

Taking into account specific weapons, discuss the criteria provided by international humanitarian law in relation to the legality of weapons.

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Introduction

International Humanitarian Law (IHL) comprises a series of treaties and customs to direct the status and conduct of war. In this context, IHL protects individuals who do not actively fight and incapacitated those who have lost fighting capacity while limiting the methods of warfare¹. Weapon regulation judgment is a rule of arms use that is legitimized by the requisite integration of tentacles means and means with consideration for humanity, thereby reducing suffering in battles to the most significant degree imaginable.

Major treaties and conventions that define the legality of weapons under the IHL include the Geneva Conventions of 1949 and the Hague Conventions. Other relevant treaties or conventions include the Convention on Certain Conventional Weapons of 1980 which has relevant protocols like incendiary weapons and blinding laser weapons.² Altogether, these documents ensure compliance with such principles as the prohibition of weapons which result to an indiscriminate effect or excessive suffering.

This essay will critically analyze the assessment of certain weapons under IHL, specifically the compliance of white phosphorus, drones, and autonomous weapons with the principles of distinction, proportionality, and taking precautions in attacks. The document aims to address contemporary armed conflicts and transformations of warfare and consider their impact on the IHL conformity of white phosphorus, drones, and autonomous weapons. The analysis will be conducted with reference to the contemporary critical literature on the scope and performance of IHL in regulating weapon usage and the real-world examples drawn from recent

¹ Peace Operations Training Institute, International Humanitarian Law (Peace Operations Training Institute) https://cdn.peaceopstraining.org/course_promos/international_humanitarian_law/international_humanitarian_law_english.pdf accessed 4 May 2024

² United Nations, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949) https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf accessed 4 May 2024

conflicts and the seminar slides/tutorials also provided. It will assess whether the existing IHL framework is appropriate to address the challenges of modern weaponry in today's conflicts.

Section 1: General Principles of Weapon Legality under IHL

International Humanitarian Law refers to a body of law that guides the behavior during war and provides protection to persons who are not or are no longer fighting in battlefields³. The major concern of IHL is principles that reduce the harm appropriately in the case of armed conflicts, including statutes concerning the legality and use of particular weapons.

Avoidance of Unnecessary Suffering

The principles enjoining combatants from applying weapons causing unnecessary injury or avoidable suffering are some of the fundamental International Humanitarian Law principles. These principles were first consolidated under the Hague Conventions and later elaborated under the Geneva Conventions of 1949. Under these conventions, the contracting states are obliged to respect and ensure the respect of certain provisions under all circumstances. The latter provisions include Article 35 and 36 of Additional Protocol I to the Geneva Conventions 1949 prohibited the utilization of weapons, projectiles, and methods of warfare that generate unnecessary suffering or superfluous injuries⁴.

The principle also involves certain means of waging combat. Bioweapons and chemical weapons, which are stated as incapable of monitoring or completely preventing their damaging impacts to combatants, create immense suffering for those same combatants and the civil population and their health or use are outlawed by a range of international agreements.

³ Helen M Kinsella and Giovanni Mantilla, 'Contestation before compliance: History, politics, and power in international humanitarian law' (2020) 64(3) International Studies Quarterly 649-656

⁴ 'Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977'
https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.34_AP-I-EN.pdf accessed 4 May 2024

Distinction and Proportionality in Targeting

Connected to the avoidance of unnecessary suffering are the principles of distinction and proportionality. According to IHL, the parties to the conflict shall at all times distinguish between the combatants and the non-combatants, and between military objectives and civilian objects, and direct attacks only against military objectives. This principle is essential for safeguarding the civilian population and civilian objects during armed conflicts. Proportionality supplements distinction by demanding that even if military objectives are targeted, the expected incidental loss of civilian life and the damage to civilian objects are not excessive relative to the expected concrete and direct military advantage. The latter also includes consideration of whether an attack on the military objective is promising, family to the imminent damage to civilian objects. Proportionality is a dynamic factor that requires constant reassessment due to the changing situation on the battlefield⁵.

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Seminar Insights on Civilian Protection

The seminars on “Protection of Civilians 2024” have unequivocally contributed to the importance of the above principles by emphasizing the protections civilians and persons hors de combat receive under the Geneva Conventions and their Additional Protocols⁶. The discussions also pinpoint the legal obligations to protect the wounded, sick, and shipwrecked, as well as prisoners of war while promoting their humane treatment and protecting them from acts of violence.

Practical Applications and Challenges

⁵ Shahbaz Ali, 'Coming to a Battlefield Near You: Quantum Computing, Artificial Intelligence, & Machine Learning's Impact on Proportionality' (2020) 18 Santa Clara J Int'l L 1

⁶ Protection of Civilians. <https://www.securitycouncilreport.org/monthly-forecast/2024-05/protection-of-civilians-7.php#:~:text=The%20paper%20reaffirmed%20the%20enduring,providing%20protection%20through%20UN%20peace>

Many examples, such as white phosphorus and drone warfare, blur the line between law and ethics. For example, white phosphorus is not strictly prohibited when employed in particular ways, but the incendiary effect of white phosphorus requires a heavy temporal constraint to ensure proper discrimination and proportion⁷. Likewise, drone warfare is not outlawed, but the IHL must take into account the possibility that disproportionality may arise due to drones' conventional weapons.

Based on the abovementioned analysis, it may be concluded that following IHL regarding the legality of weapons is not just a matter of abiding by legality; it is also about keeping the ethical status in armed conflicts. Given that warfare becomes increasingly advanced owing to the development of technology, the legal and ethical debates surrounding weapon use are likely to become more heated within the IHL paradigm. It is crucial that these debates go beyond academic setting so that IHL can successfully adjust to new technologies and strategies of warfare. This will help protect human dignity in times of war.

Section 2: Specific Weapons and IHL Criteria

White Phosphorus

Legal Status under Protocol III of the CCW 1980 on Incendiary Weapons

White phosphorus is one of the most controversial weapons in the international system of humanitarian laws. The Protocol III of the Convention on Certain Conventional Weapons defines primary legal scope of the incendiary weapons that encompass white phosphorus⁸. According to Article 1 of the Protocol, an incendiary weapon is “any weapon or munition which is primarily

⁷ Christopher Knight and Sarah Miller, 'The Ethics of Eviction Agents versus Bombardment in Urban War: Context for the Drone Debate' in *The Ethics of Urban Warfare* (Brill Nijhoff 2022) 126-152

⁸ The Convention on Certain Conventional Weapons. <https://disarmament.unoda.org/the-convention-on-certain-conventional-weapons/#:~:text=It%20was%20adopted%20on%2010,or%20to%20affect%20civilians%20indiscriminately.>

designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof, produced by a chemical reaction of a substance delivered on the target". The legal definition of white phosphorus being or not incendiary weapons depends on whether the ultimate or primary aim of its use is such activity. Primarily organized for illumination, signaling, or for the creation of smoke screen weapons, even if they happen to have unintended incendiary effects, are not incendiary weapons according to Protocol III. Hence, when signaling or using a smokescreen, white phosphorus cannot be qualified as an incendiary weapon according to the provisions of the protocol.

Usage Contexts

As demonstrated by various military forces, white phosphorus can be described as a dual-use chemical. Legitimate military uses of white phosphorus include illumination of targets for night operations and the creation of smoke screens to cover the movements of troops fighting on the ground⁵⁹. These military uses of white phosphorus are recognized under international law, and its deployment exclusively in military zones with no civilian presence is somewhat compatible with the principles of proportionality and distinction of IHL. The use of this chemical in military areas only is ethically and legally justifiable personally due to its inhumane effects. However, when white phosphorus is used in civilian presence areas, its use becomes highly unethical and potentially illegal. White phosphorus may cause severe burns and other destructive effects, and its use in civilian areas contradicts unnecessary suffering and distinction IHL principles. The legality of this chemical's use is questionable and disputed between different states and scholars.

⁵⁹ Carroll, G. (2021). Clearing the smoke: evaluating the United States policy toward white phosphorus munitions in urban contexts. *The Military Law and the Law of War Review*, 59(1), 3-22.

Controversy Over Its Classification

The classification of white phosphorus centers on its humanitarian impact or military utility. Some people argue that since its usage always entails the danger of causing severe and indiscriminate injuries, especially in urban surroundings characteristic of civilian harm, the weapon should be classified as an incendiary under all circumstances. Nevertheless, users of white phosphorus claim that this type of weapon is only practical in certain military situations and can prevent misuse based on existing regulation under Protocol III.

The legal debate also includes the consideration of whether international customary law could “mature” in such a way that stipulates additional, more stringent limitations, or even the proscription on the employment of white phosphorus. Thus, while some states initiated self-imposed limitations on the use of the chemical, no international agreement has been reached so far. The ICRC and multiple human rights organizations sustain the claim for new restrictions or revision of the legal white phosphorus classification in IHL. The use of white phosphorus during warfare is a complex issue formulated at a crossroad of the lawful law of armed conflict and the commitment to protect human dignity. As warfare experiences changes and the international community becomes more and more aware of the nature of the weapons used, the subject under discussion remains an area for further debate that might result in new interpretations or changes to the status quo regarding the use of incendiary weapons.

Section 2: Specific Weapons and IHL Criteria

Drones

Legal Challenges Presented by Drone Warfare

The use of drones in warfare is a radical transformation of technology; however, it creates numerous legal problems founded in the current International Humanitarian Law. In the

past twenty years, drones, the unmanned aerial vehicles, have been actively utilized for military purposes. Although it was claimed to follow the requirements of traditional wars on a legal level, it was a matter of interpretation and evaluation. Despite the issues of the aforementioned cause, it is the challenge of distinction, proportionality, and responsibility that are the main legal solutions. At the same time, apart from the critical ones, there are also the fundamental legal ones. Probably the latter would be the threat of physical and psychological remoteness that makes many drones almost unable to gauge the military necessity and proportionality. Moreover, although many believe that drones as a weapon are extremely precise, the action of execution contradicts it because it leads to injuries and destruction.

Compliance with IHL Principles of Distinction and Proportionality

Drones are most commonly used for targeting strikes. On the one hand, drones are theoretically capable of hitting a military facility with unprecedented precision and reducing collateral damage. On the other hand, human life, namely the lives of innocent people, is greatly influenced by the quality of intelligence and its timeliness, which effectiveness directly affects the principle of distinction. That is, indifference to the principle of distinction means the desire to hit all at once, without discrimination. The principle of distinction requires the involved parties to distinguish at all times between the civilian population and combatants.

The principle of proportionality in drone warfare assesses that the civilians and civilian property destroyed should vary directly with the expected military advantage of the strike in question. Drones have been previously deployed in complex conditions where combatants coexist with civilians, as seen in Syria and Afghanistan's urban warfare. Since certain strikes are still likely to result in civilian damage in such circumstances, proportional use is a constant concern in drone warfare.

Another issue is related to operational transparency and accountability. Drone activities still evoke much concealment since there is hardly any publicly available information on targeting matrices, operational grounds and measures, approximation of collateral-damage numbers, the use of strength, and so on. This lack of transparency makes it hard to appraise whether states uphold their legal obligations under IHL. The information vacuum hinders the potential of international organizations, non-governmental organizations, and the public to control what states do under IHL and to keep them responsible for violation possibility.

Autonomous Weapons

Emerging Issues with Fully Autonomous Weapons

Killer robots, also known as fully autonomous weapons, are a revolutionary breakthrough in military science, as their artificial intelligence independently determines the target and carries out its own armed attacks without human involvement. In this context, fully autonomous weapons create serious legal and ethical problems in terms of International Humanitarian Law – the principles of distinction, proportionality, and human agency are violated.

Another key emerging debate is the delegation of the machines with the authority to make vital combat decisions, including decisions on applying lethal force. The systems are created in such a way that clusters of algorithms and sensor devices can help the Autonomous weapons systems (AWS) to make autonomous and quick decisions on targets. There is a certain amount of skepticism behind the theoretic ability of AWS to respect the principle of distinction under the current technological capacity. The counterargument claims that the algorithms and machine-learning systems cannot reflect on the contextual dimension of the situation or quality judgments.

Challenges Posed to IHL

Compliance with the Principle of Distinction and Proportionality

The principle of distinction requires combatants to constantly distinguish civilians from combatants. Autonomous weapons do not always differentiate a civilian from a combatant in real-time, fluid situations since it relies on pre-programmed criteria and sensor inputs. As a consequence, autonomous weapons have a hard time distinguishing a civilian from a combatant, more so in environments where it is difficult to separate the troops from civilians.

Moreover, the principle of proportionality that “forbids attacks in which the anticipated civilian loss cannot be justified by the expected direct military advantage” also creates a high barrier for AWS. Proportionality is difficult to assess objectively and involves subjective judgment to measure the expected civilian loss against the military benefit of the target. The AWS’s decision-making algorithm would not be able to make such complex and uncertain assessments, probably resulting in a high level of accidental civilian loss.

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Accountability Issues

The issue of accountability remains essentially unfeasible when it comes to the use of weapons of war alone. The conventional sophistication mechanisms under IHL are founded on the idea of a human being as the deciding party and accountability voiding¹⁰. In AWS, whether the computer decides, it is practically impossible to establish as responsible in the event of a breach – the programmer, the military commander, or the producer. This accountability lack may produce an “accountability void”, making it difficult to determine who is ultimately responsible for the crimes undertaken by the independent system.

Legal and Ethical Considerations

¹⁰ Andersin, E. (2020). Lethal Autonomous Weapons Systems and International Humanitarian Law: A mixed-methods study to understand and explain how states’ position themselves vis-à-vis lethal autonomous weapons systems compliance with international humanitarian law.

There are several strong concerns regarding the legality and ethics of deploying such weapons. First of all, allowing machines to conduct decisions with actual life and death implication is fundamentally disrespectful to human dignity. Moreover, the mere potential of developing and applying AWS raises worries about a potential escalation of an AI-based arms race. This might lead to a further militarization and chaos if such systems spread to non-state or rogue state actors.

The challenges posed by autonomous weapons to International Humanitarian Law present a broad spectrum of obstacles that are factual, ethical, and legal. With the quickening pace of technological development, international legal institutions have to likewise ensure that the use of novel means and methods complies with the overall principle of human control, legality of legality, and distinction of civilians. This can only be achieved through a concerted effort of multiple states to identify the specific regulations that can adapt to new weapons, thus keeping war under the control of law and ethics.

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Section 3: Case Studies and Practical Applications

Use of White Phosphorus in Populated Areas

White phosphorus has been used in controversial circumstances, particularly in Iraq, Gaza, and Syria. Its application in city and closely populated areas prompted severe legal and humanitarian criticism. While white phosphorus is not explicitly defined as an incendiary weapon under Protocol III of the Convention on Certain Conventional Weapons (CCW), its usage in areas where civilians are located is closely monitored. As a result, the harmful substance has a high level of threat that causes hideous burns while igniting clothes; it includes the principles of unnecessary suffering and proportionality under IHL.

For example, during the conflict in Gaza, it has been claimed in several reports that white phosphorus was used, which resulted in the deaths of civilians and sparked long and heated discussions about the compliance to distinction¹¹. These examples illustrate a general problem in IHL related to dual-use weapons, as the issue of their legality largely depends on the way they are used. The argument is whether using such weapons is reasonable in terms of military necessity, or it violates IHL, explanation provisions related to the indiscriminate effects and the risk of widespread civilian harm.

Deployment of Drones in Conflict Zones like Syria and Yemen

Drones occupy a prominent place in contemporary warfare, deeply connected with the United States' military operation in countries such as Syria and Yemen¹². Possessing a high level of precision and much lower threat level for the combat personnel, drones, however, represent a potentially contentious instrument in the context of the IHL. The violation of the law appears within the realm of proportionality and distinction, as not only high-profile militants become targets of a given strike – civilians die in the process. For instance, targeting Al-Qaeda, involved in the conflict in Yemen, United States drones eliminated its affiliates, accompanied by massive collateral damage and subsequent condemnation on an international scope. The problem here remains in the inability to precisely assess the targets in real-time, contributing to a high degree of uncertainty regarding the identity of the enemy. These instances demonstrate the complications of the modern warfare ideology and call for increased regulation and focus on minimization of collateral damage.

Discussions on Autonomous Weapons at International Forums

¹¹ Buheji, M., & Al-Muhannadi, K. (2023). Mitigating Risks of Environmental Impacts on Gaza-Review of Precautions & Solutions post (2023 War). *International Journal of Advanced Research in Engineering and Technology*, 14(7), 15-47.

¹² Khalilzada, J. (2022). The Proliferation of Combat Drones in Civil and Interstate Conflicts. *Insight Turkey*, 24(3), 89-108.

Apart from increasing awareness and concerns, the development of autonomous weapons systems has induced debates on the international level. Various international forums, such as the United Nations and disarmament conferences, have addressed the issue of AWS, as well as implications it may have for global security and conduct of warfare¹³. Considering the necessity of creating a regulatory framework for the development and use of AWS according to principles of IHL, the dividing issues have been the possibility of AWS to comply with IWC norms, namely, distinction, proportionality, and responsibility. As a result, international forums have been divided into proponents of outlawing fully autonomous weapons and those arguing in favor of IHL-compliant AWS. Another contentious issue related to AWS is the potential ethicality of letting machines decide over life and death, which has a huge potential impact on international norms and future armed conflict.

Section 4: Critical Analysis of Weapon Legality under IHL

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Evaluating the Effectiveness of IHL in Regulating Modern Weapons

The ability of International Humanitarian Law to regulate the use of modern weapons remains controversial. IHL is predominantly based on concern regarding the humanitarian impact of warfare such that the legal domain balances the necessity of weapon use with various humanitarian laws. In particular, the general principles of distinction, proportionality, and unnecessary suffering guide the legal framework of weapon use regulation on the battlefield¹⁴. However, the development of new technologies, including drones and other autonomous weapons, has increasingly tested the efficacy and capability of IHL to respond to new technologies due to the necessity to adapt and apply its provisions to new scenarios. Importantly,

¹³ 'Seventy-eighth Session, 28th Meeting (AM) GA/DIS/3731, 1 November 2023, First Committee Approves New Resolution on Lethal Autonomous Weapons, as Speaker Warns "An Algorithm Must Not Be in Full Control of Decisions Involving Killing'" <https://press.un.org/en/2023/gadis3731.doc.htm> accessed 4 May 2024

¹⁴ Lubell, N., & Cohen, A. (2020). Strategic proportionality: limitations on the use of force in modern armed conflicts. *International Law Studies*, 96, 159-195.

IHL serves as a clear legal framework with exclusive jurisdiction on weapon use during warfare. Nevertheless, states and non-state actors have the independent capability to utilize their weapons, undermining the authority of IHL. Perspectively, modern technologies, including cyber warfare capabilities and the use of drones, and activities for developing autonomous weapons nationally, have dissipated the feasibility of these principles. For example, drones guarantee low risk to combatants on one hand, and guarantees increased targeting effects. However, civilian casualties due to wrong targets question the possibility of enhanced accuracy, including the reliability of intelligence evaluations leading to the targeted attacks. Ultimately, these aspects highlight the difference between the ideology of IHL and the capability of application in warfare.

Role of International Courts and Tribunals in Enforcing Weapon Legality

International courts also have important mechanisms for the enforcement of IHL, especially concerning the legality of weapons. For example, the International Criminal Court and international tribunals like the International Criminal Tribunal for the former Yugoslavia and several ad hoc tribunals have the power to try cases of war crimes, defined in part as breaching the rules of the allowed means and methods of warfare¹⁵. This applies to both punishing persons responsible for illegal weapons use and creating deterrence against such behavior. However, the work of international courts is substantially ineffective because they are easily influenced by international politics, have limited jurisdiction and often face difficulties in bringing alleged culprits to court. More importantly, legal precedent is very inconsistent with weapon case law. While they create precedence for legal practice and increase IHL's understanding and acceptance, their weapon case law might not always be sufficient. The reason is that it might be situational and not serve as a black-or-white guideline to other similar IHL cases.

¹⁵ Setiyono, J. (2022). The Role of International Adjudicative Bodies in Prosecuting Genocide Crime: A Case Study of International Criminal Tribunal for the Former Yugoslavia (ICTY).

Differing Interpretations by States Regarding Weapon Use under IHL

There is a significantly differing interpretation on the IHL governing weapons among states depending on their military capability, strategic preferences, and legal traditions. Some states propose a treaty that will completely outlaw fully autonomous weapons while others suggest such weapons could potentially minimize human death cases and, therefore, should not be a complete ban but rather regulated. Such a vast range of interpretations does not exist among futuristic weapons; it also exists in other normal weapons. The legality of utilizing white Phosphorus is debating legally by states such that some regard it as a munition when used in certain circumstances while others consider it inhumanly irrespective of situation¹⁶. This demonstrates that it is impossible to establish laws that will be universally agreed on by all states. This consequently creates a challenge in implementing IHL and producing levels of compliances based on the countries.

Conclusion

In conclusion, it is clear that International Humanitarian Law suffers considerable challenges in adjusting to warfare technologies of modern times such as drones, autonomous weapons, and artillery such as white phosphorous. The use of these weapons challenge the extent to which the established principles in this law, including distinction, proportionality tendencies, and the rigging of unnecessary suffering as war crime apply. The effectiveness of International humanitarian law in addressing these weapons based on principles and as part of legal law depends on how states and different situations adhere to its rules that differ by far. With the warfare environments evolving due to technologies, urgent measures are required to promote changes in international legal systems. This adjustment may come in form of developing new treaty rules or addition or nullifying existing ones on specific aspects of modern weapons

capacities. Additionally, considering the courts in International laws and the legal institutions and cooperation across the states, internationals should enforce IHL while at the same time ensuring it is adhered to and applied. The future and continued relevance of IHL in militarism will depend on the nature in which it evolves and meets the warfare dynamics in place. Legal norms and international cooperation will be necessary to ensure the humanitarian theories based on IHL are fulfilled even in the phase of emerging technologies.

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