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COMMISSION ON HUMAN RIGHTS  
Sixtieth session  
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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ANY PART OF THE WORLD**

**Written statement\* submitted by International Education Development, Inc.,  
a non-governmental organization on the Roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2004]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

1. International Educational Development/Humanitarian Law Project (IED/HLP) has raised the issue of weaponry containing depleted uranium at both the Commission on Human Rights and the Sub-Commission on Human Rights since 1996. We have been pleased that the Sub-Commission immediately took up this issue and agreed that the use of weaponry containing depleted uranium in armed conflict is incompatible with existing human rights and humanitarian law. We welcome the working papers submitted by Y.K.J. Yeung Sik Yuen weaponry containing depleted uranium and other weapons whose use in armed conflict is incompatible with existing norms.<sup>1</sup>
2. We have already set out four tests that all weapons must pass in order to be used in armed conflict: the “geographical” test; the “temporal” test; the “humaneness” test; and the “environment” test.
3. In addition to failing the four- part weapons test, DU weaponry fails the “rule by analogy” test. Drafters of early conventions recognized that they could not possibly foresee all circumstances of armed conflict or weapons. Indeed, between the time of the first Geneva Convention in 1864 and the first The Hague Convention of 1899, there had been tremendous advancements in both weaponry and types of combat. To accommodate the fact that methods and means of warfare evolve with time, the drafters of treaties on humanitarian law incorporated the rule that a new method or means of warfare may be deemed illegal if it is similar to methods or means of warfare that are expressly or by custom prohibited. This is called the rule of analogy.
4. The first expression of that rule is set out in humanitarian law that addresses methods and means of warfare (called The Hague law after The Hague treaties). The Hague Convention on 1899 contains the “Martens clause,” after the Russian who drafted it, which provides:

The High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written understanding, be left to the arbitrary judgment of military commanders. Until a more complete code of the laws of war is issued, the High Contracting Parties deem it expedient to declare that in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection of the rule of the principles of the laws of nations as they result from the usage established between civilized nations, the laws of humanity and the dictates of the public conscience.

This same provision was also included in the 1907 The Hague Convention as preambular paragraph 8, which is the citation usually given for it.
5. The concept of “similar but not foreseen” regarding weapons was a feature of some of the treaties banning specific weapons. For example, in the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare prohibits all analogous liquids, materials or devises.

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<sup>1</sup> E/CN.4/Sub.2/2002/38 and E/CN.4/Sub.2/2003/35.

6. The four 1949 Geneva Conventions all have expression of the Martens clause in the common article relating to denunciation, so that even if a State withdraws from the Geneva Conventions, that State is still bound by all provisions that are customary law as well as analogous situations. Geneva Conventions I, Article 45 and II, Article 46 of 1949 also contain an article requiring that unforeseen situations must be interpreted in light of each of these two conventions. The Martens clause was incorporated into Article 1 of Protocol Additional I and the preamble of Protocol Additional II.
7. Applying this rule to new weapons requires review of both all other treaties forbidding particular weapons as well as all of the rest of humanitarian and human rights law. In review of a treaty prohibiting a specific weapon, the question should be asked: "why was that weapon prohibited?" If a new weapon has a similar effect, then it may be sufficiently "analogous" to be also prohibited.
8. Use of the rule by analogy buttresses the argument that weapons containing depleted uranium (DU) are already illegal as concluded by the United Nations Sub-Commission and Justice Yeung Sik Yuen in particular. DU weapons could be viewed as "poison" or "poisonous" and thus banned by The Hague Convention of 1907, Regulations Article XXIII (a). While clearly not foreseen in 1907, DU weapons have an effect on the human body and natural environment that is "analogous" to the poisons of 1907. In a similar vein, the 1925 Protocol on Gases may ban DU weapons because they are analogous to those specifically mentioned in the treaty. And regardless of whether one considers DU weapons "conventional," "nuclear" or "radiological", the 1980 Conventional Weapons Convention, Protocol I prohibits weapons producing fragments not detectable by X-rays. If one considers DU weapons "conventional" then this provision directly applies. If one considers DU weapons nuclear or radiological, then this provision prohibits them by analogy because DU particles are not detectable by x-rays.
9. Mr. Yeung Sik Yuen stresses that all weapons use must be in proportion to the legitimate military objectives. Thus even "legal" weapons might be used illegally -- as when a military force uses a large bomb against a small, lightly defended military outpost that causes injury and damage in excess of the actual military gain. Several weapons systems are now being developed by the United States that would severely tax this rule.
10. One weapons system under development would allow the United States to engage in an armed conflict anywhere in the world from its own territory. Code-named FALCON (an acronym for Force Application and Launch from the Continental United States), this plan contemplates 12,000 pound bombs delivered anywhere in the world in less than two hours from a US launch. It would be impossible to assess proportionality as there would be no combatants on site. No State or group of States would have the military means to counter pre-emptive military actions by the United States. The United States is also planning smaller bombs that can be launched into space and then orbited until needed, when they are guided over a target, and then dropped. The bombs can penetrate 70 feet of solid rock. These weapons systems are defended by United States officials because they "would free the US military from reliance on

forward basing to enable it to react promptly and decisively to destabilising or threatening actions by hostile countries or terrorist organizations.”<sup>2</sup>

11. Weaponry containing depleted uranium has been increasing in the news and subject of widespread international condemnation, especially as it was so widely used in the new war against Iraq. In October, 2003 there was a large international conference held in Hamburg, Germany with the participation of more than 300 scientists, lawyers and representatives of the anti-DU world-wide movement. Among recent studies is one showing that children born of United States veterans of the first Gulf War shows a more than 60% incidence of disability, deformity and other serious medical problems. Another study shows that United States Gulf War veteran’ children have a much higher likelihood of having three specific birth defects: two types heart valve abnormality to children of male veterans, and genito-urinary defects to children born of female veterans.<sup>3</sup> A study of British veterans of the Gulf War, Bosnia and Kosovo reveals that they have 10 - 14 times the level of chromosomal abnormalities than usual.<sup>4</sup>

12. There is increasing evidence that troubling weaponry was also used in Afghanistan. A Canadian medical research facility recently found that the urine of Afghani people near where the United States carried out military operations contained radioactive isotopes 100 to 400 times higher than Gulf War veterans from the United Kingdom who were tested in 1999.<sup>5</sup> The Canadian team recorded an average 315.5 nanograms in people in Jalalabad, Tora Bora and Mazar-e-Sharif. A 12-year-old boy near Kabul tested at 2,031 nanograms, with the maximum exposure considered safe by the United States put at 9 nanogram/year. With growing evidence of an increase in birth defects and still-borns, the situation should be addressed as an issue of the highest priority.

13. We urge the Commission to study the two papers prepared by Mr. Yeung Sik Yue n, who has become one of the few experts in this field. The Commission is well advised to request him to consult with the Office of the High Commissioner to further this topic. The need to stop DU weapons use cannot possibly be overestimated. The smaller, poorer countries cannot possible keep up with “arm-chair” wars or they will bankrupt themselves. Even the highly developed countries are far, far behind this technological madness. If the United States is allowed to develop and use these weapons, all other countries only exist at the mercy of the United States.

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<sup>2</sup> From the Defense Advanced Research Projects Agency (DARPA) invitation for bids, posted on its website, reported by Julian Borger, The Guardian, 1 July 2003. We call wars to be waged this way “arm chair” wars. The United State military will not have to leave home, but can effectively destroy a country from their homes. The United States “combatants” never have to see combat, nor the destruction they cause with the bombs they send from home.

<sup>3</sup> “Gulf War Birth Defects” in the Lexington-Herald Leader, 4 June 2003.

<sup>4</sup> H. Schrader, A. Heimers, R. Frentzel-Beyme, A. Schott & W. Hoffmann, “Chromosome aberration analysis in periferal lymphocytes of Gulf war and Balkan war veterans,” in Radiation Protection Dosimetry, vol.103 no.3, pp. 211-220.

<sup>5</sup> The report is posted at [www.umrc.net](http://www.umrc.net).