



INTERNATIONAL LAW YEAR IN REVIEW

10 January 2023

New Methods and Means of Warfare and Challenges to International Humanitarian Law

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INTERNATIONAL HUMANITARIAN LAW

- Originally known as “The Law of War”
- Also known as “The Law of Armed Conflict”
- Sub-set of Public international Law
- Prescribes the rules applicable to warfare/armed conflict
- Not concerned with the reasons for the armed conflict
 - “Jus ad Bellum”
- Concerned only with conduct of persons, nations and entities involved in armed conflict
 - “Jus in Bello”

BASIC PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

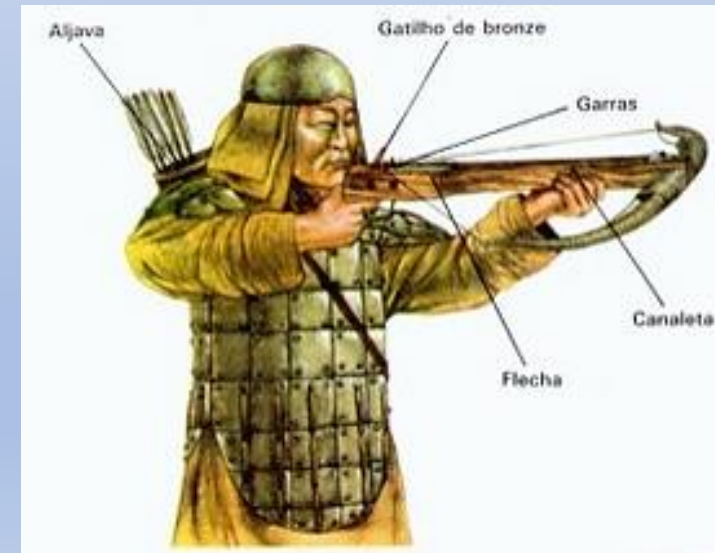
- Humanity
 - Unnecessary suffering must not be caused
- Distinction
 - Between combatants, non-combatants, POWs, civilians and neutrals
- Proportionality
 - No more force than is necessary can be used to achieve a military objective
- Military Necessity
 - No breach of the above principles are permitted except when mandated by Military - Necessity
- IHL initially developed by military men to suit their needs and preferences
 - Heavy influenced by medieval notions of chivalry
- Now largely found in treaties and conventions
 - Presently is the province of diplomats and lawyers.

APPLICATION OF IHL

- IHL regulates the means and methods of armed conflict
 - i.e. determines strategies, weapons and tactics
- Applies in
 - International Armed Conflicts (IAC)
 - Non-International Armed Conflicts (NIAC)
- Different rules may apply depending on nature of armed conflict
- Asymmetrical warfare confuses distinction between IAC and NIAC
- All IHL rules are meant to be applied by humans in situations of armed conflict with other humans.

TECHNOLOGY AND WARFARE

- Warfare technology has and is constantly evolving
 - Many everyday technologies necessary for human life today were originally developed for warfare
- Introduction of new technologies has always posed challenges for the laws of war
- e.g. introduction of the Chinese crossbow into Europe
 - Banned by Papal edict of Pope Innocent II in 1139 AD
 - “unfit to be used by Christians”
 - (But can be used against non-Christians)
- Underscores the political nature of IHL rules.



ACCEPTENCE OF NEW TECHNOLOGIES

- IHL has had to accept many new technologies despite total failure to comply with the basic principles of IHL



- Reflection of political realities and influence of great powers on the development of IHL.

DEVELOPING TECHNOLOGIES AND IHL

- Massive development in military technology in recent times
- Major areas of development:
 - Long range weapons (without need for sight before activation)
 - Blinding lasers
 - Microwave weapons (re “Havana syndrome”)
 - Use of artificial intelligence in target acquisition
 - Autonomous weapons
 - Biological weapons (including rumoured genetic weapons)
 - New chemical weapons
- All posed challenges to IHL, just like new weapons of the past.

MOST DEMANDING CHALLENGES

- Use of artificial intelligence in target acquisitions and use of autonomous weapons
 - (Re Simon Chesterman's presentation)
- Main challenge is the lack of immediacy before weapon is activated
 - No human intervention before another human life is taken or infrastructure important to human life destroyed
- Major challenge to all basic principles of IHL
 - In particular the principle of Humanity
 - New technologies threaten to take out the humanness in armed conflict
- Thus far no incentive to attempt regulation of such means and methods of warfare.

Example of game-changer

- Chinese robotic war dog
 - Very stealthy
- Can carry different weapons system
 - Operate in all types of weather and all types of terrain
- Can carry out different missions autonomously
- Highly durable as can be continuously resupplied by drones
 - even behind enemy lines
- Given Chinese manufacturing capacity, can be produced in the millions – very cheaply!
- Has potential to change dramatically the very nature of warfare.



MOVING FORWARD

- Should the rules of IHL be amended to prohibit the Chinese robotic war dog
 - Just like the way the Chinese cross bow was prohibited in the 10th century?
- What about prohibiting the clearly non-compliant but now no longer new weapons, notably the A-bomb?
- Does the world have the political courage to regulate all weapons systems not compliant with IHL?
- Or should only weapons systems which are outmoded and no longer needed by the great powers, such as the “dum-dum” bullet, be banned?



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