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Book Reviews

Eitan Barak, *Deadly Metal Rain: The Legality of Flechette Weapons in International Law*. Martinus Nijhoff, 2011, 320 pp. ISBN: 978 90 04 16719 3.

The principles of distinction and unnecessary suffering in international humanitarian law, as applied to types of weapons used in armed conflict, are among the most notoriously difficult to apply in all of the law of armed conflict. The application of these principles is so very difficult because it involves the use of standards that are in many cases context-specific, and in other cases require the comparison and balancing of values that are inherently impossible to quantify, and therefore nearly as difficult to compare.

With regard to the principle of distinction—ie whether a weapon is capable of distinguishing civilian from military targets—questions to be asked in application of the principle to a specific weapon include: what are the subject weapon’s characteristics, and intended as well as typical actual uses? What are both the intended and the possible unintended, effects of the subject weapon on targets in a variety of contexts, eg urban versus unpopulated areas? In light of these uses, can the weapon be said to be inherently capable of distinguishing between civilian and military targets?

With regard to the principle of superfluous injury and unnecessary suffering, the questions to be asked are fewer, but even more difficult to apply, and include: how much and what kind of suffering does the subject weapon inflict upon targets? Does this suffering constitute superfluous or unnecessary suffering?

The prohibition of weapons causing unnecessary suffering is a longstanding principle of international law, clearly codified in Article 23 of 1907 Hague Regulation IV. Pursuant to his principle, many weapons have been specifically declared unlawful in subsequent sources of international law, notably including the 1980 Convention on Certain Conventional Weapons. These ‘[b]anned weapons include explosive bullets, glass-filled projectiles, “dum-dum” bullets, poison and poisoned weapons, asphyxiating gases, bayonets with serrated edges – all of which increase suffering without increasing military advantage’.¹

The principle of distinction as applied to the use of specific weapons was a later evolution in the law, an outgrowth of the post-World War II emphasis on the protection of non-combatants in the 1949 Geneva Conventions and their 1977 Additional Protocols. It is most clearly codified in Article 51(4) of Additional Protocol I.

Notwithstanding these well-established principles of international law, and their application to many weapons to produce clear prohibitions in international legal sources, there are weapons still in use by modern militaries that are disputed as to their harmony with these principles. One of these is the flechette ammunition round. In his book *Deadly Metal Rain: The Legality of Flechette Weapons in International Law*, Hebrew University Assistant Professor Dr Eitan

¹ G Solis, *The Law of Armed Conflict* (2010) 270.

Barak provides a focused and thorough application of the legal principles of distinction and unnecessary suffering in international humanitarian law, to the use of flechette ammunition in armed conflict, in particular light of Israel's use of flechettes in its military actions in the Gaza Strip from 2001–09.

The book begins with an introduction to the flechette as a weapon, in historical perspective, as its uses and characteristics evolved over time. Flechette rounds are typically used for anti-personnel purposes, as distinct from weapons that have a significant effect upon structures or armoured vehicles. They are most useful as an 'area weapon (ie, a means of warfare that is effective over a broad area, even if it is targeted at a specific point)'.² A flechette round is essentially a single shell, typically fired from a tank or artillery piece, that is engineered to 'explode in mid-air and scatter thousands of steel darts across a wide expanse...' killing or wounding anyone unfortunate enough to be in the area of its coverage.³

The book then proceeds to a discussion of the history of prohibitions on weapons in the sources of international law, in the application of the principles of distinction and unnecessary suffering, and why throughout that history flechette weapons escaped prohibition in these sources, including in the 1980 Convention on Certain Conventional Weapons. Barak concludes that 'despite grave concern over the use of these weapons in the 1970's', following their use in the Vietnam war, 'they were not used to any major degree in any of the subsequent armed conflicts that had attracted much international attention', including the NATO bombing of Yugoslavia in 1999 or the two Gulf Wars in 1991 and 2003.⁴ Thus, flechette weapons were never included in a specific protocol to the 1980 Convention.

In Part II, the book then switches to a focused description of the use of flechette weapons by the Israeli military in Lebanon in the 1980s–1990s, and later in Gaza, beginning around 2001. The use of flechette weapons in the densely populated areas of the Gaza Strip, which produced a number of high-profile incidents of civilian casualties, brought the issue of the legality of flechette weapons to a head inside of Israel. In October 2002, several Israeli NGOs petitioned the Israeli Supreme Court, sitting as the High Court of Justice, demanding to know why the use of flechette rounds 'in the context of IDF operations in the Gaza Strip area' should not be considered unlawful.⁵

The book proceeds to review the legal battle on flechettes before the Israeli Supreme Court, resulting in the dismissal by the court of the petition in April 2003. It further juxtaposes the court's dismissal of the case, and effective authorization of the use of flechette weapons by the IDF in Gaza, with the finding of the 2009 Goldstone Report, that flechettes '... are an area weapon incapable of discriminating between objectives after detonation. They are, therefore,

² *ibid* 2.

³ *ibid* 6.

⁴ *ibid* 3–4.

⁵ *ibid* 129.

particularly unsuitable for use in urban settings where there is reason to believe civilians may be present'.⁶ This analysis produces some very interesting and astute observations by Barak regarding the interplay between the domestic and international judicial processes on this issue, including how 'the 2003 HCJ Decision has become the State's first line of defense against any accusations of its improper use of flechette weapons...'.⁷

The final two chapters of the book are devoted to a detailed explication of the principles of distinction and unnecessary suffering in international humanitarian law, and their application to the use of flechette weapons. I found particularly impressive in this explication the material on pages 179–195, in which Barak engages in a serious and detailed consideration of the legal standard of unnecessary suffering as applied to weapons, relying on a variety of medical scientific sources, including psychology, in this consideration.

Deadly Metal Rain is a tour de force demonstration of how to conduct the complex and necessarily interdisciplinary process of applying the principles of distinction and unnecessary suffering in international humanitarian law to a specific weapon technology. Barak's analysis in this book employs historical, military science, political science, sociological, medical, as well as legal methods and insights, in order to produce a persuasive, holistic application of these principles to flechette weapons. His use of the Israeli case study adds both timeliness and concreteness to the book's analysis.

This is, as far as I am aware, the only book of its kind, devoting such focused, thorough and systematic treatment to the consideration of a specific conventional weapon, and its harmony with the principles of distinction and unnecessary suffering in international humanitarian law. This fact, and the quality of Barak's analysis, makes this book a significant contribution to existing literature in international humanitarian law, both in its specific analysis with regard to flechette weapons, but even more importantly, in its exemplary demonstration of a template for application of these principles, which can and should be used by other scholars when considering the legality of other weapon technologies.

Deadly Metal Rain is a masterful achievement, and an exemplary piece of legal scholarship; well organized and thorough in its scope, and demonstrating a deep understanding on the part of the author of the complexities and nuances of the relevant legal standards, and a rare ability to apply interdisciplinary analysis to holistically, creatively and persuasively apply these standards.

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⁶ *ibid* 161.

⁷ *ibid* 163.