

مشروعية استعمال بعض أنواع الأسلحة التقليدية  
في ضوء مبادئ القانون الدولي الإنساني

م.أحمد عبيس نعمة الفطلاوي  
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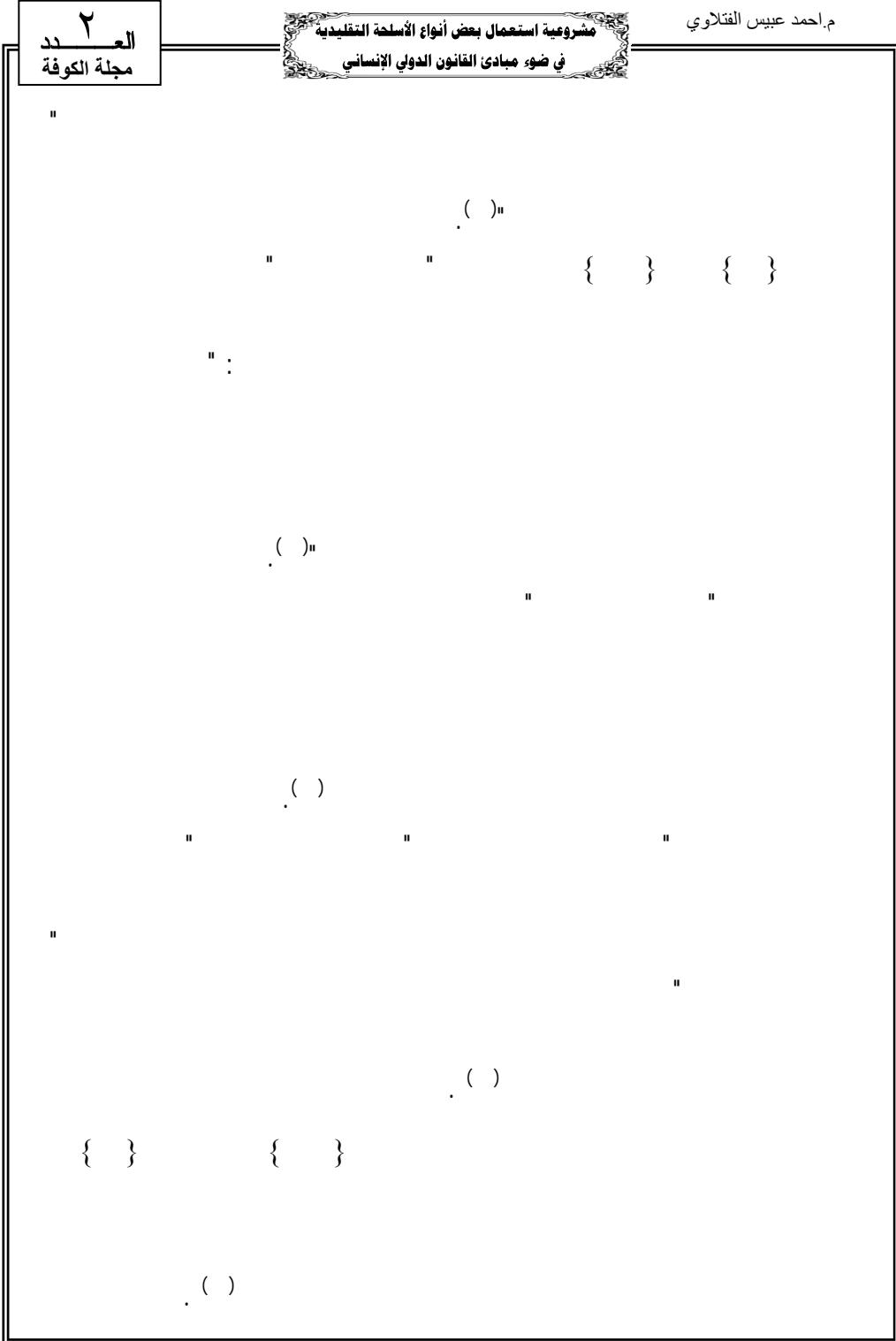
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**Abstract:**

Legality of use certain weapons in light of principles of international humanitarian law

The use of inhuman weapons, such as anti personnel land mines and cluster munitions , against military targets as well as civilian targets accordance to Military Necessity and proportionality test are a violation of current international

humanitarian law. They should not, however, be employed to just cause unnecessary suffering to individuals.

All weapons, weapons systems, and munitions must be reviewed by the service Judge Advocate General for legality under the law of war. A review occurs before the award of

the engineering and manufacturing development contract and again before the award of the initial production contract.

The rights of belligerents to adopt means of injuring the enemy are not unlimited. The customary law of war places limits on the exercise of a belligerent's power and requires that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes. The Law of Armed Conflict rests on fundamental principles of military necessity, unnecessary suffering, proportionality, and distinction (discrimination) which will apply to targeting decisions.

1. The principle of military necessity justifies those measures not forbidden by international law, and which are indispensable for securing the complete submission of the enemy as soon as possible.
2. The principle of proportionality requires that the anticipated loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.

Customary international law prohibits the launching of attacks (including bombardment) against either the civilian

population as such or individual civilians as such. Defended places are permissible objects of attack (including

bombardment). In this context, defended places include a fortified place; a place that is occupied by a combatant military force; or a city or town surrounded by detached defense positions, if under the circumstances the city or town can be considered jointly with such defense positions

as an indivisible whole. The loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.

Reprisals are acts of retaliation in the form of conduct which would otherwise be unlawful, resorted to by one belligerent against enemy personnel or property for acts of warfare committed by the other belligerent in violation of the law of war, for the purpose of enforcing future compliance with the recognized rules of civilized warfare. For example, the employment by a belligerent of a weapon the use of which is normally precluded by the law of war would constitute a lawful reprisal for intentional mistreatment of prisoners of war held by the enemy.

We suggest to set up anew international court to judgment the cases of violation of IHL, and should be independent from great power, to repression the breaches of human sufferings with both belligerents and civilians.