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LEGALITY OF THE USE OF CLUSTER BOMBS IN INTERNATIONAL LAW: A SHORT OVERVIEW

Vesna Poposka[1*], Abdulmecit Nuredin[2]

[1]Faculty of Law, International VISION University - Gostivar, North Macedonia ✉ vpoposka88@gmail.com
[1]Faculty of Law, International VISION University - Gostivar, North Macedonia ✉ nuredin@vizyon.edu.mk

Abstract: *The war in Ukraine brought the collective security system towards a dead-end street. After raising the question of nuclear threat, another long-time forgotten question arises again, waking up the ghosts that slept for more than a half-century- the use of cluster bombs. Although an international convention prohibits this type of weapon, neither Ukraine, Russia, nor the United States are part of it, which leads back to the agony of fragmentation of international law versus the erga omnes concept of universally applicable norms and customary rules. Since the war is official and intensive, the law of armed conflict applies no matter which of the states involved denies it or names it differently. The use of cluster munitions from both sides is highly contested in international law—the paper aimed to provide an overview of the applicable legal framework through analytical and comparative methods. Although there is a general notion that cluster munition is banned under international law, the paper's results show this is not the ultimate case. Contextualisation relies on the four basic principles of humanitarian law.*

Keywords: *International Humanitarian Law; War; Cluster Bombs; Ukraine*

INTRODUCTION

Cluster bombs have long been a contentious issue in international law, sparking heated debates and discussions among policymakers, legal experts, and humanitarian organizations. The legality of cluster bombs has been a topic of particular concern, with various international treaties and conventions addressing their use, production, and stockpiling. While some argue that the use of cluster bombs is legal under certain circumstances, others contend that their use violates various principles and provisions of international law. Furthermore, the humanitarian impact of cluster munitions can have long-term effects on communities, as unexploded bomblets continue to pose a threat to civilians, particularly children, for years after the conflict has ended. Advocates for the prohibition of cluster bombs argue that their humanitarian impact far outweighs any potential military advantage and that their use should be strictly prohibited under international law. The use of cluster bombs raises complex legal and ethical questions that have been the subject of ongoing debate within the international community. The 2008 Convention on Cluster Munitions, which prohibits the use, production, transfer, and stockpiling of cluster munitions, reflects a growing consensus on the need to address the humanitarian impact of these weapons.

The 2023 Cluster Munition Monitor reports the worst carnage from cluster munition injuries and deaths since the annual report launched in 2010. Cluster munitions killed or injured 1,172 people in 2022, an increase of more than 750% over the total reported in 2021 (149).

This shocking and unprecedented figure is overwhelmingly due to repeated cluster munition use across Ukraine.1,172 new cluster munition casualties were recorded across eight countries in 2022: Azerbaijan, Iraq, Lao PDR, Lebanon, Myanmar, Syria, Ukraine, and Yemen (The Monitor 2023).

On the other hand, some states and military experts maintain that cluster munitions can be used in a manner that complies with international humanitarian law, mainly when targeting military objectives in a manner that minimizes the risk to civilians. They argue that a blanket prohibition on cluster bombs may limit military options in specific operational contexts and overlook the legitimate security concerns of states (Mustafa 2023).

The legality of cluster bombs continues to be a contentious issue, with divergent perspectives on the balance between military necessity and humanitarian considerations. As the debates persist, it remains essential for the international community to engage in constructive dialogues and seek common ground to address the challenges posed by these controversial weapons.

METHODOLOGY

The research was conducted through the spectrum of exploratory-descriptive qualitative methods based on the sources of international public law in general, especially the law of armed conflicts. So, the primary analysis is conducted on sources of international law such as conventions (treaty law) and customary laws. The study gathered empirical data from primary and secondary sources such as press releases, reports of international organizations, scientific articles, news articles, electronic sources, interviews, etc. The general analysis, deduction, and synthesis methods were used to analyze data and extract conclusions. It also includes a basic analysis of the legality of the use of cluster munitions in the Russia-Ukraine war in specific contexts through a case study method. The case study method usually involves various research methods to generate numerical and non-numerical data that, when triangulated, can draw robust, reliable, valid inferences about law in the real world. It is relatively underused in empirical legal research.

THE UNDERSTANDING OF CLUSTER MUNITION

The term "cluster munitions" refers to any weapons systems that, as the name suggests, deliver clusters of smaller explosive submunitions onto a target. Often referred to as "cluster bombs", the submunitions are, in fact, every bit as likely to be delivered by missiles, artillery, or sprayed from fixed dispensers as they are to be dropped in bombs from aircraft. Submunitions delivered in any given attack may number in the hundreds or many thousands. The concept, already well-developed by the end of World War II, has certain military advantages over delivering similar amounts of destructive force in single or "unitary" munitions. For example, a single bomb to the middle of an enemy airstrip leaves one crater that can be quickly filled, even if large. A cluster munition attack, on the other hand, may produce hundreds of craters, taking days to repair (UN 2008). Unexploded bomblets can kill or maim civilians and/or unintended targets long after a conflict has ended and are costly to locate and remove.

The Convention on Cluster Munitions (CCM) was born out of a collective determination to address the humanitarian consequences and unacceptable harm to civilians caused by cluster munitions (UN 2008). A cluster munition is defined in the Convention as: "a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms and includes those explosive submunitions" (UN 2008). The definition captures all those weapons that contain submunitions and cause cluster munitions' problematic effects: 1) a wide area effect and 2) a risk of unexploded ordnance (UN 2008). The definition makes certain clarifications for weapons with submunitions but not cluster munitions, such as those designed for smoke, flare, and electronic counter-measures. Also falling outside the definition are weapons with submunitions that do not cause the indiscriminate area effect (clusterconvntion.org).

On 2 March 2022, Karim A. A. Khan QC, Prosecutor of the International Criminal Court (ICC), announced that the court had opened an investigation into the "Situation in Ukraine", including "any new alleged crimes" within the ICC's jurisdiction that have been committed in Ukraine since Russia's 2022 invasion. This investigation could examine allegations of cluster munitions in Ukraine by any party (ICC 2022).

The weapons, banned by most countries over human rights concerns, are "not a magic wand", but some Ukrainian troops say they are making a difference in fighting Russian forces (Jakes and Schmitt 2023).

The recent White House announcement that it would send cluster munitions to Ukraine was met with both criticism and applause. The administration defended its decision, noting that Russia has been using these munitions to attack Ukraine and that Kyiv has been asking for these munitions for self-defense purposes. It is unlikely that any single weapon or munition will quickly usher in a Ukrainian victory. However, the Ukrainians are in an existential battle for the future of their country. They fully appreciate the risks using these weapons implies (RAND 2023).

In Resolution 49/1 of 4 March 2022, the Human Rights Council established an Independent International Commission of Inquiry to investigate all alleged violations and abuses of human rights and violations of international humanitarian law and related crimes in the context of the Russian Federation's aggression against Ukraine.

The UN Commission, in its latest report, noted that there are unlawful attacks in territory controlled by the Government of Ukraine. The Commission has investigated attacks carried out with explosive weapons in populated areas controlled by the Government of Ukraine (OHCHR 2024). Some were conducted in the context of Russian armed forces' attempts to capture towns or cities, while others struck areas far from the frontlines. In some situations examined, the Commission could not identify a military objective. When objects of military value that might have been the intended targets of the attacks were present in the vicinity of some of the impact sites, the Commission has generally found that Russian armed forces used weapons that struck both military and civilian objects without distinction. It has identified four types of weapons, the use of which in populated areas led to indiscriminate attacks: unguided bombs dropped from aircraft; inaccurate long-range anti-ship missiles of the Kh-22 or Kh-32 types, which are inaccurate when striking land targets; cluster munitions, which, by design, spread small submunitions over a wide area; and multiple launch rocket systems, which cover a large area with inaccurate rockets. The Commission had found instances where Ukrainian armed forces

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likely used cluster munitions and rocket-delivered antipersonnel landmines to carry out attacks in Iziumcity, Kharkiv region, from March to September 2022, when Russian armed forces controlled it. The three following examples illustrate the use of weapons that bear the characteristics of cluster munitions in the city of Izium during that period. On 9 May 2022, an attack struck a residential area, killing three people and injuring six. On 14 July 2022, an attack hit the area around the central market, injuring two older women. On 16 July 2022, several submunitions impacted a residential area, including a kindergarten, where about 250 people had sought shelter, killing two older persons (HRC 2023).

SOURCES OF INTERNATIONAL LAW AND APPLICABILITY OF LEGAL REGIMES

International law has four vital functions: to define precisely the limited cases in which the use of force is permissible (self-defense and the preservation or restoration of world peace and security, following the Charter), to regulate and control the use of force (even) in situations where it is permitted, to assess whether the force used was unlawful and to regulate the consequences of the use of force, whether lawful or unlawful (Franklin 2006).

Given the four vital functions and the fact that international law regulates the use of force through the prohibition of use and exceptions to that prohibition, efforts to maintain world peace and security have created four aspects to regulate the use of force in international law (Hadji Janev 2016). For all four aspects, the same sources of law apply following Article 38 of the ICJ Statute: international treaties, international customary law, the practice of states, the opinions of prominent jurists, and judicial practice (UN 1946).

Horizontality - or the lack of hierarchy - is considered by most legal scholars a central fact of international life and the starting point for theorizing about international law. This is more evident, perhaps, than in the doctrine of sources. The functional equivalence of sources should not obscure that international legal thought and practice are replete with varied hierarchies which, though not necessarily openly acknowledged as such, nevertheless run deep in the system and inform how international law is conceptualized, made, and applied. The consensus remains that Article 38 of the International Court of Justice (ICJ) does not establish a rigid hierarchy of sources, particularly regarding the relationship between customary law and treaties. These are said to exist alongside each other in no particular order of pre-eminence, in a decentralized and pluralistic arrangement where no source ranks higher (Prost 2017). This means we shall first examine the applicability of treaty and customary law on cluster munitions. Before such analysis, the conflict should be seen through the lenses of each of the four vital functions of international law.

The first aspect of the four mentioned is *ius contra bellum*, the right against war or the use of armed force. The second aspect is the corpus of legal rules *ius ad bellum* ("law of war"), which governs when a state or states can legally resort to force. The third aspect is the corpus of *ius in bello*, which regulates the principles, standards, and regulations that come into force when force has already been used and an active conflict is occurring. The fourth aspect is ius post bellum, or principles, standards, and obligations after the end of major hostilities. In practice, this would mean that activities related to conflict prevention and prohibiting the use of force are compatible with *ius contra bellum*.

No matter whether Russia refers to the war in Ukraine as a "special military operation", the state of war does not depend on declaratory statements and wording but relies upon factual situations. The answer to the question of whether the use of force will be categorized as an act of war or not is found in the jurisprudence of the International Court of Justice, the supreme judicial body of the United Nations, which, in the judgment in the case of military and paramilitary activities in Nicaragua (dispute between Nicaragua and the United States), states that the force used will constitute an armed attack (equivalent to war) based on the intensity and effects of the hostilities. The same legal logic was used after the attack on the World Trade Center, which was held to constitute an act of war, triggering the inherent right of self-defense and, subsequently, Article 5 of the Washington Treaty. This means that according to existing international law, Russia has invaded Ukraine and started a war, regardless of what it calls it and how long it happens. Consequently, with this qualification, the application of international law for armed conflict begins, that is, international humanitarian law - two terms often used as synonyms. However, international humanitarian law usually includes "Geneva law", i.e., the principles and rules arising from the Geneva Conventions and additional protocols. At the same time, international law on armed conflict is a slightly broader category that also includes "Hague law", the regulation of the use of force and the methods and tactics of warfare. This means that both parties at war must adhere to the rules and principles of warfare in a situation where that is the predominant legal regime under which protection falls. The use of force in international law, contrary to popular opinion, is not prohibited between states; it is only limited. The correctness or permissibility of the use of force in the case should be subject to a separate analysis. However, in any case, the outcome of that analysis does not change the fact that regardless of who used force first and why, both sides are obliged to apply the rules of international law - laws applicable to armed conflicts.

Although some theorists consider only the first two aspects, reasoning that only the law of war and the law of war are explicitly distinguished in international law, the complexity of the situations nowadays requires a slightly broader approach. The fact is that ius ad bellum and ius in bello are the primary legal regimes that have become separated in the context of international law. The separation of ius in bello and ius ad bellum is firmly established through case law, state practice, and international legal doctrine. The first case of separation dates back to the Nuremberg trials immediately after the Second World War and the Hostage Case, which was considered by the Tribunal (IMT 1946). In this case, the Tribunal stated that "regardless of what occasion the war broke out and whether it is a so-called just war, the same norms of international law are applicable". The same principles are applicable in the period after the adoption of the UN Charter. They are confirmed in the advisory opinion of the International Court of Justice (ICJ) on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories (ICJ 2004).

In the given context of Ukraine, the *ius ad bellum* principle is breached because Russia did not use military means for self-defense. Thus, this does not mean that if the right to use force is breached, the use of force and the ongoing hostilities should not comply with *ius in bello* principles, meaning the international humanitarian law, through which the legality of using cluster bombs will be examined.

INTERNATIONAL TREATY LAW REGARDING THE USE OF CLUSTER BOMBS AND ITS APPLICABILITY IN THE RUSSIA-UKRAINE WAR

The Convention on Cluster Munitions (CCM) is an international treaty that prohibits all use, transfer, production, and stockpiling of cluster munitions, a type of explosive weapon that scatters submunitions ("bomblets") over an area. Additionally, the Convention establishes a framework to support victim assistance, clearance of contaminated sites, risk reduction education, and stockpile destruction. The Convention was adopted on 30.05.2008 in Ireland and opened for signature in Norway a few months later. It entered into force on 1 August 2010, six months after 30 states ratified it. As of April 2023, 123 states are committed to the goal of the Convention, with 111 states that have ratified it and 12 states that have signed the Convention but not yet ratified it (UN 2023). To date, neither the United States nor Russia have signed this Convention, nor has Ukraine. The Convention intends general recognition, stating in Article 1 that:

> The production, stockpiling, use, and transfer of all cluster munitions are prohibited in all circumstances, including in international conflicts and conflicts of a non-international nature. It is also prohibited to assist, encourage, or induce anyone to engage in any activity prohibited by the Convention (UN 2008).

Thus, this is not entirely in line with the Vienna Convention - Law on treaties (UN 1969). In the Vienna Convention, recognized as the *alma mater* of all other conventions, two fundamental principles of law creation and administration are laid: the principle of codification of existing customary law on the one hand and providing guidelines for progressive development, i.e., specifying the norm, on the other hand. The same principles are inherent to a more significant number of international legal instruments. Where an instrument is lacking, the methods of legal sciences and legal interpretation are applied to extract appropriate legal rules to enable the smooth functioning of current living and anticipating the needs of society through law.

In that context, it is essential to emphasize that not every international agreement binds every state in its entirety: the agreement must be ratified following the Convention and constitutional traditions, and it is also important to take into account whether the state has acceded to a certain agreement in entirety or stated a reservation to any provision in the acceptance. The Convention on Cluster Munition to oblige Russia, Ukraine, or the USA should be signed and ratified by each specific party involved. Following Article 18 of the Vienna Convention, a state is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

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In accordance with Article 24, a treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree. Without any specific provision or agreement, a treaty becomes effective once all negotiating States have consented to be bound by it. Suppose a state's consent to be bound by a treaty is established after the treaty has already come into force. In that case, The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary, and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text (UN 1969). Every treaty in force is binding upon the parties and must be performed by them in good faith.

In this instance, the Convention on Cluster Munitions does not apply to any parties involved in the conflict. Consequently, a generalized ban conclusion cannot be drawn based on treaty law as a source of international law. Therefore, customary rules must be examined instead.

THE CUSTOMARY RULES TOWARDS CLUSTER BOMBS

The most significant collection of customary rules of international humanitarian law (IHL) was considered in 2005 through the work of the International Committee of the Red Cross. The database contains the 161 rules of customary IHL identified in the 2005 study. While comprehensive, the study does not purport to be an exhaustive assessment of customary IHL (ICRC 2023). The database recognizes a separate section on the use of weapons, relating to Rule 70-Weapons of a Nature to Cause Superfluous Injury or Unnecessary Suffering, and Rule 71 - Weapons that are by Nature Indiscriminate.

The general notion is that cluster munition enters into both of the requirements - it is indiscriminate by nature and does cause additional and unnecessary suffering when used in combat against human targets. The prohibition of the use of means and methods of warfare that are of a nature to cause superfluous injury or unnecessary suffering is outlined in a large number of treaties, including early instruments such as the St. Petersburg Declaration and the Hague Declarations and Regulations. Numerous military manuals include that rule.

Sweden's International Humanitarian Law Manual (IHL), in particular, identifies the prohibition of means and methods of warfare that cause superfluous injury or unnecessary suffering, as outlined in Article 35(2) of Additional Protocol I, as a rule of customary international law. Violations of this rule constitute an offense under the legislation of many States. National case law has relied upon it (ICRC 2023). Weapons that are by nature indiscriminate are those that cannot be directed at a military objective or whose effects cannot be limited as required by international humanitarian law. The general prohibition of indiscriminate attacks also supports the prohibition of such weapons. Several military manuals and official statements mention weapons that "have indiscriminate effects", "strike military objectives and civilians indiscriminately", or "cannot distinguish between military objectives and civilians" without further detail. Beyond such general statements, the two criteria most frequently referred to are whether the weapon can be targeted at a military objective and whether the weapon's effects can be limited as international humanitarian law requires. These criteria are both laid out in Additional Protocol I: Article 51(4)(b) prohibits weapons that cannot be directed at a specific

military objective, and Article 51(4)(c) prohibits weapons the effects of which cannot be limited as required by the Protocol (ICRC 2023). Thus, these rules apply in a given context since the principle of military necessity and proportionality is equally important as the principle of distinction and humanity. Cluster bombs can be targeted against human, vehicle, and infrastructure targets, meaning the usage can or cannot be justified based on case-by-case analysis. Cluster munitions can be in the form of artillery shells, rockets, or air-delivered munitions. Ukraine wants cluster munitions because they are highly effective against area targets such as infantry, artillery, and vehicle convoys. Indeed, cluster munitions got the nickname "steel rain" because of their intense and widespread effects. Because cluster munitions spread bomblets out over a wide area, a single munition can cover the same area as many unitary projectiles (CSIS 2023).

THE FOUR PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

The normative framework for *ius in bello* intersects in the applicability of four basic principles: proportionality, humanity, distinction, and necessity (or military necessity). These principles are not based on a separate source of international law but on treaties, customs, and general law principles. On the one hand, they can and often must be derived from existing rules, expressing the essence and meaning of the regulations. On the other hand, they inspire existing rules, support them, and make them intelligible, and they must be considered when interpreting them (Poposka 2021).

Distinction or discrimination means distinguishing military objectives from civilian ones. Humanity means not inflicting additional unnecessary suffering (primarily for soldiers as a legitimate military objective), and proportionality means balancing the force used. Only as much force can be used to remove the immediate threat and ensure a possible military advantage. This does not lead to the principle of military necessity, i.e., to do everything necessary to achieve victory. These four principles are realistically extensible, so that's usually how argumentation is built, based on case-by-case analysis. Of particular importance is the Martens clause, which stipulates that in cases not covered by treaties (and traditional customary international law), "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience" (International Humanitarian Law Databases 2024).

The principle of distinction begins with the distinction between civilians and combatants was first outlined in the Declaration of St. Petersburg (The Declaration 1868), which stated that "the only legitimate object which states have to achieve in time of war is to weaken the military forces of the enemy".

The Hague Regulations do not state that a distinction should be made between civilians and combatants. Still, Article 25, which prohibits "the attack or bombardment by any means of towns, villages, habitations or buildings which are undefended", is based on this principle. The principle of distinction is now codified in Articles 48, 51(2), and 52(2) of Additional Protocol I, to which no reservations have been made (ICRC 2023).

Second, the facility's destruction, capture, or neutralization must offer some military advantage to the attacking party. According to declarations of understanding made by some

states, the military advantage expected from an attack refers to the advantage anticipated from the attack as a whole, not just from isolated or specific parts of the attack.

What is considered is that the action and advantage should be "military"; the political goal of victory can be achieved through violence only by using violence against military goals, that is, by weakening the military potential of the enemy. By characterizing the contribution as "effective" and the advantage as "definite", it tries to avoid too broad an interpretation of what constitutes a military objective. However, the specific practical implications of those terms are subject to controversy.

Both criteria must be met "in the prevailing circumstances". Without this limitation on the factual situation, the principle of distinction would be invalid since any object could become a military objective in the abstract after possible future events, for example, if used by enemy troops.

The principle of distinction also applies to the use of means and methods of warfare - that is, means and methods of warfare that have an unlimited effect must not be used. Combined with the principle of humanity, this also means that the methods and means of warfare must not be used to cause additional suffering. For indiscriminate effects in the context of critical infrastructure, consider, for example, the destruction of the Huayuankou and the poisoning of water by the Chinese army during the Japanese invasion (ICRC 2023).

THE HISTORY OF USAGE OF CLUSTER BOMBS AND STATE PRACTICE

The widely condemned use of cluster bombs can be traced back to World War II.

In 1943, the Soviet forces dropped cluster munitions on German troops in Kursk, western Russia. In the 1960s and 70s, during the Vietnam War, US forces targeted Cambodia, Laos, and Vietnam with cluster munitions. In 1975-88, those weapons were used in Western Sahara: Moroccan forces used cluster munitions against non-state armed groups. In 1978, in Lebanon, During Israel's invasion, Israeli troops were claimed to use cluster munitions in southern Lebanon. A bit later, Soviet forces used cluster munitions in Afghanistan from 1979 to 1989. In 1982, during the Falklands War, British troops released cluster bombs on Argentinean infantry positions during the 10-week undeclared war, in which hundreds died. In the 1991 Gulf War, approximately 61,000 aerial-delivered cluster munitions released by the US and its allies accounted for "about one-quarter of the bombs dropped on Iraq and Kuwait" (Timeline: Use of controversial cluster bombs in past conflicts 2023). Yugoslav forces used available cluster munitions during the war for independence in Bosnia and Herzegovina (1992-1995).

During the First Chechen War (1994-1996), Russian forces used cluster munitions against Chechen independence groups. In 1998, Ethiopia and Eritrea exchanged bomb strikes, with Ethiopia attacking the Asmara airport and Eritrea targeting the Mekelle airport. In the 1999 Yugoslavia war, it has been estimated that NATO allies dropped 1,765 cluster bombs containing 295,000 bomblets (Timeline: Use of controversial cluster bombs in past conflicts 2023). In the 2001-2002 Afghanistan War, the US dropped 1,228 cluster bombs containing 248,056 bomblets in Afghanistan between October 2001 and March 2002, according to Human Rights Watch (Timeline: Use of controversial cluster bombs in past conflicts 2023). Nearly 13,000 cluster munitions were used by the UK and the US during three weeks of combat, according to the

CMC. In the 2003-2006 Iraq war (Timeline: Use of controversial cluster bombs in past conflicts 2023). In the 2008 Georgian war, Russia used air- and ground-launched cluster bombs during a conflict in South Ossetia. Georgia also used cluster munitions. In 2011, in Libya, then-President Muammar Gaddafi's forces used cluster munitions in a village in Misrata, Libya (Timeline: Use of controversial cluster bombs in past conflicts 2023).

The use of cluster munitions in the Syrian conflict started in 2012, since the Arab Spring revolutionary protests. In 2014-15, Russia and Ukraine used cluster munitions during Moscow's invasion to annex Crimea. In 2015-18, Saudi Arabia used UK-made cluster bombs against Houthi rebels in Yemen (Timeline: Use of controversial cluster bombs in past conflicts 2023).

Russia and Ukraine have extensively used cluster bombs during the conflict since 2022 (HRW 2023).

CONCLUSION

No matter what it is called, an international armed conflict or the equivalent of war is currently active on Ukrainian territory. This legal categorization is based on the factual situation and does not depend on the expressed unilateral desire of the parties nor on the duration of the armed actions. Consequently, with this qualification, the application of international law for armed conflict begins, that is, international humanitarian law - two terms often used as synonyms. However, international humanitarian law usually includes "Geneva law", i.e., the principles and rules derived from the Geneva Conventions and additional protocols. At the same time, international law on armed conflict is a slightly broader category that also includes "Hague law", the regulation of the use of force and the methods and tactics of warfare. This means that both parties at war must adhere to the rules and principles of warfare in a situation where that is the predominant legal regime under which protection falls. The use of force in international law, contrary to popular opinion, is not prohibited between states; it is only limited. The correctness or permissibility of the use of force in the case should be subject to a separate analysis. However, regardless of who used force first and why, both sides must adhere to the rules of international law applicable to armed conflicts. This vast set of rules for specific situations can be simplified by applying the four vital principles of international humanitarian law: the principle of humanity, the principle of proportionality, the principle of distinction, and the principle of military necessity. These principles are established to limit the suffering of civilians and the battlefield while enabling the achievement of the objective of warfare. Therefore, these principles limit and complement each other and must be seen in a given context. (Sassòli et al. 2017).

In the simplest terms, the principle of humanity implies that both civilians and combatants should be treated as humanely as possible, that is, to limit unnecessary suffering. Because of this principle, certain types of weapons have been prohibited during the evolution of warfare.

The principle of proportionality means that the force used to respond to an attack is appropriate to the force used in a particular attack (for example, a bullet fired by an infantry soldier is not returned by a rocket-propelled mortar). However, the principle of proportionality must be taken in context with the principle of military necessity, i.e., to repel the immediate

attack and danger and the potential future attack that is certain to happen or give an advantage to the opposing side. In this way, the use of force, which at first glance seems disproportionate, is usually justified.

The principle of distinction refers to the distinction between civilians and combatants, that is, civilian and military objects - civilian objects must not be treated as legitimate military targets. In this context, the attacks must not have an indiscriminate effect; that is, the impact of the attacks must not affect civilians and civilian objects, which is generally a primary argument against the use of nuclear weapons.

States usually justify attacks on civilians and civilian objects in case of conversion of the objects (that is, if a typical civilian object such as a cultural center starts to be used as a storage or assembly facility for weapons and ammunition), thus enabling a significant military advantage for the other side in the context of the principle of military necessity, as collateral damage.

Additionally, the applicability of the law of armed conflict does not always derogate from the international law of human rights. Those two legal regimes shall not exclude each other but empower.

International humanitarian law is the *lex specialis* that applies during armed conflict. This means that individuals enjoy double protection. According to the principle of *lex specialis derogat legi generali*, whenever humanitarian law suggests a specific rule for the special situation arising from the conflict, that rule prevails over the other rule derived from the protection provided by human rights law.

A classic example in this direction is the rule regarding the use of force and the right to life. The right to life continues to be upheld during times of armed conflict as an inherent human right that cannot be waived. However, as stated by the International Court of Justice, the assessment of whether there has been an arbitrary deprivation of life falls under the applicable *lex specialis*, namely the international law of armed conflict, specifically designed to regulate the conduct of conflict situations. This also implies that at some juncture, protection will be governed by either regime or the other. Therefore, a case-by-case analysis method must always be employed.

The UN Convention banning the use of cluster bombs stipulates that it will enter into force after the thirtieth ratification, which took place in 2010. However, neither the United States nor Russia nor Ukraine are signatories. No matter how much international law strives for universality, it has no coercive mechanism due to the principle of sovereignty and equality. The sole mechanism available is the Security Council, which is currently hindered by Russia's role as one of the permanent member states with veto power despite being the aggressor in this case. This highlights the necessity for reforming the collective security system.

The Convention represents a typical agreement subject to the Vienna Convention on the Law of Treaties concerning entry into force provisions. Consequently, it does not legally bind Russia, Ukraine, or the United States. Apart from treaty law, there is also customary law in the LOAC (Law of Armed Conflict) section, and this does not support the use of cluster bombs because they generally have a non-discriminatory effect and cause additional and unnecessary suffering. Their usage can be justified to some extent depending on the context, if there is no other more suitable way, by applying the balancing of the four principles of humanitarian law and depending on the specific type of munition. However, even that argumentation is not the

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most appropriate. The fact is that there are no weapons whose use is completely prohibited, not even nuclear weapons. In general, whether the use of a type of weapon will be banned depends on its specific characteristics and context, according to the four principles of humanitarian law: the principle of distinction, the principle of humanity, the principle of proportionality, and the principle of military necessity.

Peremptory norms of international law are also known under the name *ius cogens* and represent a generally accepted principle of the international community - something that is understood to be a norm in itself - and represent an absolute obligation, although they are part of an international agreement and whether a particular country is a party to that agreement - it is obliged to respect the peremptory norms. They arise from international custom and are not defined in a separate instrument. Still, the jurisprudence of international tribunals and the interpretations of distinguished jurists know how to point out some norms as peremptory. For example, the prohibition of genocide is treated as such. This is how the right to self-determination is treated, but how the law is interpreted is far from a consistent legal regime so that a straightforward practice can be extracted. That's why there is not enough background to say that the prohibition of the use of cluster bombs is also a peremptory norm of international law.

In this manner, although the use of cluster bombs should not be encouraged or legal, it cannot be said that it is banned in the current framework of international law. The legality of cluster munition use must be examined in case-by-case analysis depending on the context and considering the four basic principles. This means that, for example, the usage of the bomblets during Russian attacks on Kharkiv (BBC 2022), taking into consideration the number of civilian deaths and the fact that it did not pose a direct threat to the attackers, shall be considered illegal and contrary to the principles of international law. Even if bomblets are used against military forces, they still go under the line of causing unnecessary suffering. Using against military targets of non-human nature can be justified in specific cases, taking into consideration the type and characteristics of the bomblets, which also may technically differ quite a lot.

Additional work and campaigns are more than necessary to refrain states and non-state actors from using this type of weapon, including a more robust legal framework and encouragement towards ratifying the Convention.

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