

# A legal definition and the regulation of toxic remnants of war



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Workshop: Exploring a legal framework for toxic  
remnants of war

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## War Remnants Museum (Ho Chi Minh City)

## Spraying Agent Orange in Vietnam



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# 1. Starting Point

- No specific regulation/definition
- Part of the overall issue of environmental protection before, during and after armed conflict
- Parallel application of IHL, IEL, NEL, HRL...
- Legal argumentation at general and at specific ground
- Relevance of soft and of customary law (e.g. Stockholm Principles and the due regards rule)



## 2. Definition

- Basis: broad working definition - any toxic substance used in or resulting from military activities that forms a hazard to the environment
- During and outside conflict (international/internal) “whether lawful or unlawful”
- Any military operation/activity (ICRC)
- Deliberate, incidental and negligent environmental harm (Falk)
- Illustration by non-exhaustive list of substances
- IMAS definitions/guidelines



# 3. Precaution – Review – Information

- Precautionary Principle (IHL + IEL): impetus for approaching, defining and regulating TRW issue
- Review procedure under ext. 36 AP I as expression and ongoing obligation – choices for the military
- Linked: proposal of a global information registry about weapon toxicity (Wexler)
- Anyway: a TRW database



## 4. National environmental Law

- Great relevance – many examples – readiness of states to deal with TRW
- Afghan (2007) and Iraqi (2009) laws – but realities
- Applicability on military bases overseas: „quasi-territories“ – „jurisdiction and control“ – base agreements
- US laws and policies
- The case of Salto di Quirra: Law no. 152 "*Norme in materia ambientale*„



# 5. Old armament waste

- Special case(s) – dimensions – regulations
- Ex.: CWC Regime for old chemical weapons – treat as toxic waste according to national legislation
- German draft legislation: full responsibility of the Federal Republic (about 40 Mio € annually)
- Extension from WW II damages into remnants of preparing for war





## 6. A declaration on TRW

- Rendering a political, conceptual signal and frame
- Underlying the overall importance of the topic (for stability; future generations ...)
- Role of information and education
- Call upon states, organisations, civil society to meet the challenge and strive for solutions (i.a. through domestic legislation)



# 7. Regulation approaches

- Making utmost reference to existing law, including certain standards (like WHO on drinking water quality) or implementation procedures (like in the field of HRL)
- Stockpile, compare, model (?) national legislation regarding TRW
- Initiate and outline new law, a „new mechanism“ on TRW
- Establishing some responsibility of user states alongside main responsibility of territorial States
- Employing flexible regulation techniques (like qualifying phrases; combination of binding and non-binding parts)



## 8. A draft protocol/instrument

- TRW resulting from conflicts or other military activity
- Clearance and decontamination
- User obligations as to transparency and assistance
- Cooperation and help for victims
- Assistance with regard to existing TRW (“prior entry into force...”)
- Non-binding part ( prevention, best practice, list of substances...)



## 9. Organization and process

- TRW website, publications...
- Small informal working panel of interested lawyers
- Continued exchange with governments and civil society as with „non-legal“ experts
- Exploring CCW potentials being aware of the consensus dilemma
- A new (draft) protocol vs. binding declarations or other instruments

