



ICBUW Legal Briefing

Legal Update on DU Weapons – From Precaution to a Ban

1. Arms control law

There is still no explicit rule, or treaty, outlawing DU weapons as is the case, for example, with biological and chemical weapons. Furthermore, DU weapons cannot be (easily) subsumed under respective treaties, including the 1925 Geneva Gas Protocol or the Certain Conventional Weapons Convention's (CCW) legal regime (protocols).

2. International Humanitarian Law (IHL)

Nevertheless, IHL fully applies to the use of DU weapons and their effects. In such a vein, GA Res. 62/30 is guided by “the rules of humanitarian international law” and taking into consideration “the potential harmful effects of the use of armaments and ammunitions containing depleted uranium on human health and the environment”.

3. Main legal arguments

Under existing IHL, these can be derived from:

- a) The prohibition of indiscriminate attacks (i.a. of “those which employ a method or means of combat the effects of which cannot be limited as required”, Art. 51 (4) c, Add. Protocol I to the Geneva Conventions)*
- b) The prohibition to cause superfluous injury or unnecessary suffering*
- c) The principle of precaution*
- d) The principle of proportionality.*

4. Customary IHL

The International Committee of the Red Cross (ICRC) identified as one of the rules (no. 44):

“Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions”.

5. Resolutions

Although non-binding; resolutions adopted by intergovernmental bodies may hint at the convictions of States and contribute to (customary) law developments. Thus, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, in two resolutions (1996/16 and 1997/36), concluded that weapons containing depleted uranium may be classed as weapons “with indiscriminate effects”, being concerned about “repeated reports of the long-term consequences of the use of such weapons upon human life and health and upon the environment”.

In an overall assessment, the European Parliament, in a resolution adopted in May 2008, states that: “the use of depleted uranium in warfare runs counter to the basic rules and principles enshrined in written and customary international, humanitarian and environmental law”.

6. Domestic developments

Often overlooked, domestic laws are of decisive impact on developing and shaping international law. There is a wide range of up-dating possible: from the Belgian anti-DU legislation, through various compensation cases (as in Italy) to military manuals and regulations, like US Army Regulation 700-48 “Management of Equipment contaminated with depleted Uranium”.

7. The Process

Based on risks associated with the use of DU weapons, as well as on precautionary obligations, States should refrain from using uranium weapons. During a “moratorium phase” more scientific studies and a treaty process should be launched, leading to a ban on DU weapons. A Draft Convention text can be found at <http://www.bandepleteduranium.org/en/i/13.html>

8. The CM example, or the next logical step

The DU Draft and the Convention on Cluster Munitions (CM) reveal the same basic structure, which is:

- *Definitions*
- *Prohibition of use, production, stockpiling*
- *Destruction and clearance*
- *Victim assistance*
- *International cooperation.*

Arriving at a ban or arms control treaty, would finally mean to clarify all legal and factual uncertainties and – as the next logical step after CMs – to get rid of a most inhumane weapon.