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The UVU Security Review is Utah's first student-edited academic journal focused on national security issues. The Review is published twice annually—in April and December—and it is supported by the Center for National Security Studies (CNSS) at Utah Valley University (UVU). The Review publishes timely, insightful articles on critical national security matters, including topics relating to foreign affairs, intelligence, homeland security, terrorism, and national defense. The Review accepts articles from UVU students, alumni, faculty, staff, and administration. Submissions should be sent to the Review Editor-in-Chief at CNSSJournal@uvu.edu.

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A Note From the Editor-in-Chief

Dear Readers,

It is with great pleasure that I present the Spring 2026 edition of the UVU Security Review. This journal represents an incredible opportunity we have here at Utah Valley University, and this semester's publication addresses several monumental issues within the field of national security.

I would like to begin by expressing my sincere gratitude to the contributors of this edition. Your academic rigor, depth of research, and commitment to the study of national security are clearly evident in your work, and I am grateful for the effort and dedication you have shown throughout this process. The research and editing process is not simple, nor is it easy, and your hard work has contributed to a final product that we are proud to share with others.

To my editorial staff, I would like to thank each and every one of you for your hard work throughout the semester. You rose to the occasion quickly and professionally, and I am sincerely grateful for your contributions. I would also like to extend a special thank you to our typesetters, Emmy Stens and Braxton Bogard. Typesetting is a very tedious and detail-oriented process, and both of these individuals took on the responsibility with care and precision.

Finally, I would like to express my gratitude to Professor Roberto Flores for his continued support throughout this process. His experience in research and publication has been invaluable, and this journal has benefited greatly from his guidance. It is my hope that the articles presented in this edition will stimulate new ideas, inspire further exploration, and connect readers with important developments in the field of national security.

Sincerely,
Josh Reid
Editor-in-Chief

Terrorism as a Standalone War Crime

Audrey Henriksen

ABSTRACT

Terrorism is one of the most long-standing threats to international security in the twenty-first century, and yet it does not exist as a stand-alone war crime under the Geneva Conventions, their Additional Protocols, or the Rome Statute. As it stands, the international legal framework for terrorism comprises miscellaneous treaty-based and domestic legislation, which leads to continuing uncertainty and inconsistency. This paper argues that terrorism should be listed as a separate war crime. Terrorism goes against the fundamental principles of international humanitarian law and directly undermines efforts to protect civilians in wartime. Genocide and torture are recognized in law as the grave offenses that they are, and terrorism should be afforded the same standing.

INTRODUCTION

Terrorism has become one of the most active threats to global security in the 21st century. Current international law addresses terrorism through fragmented conventions and domestic legislation, but it is not explicitly recognized as a war crime under the Geneva Conventions, Additional Protocols, or Rome Statute. Terrorism should be defined as a standalone war crime because it violates fundamental principles of humanitarian law, undermines civilian protection, and requires international cooperation to handle.

DEFINITIONAL CHALLENGES AND A NEED FOR CLARITY

Problem with Definition

States and even within countries themselves disagree on what constitutes terrorism, leading to inconsistent enforcement. Terrorism is a “loose label” that has been applied to the actions of various political extremists, as well as ordinary criminals.[1] The term terrorism varies across legal, political, and cultural contexts. States, international organizations, and scholars disagree on whether terrorism is defined by methods (violence), targets (civilians), or motives (political, religious, ideological). Different states may define terrorism differently in a way that also protects their own interests, for example, rebels versus terrorists. One government may frame it in a way that they are rebels, fighting for the good of the people, while another government may frame them as terrorists, causing unrest and destabilizing the peace.

Proposed Solution

Establish a universally accepted definition rooted in jus in bello principles – targeting civilians, spreading fear, and coercing governments – as a standalone war crime.

1 Louis Rene Beres, The Meaning of Terrorism-Jurisdictional and Definitional Clarifications. (1995).

DEFINITIONS AND LEGAL FRAMEWORKS

What Exists Currently

The International Convention for the Suppression of the Financing of Terrorism resolution in the United Nations states that terrorism is defined as causing death or injury to civilians not participating in the hostilities of an armed conflict.[2] The United States has defined terrorism in several official documents, including the USA Patriot Act, the Homeland Security Act, and Title 28 of the Code of Federal Regulations. Federal law itself in the U.S. has over 140 definitions, but I will only go over the USA Patriot Act.[3]

The USA Patriot Act defines international terrorism as needing to "involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State", and having to "appear to intimidate or coerce a civilian population… influence the policy of a government by intimidation or coercion; or… affect the conduct of a government by mass destruction, assassination, or kidnapping; or… occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished…"[4]

It also defines domestic terrorism, as activities that "involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State" that appear to "intimidate or coerce a civilian population; influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occurs primarily within the territorial jurisdiction of the United States."[5]

Terrorism Actions that are Illegal

Terrorism, as of now, is not a standalone war crime, but the actions of a terrorist are considered under international law. The first and foremost action that falls under international law is targeting civilians. Under Article 8 of the Rome Statute, intentionally directing attacks against civilian populations constitutes a war crime.[6] To extend that definition, Article 8 continues to state that attacking civilian objects is also a war crime.[7]

The next war crime that terrorists commit is indiscriminate violence. Terrorist actions also frequently violate the principle of distinction, an important part of International Humanitarian Law (IHL). They use equipment such as car bombs or improvised explosive devices that can be activated anywhere. Methods like this are common to terrorist campaigns, and they break the proportionality and the distinction rules of IHL. In Additional Protocol I, it is stated that indiscriminate attacks are "those which are not directed at a specific military objective; those which employ a method or means of combat which cannot be directed at a specific military objective; or those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol".[8] Examples of this kind of attack are listed in Additional Protocol I, such as if a selection of civilian locations along with a military target is considered one target, and if the attack causes injury or death to civilians or damage to civilian targets that would be excessive to the military advantage of the attack.[9]

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2 International Convention for the Suppression of the Financing of Terrorism, 1999. Article 2.1.b.

3 Nicholas J. Perry, THE NUMEROUS FEDERAL LEGAL DEFINITIONS OF TERRORISM: THE PROBLEM OF TOO MANY GRAILS

4 USA PATRIOT ACT (18 U.S.C. 2331)

5 Ibid.

6 Rome Statute A8.b.I. "(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities

7 Id A8.b.II. "(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;"

8 Additional Protocol I, Article 51(4)(a-c)

9 Ed Article 51(5)(a-b)

Hostage taking or targeting protected objects is the next main tactic used by terrorists. Beyond direct attacks, terrorism often involves hostage-taking and assaults on protected sites such as hospitals, religious institutions, or humanitarian facilities. Common Article 3 of the Geneva Conventions prohibits hostage-taking.[10] While the Rome Statute criminalizes attacks on protected objects.[11] Terrorist groups that kidnap civilians to leverage political concessions or bomb cultural landmarks commit acts that are war crimes and should be considered as terroristic acts.

Acts of terror are also designated as a war crime currently. In Additional Protocol 1, article 51, IHL explicitly prohibits "acts of threats of violence, the primary purpose of which is to spread terror among the civilian population."[12] This provision directly criminalizes the intent of terrorizing the civilian population, making it a war crime when committed during armed conflict. If we were to make terrorism a standalone war crime, it would not need to fall under just times of war.

ARGUMENTS FOR INCLUSION

Distinctive Nature of Terrorism

Terrorism is not just about violence; it's about deliberately instilling fear in a wider population beyond the immediate victims. It often targets symbolic targets (e.g. landmarks, government institutions) to send a political message. Unlike ordinary war crimes that focus on unlawful acts against specific victims, terrorism is explicitly tied to advancing political, religious, or ideological goals. A suicide bombing in a mall or marketplace is designed not only to kill civilians but also to instill fear in society as a whole. This reliance on psychological impacts sets terrorism apart from other war crimes and justifies treating it as a separate category.

Limiting Harm to Non-Combatants, both Physical and Psychological

IHL is not only created to protect the soldiers fighting the wars, but also to protect the civilians at home, which requires parties to armed conflict to differentiate between combatants and civilians. Combatants are defined by Additional Protocol I[13] and non-combatants fall under all other definitions not stated. Terrorism undermines this principle by targeting civilians precisely because of their vulnerability, as they are persuaded to not involve themselves with the armed conflict, as they could be then considered participants in hostilities, or DPHing, and if captured, would not have the same rights as those of members part of the legitimate military force.[14] This makes the protection of non-combatants both a physical and psychological imperative to IHL.

Terrorist acts such as suicide bombings, indiscriminate rocket attacks, or assaults on hospitals and schools, inflict direct physical harm on civilians. These actions violate the prohibition against targeting non-combatants and protected objects under the Geneva Conventions[15] and the Rome Statute.[16] By defining terrorism as a standalone war crime, international law would reinforce the prohibition of such acts, emphasizing that deliberate violence against civilians is among the gravest breaches of IHL.

Beyond physical destruction and harm, terrorism is distinctive in its reliance on psychological impact. The primary purpose of many terrorist acts is to instill fear in the wider population. IHL already recognizes this as "acts of threats of violence the primary purpose of which is to spread terror among the

10 Geneva Convention I, Common Article 3, 1.b.
11 Supra 6. A8.b.III-V.
12 Supra 8. A51(2)
13 Additional Protocol I, A43.1-2.
14 Nils Melzer. ICRC. INTERPRETIVE guidance on the notion of Direct participation in hostilities under international humanitarian law. 2009.
15 Supra 8
16 Supra 6

civilian population".[17] Distinguishing terrorism as a war crime would elevate this recognition, ensuring that psychological harm is treated with the same seriousness as physical injury.

Accountability for War Crimes; Becomes a Deterrence

Accountability for war crimes is a cornerstone of IHL. The principle reflects the idea that grave violations of the laws and customs of war must not go unpunished, both to have justice for victims, and to deter future atrocities. From the Nuremberg and Tokyo Tribunals after WWII to when the International Criminal Court (ICC) was created, accountability has been sought after to ensure that individuals (political leaders, military commanders, soldiers) are held responsible for war crimes committed during armed conflict.

1. Accountability for Terrorists

International law emphasizes that accountability goes to individuals, not just states. Command responsibility makes military and political leaders liable for crimes committed by subordinates if they knew, or should have known, and failed to prevent or punish them. This principle ensures that accountability cannot be evaded by hiding behind state structures or collective decision-making. Terrorist leaders, for example, could be prosecuted under this doctrine if terrorism were established as a stand-alone war crime.

2. Accountability for States

While international criminal law emphasizes individuals' accountability, the states themselves also have a certain amount of responsibility for the violations of the law of war. A state can be held accountable when its representatives commit internationally wrongful acts, including war crimes.[18] The ICJ also has the jurisdiction to mediate disputes between states, including claims of war crimes or breaches of IHL. For example, in the Bosnian Genocide Case (2007), the ICJ held Serbia responsible for failing to prevent genocide, demonstrating how states can be held accountable even when individual prosecutions occur separately.[19]

The issue of terrorism complicates state accountability. States may be held responsible if they directly sponsor, support, or harbor terrorist groups that commit war crimes. For instance, providing material support, safe places, or not preventing terrorist attacks, when possible, can trigger state responsibility under international law. Giving terrorism the stand-alone definition of a war crime would strengthen this framework by clarifying the obligations of states to prevent and punish terrorism, ensuring they cannot evade accountability by claiming terrorism is solely the responsibility of non-state actors.

Strengthen International Justice and Create Consistency in Legal Treatments

International justice is built on the principle that grave violations of IHL must be prosecuted regardless of where they happen. But because there is not one listed definition of terrorism, there is uneven enforcement varied across states. Strengthening international justice requires uniting the definitions of terrorism, so that terrorism and war crimes face equal treatment under the law, rather than escaping accountability due to different definitions used by different states.

Consistency is essential to the credibility of international justice. When states apply different

17 Supra 8. A51(2)

18 Draft articles on Responsibility of States for Internationally Wrongful Acts, 2001. Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10).

19 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). https://www.icj-cij.org/case/91/judgments

standards to terrorism, such as one state labeling a resistance movement as terrorism, the result is selective enforcement and often politicization of the term terrorism. Making terrorism a stand-alone war crime would create a uniform standard, ensuring that deliberate attacks on civilians are prosecuted consistently across states. This would prevent states from manipulating definitions to serve political ends and reinforce the importance of IHL norms.

Existing war crimes include terrorist acts, but there are gaps for when attacks are committed outside armed conflict. Events such as 9/11 do not fall under the existing war crimes because they fall outside of armed conflict times. A unified international definition would close these gaps, ensuring that terrorism is treated with the same importance as genocide or crimes against humanity, and that those who commit terrorism cannot escape justice due to inconsistencies.

Uphold Moral Standards of States

Beyond legal obligations, states carry a moral responsibility to uphold international humanitarian values in times of conflict. International law is not only an outline but also shows shared moral standards designed to protect human dignity. When states deliberately target civilians or condone terrorism, they undermine these standards that have been created and lessen the legitimacy of IHL.

Terrorism deliberately weaponizes fear against non-combatants. States that support or tolerate terrorism betray their duty to protect civilians and maintain peace. Assigning terrorism a definition and making it a war crime would reinforce the expectation that states must reject terror as a legitimate tool of policy. In doing so, international law would hold states accountable not only for their actions but for their moral stance towards violence against civilians.

ARGUMENTS AGAINST INCLUSION AND REBUTTALS

Terrorism is Already Covered Under the Law of War

One of the strongest arguments against including terrorism as a war crime is that many aspects of terrorism are already covered under IHL. Many terrorist attacks such as attacks on civilians, hostage taking, or indiscriminate attacks are already criminalized under the Geneva Conventions, Additional Protocols, and the Rome Statute. In creating a separate category for terrorism, there are risks of duplicating what is already in place and possibly complicating the legal framework.

While some argue that terrorism does not need to be considered a stand-alone war crime because the actions are already listed under IHL, it overlooks the distinctive reliance on fear as a weapon. While current law punishes physical acts, it does not fully punish the deliberate psychological part of terrorism. Making terrorism a stand-alone war crime would add clarity rather than complicating the legal framework, ensuring that the intent of terrorizing was a grave violation of IHL.

Politicization

Terrorism is a contested concept, often used as a political label for governments trying to cover their tracks, rather than a legal definition. States frequently disagree on whether a group is a terrorist organization or not, or if a resistance movement is terrorism. Making terrorism a war crime could completely politicize it, allowing powerful states to accuse opponents under the guise of international law. This could undermine the credibility of international justice rather than strengthen it.

Though there is the risk of terrorism as a war crime being politicized and having states label competitors as terrorists, the danger of that very thing happening is concerning the fact that there is no international definition. By legitimizing terrorism as a war crime, narrowing down the possibilities of what state actors want it to be, it can focus on the violence against civilians and civilian targets, and the act of causing terror. A clear, stand-alone definition would stop states from abusing the term, creating consistency, and limiting politicization rather than encouraging it.

Enforcement Challenges

Even if terrorism were listed as a war crime, enforcement would remain difficult. International courts depend on state cooperation, and many states are unwilling to prosecute terrorism consistently due to political alliances or strategic interests. Without a universal consensus, prosecution could be selective, undermining the principle of equality under IHL. The question is then, if you add terrorism as a war crime, would it positively add to the enhancement of IHL, or would it become another provision that is unenforced on the international landscape?

Difficulties with enforcement are often listed as a reason to avoid legitimization for terrorism as a war crime. But enforcement still exists for all international crimes, from genocide to crimes against humanity; the solution is not to avoid it, but to strengthen the principles under IHL. When terrorism is given the status of a war crime, the international community would come together to state that the prosecution of terrorism is imperative and would encourage all states to cooperate with the new addition of IHL, reducing state toleration or backing of terrorist acts or organizations.

Conclusion

The debate over the definition of terrorism, and whether it should be added as a war crime, shows the broader struggle to determine law in politics, and the struggle with morality in the international system. Because terrorism distinctly targets civilians, civilian targets, and relies on fear, this sets it apart from other war crimes, justifying the need to make it a stand-alone war crime. Making it a war crime strengthens international justice and accountability, ensures equality across states, and enforces moral standards internationally. This helps protect non-combatants from both physical and psychological harm and would show that the international community is serious about the enforcement of IHL. Just as genocide and torture were codified to reflect their severity, terrorism deserves equal recognition as a war crime.

A Time for Choosing: The Need for Change in the American Approach toward Taiwan and China

Samuel Fletcher

Introduction

For the foreseeable future, the United States' position toward Taiwan will be the most consequential foreign policy decision the U.S. will make in the next 5 years. The growing threat that China poses destabilizes the region and threatens international trade, security, and commerce. The United States must adopt a strategy of deeper ties and cooperation with Taiwan to ensure stability, safety, and prosperity not only for those two nations but for the world. This paper will discuss the historical context of the Taiwan-China dispute, explain how important Taiwan is to the United States, and propose that the United States must be prepared to offer military support to Taiwan should the need arise.

Historical Context

It is impossible to appreciate the magnitude of the current tensions between China and Taiwan without understanding the historical context of the two countries. The history between China and Taiwan is complex and ripe with conflict. After World War II, the Chinese Nationalist government had reclaimed Taiwan from the Japanese and were briefly one nation for two years. The whole of China was under the control of a Western-backed nationalist government that was led by General Chiang Kai-Shek.[1]

Following World War II, the United States tried to assist in negotiating an agreement between the Chinese Communist Party (CCP) and the nationalist government (KMT). However, in 1947, the U.S. withdrew from the negotiations. Following this withdrawal, "There was a massive massacre of the intelligentsia of local Taiwanese Chinese in 1947, two years before the Communist Revolution happened on the mainland."[2] After two years of bitter fighting, the CCP emerged victorious in the fight over mainland China.

"On October 1, 1949, Mao Zedong, the chairman of the CCP, announced the establishment of the People's Republic of China (PRC) in Beijing while Chiang Kai-Shek, generalissimo of the KMT, withdrew to Taiwan, bringing two million KMT troops and supporters with him. His army proclaimed Taipei the temporary capital of the Republic of China."[3]

China and Taiwan continued to threaten each other, and each had prepared attack or invasion strategies against the other nation. However, in 1950, when the Korean War exploded into an international geopolitical conflict, the United States sent its Seventh Fleet to patrol the Taiwan Strait, and this effectively

1 "China and Taiwan: A Really Simple Guide," BBC News, January 8, 2024, https://www.bbc.com/news/world-asia-china-59900139

2 Rana Mitter, "Understanding the Relationship between Mainland China and Taiwan," Harvard Kennedy School, September 9, 2025, https://www.hks.harvard.edu/faculty-research/policy-topics/international-relations-security/understanding-relationship-between.

3 "Background and Overview," Cross-Strait Security Initiative, Center for Strategic and International Studies, accessed December 12, 2025, https://www.csis.org/programs/international-security-program/archives/asia-division/background-and-overview.

prevented either side from acting further.[4]

The United States soon began to rekindle a close diplomatic relationship with the Republic of China (ROC). In 1954, the United States and Taiwan entered into a mutual defense treaty which, among other things, stated, "Each Party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes."[5] This partnership between the United States and Taiwan lasted well into the 1970s. During this time, many nations around the world supported Taiwan. However, the PRC in the early 70s gained enough supporters to have Taiwan's representatives removed from the United Nations and to have the PRC recognized as the rightful figurehead of all of China.

President Richard Nixon, on a diplomatic trip to China, reestablished relations with the PRC, and some years later, President Jimmy Carter withdrew the United States from treaty obligations towards Taiwan.[6] This shift in policy towards Taiwan and China has infamously been labeled the "One China Policy." This has remained the official policy of the United States ever since the late 70's. This "One China Policy" essentially means that "[t]he United States doesn't agree with Beijing's claim to sovereignty over Taiwan, nor does it agree with Taipei that the ROC is an independent, sovereign state."[7]

US Interests in Taiwan

Over the last twenty years in particular, the United States and Taiwan have become vital strategic partners. "Taiwan is the United States' 7th-largest merchandise trading partner ($158.6 billion in total goods trade), 10th-largest export market ($42.3 billion), and 8th-largest source of imports ($116.3 billion)."[8] One of the most important economic commodities that the United States relies on Taiwan for is semiconductors. "Taiwanese companies manufacture nearly 70 percent of the world's semiconductors and around 90 percent of the most advanced chips. If the world loses Taiwan's production capacity, no other company will be able to fill the gap in the short term."[9]

The economic impact on not only the United States but also the world would likely mean global economic depression. Many experts estimate "[t]hat a full-scale conflict over Taiwan could result in a $10 trillion loss to the global economy. Even a blockade scenario would carry a global cost of $2.7 trillion."[10] The global need for chips and semiconductors continues to grow, year after year, and more and more chips are purchased by businesses and countries. If China were to absorb Taiwan and its manufacturing, then the world would be destitute for these necessary components of the economy.

Taiwan also plays a strategic role in the U.S. military strategy in East Asia. The island of Taiwan is strategically located just 112 miles off the coast of China. The United States has seen the long-term benefits that could result if Taiwan were to become an ally of the United States, as this would send a direct

4 CSIS, "Background and Overview."

5 "Mutual Defense Treaty between the United States of America and the Republic of China," signed December 2, 1954, entered into force March 3, 1955, in United States Treaties and Other International Agreements 6 (1955): 433–440, https://avalon.law.yale.edu/20th_century/chin001.asp

6 CSIS, "Background and Overview."

7 Michael J. Green and Bonnie S. Glaser, "What Is the U.S. 'One China' Policy, and Why Does It Matter?" Center for Strategic and International Studies, January 12, 2017, https://www.csis.org/analysis/what-us-one-china-policy-and-why-does-it-matter.

8 Karen M. Sutter, "U.S.-Taiwan Trade and Economic Relations," Congressional Research Service, IF10256, January 13, 2025, https://www.everycrsreport.com/reports/IF10256.html.

9 David Sacks, "Why Is Taiwan Important to the United States?" Council on Foreign Relations, June 19, 2023, https://www.cfr.org/articles/why-taiwan-important-united-states.

10 Amir Najafi, "The World's Growing Reliance on Taiwan's Semiconductor Industry," Vision of Humanity, June 16, 2025, https://www.visionofhumanity.org/the-worlds-dependency-on-taiwans-semiconductor-industry-is-increasing/.

message to China. The United States has the capacity to make Taiwan its center for military, economic, and diplomatic operations in the South China Sea. If such objectives were achieved, China would find itself on the defensive as an emboldened and empowered United States stood on China's doorstep.

With all of this potential for strength and dominance in the region, it is easy to ask why the United States has not taken these steps or approved of these actions. The reality is that any action taken by the United States to soften its stance towards Taiwan is met with fierce responses from Beijing. In August of 2022, then-Speaker of the House of Representatives, Nancy Pelosi, visited Taiwan. This action by a senior member of the United States government was met with vitriol and anger from China. In response to her visit, "The PLA [People's Liberation Army] surrounded the island with ships, sent aircraft repeatedly across the median line of the Taiwan Strait, and tested ballistic missiles in the seas around Taiwan. Since that time, there has been a startling rise in Chinese military exercises around the island."[11]

This was not the first time that China has reacted in such a manner towards U.S. and Taiwanese diplomacy. The fact of the matter is that China controls vast amounts of political, military, and economic capital within the region and around the world. China is very powerful and persuasive, and will do whatever they deem necessary to influence the United States against changing its policy towards Taiwan. Before the U.S. can even think about shifting its stance from the "One China Policy," it must first attempt to calculate what the retribution might look like from China. It is anticipated that any response would be centered on economic considerations. "Today, China is one of the largest export markets for U.S. goods and services (second to Mexico), and the United States is the top export market for China."[12]
Currently, as the United States continues to maintain its "One China Policy," there appear to be some officials who are open to changing the nation's official stance towards Taiwan. Following Speaker Pelosi's visit to Taiwan, then-President Biden was asked if the United States would help defend Taiwan should China invade it. His response was, "Yes, if in fact, there was an unprecedented attack."[13] Another example of a changing stance over the China-Taiwan policy came about in the National Security Strategy released by President Trump on December 5, 2025. In the strategy, it is stated that "Deterring a conflict over Taiwan, ideally by preserving military overmatch, is a priority."[14]

Taiwan's geographic location is vital to the United States as well. Not only does it act as a barrier for the rest of Asia against China, but it also serves as a strategic economic and military post. Should the U.S. change its policy toward Taiwan, and seek to formalize relations with it, there is the potential for U.S. troops to be stationed on Taiwan or even U.S. military or naval bases to be constructed on the island. This would serve as a massive military deterrent against any Chinese aggression in the South China Sea. In the event of armed conflict between the United States and China, Taiwan would serve as the perfect launch pad for military operations within the region.

There is no denying that Taiwan is absolutely vital to the United States. As a trading and economic partner and with the potential to be an invaluable military partner, the United States cannot afford to lose Taiwan to communist China. While some in the United States argue that the country is too embroiled in foreign conflict, the issue of Taiwan remains a necessary constant due to its strategic and national security importance.

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11 Sam Malone, "Reassessing U.S. Strategy in the Taiwan Strait," Proceedings 151, no. 9 (September 2025), https://www.usni.org/magazines/proceedings/2025/september/reassessing-us-strategy-taiwan-strait.

12 Sam Malone, "Reassessing U.S. Strategy in the Taiwan Strait," Proceedings 151, no. 9 (September 2025), https://www.usni.org/magazines/proceedings/2025/september/reassessing-us-strategy-taiwan-strait.

13 Frances Mao, "Biden Again Says US Would Defend Taiwan If China Attacks," BBC News, September 19, 2022, https://www.bbc.com/news/world-asia-62951347.

14 The White House, National Security Strategy of the United States of America, November 2025 (Washington, DC: The White House, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/12/2025-National-Security-Strategy.pdf.

Need for U.S. Military Protections

The United States has a growing need to formalize relations with Taiwan. Not only would this serve the people of Taiwan by protecting their well-established democracy, but it would certainly prove beneficial for the United States. The question remains, though, how deep should relations between the two countries go?

There are several likely options with varying degrees of benefits and risks. A primary option would be to keep relations largely the same with Taiwan. The obvious benefit of this option is that the United States can maintain the status quo regarding relations with China. This would protect U.S.-Chinese interests and maintain regular conditions in the region. However, the obvious risk is that appeasement of the CCP will result in the Chinese absorption of Taiwan at some point in the future. This threat, in many ways, outweighs the benefits. There must be a change in policy.

Another option regarding a change in policy towards Taiwan would be to recognize Taiwan and formalize economic and diplomatic ties only. By recognizing Taiwan, the United States would be able to formally begin negotiating economic and diplomatic deals. This would lead to deeper ties between the two countries and provide additional, yet limited, security to Taiwan. This would also benefit the United States by providing a stronger ally within the volatile region. This change in policy would inevitably invoke a swift response from China. China would adamantly oppose this change and take strong measures to respond to it. The United States and Taiwan could expect harsh economic and military responses to the new policy.

A third and final policy that the United States could explore regarding Taiwan would be to formally recognize Taiwan and formalize diplomatic, economic, and military relations. The United States and Taiwan could sign a mutual defense treaty and invite all global partners and allies to join, in hopes of weakening a Chinese response. This would mean that in the event of a Chinese attack or siege of the island of Taiwan, the United States must be prepared to take military action to help defend its partner.

The benefits to this proposal are plentiful. The United States would further expand its influence into the Asian and Pacific regions. The clear benefit for Taiwan would be that it would now have a clear ally and an assured mutual defense treaty. It is hoped that these actions would safeguard free trade and facilitate economic development across the region and the globe. While this option for change presents the greatest benefits, it also presents the greatest risks. The United States, Taiwan, and all partners would face untold responses from China. China's options for retaliation would certainly be severe and crippling. From destroying global commerce to unleashing cyberattacks and even war, China would likely stop at nothing to seek revenge. Given these threats, it would be crucial for the United States and a coalition of its allies to stand with Taiwan to bear the brunt of China's response and as a coalition to deter extreme Chinese responses.

Conclusion

The history of the Taiwan-China conflict is deep and complex, but the United States has many options to choose from in helping to mediate the situation. While there is much at stake in this current crisis, it is clear that the United States cannot just carry on as it has for the last 50 years. It is time to change its policy toward Taiwan. The United States should take steps now to recognize Taiwan and formalize relations with it. This is a vital step in legitimizing Taiwan and helping to offer support from the U.S. The United States must stop at nothing to defend Taiwan from an oppressive Chinese regime. In the interest of safeguarding economic prosperity and securing strategic advantage in the region, the United States should be willing to commit to military support to Taiwan.

Directed Energy Weapons and the Law of War

Liam Thiess

INTRODUCTION

In a world where science and technology are advancing at spectacular rates, it is no surprise that the emergence of new weapons is rapidly occurring throughout the international community. In particular, the development of 'Directed Energy Weapons' has started to be a commonality in defense industries throughout the globe. Directed Energy Weapons, or DEWs for short, are weapons that utilize concentrated electro-magnetic energy and atomic or subatomic particles in a system designed to "incapacitate, damage, disable, or destroy enemy equipment, facilities, and/or personnel".[1] Current International Humanitarian Law (IHL)[2] does not include provisions on these types of weapons, except in Protocol IV of the Convention on Conventional Weapons, which bans lasers designed for the purpose of causing permanent blindness,[3] these kind of weapons will not be explored by this paper.

Rather, this paper will explore the legality of DEWs based on current international law and will argue that DEWs can be used legally if certain criteria are met. This argument will be made by exploring DEWs and their effectiveness, listing current provisions in IHL relating to the use of these types of weapons, applying those provisions to the use of DEWs, and finally providing recommendations and cautions for deploying them.

'DIRECTED ENERGY WEAPONS' AS AN EMERGING TECHNOLOGY

Types of DEWs

Directed Energy Weapons is an umbrella term for weapons that utilize powerful beams of electromagnetic energy, light, or particles to cause destruction. These types of weapons are often portrayed falsely in movies as having the ability to destroy anything in their path instantaneously. Although the use of these weapons in movies is typically science-fiction or futuristic at best, weapons like these are actively being developed by defense manufacturers in countries such as China, Russia, and the United States.[4] Unlike traditional weapons, DEWs are able to transfer energy at a target without the need of a projectile.[5]

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1 Joint Chiefs of Staff, Joint Publication 3-13.1: Electronic Warfare ix (Feb. 8, 2012).

2 It is important to note that the terms "Law of War", "Law of Armed Conflict" and "International Humanitarian Law" all refer to the same body of law and can be used interchangeably. Because this paper is intended for international audiences, the term "International Humanitarian Law" or "IHL" will be used due to its favored use in the international community.

3 Protocol on Blinding Laser Weapons (Protocol IV) to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Oct. 13, 1995, art. 1.

4 Defense Primer: Directed-Energy Weapons (2025), https://www.congress.gov/crs-product/IF11882.

5 Bahman Zohuri, Directed Energy Weapons: Physics of High Energy Lasers (HEL), at viii (Springer Int'l Publ'g 2016).

There are three main types of DEWs:

i. high-energy lasers[6]
ii. high-power radio frequency or microwave devices[7]
iii. charged or neutral particle beam weapons[8]

Each of these operates in similar fashion but scientifically are very different. Each has its own advantages and uses. For example, high-energy lasers (HELs) are anticipated to be used to destroy incoming munitions or aircraft before they hit their target.[9] This is achieved by applying extreme heat to the munitions/aircraft or by creating a shockwave that penetrates the target.[10]

High-Power Microwave (HPM) weapons work by sending out electro-magnetic waves that can disrupt electronic systems and cause surfaces to heat up by activating molecules coming in-contact with the waves.

Particle Beam Weapons (PBWs)[11] operate differently. Rather than directing light or electromagnetic beams, they direct a high-current pulse of electrons or ions, carrying significant amounts of energy.[12] When they make contact, they can penetrate deep into their target, and depending on the type of pulse, can cause detonation, structural damage, and destruction of electronics.[13]

Uses for DEWs

Understanding the various types of DEWs points to the fact that they are likely to be used on different targets with different goals in mind. However, whether or not they are used for defensive or offensive purposes, the main strategy in using these types of weapons is the incapacitation, damaging, disabling, or destruction of enemy equipment, facilities, and/or personnel.[14] DEWs offer several strategic advantages compared to traditional weapons. Some of these include:

i. The ability to strike a target without needing a projectile.[15]
ii. A deeper magazine (the ability for more shots to be fired before the need to refill/refuel/replace a part of the weapon. These weapons have the potential to have a "bottomless magazine" where the amount of fire-power is only limited to the electrical supply).[16]
iii. Lower logistical requirements.[17]
iv. Speed of light engagement (allows faster tracking and responsiveness)[18]
v. The ability to be fired in a stealthy manner that is hard to both detect and intercept (the beams are both quiet and invisible)[19]
vi. Precise targeting[20]

6 Henry "Trey" Obering, Directed Energy Weapons Are Real… and Disruptive, 8 PRISM at 37 (2019).
7 Id
8 Id
9 Bayram Mert Deveci, Directed-Energy Weapons: Invisible and Invincible, at 39 (M.A. thesis, Naval Postgraduate School 2007).
10 Id at 34.
11 Note that PBWs can also be abbreviated as CPBWs if the type of PBW being referred to is a charged one.
12 William E. Wright, Charged Particle Beam Weapons: Should We? Could We?, 105 Proceedings at 921 (Nov. 1979).
13 Id
14 Supra note 1
15 Supra note 5.
16 Jennifer DiMascio, Andrew Feickert, Ronald O'Rourke & Kelley M. Sayler, Department of Defense: Directed Energy Weapons—Background and Issues for Congress, CRS Report R46925 (July 11, 2024), https://www.congress.gov/crs-product/R46925.
17 Id.
18 Supra note 6, at 39.
19 Id
20 Id.

vii. The ability to attack targets deep in the earth or in space, that were previously untouchable.[21]
viii. The ability to adjust the energy in the weapon (allows for non-lethal attacks if desired)[22]
ix. Having an incredibly low cost per shot[23]

These benefits are difficult for militaries to overlook, especially when considering the increasing cost of weapons manufacturing.

DEWs are also versatile and can be used in a variety of offensive and defensive scenarios. HELs, as briefly described in the previous section, work through two different methods. The first one is by directing photons (light) in a dense beam which heats up a surface and "drills" a hole through the surface of the target[24]; This is referred to as a "thermal kill".[25] A "mechanical kill" on the other hand happens when very intense but short laser pulses interact with the surface of a target causing it to structurally collapse and destroy the internal components.[26] These weapons are effective at causing high-pressure targets (such as a missile, gas tank, or plane) to explode. The most likely use for HELs will be in missile defense systems that need to react quickly to incoming threats. They may also be used to "disable target sets including vehicles, aircraft, munitions, rockets/mortars, optical and radar surveillance systems, communication infrastructure, and other military targets."[27]

High-powered microwave (HPM) weapons can be used to disrupt and destroy electronic equipment and systems, or anything that responds to electro-magnetically induced voltages and currents (this can even include people).[28] These kinds of DEWs work through two methods: molecular heating and electronic stimulation.[29] The former works by causing molecules coming into contact with the wave, to rub together and produce heat (similar to the way food heats up in a microwave). However, this is not the primary strength of HPM weapons, as it takes significant power and time to achieve this effect. The latter method, electronic stimulation, delivers the preferred effect. Electronic stimulation (similar to putting metal in a microwave) happens when energy is "coupled" into a target.[30] This can disable or even destroy a target device. Unlike HELs, HPM weapons can be used to affect multiple targets at once, due to their ability to cover a wide-area.[31] These weapons will likely be used in both defensive and offensive scenarios. Such scenarios could include disabling weapon systems upon a militaries arrival to the area, detecting munitions and enemy equipment around a base, disabling enemy communication devices, or even using them on people to encourage them to vacate an area (non-lethal crowd control) or to inflict harm (burns) on the enemy.

The third type of DEW, a particle beam weapon (PBW) also has its practical uses. One of these would be defending ships from missile attacks.[32] These could replace current anti-missile systems placed on boats. PBWs could also be placed in space to protect from ICBMs (in their boost phase or later), enemy satellites, and antiship missiles.

Effectiveness of DEWs

21 Sean Jersey, Twenty First Century Warfare – Theater Operations at the Speed of Light (Naval War Coll., Joint Military Operations Dept., paper, Feb. 3, 2003).
22 Supra note 9, at 20.
23 Supra note 6, at 39.
24 Supra note 9, at 34.
25 Id
26 Id
27 Id, at 44.
28 Id, at 53.
29 Id.
30 Id, at 55-56
31 Id, at 52.
32 Supra note 12.

Directed Energy Weapons are relatively new, therefore the effectiveness is only loosely established. That said, the following criteria will be used to briefly determine the effectiveness as best as possible: accuracy, destructive power, and reliability.

1.) Accuracy

All three types of directed energy weapons are able to hit targets with stunning accuracy. HELs and PBWs work by directing their energy (hence the name) at a very specific target, practically eliminating the possibility of collateral damage. Experts have argued that there is the possibility for fratricide, as the weapon will engage with anything in its path. Although this is true, such is the case with almost all modern weapons (with the exception of some precision-guided munitions). This argument is not specific to DEWs; therefore, it is not an important point to consider. However, the ability for a weapon to discriminate between targets will be important later, as it is a crucial factor in determining the weapons legality under IHL.

HPM weapons on the other hand, are not discriminate in nature. They will affect anything in the beam's path whether on the ground or in the air.[33] This can be a problem if there are any unprotected systems not intended to be hit (including civilian and friendly systems), as they will be affected the same way as the target.[34] However, HPM weapons are still more discriminate than biological or chemical weapons which are known to cause significant collateral damage.[35]

2.) Destructive Power

High-energy lasers derive their power from the amount of energy they can transfer to an object in a given amount of time. If focused on absorbent areas of a target, these lasers can cause pressurized vessels to explode.[36] However, this can take time, as the laser must be focused on a single spot on the target for a specified amount of time. This specified amount of time is determined by the ability of the target to absorb the laser's energy.

HELs are also used to destroy, degrade, or blind sensors, optics, or electronics.[37] This can be very useful in a world where missiles, guns, and other weapons are reliant on these technologies to operate. A single shot from a HEL has the potential to completely disable or destroy such technologies, voiding their effectiveness.

Particle-beam weapons are about as effective as HELs, but don't require a "clear" path to the target. This makes them better suited for space-based systems, targeting objects in the atmosphere.[38]

High-powered microwave weapons can be very destructive also, when used correctly. They can be used to penetrate targets that have been previously untouchable.[39] There are two types of these weapons: continuous and pulse-waved. The former is effective in area denial operations, including those against personnel or small electronics.[40] These can even be employed as crowd-control devices, perimeter defense, or convoy protection.

There is also the concept of an "e-bomb" which has been known to be studied by the United States, Germany, Russia, France and the United Kingdom.[41] These bombs can be delivered through

33 Deveci, Directed-Energy Weapons, at 72.

34 Id

35 Id, at 52.

36 Supra note 6, at 38.

37 Id

38 Donald M. Snow, Lasers, Charged-Particle Beams, and the Strategic Future, 95 Pol. Sci. Q. 277, 282 (1980), https://doi.org/10.2307/2149368.

39 Supra note 21.

40 Jack McGonegal, High Power Microwave Weapons: Disruptive Technology for the Future (Air Command & Staff Coll., ACTS 2.0 Research Task Force, Spring 2020).

41 Deveci, Directed-Energy Weapons, at 78.

conventional means, wiping out an area's electronics by the same mechanisms as other HPM weapons.[42]

3.) Reliability

All of these weapons are still in the development stage, so it is unclear whether or not they will be as reliable as traditional weapons. However, it is clear that DEWs do have some disadvantages. Some of these include the HELs' inability to fire in certain atmospheric conditions[43] , HPM weapons inability to distinguish targets[44], the general inability of DEWs to penetrate targets with counter-measures[45], and the time/energy they take to inflict their damage. For the purposes of this evaluation though, they are effective weapons that can and will cause significant damages to enemy equipment, munitions, and personnel in the future.

EXISTING LEGAL FRAMEWORKS IN IHL

To determine whether DEWs fall under the legal guidelines put forth by international humanitarian law, we must outline the current legal frameworks already in place that could affect directed energy weapons and examine their application to DEWs.

A. Additional Protocol I

Additional Protocol I of the Geneva Conventions provides that the rights of a party to "choose methods or means of warfare is not unlimited"[46]. Further, it is "prohibited to employ weapons, projectile and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering"[47]. As made abundantly clear, this article puts a ban on any weapon or means of warfare that causes "superfluous" harm or suffering.

Article 35(3) expounds on this by extending these protections to the environment, saying means or methods of warfare that are expected to or are intended "to cause widespread, long-term and severe damage to the natural environment" are prohibited.[48]

Article 36 of Additional Protocol I establishes an "article 36 review" of new weapons in which "a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.[49]" This review is to be done by the party developing, acquiring or adopting the new weapon.[50]

If desired to be used by a state, DEWs would have to undergo an Article 36 review prior to being included in the military's arsenal. This is required to be done by both the states developing the weapon as well as the states deploying the weapon.

Marten's Clause (1899)

Marten's clause, as found in the Preamble of the 1899 Hague Convention has been generally

42 Id.
43 Supra note 16.
44 Id.
45 Id.
46 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 35(1), June 8, 1977, 1125 U.N.T.S. 3.
47 Id at art. 35(2).
48 Id at art. 35(3).
49 Id at art. 36.
50 Id

adopted either in whole or in part by other IHL instruments.[51] It is considered a customary rule, that has been agreed to have met both the usus (state practice element) and the opinion juris (belief in obligation element) requirements for customary law.

The clause itself pertains to cases of international conflict that are not covered by IHL treaties. It states that "until a more complete code of the laws of war is used, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience."[52]

This holds that if not specifically covered by international law, both civilians and combatants are afforded at least a minimum level of protection through the public conscience and shared principle observed by civilized nations. This would certainly apply to weapons and targets that are not covered by international humanitarian law. Therefore, it is important to consider this clause when conducting an Article 36 review, to ensure compliance under Marten's clause.

Treaties Prohibiting Specific Weapons

The following treaties banning specific types of weapons do not specifically ban DEWs. However, they ban certain types of weapons, some of which are close in nature to DEWs. Understanding these bans can help determine whether or not DEWs might fall partially or wholly under any of these treaties. Each of these treaties will be briefly discussed and applied to the usage of DEWs.

1.) Biological Weapons Convention (1972)

The Convention on the Prohibition of Biological weapons does just as its name suggests and prohibits the use of "microbial or other biological agents, or toxins, whatever their origin or method of production, of types and in quantities that have no justification for the prophylactic, protective or other peaceful purposes".[53] The convention goes on to ban weapons or delivery systems that are designed to use the agents described above in an armed conflict or otherwise hostile purpose.[54]

This convention clearly has no implications on directed energy weapons, as they operate outside of the biological realm.

2.) Convention on Conventional Weapons (1980)

The Convention on Certain Conventional Weapons (CCW)[55] is an extensive agreement that banned certain weapons that had been traditionally used due to their excessive injurious or indiscriminate natures. The scope of this convention covers situations reffered to in article 2 of the Geneva Conventions (declared war, armed conflicts between High Contracting Parties, and situations of occupation)[56]. It does apply to non-international armed conflicts (NIACs) if the conflict is happening

51 Martens Clause, ICRC Casebook Glossary, ICRC, https://casebook.icrc.org/a_to_z/glossary/martens-clause.

52 Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land pmbl., July 29, 1899, https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899/preamble.

53 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, https://www.icrc.org/sites/default/files/document/file_list/dp_consult_6_1972_biological_weapons.pdf.

54 Id.

55 Officially recognized as the "Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to have Indiscriminate Effects".

56 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, art. 1(1), 10 Oct. 1980, ICRC, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0811.pdf.

within the borders of a High Contracting Party.[57] It does not apply in instances of internal disturbances, sporadic (and isolated) acts of violence, or other non-armed conflicts.[58]

Protocol I of the CCW prohibits the use of any weapon in which the primary effect is “to injure by fragments which in the human body escape detection by X-rays”.[59] DEWs operate through beams of energy, which excludes them from falling under this law.

Protocol II of the CCW prohibits the use of land mines, booby-traps, or other devices[60] designed to cause superfluous injury or unnecessary suffering, and restricts those same weapons in other circumstances.[61] DEWs do not fall under the definitions given in Protocol II art. 2, therefore it does not apply.

Protocol III of the CCW prohibits or restricts the use of “any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target”[62] if being used on civilians[63], civilian objects[64], military objects located “within a concentration of civilians”[65], or forests/plant cover (unless they are concealing combatants or military objectives)[66]. This protocol has the potential to apply to HELs, as they can cause burn injuries to people through the action of heat if targeted at people. However, the clear purpose of these weapons is to inflict this heat on munitions or objects to cause breakage, rather than burns. HPM weapons also can have this effect when being used on people, however according to the evidence provided, it only causes a mild burning sensation and does not cause a burn injury as described in this section. Therefore, this protocol only restricts the use of HELs if they are being built to inflict harm on personnel (either as the main function or one of their functions).

Protocol IV of the CCW pertains to blinding laser weapons. It states that it is prohibited to “employ laser weapons specifically designed, as their sole combat function or as one of their combat function, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.”[67] It also bans the transfer of these weapons from one of the High Contracting Parties to any state or non-state entity.[68] This can be interpreted to only cover laser weapons which were designed in part to cause blindness to their target. According to all available evidence, DEWs are not designed to have this combative purpose. Further, article 3 reads “blinding

57 Id at art. 1(3).

58 Id at art. 1(2).

59 Protocol I to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, on Non-Detectable Fragments, 10 Oct. 1980, ICRC.

60 Defined as “manually emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time” per art. 2(5) of Additional Protocol II to the CCW.

61 Protocol II (Amended May 3, 1996) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, on the Use of Mines, Booby-Traps and Other Devices, 3 May 1996, ICRC.

62 Protocol III to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, on Prohibitions or Restrictions on the Use of Incendiary Weapons, art. 1(1), 10 Oct. 1980, ICRC.

63 Protocol III to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, on Prohibitions or Restrictions on the Use of Incendiary Weapons, art. 1(1), 10 Oct. 1980, ICRC.

64 Id at art. 2(2).

65 Id at art. 2(3)

66 Id at art. 2(4)

67 Protocol IV to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, on Blinding Laser Weapons, art. 1, 13 Oct. 1995, ICRC.

68 Id

as an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment, is not covered by the prohibition of this Protocol."[69] It is my argument that this law does not apply to HELs (or any DEW), unless by design, they are being built to target personnel's eyes, which according to all available evidence, they are not. Protocol V of the CCW pertains to the clearance, removal or destruction of explosive remnants after a war takes place.[70] This does not deal with anything in-relation to DEWs, therefore it does not apply.

3.) Chemical Weapons Convention (1993)

This convention covered exclusively "munitions and devices, specifically designed to cause death or other harm through the toxic properties…which would be released as a result of the employment of such munitions and devices."[71] DEWs do not fall under this definition; therefore, this treaty does not apply to them.

4.) Ottawa Convention (1997)

Similar to Protocol II of the CCW, this treaty[72] prohibits the use or development of anti-personnel mines.[73] DEWS do not fall under the definitions given; therefore this treaty does not apply to them.

5.) Cluster Munitions Convention (2008)

This convention prohibits the development, production, acquisition, stockpiling, retaining, or transferring of cluster munitions.[74] DEWs do not fall under the definitions given for cluster munitions; therefore, this convention does not apply to them.

APPLICATION OF IHL PRINCIPLES TO DIRECTED ENERGY WEAPONS

Based exclusively on the laws and treaties explained in the previous section, DEWs do fall within the bounds of the law. The weapons, in their current state and purposes, do not fall under the definitions of specific treaties and if reviewed correctly could be used legally. However, it is necessary to apply the law generally to DEWs as well. This will be done by examining the principles of necessity, distinction, proportionality, and humanity in relation to DEWs.

Military Necessity

The first important principle in IHL is necessity. This principle attempts to determine whether or not attacking a target will "make an effective contribution to military action" and offers "a definite military advantage".[75] It is also prohibited to attack civilian objects, unless it is being used to "make an

69 Id at art. 3.

70 Protocol V to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, on Explosive Remnants of War, art. 3, 28 Nov. 2003, ICRC.

71 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed Jan. 13, 1993, ICRC.

72 Also known as the "Mine Ban Treaty".

73 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, art. 1, 18 Sept. 1997, ICRC.

74 Convention on Cluster Munitions, adopted May 30, 2008, Diplomatic Conference for CCM/77, Dublin, ICRC.

75 Protocol I to the Geneva Conventions of 12 Aug. 1949, on the Protection of Victims of International Armed Con-

effective contribution to military action".[76]

With DEWs, it will likely always be the case that they will be used against military objectives, specifically munitions, aircraft, and satellites. Each of these weapons have the capability of making the "effective contribution to military action" as defined by the law. As long as the personnel using these weapons stay within the principles of necessity by refraining from targeting civilian objects and only targeting military objectives that offer a definite military advantage.

Distinction

Distinctions must be made between the civilian populations and combatants as well as between civilian objects and military objectives.[77] The civilian population should generally be protected
from "dangers arising from military operations"[78] and "shall not be the object of attack."[79] The important component of this principle is the prohibition on indiscriminate attacks that do not make the distinction between military and civilian objects. These kinds of attacks are:

i. Those which are not directed at a specific military objective;[80] OR
ii. Those which employ a method or means of combat which cannot be directed at a specific military objective;[81] OR
iii. Those which employ a method or means of combat the effects of which cannot be limited as required by this protocol;[82]

The idea of distinction within the scope of DEWs only becomes a problem with HPM weapons. These weapons do not have the ability to discriminate between military and civilian targets. They will disrupt every electronic system within range of the weapon whether by intention or not. However, if used properly, only being executed to destroy, disrupt, or harm military objects or personnel, these weapons may be used in accordance with the law. Any attacks implementing these kinds of weapons need to avoid any of the situations described in article 51(4).
However, all other kinds of DEWs including HELs and PBWs exceed these expectations by being extremely precise in nature. They are able to target objects with stunning accuracy and reliability as discussed earlier.

Proportionality

If an attack is anticipated to cause harm to a civilian population or civilian object, the standard of proportionality must be met. Per international law, civilians must not be the object of attack.[83] However, if an attack which may cause "incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof"[84] is found to have a military advantage greater in relation than the damage it would inflict on the civilians, it is legal.[85] In other words, if the damage done

flicts, art. 52(2), 8 June 1977, ICRC.
76 Id at art. 52(3).
77 Protocol I to the Geneva Conventions of 12 Aug. 1949, on the Protection of Victims of International Armed Conflicts, art. 48, 8 June 1977, ICRC.
78 Id at art. 51(1).
79 Id at art. 51(2).
80 Id at art. 51(4)(a).
81 Id at art. 51(4)(b).
82 Id at art. 51(4)(c).
83 Id at art. 51(2).
84 Id at art. 51(5)(b).
85 Id.

to civilians is excessive in relation to the concrete and direct military advantage, then the attack is permitted.[86]

Therefore, in the context of DEWs, HPMs (indiscriminate by nature) may be used in an attack if 1. The attack will only effect military targets and personnel OR 2. The anticipated military advantage is greater in relation than the damage done to civilians. This is something policy-makers must make clear if allowing these weapons to be used in conflict.

Other DEWs do not strain the requirement of proportionality due to their preciseness in attack. As long as they are used towards military objectives, they are permitted under the law.

Humanity

This principle is mainly covered by specific treaties (such as the CCW) that specify which weapons are considered inhumane. However, as DEWs are not the subject of a treaty, we must use the general rules and guidelines to determine their legality. The first of these rules is found in article 35 of Additional Protocol I of the Genva Conventions. It states that "in any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited"[87], further "it is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering."[88]

This same idea is brought forth in the Hague Regulations of 1907: "it is especially forbidden… to employ arms, projectiles, or materials calculated to cause unnecessary suffering".[89]

With DEWs, it is important for states who are considering the use of these weapons to do a review per article 36 to determine the exact effects of these kinds of weapons on people. This will determine whether or not they comply with the principle of humanity. However, for the most part, these weapons have shown their ability to hit their target reliably, without causing superfluous injury or unnecessary suffering personnel.

CAUTIONS & RECOMENDATIONS

In order to ensure compliance with international humanitarian law, certain actions must be done. These are:

i. Conduct an Article 36 review.
ii. Ensure these weapons are designed to operate in a manner consistent with IHL.

These two things are crucial to allowing these weapons to be utilized in both international armed conflict and non-international armed conflict. Upon completion of both of these steps, these weapons will be permitted by international humanitarian law to be used in conflict.

After these weapons are completed and reviewed, it is additionally important for these weapons to be used in a manner consistent with international law. The following recommendations should be implemented following DEWs review and implementation:

86 Id.

87 Protocol I to the Geneva Conventions of 12 Aug. 1949, on the Protection of Victims of International Armed Conflicts, art. 35, 8 June 1977, ICRC.

88 Id

89 Convention (IV) Respecting the Laws and Customs of War on Land, 18 Oct. 1907, annexed Regulations, art. 23(e).

i. Define each weapon. Each DEW should be defined in a manner that limits its purpose and capabilities to those it was intended to have. This will ensure the weapons are not used in a manner inconsistent with IHL.
ii. Ensure HPM weapons are not used in an indiscriminate manner. As the only class of DEW susceptible to indiscriminate use, these weapons should have standard operating procedures (SOPs) assigned to them that limit when/where they can be used.
iii. Systems should be operated by humans. Until the precise capabilities of these weapons can be determined, humans should operate these weapons to ensure they are compliant with IHL. Using automated systems to control these weapons can lead to unanticipated mistakes and failures possibly leading to violations of international law.
iv. Advanced training should be given to users of these weapons. Ensuring combatants are familiar with the benefits and risks of each of these weapons will help them utilize these weapons in a compliant way.

CONCLUSION

Directed energy weapons are the weapons of the future. Being very advantageous, these weapons will replace conventional weapons in the wars to come. As argued in this paper, these weapons do fall within the legal bounds set by international humanitarian law, comply with the general international law, and align with principles put forth by IHL. They do not fall under definitions of weapons banned by treaty. That being said, it is crucial to ensure these weapons are used in a manner consistent with these laws and principles. Implementing the recommendations given by this paper will help ensure this happens.

Financial Intelligence and the U.S.-China Conflict

Connor Massey

In 2023, it is reported that China saved 10 billion dollars by purchasing oil from countries that are heavily sanctioned by the U.S.[1] It's no secret that the relationship between the United States and China is rife with contentions, and this contention has been further escalated as the Trump administration places larger and larger tariffs on China. The tension between the U.S. and China is largely over economic dominance and influence in the world. They are doing this by enabling other adversaries of the United States, in addition to initiating large-scale theft of U.S. intellectual property and practicing other mercantile economic practices that are harmful to the global economy.

The Office of Intelligence and Analysis at the U.S. Department of the Treasury defines financial intelligence (FININT) as "the gathering of information about the financial affairs of entities of interest to understand their nature and capabilities and predict their intentions."[2] For our purpose, this is the definition that I'm going to be using for my argument. FININT is conducted throughout the IC, but it's most prevalent in the Office of Intelligence and Analysis at the U.S. Treasury. In addition to its use against nation-state actors, it's also used to combat terrorism and other transnational crimes.

This paper argues for increased use of financial intelligence by examining how China evades economic sanctions, then exploring weaknesses in cyber-financial counterintelligence, and finally, discussing the benefits of expanding FININT operations.

China's methods for evading economic sanctions include legal maneuvers and illicit practices. Notably, China has enabled other sanctioned nations, such as Iran and Russia, to circumvent restrictions.[3] In June of 2021, the Chinese Communist Party (CCP) passed the Anti-Foreign Sanctions Law (AFSL). The Mercator Institute for China Studies argues that "Fundamentally, the AFSL will support Beijing's efforts to build a system for the extraterritorial application of its laws..." indicating that the AFSL functions as an economic coercion tool, not merely a defense mechanism.[4] This law gives the Chinese the ability to block foreign individuals, companies, and non-government organizations, and they have used it to do that. In 2021, they instituted harsh counter-sanctions on the European Union (EU) that banned many individuals and organizations, including the Subcommittee on Human Rights in the European Parliament. The Mercator Institute for China Studies has also stated that "Fundamentally, the AFSL will support Beijing's efforts to build a system for the extraterritorial application of its laws and to police behavior outside China's borders." This suggests that the law is not, as earlier stated, "a self-defense mechanism" but a means to economically bully governmental and non-governmental organizations. An increase in FININT would enable these organizations to protect themselves. It would also give the U.S. government a better understanding of whether it needs to retaliate against this behavior.

1 Atlantic Council NOTE: THIS SOURCE NO LONGER EXISTS AS ORIGINALLY CITED

2 "Office of Intelligence and Analysis," U.S. Department of the Treasury, accessed March 21, 2026, https://home.treasury.gov/about/offices/terrorism-and-financial-intelligence/oia

3 Atlantic Council NOTE: THIS SOURCE NO LONGER EXISTS AS ORIGINALLY CITED

4 Katja Drinhausen and Helena Legarda, "China's Anti-Foreign Sanctions Law: A warning to the world," Mercator Institute for China Studies, June 24, 2021, https://merics.org/en/comment/chinas-anti-foreign-sanctions-law-warning-world

China has also violated international sanctions by employing North Korean forced labor and channeling wages back to Pyongyang's weapons program. This action not only breaches United Nations restrictions but also constitutes a human rights violation, as these workers often never see their earnings. Captains of these vessels are complicit, deliberately hiding the laborers from authorities.[5] These actions violate two U.N. sanctions. The first concerns providing support for North Korea's weapons program, and the second prohibits North Korean workers from working abroad and providing them with a work visa. FININT would help to mitigate both of these issues. First, tracking the money will help the U.S. to assess the damage that has already been caused. Second, it will allow us to prevent this in the future by looking at where money is moving, and third, it will at least slow the North Korean weapons proliferation program.

China plays a critical role in enabling sanctioned states such as Iran and Russia to circumvent international restrictions. These countries, whose economies depend heavily on oil exports, have developed systems with Beijing that bypass Western banks and shipping services. These services have provided Russia with the means to continue its war on Ukraine. These nations rely on a so-called "dark fleet"—tankers that operate outside international maritime law and conceal their routes and ownership—to transport oil covertly. Upon arrival in China, the oil is rebranded as originating from Malaysia or the Middle East and sold to small independent refineries, known as "teapots," which absorb the bulk of Iran's exports.[6] The way that they get money back to Iran is by paying Iran in renminbi (RMB) through smaller Chinese banks like the Bank of Kunlun to avoid the heat that would be taken by China's larger banks. Expanding FININT capabilities would allow U.S. agencies to detect these covert maritime operations and the financial mechanisms supporting them. By targeting the financial infrastructure behind these transactions, the U.S. could weaken Russia's war effort in Ukraine and reduce Iran's capacity to fund terrorist organizations. Intelligence from these sources would severely damage Russia's ability to fight its war with Ukraine and weaken Iran's ability to fund terrorist groups throughout the Middle East. Despite the growing threat from Chinese economic and cyber aggression, the United States lacks sufficient financial intelligence coverage. This weakness undermines efforts to protect U.S. intellectual property, counter cyber threats, and anticipate strategic motivations behind Chinese economic activity.

The systemic stealing of intellectual property by the CCP against the U.S. is no secret. In 2011, American Superconductor Corporation (AMSC) suffered a major breach when an employee leaked its proprietary source code to the Chinese wind turbine company Sinovel. As a result, AMSC's valuation plummeted from $1.6 billion to $200 million, and its workforce shrank by two-thirds.[7] This is not a one-off. The FBI reports that cases involving the foreign theft of U.S. technology comprise approximately one-third of its counterintelligence investigations, with the People's Republic of China posing the greatest immediate and long-term threat to U.S. economic and national security.[8] Financial intelligence enables law enforcement and policymakers to trace illicit financial flows that result from stolen intellectual property. It also supports the implementation of targeted sanctions and economic defenses against hostile foreign entities.

Volt Typhoon, a state-sponsored Chinese cyber espionage group, has conducted numerous operations targeting U.S. infrastructure. According to joint reports by the Cybersecurity and Infrastructure

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5 Helen Davidson and Christopher Knaus, "Chinese fishing fleets using North Korean forced labour in potential breach of sanctions, report claims," The Guardian, February 24, 2025, https://www.theguardian.com/world/2025/feb/25/chinese-fishing-fleets-using-north-korean-forced-labour-in-potential-breach-of-sanctions-report-claims

6 Kimberly Donovan and Maia Nikoladze, "The axis of evasion: Behind China's oil trade with Iran and Russia," The Atlantic Council, March 31, 2026, https://www.atlanticcouncil.org/blogs/new-atlanticist/the-axis-of-evasion-behind-chinas-oil-trade-with-iran-and-russia/

7 "Chinese Company Sinovel Wind Group Convicted of Theft of Trade Secrets" Federal Bureau of Investigation, accessed March 31, 2026, https://www.justice.gov/archives/opa/pr/chinese-company-sinovel-wind-group-convicted-theft-trade-secrets

8 "The China Threat," Federal Bureau of Investigation, accessed March 21, 2026, https://www.fbi.gov/investigate/counterintelligence/the-china-threat

Security Agency (CISA), the FBI, and the NSA, Volt Typhoon has targeted multiple critical U.S. infrastructure sectors, including communications, energy, transportation, and water systems.[9] All of these systems are critical to the financial integrity of the U.S. According to a CISA report, as of 2024, Volt Typhoon employs “Living off the Land” (LotL) techniques—leveraging legitimate system tools to avoid detection. These strategies allow the group to maintain long-term, covert access to victim networks. The group demonstrates advanced persistence by maintaining undetected access to systems for extended periods. It then uses all the information that it collected to perform a highly effective and personal attack on the system. Volt Typhoon is capable of damaging the infrastructure surrounding our financial institutions.[10] Volt Typhoon’s access to U.S. infrastructure systems poses a significant risk to the stability of financial institutions. Through prolonged surveillance and data extraction, the group can gather intelligence used to disrupt or manipulate financial operations. A combination of cyber and financial security can provide us with the tools to keep this from happening. Financial intelligence enables agencies to trace Volt Typhoon’s funding streams and disrupt their financial networks at the source. Targeting these flows could weaken the group’s capacity to sustain long-term operations against U.S. systems.

Understanding the Chinese Communist Party’s (CCP) strategic objectives is essential to determining where FININT can serve as an effective countermeasure. According to a report by Booz Allen Hamilton, the CCP employs a strategic framework known as the “three warfares,” which includes psychological, public opinion, and legal warfare.[11] These tactics aim to manipulate decision-making, control information dissemination, and exploit international legal systems for strategic gain. FININT serves as a key countermeasure by exposing and disrupting the financial flows that support these strategic efforts. Whether funding disinformation campaigns or exploiting legal loopholes, the CCP’s actions require financial infrastructure, FININT can illuminate and obstruct these channels. It can help us to prepare and specify the attack angles that the CCP is taking against the U.S. Not only that, but it can also show us where we can counterattack in the case of escalation. FININT will also give us an added edge to attack Chinese financial systems in the case where the tension between us escalates into a kinetic war. Running FININT counterintelligence can also help us to find where potential breaches have taken place, whether that’s a human or technology. China leverages its domestic legal framework to manipulate global supply chains, disrupt international trade norms, and extract strategic advantage from foreign businesses operating within its borders. China’s 2017 Cybersecurity Law imposed stringent requirements on foreign companies, mandating domestic data storage, government reviews of ICT products, and approval before data transfers out of the country. “China put into effect a new cybersecurity law that restricts sales of foreign information and communication technology (ICT) and mandates that foreign companies submit ICT for government administered national security reviews. The law also requires that firms operating in China store their data in China, and it requires government approval prior to transferring data outside China. The U.S. Chamber of Commerce warns that these mandates expose companies to significant risk of intellectual property theft and legal ambiguity, particularly in an environment where data protection enforcement favors state interests.[12] Unfair trade practices like these compromise the integrity of the global financial system. A 2024 Georgetown University report draws a comparison between the United States and China using the fable of the hare and the tortoise. The report suggests that while the U.S. once held a commanding lead in technological and strategic industries, China has gradually eroded this advantage through steady and methodical investment.

9 “China Threat Overview and Advisories,” Cybersecurity and Infrastructure Security Agency, accessed March 21, 2026, https://www.cisa.gov/topics/cyber-threats-and-advisories/nation-state-cyber-actors/china

10 “PRC State-Sponsored Actors Compromise and Maintain Persistent Access to U.S. Critical Infrastructure,” CISA, February 7, 2024, https://www.cisa.gov/news-events/cybersecurity-advisories/aa24-038a

11 “Same Cloak, More Dagger: Decoding how the People’s Republic of China Uses Cyberattacks,” Booz Allen Hamilton, accessed March 21, 2026, https://www.boozallen.com/content/dam/home/pdf/natsec/china-cyber-report.pdf

12 “Foreign Economic Espionage in Cyberspace,” National Counterintelligence and Security Center, accessed March 21, 2026, https://www.dni.gov/files/NCSC/documents/news/20180724-economic-espionage-pub.pdf

They use China's "Made in China 2025" plan as an example, stating...

> [Made in China 2025] explicitly outlines the CCP's plan to become the top global producer in ten industries essential to national security — such as telecommunications, robotics, artificial intelligence, and aerospace — as well as the Belt and Road Initiative and other plans. Beijing seeks to control strategic supply chains, manipulate global and domestic market conditions, spread the CCP's authoritarian value system, and bolster its military capabilities — all to reshape international norms to favor the PRC's interests as part of its campaign for global hegemony. This is not just an attack on American economic leadership but also a threat to U.S. security and the world order.[13]

In 2020, comments from former FBI director Christopher Wray state, "The Chinese have targeted companies producing everything from proprietary rice and corn seeds to software for wind turbines to high-end medical devices. And they're not just targeting innovation and R&D. They're going after cost and pricing information, internal strategy documents, bulk PII—anything that can give them a competitive advantage."[14] The FBI is taking many counterintelligence measures to stop unfair Chinese business practices, like collaborating with private business sectors and higher education. Collaboration between the Intelligence Community, the private sector, and academia is essential to developing a robust FININT apparatus capable of preempting and mitigating Chinese economic espionage.

Critics might argue that China operates within the bounds of international law or that current U.S. FININT capabilities are sufficient. However, China's close ties with sanctioned states such as North Korea and Iran, as well as its retaliatory sanctions against Western research institutions, suggest otherwise. Additionally, the increasing frequency and scale of intellectual property theft indicate that existing FININT efforts are insufficient. I also think a potential counterargument would be that the level of FININT that we are now conducting is sufficient. I think that this argument is invalid due to the widespread stealing of American intellectual property, which is only increasing. Also, I think signs that the Intelligence Community is trying to increase cooperation with the private sector show that they deem this as something important that needs to be further pursued. Although increasing FININT pressure on China may risk short-term economic tensions with certain allies, it is more likely to strengthen international cooperation. Many allied nations are also subject to China's coercive economic practices and would benefit from a coordinated response. It may cause tension as China is the largest exporter in the world, but if we can crack down on China as we open to others, we'll see strong economic ties with our allies.

This paper demonstrated that enhanced financial intelligence is essential for addressing China's sanction evasion, cyber and economic espionage, and broader geopolitical strategy. A more aggressive FININT posture will help safeguard U.S. financial infrastructure, support policymakers, and ensure long-term competitiveness in an increasingly hostile global economic environment. My final thoughts are that FININT is an important but underutilized tool that the intelligence community has. It provides versatility in combating Chinese aggression in areas where they have stated they are seeking to become the dominant power. FININT use on our adversaries will enable U.S. companies to stay competitive in a hostile global economy.

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13 Tom Bryja, "Winning the Race: The Case for Counterintelligence against Chinese Espionage," Georgetown Security Studies Review, accessed March 21, 2026, https://gssr.georgetown.edu/the-forum/topics/intel-natsec/winning-the-race-the-case-for-counterintelligence-against-chinese-espionage/

14 Christopher Wray, "Responding Effectively to the Chinese Economic Espionage Threat," Department of Justice China Initiative Conference, Washington, D.C., February 6, 2020, https://www.fbi.gov/news/speeches-and-testimony/responding-effectively-to-the-chinese-economic-espionage-threat

The Legal Ambiguity of Targeting Dual-Use Infrastructure Under International Humanitarian Law

Spencer A. Manwaring

Introduction

What is dual-use infrastructure and why is it so important when it comes to the law of war? The U.S. Department of Defense Law of War Manual states, ""dual-use" is used to describe objects that are used by both the armed forces and the civilian population, such as power stations or communications facilities."[1] In other words, dual-use infrastructure refers to objects, facilities, or systems that serve both a civilian and military purpose. Some examples of things that can be considered as dual-use infrastructure are power grids, bridges, communication networks, fuel depots, and transportation infrastructure.

While international humanitarian law[2] permits the targeting of dual-use infrastructure, it can be very complicated and cross over into the realm of war crimes as it is more of a gray area within armed conflict. The reason why targeting dual-use infrastructure is challenging is due to the fact that targeting these pieces of infrastructure does not only have an effect on the military, but on the civilian population as well. The ambiguity of targeting dual-use infrastructure could lead to countries justifying actions that have a massive negative impact on the civilian population. This can be clearly seen in current conflicts such as the Ukraine-Russia war and the Israel-Palestine war. International humanitarian law recognizes that dual-use infrastructure may constitute a legitimate military objective, however, the vague standards of distinction, proportionality, and military necessity leave a lot of room for interpretation. This has led to significant civilian suffering in recent conflicts, suggesting the need for clearer legal limits and stronger protections for essential services.

Legal Frameworks Governing Targeting Dual-use Infrastructure

It is well known that "the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations."[3] Additional Protocol I (AP I)[4] to the Geneva Conventions of 12 August 1949 also states, "Civilian objects shall not be the object of attack or of reprisals."[5] If this is the case and if much of international humanitarian law is centered around protecting civilians from the horrors of war, why is targeting dual-use infrastructure allowed?

The main principle within the law of war that regulates the targeting of dual-use infrastructure is the principle of distinction, supported by the principles of proportionality, and military necessity. The legal frameworks that govern these principles are what primarily allows for targeting dual-use infrastructure.

1 U.S. Department of Defense, Department of Defense Law of War Manual (Washington, DC: Office of General Counsel, June 2015, updated December 2016), 209.

2 In this paper Law of War and International Humanitarian Law will be used interchangeably.

3 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, art. 51(1).

4 For the purpose of this essay if something has an abbreviation for it, it will be introduced in parentheses, and the abbreviation will be used thereafter.

5 Ibid., art. 52(1).

Article 48 of AP I directly states, "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."[6] This article clearly lays out that operations will only target military objectives in order to stay within accordance with international humanitarian law. While this is the case, during war much of the country's infrastructure that would otherwise just be civilian infrastructure begins to be used by both the military and the civilian population, hence the "dual-use" nature of it. When infrastructure begins to be used by the military it can become legally targetable as it can become a military objective. However, there are other factors to take into consideration to correctly determine if the objective is truly a military objective and if it is targetable, this is where the principles of distinction, military necessity, and proportionality come in.

Above anything, targeting dual-use infrastructure is a problem of distinction. How does one distinguish if certain infrastructure that has a dual-use nature is legally targetable? Article 52(2) of AP I clearly defines what is considered a military target, "in so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."[7] This means that in order to properly distinguish if a target is a military target a commander must determine the objective's nature, location, purpose, and use. One must determine if the object's nature is inherently civilian, and if so, what is its purpose and use? Is its purpose to directly contribute to military operations? Is it being used by the military or being used to support the military? The location of an object must also be looked at to determine if it is in a strategic location to the military or if it is in a location that will cause grave harm to civilians if attacked. When these aspects of an object are determined one can accurately determine if a target is a military target, however, there are other considerations to consider when targeting dual-use infrastructure due to the fact that attacking the object can affect the civilian population as well.

If a piece of dual-use infrastructure is determined to be a military target, a commander must then also take into consideration other principles of targeting, mainly military necessity and proportionality. As previously stated, Article 52(2) of AP I permits attacks on objectives that "make an effective contribution to military action" and whose destruction offers "a definite military advantage."[8] This goes in line with the principle of military necessity, if the attack does not provide a definite military advantage or contribute to military action, it is not legal under the law of war.[9] It is not difficult to justify an attack as having military necessity; however, the attack must also follow the principle of proportionality.

Proportionality is important when it comes to targeting dual-use infrastructure as the attacks oftentimes affect the civilian population. Article 51 of AP I talks about the protection of the civilian population during wartime and describes the principle of proportionality. It prohibits, "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[10] Therefore if by attacking a piece of dual-use infrastructure it causes catastrophic harm that is excessive to the military advantage gained, it is unlawful according to international humanitarian law.[11]

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6 Ibid., art. 48.

7 Ibid., art. 52(2).

8 Ibid., art. 52(2).

9 For discussion of military necessity, the Hague Convention states: "To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war." Hague Convention (IV) Respecting the Laws and Customs of War on Land, October 18, 1907, Annex, art. 23(g).

10 Protocol Additional I, supra note 3, art. 51(5).

11 Customary International Humanitarian Law (ICRC Study, 2005) lays out the customary rules for proportionality and distinction between civilian and military objects. Rules 7 and 8 echo Articles 48 & 52(2) as they state that attacks on these objects must

Article 57 of AP I lays out additional precautions that commanders should take when carrying out operations, which are good guidelines when targeting dual-use infrastructure. The article starts by saying that, “in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.”[12] This is a good general rule when dealing with dual-use infrastructure, great care must be taken to ensure that the operations are not greatly affecting the civilian population and civilian objects. Another important distinction in this article is that, “when a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.”[13] This gives important guidance into a key principle of targeting dual-use infrastructure that you must have a legitimate reason for targeting this infrastructure and if there is an option that does not affect civilians, it must be taken in its place.[14] This means that even if a dual-use object can be considered a military target, but there is a target that is not dual-use that will achieve the same results, a commander must choose the one that does not have a dual-use nature. In principle, militaries should do everything in their power to minimize the impact of war on civilians, however, unfortunately this is often not a priority for states at war, when in reality it should be.[15]

The Problem of Dual-Use Infrastructure

With all these legal frameworks in place to govern targeting dual-use infrastructure, why is it still so problematic? The problem is that dual-use infrastructure is a sort of “gray zone” when it comes to the law of war. This is due to the ambiguity of the legal frameworks that govern it which leaves lots of room for interpretation. As discussed, an object becomes a military objective whereby its nature, location, purpose or use makes an effective contribution to military action, and its neutralization offers a definite military advantage.[16] In principle this seems like a clear definition that will bring the decision maker to an obvious conclusion, in practice, however, those assessments are rarely clear-cut. A power plant that supplies power for civilians and military, roads and bridges that are used by both the military and civilians, or a civilian factory that is being used for the war effort are just some examples that satisfy the Article 52 test. This structural overlap means that virtually any infrastructure could be framed as “militarily useful” by an attacking commander, enabling broad target lists and increasing civilian exposure to harm. Modern warfare only increases this problem as operations become quicker and more complex and new domains are explored that bring up new concerns such as cyber attacks and hybrid warfare.

The core international humanitarian law concepts of distinction, proportionality, and military necessity are expressed in open-ended language that requires nuanced judgment calls. Proportionality, for instance, prohibits attacks expected to cause civilian harm excessive in relation to the concrete and direct military advantage anticipated.[17] But what constitutes “excessive” or a “concrete and direct” advantage is not numerically defined; it depends on context, intelligence, and the decision-maker’s evaluation of military gain versus civilian cost.[18] The lack of specificity causes states to fill the gaps which leads to some states

offer a “definite military advantage” and “attacks may only be directed against military objectives.” Rules 14 and 15 echo Article 51 stating that, “all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life” and that attacks “excessive in relation to the concrete and direct military advantage anticipated, are prohibited.”

12 Protocol Additional I, supra note 3, art. 57(1).

13 Ibid., art. 57(3).

14 The entirety of Article 57 of AP I lays out an important list of precautions that is too extensive to quote here but is worth reading to understand the full scope of precautions one must take into consideration when dealing with dual-use infrastructure and the impact it has on the civilian population.

15 Ibid., art. 57.

16 Ibid., art. 52(2)

17 Ibid., art. 51.

18 Ibid., art. 51.

adopting their own restrictive doctrines for operations and others treating any contribution to military effectiveness as a legitimate basis for attack. The different interpretations of these laws complicate legal assessments and produce widely varying state practice which means that humanitarian protection relies on the defender's or attacker's policy choices rather than a consistent policy or law.

This is true for several law of war principles as it is hard to set a concrete definition that the majority of countries will support. Even when attempts are made to impose precise limits, these limits still often have room for interpretation and have exceptions. For example, Article 56 of AP I lays out the special protections of works and installations containing dangerous forces.[19]

This article specifically states, "works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population."[20] Due to the catastrophic impact these forces would have on the civilian population and the country, these works or installations are prohibited from being targeted if the attack will release the dangerous forces contained. Not only are these facilities not targetable under these guidelines, but any military targets in the vicinity of the installation cannot be targeted if it would cause these dangerous forces to be released.[21]

This seems to be a clear distinction on infrastructure that cannot be targeted,[22] but the ambiguous language of "if such attack may" still leaves the targeting of these works and installations up to interpretation. This article also lays out exceptions to the law stating that if such infrastructure is "in regular, significant and direct support of military operations" and if attacking it is the only way to terminate this support, it may be targeted. This essentially still leaves it up to interpretation and broad justification of states. This can be extremely dangerous as permissive targeting of infrastructure containing dangerous forces can have catastrophic consequences on the civilian population and the country.[23]

The biggest reason why dual infrastructure is so problematic is that the destruction of it effects the civilian population. How does a military truly minimize "incidental loss of civilian life, injury to civilians and damage to civilian objects" when targeting infrastructure that may affect hospitals, transportation, heating, life-support systems, income, and more?[24] The only hard concrete rule that does not have room for interpretation when attacking dual-use infrastructure is that it must not "leave the civilian population with such inadequate food or water as to cause its starvation or force its movement."[25] While food and water are critical for survival, destroying critical infrastructure has the potential to affect survivability as well. I believe that laws surrounding the targeting of dual-use infrastructure need to be clearer in order to decrease the broad interpretation of it. I believe this will cause states to examine more carefully dual-use targets before conducting operations against them. To fully understand the scope of how much the interpretation of what constitutes a lawful target when targeting dual-use infrastructure, we must look at real world examples.

Case Studies

I will discuss examples from three different armed conflicts, the Russia-Ukraine War, the Kosovo war, and the Israel-Palestine Conflict.[26] I will examine various examples of states targeting dual-use infrastructure during an armed conflict and analyze the legality of these operations and the effect they have

19 Ibid., art. 56.
20 Ibid., art. 56(1).
21 Ibid., art. 56(1).
22 Ibid., art. 56(2).
23 DoD, Law of War Manual, 270-271
24 Protocol Additional I, supra note 3, art. 57 (2(ii)).
25 Ibid., art. 54.
26 I will not be going over every example of targeting of dual-use infrastructure in these conflicts, rather I will be addressing a few choice examples from them that I believe are the most relevant.

had or could have.[27]

Russia-Ukraine

The Russia-Ukraine war has provided many examples of the law of war in action in a modern-day conflict. Among these examples are those involving the targeting of dual-use infrastructure which has made this topic increasingly important on the modern battlefield. In this war, infrastructure such as power stations, bridges, and communication networks have been targeted. This is not one-sided either as both Russia and Ukraine have carried out attacks on infrastructure with a dual-use nature. While this is true, Russia has notably been the one focusing on the destruction of critical infrastructure primarily targeting energy infrastructure. I will discuss a couple key examples of this highlighting the legality and effects of the operations.

The most notable case involving dual-use infrastructure is the 2022 occupation of the Zaporizhzhia Nuclear Power Plant (ZNPP). The ZNPP is one of the largest powerplants in Europe and provides over half of the power for Ukraine.[28] Russia occupied this power plant through heavy shelling and fighting in 2022, and currently still controls it. Russia has shutdown the six nuclear generators and is currently working on integrating the powerplant into Russia's energy grid.[29] Russia has justified this attack by claiming that Ukraine was using it for military operations and that Russia took it for safety reasons.

There are several reasons why this occupation is problematic according to international humanitarian law. Article 56 states that nuclear power plants cannot be targeted nor infrastructure around them if such attack may cause the release of dangerous forces even where these objects are military objectives.[30] I believe that the violent nature of the occupation could have caused the release of dangerous forces and therefore should not have been carried out even if it was truly a military target. Russia has also stopped the six reactors from producing power; therefore, it has had an adverse effect on the civilian population due to it providing half of the country's power and providing power for hospitals, heating, and life support systems.[31]

This is not in line with the principle of proportionality. Along with claiming the Ukrainian military was using the ZNPP for operations, Russia could also make the argument that by controlling this power plant they deny the Ukrainian military power from it. However, after investigation, there is no concrete evidence that the Ukrainian military was using this power plant for military purposes, therefore it is hard to justify military necessity and distinguish it as a military target. The occupation of the ZNPP is extremely dangerous and does not fit within the confines of international humanitarian law and therefore should be condemned.

As the war in Ukraine has progressed, Russia has begun to target Ukrainian energy infrastructure more and more by targeting thermal power plants, gas production, and any other energy producing infrastructure.[32] Russia's goal has been to cripple Ukraine economically and physically to win the war. Russia has succeeded in this as, "Ukraine currently lacks the financial, technical, and human resources to restore approximately 50% of its unrepaired electricity infrastructure," resulting in Ukraine turning to non-domestic sources for energy.[33] These attacks are greatly affecting the civilian population as they deny

27 To be clear, many of the examples I will discuss have already been publicly condemned and considered war crimes. However, I believe that the vagueness of international humanitarian law is a primary factor into why these operations happened in the first place.

28 Denis Cenusa, "The Evolving Rationale behind Russian Attacks on Ukraine's Energy Infrastructure," EUIdeas, April 24, 2025.

29 World Nuclear Association, "Ukraine, Russia and Control of Zaporizhzhia Nuclear Power Plant," World Nuclear, October 6, 2022.

30 Protocol Additional I, supra note 3, art. 56.

31 Human Rights Watch, "Ukraine: Russian Attacks on Energy Grid Threaten Civilians", December 6, 2022.

32 Cenusa, supra note 27, "The Evolving Rationale behind Russian Attacks on Ukraine's Energy Infrastructure."

33 Ibid.

them access to water, heat, and health services.[34] The broad justification of weakening the country to also weaken the military can be made for these attacks. This brings to light how broad justifications can result in serious consequences for the civilian population due to the legal ambiguity surrounding dual-use infrastructure.

Kosovo War

One of the most controversial issues of the Kosovo War is NATO's direct involvement and bombing campaign of former Yugoslavia. I will address one specific example from this conflict that involved the NATO bombing of the RTS (Serbian TV and Radio Station) in Belgrade on April 23, 1999.[35]

The official report from the International Criminal Tribunal for the Former Yugoslavia (ICTY) described the attack as follows, "On 23 April 1999, at 0220, NATO intentionally bombed the central studio of the RTS (state-owned) broadcasting corporation at 1 Aberdareva Street in the centre of Belgrade. The missiles hit the entrance area, which caved in at the place where the Aberdareva Street building was connected to the Takovska Street building. While there is some doubt over exact casualty figures, between 10 and 17 people are estimated to have been killed."[36] This coordinated attack was aimed at disrupting the C3 (Command, Control and Communications) network and shortly after this building was hit, radio relay buildings and towers were hit along with electrical power transformer stations.[37] On April 27 NATO officials gave their official justification of the attack explaining that this system was dual-use in nature. The NATO officials described the communications system as a, ""very hardened and redundant command and control communications system [which …] uses commercial telephone, […] military cable, […] fibre optic cable, […] high frequency radio communication, […] microwave communication and everything can be interconnected. There are literally dozens, more than 100 radio relay sites around the country, and […] everything is wired in through dual use. Most of the commercial system serves the military and the military system can be put to use for the commercial system […].""[38]

Now the question is, was this attack lawful according to international humanitarian law? In my view I believe that this attack was a good example of a lawful attack on dual-use infrastructure. NATO had credible evidence that these communication systems were directly supporting military operations and that the military heavily relied on the civilian system to communicate. I believe that nature, use, location, and purpose of the RTS, relay buildings, and transformers distinguishes this target as a military target. While the people killed in the building were all civilians, I believe that the attack still follows the principles of military necessity and proportionality as it crippled the entire military's communication network and had minimal impact to the civilian population. NATO claims that it made "every possible effort to avoid civilian casualties and collateral damage" claiming that they warned the civilian population before the attack.[39] I believe this is the correct way to go about targeting dual-use infrastructure. Making sure that you have the intelligence needed to clearly apply the principles of distinction, proportionality, and military necessity and then taking as much precaution as you can to avoid civilian suffering.

Israel-Palestine

34 Human Rights Watch, "Ukraine: Russian Attacks on Energy Grid," ""By repeatedly targeting critical energy infrastructure knowing this will deprive civilians of access to water, heat, and health services, Russia appears to be seeking unlawfully to create terror among civilians and make life unsustainable for them," said Yulia Gorbunova, senior Ukraine researcher at Human Rights Watch."

35 International Criminal Tribunal for the Former Yugoslavia, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, June 13, 2000.

36 Ibid., 27.

37 Ibid., 27.

38 Ibid., 27.

39 Ibid., 30.

The atrocities that have been committed in the Israel-Palestine conflict since 2023 are well documented and known across the international community. For the purpose of this paper, I will only focus on the attacks that have occurred to dual-use infrastructure or civilian infrastructure and not any other violations of international humanitarian law. The problem with this conflict is that many attacks on civilian or dual-use infrastructure have been either justified by Israel as collateral damage from the war, justified very broadly, or are not given justification at all. The Israel-Palestine Conflict by far shows the most disregard for international humanitarian law out of the three examples I have given.

Almost all of the attacks by Israeli forces on infrastructure in the Gaza strip have completely disregarded international humanitarian law and often the infrastructure targeted is solely civilian infrastructure. "Israeli attacks have damaged and destroyed resources that people need to stay alive, including hospitals, schools, water and energy infrastructure, bakeries, and agricultural land."[40] This has included the demolition of civilian houses and property to create a "buffer zone" between Israel and Gaza.[41] Almost all of these example are against the law of war as they either affect the food and water supply of civilians or they directly contribute to civilian loss of life and property or loss of life to those that are "hors de combat." The most notable and impactful example of targeting dual-use infrastructure in this conflict is the destruction of WASH infrastructure.

WASH stands for water, sanitation, and hygiene, and the Gaza strip is currently facing a crisis due to the destruction of this infrastructure.[42] By August 2024 it was reported that 84.6 percent of the WASH infrastructure for Gaza had been destroyed.[43] This has led to inhabitants of Gaza surviving off of 2-9 liters of water per day when the WHO minimum for basic needs is 50-100.[44] This has led to a crisis of hygiene, water, and starvation in Gaza. There is direct evidence of Israel purposefully destroying this infrastructure making any claims that it was collateral damage false.[45] As previously discussed Article 54 of AP I prohibits rendering useless objects that the civilian population relies on for survival.[46] Even if this WASH infrastructure was directly supporting Hamas, Article 54 states, "in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement," which is exactly what these attacks have done.[47] I would argue that the majority of attacks on infrastructure claimed to be "dual-use" in Israel are simply blatant ignorance of international humanitarian law and therefore war crimes.

Conclusion

In conclusion, while international humanitarian law permits the targeting of dual-use infrastructure, the current legal framework leaves significant ambiguity that, as we can see from the examples stated, can result in substantial civilian suffering. The case studies addressed illustrate how dual-use targets, such as energy infrastructure, water systems, and other essential services, can be attacked with devastating humanitarian consequences when the definitions of "military objective" and proportionality are left open to interpretation. These legal standards need to be clarified to better protect the civilian population from unnecessary suffering. At the very least there needs to be stricter frameworks that restrict the targeting

40 Human Rights Watch, "'Hopeless, Starving, and Besieged': Israel's Forced Displacement of Palestinians in Gaza," November 14, 2024.
41 Ibid.
42 Human Rights Watch, "Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water" (report, December 19, 2024).
43 Ibid
44 Ibid
45 Ibid
46 Protocol Additional I, supra note 3, art. 54(1).
47 Ibid., art. 54(3(b)).

of critical infrastructure such as power and water and facilities that contain dangerous forces such as nuclear power plants. This can be done through rules that require stricter verification methods or third-party verification involvement. To better protect civilians, clearer treaty language is urgently needed. By clarifying these legal standards, the international community can uphold the core humanitarian principles of international humanitarian law while ensuring that combat operations minimize harm to civilian populations. Ultimately, strengthening and specifying these rules is essential to reduce the human cost of war and safeguard the fundamental rights of those caught in conflict.

Historic Principles that Guide Detainee Treatment and Interrogations in the Law of War

Wes Baker

Introduction

What are the circumstances that influence lawful combatants to break the law of war, wittingly or otherwise? I believe this is influenced by improper leadership, communication, and malignant feelings. The way to avoid committing war crimes in this and any case is by understanding how they happen and the historical foundation of the legal and humane principles that guide these laws.

The United States Military and International Humanitarian Law share the same humane and legal principles as their basis.[1] However, a lack of understanding that surrounds the historic context for the law and operational pressures has created grey zones that have contributed to inhumane treatment. Additional training, coupled with historic context to law and policy, are needed to maintain reciprocity during armed conflict. This paper examines the legal foundations of detainee treatment in doctrine and international law; how rules are applied and interpreted under operational pressures; specific cases, such as Abu Ghraib, to demonstrate where ambiguity leads to abuse; and, finally, proposes solutions for clarifying standards and ensuring accountability.

Legal Foundations for Detainment and Interrogation

Historical Development

Human beings have detained and imprisoned one another far longer than the history of the American Civil War. However, this is where the foundation and codification began for international humanitarian law and for what is now found in FM 2-22.3.[2] During the Civil War, President Abraham Lincoln asked Francis Lieber, a professor of law, to draft guidelines on how the Union and Confederacy were to interact with one another during the conflict, including what they could do to one another during capture and detention. Lieber's Code was accepted by the President, and, on April 24, 1863, the General Orders No. 100: Instructions for the Government of the Armies of the United States in the Field was in effect.[3] Within the more than 150 articles, 18 guide the treatment of enemies who are captured and detained.[4] Those 18 articles emphasize that lawful combatants and prisoners of war are identified by status and treated humanely, without cruelty or discrimination. This includes protection against unnecessary violence and limits reprisals or deprivations to what is strictly required for legitimate war aims.[5]

1 U.S. DEP'T OF DEF., OFFICE OF GEN. COUNSEL, LAW OF WAR MANUAL 47–54 (rev. Dec. 2016), https://ogc.osd.mil/Portals/99/department_of_defense_law_of_war_manual.pdf.

2 Historic Principles that Guide Detainee Treatment and Interrogations in the Law of War

3 William L. D'Ambruoso, The Persistence of Torture: Explaining Coercive Interrogation in America's Small Wars 15–22 (2016) (Ph.D. dissertation, Univ. of Wash.), ProQuest Dissertation & Theses Global (Doc. No. 10162376).

4 M.M. Thompson & R. Jetly, Battlefield Ethics Training: Integrating Ethical Scenarios in High-Intensity Military Field Exercises, 5 EUR. J. PSYCHOTRAUMATOL. 23668, 5–9 (2014).

5 Francis Lieber, Instructions for the Government of Armies of the United States in the Field, Gen. Orders No. 100 (Apr. 24,

In 1907, the Hague Convention was held in the Netherlands. An international agreement called the Hague Regulations was reached. This agreement established laws for how land warfare would be conducted and established guidelines for the treatment of detainees and prisoners of war.[6] The Hague Regulations focused more on how the government would account for the welfare of captured persons rather than the government being responsible themselves.[7] Within the Hague Regulations the basic treatment for Prisoners of War (POW) was that they would retain personal belongings, but not arms, military papers, or horses. POWs must be provided with the same clothes, food, and lodging as the capturing government's own troops. The regulations prohibited any unnecessary suffering, wounding, or killing of surrendered enemies.[8] Additionally, mandates were in place to protect rights, honor, lives, and religious practices and the regulations formally forbade pillaging to prevent property violations.[9] The Lieber Code and Hague Regulations are the foundations where the Geneva Convention took shape and later defined the modern standards applied today to lawful and humane treatment of detainees and POWs within an armed conflict.[10]

Doctrinal Frameworks

The Russian nesting doll of historical legal frameworks begins with the Lieber Code of 1863, from which subsequent frameworks drew important precepts: the 1907 Hague Regulations, the 1949 Geneva Conventions, the 1996 War Crimes Act, the 2005 Detainee Treatment Act, the 2006 Department of Defense Directive 2310.01E (DoDD 2310.01E), and Field Manual 2 22.3 (hereafter FM 2 22.3). Each of these frameworks has undergone revisions and amendments, but the modern law of armed conflict, both international and domestic, can trace much of their conceptual lineage to the Lieber Code, which was later globalized through Hague Regulations and Geneva Conventions. FM 2-22.3 is the authoritative doctrinal standard for service members within the United States to conduct interrogations and handle detainees.[11] The DoD Directive 2310.01E (DoDD 2310.01E) is mentioned within FM 2-22.3 and categorizes detainees into distinct groups that require different protocols: enemy prisoners of war (EPWs) entitled to full Geneva Convention III protections; unprivileged enemy belligerents (UEBs) who engaged in hostilities without meeting lawful combatant criteria; civilian internees detained for imperative security reasons; and retained persons (medical and religious personnel).[12]

Interpretation and Implementation

Even though comprehensive legal frameworks and humane principles govern interrogation and detainment, people still find a way to commit war crimes, willingly or otherwise. The standards are interpreted and implemented by human beings who may not fully understand, be aware of, or remember the legal standards. However, there is training and leadership in place to ensure these rules are followed, and a rigorous review takes place every three years for FM 2-22.3.[13] So how do these breaches in conduct still happen?

1863), https://avalon.law.yale.edu/19th_century/lieber.asp.

6 Id. arts. 56, 75–76.

7 Id. pmbl., arts. 15–16.

8 Convention (IV) Respecting the Laws and Customs of War on Land and Annexed Regulations, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631.

9 Id. annex arts. 18, 46-47.

10 Id. annex arts. 46–47, 50.

11 Id. at 1-1 to 1-4.

12 U.S. DEP'T OF THE ARMY, FIELD MANUAL NO. 2-22.3: HUMAN INTELLIGENCE COLLECTOR OPERATIONS 1-1 to 1-3 (Sept. 6, 2006), https://irp.fas.org/doddir/army/fm2-22-3.pdf.

13 U.S. DEP'T OF DEF., DIRECTIVE 2310.01E, DOD DETAINEE PROGRAM §§ 3.2–3.4 (Mar. 15, 2022), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231001e.pdf.

Rules and Regulatory Authority

It is worth noting that Francis Leiber—the same man who created the Lieber Code—had three sons fighting in the Civil War. One son fought for the Confederacy and the other two fought for the Union. The foundational principles Leiber set in place must have, to some degree, been inspired by the fact he was a father to three sons who were participating. It is poetic that he was the one required to create this code of conduct; to create rules for how his sons were to treat one another if they had been captured. This is significant because I believe, this is the lens through which the previous rules and regulations mentioned in first two sections of this paper—that still govern the legal framework today— should be understood, remembered, and applied.

Every detainee that comes into the custody of the United States Government is to be treated with respect and dignity at all times. They must be provided with proper food, water, shelter, and medical care. The detainee will be protected from all forms of torture and any degrading, cruel, or inhumane punishment. They must also be safeguarded from violence, abuse, and threats. There can be no discrimination based on nationality, status, or any other circumstances that lead to their detention, of one who falls under hors de combat. Detainees are afforded humane contact with the outside world as law and security require. Violations within the existing legal framework must be reported to ensure accountability for those who are mistreated, regardless of their detention status.[14]

Doctrinal Interpretation

Interpretation varies considerably depending on where the information comes from. Clearly, the frameworks that dictate the standards and methods of detainee treatment are self-evident. However, the leadership that oversees the policy and intent for the United States government can affect subordinate leaders, all the way down to the newest service member within the detainment facility. The training and how these things are communicated will contribute to the interpretation of these rules and regulations.

The way a person communicates is enough to set the stage for how treatment towards detainees will go. For example, handwritten on a memo titled Counter-Resistance Techniques, Secretary of Defense, Donald Rumsfeld wrote, “I stand for 8 to 10 hours a day, why is standing limited for 4 hours?”[15] This was in reference to stress positions labeled under advanced interrogation techniques at Guantanamo. It is said that Rumsfeld passed it off as a half joke[16] , however, the basis had been set for how one could interpret the intent of the Secretary of Defense and how that trickles downward all the way to the facility and in the minds of those who are to oversee detainees.

A Presidential Memorandum: Humane Treatment of Al Qaeda and Taliban Detainees, issued by President George W. Bush on February 7, 2002, indicates further how leadership sets the precedent for interpretation that will govern subordinates.

The memo asserts, “common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees,”[17] an interpretation that conflicts with doctrine mandating adherence to both Hague and Geneva Conventions.[18] Leadership interpretation and clear communication shape the standards for detainee treatment from the top down. When leaders at the highest level redefine protections outside of the FM 2-22.3, it sets a permissive tone for everyone down the chain, creating ambiguity and opening the door to

14 Id. encl. 3, §§ 2–3.

15 42 U.S.C. § 2000dd–2(a)–(b) (2025).

16 Jane Mayer, “The Memo,” New Yorker, February 27, 2006, accessed March 31, 2026, https://www.newyorker.com/magazine/2006/02/27/the-memo.

17 Detainee Treatment Act of 2005, Pub. L. No. 109-148, div. A, tit. X, §§ 1001–1006, 119 Stat. 2680, 2739 (codified in scattered sections of 10 & 42 U.S.C.).

18 McCain-Feinstein Anti-Torture Amendment: Strengthens U.S. Ban on Torture, CTR. FOR VICTIMS OF TORTURE, Factsheet 1–2 (Nov. 2015), https://www.cvt.org/wp-content/uploads/McCain-Feinstein-Amendment-Factsheet_November-2015.pdf.

abuse.

In relation to how things got so bad at Abu Ghraib, Major General Taguba's investigation led him to state, "Failure in leadership, Sir, from the brigade commander on down. Lack of discipline, no training whatsoever and no supervision,"[19] and illustrates exactly how poor leadership communication and a lack of clarity and discipline led to grave breaches. Weak or ambiguous communication transforms established statutes into loopholes, undermining compliance and endangering ethical conduct at every echelon.

Before FM 2-22.3, there was FM 34-52, which also contained guidance on the proper treatment of detainees. It expressed clearly that all techniques were to comply with the Geneva Conventions, the Uniform Code of Military Justice, and FM 27-10 (Law of Land Warfare). Service members were to act "within the constraints established by FM 27-10, the Hague and Geneva Conventions, and the Uniform Code of Military Justice (UCMJ),"[20] which prohibited the use of coercion and abuse.

Additionally, there is a supremacy of law over even presidential authority. However, it is clear that those constitutionally based statutes —the same constitution that U.S. service members swear to defend— were ignored or misunderstood. Ignorance cannot be an excuse for grave breaches in the law of war. In fact, it is the responsibility of every service member to disobey unlawful orders wherever they may come from.[21] Training to remove ignorance and practicing clear communication could mitigate a majority of war crimes committed and yet there is still one last issue to hurdle if a solution to mistreatment of detainees is going to be meaningfully addressed.

Malignant feelings can be an adequate description as a culmination of hatred, dehumanization, revenge, contempt, fear, and stress. It is malignant feelings that lead to the justification for the grave breaches and disregard for the law of war.[22] Despite the robust amounts of statutes, field manuals, executive orders, and any other related authorities that contribute to the legal framework and how the laws of war are to be conducted can still be interpreted and subverted to undermine the standards.

Counterarguments

A counterargument to my position could be that the quickest and most acute pressure to leverage information for intelligence use is the most effective way to save lives and fulfill mission requirements. If one were to be overly cautious in their approach to detainees, then information obtained cannot satisfy the demands of the mission. However, any method outside the legal standards found within FM 2-22.3 is unlawful and coercive and is known to produce unreliable intelligence.[23] Being made aware of the historic context will mitigate misconduct and maintain adequate methods of obtaining information.

Additionally, another argument is that more training only adds to redundancy and excessive bloat to an already rigorous education, legal framework, and policy. Although the desire for efficiency and concise clarity in training, law, and policy is valid, the lack of ethical resilience found in cases like Abu Ghraib and others suggests that the previous amount of training, law and policy was not enough to prevent misconduct.[24] This demonstrates the need to address more fully the consequences of law-of-war violations

19 Antonio M. Taguba, testimony before the U.S. Senate Committee on Armed Services, Review of Department of Defense Detention and Interrogation Operations, 108th Cong., May 11, 2004, https://www.govinfo.gov/content/pkg/CHRG-108shrg96600/html/CHRG-108shrg96600.htm

20 FIELD MANUAL NO. 2-22.3, supra note 12, at preface, 1-2.

21 Id. at 5-1 to 5-3.

22 U.S. DEP'T OF DEF., DIRECTIVE 2311.01, DOD LAW OF WAR PROGRAM §§ 3.2–3.3 (July 2, 2020), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101p.pdf.

23 Memorandum from William J. Haynes II, Gen. Counsel, U.S. Dep't of Def., to Sec'y of Def. Donald Rumsfeld, Counter-Resistance Techniques 1–2 (Nov. 27, 2002) (declassified June 18, 2004), https://nsarchive2.gwu.edu/torturingdemocracy/documents/20021127-1.pdf.

24 Jennifer K. Elsea, Lawfulness of Interrogation Techniques Under the Geneva Conventions 1–3, 17–23, CONG. RSCH. SERV., RL32567 (Sept. 8, 2004),

for both victims and perpetrators.[25]

Operational Pressures and Legal Grey Areas

How then can someone who is trained and solely authorized to conduct interrogations and manage detainees stray into war crimes? The operational pressures experienced by service members are no small matter. The law has strict demands that require careful observation, and the battlefield has its demands that require intense vigilance as well. Both hold lives at stake. This section will explore the operational pressures that service members face and will provide an explanation—not justification—for mistakes made within the law of war.

What are the operational pressures?

The timeliness and urgency within a combat environment is real and adds to the feeling of needing to act quickly to save lives. This can weigh heavily on a person.[26] Imminent threats can occur within 72 hours or less and those things can magnify feelings of urgency and stress.[27] Leadership also feels this, and the pressure can compound —whether directly or indirectly— on subordinates who sometimes operate under fast-moving and evolving orders to complete the mission consistent with the commander's intent.[28] As the pressure is applied from higher up—such as the Presidential level— commanders may feel justification for substandard methods of collection due to military necessity. As referenced in President Bush's memo, the Geneva Conventions ought to be considered, but if a military advantage is at stake, operators may feel compelled to "do what they have to do." This mindset can lead to the subversion of established rules and techniques in pursuit of actionable intelligence.[29]

Prolonged pressure in these sorts of environments accompanied with stress and fear can erode ethical resolve and harden attitudes toward the detainees. Insufficient resources contribute to operational stress as service members feel they must improvise when they don't have translators, medical equipment and personnel, or adequate security. None of these things can justify the mistreatment of detainees as outlined within the law of war, but they are contributors to the decisions made to loosely interpret the standards.

What Are the Legal Grey Areas?

This section examines the FM 2-22.3 approaches and compare each technique to the humane treatment requirements for detainees. The direct approach is considered lawful so long as the detainee is medically cleared, the only grey area might be the timing by exploiting the detainee's shock.[30] The incentive approach is lawful inasmuch as the incentives are not linked to basic human needs such as food, water, safety or other reasonable things listed within the legal framework.[31] Withholding or threatening basic human needs would be considered degrading or coercive. Emotional love or hate is meant to persuade and build rapport (whether it is negative or positive) to encourage the detainee to willingly cooperate and grey areas are introduced if the approach becomes humiliating or threatening.[32] The fear up or down approach is

25 "United States, The Taguba Report," How Does Law Protect in War? (ICRC casebook), International Committee of the Red Cross, accessed March 31, 2026, https://casebook.icrc.org/case-study/united-states-taguba-report.

26 U.S. DEP'T OF DEF., OFFICE OF GEN. COUNSEL, LAW OF WAR MANUAL, supra note 1, at 1087–89.

27 Megan M. Thompson and Rakesh Jetly, "Battlefield Ethics Training: Integrating Ethical Scenarios in High-Intensity Military Field Exercises," European Journal of Psychotraumatology 5 (2014): 23668.

28 D'Ambruoso, supra note 2, at 45–53.

29 Thompson and Jetly, "Battlefield Ethics Training," 23668.

30 D'Ambruoso, supra note 2, at 88–103.

31 Thompson & Jetly, supra note 3, at 9–13.

32 Cavalier Bleu, Convergence of Errors: Leadership Failures Contributing to Abu Ghraib Abuses, COLLÈGE MILITAIRE

lawful if the statements are fact based about the detainee's reality.[33] Inducing irrational or exaggerated fear, or making threats of violence or reprisals, is unlawful and can constitute mental torture or coercion. Pride and Ego Up or Down aims to encourage the detainee to defend their self-esteem, and the interrogator may flatter or express dissatisfaction with the detainee.[34] However, "insults, abuse, or any degrading treatment" are forbidden in regard to derogatory language, mocking, or personal attacks which would cross the line. Silence is not exactly an approach but a technique that uses the discomfort of silence to encourage the detainee to talk more, so long as this isn't coupled with background noises that could insinuate a threat.[35]

The following approaches begin to get trickier as some of them require special permissions and particularly skilled interrogators so that lines are not crossed within the legal standards. Futility is an approach where the detainee believes that their situation is inevitable and they have limited choices to improve—aside the lawful standards—their situation.[36] This is lawful as long as it is not taken to extremes by inducing despair and coercion. The We Know All approach is a deception tactic that suggests to the detainee that the interrogator knows more than they lead on.[37] This is lawful as long as it is not coupled with threats and pressure beyond persuasive efforts. File and Dossier is an extension of the We Know All approach as the interrogator brings supposed evidence that suggests they know more information on the detainee or their organization than they really do, presenting this supposed evidence is fine if it does not allude to threats or deception rising to the level of coercion or humiliation.[38] With the Establish Identity approach, the interrogator insists falsely that the detainee has been identified as a notorious person who is wanted by higher authorities.[39] This is lawful to do unless coupled with threats within the consequences or intimidating behavior that is coercive. Rapid Fire is when the interrogators intentionally interrupts the detainee with another question before they finish answering the initial question.[40] The idea is that the detainee will attempt to speak freely and give more than they initially intended to. This is lawful insofar that interrogators do not induce panic that could cross into mental suffering. The Mutt and Jeff otherwise known as the good cop/bad cop approach is a routine where one interrogator acts aggressively and builds negative rapport, while the other interrogator acts calm and builds positive rapport with the detainee.[41] This is lawful so long as the "bad cop" does not produce threats or humiliate the detainee and the "good cop" does not promise unlawful rewards. Lastly, the Change in Scenery approach involves moving the detainee to an alternative and approved location for the interrogation.[42] However, doing this must not put the detainee in harm's way or be used to disorient or isolate them.

Conclusion & Policy Recommendations

The history that surrounds the law of war is poetic and points to our greater qualities of humanity, showing how fathers and sons came together to settle the harsh realities of war through respect and dignity. It is through these principles that we can mitigate the feuds and lasting hatred that fester from a lawless and brutal war. Peace can be established after war, but lasting peace can be established after lawful war.

ROYAL DE SAINT-JEAN 1–4 (2012), https://www.cmrsj-rmcsj.forces.gc.ca/cb-bk/art-art/2012/art-art-2012-1-fra.asp.

33 Associated Press, Abu Ghraib Detainee Shares Emotional Testimony During Trial Against Contractor, AP NEWS (Apr. 14, 2024), https://apnews.com/article/abu-ghraib-trial-iraq-virginia-9e6eae5c7ea05fac90d8541efdd15562.

34 FIELD MANUAL NO. 2-22.3, supra note 12, ch. 8, at 8-5 to 8-7 (Direct and Incentive Approaches).

35 Id. at 8-8 to 8-10 (Emotional Love/Hate; Fear Up/Fear Down Approaches).

36 Id. at 8-11 to 8-13 (Pride & Ego; Silence).

37 Id. at 8-13 to 8-16 (Futility; We Know All; File & Dossier).

38 Id. at 8-16 to 8-18 (Establish Your Identity; Rapid Fire; Mutt & Jeff).

39 Id. at 8-19 (Change of Scenery).

40 Thompson & Jetly, supra note 3, at 13–18.

41 DIRECTIVE 2311.01, supra note 22, §§ 3.1–3.4 (law of war training).

42 TAGUBA REPORT, supra note 25, at findings 2–6; Cavalier Bleu, supra note 31.

Ambiguities and weak oversight will only serve to prime the vulnerable parts of malignant feelings within a conflict. Operational stresses will always exist, supplying ample excuses to justify subverting the humane principles within international humanitarian law. To avoid these follies, the following recommendations are likely to achieve the kind of lawful and reciprocal outcomes desired for war.

Integrate Historical Context into Military Training

Perhaps one of the most frustrating parts when learning about humane and just treatment in wartime, is when people observe the unfairness that contrasts one state's attempt to lawful practice while the other does not. The incentive to uphold these moral principles begins to wane immediately unless it is counterbalanced with the understanding of why we remain vigilant in our efforts for humane treatment even if our enemies do not.[43] The Department of War's, Law of War Program, mandates training for the military, but most of the instruction focuses on the current rules rather than the historic evolution of legal standards.[44] Everything that currently exists within the Department of War, law of war program, can integrate references to historic documents and explanations that emphasize "why" the current rules are in the Law of War program. Add additional modules that revolve around the historic foundations of the laws of war from the lowest to the highest level of military education. Emphasize the milestones like the Lieber codes, Hague Conventions, Geneva Conventions, and modern updates.

Revise Doctrinal and Policy Manuals

Within the existing doctrine that is taught, include a historic overview of how the law of war evolved to the current legal framework and the necessity of linking the initial intent for the rule of law to the current standards and obligations. These sections could include subheadings such as "doctrinal rationale," explaining how lawful obedience relies as much on an understanding of purpose as on the existence of military necessity and mission completion.

Leadership and Professional Military Education

Leadership will be the most effective and influential aspect to these recommendations. By requiring further instruction of the history and philosophy of the law of war, officers and non-commissioned officers will be able to lead their subordinates and cultivate a culture of principled service members who understand both the purpose and application of the legal standards. Integrate this learning within their professional military education progression and have it reiterated at regular intervals through their careers. Service members that can teach the "why" in addition to the "what" and "how" will create a resilience to the callousness that armed conflict inevitably brings. Service members grounded in historical and humane principles will have the knowledge and moral courage to resist the temptation to go along with unlawful orders and internal temptations when faced with the legal grey areas of the law of armed conflict, and the reciprocity we strive for in the law of war can be securely held in place and carried forward.

43 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, supra note 11, arts. 27, 31–32.
44 LAW OF WAR MANUAL, supra note 1, at 1023–28 (reciprocity and humane treatment).