

IHL Specific Weapons Regime

- **The regulation of armed conflict has drawn the attention of scholars, statesmen and soldiers for thousands of years.**
- **The idea that the conduct of armed hostilities is governed by rules is found in almost all societies, without geographical limitations.**
- **The Articles of War decreed by Swedish King Adolphus (1621) contained number of rules that fall within the laws of war.**

- 1. How International Humanitarian Law (IHL) regulates conflict.**
- 2. Warfare: Basic Rules.**
- 3. Prohibited Weapons: Limitations to the Means of warfare (Part I)**
- 4. Disputed Weapons (Part II)**
- 5. Prohibited Methods of Warfare (Part III)**

Child soldier

Development of new weapon

IHL regulates armed conflict in two ways

1. By imposing minimum standards of protection for victims of armed conflict. (Geneva Law)

2. By restricting the permissible means and methods of warfare, including the types of weapons that can be deployed. (Hague Law)

St. Petersburg Declaration of 1868

The **object of war** is to **weaken the military forces** of the enemy, and **not to senselessly cause suffering** to innocent millions.



St. Petersburg Declaration of 1868

- “The only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy”.
- This object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable.
- The use of such arms would “be contrary to the laws of humanity”.

IHL

GENERAL PRINCIPLES

- A. **MILITARY NECESSITY**
- B. **UNNECESSARY SUFFERING**
- C. **PROPORTIONALITY**
- D. **HONORABLE CONDUCT**

A. MILITARY NECESSITY

- **MAY USE THAT FORCE NOT FORBIDDEN BY INTERNATIONAL LAW WHICH IS NECESSARY TO SECURE THE PROMPT SUBMISSION OF THE ENEMY**
- **TARGETING OFFERS A MILITARY ADVANTAGE**

B. UNNECESSARY SUFFERING

- **MAY NOT INFLICT SUFFERING, INJURY OR DESTRUCTION NOT ACTUALLY NECESSARY TO ACCOMPLISH LEGITIMATE MILITARY PURPOSES**

C. PROPORTIONALITY

- **MAY NOT CAUSE SUFFERING, OR INJURY TO NONCOMBATANTS OR CIVILIAN OBJECTS DISPROPORTIONATE TO THE MILITARY ADVANTAGE GAINED**
- **ISSUES OF WEAPONS CHOICE AND TACTICS**

D. HONORABLE CONDUCT

- **DISHONORABLE OR TREACHEROUS MEANS ARE FORBIDDEN**
- **PROTECTIONS and HUMANE TREATMENT OF ALL** (No murder, torture, rape, cruel or degrading treatment; No hostage taking; Punishment only through regular court; and wounded and sick cared for.)

MEANS OF WARFARE

Hague IV Regulations, 1907

- **Art 22: “The right of belligerents to adopt means of injuring the enemy is not unlimited”**
- **Art 23: “It is especially forbidden to employ arms, projectiles, or material calculated to cause unnecessary suffering.”**

Warfare: Basic Rule

1977 Additional Protocol I, to GC

Art 35: Basic Rules

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is **not unlimited**.

Art 35. (2) It is
prohibited to
employ
weapons,
projectiles and
material and
methods of
warfare of a
nature to cause
superfluous
injury or
unnecessary
suffering.



BASIC RULE

**UN Secretary General's Bulletin
No.13, (1999) Para 6.1**

**The right of a UN force to
choose methods and
means of combat is not
unlimited.**

Warfare: Basic Rule

Rome Statute 1998 Art 8(2)(b)(xx)

- that employing weapons, projectiles and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering will be a crime within the jurisdiction of the court....

IHL Provisions:

UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) which may be deemed to be Excessively Injurious or to have Indiscriminate Effects

Protocol I on Non-Detectable Fragments (10 October 1980)

Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (10 October 1980)

Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons (10 October 1980)

Protocol IV on Blinding Laser Weapons. (13 October 1995)

Protocol V on Explosive Remnants of War. (28 November 2003)

- 1976 UN Convention on the Prohibition of Military or Any other Hostile use of Environmental Modification Techniques (ENMOD).
- 1971 UN Convention on Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.
- 1993 Convention on Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction.
- 1998 Statute of the International Criminal Court.
- 1999 UN Secretary General's Bulletin on Observance by UN Forces.
- 1978 Red Cross Fundamental Rules of IHL Applicable in Armed Conflicts.
- 2005 Customary Rules of International Humanitarian Law by ICRC containing 161 Rules divided into 6 Parts.

PART I

PROHIBITED MEANS OF WARFARE

1.Expanding Bullet

Expanding bullets are those that expand or flatten easily in the human body.

For example: bullets with a hard envelope that does not entirely cover the core, or is pierced with incisions.

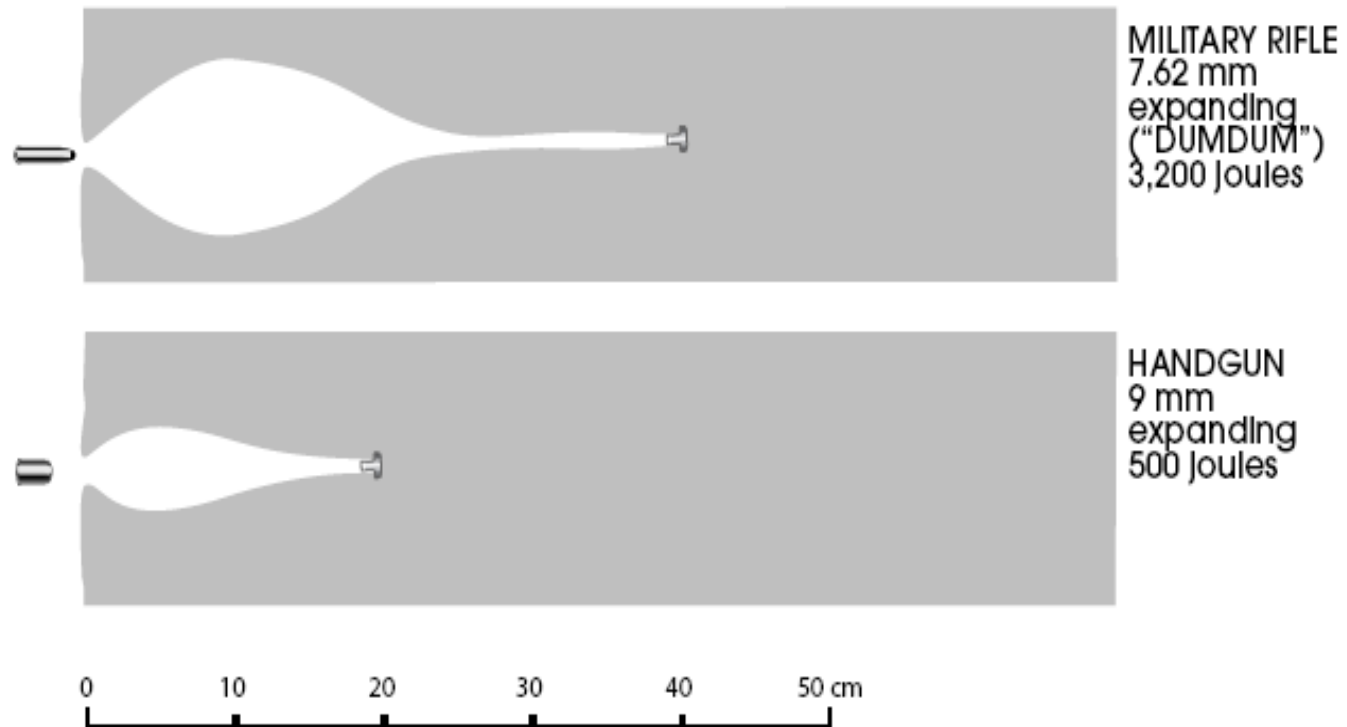
Example: Dum-Dum bullet.

Rule: The Hague Declaration of 1899 concerning Expanding Bullets:use of expanding bullets (in armed conflict) is prohibited.

Expanding Bullet



“EXPANDING” BULLETS



2. Poison/Poisoned Weapons

- **Article 23 (a), Hague Regulations of 1899/1907 prohibits the use of poison or poisonous weapons.**
- **It relates mainly to the poisoning of drinking water or foodstuff likely to be used by enemy forces, while poisoned weapons applies, to poisoned arrows or spears.**

- **The Rome Statute of International Criminal Court (ICC) Article 8 (2) (b) (xvii) also calls “employing poison or poisoned weapons” a war crime.**

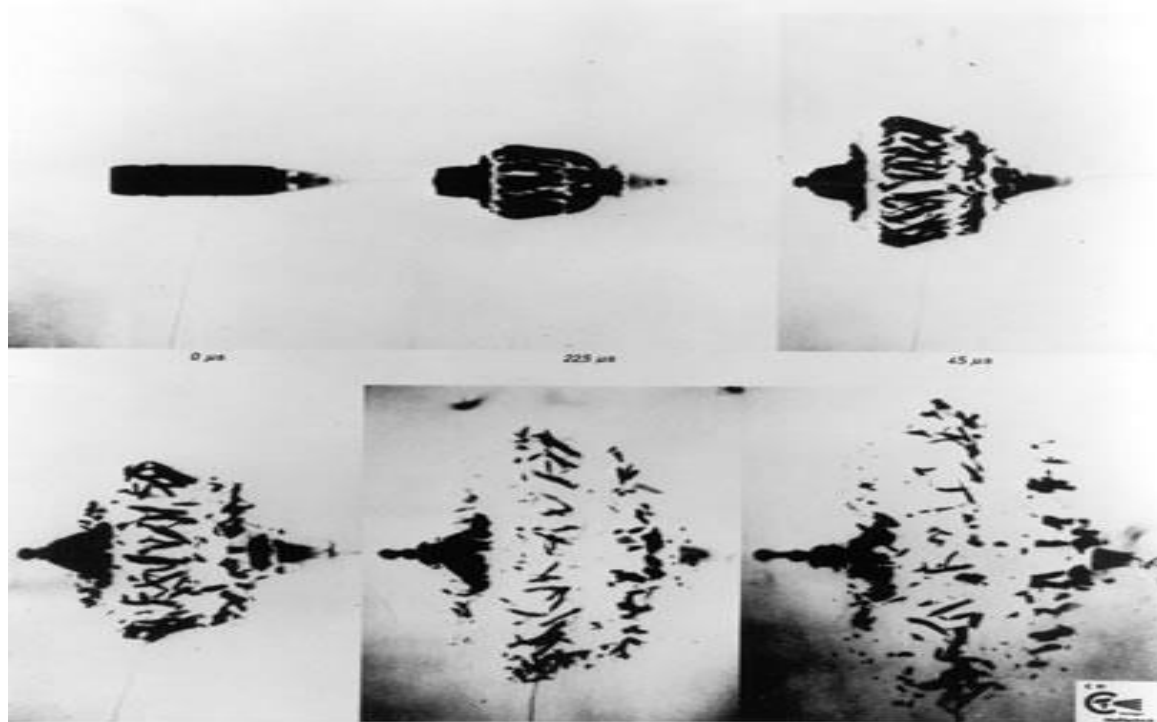


3. Certain Projectiles

- **The 1968 St Petersburg Declaration: It is not permitted to use projectiles weighing below 400 grams, which are either explosive or charged with fulminating or inflammable substances.**

3. Certain Projectiles

An incendiary or exploding bullet is intended to cause harm **through burn injury or explosive effect.**



4. 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.

- **Such fragments cannot be detected by X-rays, they render medical treatment almost impossible and thereby cause unnecessary suffering.**
- **Protocol I of the 1980 Convention on Certain Weapons prohibits weapons having Non-detectable Fragments.**

5. Booby-traps

- **Article 6 of Protocol II of the 1980 Convention prohibits in all circumstances, the use of booby-traps:**
In any way attached to or associated with internationally recognized protective emblems, sick, wounded or dead persons; burial or cremation sites; kitchen utensils or appliances, except in military locations.

Booby Traps



**Designed to
cause
superfluous
injury or
unnecessary
suffering.**

**Article 3 of the
Protocol II
disallows the use
of booby-traps,
directly or
indiscriminately
against civilians.**



- It is **not forbidden to booby-trap a transistor**, for example, but it is forbidden to manufacture booby-traps which appear to be transistors.
- **The degree of protection to combatants varies with circumstances.**
- Thus, it is permitted (in Article 6) to booby-trap a kitchen appliance in a military location, but not food or drink.

6. Landmines

- **Mines are the greatest violators of international humanitarian law.**
- **Mines may be described as fighters that never miss, strike blindly, do not carry weapons openly, and go on killing long after hostilities are ended.**

Landmines





Indiscriminate weapon causing
Unnecessary suffering?

Landmines violate IHL

Principles:

- The right of the parties to a conflict to adopt means of injuring the enemy is not unlimited.
- It is forbidden to use weapons which ‘cause superfluous injuries or unnecessary sufferings’.
- In the conduct of hostilities, parties to a conflict must always distinguish between civilians and combatants.

Anti-vehicle Mines

It is prohibited to use anti-vehicle mines:

- 1. Against the civilian population or individual civilians.**
- 2. That use a method of delivery which cannot be directed at a specific military objective.**
- 3. By placement which is not on or directed against a military objective that can be expected to cause incidental loss of civilian life, injury or damage which would be excessive in relation to the military advantage anticipated.**
- 4. That are designed to cause unnecessary suffering.**

7. Anti Personnel Mines

- **The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction was held in 1997 to impose a complete ban on anti-personnel landmines (Ottawa Treaty).**

Anti-Personnel Mines



Article 1: State Parties undertake ‘never under any circumstances’ to use anti-personnel mines, or to develop, produce, acquire, stockpile, retain or transfer them; and further assume the obligation to destroy all existing anti-personnel mines. (Ottawa Treaty)

Anti-Personnel Mines

It is prohibited for any member of the armed forces of a State which has signed and ratified the Ottawa Convention to:

1. To use anti-personnel mines;
2. To develop, produce, or acquire anti-personnel mines;
3. To stockpile, retain or transfer anti-personnel mines; or
4. To assist, encourage or induce any person to engage in such activities.

JODY WILLIAMS: NOBEL PEAE PRIZE

LECTURE ON LANDMINES, 1997

- **Landmines distinguish themselves because once they have been sown, once the soldier walks away from the weapon, the landmine cannot tell the difference between a soldier or a civilian—a woman, a child, a grandmother going out to collect firewood to make the family meal.**
[contd.....]

The crux of the problem is that while the use of the weapon might be militarily justifiable during the day of the battle, or even two weeks of the battle, or may be even two months of the battle, once peace is declared the landmine does not recognize that peace.

The landmine is eternally prepared to take victims. In common parlance, it is the perfect soldier, the “eternal sentry.” The war ends, the landmine goes on killing.

8. Naval Mines

Naval mines not equipped with a high-tech target selection device can endanger ships indiscriminately, including neutral vessels, merchant ships and passenger liners. These mines can also affect neutral territory, if they get swept away by currents.



9. Torpedoes

- Article 1 (3) of the Hague Convention (VIII) prohibits the use of torpedoes which do not become harmless once they have missed their mark.
- Having run its course, a torpedo may lie in water like a free-floating mine and cause danger to a neutral target.



10. Incendiaries

Article 2 (1), Protocol III of the 1980 CCW:

It is prohibited in all circumstances to make the civilian population/ objects the targets of attack by incendiary (Napalm) weapons.

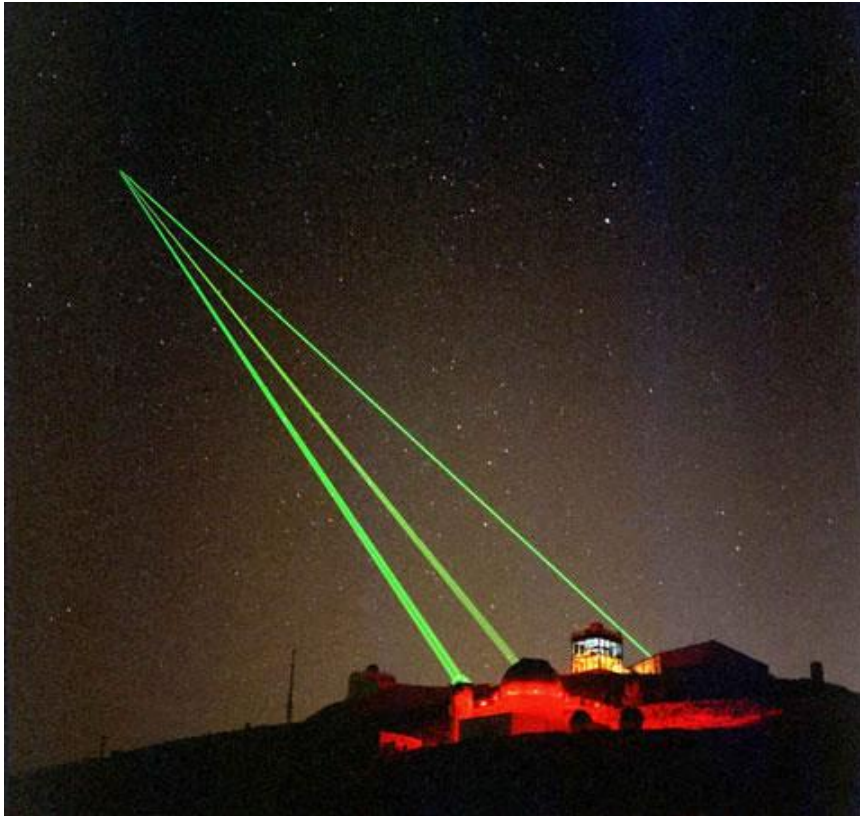
Combatants are not protected from incendiary weapons



11. Blinding Laser Weapons

- In 1996, a Protocol on Binding Laser Weapons (Protocol IV) was added to the 1980 CCW.
- It bans the **use and transfer of laser weapons** ‘specifically designed, as their sole combat function is to cause **permanent blindness**’ (Article 1).

Lasers can be used by military for range finding and target designation.



12. Depleted Uranium (DU) ?

- The US led coalition forces have allegedly used DU weapons in the recent Iraq war.
- No international treaty currently bans the production or use of DU weapons.
- However, the use of DU weapons goes against established principles of humanitarian law
- DU weapons are indiscriminate even when used on military targets, since the radioactive residue can affect large areas.

Depleted Uranium



12. Depleted Uranium

- **The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities issued two Resolutions (United Nations 1996a; United Nations 1997) on the need to stop the production and use of weapons of mass destruction, including DU weapons.**

The Sub-Commission urges all States to be guided in their national policies by the need to curb the production and the spread of weapons of mass destruction or with indiscriminate effect, in particular nuclear weapons, chemical weapons, fuel-air bombs, napalm, cluster bombs, biological weaponry and weaponry containing depleted uranium (United Nations 1996b).

13. Explosive Remnants of War (ERW)



13. Explosive Remnants of War (ERW)

Protocol V to the CCW has been designed to eradicate the deadly threat that explosive remnants of war pose to civilian population and to humanitarian personnel working in post-conflict settings.

14. Chemical and Gas Weapons

- **A chemical weapon is a munition or device that is specifically designed to cause harm through the release of toxic chemicals. The toxic chemicals themselves are also considered to be chemical weapons.**
- **Toxic chemicals are chemicals that can cause death, temporary incapacitation or permanent harm to animals or humans.**

CHEMICAL WEAPON



14. Chemical and Gas Weapons

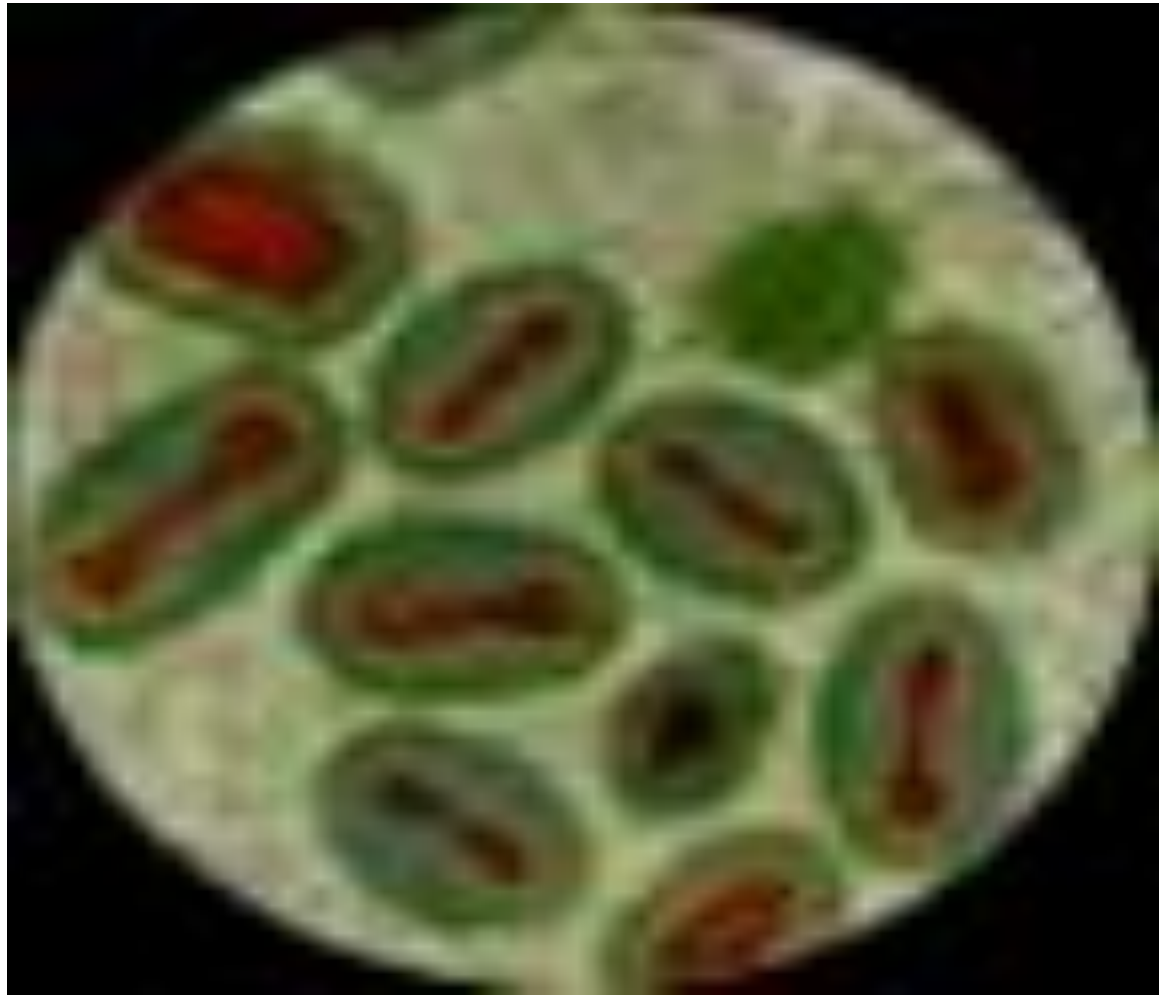
Rules: It is prohibited to:

- 1. use poisonous or asphyxiating gas;**
- 2. use chemical weapons;**
- 3. conduct military preparations to use chemical weapons; develop, produce, acquire, stockpile transfer chemical weapons;**
- 4. assist, encourage or induce any person to engage in such activities.**



- **The use of chemical weapons in warfare was totally banned in 1993, in Chemical Weapons Convention.**
- **The Convention obliges State Parties ‘never under any circumstances’ to use chemical weapons, to engage in military preparations for such use, or to develop, produce, acquire, stockpile, retain or transfer them; and undertake to destroy chemical weapons they possess.**

15. Biological Weapons



Biological Weapons

Definition

A Biological or bacterial weapon is a quantity of biological agents or toxins that is not justified for peaceful or protective purposes and equipment designed to use these agents or toxins in armed conflict.

- In 1971, the UN Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on Their Destruction.
- Generally known as the **Biological Weapon (BW) Convention**-- it entered into force in 1975.

- **Signatories to BWC undertook ‘never in any circumstances to develop, produce, stockpile or otherwise acquire or retain’ biological weapons designed to be used for hostile purposes or in armed conflict, and to destroy and not to transfer existing weapons.**



16. Nuclear Weapons: are they prohibited?



16. Nuclear Weapons

The principles and rules of international humanitarian law, and in particular the principles of distinction and proportionality and the prohibition on causing superfluous injury or unnecessary suffering, apply to the use of nuclear weapons.

Legality of Nuclear Weapons

International Court of Justice (ICJ), Nuclear Weapons Advisory Opinion 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*

- Dissenting Opinion of Judge Weeramantry

"... The sight of them was almost unbearable. Their faces and hands were burnt and swollen; and great sheets of skin had peeled away from their tissues to hang down like rags on a scarecrow... And they had no faces! Their eyes, noses and mouths had been burned away, and it looked like their ears had been melted off. It was hard to tell front from back..."

ICJ Opinion: 1996

- The threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;....

ICJ Opinion: 1996

...however, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of the State would be at stake.

ICRC Opinion

- 1. The principles and rules of IHL and in particular the principles of distinction and proportionality and causing of superfluous injuries and unnecessary suffering applicable.**
- 2. States not to use nuclear weapons.**
- 3. To ensure non-proliferation.**
- 4. To achieve complete prohibition and elimination.**

Adopted by the ICRC Assembly on 27 June 2002

17. Damage to Environment

It is **prohibited** to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

1977 Additional Protocol I, Art 35 (3) and 55 (1).

Damage to Environment

- Rome Statute of ICC (1998) Art 8(2)(b)(iv) provides that intentionally launching an attack in the knowledge that such an attack will cause widespread, long term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage to be anticipated is a war crime.

- **1976 UN Convention on the Prohibition of Military or Any other Hostile use of Environmental Modification Techniques.**
- **General principles of humanitarian law are too open-ended to preclude most environmental damage.**

What can be done

- **A comprehensive review of the environmental effects of war**
- **A UN Resolution urging states to protect the environment during non-international conflict**
- **Inclusion of environmental concerns in military manuals.**
- **Binding instruments, such as a convention on the prohibition of military activities in protected environments.**

Weapons to be banned, if

1. Their use has indiscriminate effects –no effective distinction between civilians and combatants.
2. Their use is out of proportion with the pursuit of legitimate military objective.
3. Their use adversely affects the environment in a widespread, long-term and severe manner.
4. Their use causes superfluous injury and unnecessary suffering to the combatants.

- **“Wars are not acts of God. They are caused by man, by man-made institutions, by the way in which man has organized his society. What man has made, man can change.”**

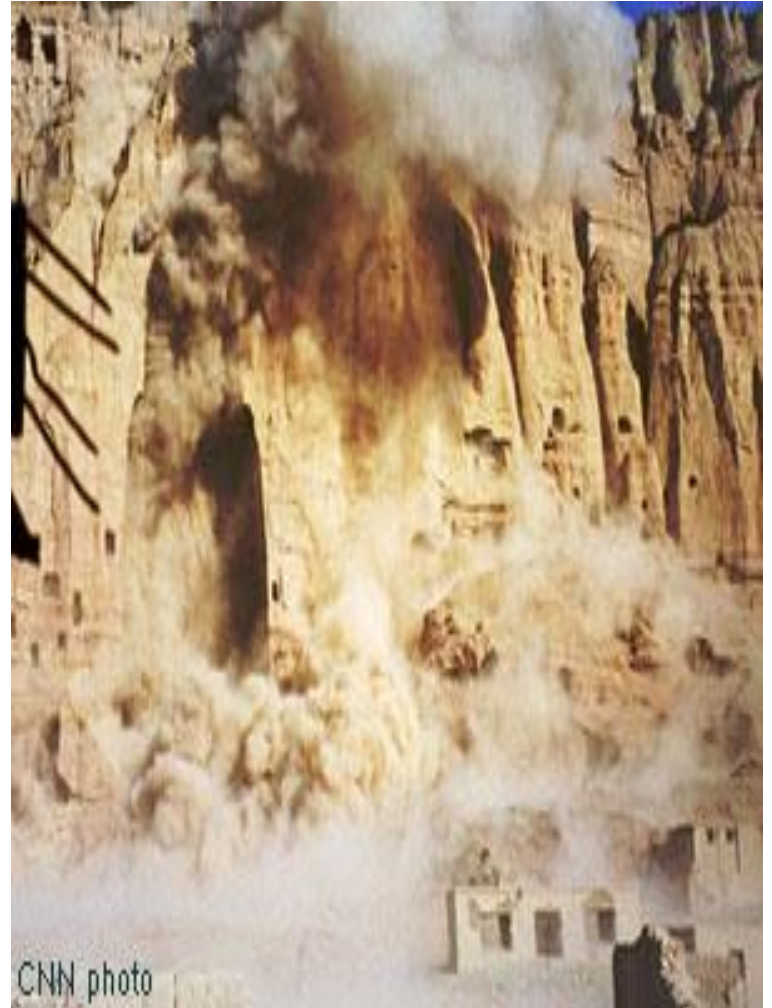
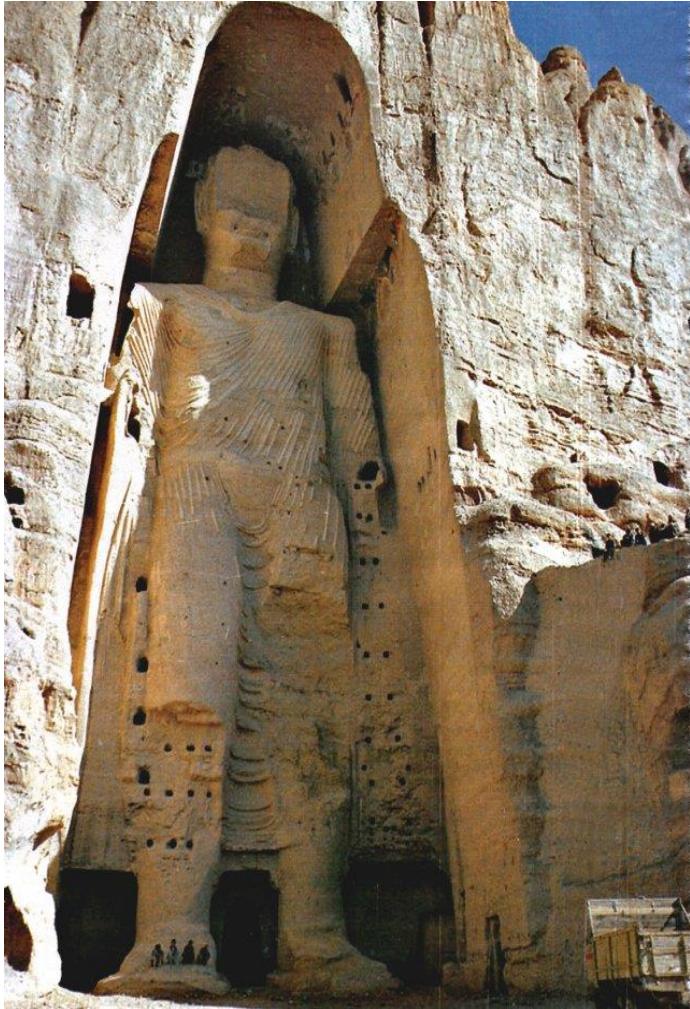
- Frederick Moore Vinson



Indiscriminate ?

Indiscriminate and
disproportionate





Care and Protection of Protected Persons?



ANY QUESTION ?????