Research Training Class: Program on International Law and Armed Conflict

Jennifer Allison
RESEARCH TRAINING CLASS

INTERNATIONAL HUMANITARIAN LAW &
THE USE OF WHITE PHOSPHORUS IN SITUATIONS
OF ARMED CONFLICT

JENNIFER ALLISON
LIBRARIAN FOR FOREIGN, COMPARATIVE, AND INTERNATIONAL LAW
Contact Jennifer for Research Help:

JALLISON@LAW.HARVARD.EDU
1. **Background Research on the Major Issues**

2. **Scholarly Articles**

3. **Primary Sources**
Think about the questions you want to answer through research.
1. What is white phosphorous and how do you get it or make it?

2. How would it be used as a weapon?

3. What are its major effects on people and the environment?

4. Has it been used in armed conflict before? If so, when and to what effect?
Start with what you know.
BACKGROUND RESEARCH ON THE MAJOR ISSUES

First six Google Search results:
1. Wikipedia (general)
2. Wikipedia (specific in-war use)
3. News
4. News
5. News
6. CDC (U.S. Government Agency)
1. What is white phosphorus and how do you get it or make it?
2. How would it be used as a weapon?
3. What are its major effects on people and the environment?
4. Has it been used in armed conflict before? If so, when and to what effect?

Use your questions to start an outline...
### Background Research on the Major Issues

1. **What is white phosphorus and how do you get it or make it?**
   - **Wikipedia** — incendiary weapon, also called WP or “Willie Pete” (from Vietnam).
2. **How would it be used as a weapon?**
   - **Wikipedia** — as a fierce burning agent as a smoke-producing agent (“smoke-producing white phosphorus munitions” creating “smoke screens”), in grenades, artillery, or mortars.
3. **What are its major effects on people and the environment?**
   - **Wikipedia** — Chemical poisoning, could potentially impact safety of water supply, crops, and animal products (in dispute)?
   - **CDC** — “Exposure to white phosphorus may cause immediate burns that heal slowly. Systemic toxicity from white phosphorus exposure is classically divided into 3 phases. The first phase, the gastrointestinal phase, occurs a few minutes to 8 hours following white phosphorus exposure. Shock during this phase may be severe enough to cause death in 24 to 48 hours. The second phase, the asymptomatic phase, follows the first phase and lasts for 8 hours to 3 days. The third phase, the multi-organ failure and central nervous system injury phase, may begin 4 to 8 days after the second phase begins, and may end in death.” ([http://www.cdc.gov/niosh/erhdb/EmergencyResponseCard_29750025.html](http://www.cdc.gov/niosh/erhdb/EmergencyResponseCard_29750025.html))
4. **Has it been used in armed conflict before? If so, when and to what effect?**
   - **Wikipedia** — yes, in first 19th century by fenian arsonists as a solution in carbon disulfide (“Fenian fire”); then as a potential terrorist weapon in conscription struggle during WWI (“Sydney Twelve”), by the British as factory-built grenades in 1916; by Americans, Commonwealth, Japanese in WWII; Korea; Vietnam; Chechnya; Iraq (including by US forces against Iraqi insurgents); Israel-Lebanon conflict, Gaza, Afghanistan, Yemen. Israeli-Palestinian conflict, Libya.
   - **PressTV (reliability?)** — “Latest reports say Israeli aerial and ground forces are using white phosphorus bombs to pound several residential areas across the besieged Gaza Strip.” ([http://www.presstv.com/detail/2014/07/21/372201/israel-drops-phosphorus-bombs-on-gaza](http://www.presstv.com/detail/2014/07/21/372201/israel-drops-phosphorus-bombs-on-gaza))
5. **What international legal instruments address its use?**
   - **Wikipedia** — 1980 Convention on Certain Conventional Weapons; use was defended by Israel and U.S. as lawful in their conflicts under international conventions.

- **Outline issues using the questions that you asked at the beginning.**
- **Purpose:** Get a sense of the issue and the vocabulary.
- **Bonus:** If you see references to potentially relevant legal instruments, add them. See new question #5.
1. What is white phosphorus and how do you get it or make it?
   a. Wikipedia – incendiary weapon, also called WP or “Willie Pete” (from Vietnam).

2. How would it be used as a weapon?
   a. Wikipedia – as a fierce burning agent as a smoke-producing agent (“smoke-producing white phosphorus munitions” creating “smoke screens”), in grenades, artillery or mortars.

3. What are its major effects on people and the environment?
   a. Wikipedia – Chemical poisoning could potentially impact safety of water supply, crops, and animal products (in dispute?).
   c. CDC – “Exposure to white phosphorus may cause immediate burns that heal slowly. Systemic toxicity from white phosphorus exposure is classically divided into 3 phases. The first phase, the gastrointestinal phase, occurs a few minutes to 8 hours following white phosphorus exposure. Shock during this phase may be severe enough to cause death in 24 to 48 hours. The second phase, the asymptomatic phase, follows the first phase and lasts for 8 hours to 3 days. The third phase, the multi-organ failure and central nervous system injury phase, may begin 4 to 8 days after the second phase begins, and may end in death.” (http://www.cdc.gov/niosh/erthdb/EmergencyResponseCard_29750025.html)

4. Has it been used in armed conflict before? If so, when and to what effect?
   a. Wikipedia – yes, first in 19th century by Fenian arsonists as a solution in carbon disulfide (Fenian fire); then as a potential terrorist weapon in conscription struggle during WWI (“Sydney Twelve”), by the British as factory-built grenades in 1916; by Americans, Commonwealth, Japanese in WWII; Korea; Vietnam; Chechnya; Iraq (including by US forces against Iraqi insurgents); Israel-Lebanon conflict, Gaza, Afghanistan, Yemen, Israeli-Palestinian conflict, Libya.
   b. PressTV (reliability?) – “Latest reports say Israeli aerial and ground forces are using white phosphorus bombs to pound several residential areas across the besieged Gaza Strip.” (http://www.presstv.com/detail/2014/07/21/372201/israel-drops-phosphorus-bombs-on-gaza)

5. What international legal instruments address its use?
   a. Wikipedia – 1980 Convention on Certain Conventional Weapons; use was defended by Israel and U.S. as lawful in their conflicts under international conventions.
BACKGROUND RESEARCH ON THE MAJOR ISSUES

About PressTV

Press TV takes revolutionary steps as the first Iranian international news network, broadcasting in English on a round-the-clock basis.

Our global Tehran-based headquarters is staffed with outstanding Iranian and foreign media professionals.

Press TV is extensively networked with bureaus located in the world's most strategic cities.

VISION

Heeding the often neglected voices and perspectives of a great portion of the world;

Embracing and building bridges of cultural understanding;

Encouraging human beings of different nationalities, races and creeds to identify with one another;

Bringing to light untold and overlooked stories of individuals who have experienced the vitality and versatility of political and cultural divides firsthand.
Maximize Google’s searching options!
BACKGROUND RESEARCH ON THE MAJOR ISSUES

Limit your search to just UN websites like this:
white phosphorus war site:un.org.

Try it with other sites also.
white phosphorus war site:icrc.org.
BACKGROUND RESEARCH ON THE MAJOR ISSUES

This article examines the current state of international law governing the use of white phosphorus munitions and argues that the ambiguous legal status of white phosphorus has become untenable given recent controversies in Fallujah and Gaza. This article further argues

that the deployment of white phosphorus munitions may already be illegal in many circumstances under either the Chemical Weapons Convention or the Convention on Certain Conventional Weapons or both. However, changes may be necessary to one or both treaty regimes to explicitly ban the use of white phosphorus munitions in some situations, particularly when used in urban areas. A more definitive consensus on the legality of white phosphorus use will reduce the current state of confusion, which is obscuring the debate in the public, the media, the military, and even among legal scholars and commentators.

CHILDREN and CIVILIANS


Library's new acquisitions: mid-March to April 2012
Background Research on the Major Issues

Scholarly articles are available through HeinOnline.
BACKGROUND RESEARCH ON THE MAJOR ISSUES

Also look up relevant articles in Google Scholar.
Specifically, focus on books and articles it thinks are “related.”
Let’s find more scholarly writings.
Library resources can be helpful for this.
THE USE OF WHITE PHOSPHORUS AND THE LAW OF WAR

Macleod, I.J.; Rogers, A.P.V.


Title: THE USE OF WHITE PHOSPHORUS AND THE LAW OF WAR

Author: Macleod, I.J.; Rogers, A.P.V.

Summary: Abstract: The controversy surrounding recent uses of white phosphorus (WP) to “flush-out” suspected insurgents or in attacks against military targets in open ground has led to a renewed media interest in the legal status of WP-based munitions. An inherent public dislike for weapons that cause death or injury by fire is very natural, so one is entitled to ask whether humanity should not prevail when it comes to anti-personnel uses of such weapons. In the absence of a specific treaty dealing with the use of WP, this article, written jointly by a retired military lawyer and a scientist interested in the law, examines the use of such weapons in practice as well as the relevant legal and scientific background before attempting to reach conclusions about their legality. This involves a consideration of the reasons for the development of WP-based munitions, of their usual military uses and of some unconventional uses of such weapons. There follows an examination of the basic principles of customary international law as well as the treaty provisions dealing with incendiary weapons. Furthermore, because of the various harmful physiological interactions of WP, it was necessary to look closely at the legal provisions on poison, gas and chemical weapons. That demanded an interpretation of multiple aspects of the Chemical Weapons Convention before the legal status of WP could be fully determined. The convention is constructed in such a way that what at first sight appears to be a chemical weapon may not be as a matter of law unless it is consciously applied in a prohibited manner.

Subject: White Phosphorus; Military Uses; Target Marking; Battlefield Illuminator; Battlefield Obscurator; Incendiary Weapon Component; Legal Principles; Humanity; Unnecessary Suffering; Treaty Law; Poison; Gas; Incendiary Weapons; Chemical Weapons Convention; White Phosphorus As A Chemical Weapon; Secondary Toxic Effects; Purpose Not Prohibited


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Source: Cambridge University Press
THE USE OF WHITE PHOSPHORUS AND THE LAW OF WAR

I.J. MacLeod and A.P.V. Rogers

1. Introduction............................................. 76
2. Military aspects........................................ 76
3. Legal background....................................... 79
   3.1 Control of weapons under existing treaty law............ 79
      3.1.1 Explosive, incendiary or inflammable projectiles............ 79
      3.1.2 Gas............................................... 80
      3.1.3 Poison.......................................... 80
      3.1.4 Incendiary weapons.............................. 81
      3.1.5 Chemical weapons............................... 82
      3.1.6 Summary......................................... 82
   3.2 General principles................................ 82

Like we did before, always look up relevant articles in **Google Scholar**. Look at the citing references and related articles for additional sources.
Search within citing articles by checking this box.
Also, look for other search terms to try, such as “incendiary weapons.”
Next, try something new…
LegalTrac is an electronic law journal index service. It collects information about law review articles from multiple databases into a single index.
Two spellings!

"White Phosphorus" and "White Phosphorous"
Build your stack of scholarly articles. They provide information and references to primary sources.

Photo Credit: Jenni C (Flickr; Creative Commons License)
On to the primary sources…
5. What international legal instruments address its use?
   
   a. Wikipedia – 1980 Convention on Certain Conventional Weapons; use was defended by Israel and U.S. as lawful in their conflicts under international conventions.
   
   b. Hashley article – Convention on Certain Conventional Weapons and Chemical Weapons Convention?
   
   c. MacLeod/Rogers article
      
      i. Treaties: applicable treaties depend on how the weapon is characterized (*incendiary, poison, gas, chemical; note that article says that purpose of these weapons is not to gas, asphyxiate, or poison so it is debatable if those are relevant...*)
         
         1. St Petersburg Declaration of 1868 (all weapons)
         2. Hague Declaration of 1899 (gas)
            a. Argument: WP is toxic and therefore could be chemical. Focus, therefore, on CWC?
         4. Hague Regulations of 1907 (poison, also weapons causing general suffering in article 23)
         5. Lieber Code of 1863 (poison)
         6. Hague Convention II of 1899 (poison)
            a. Often cited as the main treaty that does not allow this use, focus here as well.
         8. Geneva Protocol I of 1978 (see specifically Article 35 re employing weapons that cause unnecessary suffering)
Go back to Google!

Here, limit your search to the UN Treaty Collection website:

http://treaties.un.org
• Convention information: dates, participants, and declarations and reservations.
• Click “Full Details” to view full text.
• The note lists conference and GA resolutions that led to the creation of this convention.
Search for the convention again, but leave out the website limiter.

First result:
The United Nations Office at Geneva.

We would not have found this if we limited our search to un.org pages.
Explore this page for historical and current information about this convention.
Remember, don’t limit yourself to just UN materials...
Expand your search of primary sources to customary IHL as well. A good place to start researching that is the ICRC website.
“Rules” and “Practice” are provided for each rule.
Use the tabs at the top of the screen to toggle between them.
Check to see if we have cited sources by using HOLLIS.

*Jane’s Infantry Weapons*, which was cited multiple times on the Practice tab for Rule 85, is available in print at Widener.
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*Jane’s Infantry Weapons*, which was cited multiple times on the Practice tab for Rule 85, is available in print at Widener.
Researching Foreign Legal Materials
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Researching Foreign Legal Materials
1. **BACKGROUND RESEARCH ON THE MAJOR ISSUES**
   - Chart out your questions and create an outline.
   - Google (general and site/domain-specific searches)

2. **SCHOLARLY ARTICLES**
   - Use Hollis+ and Google Scholar, as well as legal periodical indexes like LegalTrac, to find articles.
   - Always look at citing references!

3. **PRIMARY SOURCES**
   - Use site-specific searching in Google to find primary sources through the UN and the ICRC.
PILAC Research Guide:  http://guides.library.harvard.edu/PILAC
Contact Jennifer for Research Help:

JALLISON@LAW.HARVARD.EDU

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