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The Impact of Contemporary War Methods on the Legal Protection of Civilians and Combatants: A Study in the Context of International Humanitarian Law

A Doctoral Thesis

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بسم الله الرحمن الرحيم

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ))
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صدق الله العلي العظيم

(60) سورة الانفال – آية

Dedication

This thesis is dedicated, first and foremost, to the visionary who laid the foundation of this great academic institution—the Al-Alamain Institute for Postgraduate Studies—which has earned an esteemed place among national and international universities and institutes. With deep gratitude, I dedicate this work to our beloved professor, Dr. Muhammad Bahr al-Uloom, whose wisdom and leadership, alongside the dedication of his noble sons, have guided this legal and scientific journey. I sincerely wish him continued success in advancing this remarkable academic mission.

To the generous soul, the source of endless love and compassion—my mother—whose nurturing heart and unwavering encouragement inspired me to pursue my academic path and reach for the highest levels of achievement. To her pure soul, I dedicate this humble fruit of my efforts.

To my dearest friend and lifelong supporter—my father—who has always stood by my side, encouraging me to excel and providing strength throughout every stage of my life and academic journey.

To my wife, who shared with me the sweetness and the bitterness of life, endured with patience the challenges of this journey, and continuously motivated me to fulfill my aspirations and responsibilities.

And finally, to the light of my eyes—my little ones—whose presence filled my days with hope and optimism. Your innocent support gave me strength as I nurtured this dream into reality.

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This doctoral thesis, submitted to the esteemed Al-Alamain Institute for Postgraduate Studies in Najaf, represents the culmination of a journey toward the doctoral degree. I take this opportunity to express my sincere thanks, appreciation, and profound gratitude to my supervisor, Assistant Professor Dr. Mohamad Ghazi Nasser Al-Janaby, whose guidance, support, and scholarly advice were instrumental in shaping and developing this research. Despite his many responsibilities, his generosity and wisdom left a lasting impact on this academic endeavor.

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Abbreviations

Symbol	Detail
AI	Artificial Intelligence
AP	Additional Protocol
BC	Before Christ
BCE	Before the Common Era
DDoS	Distributed Denial of Service
DoS	Denial-of-Service
EU	European Union
GIS	Geographical Information Systems
GPS	Global Positioning System
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for former Yugoslavia
IHL	International Humanitarian Law
ML	Machine Learning
PBUH	Peace Be Upon Him
PTSD	Post-Traumatic Stress Disorder
U.S.	United States
UAE	United Arab Emirates

UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNRWA	United Nations Relief and Works Agency

Abstract

Human beings are the essence of life, and their enduring sense of safety, dignity, and liberty is vital to their survival. Therefore, the protection and promotion of human rights are imperative. The broader the recognition of these rights, the more effectively IHL fulfills its role in protecting civilians and mitigating the devastating consequences of armed conflicts. In an era marked by the revolution in information and communications technology, the modern battlefield has expanded into virtual domains, presenting new challenges to established legal norms. This transformation necessitates a re-evaluation of the adequacy of existing IHL frameworks, which originated from the historical suffering of humanity and the desire to curtail the destructive impact of war. These efforts were crystallized in foundational legal instruments, including the four Geneva Conventions of 1949, the Hague Conventions of 1899–1907, and the two Additional Protocols of 1977. These instruments, now considered part of customary international law and ratified by 196 states, form the cornerstone of contemporary IHL. Given the legal and humanitarian challenges presented by technological advancements—particularly cyber operations, AI, and international terrorism—this study adopts a descriptive and analytical methodology. Through an examination of relevant treaties, case studies, and contemporary legal scholarship, it assesses whether current legal frameworks are sufficient to protect civilians and combatants in modern conflicts, and whether they require evolution to match the pace of technological development.

The study is structured into five chapters. The **first** introduces the research problem and central question: to what extent is the legal protection framework for civilians and combatants impacted by technological advancements? It explores the need for legal reform to ensure the continued effectiveness of IHL. Chapter **Two** examines the legal framework governing the methods of warfare, focusing on key IHL principles, such as distinction, proportionality, and precautionary measures, all aimed at safeguarding civilians and combatants alike. Chapter **Three** analyzes the emergence of new technologies as tools and methods of warfare. Cyber-attacks—often anonymous and difficult to trace—raise significant challenges, especially when they target both civilian and military networks. The legal implications of such attacks are addressed through Article 36 of the First Additional Protocol to the 1949 Geneva Conventions

and the Tallinn Manual. The chapter also discusses AI, particularly autonomous weapons systems capable of selecting and engaging targets without human intervention. These developments raise critical questions about compliance with IHL principles, especially the principle of distinction. The debate around whether AI weapons constitute mere tools or legal actors is also explored, with support given to the view that AI functions as an extension of human agency. Issues such as job displacement, economic inequality, and the independence of decision-making by machines present further challenges. Chapter **four** focuses on terrorism as both a method of warfare and a distinct international threat. Despite numerous international instruments aimed at criminalizing specific terrorist acts, no universally accepted definition of terrorism exists. The closest attempt appears in Article 1(2) of the 1937 Geneva Convention. A comparative analysis between IHL and anti-terrorism laws highlights the evolution of the concept, particularly post-September 11, when terrorism transitioned from a political concept to one with concrete legal ramifications. Terrorism is further categorized based on perpetrators (state, individual, or group), motives (political, religious, ethnic, or ideological), and scope (domestic or international). The legal status of members of terrorist organizations, especially foreign fighters, is examined through the lens of the Geneva Conventions and subsequent protocols, which prohibit terrorist activities but do not recognize terrorists as a distinct category in armed conflict. Security Council Resolution 2178 (2014) is cited as a major step in urging states to criminalize and prosecute terrorist acts under national legislation. The legal complexity of trying foreign fighters—particularly in determining applicable laws and ensuring fair treatment during custody—is addressed. Finally, the study critiques Iraq's Anti-Terrorism Law No. 13 of 2005, particularly its broad definition of terrorism under Article 4. It recommends legislative harmonization with the Iraqi Penal Code No. 111 of 1969 to address issues of vagueness and legal incoherence, the study ends with chapter **five** where the results and the possible recommendations were addressed.

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Chapter

One:

Introduction

The rapid scientific and technological developments of the modern era, coupled with evolving power dynamics rooted in global polarization, have produced profound transformations across political, economic, and social spheres. These shifts have had a significant impact on the nature of armed conflict, introducing new concepts, methods, and means of warfare that diverge sharply from traditional understandings. The consequences of these developments have included heightened human suffering, widespread destruction, and the loss of life and property on an unprecedented scale. Such transformations pose a fundamental challenge to the continued relevance and adaptability of IHL. While IHL is grounded in enduring principles that derive from human conscience, cultural traditions, religious teachings, and moral values—particularly the balance between military necessity and humanitarian considerations—it is increasingly questioned whether the existing legal framework can effectively address the complexities of modern warfare. This is especially evident in relation to emerging technologies such as cyber warfare, AI, and the virtualization of conflict, including the use of terrorism as a method of war.

A central issue arises regarding the applicability and adequacy of IHL in addressing these developments, particularly in light of Article 36 of Additional Protocol I, which governs the evaluation of new means and methods of warfare. Similarly, the enduring relevance of the Martens Clause—with its emphasis on customary norms, public conscience, and humanity—comes into question. The challenge lies not only in the abstract applicability of IHL principles but also in their concrete interpretation and enforcement by international and national courts, and in the doctrinal analyses offered by legal scholars. These sources play a vital role in clarifying ambiguities and guiding the legal qualification of contemporary issues, including those arising from cyber operations, AI deployment, and the expanding scope of non-international armed conflicts involving states, non-state actors, private military and security companies, and proxy forces.

The convergence of cyber warfare, AI technologies, and international terrorism within a largely unregulated digital space underscores the urgent need to address emerging legal gaps. The absence of effective legal regulation in this area threatens to exacerbate disorder and produce catastrophic consequences for the international community. In light of the current difficulty in negotiating new multilateral treaties,

scholars and practitioners are increasingly turning to customary international law and to general principles—especially the Martens Clause—for guidance. These sources offer the flexibility and binding force necessary to develop a dynamic legal framework capable of balancing the fluidity of modern methods of warfare with the stability of humanitarian protections, particularly for civilians and combatants in non-international armed conflicts.

To thoroughly identify the Stations of this study in all its aspects, the means of combat were regarded as an integral component of the methods, necessitating their interdependence until their designation and definition were unified. Furthermore, they pertain to a singular legal framework concerning legality, prohibition, and restrictions on use and mutual impact, as delineated in the relevant legal texts. This is substantiated by the stipulations of articles (35-36) of the First Additional Protocol, aimed at achieving the paramount objective of safeguarding victims of both international and non-international armed conflicts, encompassing civilians and combatants. The analysis is structured across five chapters. Chapter One introduces the topic, its significance, and research objectives. Chapter Two outlines the legal framework governing methods of warfare. Chapter Three explores the legal challenges posed by technological innovation, with a focus on cyber warfare and AI. Chapter Four examines terrorism as a contemporary method of warfare. The study concludes with a synthesis of findings and recommendations for legal reform and policy development and ends with the final conclusion for this study at chapter five.

1.1 The Importance of the Study

The significance of this study lies in its exploration of the effects that contemporary methods of combat may have on the legal protection of civilians and combatants amidst the global scientific, technological, and cognitive transformations of the current era. It serves as both a theoretical and practical preventive analysis, addressing the impact of modern warfare methods that closely reflect today's realities. The study examines how IHL responds to and adapts to these evolving challenges, which may introduce new complexities requiring thorough research and analysis within the framework of the law. This approach seeks to identify appropriate solutions to address such challenges, acknowledging that the principles and rules of IHL were originally conceived in an era that could not foresee many of these developments. Additionally,

this research aims to contribute a modest yet meaningful addition to the body of existing scholarship, complementing previous studies that have addressed aspects of this topic. It is presented with the hope of advancing the understanding and application of IHL in light of these pressing contemporary challenges.

1.2 Study Objectives

The primary objective of this study is to examine whether the existing rules of IHL can be effectively applied to contemporary methods of warfare to ensure comprehensive protection for both civilians and combatants. This inquiry underpins the study's broader aim of assessing the adequacy and adaptability of IHL in the face of evolving technologies and tactics of modern armed conflict. The findings of the study emerge from a detailed exploration of its conceptual framework, significance, and overarching purposes, as well as a critical analysis of its thematic chapters. These chapters offer a structured exposition of core IHL principles and relevant legal provisions—some of which demonstrate potential for application to the consequences of emerging methods of warfare. The study draws on relevant jurisprudence and scholarly opinion to reinforce its legal analysis and to address ambiguities within the current legal framework. Ultimately, the study seeks to identify the extent to which existing legal mechanisms can provide robust and consistent protection to civilians and combatants—two of the most vulnerable groups affected by the changing nature of armed conflict.

1.3 The Problem of the Study

The problem of this study revolves around the main question: to what extent is the legal protection of civilians and combatants affected by the use of contemporary methods and means of combat, some of which have caused widespread controversy in the legal and jurisprudence circles. There are two sub-questions directly related to legal protection, which is the focus of this study, the first of which is : Is there a shortage or legal vacuum in the rules of international humanitarian law when facing the challenges arising from the emergence of new technology from cyber operations, artificial intelligence and international terrorism. Secondly, is there an ongoing international obligation to change and apply the rules of this law to these challenges,

and what is the nature of this obligation?. These questions will be answered through the chapters of this study.

1.4 Study Methodology

To achieve the objectives of this study, a doctrinal and critical legal studies approach has been selected, as it most effectively aligns with the content and purpose of the research. The doctrinal method will guide a systematic analysis and interpretation of relevant legal texts, principles, and provisions within IHL. This includes an examination of judicial precedents and scholarly opinions, particularly in light of the novel research topics: cyber warfare, AI, and international terrorism. The doctrinal analysis will facilitate the definition and clarification of each of these elements, assess their implications, and explore their interactions within the existing legal framework.

Concurrently, the critical legal studies methodology will offer a crucial perspective for interrogating the power dynamics, assumptions, and inherent limitations in the application of international law to these emerging challenges. This approach will foster a deeper understanding of potential biases or gaps within current legal structures, particularly in relation to the rapidly evolving nature of cyber-attacks, AI, and terrorism. A critical assessment will be made to determine whether the current legal frameworks adequately address these challenges or necessitate reform. By combining these two methodologies, this study will not only describe and analyze the relevant elements but also propose potential solutions to better address the complexities posed by these modern threats within international law.

1.5 Scope of the Study

The scope of this study is defined by focusing on specific contemporary methods of warfare that may have direct or indirect effects on civilians and combatants, arising from the advent of new technologies. These methods include cyber warfare, AI, and international terrorism. The study operates within the legal framework of IHL, addressing its concepts, rules, principles, objectives, and scope. It is important to note that some of these methods may also be classified as means of warfare, particularly with regard to AI and cyber operations. This is why references are occasionally made to both means and methods of warfare; however, the primary focus of this study is on methods of warfare.

1.6 Literature Review

In order to update the terminology and conceptual framework used throughout this study—particularly concerning the emerging discourse around contemporary methods of combat—it is necessary to assess the extent to which such developments challenge the existing rules, principles, and provisions of international humanitarian law (IHL). These modern methods have significant implications for the legal framework governing the protection of victims of armed conflict, particularly civilians and combatants. This study, titled *The Impact of Contemporary Methods of Combat on the Legal Framework for the Protection of Civilians and Combatants: A Study in Light of the Provisions of International Humanitarian Law*, seeks to bridge a discernible gap in existing legal scholarship. Despite the increasing relevance of this topic in today's conflict environments, and to the best of the author's knowledge, there remains a notable scarcity of academic studies that comprehensively address the intersection of emerging combat methods—such as cyber warfare, artificial intelligence, and autonomous weapons—with the IHL framework for victim protection. Through rigorous research and review, a limited number of relevant studies have been identified that engage with aspects of the topic, although none appear to treat it in its entirety. Some of these studies are aligned with the present research in certain respects, while diverging in others.

A prominent example is the *Comprehensive Introduction to International Humanitarian Law* by Dr. Nils Melzer⁽¹⁾, Head of the Human Rights Department at the Geneva Academy of International Humanitarian Law and Human Rights and a legal adviser to the International Committee of the Red Cross . The book consists of eight chapters. The first chapter addresses the introduction, definitions, basic principles, and sources of IHL. The second chapter focuses on the critical importance of the term "armed conflict," offering definitions and drawing distinctions between international and non-international armed conflicts. The third chapter examines the conduct of hostilities, including the protection of the civilian population and civilian objects, as well as key operational principles such as proportionality, precautions, and permissible methods and means of warfare. Chapter VII elaborates on the obligations

¹Nils Melzer and Etienne Kuster, 'New IHL Handbook' (2017) 98 *International Review of the Red Cross* 1

of parties to armed conflict to respect and ensure compliance with IHL, discussing state responsibility, reparation mechanisms, and individual criminal responsibility for violations. Chapter VIII emphasizes the special mandate of ICRC as the guardian of IHL. This manual provides a critical starting point for the present study, particularly informing its conceptual framework and guiding several of its key discussions. Of particular relevance is the manual's third chapter, which explores the legal regulation of hostilities and outlines essential principles such as distinction, proportionality, and feasible precautions. These principles are central to the present research, particularly in evaluating their applicability in light of modern technological developments. However, despite its comprehensive treatment of traditional IHL, the manual does not address the legal consequences that arise from the use of contemporary methods of warfare—particularly those conducted in virtual domains. As such, while the manual serves as an important foundation, this study extends beyond its scope to explore how emerging combat technologies challenge established IHL norms in unprecedented ways.

Another significant contribution to the literature is the doctoral thesis titled "*Controls of the Conduct of Hostilities in International Humanitarian Law*"⁽²⁾, submitted by Saed Al-Aqoun at Al-Haj Lakhdar Batna University during the 2014/2015 academic year. The researcher structured his work into two main sections: a theoretical part and an applied and evaluative part. In the first section, he examined the legal and conceptual frameworks governing the conduct of hostilities, addressing the historical development of these controls, their legal nature, and their material scope. He further analysed the relevant legal rules concerning means and methods of warfare. In the second section, Al-Aqoun focused on the implementation mechanisms for these controls, as well as the challenges posed by armed conflicts and the frequent violations of these legal norms. While Al-Aqoun's research presents a valuable contribution to understanding the regulation of hostilities in IHL, it differs in significant respects from the present study. Notably, his thesis does not explore the specific types or methods of combat that exceed legal restrictions, nor does it assess the implications of such methods for the broader legal framework governing the protection of civilians and combatants. Additionally, while his research offers an

² Saed Al-Aqoun, *Controls of the Conduct of Hostilities in International Humanitarian Law* (PhD thesis, El Hadj Lakhdar University–Batna 2015)

extensive historical analysis of the evolution of combat methods, it does not engage with the impact of recent scientific and technological developments—particularly in the realm of cyber warfare and artificial intelligence—which form the central focus of this study.

A notable contribution is the *Comprehensive Manual on International Humanitarian Law*⁽³⁾, co-authored by Professor Dr. Haider Al-Quraishi and Dr. Omar Abbas Khudair Al-Obeidi. The manual comprises eight chapters, covering the foundational principles of IHL, the classification of armed conflicts, and the conduct of hostilities—including protections for civilians and civilian objects. It further addresses compliance obligations, state responsibility, and the special role of the ICRC. Although this manual provides essential legal grounding—particularly in relation to the principles of distinction, proportionality, and feasible precautions—it does not sufficiently examine the legal consequences of contemporary means and methods of warfare operating within virtual and autonomous domains.

Talal Mohammed Al-Haj Ibrahim’s doctoral thesis, “*Cyber-Attacks on Computer Networks in the Light of IHL*”⁽⁴⁾ (Damascus University, 2020), is highly relevant to this study. It focuses on cyberspace as a strategic domain and examines whether IHL applies to cyber-attacks occurring within or outside armed conflict. While this study shares the current research’s concern for the applicability of IHL to cyber operations, it primarily assesses past cyber incidents rather than theorizing their impact on legal frameworks for protection.

Similarly, Faten Fayez Hamida Safty’s PhD thesis, “*The Legality of the Use of Autonomous Weapons in the Light of the Rules of IHL*”⁽⁵⁾ (Cairo University, 2021), explores the compatibility of military artificial intelligence and autonomous weapons with IHL. The study analyses legal limits, international perspectives, and the dangers posed by removing human oversight from combat decision-making. While it overlaps with the present study in evaluating the legality of these systems, it does not

³ Haider Abdul Ali Al-Quraishi and Omar Abbas Khudair Al-Obeidi, *Encyclopedia of Means and Methods of Fighting: Concept and Principles*, vol 3 (Islamic University, Babylon 2012)

⁴ Talal Mohammed Ibrahim, *Cyber-Attacks on Computer Networks in the Light of International Humanitarian Law* (Master’s thesis, Damascus University 2020)

⁵ Faten Fayez Hamida, *Legality of the Use of Autonomous Weapons in the Light of the Rules of International Humanitarian Law* (PhD thesis, Cairo 2024).

sufficiently explore the role of the human element in operational control or how autonomous functions might dynamically alter the course and compliance of hostilities.

Gandhi Mohammed Abdul Karim's dissertation, "*Mechanisms of IHL in the Fight Against International Terrorist Crime*"⁽⁶⁾ (Free University, Netherlands, 2009), is also relevant. This study investigates the legal definition, typology, and challenges of international terrorism. Although it aligns with this study in seeking clarity on terrorism under IHL, it does not specifically address how IHL incorporates or contrasts with national anti-terrorism frameworks or the impact of such distinctions on civilian protection during conflict.

Dr. Reza Ibrahim Abdullah Al-Bayoumi's study, "*Legal Protection from Artificial Hazards: A Comparative Analytical Study*"⁽⁷⁾ (published in *Al-Qunqa Journal*), focuses on the legal implications of artificial intelligence in various domains. While it provides an in-depth analysis of AI applications—including drones, robots, and autonomous vehicles—it does not engage with the core IHL question of whether AI constitutes a method or means of warfare, nor does it address compliance with legal principles such as distinction or proportionality.

Finally, Rana Sabah Mohsen's study, "*The Criminalization of International Terrorism with Reference to the Criminal Laws in Iraq*"⁽⁸⁾, addresses the legal conceptualization and typology of terrorism, comparing national and international legal standards. While this study shares common ground with the current research in terms of subject matter, it does not explore the distinction between the concept of terrorism as understood in IHL and that defined in counter-terrorism law. Nor does it critique the legal and technical formulation of Iraq's Anti-Terrorism Law No. 13 of 2005 in light of IHL's humanitarian objectives.

⁶ Gandhi Mohammed Abdulkarim, *Mechanisms of International Humanitarian Law in the Fight against International Terrorist Crime* (PhD thesis, Free University, The Netherlands 2009)

⁷ Reda Ibrahim Abdullah Bayoumi, *Legal Protection from the Risks of Artificial Intelligence: A Comparative Analytical Study* (PhD thesis, Faculty of Law, Mansoura University 2024)

⁸ Rana Sabah Mohsen, *International Cooperation to Combat Terrorism (ISIS Terrorist Organization)* (Master's thesis, Maysan University 2023)

In sum, while each of these studies contributes to the broader discourse, the present research is distinct in its integrated approach to analyzing the impact of contemporary methods of warfare—particularly cyber operations, artificial intelligence, and terrorism—on the legal framework for the protection of civilians and combatants under IHL. This study builds on existing legal and theoretical foundations while filling a crucial gap in the literature concerning the adaptability and resilience of IHL in the digital and