

Landmine and its Impact on Myanmar

Nyein Wai Wai¹

Abstract

Landmines are generally victim-activated explosive devices which their explosion is injured to person or vehicle. It reveals how Landmine affects negative impact on the people even though positive effect is to protect security areas and combat zones. The purpose of this paper is to outline ways of protection and assistance to victims. It analyzed the standards of international treaties, in particular, the Mine Ban Treaty 1997 which is mainly related to landmine, for understanding of legal protection internationally. It evaluates that Myanmar should initially formulate policy and strategic plans which covers prohibition of the use of land mine.. After implementing the policy and strategic plan, Myanmar should consider acceding to the Mine Ban Treaty 1997.

Key Words: *Impact of Landmine, Standard of International Treaties, Policy and Strategic Plan*

Introduction

A landmine is an explosive device that it is placed under, on or near the ground or other surface. Now, landmines are threat to the countries in daily life. The worst fact is that landmines are used not only in time of war but also does not take clearance to them after the war. In many conflict, landmines can kill and main more civilians than any other weapons. Protection against landmine explosion is governed by the provisions of the international humanitarian law and the international treaties' regulations prohibited the use of weapons, projectiles and causing to superfluous injury or unnecessary suffering.

The purposes of this paper are to outline the rights relating to awareness of landmine explosion, and intend to analyze international treaties relating to landmine for understanding of legal protection in internationally. Actually, the civilians and both combatants are also facing the worst suffering forms caused by using landmine the most affected impacts to the situations are social, political, economical and educational sectors. Nonetheless, there is no statutory law relating to landmines in order to solve these situations. Currently, related laws can protect the people from suffering caused by landmine. The government is also conducting to provide the assistance to victims for their rehabilitations.

Material and Method

This paper has been used Literature Review and Data Collection related to landmine explosion. It reveals the legal provisions of international treaties and Myanmar local laws which can protect the civilians.

Findings

This research will concentrate on National Ceasefire Agreement (NCA) between the government and all ethnic groups. If they focus on the trust each other, the internal peace process will successfully implements with all ethnic groups. By this peace process, the hostilities will automatically be halted between the two combatants. Therefore, the NCA is the fundamental step toward to enter to the Mine Ban Treaty 1997. Particularly, Myanmar also needs to adopt a landmine's policy before the acceding to the Mine Ban Treaty 1997.

¹ Lecturer, Dr, Department of Law, University of Mandalay

Furthermore, strategic plans for implementing to the goal of policy are urgently needed to be formulated. After the internal peace process should successfully implement with all ethnic groups, Myanmar should try to accede to the Mine Ban Treaty, 1997.

Discussion

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In finding the historical evaluation of landmines, the creation of gunpowder can probably be taken as the genesis. The purpose of mentioning historical development and usage, the early precursors to landmines seem to have emerged during World War I when artillery shells with exposed fuses.

Type of landmine

Landmines are generally victim-activated explosive devices which their explosion is injured to person or vehicle. The Latin word “*mina*” means “a vein of ore” and mining is the act of retrieving material from the Earth. The word gained its association with militarism during the First World War when mines were dug under enemy positions and packed with explosives. They are always standing as live mines in the ground until step on them.

“Mine” means an explosive or other material, normally encased, designed to destroy or damage ground vehicles, boats, or aircraft or designed to wound, kill or otherwise incapacitate personnel. It may be detonated by the action of its victim, by the passage of time or by controlled means.²

According to Article 2 (2) of the Convention on the Prohibition of Use, Stockpile, Production and Transfer of Anti-Personnel Mines and on Their Destruction 1997 (here in after MBT), mine means 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.³

According to Article 2 (1) of the Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices 1996 (Protocol II to the Convention on Certain Conventional Weapons 1980), mine means 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.⁴

Landmines come in a variety of models; there are currently more than **600** different types. All landmines can be grouped into two broad categories, namely-

1. Anti-personnel mine (AP)
2. Anti-tank mines (AT)

1. Anti-personnel (AP) Mine

According to Article 2 (1) of the Mine Ban Treaty 1997, anti-personnel mine means 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. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices are not considered anti-personnel mines as a result of being so equipped.⁵

In the Article 2(3) of Protocol II on Prohibition or Restrictions on the Use of Mines, Booby Traps and Other devices 1996, (Protocol II to the 1980 Convention on Certain Conventional Weapons), anti-personnel mine means a mine primarily which is designed to be

² JAY M.SHAFRITZ, Dictionary of Military Science, the United States of America, 1989.

³ The Convention on the Prohibition of Use, Stockpile, Production and Transfer of Anti-Personnel Mines and on Their Destruction on 18 Sept, 1997.

⁴ Protocol II on Prohibition or Restriction on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention on Certain Conventional Weapons).

⁵ The Convention on the Prohibition of Use, Stockpile, Production and Transfer of Anti-Personnel Mines and on Their Destruction on 18 Sept, 1997.

exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.⁶

2. Anti-Tank (AT) Mines

Anti-vehicle or Anti-tank mine (AT) is a type of landmine designed to damage or destroy vehicles including tanks and armored fighting vehicles. Those mines were invented as soon as the creation of the tanks in the First World War. Anti-tank mines and Anti-personnel mines can be detonated by pressure, by remote control and by magnetic influence. They are generally deployed on roads, roadsides, paths, tracks and the verge of the road in order to destroy vehicles. They are usually also created between 2 and 9 kg of explosive and their fusing mechanism requires a pressure around 120 kg to 150 kg to activate it.⁷

Therefore, these mines have been used around the world, many problems have happened all over the world. In addition, the humanitarian angle to the landmine issues has compelled the international community to consider the possibility of a ban to landmine by debating of the most vocal groups. These groups are non-governmental organizations such as the International Committee of the Red Cross (ICRC), the Red Crescent, the Vietnam Veterans Foundation of America (VVFA) and the International Conference to Ban Landmines (ICBL).⁸

The provisions of international humanitarian law and the international treaties regulations or banning conventional weapons, the combatants are prohibited to employ the weapons, projectiles and causing to superfluous injury or unnecessary suffering. But, the combatants are still not refrained to the use of these weapons in order to deterrence the enemy and self-defence.

In the International Humanitarian Law (IHL), the two basic premises of International Humanitarian Law that can be specifically applied to landmines are:

- Parties to a conflict must always distinguish between civilians and combatants. Civilians may not be directly attacked and indiscriminate attacks and the use of indiscriminate weapons are prohibited.
- It is prohibited to use weapons that cause unnecessary suffering. Therefore, the use of weapons whose damaging effects are disproportionate to their military purpose is prohibited.⁹

Under Article 1 of the Convention the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1993, each State Party to this Convention undertakes never under any circumstance: to develop, produce, otherwise acquire, stockpile or retain chemical weapons, transfer, use, directly or indirectly, chemical weapons to anyone or to engage in any military preparations to use chemical weapons and to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.¹⁰

In line with Article 1 (2) of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972, each State Party to this Convention undertakes never in any circumstances

⁶ Protocol on Prohibition or Restrictions on the Use of Mines, Booby Traps and Other devices as amended on 3 May 1996, (Protocol II to the 1980 Convention on the Certain Conventional Weapons).

⁷ United Nations Mine Action Service (UNMAS), Landmines, Explosive Remnants of War IED Safety Handbook, UNMAS New York, NY 10017 USA United Nations 2015 3rd Edit, P.18.

⁸ <http://www.isda-india.org/an-nov-1.html>.

⁹ Protocol I Additional to the Geneva Conventions of 12 August 1949 and and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977.

¹⁰ The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 13 January 1993.

to develop, produce, stockpile or otherwise acquire or retain: weapons equipment or means of delivery designed to use such agents or toxin for hostile purposes or in armed conflict.¹¹

According to Article 1 of the Mine Ban Treaty 1997, each State Party undertakes never under any circumstance such as using anti-personnel mines and to develop, produce, otherwise, acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines.¹²

In line with Article 4 of the Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices 1996 (Protocol II to the 1980 Convention on the Certain Conventional Weapons), it is prohibited to use anti-personnel mines which are not detectable.¹³

Under the treaties, the banning of landmines is similarly being carried out on the 1980 United Nations Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW) and the Ottawa Treaty or the Mine Ban Treaty 1997. The regulation of prohibition relating to the use of landmines is that the 1980 CCW was the first step. However, the 1980 CCW had not only inherent weakness within its structure but also the 1980 CCW had crippled the move towards to address the landmines issue. To overcome these shortcoming, Protocol II entitled “Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices was adopted in order to put forward certain significant provisions while it fails to address certain key issues. The second step was being conducted by the International Strategy Conference, “Toward a Ban on Anti-Personnel Mines” commonly known as the Ottawa Process.¹⁴

Ottawa Treaty or Mine Ban Treaty 1997 entered into force on 1st March 1999. The total numbers of members to this Convention are 164 member states. Among them, 132 States signed and ratified the treaty while 32 States accede to it but 33 States are not parties to the treaty. Moreover, the Mine Ban Treaty 1997 is also acceded by two States such as Sri Lanka on 13th December 2017 and Palestine on 29th December 2017. The treaty was the result of the leadership of the government of Canada working with the International Campaign to Ban Landmines¹⁵, launched in 1992. Moreover, the United Nations Mine Action Service (UNMAS) is the branch of the United Nations dedicated to addressing the problem of landmines and explosive hazards. Landmines are designed to maim rather than kill. Moreover, the original purpose of anti-personnel landmines was to protect anti-tank and anti-vehicle mines from being removed by enemy forces. Now, anti-personnel mines are generally used as a defensive weapon to protect borders, camps and other strategic locations and to restrict or channel the movement of enemy troops. Anti-personnel mines are invented in many forms depending the era.¹⁶

The original purpose of anti-personnel landmine was to protect anti-tank from being removed by enemy force. Today, anti-personnel mines are generally used as a defensive weapon to protect borders, camps and other strategic locations as well as to restrict or channel the movement of enemy troops. Later, landmines are invented in the various forms depend upon the condition of the age and technology. Among these mines, plastic mines are cheap and less detectable. Unfortunately, these mines are very attracted to children who are thinking they

¹¹ The Convention on the Prohibition of the Development, Production and Stockpile of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 10 April 1972.

¹² The Convention on the Prohibition of Use, Stockpile, Production and Transfer of Anti-Personnel Mines and on Their Destruction on 18 Sept, 1997.

¹³ Protocol II on Prohibition or Restriction on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention on Certain Conventional Weapons).

¹⁴ <http://www.isda-india.org/an-nov-1.html>.

¹⁵ The campaign and its leaders, Jody Williams, won the Nobel Peace Prize in 1997 for its efforts.

¹⁶ Landmine Monitor 2018, International Campaign to Ban Landmines, Monitoring and Research Committee, 20th Annual Edition, ICBL_CMC Governance Board, November 2018,P.12.

are toys. So, the countries had renounced landmines and have signed to the Mine Ban Treaty 1997. This treaty was the result of the leadership of the government of Canada working with the International Campaign to Ban Landmines (ICBL) and its leaders, Jody Williams, won the Nobel Peace Prize in 1997 for its efforts. Furthermore, the whole world accepted that Saturday, 4th April was International Day for Mine Awareness and Assistance in Mine Action.

Current Situation of Using Landmine

Landmine has been used by the Tatmadaw (government forced), and by various numerous non-state armed groups (NSAGs) affiliated with ethnic minorities. These two groups have used mines to advance their cause throughout the conflict. The heavily mine-affected is a result of conflicts between the Tatmadaw (government forced) and numerous non-state armed groups (NSAGs). The oldest mine accident was recorded in the Community Based Organization (CBO) Database dates back to 1950. In line with its database, Tatmadaw had used both homemade and factory-made mines prior to the mid-1990s. Similarly, numerous non-state armed groups (NSAGs) have also used landmines. Myanmar is one of the highest numbers of landmine casualties in the world.¹⁷

Using landmine may get the convenient protection for the country. According to Section 20 (b) of the Constitution of the Republic of the Union of the Myanmar, 2008 stated that the Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.¹⁸ Besides, the statement of President Thein Sein at the Association of South-East Asian nations (ASEAN), the purpose of using landmine is to protect the life and property of people and self-defence by the statement of President Thein Sein at the Association of South-East Asian Nations (ASEAN) Summit in November 2012.¹⁹

On the other hand, using landmine in Myanmar may also cause the worst injuring to the civilians. Therefore, some Regions and States have been contaminated the landmines which are prevented to the freedom of movement to the people in those areas. There have some impacts of anti- personnel mine at the 84 Townships (out of a total of 325) which 10 states and regions are suffering from the mine contamination. Karen (Kayin) state and Pegu (Bago) division are the largest mine contamination and the heaviest number of casualties. Furthermore, the new contamination area happened on border of Bangladesh in northern Rakhine state. Then, there has suspected hazardous areas (SHAa) on the Indian border in the Sagaing Region.

Nevertheless, landmine contamination is often caused as an obstacle to the homecoming of refugees and internally displaced person. Landmine contamination is also continued as a significant barrier to refugee returning as well as to livelihoods, economic development, land ownership, access to health and education services.²⁰

Overview to using landmine in Myanmar, it may get the effects for the protection of the country as well as the affect situations upon the community. However, it could not implement a clear instruction for mine action and established a center to coordinate it up to now.

¹⁷ APPEL DE GENEVA and LLAMAMIENTO DE GINEBRA, Humanitarian Impact of Landmines in Burma/Myanmar, report prepared by Geneva Call with Technical Assistance from DCA Mine Action, 2011, P.9.

¹⁸ The Constitution of the Republic Union of Myanmar 2008, printing and publishing enterprise, Ministry of Information, September 2008, P.6.

¹⁹ The New Light of Myanmar, Volume XX, Number 206, 13th Waning of Thadingyut 1372ME, Monday November, 2012.

²⁰ Landmine & Cluster Munition Monitor 2018: Myanmar/ Burma Country Report, International Campaign to Ban Landmines, December 2018, P.19.

Impact of Landmine Explosion

After many years of civil war, Myanmar is struggling with a significant landmine problem. The decades of conflict between the authorities and a number of ethnic minority groups had led to tremendous suffering and displaced tens of thousands of people. Anti-personnel landmines planted by both government forces and ethnic armed groups which injure and kill not only enemy combatants but also their own troops, civilians and animals. The International Campaign to Ban Landmine (ICBL) has strongly condemned the landmine's using in Myanmar that there is no justification for using such indiscriminate weapons which are harming and killing civilians fleeing their homes. Therefore, the innocent people are facing the worst suffering forms which the use of landmine is causing the most affected impact to the situations such as economical, social, political and educational.

Antipersonnel landmines cannot discriminate in choice of target and these weapons will kill or seriously injure an adult or a child, a soldier or a civilian. The most range of the mine injuries are the rural people. Villagers are foraging firewood and food, herding cattle or tilling their fields at risk particularly. Moreover, when the refugees and internally displaced persons come back their home, they are at a larger risk because they do not know the circumstance to their countries. In some countries, young and women who were actually born in refugees camps and have not been seen their own lands before. The total number of landmine's casualties is at least 430 which were reported by the NGOs, UN agencies, the ICRC and other organizations, as well as by state and independent media reports. The Department of Rehabilitation in the Ministry of Social Welfare, Relief, and Resettlement which also provided the numbers of casualties are increasing according to the yearly report. Therefore, there are some incidents of landmine in Myanmar as following.

In the incident, On 15 February 2018, Khun Aung (age 35) year had injured by the landmine with the emplacement of KIA armed group at the Hpakant township, Kachin state. Therefore, the use of landmine will continue impact with the highest reluctant to the livelihood of the people and most devastation to the security of the living standard.²¹

Moreover, an incident is caused relating to the explosion of an improvised explosive device (IED) in Lashio Town, Shan state on Wednesday 21 February 2018. This device set up by an organization between Yoma Bank and Ayeyarwady Bank at the Junction of Lanmataw Street and Shwebo Street, Ward (2). This explosion killed two innocent women bank staff members and wounding nine men and twelve women. This act of terrorism resulting in the death and injury of innocent people in the public place affected not only the national reconciliation and peace effort but also banks' owner economic as well as the economic development of country. Therefore, Aung San Su Kyi, Chairperson of National Reconciliation and Peace Center (NRPC) said that the protection to life and property of the people and the rule of law are needed to take action in line with national law.²²

Futhermore, these next generations' damaging may also affect to the human resources and the future of the country. In the incident, Mg Zaing Htain La San (age 16) as matriculation student had impacted due to Explosive Improvised Devices (IEDs) at Karmaing Township, Kachin Region on 25 February 2018.²³

Myanmar is one of the most heavily mine-affected countries in the world. Using landmine started after independence in 1948 between the Tatmadaw (government forces) and

²¹ Global New Light of Myanmar, Volume IV, Number 131, 10th Waxing of Taboung 1397 Me, on 18 Sunday February 2018.

²² Global New Light of Myanmar, Volume IV, Number 131, 10th Waxing of Taboung 1397 Me, 24 Saturday February 2018, P.3.

²³ Global New Light of Myanmar, Volume IV, Number 315, 12th Waxing of Taboung 1397 Me, 26 Monday February 2018, P.12.

non-state armed groups (NSAGs). As a consequence, Myanmar is significantly facing landmine issues after many years of internal war.

Protection against Landmine Explosion

In Myanmar, using landmine can be self-defense for the government forced and non-states armed groups but it can also injure to the civilians and both combatants. Therefore, there are many difficulties to the livelihood of the people. There are some related laws that are protecting related to using landmine in Myanmar.

According to Section 286 of the Penal Code, 1861 provided that whoever does with any explosive substance any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any problem danger to human life from that substance shall be punished with imprisonment of either description for a term which may extend to three year and shall also be liable to fine.²⁴

Under Section 5 of the Arm Act 1878, no person shall manufacture, convert or sell or keep, offer or expose for sale, any arms, ammunition or military stores, except under a licence and in the manner and to the extent permitted thereby. Whoever commits manufactures, converts or sells or keeps, offers or exposes for sale any arms, ammunition or military stores in contravention of the provision of section 5 shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.²⁵

In Section 3 of the Explosive Substance Act, 1908 stated that any person who unlawfully and maliciously causes by any explosive substance an explosive of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not be punished with transportation for life or any shorter term, to which fine may be added or with imprisonment for a term which by extend to ten years to which fine may be added.²⁶

Regarding to rehabilitation of the victims, the Section 32 (b) of the Constitution of the Republic of the Union of Myanmar 2008, the persons with disabilities are also protected the Union shall ensure disable ex-Defence Services personnel a decent living and free vocational training.²⁷

Myanmar had assisted to the persons with disabilities by entering to the Convention relating to the rights of person with disabilities in order to get the fundamental rights to those persons. She acceded to the Convention on the Rights of Persons with Disabilities on 7th December 2011 and entered into force on 6 January 2012. In addition, there have been passed the Law on the Rights of Persons with Disabilities in June 2015 and enacted to the by-laws in 2018. Now, the National Committee on Rights of Persons with Disabilities was formed on 14th September 2017. Nonetheless, the authorities permitted to the prosthetic clinics in victims before 2004. The most rehabilitation centers are opened at the major cities and the transportation fees are heavily for the persons living in rural areas and they have many difficulties to accept services. Therefore, the Myanmar Red Cross Society and the International Committee of the Red Cross (ICRC) supported three rehabilitations centers with managing by the Ministry of Health. The ICRC also assisted the treatment and travel costs for the most unable patients. In October 2016, there is a combination of the ICRC and the Ministry of

²⁴ The Penal Code, India Act XLV.1860, 1st May1861,P.100.

²⁵ The Burma Code, Volume II, Published under the Authority of the Government of the Union of Burma, 1 September, 1955,P.191-195.

²⁶ The Burma Code, Volume II, Published under the Authority of the Government of the Union of Burma, 1 September, 1955,P.199.

²⁷ The Constitution of the Republic Union of Myanmar 2008, printing and publishing enterprise, Ministry of Information, September 2008,P.9.

Health and Sports in order to open the Physical Rehabilitation Center in Kachin State. Many donors provided livelihoods interventions to assist mine/ERW-affected communities as well as mine/ERW victims with skills development training in business, agriculture-oriented support, and vocational training center for persons with disabilities.²⁸

Therefore, there are other local communities participating in the sector of landmine victim assistance, care and rehabilitation. Therefore, there are two mine action pillars in Myanmar, first is Mine Risk Education (MRE) and second is victim assistance. Many organizations such as INGOs, NGOs and International Organizations are supporting and assisting to the landmine victims in line with Article 6 (3) of the Mine Ban Treaty.

Conclusion

It may be said that landmines are effective weapons on war which has caused thousands of civilian casualties and untold suffering. The use of landmines is primarily restricted by the international humanitarian law and treaties regulations. Myanmar is facing the issues of using landmine. Myanmar has periodically expressly support for the Mine Ban Treaty 1997 but she cannot sign it, yet. Therefore, the related laws are protecting to the use of explosive weapons and provided the punishment. Particularly, Myanmar also needs to adopt a landmine's policy before the acceding to the Mine Ban Treaty 1997. This policy should draw with the essential elements for covering their implementation. Furthermore, strategic plans for implementing to the goal of policy are urgently needed to be formulated. With regard to landmine, Myanmar would consider accede to the Mine Ban Treaty 1997 after the implementation of the internal peace process between the government and all ethnic armed groups by signing to the National Ceasefire Agreement (NCA).

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