

Uranium Coverup 11/21 - Consequences use

As uranium weaponry is already illegal under existing humanitarian law, countries that have used them are responsible for military and civilian victims and for environmental pollution throughout the life cycle of the weapons, from development to disposal of unused munitions.

The Geneva Conventions require all Parties to “search for persons alleged to have committed, or to have ordered to be committed [...] grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.” (Article 49 in the First Geneva Convention. There is an identical provision in the other three conventions of 1949). Thus uses of DU weaponry place their own military and commanders at serious legal risk.

Hopefully, wider understanding of this will constrain the nearly 30 other countries that have or plan to develop, produce and stock radiological munitions. The US has exported known and suspected uranium weapons to over 20 countries. It does this in part to militate against the “customary” prohibition of these weapons, presumably to be able to argue that if a large number of countries have DU and other radiological weaponry in their arsenals, it weighs against a ban by operation of customary humanitarian law. However, it is likely that many of the countries having DU weaponry supplied by the US in their arsenals did not know what it was. And it appears that most of these countries have not used these weapons in military operations. And further, these countries in aggregate cannot re-write The Hague Conventions, the Geneva Conventions and all other instruments or customary rules of humanitarian law. To do so would require large-scale denunciation of the treaties – which no country is prepared to do. Further, governments that manufacture or have purchased uranium weapons are likely to be compromised into maintaining US secrecy over the extent of non-nuclear uranium weapons proliferation, and may face serious legal and political consequences of chronic illnesses or deaths on former and future battlefields due to uranium contamination.

The duty to compensate victims of humanitarian law violations has long been a rule of customary humanitarian law. In treaty-based humanitarian law this rule is found in Article 3 of the 1907 The Hague Convention. Evolution of the right to compensation of victims and the duty to compensate by violators has been a prominent feature of human rights law, beginning with the Universal Declaration of Human Rights of 1948, whose Article 8 requires an effective remedy for victims of violations. Other human rights instruments have comparable provisions for compensation for violations. The UN human rights forum’s prolific studies of this issue began with the “van Boven” study: van Boven’s final paper on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (UN Doc. E/CN.4/Sub.2/1993/8) culminates work that began in 1989. The Commission on Human Rights carried on with the appointment of Cherif Bassiouni as first an independent expert and then a Special Rapporteur. The van Boven “Guidelines” for remedies, derived from long-existing treaty-based and customary laws were included, with modifications, in Bassiouni’s final report, UN Doc. E/CN.4/2000/62, Annex.

A minimum requirement of the duty to remedy from use of illegal weaponry is compensation for all victims. This can include, for example, military and civilian victims from uranium wars and civilian victims of uranium weapon use at military ranges. Part of the minimum remedy is the duty to fully disclose all facts about the weapons and their development and deployment. Regarding environmental

damages, users of these weapons are obligated to carry out an effective clean-up. When lands and water resources cannot be effectively cleaned up, the State causing the damage must pay damages equal to the loss of those lands and waters from the national patrimony. In US dollars, the cost of legal claims and environmental cleanup for the Gulf War alone would be staggering.

The chief prosecutor of the International Tribunal for the Former Yugoslavia, Carla del Ponte, initially refused to prosecute NATO for contaminating Bosnia and Kosovo with uranium due to use of DU weaponry in the Balkans. But on January 14, 2001, she said her tribunal would act “if coherent results emerge directly linking the use of DU ammunition with health problems.” This statement of a theoretical willingness to open the tribunal to prosecution and potential damage claims is a key factor in the continued “artificial” controversy about what DU and other radiation weapons actually do. As more and more evidence surfaces that the developers of the weaponry knew how lethal it was, even before the Gulf War, it will become more and more difficult for the Tribunal to keep this issue out. Compensation and clean-up costs in Bosnia-Herzegovina and the Federal Republic of Yugoslavia would also be staggering, more so if hard-target weapons, cluster bombs and other weaponry made with uranium were deployed in substantial numbers. Taking on the issue of consequences of the use of DU weaponry and fashioning adequate remedies for the victims of these weapons would go a long way to dispelling increased international consternation over the appearance of bias in the operation of the tribunal – with to date not one warrant for a member of the NATO forces and relatively few for non-Serbian participants.

In addition to the elaboration of remedies under humanitarian law and for gross violations of human rights, there has been a necessary evolution in the concept of international environmental law, especially arising from the Sub-Commission’s incorporation of a right to a healthy environment as part of its mandate. The seminal work was done by the Sub-Commission’s Special Rapporteur Fatma-Zohra Ksentini (now Fatma-Zohra Ouhachi-Vesely), culminating in final report UN Doc. E/CN.4/Sub.2/1994/9. Ouhachi-Vesely was subsequently appointed as Special Rapporteur of the Commission on Human Rights to address the issue of toxics and toxic dumping – a mandate that continues today. Her work involves investigating allegations of damage due to toxic materials (such as DU) and trying to work out appropriate remedies. This mandate may prove a fruitful vehicle to heighten international concern over uranium weapons and to elaborate the legal consequences and obligations of users.

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