

International Humanitarian Law and Cyber Warfare: Sufficiency of International Humanitarian Law in Combating Cyber Warfare as a New Phenomenon

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Abstract

Long ago cyber space is more a fiction which has now become the new phenomenon in all our lives. People are so attracted by it, some get benefits out of it, while most of them become victims. Cyber space is now used in many activities in day-to-day life and some people experiment to develop it as a method of warfare. Cyber warfare in no time shall become inevitable. Therefore, it is important to take steps to regulate cyber warfare before it makes irreversible damages to mankind. This research finds the answers to the main question in the new era of cyber warfare, whether traditional rules and principles of warfare are capable of addressing the complicated ways and methods that are used and expected to be used in cyber wars. The research is entirely based on a thorough library research and on an online research. Even though people are attracted by cyber space, these sophisticated techniques are alien to most of them unless they are professionals who work in that field. Therefore, it is up to international community and states to take up the mission to prevent cyber warfare. Cyber space is intangible. However, modernity has connected main domains of tangible world- land, air, sea and outer space- through this intangible cyber space. Therefore, attack on cyber space can severely damage physical world. Most of the IHL principles are flexible enough to apply them in cyber warfare. For an example 'rule of distinction' is applicable even in cyber wars. This would simply mean that cyber attacks can only be directed only against military objectives. However, owing to specific characteristics of cyberspace and related situations, it becomes impossible to combat the whole phenomenon of cyber warfare by already existing IHL principles alone. Novelty of the phenomenon makes a gap in customary international humanitarian law. In the absence of customary international humanitarian law, treaty laws should take up the mission of regulating cyber warfare by introducing new rules. International community, identifying the situation, has taken up the mission of combating cyber warfare through treaty law provisions. Tallinn Manual on the International Law Applicable to Cyber Warfare can be regarded as an attempt of regulating cyber warfare. However, states are not obligated to follow these laws and international community has failed to make states be bound by a set of principles in case of cyber warfare. This is the most suitable time to pay attention on this new phenomenon. Laws should be made now, before a fatal attack is done, because making laws after an attack is done would not make that person liable under the rule of non-retroactivity. All in all traditional IHL principles' capability of addressing the new phenomenon called cyber warfare is restricted to a certain extent, because cyber warfare has complex characteristics. It is the time to introduce new rules and principles that are applicable in this arena that would assist and strengthen the existing traditional principles of wars.

Key words: Cyber Warfare, Physical World, International Humanitarian Law

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