

LESS-LETHAL WEAPONS UNDER INTERNATIONAL LAW

Hitherto 'less-lethal' weapons, in contrast to classical firearms and other highly destructive weapons, have literally slipped under the radar of public international law. This book is the first monograph addressing and analysing all international legal regimes applicable to less-lethal weapons, ranging from arms control treaties, international humanitarian, criminal and human rights law. In doing so the different scenarios in which less-lethal weapons come to use will be taken into account, such as law enforcement, armed conflict and law enforcement scenarios during armed conflict. The relationships between the different legal regimes will be elaborated thoroughly with a view to examining how international law responds to less-lethal weapons. The final chapter provides guidelines as well as recommendations on appropriate use and regulation of less-lethal weapons, where the different scenarios of application, such as in armed conflict and law enforcement, will be given due account.

Elisabeth Hoffberger-Pippan is Researcher at the German Institute for International and Security Affairs in Berlin as well as the International Panel on the Regulation of Autonomous Weapons (iPRAW). Prior to that, she was Researcher and Lecturer at the Institute for Public International Law, Air Law and International Relations at Johannes Kepler University Linz.

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Less-Lethal Weapons under International Law

A THREE-DIMENSIONAL PERSPECTIVE

ELISABETH HOFFBERGER-PIPPAN

Johannes Kepler University Linz



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For my parents

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Foreword

The issue of less-lethal weapons is not new – the police have, for instance, long been equipped with batons as standard equipment – but the diversity of such weaponry has increased markedly over the last three decades, bringing with it the need for more specific regulation. The 1990 United Nations (UN) Basic Principles on the Use of Force and Firearms had called for the development of “non-lethal incapacitating weapons for use in appropriate situations” with a view to reducing recourse to conventional firearms and thereby fatal outcomes. But the Basic Principles also cautioned that such less-lethal weapons should be “carefully evaluated in order to minimize the risk of endangering uninvolved persons” and their use “carefully controlled.”

Moreover, since the negotiation of the UN Basic Principles, conducted energy weapons – such as Tasers, laser dazzlers, acoustic weapons and a range of kinetic impact projectiles – have been developed and deployed within and outside situations of armed conflict. Their increasingly frequent use in law enforcement – and the specific risks that inappropriate use engenders – certainly demanded greater regulatory clarity at the international level. In 2019, to help fill the normative gap, the Office of the UN High Commissioner for Human Rights issued valuable Guidance on the design, testing, transfer, training and use of less-lethal weapons in law enforcement.

Elisabeth Hoffberger-Pippan’s book, *Less-Lethal Weapons under International Law*, is a further addition to this normative landscape that is exceptionally welcome. The care Elisabeth takes with the sources of international law and the methodological treatment of the different categories of weapons demonstrate her mastery of the material. Her detailed discussion of the use of less-lethal weapons in situations of armed conflict, including during related detention and in occupied territory, ensures that the book is comprehensive in scope.

Elisabeth's affirmation that international human rights law is able to regulate effectively the use of less-lethal weapons in different scenarios, such as law enforcement in general, custodial centers and scenarios of occupation, is clearly evidenced and supported in the book. As she duly notes, forensic ballistics and other weapons expertise as well as medical assessments have to be taken into consideration in any assessment of legality, given human rights law's strong interdisciplinary character. As she concludes, less-lethal weapons "have slipped under the radar of international law for a long time." It is to Elisabeth's great credit that her work is a significant contribution to ending that regrettable state of affairs.

Stuart Casey-Maslen

*Honorary Professor
Centre for Human Rights
University of Pretoria*

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- Protocol Additional to the Geneva Conventions of August 12, 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, June 8, 1977, in force December 7, 1978, 1125 UNTS 17513
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, New York, May 31, 2001, in force July 3, 2005 (Firearms Protocol of 2001)
- Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva Gas Protocol), Geneva, June 17, 1925, in force February 8, 1928, 94 UNTS 2138
- Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, Strasbourg, April 28, 1983, in force March 1, 1985, ETS No. 114
- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the Abolition of the Death Penalty in all Circumstances, Vilnius, May 3, 2002, in force July 1, 2003, ETS No. 187
- Protocol on Prohibitions or Restrictions on the Use of Booby-Traps and Other Devices as amended on May 3, 1996 (Protocol II, as amended on May 3, 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be deemed to Be

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- Excessively Injurious or to Have Indiscriminate Effects, Geneva, May 3, 1996, in force December 3, 1998, 2048 UNTS 22495
- Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Protocol V), Geneva, November 28, 2003, in force November 12, 2006, 2399 UNTS 22495
- Single Convention on Narcotic Drugs, New York, March 30, 1961, in force December 13, 1964, 520 UNTS 7511
- UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, December 20, 1988, in force November 11, 1990, 1582 UNTS 27627

Abbreviations

ACHPR	African Charter on Human and Peoples’ Rights
ACHR	American Convention on Human Rights
ACLU	American Civil Liberties Union
ADHR	American Declaration of the Rights and Duties of Man
AI	Amnesty International
ACommHR	African Commission on Human and Peoples’ Rights
AP I	Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts
AP II	Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts
ARDEC	Armament Research Development and Engineering Center
ARL	Army Research Laboratory
ATT	Arms Trade Treaty
AU	African Union
BWC	Biological Weapons Convention
CAT	Committee against Torture
CCW	Convention on Certain Conventional Weapons
CDDH	Steering Committee for Human Rights
CED	conducted energy device
CESCR	Committee on Economic, Social and Cultural Rights
CEW	conducted electrical weapon
CLAHR	Committee on Legal Affairs and Human Rights
COAT	Committee on the Administration of Justice
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

List of Abbreviations

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CS	2-chlorobenzalmalononitrile
CWC	Chemical Weapons Convention
dB	decibel
DoD	Department of Defense
DoJ	Department of Justice
DoS	Department of State
ECBC	Edgewood Chemical Biological Center
ECD	electronic control device
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECommHR	European Commission on Human Rights
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
EID	electronic immobilization device
ELN	Ejército de Liberación Nacional
EMBO	European Molecular Biology Organization
GC I	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)
GC II	Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (1949)
GC III	Geneva Convention (III) Relative to the Treatment of Prisoners of War (1949)
GC IV	Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (1949)
GGP	Geneva Gas Protocol
gHz	gigahertz
HEAP	Health Effects Advisory Panel
HECOE	Human Effects Center of Excellence
HERB	Human Effects Review Board
HRC	Human Rights Committee
HRW	Human Rights Watch
Hz	hertz
IAC	International Armed Conflict
IACommHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IEC	International Electrotechnical Commission
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILEF	International Law Enforcement Forum
JNLWD	Joint Non-Lethal Weapons Directorate
kHz	kilohertz
KFOR	Kosovo Force
LRAD	long-range acoustic device
MOAW	military operation other than war
NATO	North Atlantic Treaty Organization
NIAC	non-international armed conflict
NIJ	National Institute for Justice
OPCW	Organization for the Prohibition of Chemical Weapons
PIL	Public International Law
POW	prisoner of war
RCA	riot control agent
TRNC	Turkish Republic of Northern Cyprus
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNHCHR	United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Council
UNMIK	United Nations Interim Administration Mission in Kosovo
V	volt
VCLT	Vienna Convention on the Law of Treaties