



# International Humanitarian Law Standards and Toxic Remnants of War

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# Plan

- Targeting
- Weapons
- Environmental protections
- Clean up obligations

# Some weapons instruments

- 1972 Biological Weapons Convention
- 1980 CCW, Protocol II on Mines
- 1993 Chemical Weapons Convention
- 1996 Amended Protocol II on Mines
- 1997 Ottawa Anti-Personnel Mines Convention
- 2003 ERW Protocol to the 1980 CCW
- 2008 Cluster Munitions Convention

# weapons

- Specific treaty ban
  - comprehensively prohibit a specific weapon;
  - cover both IAC and NIAC,;
  - includes transfer, stockpiling etc;
  - contains a definition;
  - compliance mechanisms ;
  - clean up or removal obligations

# Definition of cluster munitions for 2008 CMC

Article 2(2) “**Cluster munition**” means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:

- (a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
- (b) A munition or submunition designed to produce electrical or electronic effects;
- (c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:
  - (i) Each munition contains fewer than ten explosive submunitions;
  - (ii) Each explosive submunition weighs more than four kilograms;
  - (iii) Each explosive submunition is designed to detect and engage a single target object;
  - (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism;
  - (v) Each explosive submunition is equipped with an electronic self-deactivating feature;

## DU?

- No specific treaty ban at present
- Does not fit within 1993 Chemical Weapons Convention
  - ‘munitions and devices, **specifically designed** to cause death or other harm through the toxic properties of those toxic chemicals’

# Prohibition on weapons causing unnecessary suffering

- Art.35(2), API

- It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

- Suffering must be unnecessary but it is in comparison with the military utility of the function

# Prohibition on Indiscriminate Weaponry

- Art.51(4)

- 4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
  - (a) those which are not directed at a specific military objective;
  - (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
  - (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

- Cluster munitions as an analogy??

## For both IHL rules

- Is the rule sufficient to ban the weapon?
- Or is a specific treaty required?
- Possibly latter

# Are weapons prohibited due to their impacts on the environment?

- Art.36, API

- In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

- Plus distinction and proportionality

# Environmental IHL provisions

- Art.35(3), API

- It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

- Will DU fit within this prohibition? Or tungsten?

# Some contamination concerns for DU

- The migration of DO oxide particles outside the area of impact
- The penetration of the water table
- The contamination of soil
- Genetic and terotogenic effects in species (including humans) affecting future generations that migrate out of the impact area
- Note: UNEP Bosnia and Kosovo studies

# Broader Environmental obligations

- Art.55(1), API
  - Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage
- Customary Study
  - Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment...
- Might these be useful?

# Post Conflict Clean Up

- Obligations already for cluster munitions and landmines
  - 2008 Cluster Munitions Convention
  - 2003 ERW Protocol to the 1980 CCW
  - Mines Protocols to CCW (II and Am.II)
- Existing remnants v. future ones
- Victim protection
- Int'l obligation of recording of location of use, type and volume

# Additional thoughts

- Would the notion of ‘toxic’ weapons be too narrow an approach?
- Careful orchestration of the precautionary principle could be useful
- Possible political pressure now for the start of a process – esp. on DU or utilising Scandinavian action on environmental protection