

INTERNATIONAL LEGAL REGIME APPLICABLE TO CERTAIN CATEGORIES OF WEAPONS

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Abstract

The international community governed by treaties some issues relating to certain categories of weapons, targeting especially weapons of mass destruction, which due to their potential are a real threat to humanity. Interdicting the use of this category of weapons is imposed by international law in certain situations because its use would result in the disappearance of subjects of international law.

Key words: *Weapons of Mass Destruction, International Law, Treaty, Legal Status, Interdiction*

In order to understand how does the human rights protection effectively take place in the event of armed conflict we must start from two concepts, namely “humanitarian law” and “armed conflict”.

International humanitarian law of armed conflict can be defined as the set of rules of international law, stemming from customary or conventional specifically designed to regulate matters arising in situations of international armed conflict¹.

This right has two main sectors and namely: Law of War which stipulates the rights and obligations of belligerent states; Humanitarian law which aims to save military and civilians that are out of the battle.

In addition to these sectors, there were two new dimensions, showing relevance for us human dimension.

This is represented firstly by protecting the human rights of victims of war, and broader human rights protection of the civilian population in armed conflicts, and later to include their protection in peacetime².

The armed conflict implies the existence of a dispute that is settled by force of arms. In the event of an armed conflict there are present at least two military forces belonging to different states.

With the adoption of UNO Charter in 1945, prohibiting the use of force or threat of force has become a rule of “ius cogens gentium”. Thus Charter O.N.U in art. 2 pt. 4 states that “All members shall refrain in their international relations from the threat to use force or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. On the basis of this clause have been created a number of institutions, which were aimed at maintaining world peace, war criminalization of aggression and aggressor states impose liability for damages.

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¹ Ionel Cloșcă, Ion Suceavă, *Drept internațional umanitar*, București, Editura Şansa SRL, 1992, p. 11.

² *Ibidem*, p. 12.

Prohibitions on use of certain means and methods of warfare

These prohibitions are closely related to the protection of civilian and military persons in time of war. The Hague Regulation of 1907 prohibited the following methods of combat: use of poison or poisoned weapons; killing or wounding treacherously of individuals belonging to the nation or enemy army; killing or wounding an enemy, who surrendered weapons or submitting, no longer having means of defense; statement that no one will be spared; irregular or misuse of a truce flag, national flag or of the military insignia and uniform of the enemy, as distinctive emblems of the Geneva Conventions; constraint of the enemy part citizens to participate in operations of war directed against their state.

Geneva Protocol I of 1977, taking into account environmental protection by prohibiting the use of methods or means of warfare intended to cause harm to the widespread, long-term or serious damage to the environment.

Regulation laws and customs of war on land, which was attached to the Ninth Conference of the 1907 Hague in art. 23 prohibits attacking or by any means bombard cities, villages, dwellings or buildings which are not defended. So under international law warring parties have an obligation not to attack such places. For a city to be declared desperately need to meet certain conditions, namely: fixed military installations are not to be used; to evacuate all combatants and mobile military equipment; not be committed acts of hostility from the authorities or the population; not be undertaken activities to support military operations.

Protocol I, art. 56 shows that the following goods may be subject to attacks: cultural goods, consisting of historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; goods necessary for the survival of the civilian population, such as foodstuffs, agricultural areas, crops, livestock, equipment and means of water supply, irrigation works, etc.; works or installations that are sources of danger such as dams, dams, nuclear power plants, etc.

Also, The Geneva Protocol I of 1977 imposes on the armies behalf certain measures, which include: verification objectives to be attacked (whether they are civilian or military); the means and methods of attack in such a way as to produce as little damage to human and civilian; refrain in triggering an attack would cause human and material damage on the civilian population.

Most international treaties relating to rules of warfare are provided as special clause prohibiting attacking military targets not. It thus makes a distinction between military objectives and civilian objects.

Military objectives are limited to objects which by their nature, location, purpose or use, make an effective contribution to military action and whose destruction, capture or neutralization in critical circumstances at the time, offers a certain military advantage¹.

Since the first international regulations on laws and customs of armed conflicts were established a set of rules and principles for waging war. This was prohibited use of Weapons of nature to cause superfluous or unnecessary suffering harm. This includes: nuclear weapons, bacteriological or biological weapons, chemical weapons, incendiary weapons, other types of weapons.

¹ Geneva Protocol I from 1977, art. 52, para. 2.

Over time, there were promulgated a series of international acts, which sought to limit the human and material losses produced civilian population.

The Petersburg Declaration of 1868 prohibits the use of weapons that cause unnecessary suffering worsening men knocked out or that would make their death inevitable. Rules endorsed by the Fourth Convention of The Hague of 1907 prohibits the use of certain categories of weapons that cause unnecessary suffering. Geneva Protocol I of 1977 once again reaffirms ban.

A. Nuclear weapons

The use of atomic weapons was prohibited by Resolution 1653 of the UN General Assembly 1961 whereas their use is non-discriminatory affecting both combatants and civilians, and especially the effects of radiation are not controllable and affecting the territory over a long period of time.

Conventional international law contains various limitations on nuclear weapons, such as possession, testing, deployment, use or threat of use. There are a number of general principles of customary nature that could be considered as well with reference to the legality of these weapons of mass destruction¹.

The use of such weapons is not a war against an enemy but against humanity.

Certain nuclear States made specific statements during the negotiations of the 1977 Protocol I emphasizing that this legal instrument should not impair their right of ‘sovereignty’ with regard to nuclear weapons. Protocol I of 1977 has not explicitly prohibited the use of nuclear weapons. But given the fact that these weapons are by nature indiscriminate and it is not possible to ensure the protection of the civilian population in an attached territory, nuclear weapons are indirectly prohibited by the Protocol's provisions on indiscriminate or area attacks.² The effects or radiation, nuclear weapons fall into the category of poisonous weapons as absorbing radioactive materials can be treated with absorbing material poisoned, thus breaching the Hague Rules. Also, the use of nuclear weapons leads to the existence of the crime of genocide as destroying large groups of nations.

B. Bacteriological weapons

They are also called biological weapons and consist in the use of living organisms or their derivatives toxic to trigger the creation of a dead human or inability or injury. Their action can be extended to animals and crops. They are considered weapons of mass destruction as if it would be used against cities would cause loss of human lives, without any discrimination.

Convention of 11 April 1972 prohibits the production and storage of bacteriological weapons constitute the first international document that provides for the elimination of arsenals Member of an entire category of weapons³.

¹ Anguel Anastassov, *Are Nuclear Weapons Illegal? The Role of Public International Law and the International Court of Justice*, in “Journal of Conflict & Security Law”, Oxford University Press 2010, Vol. 15, No. 1, p. 66.

² Ingrid Detter, *The Law of War*, Cambridge, Cambridge University Press, 2007, p. 240.

³ Ionel Cloșcă, Ion Suceavă, *op. cit.*, p. 115.

C. Chemical weapons

Define the means of fighting based chemicals used in armed conflicts, producing direct toxic effects on humans, animals and plants¹. They all fall into the category of weapons of mass destruction.

For the first time the Declaration of the Hague Peace Conference of 1889 banned the use of asphyxiating gases harmful.

Modern international law prohibits combatants from deploying any means that exceed what is necessary for the achievement of their legitimate military objectives². On 17 June 1925 adopted the Geneva Protocol on the prohibition of the use in war of asphyxiating gases, toxic bacteriological or similar means.

Since 1971, the Chemical Weapons has been the subject of a separate item on the agenda of the UN General Assembly debates that have taken place so far have revealed the existence of extremely complex issues such as the scope of the prohibition (partial or total), activities and agents to be prohibited, means of verification and control of compliance with an agreement. Some of the difficulties have been overcome so that the development of an international convention is currently under negotiation³.

D. Incendiary weapons

Protocol III on incendiary weapons ban or limit defines them as “any weapon or ammunition specially designed to set fire burns objects or persons through the action of flame, heat or a combination of fire and heat, releasing a chemical reaction of -a substance dropped on target”. Initially, incendiary weapons were conventional weapons, but by improving their success, they become weapons of mass destruction because of the effects they produce. Geneva Protocol I of 1977 in art. 2, paragraph 1 prohibits any attack with incendiary weapons against civilians. It is forbidden to use incendiary weapons on forests and plantations except where they are used for concealing military objectives. Although this was partly prohibited incendiary weapons, taking into account their non-discriminatory character to be established a general ban on these weapons.

Other types of weapons. This includes: battle lasers; radiologic weapons; means and methods of electronic warfare; ultrasounds devices; devices with bright lightning. These types of unconventional weapons have no international regulation because they have not been officially used in armed conflict, they also are called weapons specialists of the future.

In the new political and technological environment, the traditional arms control approach no longer monopolizes the international legal strategy against weapons of mass destruction⁴.

¹ *Ibidem*, p. 110.

² Thomas Franck, *On Proportionality of Countermeasures in International Law*, in “The American Journal of International Law”, Vol. 102, No. 4, 2008, p. 727.

³ Ionel Cloșcă, Ion Suceavă, *op. cit.*, p. 114.

⁴ David Fidler, *Weapons of Mass Destruction and International Law*, in ASIL Insights, vol. 8, no. 3, 2003, in <http://www.asil.org/insights/volume/8/issue/3/weapons-mass-destruction-and-international-law>

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Geneva Protocol I from 1977, art. 52, para. 2.