

The Restrictions on the Use of Weapons under International Law: The Case of Depleted Uranium

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Abstract: Depleted uranium weapon is relatively one of the modern weapons. It has been associated with the appearance of nuclear weapon due to its waste of the nuclear fuel. In addition, nuclear weapon is considered as being a new weapon as well as depleted uranium. The current study focuses on the extent of applicability of the restrictions concerning the use of weapons, specifically the depleted uranium weapon in which it should be banned. Currently, there is no international convention banning the use of depleted uranium weapon in spite of its serious impacts upon human life, the environment and successive generations. This poses a noticeable controversy over the subordination of restrictions with respect to the use of weapons under international law. Hence, this study has a significant implication for the international community to undertake actions regarding the use of depleted uranium weapon in wars to provide legal protection for humans and the environment as well as to keep international peace and security. A conclusion and a contribution of scholars in the field of law concerning this particular issue are presented accordingly.

Key words: International law, weapon, depleted uranium, convention, implication

INTRODUCTION

During war, peace and neutrality, public international law includes the legal rules that define the rights of nations and other international bodies. These rules also determine the duties of nations and organize their mutual relations (Majzoub, 1999).

A weapon can be defined as “a tool to cause harm of a particular goal and according to the material used to cause harm, weapons are classified”. In this study, the focus will be on depleted uranium weapons. First, let us define depleted uranium. Depleted uranium is a secondary product of uranium in which it enriches in nuclear reactors (White, 2008). As for the depleted uranium weapons, they were used by the United States and Britain for the first time in military operations during the second Gulf War against Iraq in 1991. Furthermore, NATO used these weapons during the war against Afghanistan in 2001. It is important to note that their use was repeated by the United States against Iraq during the third Gulf War in 2003 (Muhammad, 2011).

Depleted uranium has a critical impact that affects human life, the environment and successive generations (Nekheab, 2006). In spite of its critical consequences,

there is no international convention preventing the use of the weapon. Moreover, the International law tackles many rules that govern the limitation of the methods and means of warfare. It is necessary to indicate that these rules play a great role since their purposes are mainly to protect humans via prohibiting the use of the methods and means in which they have implications. Additionally, they are inconsistent with the principles of humanity. In other words, the aims of these rules are preventive in a way that protects humans' rights and averts the risk from military actions that cannot be avoided. Based on the fact that “military necessity outweighs the laws of war”, the international law identifies the right of the absolute state in the war (Anbeki, 2012).

Developing methods of war requires the need to restrict the right of combatants to adopt methods to harm the opponent. This is due to alleviate the suffering of civilians and military persons as well as their pain resulting from armed conflicts. In spite of the circumstances authorized in the United Nations Charter, the provisions of international law are designed to attain consistency among the states' behaviour. This can be done through the principle of the prohibition of the use of force and the rationalization of its use.

With respect to the right to the use of weapons by the warring parties under international humanitarian law, the restrictions include the following issues. First, there are issues related to weapons that have indiscriminate effects. Second, issues have to do with weapons that cause excessive pain or unnecessary suffering and finally issues concerned with weapons that cause damage to the environment (Abdullah, 2011). The next sections demonstrate the aforementioned issues.

Weapons that have indiscriminate effects: Weapons of indiscriminate effect can be defined as weapons with a critical effect. This effect is not only limited to military targets but also involves the civilians as well as civilian targets. It has been noted that the text of Article 48 of the first additional Protocol to the Geneva Conventions 1977 provides the principle of distinction between the civilian population and the military. It also encompasses respect for the civilian population. This is the evidence that the civilian population should be protected from military operations. Additionally, precautionary steps should also be taken into consideration in order to get rid of any harm or damage during armed attacks (Abdullah, 2011). Thus, the ban of indiscriminate effects weapons is resulted from the fact that these weapons cannot differentiate between combatants and civilians. The purpose of war is to weaken the military force of the enemy as well (Amir, 1995).

Since, it restricts the effect of the armed conflict on humanitarian grounds, the basis of distinction between combatants and civilians is considered essential. Moreover, to weaken the military power is the only legitimate aim in which states should endeavor to be accomplished during war. Given such basis, it was accepted for the first time in the introduction of the St. Petersburg Declaration in 1868. The Hague Regulations in 1907 also offered the same basis (Amir, 1995).

Substantial hardships are experienced by those who would practice the principle of distinction between combatants and civilians in spite of Article's 48 conformation of the first additional Protocol concerning the Geneva Conventions 1977. This action is affirmed with regard to the importance of ensuring respect for civilian objects and the civilian population as well. It is also affirmed to protect them from the impacts of the fight. Additionally, this is why these hardships are resulted in the uncertainty principle, especially after people have become part of the modern conflicts. It is important to note that such factors that involve the growing number of combatants, the increase in armed conflict, the development of methods of war and its arts and the utility of economic war are reasons stand behind these hardships.

Weapons that cause excessive pain or unnecessary suffering: The basis of the prevention of unjustified pain is regarded one of the most effective restrictions concerning the right of the disputing parties to select the means and methods of fighting. This basis stands for the commitment of the warring parties when utilizing such means and methods of warfare. The aim of the previous action is to take the precautions needed and utmost care in order to protect the civilian objects and civilian population from the dangerous impacts of these methods and means (Abid and Jaithom, 2012).

Furthermore, the legal principle for the prevention of the use of means and methods of warfare that begets unnecessary pain exists in several legal documents beginning from the announcement of St. Petersburg in 1868 and the Hague Regulations 1899 Article 23/E, that is the first additional Protocol 1977 Article 35/paragraph 2. There are also several resolutions of the United Nations General Assembly. For instance, these resolutions involve resolution No. 47/56 on 09/12/1992, resolution No. 49/79 on 11/01/1995, resolution No. 50/74 in 10/01/1995 and resolution No. 54/58 at 31/12/1995 (Henckaerts *et al.*, 2005).

On the other hand, the "excessive" means are more than what is required or even not required, when there is no need for "unnecessary" means. It has been noted that Article 35/2 of the first additional Protocol in 1977 indicated the idea of excessive pain or unnecessary suffering. To be specific, that expression has to do with any infringement of physical or mental integrity, or the infringement of the people lives who are prone to illegal violence in accordance with the customary international law in respect of war. Furthermore, the military advantage resulting from an attack represents the legal standard of excessive or unnecessary pain according to the humanitarian considerations on the one side and the military necessity on the other (Abdullah, 2011).

Consequently, such pain which has no military goal is considered a violation of the banned arms rule that begets unnecessary pain. For that reason, it is required to find a balance between military need and the expected pain (Mirofitz, 2000).

To get a close idea of unnecessary suffering, the date of the first obvious statement of unnecessary suffering went back to the year 1874 in the Brussels Conference. It should be noted that the only legitimate purpose of states during war is not to strengthen the enemy without causing unnecessary suffering (Amir, 2000). In addition, the reality forces some purposes concerning the difficulties to apply the basis of the prevention of unnecessary pain. This pain is probably determined through the distinction between the expected amount of

excessiveness and that amount which exceeds this amount "limit". As a result, it is able to become unjustified as "redundant".

However, the other difficulty is that pain. Despite the fact that it may be minimal, it can be regarded as unnecessary from the viewpoint in which it includes suffering. Thus, it is crucial to take the principle of balance into consideration between the nature and the magnitude of the pain suffered by the injured party and the military necessity imposition. In addition, political considerations and interests should be considered (Mheibes, 2010).

Additionally, military necessity can be defined as the essential and permissible military measures under the laws of war to attain a very legitimate war purpose. It is crucial to indicate that the recourse to military necessity is not absolute. It is further certain conditions that should exist to encourage the concept of military necessity. The military necessity includes the following points: First, it should be prescribed by law. Second, the recourse to military necessity should attain a legitimate military objective. Third, humanitarian considerations should be reckoned.

Weapons that cause damage to the environment:

Differences exist between the first additional Protocol in 1977 and the Convention concerning the prevention of the use of modification techniques in the environment for military objectives or any other hostile purposes in 1976. These differences are as follows.

First, in regard to the objective, the Protocol I prevents the recourse to the use of means of warfare that hampers the natural balance of the environment. In doing so, the environment (as a victim) is protected. The convention of modification techniques however prevents the deliberate intervention in natural processes. Thus, this convention offers the protection for the environment from manipulation (here the environment is seen as a tool of weapon).

Second, in terms of the scope of application, the scope of application of the convention regarding the prevention of using the environmental modification techniques is applied in the periods of peace or war, whereas at the time of war, Protocol I is only applied.

Third, with respect to specifications of environmental damage, the environment from intentional damage is only protected by the convention of the prevention of the use of techniques. However, it is protected from both intentional and unintentional damage by the Protocol. In addition, specifications of the environmental damage in the Protocol prescribe as cumulative. The convention concerning the Prohibition is not however cumulative. It is sufficient to attain one specification.

It is important to note that the first article of the convention regarding the prevention of using the

environmental modification techniques for military objectives or any other hostile purposes 1976 (Article I, 1st paragraph of the convention mentioned above) stipulates the following items.

First, each state party in connection with this convention should not use modification techniques in the environment which has substantial impacts, a long-environment stay or an extensive act for military objectives or for any other hostile objectives as a means of destruction, damage or causing damage to any other State Party. It has offered protection for the environment from any technique in order to make changes. These changes caused substantial, long-term or severe impacts in other countries not needed to be part of the conflict. Additionally, this convention did not require the collection of the terms of the damage so as to ban the weapon that caused the damage and what existed in the additional Protocol I. However, that convention did suffice insofar as the damage is widespread, long-term or severe.

As for the Article (35/3) of Protocol 1, it stipulated that it is "prohibited to employ methods or means of warfare which are intended or may be expected to cause severe damage to the natural environment and widespread, long-term". On the other hand, Article (55/1) stipulated that it is "sensitive in warfare to protect the natural environment and severe damage is widespread and long-lasting. This protection includes a prohibition of the use of methods or means of warfare which are intended or expected to cause such damage to the natural environment and thereby to prejudice health or survival of the population".

Given the provisions of the texts of both articles 35/3 and 55/1 of the first additional Protocol 1977, they are the most important agreed provisions that directly and frankly protect the environment during armed conflicts. Furthermore, they extend the scope of protection against the methods and means of warfare whether it has been used intentionally or unintentionally. Neither article allows the lifting of the legal protection to the natural environment, even in the case of imperative military necessity.

As a result, the convention on the prevention of the use of modification techniques applies in the periods of peace as well as armed conflict (war). It is crucial to indicate that it is applied to the parties of the convention. It does not oblige others as well. In addition, its rules are not exposed to the objection of a state which is not a party to this convention.

THE CASE OF DEPLETED URANIUM

Concerning the use of weapons, if the restrictions mentioned earlier are applied to depleted uranium weapons, one should highlight the following items:

Firstly, the use of depleted uranium weapon is regarded as a violation of the first constraint included in the contents of Article 51 of the first additional Protocol, specifically paragraphs 4/c and 5/b as depleted uranium shells can be specifically directed to a definite military target as well as their unlimited impacts. It should be noted that Article 51 (4/c) of the Protocol 1 of 1977 stipulated that indiscriminate attacks are prohibited; it is considered indiscriminate attacks. However, those that employ a method or means of combat that cannot have limited effects are required by this supplement "Protocol". Therefore, this act will infect, in each such case, the military purposes and civilians or it will affect civilian objects without distinction".

Moreover, Article 51 (5/B) of the Protocol 1 of 1977 stipulated that "The following attacks species, among other attacks as indiscriminate: attack which may be expected to cause incidental loss of civilian life, injury to them or damage to civilian objects or a combination thereof, damage, excessive in relation to what is expected to be result in the concrete and direct military advantage".

Secondly, because of the lack of a special convention that prevents the use of depleted uranium weapon, this weapon is instantly exposed to the ban given in Articles 23/E of the Hague Regulations and 35/2 of the first additional Protocol. Therefore, the (Article (23/E) of the Hague Regulations of 1907 stipulated that "In addition to the prohibitions set forth in the special agreements prevent particular: the use of weapons and missiles and resources that would cause superfluous injury and unnecessary suffering". On the other hand, the Article (35/2) of Protocol 1 stipulated that states should "ban the use of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering".

Thirdly, both of the articles 35/3 and 55/1 of the first additional Protocol of 1977 constitute the basis for the third applicable constraint concerning the use of weapons. Thus, both articles can be applied to the use of depleted uranium weapon since this weapon begets an imbalance in the natural environment. It is also a radiological weapon. Consequently, the terms of the ban needed by both of the studies are available and can be found as well.

Furthermore, the prevention administered in the convention regarding the prevention of the use of environmental modification techniques 1976 can be also applied to the case of depleted uranium weapon with respect to the presentation of the convention as well as the texts of the first article/first paragraph of the convention. This act is due to the environmental, radiological damage in which it involves trans-boundary toxicity caused by the weapon of the depleted uranium.

Given the legal evidence, the conclusions presented by the legal expert, Parker to the UN High Commissioner for Human Rights concerning many occasions show the rightful proof. For example, Parker contended that four standards derived from international humanitarian law regarding weapons as well as war do exist. These four standards can be summed up into the following items:

First, it includes the regional standard. This means that the weapons should be legally and only used in the region known as the battlefield that can be defined as the enemy targets in the war; in other words, "weapons should not have adverse impacts beyond the legal ground of the war".

As for the second item, it involves the time standard. This means that the weapons should be used within the time of armed conflict. Otherwise, if these weapons have been used or their effect has lasted for longer after the war, in this case it is regarded as a violation of this standard.

Third, the human standard shows that these weapons have not to be excessively inhumane. Fourth, it encompasses the environmental standard. This remarkably shows that these weapons have not excessively had a passive impact on the surrounding natural conditions.

Parker argued that depleted uranium does not succeed in all the aforementioned criteria as its use features beyond the battlefield to get its effect to the areas that are larger than the combat zone areas. Therefore, this fails in the regional standard. Its impact also lasts much longer than the duration of the war. Once again, this does not succeed in the time standard. The critical impacts of depleted uranium on humans, especially civilians, cause failure in the humanitarian standard. Finally, due to the excessive damage that is caused to the environment and the ocean, the environmental standard also witnessed a remarkable failure.

CONCLUSION

Summarily, although depleted uranium regarded as a new type of weapons and in spite of the lack of an explicit international convention that bans its use, the use of this weapon is subject to the restrictions contained in the use of weapons under international law and constitutes a violation of these restrictions. Therefore, this weapon should be banned under particular convention with respect to humanitarian considerations as well as maintaining the international peace and security.

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