

NUCLEAR WEAPONS

AND INTERNATIONAL HUMANITARIAN LAW (IHL)



There is no comprehensive or universal ban on the use of nuclear weapons. However, International Humanitarian Law (IHL) – the law set out primarily in the Geneva Conventions of 1949 and their Additional Protocols – does contain a set of general rules that are applicable to all weapons used in armed conflict. These rules restrict how weapons may be used and outline measures to be taken to limit their impact on civilians and civilian areas.

UNDER IHL:

- attacking forces must take constant care to spare the civilian population and avoid harming them.
- attacks must not be directed at civilians or civilian objects.
- indiscriminate attacks are prohibited – this means attacks which are not, or cannot be, directed at a specific military objective, such that the attack does not distinguish between military targets and civilians.
- disproportionate attacks are prohibited – this means attacks which cause incidental civilian casualties or damage that is excessive when compared to the military aim.
- the natural environment must be protected – precautions must be taken to avoid incidental damage to the environment during military operations.

The unique characteristics of nuclear weapons

Nuclear weapons are designed to release heat, blast and radiation and, in most instances, to disperse these forces over very wide areas. Their detonation will immediately cause large numbers of deaths and injuries and extensive damage to infrastructure. In addition, the fires, firestorms and radioactive fallout resulting from a nuclear explosion will increase the number of casualties even further and have the potential to affect the global climate and food production, as well as the health of future generations. These unique features raise serious questions about the compatibility of nuclear weapons with IHL.

The ICJ advisory opinion on the legality of nuclear weapons

In 1996 the International Court of Justice (ICJ) was called on to consider whether the threat or use of nuclear weapons in any circumstances would be permitted under international law. In replying to this question, the ICJ concluded that there was no treaty law which specifically and universally prohibited the use of nuclear weapons.



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A hearing before the International Court of Justice on the legality of the threat or use of nuclear weapons. The Court held public hearings on this matter from 30 October to 15 November 1995 and issued its Advisory Opinion on 8 July 1996.

However, the ICJ confirmed that IHL was directly relevant and applicable to nuclear weapons and went on to conclude that their use would ‘generally be contrary to the rules of international law applicable to armed conflict, and in particular the principles and rules of humanitarian law...’ The ICJ went on to say that in light of the facts available to it at the time, it was unable to decide whether the use of nuclear weapons would be allowed in an extreme circumstance of self-defence, in which the very survival of a state is at stake.

Although there has been much discussion about the ICJ’s decision, the human suffering and environmental effects caused by nuclear weapons were central to its analysis. The Court specifically referred to the fact that a nuclear weapon releases immense quantities of heat, energy and radiation and that its destructive power cannot be contained in either space or time. It also highlighted that the use of nuclear weapons would be a serious danger to future generations. With such features, it seems difficult to envisage how the use of nuclear weapons in any situation could meet the requirements of IHL.

Additional treaty regimes governing nuclear weapons

Nuclear weapons are also covered by the 1970 Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The NPT aims to prevent the spread of nuclear weapons and nuclear weapons technology and to further the goal of achieving nuclear disarmament. Principally, the NPT requires that non-nuclear weapons states do not manufacture or pursue nuclear weapons, and that nuclear weapons states (namely China, United States, Russia, France and the United Kingdom) pursue negotiations in good faith for general and complete disarmament. Whilst the NPT does not regulate the use of nuclear weapons, it sets up a framework for the adoption of regional nuclear weapon free zone treaties. A number of these treaties have been concluded, including in the Pacific the Treaty of Rarotonga, which designates the South Pacific as a nuclear free zone. Similar treaties have been adopted in Latin America, Southeast Asia, Central Asia and Africa. These regional treaties expressly prohibit the use of nuclear weapons, as well as the possession, testing, manufacture and acquisition of them in the territories in which they apply.

SUMMARY

Nuclear weapons raise a number of concerns under international humanitarian law (IHL). These concerns are primarily related to the impact these weapons can have on civilians and civilian areas, and to their effects on the environment.

In 2011, the Council of Delegates of the International Red Cross and Red Crescent Movement (consisting of the ICRC, the International Federation of Red Cross and Red Crescent Societies and all the National Red Cross and Red Crescent Societies) adopted a milestone resolution, “Working towards the elimination of nuclear weapons” which outlines the Movement’s position on nuclear weapons. The resolution stated that the Council found it difficult to envisage how any use of nuclear weapons could be compatible with the rules of IHL, in particular the rules of distinction, precaution and proportionality.

It also appealed to all States to ensure that nuclear weapons were never again used and to pursue with urgency and determination negotiations to prohibit and eliminate nuclear weapons through a binding international agreement.

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