MAG Policy Brief

Humanitarian Response, Improvised Landmines and IEDs

Policy issues for principled mine action

November 2016

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Contents

Acronyms

APMBC Anti-Personnel Mine Ban Convention (Ottawa Treaty)

CCW   Convention on Certain Conventional Weapons

C-IED   Counter-IED

EOD   Explosive Ordnance Disposal

ERW   Explosive Remnants of War

IED   Improvised Explosive Device

IMAS   International Mine Action Standards

NGO   Non-Governmental Organisation

Introduction

The increasing use of improvised explosive devices (IEDs) in a growing number of contexts has led to the issue featuring more and more prominently on disarmament and security policy agendas. For several years, daily news reports have highlighted the use of IEDs in conflict, and also in attacks against civilians that have aimed to kill, disrupt and instil fear in communities.

This trend in increased IED use, and their humanitarian impact, has been matched by greater efforts by states to disrupt their use. Such activites have become integrally tied to the disruption of the non-state armed groups most frequently using them. It has been a priority for states, typically framed under Counter IED (C-IED) strategies that cut across a range of cross-government security policy agendas, ranging from military issues to the transfer of dual-use materials and intangible technology.

The scale and intensity of the regional conflict involving Daesh in the Middle East has seen the use of improvised munitions on an unprecedented level, further amplifying the priority attached to IED as a policy issue.

Efforts by states to deny the group access to weapons and munitions have been successful.

This has, however, forced Daesh to engage in the systematic production and deployment of a range of artisanal arms.

While the depressingly familiar and horrific use of car bombs and so-called 'suicide bombers' has continued, the conflict in Iraq and Syria has seen the production and use of mortars, rockets and projectiles. It is landmines and booby traps, however, that have been some of the most systematically used improvised munitions in the conflict to date.

The region has not seen this scale of new landmine use since the humanitarian emergency in northern Iraq 25 years ago, when the extent of death, injury and humanitarian suffering caused by landmines shocked the conscience of states and the public, and led to the ban and stigmatisation of an inherently indiscriminate weapon. Now, once again, people in the region are losing lives, limbs and livelihoods as they return to extensive contamination from landmines and booby traps in their homes, villages and fields.

As ever, the humanitarian mine action community is finding ways to respond, drawing on its wealth of experience and spirit of

ingenuity. While this work is already saving lives, it has also raised issues of policy and practice that must be navigated and strengthened, many of which relate to the nature of current conflict itself.

This paper explores some of these issues. It makes the case for a clear separation of humanitarian work and organisations from C-IED efforts and terminology. It also outlines the limitations for mine action policy and practice of using the term IED as a catch-all weapons category, and the need to focus more broadly than the improvised nature of the devices themselves and the status of the organisations using them.

Doing so will enable the development of mine action policy and approaches that are based on fundamental humanitarian principles, which are as relevant now as ever. It will also ensure that mine action draws on and supports the strongest application of existing international humanitarian law.

MAG's policy recommendations always have a foundation in the organisation's evidence, experience and expertise derived from impact-driven operational programmes. This paper and its recommendations are no exception.

Since early 1992, MAG teams in Iraq have responded to the numerous conflicts and humanitarian emergencies that the country and its communities have suffered.

MAG's programmes in the Middle East have successfully responded to the new emergency from improvised landmines and other devices, finding ways to meet humanitarian need within a broader complex conflict. Over 7,500 improvised devices were located and destroyed in the last 12 months, of which 99% were improvised landmines. MAG's humanitarian response in Iraq and Syria is expected to continue into the foreseeable future.

By sharing our experience and recommendations for policy and practice, MAG aims to support the constructive and reflective sector dialogue that is essential to remaining relevant, professional and fundamentally humanitarian. In doing so, we will continue to save lives, enable the safe delivery of shelter, food and aid by our humanitarian colleagues, and help people who have already endured unimaginable suffering to go home safely. This report and its recommendations are shared in this spirit.

Unpacking the term 'IED': why detail matters

The term IED is as widespread in policy dialogue as it is in media reporting. Yet the range of IEDs is vast, spanning from vehicle-borne IEDs (car bombs) to the improvised landmines that are of particular concern to much of the humanitarian mine action community and to this report. Equally broad is the diversity of contexts in which IEDs are used, from a suicide attack in a packed peacetime market, to a booby trap set in an intense and complex conflict.

On its own, the fact that an explosive device is improvised provides little detail about it, with the term IED bringing together a vast range of stakeholders and agendas to deal with a range of weapons that are limited only by their designers' imaginations. The C-IED community and its experts have developed a set of established terms to ensure coherence in developing technical approaches and responses.

Yet for stakeholders concerned with humanitarian policy and practice, the IED 'catch-all' and the C-IED technical taxonomy of devices subsumes important nuances that are essential to the development of humanitarian programming and policy.

These nuances are critical to ensuring that humanitarian programming does not risk the safety of humanitarian personnel and beneficiaries, and is conflict sensitive. They are equally important to upholding and not accidently eroding the strongest norms of international humanitarian law, including the Anti-Personnel Mine Ban Convention (Ottawa Treaty).

Improvised Landmines

Many of the devices that are currently being described as IEDs are in fact landmines. Munitions that are deployed on, under or near the ground and which are initiated by the presence, proximity or contact of a person are anti-personnel landmines, as defined by the Ottawa Treaty and Amended Protocol II of the Convention on Certain Conventional Weapons (CCW).

There is nothing in the definition or concept of landmines that means that they need to have been made in a formal munitions factory. Similarly, landmines are defined by the way in which they are deployed and their

indiscriminate nature, and not their intended military aim or target. Improvised anti-personnel landmines fall firmly within the scope of the Ottawa Treaty, its absolute prohibitions and the norms and stigma against any use of an inherently indiscriminate weapon.

As a weapon category, IEDs are not prohibited in the same way as anti-personnel landmines. The range of weapons that can be considered within the term's scope also includes devices that involve the direct initiation by a user at the point they explode, and therefore a component of human judgement and decision. Even when improvised, these are fundamentally different in character to weapons which are victim operated, and therefore inherently indiscriminate by virtue of being unable to distinguish between combatants and civilians.

The Ottawa Treaty – and the norms, stigma and obligations which it brings and represents – require landmines to be called what they are, and not as a technical category of IEDs such as 'pressure plate IED'. Landmines are landmines, irrespective of whether or not they are improvised, their intended target or the party that deployed them.

It is important to stress that the phenomenon of improvised landmines is not new, with the mine action community having responded to them since the sector's origins. In several locations, improvised landmines have been the majority of those cleared and destroyed. The mine action community has addressed these as part of land release and explosive ordnance disposal, and within the framework of the Ottawa Treaty. What is new is the scale of use and the complexity of the conflict and context, considered further in Section 4.

> **Landmines are landmines, irrespective of whether or not they are improvised, their intended target or the party that deployed them.**

Box 2.1: Definitions

Mine: A mine is a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle. (Amended Protocol II to the CCW)

Anti-personnel mine: 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. (Ottawa Treaty)

Booby trap: 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. (Amended Protocol II to the CCW)

Booby Traps

In a similar way to improvised mines, many devices that are included under discussions and debate around IEDs meet the concept and definition of booby traps (see Box 2.1). Daesh has used booby traps significantly in some areas, typically in advance of their retreat in an urban locations and including the deliberate targeting of civilian objects. Booby traps have been deployed frequently and without any warning in ways that indicate an intention to target civilians, or prevent their ability to return safely.

The deployment of many booby traps overlaps significantly with anti-personnel landmines, to the extent that many states and stakeholders consider their indiscriminate and victim-operated nature bringing them within the absolute prohibition of the Ottawa Treaty. There are specific restrictions around the use of certain objects as booby traps within Article 7 of Amended Protocol II to the CCW framework. These include children's toys, medical equipment, religious objects or sick and wounded people.

Amended Protocol II also prohibits all use of booby traps in populated areas unless specific measures are taken to protect civilians. Humanitarian operations in areas formerly held by Daesh show an increasing use of indiscriminate booby traps, almost exclusively in contravention of the restrictions set out in Amended Protocol II. Referring to these devices solely as IEDs does not give sufficient attention to indiscriminate deployment, nature and effect, or the range of commitments by the international community to address their humanitarian impact and protect civilians.

Explosive Remnants of War (ERW)

The conflict in parts of Syria and Iraq also involves the increased use of improvised munitions such as projectiles, mortars and propelled grenades. While improvised mines have been produced and used in many conflicts, the systematic production of improvised land surface ordnance on this scale is arguably a new phenomenon. The UK non-governmental organisation Conflict Armament Research has recently issued a report documenting artisanal production on a vast and organised scale in Fallujah[1].

In general terms, abandoned and unexploded improvised munitions pose the same humanitarian risks to civilians as other explosive remnants of war, a definition and concept that also does not consider whether or not a munition is improvised. The improvised nature of these devices is, however, likely to have a negative impact on their effectiveness as munitions, both in terms of their accuracy and likelihood of functioning as intended. Unexploded ordnance resulting from failed improvised munitions is likely to be unstable and sensitive, posing a greater risk of death and injury and underscoring the need for humanitarian action to address them.

Within international humanitarian law, the humanitarian impact of ERW is addressed specifically through Protocol V of the CCW. This includes elements of clearance, risk education and support to safe humanitarian access, as well as steps to facilitate the safe removal of abandoned ordnance. Considering unexploded and abandoned improvised munitions that fall within the scope of Protocol V as ERW brings them into a framework that aims to mitigate their specific humanitarian impact in a way that defining them as IEDs does not.
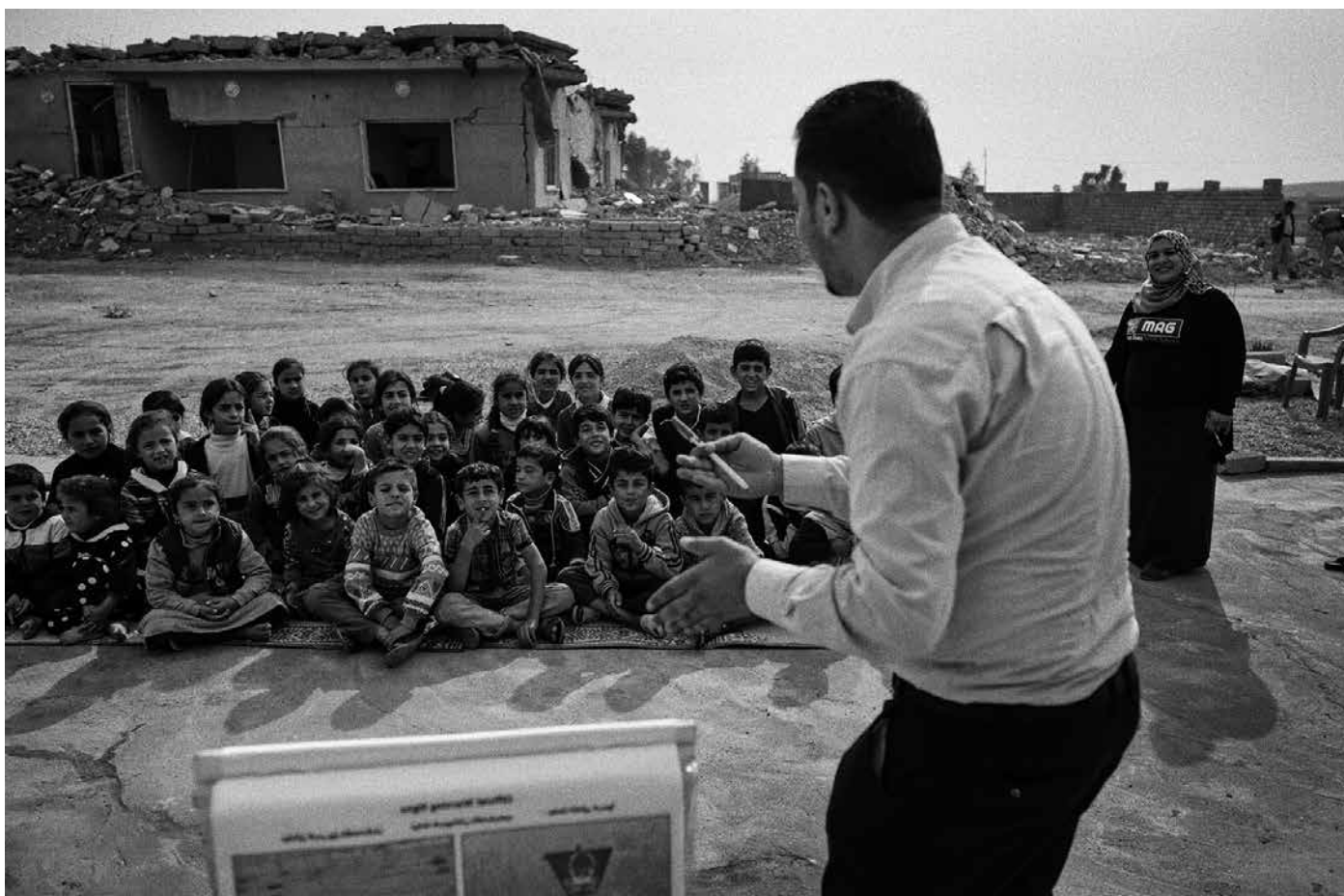
Principled Humanitarian Mine Action

Humanitarian action aims to identify and address human suffering wherever it is found. This is based on the principle of humanity, which sits alongside neutrality (not taking sides in a conflict or engaging in political controversy), impartiality (non-discrimination and delivering assistance based solely on need) and independence as the four fundamental humanitarian principles.

These principles aim to ensure the integrity of humanitarian action and enable continued humanitarian access. They also provide a value-based and clearly understood foundation for meeting humanitarian need in conflict in a way that does not compromise the security and safety of humanitarian organisations, their staff or the communities which they are working to assist.

As already mentioned, stakeholders in the IED issue extend far beyond the humanitarian sector and mine action organisations. C-IED policies and frameworks have been developed to ensure a more integrated state response by political, military and law enforcement and security stakeholders and their aims.

C-IED is typically framed around three elements:

- Attacking or countering the network on which the development and deployment of the IED depends.

- Defeating the device itself.

- Preparing or training a force with the skills and equipment to respond.

These aims and activities are led by state or multilateral military and security stakeholders with mandates to work on them, and their aims are often expressed in terms of protecting civilians and property for the public good. They are not, however, humanitarian aims and activities, nor are they neutral or impartial action as they are driven primarily by the aim of disrupting armed groups or parties to conflict, or to advance military or security objectives.

While legitimate for stakeholders involved in them, C-IED aims and frameworks must remain explicitly separate from humanitarian action, including humanitarian mine action. Similarly, C-IED cannot be used as an overarching framework for any activity involving improvised

Avoiding the use of 'IED' for devices that are improvised landmines, booby traps or explosive remnants of war will assist in supporting the humanitarian response to them.

munitions. To do so could put civilians at risk, including members of the broader humanitarian community, and jeopardise continued access and consent for humanitarian activity. It also risks aligning humanitarian effort and resource allocation to military or security objectives at the expense of humanitarian priorities.

Separating C-IED efforts from humanitarian action – and reinforcing the perception of that division – requires a clear division of labour between actors, especially when different stakeholders are addressing IEDs and improvised landmines in the same space. This is not always straightforward, particularly in many current and highly complex conflicts involving multiple parties to a conflict, some of whom do not accept humanitarian principles. It is made even more complex when conflicts span borders, with localised areas of intense conflict in some locations, and in other areas where active fighting has ceased and where humanitarian action is both needed and possible.

Despite the challenges, the coexistence and clear separation of C-IED activity and humanitarian mine action is not impossible. As stakeholders with equities across the full range of activities, states have a vital role in ensuring a clear and visible division of labour which keeps humanitarian aims and effort separate from security, military and force protection objectives. States are also in a unique position to create space for civil-military dialogue that can prevent confusion.

The different aims and the necessary division of labour between humanitarian and military or security activities will be aided by avoiding use of IED and C-IED terminology when dealing with the humanitarian clearance of improvised landmines, booby traps, explosive remnants of war and abandoned IEDs. Systematic inclusion of humanitarian mine action within other humanitarian and protection activity will also be beneficial.

It is also essential, however, that humanitarian mine action organisations are clear about the parameters and drivers of their own work, particularly when there are permissive pockets within, or on the margins of, ongoing conflict. Box 3.1 outlines three essential parameters that MAG has developed and applies to guide work on the margins of complex conflict. By extension, MAG will not undertake operations outside of the conditions, not least as activity risks compromising fundamental humanitarian positions.

The parameters focus on the aim or purpose of action, an assessment of the conflict context and status of control over the devices being addressed. They are dependent on – and are not a substitute for – robust security and risk management systems, and they have been developed in response to contamination from improvised landmines and other abandoned IEDs. They could therefore apply equally to broader mine action efforts.

Box 3.1
....
A framework for distinguishing humanitarian activity from C-IED effort.
....

MAG applies parameters to define humanitarian clearance of abandoned IEDs, landmines, booby traps and ERW in complex conflict. MAG believes that all three conditions should be in place for mine action activity to be considered 'humanitarian':

1. Activities are driven exclusively by humanitarian protection need and the goal of reducing human suffering of civilians affected by conflict, and do not include any aim relating to counter-terrorism, disruption, military objectives or support to force protection.

2. Activity takes place solely in areas where active hostilities have ceased.

3. Activity does not address any command-operated device (including remote controlled devices) which could still be initiated by the entity that deployed it or another active party to hostilities.
....

Implications for Humanitarian Mine Action policy and practice

The previous sections of this report have highlighted the significant increase of improvised landmines in many current conflicts, alongside the trend of increasing complexity in conflict context and dynamics. This creates operational challenges and the need for greater effort to meet increasing humanitarian need. Despite these new challenges, the humanitarian mine action sector can draw on several decades of experience, including in dealing with improvised landmines, and can bolster these where needed by broader explosive ordnance disposal (EOD) experience.

Defining areas where active hostilities have ceased

The nature of many current conflicts means that we cannot wait for the hostilities to stop if we are to meet humanitarian need. Alongside our colleagues in the broader humanitarian sector, mine action NGOs undertaking emergency response programmes must approach access in terms of 'areas where active hostilities have ceased', rather than seeing or waiting for a clear designation of 'post-conflict'.

It is impossible to define exactly a set of conditions and criteria to define when humanitarian mine action should and should not take place in the margins of conflict. Typical factors that MAG has taken into consideration have included the time since active hostilities have ceased in an area, the proximity of ongoing conflict and the likelihood of its resurgence in an area, and the extent to which displaced communities are returning and are at risk from improvised landmines, abandoned IEDs and ERW.

Operating in these conditions requires robust risk and security management by organisations, as well as conflict sensitive approaches that include direct engagement with affected communities through community liaison. Ensuring that mine action is treated as an integral component of protection and humanitarian response is also a part of this, and enables broader humanitarian response activity. While organisational decision making must remain independent, close dialogue with donors, as well as authorities and agencies charged with coordination, has proved beneficial.

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Ensuring consistent disaggregation of data

This paper has emphasised the importance of detail around different improvised device types. With various definitions overlapping, along with a broad spectrum of organisational organisations, it will be necessary to identify and promote consistent practice between mine action practitioners and stakeholders.

A recent report by GICHD and SIPRI on the humanitarian impact of anti-vehicle mines identified a lack of systematic and consistent reporting as having been an impediment to the development of a full understanding of their impact[2]. There is an opportunity for the mine action community to avoid this scenario for improvised munitions so that operational data can have the maximum possible utility to the development of policy, standards and good practice within the mine action sector.

Table 4.1 outlines a proposed minimum level of disaggregation of improvised devices found and destroyed as part of humanitarian mine action operations. As outlined in Section 2, the improvised nature of a munition is not relevant in its classification as a landmine if the device meets the definition, with the same being true of explosive remnants of war arising from improvised munitions. Landmines and booby traps should also be disaggregated according to whether they were cleared as part of land release and EOD operations, or whether they were destroyed from stockpiles and caches.

Ottawa Treaty obligations and transparency reporting

The disaggregation of data between improvised and non-improvised devices is also an essential foundation for considering the status and operation of the Ottawa Treaty and progress against its obligations. This includes the articles relating to destruction of stockpiled anti-personnel mines, survey, demarcation and clearance, international cooperation and transparency reporting.

Improvised landmines should be included within all Ottawa Treaty reporting, even in cases where contamination takes place within a state's jurisdiction but outside of its control. Including new contamination from improvised anti-personnel landmines should be encouraged, alongside updated reporting on contamination estimates and the impact, if any, on Article 5 deadlines, as well as national resource allocation and international cooperation and assistance needs.

Table 4.1

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Minimum disaggregation of improvised munitions in humanitarian mine action operations

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Improvised Anti-Personnel Landmine

Improvised Anti-Vehicle Landmine

Booby trap

Abandoned Radio-Controlled IED

Abandoned Command-Operated IED

UXO/AXO (improvised)

Other improvised items

....

Training, equipment, competence and mine action standards

Like any aspect of mine action, skills, training, equipment and standard operating procedures (SOPs) need to reflect the contamination profile in a particular location. As always, there need to be robust quality management systems in place. These principles apply equally to contamination involving improvised landmines, booby traps, abandoned command operated IEDs and ERW from improvised munitions.

As noted above, systems must also be in place to ensure effective security management for work on the margins of complex conflict, as well as policies and parameters to ensure conflict sensitive programming. It is not necessarily the case that a humanitarian mine action programme can simply switch operational capacity to address a new threat from improvised landmines.

Including response to improvised landmines and booby traps in the margins of complex conflict is likely to involve the development of new training programmes and capacity, as well as the adaptation of SOPs. NGO operations in the Middle East have shown that this is possible, and relatively quickly. Unlike much of the broader technical response within C-IED frameworks,

equipment to address improvised landmines does not have to be highly sophisticated.

There has been considerable discussion around the inclusion of IED clearance within the framework of the International Mine Action Standards (IMAS) and its review board. These discussions are ongoing and this paper does not repeat them. However, if landmines and booby traps are approached within the parameters outlined in this paper, the overwhelming majority of improvised devices cleared for humanitarian ends in areas where active hostilities have ceased can be addressed within the existing IMAS framework.

IMAS 01.10, the first in the series of standards and guidelines, is an existing 'Guide for the application of IMAS'. It already includes a section on humanitarian principles and the need for adaptation of approaches to meet a range of conflict scenarios. The humanitarian mine action community therefore already has most of the tools we need to succeed and respond to the new humanitarian challenges and needs that conflict creates.

Recommendations

1. **Improvised landmines should be considered within the framework of the Ottawa Treaty, including survey and clearance obligations, international cooperation and assistance and transparency reporting.** States Parties to the Ottawa Treaty or Amended Protocol II of the CCW should avoid using the IED terminology when referring to munitions which meet the definition of landmines.

2. **International funding to enhance emergency mine action programming should not come at the expense of assistance to countries striving to complete clearance of landmines and cluster munitions.** The scale of new contamination in the Middle East requires significant additional funding to address humanitarian need.

3. **Mine action organisations and bodies should ensure the clear and consistent disaggregation and reporting of improvised anti-personnel landmines, improvised anti-vehicle landmines and booby traps within output and activity reporting.** These devices should not be subsumed within non-specific categories such as 'IEDs', 'other' or 'explosive hazards'.

4. **Mine action organisations undertaking humanitarian response to landmines, ERW and abandoned IEDs must ensure that they have appropriate risk and quality management systems in place.** Standard operating procedures, training programmes, equipment and expert oversight in place should be appropriate to the context and contamination profile.

5. **Humanitarian response to survey and clear improvised landmines and booby traps should be carried out, as far as possible, within the framework of the IMAS.** The IMAS Review Board should continue to consider the utility of additional technical notes in addition to the strengthening of IMAS 01.10 to reflect the nature of humanitarian response in complex and regional conflict.

6. **Survey, clearance, demarcation and risk education in support of humanitarian objectives should be treated as a core protection activity.** Mine action activities should be included alongside other protection priorities in coordination reports, humanitarian strategies and consolidated appeals.

7. **Humanitarian organisations should take active steps to ensure that activities are prioritised on the basis of need.** This should include direct engagement with conflict-affected communities and NGO partners to verify humanitarian priorities.

8. **Humanitarian mine action programming in complex conflicts should be planned around permissive access to areas where active hostilities have ceased, rather than a general 'post-conflict' context.** Given the nature of clearance operations, humanitarian mine action organisations need to consider the proximity of conflict and an assessment of the likelihood of resurgence of hostilities in an area.

9. **Humanitarian activities should not be linked to the political, security or military activities of any state, coalition or party to a conflict.** Mine action organisations describing their work as 'humanitarian' should strive to apply the core humanitarian principles of neutrality, humanity, impartiality and independence.

10. **Humanitarian organisations should not provide or be required to provide data intended to support political, security or military aims.** To do so would compromise the integrity of humanitarian action, could inhibit continued access and put the security of humanitarian workers and conflict-affected populations at risk.

11. **Humanitarian mine action activities and organisations should not be included as part of counter-IED frameworks or strategies.** The disruption or removal of improvised explosive devices and other munitions during conflict should not be termed 'humanitarian'.

12. **States and coordination bodies must make a clear division of labour between organisations undertaking humanitarian activities and those supporting military, security and force protection objectives, including tactical support to troop contributing countries of UN missions.** This applies equally to landmines (including improvised landmines), abandoned IEDs and ERW.

1. "Inside Islamic State's Improvised Weapon Factories in Fallujah." Conflict Armament Research. www.confictarm.com/publications (Accessed November 2016).

2. The Humanitarian and Developmental Impact of Anti-Vehicle Mines. 2015. GICHD-SIPRI. www.gichd.org/avm (Accessed November 2016).

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