



Means of Warfare: Specific Prohibitions

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Weapons: Defined

What are Weapons?

Weapon /'wɛp(ə)n/ (*noun*):

"...a thing designed or used for inflicting bodily harm or physical damage; a means of gaining an advantage or defending oneself."

-- Concise Oxford English Dictionary, 11th edn, 2006.

"...all arms, munitions, materiel, instruments, mechanisms, or devices that have an intended effect of injuring, damaging, destroying, or disabling personnel or property. This implies that a weapon system comprises the weapon or munition itself and associated elements required for its operation having a directly injuring or damaging effect on people or property."

-- Bill Boothby, Weapons Law, Weapons Reviews, and New Technologies in Routledge Handbook of War, Law and Technology (2019).



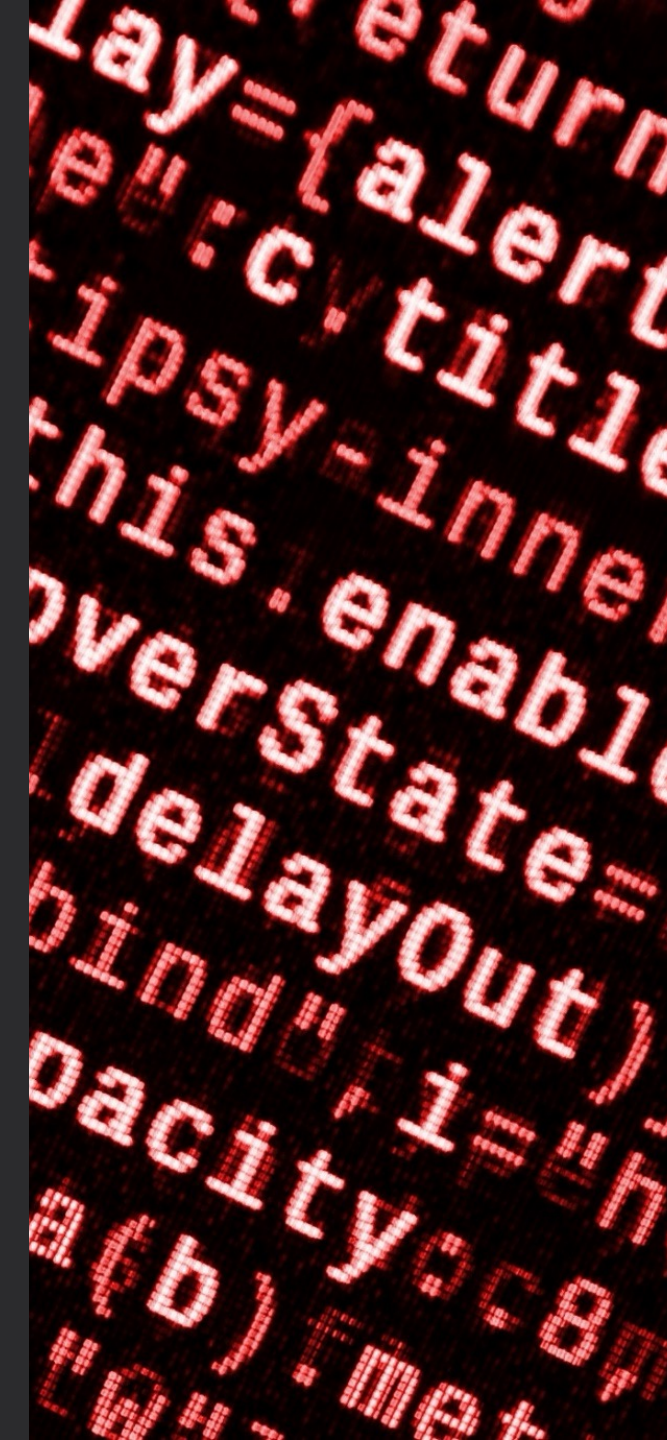
Weapons: Defined

What are Weapons?

The term 'weapon' "is not restricted to devices that cause harm by means of kinetic energy, such as a bullet fired from a gun, as damage to the body can also be effected by heat, sound, electricity, bacteria, poison, or electromagnetic energy.

The term could also be applied to the use of the internet in a cyber-attack wherein computer code is 'weaponized' for instance in viruses or worms."

-- Stuart Casey-Maslen, Weapons in The Oxford Guide to International Humanitarian Law 2020.



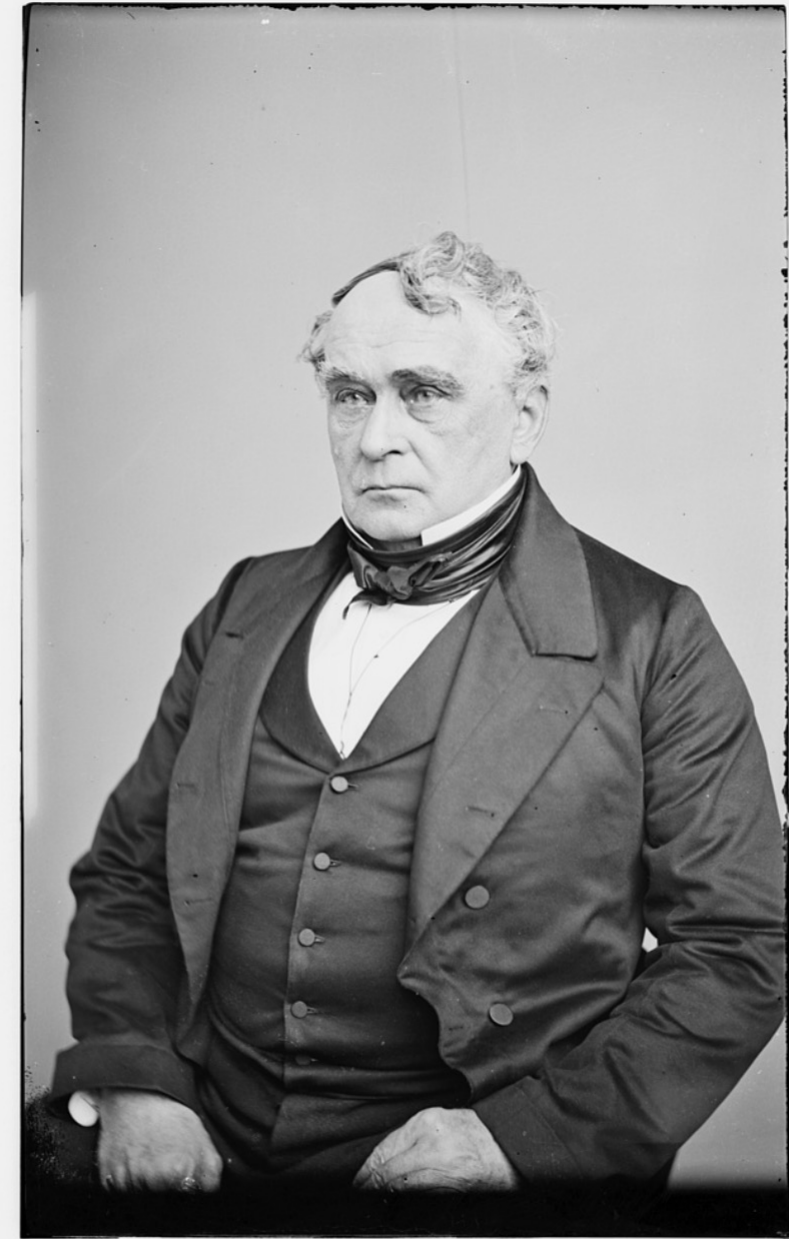
The Development of Weapons Law

The Lieber Code 1863 & The St. Petersburg Declaration 1868

Dr. Francis Lieber developed the Lieber Code for the Union Armies in the American Civil War (1861-1865):

Art. 14: Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

Art. 16: Military necessity **does not admit of cruelty** - that is, the **infliction of suffering for the sake of suffering** or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It **does not admit of the use of poison in any way, nor of the wanton devastation of a district.**



The Development of Weapons Law

The Hague Peace Conferences 1899 & 1907

Declaration II prohibited the use of "projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases."



Only applied to the State Parties to the Declaration.

Did not prohibit weapons which combined gas diffusion with some other object e.g. blast or fragmentation.

I.e. the Declaration did not prevent the gas attacks on trenches during WWI.

Declaration III prohibited "the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions."



Again only applied to the State Parties and would not apply if a third (non-party) State entered the conflict.



The Development of Weapons Law

Superfluous Injury and Unnecessary Suffering

Art. 23(e) of the Hague Regulations of 1907 states:

“It is especially forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering.”

Today we see this enshrined in Additional Protocol I to the GCs:

“It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.”



The Development of Weapons Law

The Geneva Gas Protocol 1925

After WWI, an attempt was made to address the inadequacies of the Hague Declarations through the Geneva Gas Protocol of 1925.

This treaty prohibited the use in war of asphyxiating, poisonous, or other gases and of all similar liquids, materials, or devices, and it extended the prohibition to the use of bacteriological methods of warfare.

The 'Sole Object' loophole was omitted.

France, the UK, and the US became a party to the protocol, however, noted that they were only bound by the Protocol so long as the adverse party in the armed conflict did not use prohibited weapons.

This essentially made the Geneva Gas Protocol of 1925 a 'no first use' treaty and not a comprehensive one banning the total use of gas as a weapon of war.



The Development of Weapons Law

Indiscriminate Weapons

Prior to the negotiations of Additional Protocol I to the GCs a rule that indiscriminate attacks were prohibited certainly existed. However, there was no treaty text specifically addressing weapons that by their nature were indiscriminate.

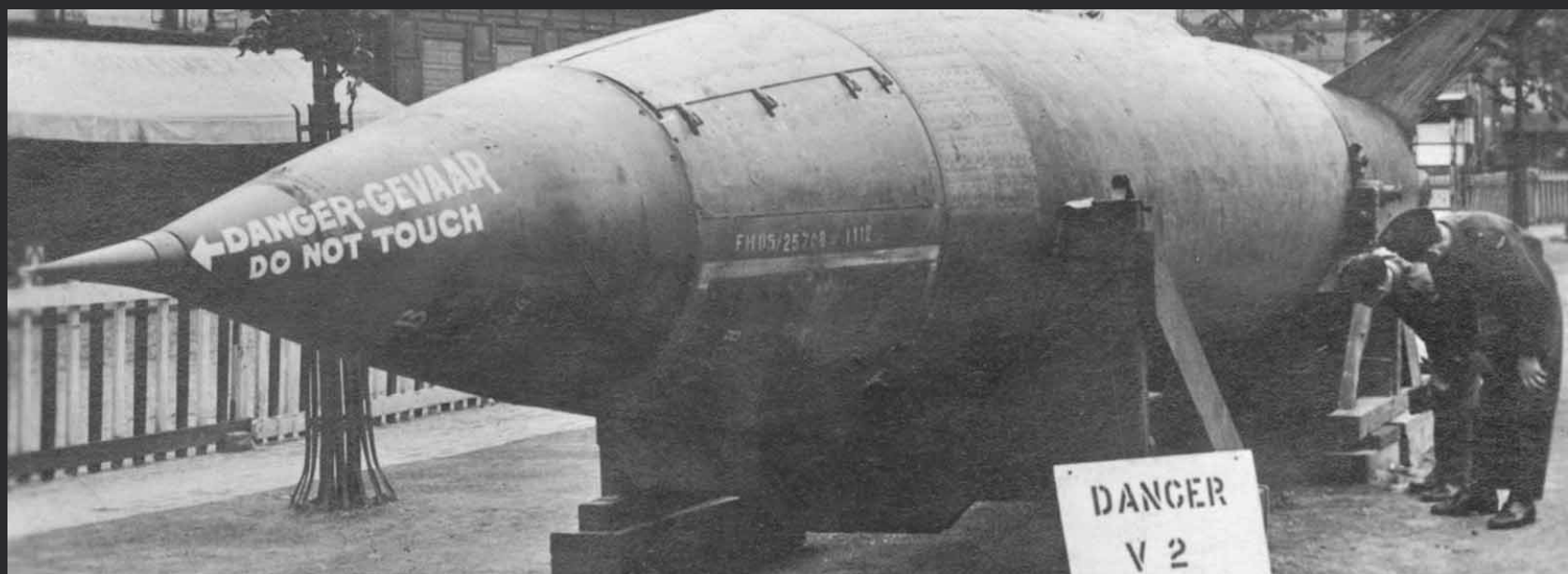
API in 1977 explicitly prohibited indiscriminate attacks via Art. 51(4):

Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- (a) those which are not directed at a specific military objective;*
- (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or*
- (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.*



Katyusha Rockets



German V-2 Rockets – Indiscriminate Weapons

The Development of Weapons Law

Environmental Modification

In 1976 the International Community adopted the Environmental Modification Convention (ENMOD). The Treaty prohibits the military or other hostile use of environmental modification techniques if these would have:

- Widespread,
- Long-lasting, or
- Severe effects

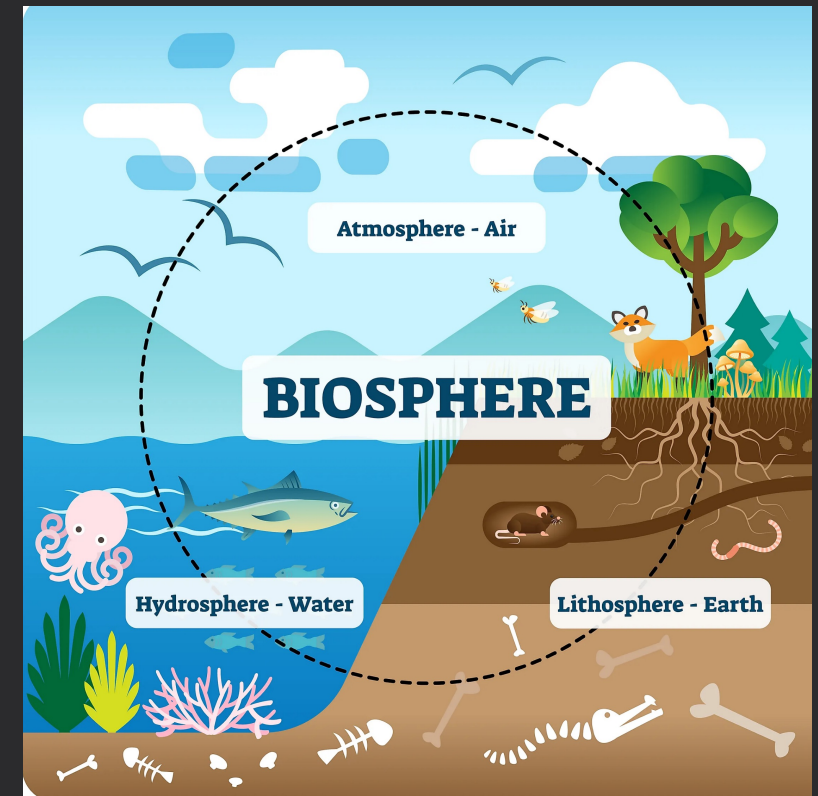
As the primary means of destruction, damage or injury to another state party.

The term "environmental modification techniques" refers to any technique for changing - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space.

Also see Art. 35(3) and 55 of API



Agent Orange



IHL IN FILM



The Avengers (2012)
Directed by Joss Whedon



RSIL

18:19 / 31:06

CC 4K

#americansniper #bradleycooper #ihl

Lawyers React to American Sniper ft. Cooking Chaos

999 views Jul 29, 2022 In this episode of #IHLinFilm, we have recruited some non-lawyers to analyse clips from the American Sniper and Avengers, and discuss the targeting of children ...more

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The Development of Weapons Law

Certain Conventional Weapons (CCW)

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects of 1980 facilitated the negotiation and adoption of Protocols that address particular types of weapons:

Protocol I: Non-Detectable Fragments

Protocol II: Mines, Booby Traps, and Other Devices

Protocol III: Incendiary Weapons

Protocol IV: Blinding Laser Weapons

Protocol V: Explosive Remnants of War



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol I

Protocol I: Non-Detectable Fragments

It is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol II

Protocol II: Mines, Booby Traps, and Other Devices

1. "Mine" means any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle, and "remotely delivered mine" means any mine so defined delivered by artillery, rocket, mortar or similar means or dropped from an aircraft.
2. "Booby-trap" means any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.
3. "Other devices" means manually-emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol II

Protocol II: Mines, Booby Traps, and Other Devices

Article 4: Restrictions on the use of mines other than remotely delivered mines, booby-traps and other devices in populated areas

....

2. It is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either: (a) they are placed on or in the close vicinity of a military objective belonging to or under the control of an adverse party; or (b) measures are taken to protect civilians from their effects, for example, the posting of warning signs, the posting of sentries, the issue of warnings or the provision of fences.



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol II

Protocol II: Mines, Booby Traps, and Other Devices

Article 6: Prohibition on the use of certain booby-traps

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use: (a) any booby-trap in the form of an apparently harmless portable object which is specifically designed and constructed to contain explosive material and to detonate when it is disturbed or approached, or (b) booby-traps which are in any way attached to or associated with:

- (i) internationally recognized protective emblems, signs or signals;
- (ii) sick, wounded or dead persons;
- (iii) burial or cremation sites or graves;
- (iv) medical facilities, medical equipment, medical supplies or medical transportation;
- (v) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- (vi) food or drink;
- (vii) kitchen utensils or appliances except in military establishments, military locations or military supply depots;
- (viii) objects clearly of a religious nature;
- (ix) historic monuments, works of art or places or worship which constitute the cultural or spiritual heritage of peoples;
- (x) animals or their carcasses.



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Amended Protocol II

Amended Protocol II: Mines, Booby Traps, and Other Devices prohibits:

- mines, booby-traps or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations;
- a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning;
- anti-personnel mines that do not incorporate in their construction a material or device that enables the mine to be detected by commonly available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass;
- remotely delivered anti-personnel mines which do not comply with the following requirements: their design and construction must be such that no more than ten percent of activated mines will fail to self-destruct within 30 days after emplacement, and each mine must have a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction mechanism, no more than one in 1000 activated mines will function as a mine 120 days after emplacement;



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Amended Protocol II

Amended Protocol II: Mines, Booby Traps, and Other Devices prohibits:

- remotely delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position;
- and booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.





CHECKING GERMAN BAZOOKA FOR BOOBY-TRAP IN OBERHOFFEN. 2-5-45. U S Army Photo

The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol III

Protocol III: Incendiary Weapons

Imposes restrictions on the Use of Incendiary Weapons. Does not, however, ban them outright.

Article 1: Definitions

For the purpose of this Protocol:

1. "Incendiary weapon" means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target. (a) Incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances. (b) Incendiary weapons do not include:



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol III

Protocol III: Incendiary Weapons

Article 2: Protection of civilians and civilian objects

1. It is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons.
2. It is prohibited in all circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons.
3. It is further prohibited to make any military objective located within a concentration of civilians the object of attack by means of incendiary weapons other than air-delivered incendiary weapons, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.
4. It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol IV

Protocol IV: Blinding Lasers

It is prohibited to employ laser-weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is, to the naked eye or to the eye with corrective eyesight devices.



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Protocol V

Protocol V: Explosive Remnants of War

Deals with the aftermath of war and the explosive elements left behind.



The Development of Weapons Law

Certain Conventional Weapons (CCW) – Extension to NIACs

In 2001 CCW Review Conference, the CCW and its annexed Protocols were extended to Non-International Armed Conflicts for states that ratify the extension.



The Development of Weapons Law

Biological Weapons Convention 1972

The 1925 Geneva Gas Protocol only prohibited the use of bacteriological or biological weapons.

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972 (Biological Weapons Convention) went much further to prohibit States from developing, producing, stockpiling, or otherwise acquiring or retaining biological weapons.

It defines these weapons as:

1. Microbial or other biological agents or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
2. Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.



The Development of Weapons Law

Biological Weapons Convention 1972

The WHO defines Biological Weapons as:

Biological and toxin weapons are either microorganisms like virus, bacteria or fungi, or toxic substances produced by living organisms that are produced and released deliberately to cause disease and death in humans, animals or plants.



The Development of Weapons Law

Chemical Weapons Convention 1993

The 1925 Geneva Gas Protocol did not prohibit the possession of Chemical Weapons.

The Chemical Weapons Convention took the law forward by requiring State Parties to never:

1. To develop, produce, otherwise acquire, stockpile or retain chemical weapons or transfer, directly or indirectly, chemical weapons to anyone;
2. To use chemical weapons;
3. To engage in any military preparations to use chemical weapons;
4. To engage in any military operations to use chemical weapons;
5. To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State party under the Convention.



The Development of Weapons Law

Chemical Weapons Defined

'Chemical weapons' means, together or separately:

- a. Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;
- b. Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals ... which would be released as a result of the employment of such munitions and devices;
- c. Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-paragraph (b).

A toxic chemical is any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere.



The Development of Weapons Law

Anti-Personnel Landmines – Ottawa Convention 1997

No consensus could be reached on a CCW Protocol completely banning Anti-Personnel Landmines and so through an ad-hoc process the Ottawa Convention was adopted. The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997 prohibits State Parties:

- I. To use anti-personnel mines;
- II. To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
- III. To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State party under this Convention.

An anti-personnel mine is a mine designed to be exploded by the presence, proximity, or contact of a person and that will incapacitate, injure or kill one or more persons.

The Ottawa Convention does not ban Anti-Vehicle Mines



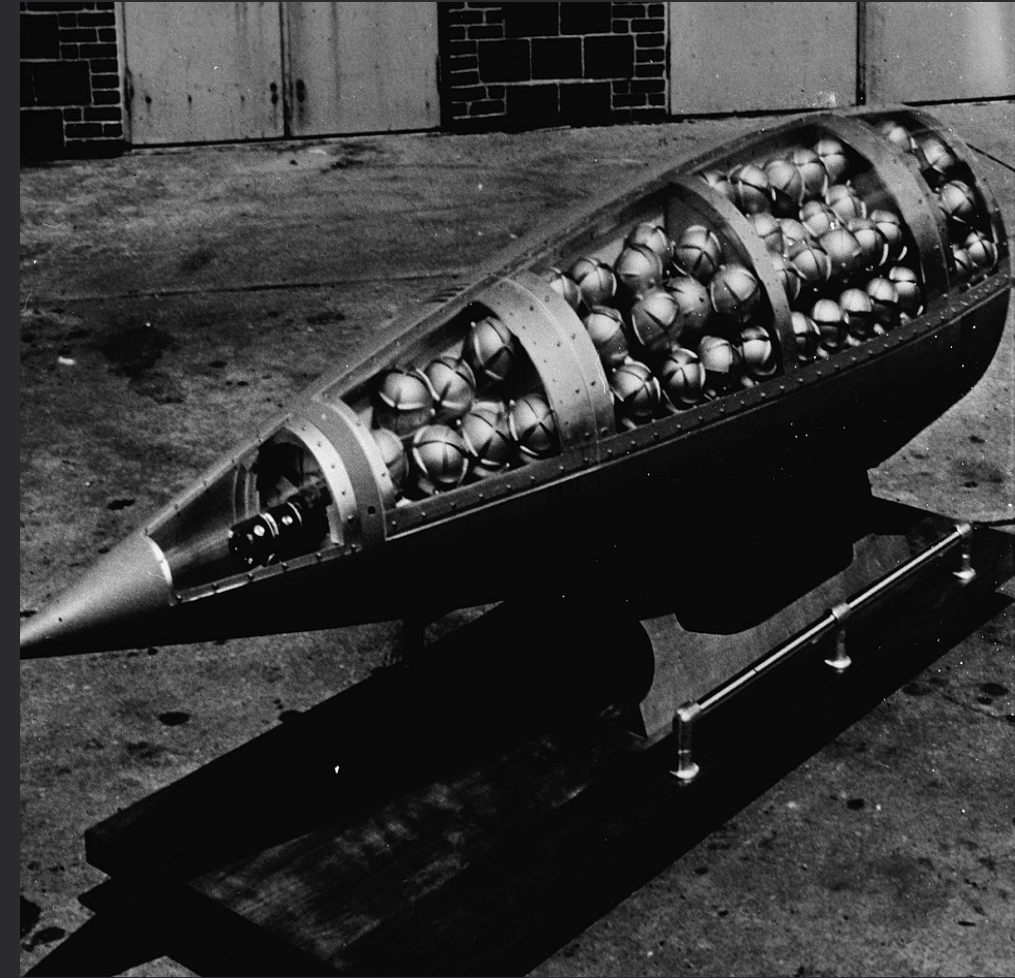
The Development of Weapons Law

Cluster Munitions

The Convention on Cluster Munitions, adopted at a meeting in Dublin in 2008, obliges states party never under any circumstances:

- to use cluster munitions,
- to develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions,
- to assist, encourage or induce anyone to engage in any activity prohibited to a State party under the Convention.

A cluster munition means a conventional munition that is designed to disperse or release explosive sub-munitions each weighing less than 20 kilograms and includes those explosive sub-munitions.

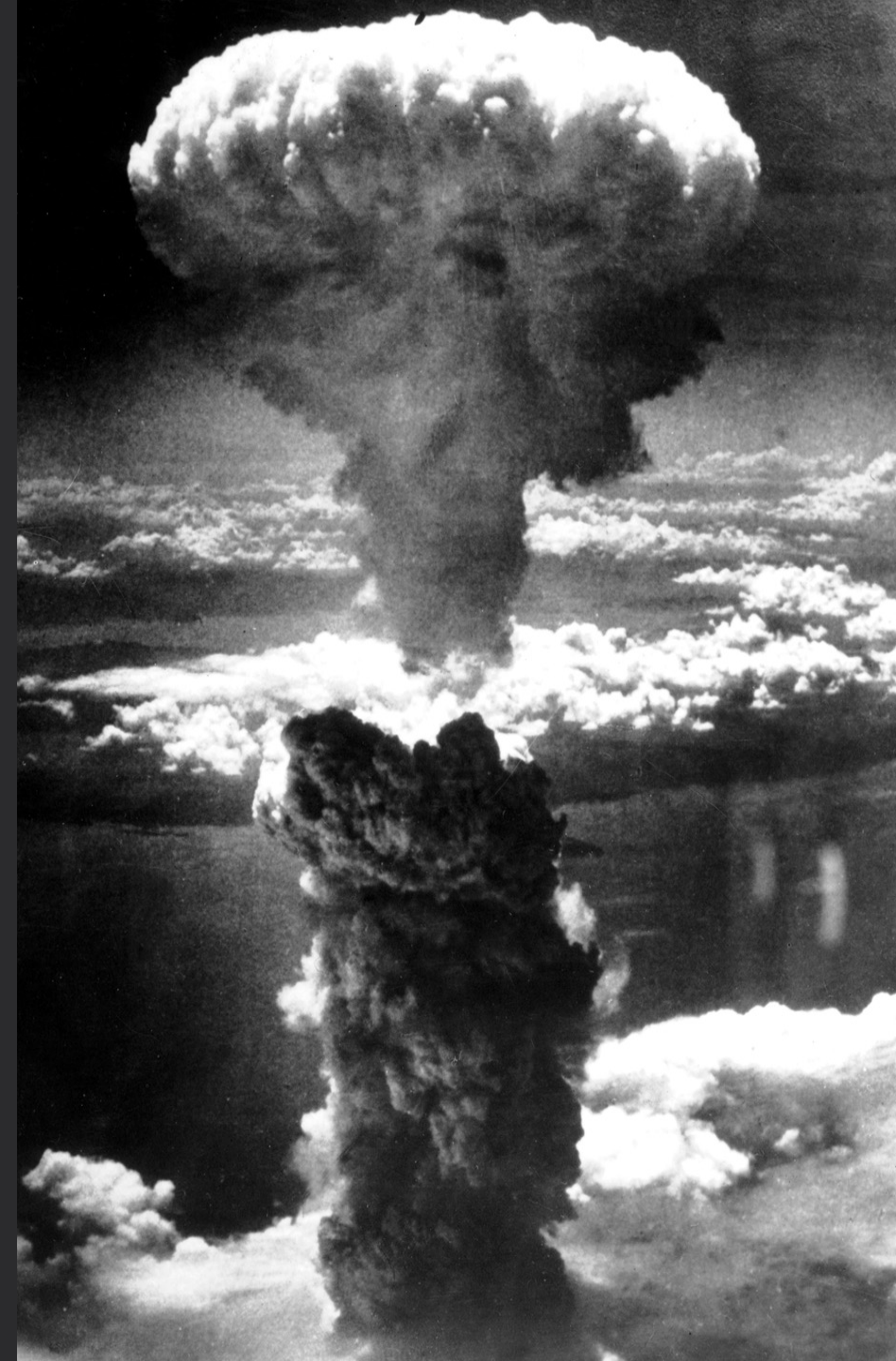


The Development of Weapons Law

Nuclear Weapons – Treaty on the Prohibition of Nuclear Weapons 2017

1. Each State Party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;
- (g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.



Weapon Reviews

New Weapons and Technologies

States that are Party to Additional Protocol I are obligated by Article 36:

“In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.”

Customary law requires all states to review new weapons to determine whether they comply with the law that applies to the relevant state.





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