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The usage of Depleted Uranium Weapon in the International Law

استخدام سلاح اليورانيوم المنضب في القانون الدولي

Keywords: International Law, Weapon, Depleted Uranium.

الكلمة المفتاحية : القانون الدولي ، سلاح ، اليورانيوم المنضب.

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Abstract

There is no international convention that explicitly bans the use of depleted uranium weapon in spite of its characteristics of causing mass destruction. Therefore, the legality of the use of this weapon should be clarified in the light of the rules of international law. If the weapon is proved to be illegal, the traditional charges of international criminal responsibility should be brought against the users. This will then lead to the discontinuance of such weapons. This study will be conducted through doctrinal approach; data will be collected through secondary sources by examining the contribution of scholars in the field of law. The current research will try to clarify the position of international law of the use of depleted uranium weapon. Hence, this research has considerable significance 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 maintain international peace and security.

1. *Introduction*

Public international law involves legal rules identifying the rights of nations and other international bodies. They identify nations and international bodies' duties in order to regulate their mutual relations during war and during peace and neutrality(1).

A weapon may be described as "a tool to cause harm of a particular goal, and weapons are classified according to the material used to cause harm"(2).

It is extremely important to note that depleted uranium is a secondary product of enriched uranium in nuclear reactors(3).

The features of depleted uranium can be described as follows: First, it is one of the heaviest metals in nature. Second, being described by high density, the warhead missiles are covered with this particular weapon (depleted uranium) in a way that enables it to penetrate armored tanks. Third, this weapon is characterized as being highly flammable. For example, the temperature produced from the explosion reaches 3,000 degrees Celsius. This explosion goes with high pressure that results in atomic dust (fallout) in which this fallout is described as high toxicity and radiation. Finally, the half-life of uranium 238 is the time in which the material radioactivity is reduced by half and stands at 4.5 billion years. Compared to plutonium, it causes death in microscopic quantities and has a half-life of 24 thousand years. This deeply shows the danger of depleted uranium(4).

During the Gulf War II against Iraq in 1991, weapons of depleted uranium were used by the United States and UK in military operations for the first time. These particular weapons were also used by NATO in 2001 during the war against Afghanistan. Once again, this type of weapons was used by the United States against Iraq in 2003 during the Gulf War III(5).

In Iraq, 320 tons of uranium was used during the Gulf War II(6). On the other hand, other sources estimated an amount of 300 to 700 tons of uranium to be used in the war(7). Depleted uranium has a severe effect upon the environment, human life, and successive generations(8).

Despite of the serious consequences of depleted uranium , there is currently no international convention that bans the use of this weapon.

This paper will concentrate on the position of international law towards the issue of using the depleted uranium weapon under the international conventions, general principles of law and international custom.

1.1 Depleted Uranium Weapon in the Light of the International Conventions

A number of international treaties exist regarding the issue of arms. These treaties include:

A-The Prohibition of Nuclear Weapons Non-Proliferation Treaty 1968.

B-The Prohibition of Developing, Producing and Stockpiling the Biological and Toxin Weapons Treaty 1972.

C-The Treaty of the Prohibition of the Use of Environmental Modification Techniques for Military Purposes or for Any Other Hostile Purposes 1976.

D-The Convention on Prohibiting or Restricting the Use of Certain Conventional Weapons which May Be Deemed to be Excessively Harmful or Having Indiscriminate Effects 1980. This convention has five protocols:

-Protocol I concerning the fragments that cannot be detected 1980.

-Protocol II concerning prohibiting or restricting the use of mines, booby-traps and other devices 1980.

-Protocol III concerning prohibiting or restricting the use of incendiary weapons 1980.

- Protocol IV concerning the weapons of blinding laser 1995.

- Protocol V concerning the explosives left from the remnants of war 2003.

E-The treaty on the Prohibition of Developing, Producing and Stockpiling the Chemical Weapons and the Act on Destroying these Weapons 1993.

F-The Convention on the Prohibition of Using, Stockpiling, Producing and Transferring the Anti-Personnel Mines and the Act on Destroying those Mines 1996.

G-The Convention of Cluster Munitions 2009.

Based on the conventions mentioned above, it is important to indicate that there is lack of a particular convention to prohibit the weapons of depleted uranium. Thus, this does not imply the legitimate use of this particular weapon .

The dangerous waste can be defined as "the residue resulting from industry, mining and craft, and business operations and the waste coming from hospitals, homes and the radioactive wastes" [(9)]. The depleted uranium can be defined as: "a waste resulting from the conversion of natural uranium into plutonium and depleted uranium in the operation of atomic reactors (u234, u235) that results from the use of nuclear fuel"[(10)].

Depleted uranium is regarded as a serious waste that results from the process of producing nuclear energy. According to Basel Convention of 1989 related to the control of the transfer and disposal of risky waste across borders, the radioactive waste has not been regulated in spite of its seriousness. The above convention however indicated its own legal regulations[(11)].

The lack of a particular convention which bans depleted uranium weapon does not indicate that it is legitimate to use that particular weapon. The ban of weapons is not only addressed under international conventions. It however occurs under other international law sources that involve the general principles of the law, the international custom, the views of scholars, and the provisions of the judiciary. If there is a prohibition in international convention, this will force countries that have ratified the convention. Additionally, if the prohibition exists under the other aforementioned sources, this prohibition will force all countries to ratify the convention. Thus, the existence of international conventions can be applied to depleted uranium weapon on the basis of the aim provided as well as the effects caused by this particular weapon. It should be noted that this method is known as induction and syllogism.

The weapon of depleted uranium banned under the Convention concerning the Non-Proliferation of Nuclear Weapons of 1968. This ban should be applied because of the probability of conversion of the depleted uranium into nuclear bombs made from plutonium-239. Moreover, using the weapon of depleted uranium violates the Convention related to the Comprehensive Ban of Nuclear-Testing of 1996 since these particular weapons leave fallout (radioactive atomic dust)which badly affects the environment in which the aims of the above convention are to protect it.

The ban of the production, development, and stockpiling of toxins stipulated in the1stparagraph of the 1starticle of the Convention concerning the Prohibition of the Development, Production and Stockpiling of Bacteriological "Biological" and Toxin Weapons in 1972 applies to depleted uranium weapon since "toxins" means poisons. Poisons are kinds of biological materials. In a reference to the report of the Environmental Policy Institute of the US Army, this report was introduced to Congress in 1995 and confirmed the toxic, chemical and radioactive qualities of depleted uranium[(12)].

The depleted uranium weapon is subject to the ban stipulated in paragraph 1/a of Article 2 of the Convention 1993 concerning the prohibition of all kinds of chemical weapons and their development, production, storing or transporting,[(13)]*. due to their toxic substances*[(14)].

In the UK, Robert Crane was a commander in the British Navy. He commented on the consultant view of the International Court of Justice regarding the legal use of nuclear weapons in 1996 and the emphasis of the Court on the fact that the effects of nuclear weapons considered more serious than the banned chemical weapons. In view of its advisory point of view concerning the legitimacy of nuclear weapons, the International Court in 1996 has measured the use of nuclear weapons "due to a lack in a treaty that entirely bans its use" rather considering the biological and chemical weapons banned under particular respective treaties[(15)].

1.2 Depleted Uranium Weapon in the Light of International Custom
The international custom can be defined as a custom in which the topics of international law have exercised in their behavior and international relations, whether this custom is described as a positive behavior or it is simply to refrain from an action because of their belief in a way that has binding status with respect to an international legal basis(16).

International custom is considered as a one of the most important sources of public international law with profound materials since most of the rules mentioned in the international treaties are often a formulation or an expression of what can be stabled by the custom before its conclusion. Furthermore, the rules of the international custom are composed of an obligation for all countries. This does not go in line with treaties to which just signatory parties are obliged(17).

In the absence of a convention governing the use of the depleted uranium weapon, this weapon should be dealt with in the light of international custom due to its great importance, especially with the presence of international humanitarian law which represents an integrated legal basis that determines the conditions and constraints of the use of weapons. It should be noted that any breach of these terms and constraints is a violation of the international custom to which all states are obliged(18). It is important to note that international humanitarian law and the international law of human rights are considered parts of the international customary law(19).

The sub-commission related to the prohibition of discrimination and protection of minorities associated with the human rights commission in the United Nations confirmed that the use of weapons of mass destruction, including weapons containing depleted uranium, disagreed with international humanitarian law and human rights law. This fact was stipulated in its resolutions of 1996 and 1997(20).

On the other hand, in its consultant view in 1996, the International Court of Justice asserted the significance of the Martens Clause(21). by stating that this condition cannot doubt its ongoing existence and its applicability. Furthermore, she reported that the

condition proved to be effective to go in line with the rapid development in military technology .

The court asserted the aforementioned basis by pointing out that the basic principles of humanitarian law can be still applied to the whole new weapons that encompass nuclear weapons, referring to the fact that no state can dispute these principles.

Being one of the judges of the International Court of Justice, Shahabuddin pointed out that the Martens Clause is not only confined to assert the customary law, but it also permits humanitarian principles to be tackled along with the acknowledgement of the public conscience. Therefore, this should be stressed in the light of changing the conditions because of the consideration of international law principles[(22)].

Because of being a part of the law of armed conflict, Martens Clause is considered the most important humanitarian customary rule. In this respect, the Martens Clause was for the first time stipulated at the introduction of The Hague Convention concerning the rules and customs of land warfare in 1899. Afterwards, it was provided in the introduction of the Hague Convention concerning the rules of land warfare and its customs in 1907. It also existed in the Convention regarding the Bans or Restrictions of the Use of Certain Conventional Weapons in 1980. Finally, it emerged in the 2ndparagraph of the 1st article of the additional Protocol I in 1977.

The significance of the Martens Clause is demonstrated as follows:

This Clause enjoys obligatory legal power. It can be a reference when there is a lack of an international convention.

The customary law is still in effect in the right of states which are not part of this law even in the existence of an international convention. In other words, it does effectively concern all nations.

This Clause completes the shortfall that arises in some of the international humanitarian conventions[(23)].

1.3 Depleted Uranium Weapon in the Light of the General Principles of Law

The trend in the doctrine often suggested that the general principles of law means the basic and common general rules came from domestic legal systems that could be applied to international relations because of their generality.

Regarding domestic law, the examples of the general principles include the principles of good will, lack of abuse of the right, and the obligation to compensate for damage with respect to third parties. Thus, the general principles of law encompass the principles that formulate the basis of international law. The basis of international law involves the principle of the right of people to enjoy their natural resources as well as the principle of the sovereign equality of states[(24)].

Based on the article 38/1/c of the International Court of Justice Statute, the general principles of law are considered as original sources of public international law[(25)]. However, depleted uranium weapons violate the general principles of law[(26)].

Conclusion

To conclude, the lack of an international convention that clearly bans the use of depleted uranium weapon does not grant the legitimate use of this particular weapon. Thus, the prohibition may be implicitly undertaken under international conventions in which it can be applied to depleted uranium weapon on the basis of the aim provided and the serious effects caused by this particular weapon. In addition, the depleted uranium weapon is banned under other sources of international law that involve the general principles of the law and international customs .

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(14) *Article 2 "1 / a" of the Convention on the prohibition of all kinds of chemical weapons, developed and produced and stored or transported 1993:*
1. Each State Party to this Convention undertakes never under any circumstances:
(A) the development or production of chemical weapons, otherwise acquire, stockpile or retain, or transfer of chemical weapons, directly or indirectly, to any place.
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استخدام سلاح اليورانيوم المنضب في القانون الدولي

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ملخص البحث

لا توجد اتفاقية دولية تحظر صراحة استخدام سلاح اليورانيوم المنضب على الرغم من خصائصه التي تتسبب في الدمار الشامل. ولذلك، ينبغي توضيح مشروعية استخدام هذا السلاح في ضوء قواعد القانون الدولي. فإذا ثبت أنه سلاح غير قانوني، ينبغي توجيه التهم التقليدية الخاصة بالمسؤولية الجنائية الدولية ضد المستخدمين. هذا بدوره سيؤدي إلى وقف استخدام مثل هذه الأسلحة. وستجرى هذه الدراسة من خلال المنهج العقائدي. وسيتم جمع البيانات من خلال المصادر الثانوية عن طريق دراسة مساهمة الباحثون في مجال القانون.

إن البحث الحالي سيحاول توضيح موقف القانون الدولي من استخدام سلاح اليورانيوم المنضب. وبالتالي إن لهذا البحث أهمية كبيرة بالنسبة للمجتمع الدولي الذي عليه أن يتخذ التدابير بشأن استخدام هذا السلاح في الحروب من أجل توفير الحماية للإنسان والبيئة فضلاً عن حفظ الأمن والسلام الدوليين.