNIDIR, 2015, pp. 14-15.

As such, it is **not only a matter of compliance with the Convention, but also one of utmost humanitarian concerns** that States Parties fulfil their obligations under the Convention, including, among others, the clearing and reporting of all improvised anti-personnel mines in areas under their jurisdiction or control.

IV. Summary and Recommendations

By comprehensively prohibiting anti-personnel mines, States Parties of the Convention commit to put an end to civilian suffering and casualties caused by anti-personnel mines – an important requirement in the face of the widespread civilian harm caused by anti-personnel mines to date. All obligations under the Convention apply to anti-personnel mines that are both industrially manufactured and of an improvised nature, as has been repeatedly confirmed by States Parties.

The lack of an internationally agreed definition and the breadth of the term ‘IED’ have led to uncertainty among some stakeholders regarding the application of the Convention to such devices. Where designed to be detonated by the presence, proximity or contact of a person, and capable of incapacitating, injuring or killing one or more persons, IEDs constitute improvised anti-personnel mines and therefore fall within the scope of the Convention.

In light of the above, **the ICRC encourages States Parties to explicitly use the term ‘anti-personnel mine of an improvised nature’ instead of ‘IED’ for the purpose of the Convention.** This will provide greater clarity to States Parties to facilitate the fulfilment of their treaty obligations, in particular:

- **clearing** areas under their jurisdiction or control that are contaminated with anti-personnel mines of an improvised nature, and submitting extension requests if necessary in accordance with Article 5 of the Convention;
- **reporting** areas that are suspected or confirmed to contain anti-personnel mines of an improvised nature under Article 7 of the Convention;
- conducting **mine risk reduction and education** programmes in relation to such mines pursuant to Article 6(3) of the Convention and Action 10 of the Maputo Action Plan; and
- adopting and/or adapting **national implementation measures** including, *inter alia*, legislation and military doctrine, as some States Parties have done, to clarify that the development and use of anti-personnel mines of an improvised nature are prohibited, and to impose penal sanctions to prevent and suppress prohibited activities accordingly, pursuant to Articles 1 and 9 of the Convention.