RESEARCH TRAINING CLASS

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

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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…
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_20750025.html)
4. Has it been used in armed conflict before? If so, when and to what effect?
   a. Wikipedia — yes, 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.

- **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.
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   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/erythdb/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.

- Use these sources for whatever (limited) value they bring to the research.
- Don’t cite Wikipedia! Use language and references in a Wikipedia article to find more “reputable” sources.
- Be a skeptical information consumer! What is, for example, “PressTV”? (outline # 4b, in green)
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 commentaries.

CHILDREN and CIVILIANS

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.”
BACKGROUND RESEARCH ON THE MAJOR ISSUES

White Phosphorous Munitions: International Controversy in Modern Military Conflict
P. Hashey - New Eng. J. Int'l & Comp. L., 2011 - HeinOnline
The deployment of white phosphorous munitions, particularly in the most recent Israeli offensive in Gaza and the 2004 Battle of Fallujah in Iraq, has given rise to an intense debate over the legality of its use on the modern battlefield. The controversy surrounding white...
Related articles All 2 versions Import into RefWorks Save More

(Citation) Israel and White Phosphorous During Operation Cast Lead: A Case Study in Adherence to Inadequate Humanitarian Laws
M Cantors - GONZ. J. INT'L L., 2010
Cited by 5 Related articles Import into RefWorks Save More

Shake & (and) Bake: Dual-Use Chemicals, Contexts, and the Illegality of American White Phosphorus Attacks in Iraq
JD Tessler - Place L. Rev., 2007 - HeinOnline
On November 6, 2005, "Italian public television aired a documentary accusing US forces of killing and wounding residents of Fallujah, including women and children, with chemical weapons during November 2004.
Cited by 3 Related articles All 4 versions Import into RefWorks Save More

Incendiary Effect of White Phosphorous in Counterinsurgency Operations, The
SR Reeves - Army Law., 2010 - HeinOnline
On 15 September 2010 the United Nations (UN) Fact Finding Mission on the Gaza Conflict, commonly referred to as the "Goldstone Report," was published. The report alleges numerous law of war violations by both Israel and Hamas during the military...
Cited by 2 Related articles All 5 versions Import into RefWorks Save More

8 Phosphorus and Stone
OC Lead - Crime and Justice in International Society, 2014 - books.google.com
Almost seventy years after the Universal Declaration of Human Rights, the birth of Israel, and the beginning of the Palestinian nakba (all in 1948) it is now clear that international law has fallen short of its promise to alleviate suffering, hold transgressors to account, and to...
Related articles Import into RefWorks Save More

Chemical Weapons Convention and Riot Control Agents: Advantages of a Methods Approach [PDF] from duke.edu to Arms Control, The
B Kasten - Duke J. Comp. & Int'l L., 2011 - HeinOnline
Breathing through chemical smoke has been described as "drowning on dry land." When one imagines chemical weapons, one often imagines that indelible image of Doughboys choking in trenches through a fog of yellow mustard gas. Though World War I did not see...
Related articles All 3 versions Import into RefWorks Save More
Let’s find more scholarly writings.
Library resources can be helpful for this.
Search result limiters

HOLLIS & Articles
HOLLIS
Articles

Keywords anywhere □ exact phrase □ white phosphorus
Keywords anywhere □ contains □ war
Keywords anywhere □ contains □
Keywords anywhere □ contains □

Material Type: All Items □
Language: Any Language □
Publication Date: Any Year □
Start Date: Day □ Month □ Year □
End Date: Day □ Month □ Year □

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Subject
Gaza Strip □ War Crimes □ Armed Forces □ United States □

More options □

Author / Creator
Anonymous □ Barnes, Rebecca □ Chen, Shao-Ming □

More options □

SCHOLARLY ARTICLES

THE USE OF WHITE PHOSPHORUS AND THE LAW OF WAR
so White phosphorus and the law of war 63... fog of war - white phosphorus, Fallujah and some... to the 75 White phosphorus and the law of

View Online □ Details

White phosphorus and war crimes in Fallujah

View Online □ Details

The fog of war. White phosphorus, Fallujah and some burning questions.

View Online □ Details

Israel admits use of white phosphorus weapons during Gaza war
Al Jazeera. Jan 21, 2009
the white phosphorus was used by a reserve paraoo... use of white phosphorus weapons during its offensive... about its use of white phosphorus weapons

View Online □ Details

After the war. Gazans seek answers on white phosphorus
Prusher, Irene. The Christian Science Monitor, Feb 5, 2009, p.4

View Online □ Details

View all versions
**THE USE OF WHITE PHOSPHORUS AND THE LAW OF WAR**

Macleod, IJ; Rogers, A.P.V. *Yearbook of International Humanitarian Law, 2007, Vol 10, pp.75-97 [Peer Reviewed Journal]*

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

**Author:** Macleod, IJ; 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 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.


**Is Part Of:** Yearbook of International Humanitarian Law, 2007, Vol 10, pp 75-97 [Peer Reviewed Journal]

**Identifier:** ISSN: 1383-1359; E-ISSN: 1574-096X; DOI: 10.1017/S138313590700075X

**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”
SCHOLARLY ARTICLES

1. Manufacturer responsibility for end use violations of domestic and international laws: U.S. made white phosphorus in Gaza. N. Voka.
   Journal of International Law. 16.2 (Spring 2010) p333-351.


1. The "Incendiary" effect of white phosphorus in counter-insurgency operations. N. Baker.

2. Recent issues with the use of MatchKing bullets and white phosphorus weapons in Iraq. R. Craig Burton.

Introduction Recently, issues have arisen about the use of certain weapons in Operation Iraqi Freedom (OIF). This article discusses two of these weapons: MatchKing bullets and white phosphorous (WP). Though neither of...
Build your stack of scholarly articles. They provide information and references to primary sources.
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 2 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.
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.
Researching Foreign Legal Materials
Researching Foreign Legal Materials
Researching Foreign Legal Materials
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:

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