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**“INTERNATIONAL CRIMINAL LAW  
AT A TURNING POINT – REFORM OF  
CRIMINAL LEGISLATION OF THE  
REPUBLIC OF SERBIA”**

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**“INTERNATIONAL CRIMINAL LAW AT A TURNING POINT – REFORM OF CRIMINAL  
LEGISLATION OF THE REPUBLIC OF SERBIA”**

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**THE APPLICATION OF CUSTOMARY NORMS OF  
INTERNATIONAL HUMANITARIAN LAW IN  
CONTEMPORARY ARMED CONFLICTS  
With Special Reference to the Use of New Technologies**

*Abstract: Contemporary armed conflicts pose new challenges for the application of international humanitarian law (IHL), particularly its customary norms, which form the foundation for both the protection of civilians, prisoners of war, and combatants themselves, and, on the other hand, limitations on the use of weapons. The development and use of new technologies, such as unmanned aerial vehicles (drones), autonomous weapons systems, and cyber operations, raise complex legal and ethical questions concerning accountability and the enforcement of IHL. This paper analyzes the application of customary norms of international humanitarian law in modern conflicts, with particular emphasis on the challenges posed by emerging technologies. Special attention is given to the identification of legal gaps, the interpretation of key norms in a contemporary context, and the presentation of concrete examples from ongoing conflicts. The aim of the paper is to highlight the need for the adaptation and consistent application of customary law in order to ensure that international standards for the protection of human life and dignity remain effective in an era of technologically advanced warfare.*

**Keywords: customary international humanitarian law, contemporary armed conflicts, civilian protection, technological development, new trends in international humanitarian law.**

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## 1. INTRODUCTION

Contemporary armed conflicts are undergoing profound transformation, shaped by rapid technological advancements and evolving methods of warfare. Traditional battlefields are increasingly supplemented, or even replaced by remote, digital, and automated forms of combat. These developments pose significant challenges to the application of international humanitarian law, particularly its customary norms, which have long served as a fundamental framework for regulating the conduct of hostilities and protecting individuals affected by armed conflict. These inadequacies of humanitarian law are, to some degree, physiological: it is illusory to think that the law can keep pace with evolving reality, which becomes more and more complex and tends to slip past the constraints of legal rules.<sup>1</sup> Yet even if states fail to fulfill their moral obligation to ensure that the law is appropriately adapted to reality, legal rules nevertheless contain at least the general principles capable of ‘taming’ new phenomena, principles that it falls to judges and jurists to distil from those rules.<sup>2</sup>

Customary international (humanitarian) law is formed by the conjunction of two constitutive elements: general and consistent state practice, which derives from an accumulation of concordant precedents, accompanied by *opinio juris* - a legal conviction which derives from the belief that by complying with that practice, the States exercise a right or fulfil an obligation.<sup>3</sup> It plays a crucial role in ensuring the universality and continuity of legal protection, especially in situations where treaty law is incomplete, not universally ratified, or difficult to apply.

One of the central issues of this paper is whether existing customary norms are sufficiently adaptable to address the realities of modern warfare, or whether the increasing reliance on technologically sophisticated means of combat exposes significant legal gaps. International humanitarian law principles, such as distinction, proportionality, military necessity, and humanity are considered cornerstones of lawful conduct in both international and non-international armed conflicts. However, the emergence of new technologies, including unmanned aerial vehicles (drones), autonomous weapons systems, and cyber attacks, raises complex legal and ethical questions regarding the interpretation and effective implementation of these principles.

For instance, the use of autonomous systems challenges traditional notions of human control and accountability, while cyber operations complicate the identification of actors and the assessment of harm within the framework of international humanitarian law. At the same time, the widespread use of drones

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1 A. Cassese, “Current Challenges to International Humanitarian Law”, *The Oxford Handbook of International Law in Armed Conflict*, (Eds. A. Clapham, P. Gaeta), Oxford University Press, Oxford, 2014, 7.

2 *Ibidem*.

3 F. Bugnion, “Customary International Humanitarian Law”, *ISIL Year Book of International Humanitarian and Refugee Law*, 7/2007, 9.

(UAVs) in contemporary conflicts has intensified debates over targeted killings, civilian protection, and the geographical scope of armed conflict.

This paper seeks to analyze the application of customary international humanitarian law in contemporary armed conflicts, with particular emphasis on the challenges introduced by new technologies. It aims to examine whether key customary principles retain their normative strength in technologically advanced environments, to identify potential shortcomings in their application, and to illustrate these issues through relevant examples from recent conflicts. Ultimately, the paper argues that while customary international humanitarian law remains an indispensable component of the legal framework governing armed conflict, its continued effectiveness depends on careful interpretation, consistent application, and, where necessary, normative development in response to emerging forms of warfare. This research is based on a normative and analytical approach to international humanitarian law, it primarily relies on the analysis of customary legal norms, as identified through state practice and *opinio juris*, as well as relevant international legal instruments and interpretative materials. The research includes a doctrinal analysis of key principles of customary IHL, with particular attention to their application in contemporary armed conflicts. In addition, the paper adopts a qualitative approach through the examination of selected case studies, including recent conflicts in which new technologies - such as unmanned aerial vehicles, autonomous systems, and cyber attacks have been employed.

## 2. CUSTOMARY INTERNATIONAL HUMANITARIAN LAW

Custom is one of the fundamental and oldest sources of law, both of public international law in general, and of international humanitarian law. In addition to international conventions, general principles of law recognized by civilized nations, judicial decisions, and doctrine, the International Court of Justice in its statute, in article 38, also lists international custom as a source of international law.<sup>4</sup> Customary international humanitarian law constitutes a fundamental component of the legal framework governing armed conflicts. Unlike treaty law, which is based on explicit consent expressed through ratification, customary law emerges from the general and consistent practice of states followed out of a sense of legal obligation (*opinio juris*). As such, it plays a crucial role in ensuring the universal applicability of humanitarian norms, particularly in situations where treaty provisions are incomplete or not binding on all parties to a conflict.

There are many definitions of custom in international (humanitarian) law, some are broader than the others, but they all lead to pretty similar conclusions, that custom in international law is evidence of a general practice accepted as law,

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4 Statute of the International Court of Justice, article 38, <https://www.icj-cij.org/statute>. Accessed 10.4.2026.

as it is defined in the Statute of the International Court of Justice in its article 38.<sup>5</sup> This definition indicates that such customs are only those rules that are the result of sufficiently long-term observance by all or most subjects of international law (general practice) in which there is an awareness of the legal obligation of those rules (acceptance as law).<sup>6</sup> Therefore, in order for one customary norm to exist, there must be a practice - a standard behavior of states in certain situations that must be sufficiently general, which means that the behavior of a large number of states, and it must last for a certain, long(er) period of time. A general and long-standing practice must be accompanied by an awareness of the legal obligation of such behavior (*opinio juris*), in order to distinguish it from simple customs, which are rules of courtesy (*comitas gentium*).<sup>7</sup>

The identification and systematization of customary international humanitarian rules have been significantly advanced through the work of the International Committee of the Red Cross, particularly its study on customary international humanitarian law, which outlines a comprehensive set of rules derived from state practice and legal conviction.<sup>8</sup> The aim of the study was to determine the customary rules of international humanitarian law, which would be applicable in every conflict and to every party to the conflict, regardless of whether the parties have ratified the international treaties containing such rules. These rules reflect widely accepted principles that govern the conduct of hostilities and aim to mitigate the humanitarian consequences of armed conflict.<sup>9</sup> Among the most important principles of customary international humanitarian law are the principles of distinction, proportionality, military necessity, and humanity.

The principle of distinction, which is widely regarded as a cornerstone of international humanitarian law, and is essential for the protection of civilian populations, implies the prohibition of deliberate attacks on the civilian population, it emphasizes that a distinction must be made (as the name of the principle suggests) at all times between civilians and combatants, as well as between civilian objects and military objectives and, therefore, indiscriminate attacks are prohibited.<sup>10</sup> The traditional understanding of the principle of distinction was

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- 5 For example: M. Shaw, *International Law*, Cambridge University Press, Cambridge, 2008, p. 73; ICRC, Customary international humanitarian law, <https://www.icrc.org/en/document/customary-international-humanitarian-law-0> Accessed 10.4.2026; P. Malanczuk, *Akehurst's Modern Introduction to International Law*, Routledge, New York, 1997, 39; A. D'Amato, *The Concept of Custom in International Law*, Cornell, 1971; M. Kreća, *Međunarodno javno pravo*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2025, 88; B. Milisavljević, *Međunarodno običajno pravo*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2016.
  - 6 M. Paunović, B. Krivokapić, I. Krstić, *Međunarodna ljudska prava*, Faculty of Law, Pravni fakultet Univerziteta u Beogradu, Beograd, 2018, 38.
  - 7 M. Kreća, *op. cit.*, 89.
  - 8 J. M. Henckaerts, L. Doswald-Beck, *Customary International Humanitarian Law: Volume 1, Rules*, Cambridge University Press, Cambridge, 2005.
  - 9 Such as principle of distinction, principle of proportionality, etc. More in: J. M. Henckaerts, L. Doswald-Beck, *op. cit.*, 3–69.
  - 10 A. Cassese, *International Law*, Oxford University Press, New York, 2005, 416.

based on relatively clear categories: uniformed members of the armed forces versus the civilian population, military barracks versus civilian objects.<sup>11</sup> However, the emergence of asymmetric conflicts, characterized by significant disparities in military power, technological capabilities, and organizational structures between the conflicting parties, as well as in which combatants often do not wear recognizable insignia or operate within the civilian population, further blurring the line between legitimate military targets and protected persons, especially after the Cold War, has led to a fundamental reexamination of these categories.<sup>12</sup>

Closely related is the principle of proportionality, which is based on the basic idea that there is no excessive use of force and violence beyond what is necessary to achieve the desired military objective; instead, there are limitations for humanitarian reasons that armies must adhere to, with a balance between military necessity and humanitarian devastation.<sup>13</sup> In practical terms, the right to pursue a military attack depends upon the tolerability of the rights of the civilians to remain unharmed by military operation, namely upon proportionality, to be assessed prospectively, on the basis of the prognostic military advantage to be gained with the attack and the presumed damage it might cause.<sup>14</sup> This principle introduces a balancing test that requires careful assessment in each specific situation, making its application particularly complex in modern warfare. Applying the principle of proportionality is critically important for protecting civilians and critical infrastructure in situations of armed conflict, especially because civilian and military networks are highly interconnected in the information and communications technology environment and incidental civilian harm is to be expected in most cases.<sup>15</sup>

There are also principle of military necessity, and principle of humanity, which somehow contradict each other. The essence of this principle is reflected in the recognition that the use of force in war is not prohibited *per se*, but is permitted to the extent necessary to achieve a specific military advantage, provided that it does not conflict with other rules of international humanitarian law. It can be understood as the application of certain norms of the law of war in certain situations, which can be violated in war by invoking military necessity.<sup>16</sup> On the other hand, principle of humanity constitutes the fundamental value

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11 M. Župljanić, A. Tutić, "Primena principa razlikovanja u asimetričnim sukobima: izazovi za međunarodno humanitarno pravo u 21. veku", *Defendologija*, 56/2025, 137.

12 *Ibidem*.

13 A. Abdulhusein Abbas, A. Aubais Alfatlawi, "The Concept of Proportionality in the Context of International Humanitarian Law and Its Customary Basis", *Contemporary Readings in Law and Social Justice*, 1/2024, 11.

14 E. Cannizzaro, "Proportionality in the Law of Armed Conflict", *The Oxford Handbook of International Law in Armed Conflict*, (eds. A. Clapham, P. Gaeta), Oxford University Press, Oxford, 2014, 336.

15 Cyber Operations During Armed Conflicts, ICRC, [https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/04\\_proportionality-0.pdf](https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/04_proportionality-0.pdf) Accessed 15.4.2026.

16 V. Jončić, M. Petrović, "Military Need in the Geneva Conventions of 1949", *Vojno delo*, 2/2012, 182–183.

foundation for limiting the use of force in armed conflicts by excluding the use of means and methods of warfare that inflict excessive suffering or are, in that context, unnecessary for achieving victory.<sup>17</sup> Together, these principles form a coherent normative framework that seeks to balance military objectives with humanitarian considerations.

Even though these principles have been established as customary and obligatory norms, their application is not without challenges – it depends on the circumstances and the nature of each armed conflict itself, and because of that, their implementation may be affected by technological, strategic, and political factors. In this sense, customary international humanitarian law remains indispensable for maintaining minimum standards of humanity in armed conflict. However, the extent to which these norms can effectively regulate the use of emerging technologies in warfare requires further analysis, particularly in light of the increasingly complex nature of contemporary conflicts.

### 3. CONTEMPORARY ARMED CONFLICTS AND NEW TECHNOLOGIES

Contemporary armed conflicts are characterized by significant structural and operational changes that distinguish them from traditional forms of warfare. With the advent of computer systems, the Internet, and artificial intelligence new ways have emerged to exploit these systems for purposes they were not intended to serve.<sup>18</sup> Although the advantages of new technologies are so great that they cannot be compared to any other “invention” to date, certain disadvantages have also emerged from the total networking of systems, people, and countries.<sup>19</sup> Technological progress has pushed all parameters of warfare – speed, range and precision – to their limits, which made obvious that current armed conflicts do not take place in a pure form, but are mixed or hybrid.<sup>20</sup> Modern military operations increasingly rely on sophisticated technologies that enable remote, automated, and cyber-based forms of engagement. Although contemporary armed conflicts are increasingly shaped by advanced technologies, these developments primarily affect the methods of warfare rather than its nature, while simultaneously creating serious challenges for the interpretation and implementation of customary international humanitarian law.

17 M. Kreća, *op. cit.* 770.

18 A. Stevanović, “Sajber ratovanje – novi vidovi sukoba u međunarodnom pravu”, *Odnos međunarodnog krivičnog prava i nacionalnog krivičnog prava Tom 2*, (eds. M. Škulić, R. Etinski, I. Miljuš, A. Škundrić), Udruženje za međunarodno krivično pravo i krivično pravo i Univerzitet u Beogradu - Pravni fakultet, Beograd, 2024, 604.

19 *Ibidem*.

20 S. Stojanović, “Ratovi 21. veka i klasična strategijska misao”, *Izazovi savremenog sveta: Strateško delovanje državavili rezultanta globalnih ili lokalnih procesa i povoda*, (ed. Z. Jeftić), Univerzitet u Beogradu – Fakultet bezbednosti, Institut za međunarodni politiku i privredu, Institut za strategijska istraživanja, Beograd, 2020, 32, 34.

Among the most prominent developments are unmanned aerial vehicles (UAVs), commonly referred to as drones, which allow for surveillance and targeted strikes without direct physical presence on the battlefield. These are unmanned aerial vehicles that, throughout their entire flight and especially during fire operations, are under the control of an operator on the ground, as a specific “pilot”, who is not in the aircraft itself, but controls it from the ground or sometimes, which is very rare, from another aircraft.<sup>21</sup> It is important to make a difference between UAVs that are controlled by a human (operator) and unmanned aerial vehicles that are practically self-guided and operate independently.<sup>22</sup> Unmanned aerial vehicles/drones can be used for war purposes - to achieve certain goals during armed conflicts, in certain basic forms, i.e. basic variants, which boil down to the following types of unmanned aerial vehicles/drones: unmanned aerial vehicles/drones used for aerial reconnaissance, including photographing the terrain and positions of enemy forces; unmanned aerial vehicles/drones used as combat platforms, which are remotely controlled, so that these aircraft are equipped with certain types of weapons or combat equipment, most often missiles and bombs, which they fire/throw at the enemy; unmanned aerial vehicles/drones used as a means of transport, for the purpose of transporting ammunition, weapons, other types of materials, and potentially also people; unmanned aerial vehicles/drones that have the properties of missiles, they are themselves missiles, which are controlled remotely, so-called suicide aircraft; autonomous unmanned aerial vehicles and autonomous drones, which are used as “loitering missiles” or “loitering hunters” against the enemy and which are a form of artificial intelligence.<sup>23</sup> While such systems may enhance precision and reduce risks for military personnel, their use raises important legal questions regarding targeting practices, transparency, and accountability.

Another significant innovation is the development of “Lethal Autonomous Weapon Systems” (LAWS), which are a specific type/category of weapon systems that, by definition, are not operated by a human, but instead use sensor arrays and computer algorithms to independently identify a target and an embedded weapon system to engage and destroy the target.<sup>24</sup> They are capable of applying force without significant human control or supervision.<sup>25</sup> These systems challenge

21 M. Škulić, “Upotreba besposadnih letelica/dronova u ratu/oružanom sukobu – analiza sa stanovišta međunarodnog krivičnog prava”, *Raskršća međunarodnog krivičnog i krivičnog prava – reforma pravosudnih zakona republike Srbije*, (eds. M. Škulić, I. Miljuš, A. Škundrić), Udruženje za međunarodno krivično pravo i krivično pravo i Univerzitet u Beogradu - Pravni fakultet, Beograd, 2023, 40.

22 *Ibid.*, 49.

23 *Ibid.*, 44.

24 I. Miljuš, “Upotrebe sistema veštačke inteligencije u oružanim sukobima – pravna zaštita i pravni izazovi”, *Odnos međunarodnog krivičnog prava i nacionalnog krivičnog prava Tom 1*, (eds. M. Škulić, R. Etinski, I. Miljuš, A. Škundrić), Udruženje za međunarodno krivično pravo i krivično pravo i Univerzitet u Beogradu - Pravni fakultet, Beograd, 2024, 470.

25 *Ibidem*.

traditional legal concepts that are based on human decision-making in the conduct of hostilities. The danger lies in the unpredictability of machine behavior, which is based on the “desires”, “beliefs” and “values” of the system, from which the reasons for the machines’ behavior arise, as well as the fact that the systems will have the ability to form and revise these beliefs and to learn from experience.<sup>26</sup> Particularly, in the context of this paper, the concerns that arise are whether such technologies can comply with fundamental international humanitarian law principles, including distinction and proportionality, which require context-sensitive and value-based judgments. The potential delegation of life-and-death decisions to machines has therefore become a central issue in both legal and ethical debates.

Cyber operations and cyber warfare represent an additional dimension of modern warfare that complicates the application of existing legal frameworks. Cyber warfare is a type of hostile activity undertaken against computer networks, computer systems, and databases with the aim of degrading or destroying the targeted systems.<sup>27</sup> The International Committee of the Red Cross defines cyber warfare as follows: cyber warfare is the means and methods of warfare consisting of cyber operations that amount to, or are committed in the context of, an armed conflict within the meaning of international humanitarian law.<sup>28</sup> We can therefore define cyber warfare as conflicts in cyberspace that have the role of armed attacks in real space and that can cause certain harm to the attacked party for the duration of the armed conflict and to which international humanitarian law can be applied.<sup>29</sup> One of the main problems with cyber warfare is the determination of the perpetrators of the crimes, which arises from the possibility of programming cyber bugs so that they not only obscure traces, but also lead to the wrong sources.<sup>30</sup> In order to accept international law in cyberspace, one must know the identity of the person responsible for committing the unlawful act – whether it is a state, an entity under the auspices of a state, or a private person conducting activities in cyberspace outside the framework of international law.<sup>31</sup> All these characteristics combined make particularly difficult to attribute responsibility, assess the scale of harm, and determine whether a specific operation qualifies as an armed attack under international law.

As we could have seen, these mentioned technological developments raise a broader question as to whether they fundamentally alter the nature of warfare or merely transform its modalities. While the core objectives of armed conflict, namely, the weakening of the adversary, remain unchanged, the means by which these objectives are pursued have become increasingly complex and less visible. This evolution places considerable strain on existing legal norms, which were

26 R. Sparrow, „Killer Robots”, *Journal of Applied Philosophy*, 1/2007, 62.

27 B. Milisavljević, *op. cit.*, 208.

28 A. Stevanović, *op. cit.*, 608.

29 *Ibidem*.

30 M. Szyłkowska, „Attributes of cyber conflict in the context of armed conflict – an outline of the problem”, *Defence science review*, 11/2021, 139.

31 J. Gordnić, “Sajber napadi sa aspekta međunarodnog i unutrašnjeg prava”, *Baština*, 57/2022, 278.

largely developed in the context of more traditional forms of warfare. Despite these challenges, it is generally accepted that international humanitarian law continues to apply to all forms of armed conflict, regardless of the technologies employed. As emphasized by the International Committee of the Red Cross, the fundamental principles of international humanitarian law are technology-neutral and must be respected in all circumstances.<sup>32</sup>

However, their practical application in contemporary settings requires careful interpretation and, in some cases, further clarification. In this context, the interaction between customary international humanitarian law and new technologies becomes particularly significant. While customary norms provide a flexible and adaptable legal framework, their effectiveness depends on the willingness and ability of states to interpret and apply them consistently in light of evolving methods of warfare. The following section therefore examines the key challenges arising from this interaction, supported by relevant examples from recent armed conflicts.

#### 4. CHALLENGES IN THE APPLICATION OF CUSTOMARY IHL

As it was mentioned before, the application of customary international humanitarian law in contemporary armed conflicts reveals a growing tension between established legal norms and rapidly evolving methods of warfare, such as UAVs, LAWS and cyber warfare. While the core principles of international humanitarian law can remain formally applicable, their practical implementation is increasingly complicated by technological developments and the increasingly fast-changing nature of conflict. These challenges are not merely abstract or theoretical; rather they are clearly reflected in recent armed conflicts, where the adequacy and adaptability of customary norms are put to the test.

##### **4.1. The Principle of Distinction and Targeting in Complex Operational Environments**

The primary aim of the law of armed conflict, here referred to as international humanitarian law, is to protect the victims of armed conflict and to regulate the conduct of hostilities based on a balance between military necessity and

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32 IHL is applicable to the development and use of new weaponry and new technological developments in warfare – whether they involve (a) cyber technology; (b) autonomous weapon systems; (c) artificial intelligence and machine learning; or (d) outer space. States that develop or acquire such weapons or means of warfare are responsible for ensuring that they can be used in compliance with IHL (e). More at: International Humanitarian Law and the Challenges of the Contemporary Armed Conflicts - Recommitting to Protection in Armed Conflict on the 70<sup>th</sup> Anniversary of the Geneva Conventions, [https://www.icrc.org/sites/default/files/document/file\\_list/challenges-report\\_new-technologies-of-warfare.pdf?utm\\_source=chatgpt.com](https://www.icrc.org/sites/default/files/document/file_list/challenges-report_new-technologies-of-warfare.pdf?utm_source=chatgpt.com), Accessed on 13.4.2026.

humanity.<sup>33</sup> This is the essence of the principle of distinction between civilians and combatants; it obliges belligerents to distinguish at all times between persons who may be lawfully attacked, and persons who must be spared and protected from the effects of the hostilities.<sup>34</sup> However, in contemporary armed conflicts, particularly those involving non-state actors embedded within civilian populations, this requirement becomes significantly more difficult to fulfill in practice. In practice, both the determination of who is a member of an armed group and the interpretation of the temporal aspect of the direct participation of civilians (who can only be targeted ‘for the duration of the participation’) is complicated and subject to divergent assessments.<sup>35</sup>

The widespread use of unmanned aerial vehicles (UAVs) highlights these difficulties. While drones enable enhanced surveillance and precision targeting, they also rely heavily on intelligence data that may be incomplete, ambiguous, or misinterpreted. Although it is considered that UAVs are more precise, than other means of combat, such as classic combat aviation – the general rule applies that the more precise a particular weapon is, the less likely it is to cause so-called collateral damage.<sup>36</sup> This applies in other ways as well, including when it comes to the use of drones.<sup>37</sup> However, the real problem occurs when UAVs cannot determine whether some individuals belong to the civilians, or to combatants. Individuals who do not formally belong to armed forces may nonetheless engage in activities that qualify as direct participation, thereby losing their protection from attack for such time as they do so, however, determining when and under what conditions this threshold is met is often highly complex, particularly in the context of irregular warfare and the use of civilian infrastructure for military purposes. This further complicates the application of the principle of distinction and increases the risk of both over-inclusive and under-inclusive targeting decisions, especially when it comes to use of UAVs.

In addition, the manner in which remote warfare has been normalized also result into proven entrenching of the form of imbalances of power in between technologically advanced states and weaker non-state actors and is further marginalizing civilian experiences.<sup>38</sup> In this regard, the continued relevance of the principle of distinction lies in its capacity to serve as a normative benchmark against which the legality of targeting decisions can be assessed. However, ensuring its effective application in modern armed conflicts requires constant adaptation in

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33 N. Melzer, “The Principle of Distinction Between Civilians and Combatants”, *The Oxford Handbook of International Law in Armed Conflict*, (eds. A. Clapham, P. Gaeta), Oxford University Press, Oxford, 2014, 297.

34 *Ibidem*.

35 M.N., Schmitt, “The Interpretive Guidance on the Notion of Direct Participation in Hostilities: A Critical Analysis”, *Harvard National Security Journal*, 1/2010, 5–44.

36 M. Škulić, *op. cit.* 43.

37 *Ibidem*.

38 H. Ullah, K. Muhib, Z. Rahman, M. Raheel, “Human rights in armed conflicts: Civilian protection under evolving warfare tactics”, *Social Sciences Spectrum*, 3/2025, 496.

interpretation and practice, as well as a heightened awareness of the risks associated with technologically mediated warfare.

## 4.2 Proportionality and the Limits of Algorithmic Decision-Making

As it was mentioned above, the principle of proportionality introduces a qualitative “test” that requires weighing the anticipated military advantage against potential incidental civilian harm. This inherently context-dependent evaluation has traditionally relied on human judgment, experience, and ethical reasoning. While the concept of meaningful human control has been interpreted by some to require a human in the loop at all times, others have interpreted the requirement more loosely as also being attainable through meaningful human involvement in the decision-making process leading up to the point of activation.<sup>39</sup> The emergence of autonomous weapons systems challenges this paradigm. Systems capable of selecting and engaging targets with limited or no human intervention raise serious concerns regarding their ability to perform proportionality assessments.

The main questions are whether these systems are capable of satisfying the basic principles regarding the legality of attacks - precaution in attack, distinction and proportionality in relation to human combatants if training rules or applications relating to compliance with these principles of international humanitarian law are incorporated.<sup>40</sup> As far as principle of proportionality is concerned, that principle prohibits attacks that can be expected to cause incidental civilian deaths, injury to civilians, damage to civilian objects, or a combination of these consequences (so-called collateral damage) that would be disproportionate to the “expected concrete and direct military advantage”.<sup>41</sup> It is problematic, given the fact that satisfaction of this principle is based on qualitative assessments and depends on the commander’s ability to perceive what is happening on the battlefield and to act accordingly.<sup>42</sup>

This issue is particularly problematic in urban warfare, where the density of civilian populations increases the likelihood of collateral damage. The delegation of critical decisions to machines may therefore result in a rigid or overly simplified application of proportionality, potentially leading to outcomes that are inconsistent with the underlying humanitarian purpose of international humanitarian law. As a result, the growing reliance on automation in targeting processes raises fundamental questions about the compatibility of such technologies with customary legal standards. Without preserving human judgment in targeting decisions,

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39 T. Zurek, J. Kvik, T. Van Engers, “Model of a military autonomous device following International Humanitarian Law”, *Ethics and Information Technology*, 15/2023, 14.

40 I. Miljuš, *op. cit.*, 473.

41 *Ibid.*, 474.

42 A. Seixas – Nunes, *The Legality and Accountability of Autonomous Weapon Systems – A humanitarian Law Perspective*, Cambridge University Press, Cambridge, 2022, 190.

there is a significant risk that the application of fundamental international humanitarian law principles, particularly proportionality, may become overly rigid, decontextualized, and ultimately inconsistent with their humanitarian purpose when it comes to use of LAWS.

### 4.3 Accountability, Attribution, and the Fragmentation of Responsibility

One of the most pressing challenges posed by new technologies concerns the attribution of responsibility for violations of international humanitarian law. Traditional legal frameworks are based on identifiable chains of command and clear distinctions between state and individual responsibility. However, modern methods of warfare increasingly blur these lines, and cyber operations represent a particularly complex example of how it is difficult to attribute with certainty a cyber attack to a specific actor. In some cases, it is possible that an individual is behind a particular cyber attack – a hacker, which can cause damage of the same intensity as a military armed attack by a state, and the problem of attributing such acts to a particular state may also arise - whether such a person worked for the state or at his own will and how to prove one or the other, which can further complicate establishing the state's responsibility for cyber attacks.<sup>43</sup>

Furthermore, even when attribution is technically possible, the legal classification of cyber operations remains contested, particularly with regard to whether they reach the threshold of an armed attack, even though, for example, the Tallinn Manual is prescribing that the rules of international humanitarian law are fully applicable to cyber conflicts.<sup>44</sup> Cyber operations can consist of attacks on a computer network (“operations to disrupt, deny, degrade, or destroy information contained in computers and computer networks, or the computers and networks themselves”) or exploitation of a computer network (“the ability to gain access to information contained in information systems and the ability to use the system itself”) without affecting the functionality of the accessed system.<sup>45</sup> It can be concluded that cyberspace is a human creation, so the principles and rules of warfare apply to this area as well; cyber attacks do not deviate from some limitations: legitimate targets of cyber attacks can be members of the armed forces, organized groups or civilians directly participating in the conflict, as well as military targets.<sup>46</sup> In this sense, cyber wars are treated like other types of classical armed conflicts.<sup>47</sup>

43 A. Stevanović, *op. cit.*, 609.

44 M. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press, Cambridge, 2017, 182.

45 M. Sassoli, *International Humanitarian Law: Rules, Solutions to Problems Arising in Warfare and Controversies (Principles of International Law series)*, Edward Elgar Pub, Cheltenham, 2019, 533.

46 B. Milisavljević, *Međunarodno humanitarno pravo*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2024, 205.

47 *Ibidem*.

In order to address these challenges, it is essential to reinforce existing frameworks of responsibility rather than to abandon them. Policymakers should prioritize updating or clarifying existing legal instruments to account for drone warfare, cyber operations, and artificial intelligence driven tactics.<sup>48</sup> One possible approach lies in clarifying the application of established doctrines of state and individual responsibility to technologically mediated warfare, particularly through interpretative guidance and state practice. Furthermore, greater transparency in military operations and the development of clearer standards for attribution in cyber contexts could contribute to reducing legal uncertainty. While these measures may not fully eliminate the complexities associated with new technologies, they represent important steps toward maintaining the effectiveness and credibility of international humanitarian law in contemporary armed conflicts. While there is no consensus on the appropriate approach, it is evident that the effectiveness of international humanitarian law depends not only on its formal applicability but also on its capacity to provide clear and operationally relevant rules in rapidly changing contexts.

## 5. CONCLUDING REMARKS

The analysis presented in this paper demonstrates that customary international humanitarian law continues to constitute a fundamental and indispensable framework for regulating the conduct of hostilities in contemporary armed conflicts. Its core principles, distinction, proportionality, military necessity, and humanity retain their normative validity and universal applicability, regardless of the technologies employed in modern warfare. In this sense, customary international humanitarian law preserves its role as a cornerstone of legal protection for individuals affected by armed conflict. However, the findings of this study also reveal that the practical application of these principles is increasingly challenged by the rapid development and deployment of new technologies. The use of unmanned aerial vehicles (drones), autonomous weapons systems, and cyber capabilities introduces complexities that were not envisaged at the time when many customary norms were formed. These technologies do not fundamentally alter the nature of warfare, but they significantly transform its modalities, thereby complicating the interpretation and implementation of existing legal rules.

In particular, difficulties in maintaining the principle of distinction in complex operational environments, the limitations of algorithmic decision-making in proportionality assessments, and the fragmentation of responsibility in cases involving autonomous systems and cyber operations highlight the growing gap between legal norms and operational realities. These challenges are further worsened by the absence of precise and universally accepted regulations governing the use of emerging technologies, which creates a risk of inconsistent state practice and potential erosion of established legal standards. At the same time, it is important to emphasize that the existence of such challenges does not imply a

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48 H. Ullah, K. Muhib, Z. Rahman, M. Raheel, *op. cit.*, 504.

legal vacuum. As consistently underlined by the International Committee of the Red Cross, international humanitarian law remains fully applicable to all means and methods of warfare.<sup>49</sup> The adaptability of customary norms represents one of their greatest strengths, allowing them to remain relevant in the face of evolving forms of conflict. Nevertheless, this adaptability has its limits, particularly where technological developments outpace the capacity of existing legal frameworks to provide clear and operationally effective guidance.

In light of these considerations, the paper argues that the future effectiveness of customary international humanitarian law depends on a combination of factors: the consistent and good-faith application of existing norms by states, the progressive clarification of their content through interpretative practice, and, where necessary, the development of new legal instruments or guidelines addressing specific technological challenges. Such efforts are essential to ensure that the fundamental objective of international humanitarian law, which is the protection of human life and dignity in armed conflict, remains fully respected and realized. Ultimately, the evolution of warfare must not be allowed to outpace the evolution of law. Maintaining the relevance and effectiveness of international humanitarian law in the era of technologically advanced conflict is not only a legal necessity but also a moral imperative for the international community.

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**Andjelija Stevanović\***

## PRIMENA OBIČAJNIH NORMI MEĐUNARODNOG HUMANITARNOG PRAVA U SAVREMENIM ORUŽANIM SUKOBIMA

### Sa posebnim osvrtom na korišćenje novih tehnologija

#### Rezime

Savremeni oružani sukobi donose nove izazove za primenu međunarodnog humanitarnog prava, posebno običajnih normi koje predstavljaju temelj zaštite civila, ratnih zarobljenika i učesnika u oružanim sukobima, kao i ograničenja u sredstvima i metodama ratovanja. Razvoj i upotreba novih tehnologija, kao što su besposadne letelice (dronovi), autonomna oružja i sajber napadi, postavljaju pravna i etička pitanja u vezi sa odgovornošću i sprovođenjem osnovnih principa međunarodnog humanitarnog prava. Ovaj rad analizira primenu običajnih normi međunarodnog humanitarnog prava u savremenim sukobima, sa posebnim osvrtom na izazove koje donose nove tehnologije, kao što su besposadne letelice, autonomna oružja i sajber napadi. Posebna pažnja posvećena je identifikaciji pravnih praznina, interpretaciji ključnih normi u savremenom kontekstu i prikazu konkretnih primera iz aktuelnih sukoba. Cilj rada je da ukaže na potrebu adaptacije i dosledne primene običajnog prava kako bi međunarodni standardi zaštite ljudskog života i dostojanstva ostali efikasni u eri tehnološki sofisticiranih oružanih sukoba.

**Ključne reči:** običajno međunarodno humanitarno pravo, savremeni oružani sukobi, zaštita civila, tehnološki razvoj, nove tendencije u međunarodnom humanitarnom pravu.

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