

NOTES

BEYOND THE SMOKE: CLOSING THE LEGAL GAPS ON WHITE PHOSPHORUS AND INCENDIARY WEAPONS

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INTRODUCTION

In modern warfare, the line between legality and atrocity often blurs when it comes to weapons with dual-use capabilities. White Phosphorus, colloquially known as “Willie Pete,” falls under this dilemma.¹ Deployed for its tactical benefits as a smokescreen and incendiary weapon, it has since become the focal point of controversy due to the catastrophe it brings upon civilians when used in populated areas.² White phosphorus exists in a legal gray area of international law, dodging stringent regulation and accountability under all major treaties. How does this happen?

Before conducting an in-depth analysis of white phosphorus, Part I of this Note will first examine the history of chemical warfare and the evolution of legal frameworks regulating its use. Chemical warfare dates back to World War I, when chlorine and mustard gas were deployed on the battlefield, causing approximately 90,000 deaths and over a million casualties.³ The widespread devastation led to early international attempts at regulation, such as the 1925 Geneva Protocol, which prohibited the use of chemical and biological weapons in war but lacked enforcement mechanisms.⁴

Despite early efforts, countries have remained hesitant to impose a

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1. Matt Collins, *Why “Willy Pete” (White Phosphorus) is a Scourge On the Modern Battlefield*, MIRA SAFETY (Oct. 27, 2023), <https://www.mirasafety.com/blogs/news/controversial-history-of-willy-pete> [https://perma.cc/H9AV-JSXS].

2. *Id.*

3. Gerard Fitzgerald, *Chemical Warfare and Medical Response During World War I*, 98 AM. J. PUB. HEALTH 611 (2008), <https://pmc.ncbi.nlm.nih.gov/articles/PMC2376985/> [https://perma.cc/GW37-TRYP].

4. *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare*, June 17, 1925, 26 U.S.T. 571, 94 L.N.T.S. 65 [hereinafter Geneva Protocol].

comprehensive ban on chemical warfare, as it continues to serve as an offensive military strategy under certain geopolitical circumstances.⁵ This reluctance ultimately led to the establishment of the International Criminal Court (“ICC”) through the Rome Statute in 1998, which 123 countries have since ratified.⁶ The Rome Statute’s Article 8 explicitly prohibits the use of “poison or poisoned weapons” and “asphyxiating, poisonous or other gases,” which are classified as war crimes.⁷ However, it notably fails to mention white phosphorus, leaving its classification somewhat ambiguous.⁸ This omission was not accidental; rather, it reflects the political maneuvering of states that sought to maintain white phosphorus as a viable military tool while “formally” condemning other chemical weapons.

Given this ambiguity, the critical question remains: Can chemical warfare, particularly involving white phosphorus, be prosecuted under the Rome Statute? As most law students learn in their first year of Civil Procedure, jurisdictional limitations apply not only in domestic courts but also at the international level.⁹ The ICC operates under strict jurisdictional constraints, including complementarity and state consent, which significantly hinder its ability to prosecute chemical warfare cases.¹⁰ Part I of this Note will explore how these jurisdictional barriers within the Rome Statute make it nearly impossible for the ICC to effectively prosecute chemical warfare crimes, leaving significant gaps in accountability and enforcement.¹¹

If white phosphorus does not fall under the Rome Statute or any other comprehensive international regulation, then what legal framework does it exist under? And fundamentally, what is white phosphorus? Part II of this Note will provide an in-depth examination of this wax-like chemical compound and how it has evaded regulation under international treaties. While the scientific background may not be the primary focus for those approaching this issue from a legal standpoint, understanding the chemical properties of white phosphorus is crucial to comprehending its devastating effects on humans. Upon contact with skin, white phosphorus burns at temperatures exceeding 800°C (1,472°F),

5. *Chemical weapons remain a threat to the world*, EUR. UNION EXTERNAL ACTION (Nov. 30, 2022), https://www.eeas.europa.eu/eeas/chemical-weapons-remain-threat-world_en [<https://perma.cc/GZ2P-TUNP>].

6. *The States Parties to the Rome Statute*, Assembly of States Parties to the Rome Statute, Int’l Crim. Ct., <https://asp.icc-cpi.int/states-parties> [<https://perma.cc/GU5P-84R4>] (last visited Oct. 9, 2025).

7. Rome Statute of the International Criminal Court art. 8(2)(b)(xvii) – (xviii), July 17, 1998, 2187 U.N.T.S. 90.

8. *Id.*

9. Cedric Ryngaert, *The Concept of Jurisdiction in International Law* 2, <https://unijuris.sites.uu.nl/wp-content/uploads/sites/9/2014/12/The-Concept-of-Jurisdiction-in-International-Law.pdf> [<https://perma.cc/JZK2-M68D>] (last visited Sep. 14, 2025).

10. Rome Statute of the International Criminal Court arts. 5, 11 – 12, 17, July 17, 1998, 2187 U.N.T.S. 90.

11. Nadia Ahmad, *The Language Barrier: Can the ICC Prosecute Chemical Warfare?*, 46 HUM. RTS. Q. 98 (2024).

causing deep, excruciating injuries that can reignite upon exposure to oxygen.¹² These burns frequently result in severe disfigurement, organ failure, and, in some cases, death.¹³

Given the catastrophic humanitarian consequences of white phosphorus, why does its use persist? As part II will further explore, white phosphorus remains widely deployed due to its effectiveness as a smokescreen in military operations, obscuring troop movements and targeting systems.¹⁴ This function classifies it as an incendiary, rather than a chemical, weapon, bringing it under the purview of the CCW, specifically Protocol III.¹⁵ However, Protocol III contains critical loopholes, most notably, it restricts the use of incendiary weapons against civilians but does not explicitly prohibit their deployment in urban warfare when used for purposes other than as a direct weapon.¹⁶ This regulatory gap allows militaries to justify their use of white phosphorus under the pretense of non-lethal strategic necessity, despite its well-documented civilian harm. If white phosphorus is technically regulated under the CCW, then why does its abuse continue unchecked? The answer lies in enforcement weaknesses and political reluctance to impose stricter bans.¹⁷

Part III of this Note will examine how, despite its nominal regulation under the CCW, white phosphorus continues to be misused by countries such as Russia, Israel, Syria, and Iraq.¹⁸ While Protocol III of the CCW restricts the use of incendiary weapons, its loopholes and lack of enforcement mechanisms have allowed states to deploy white phosphorus in ways that cause widespread civilian suffering. Reports from human rights organizations, such as Amnesty International, document the recurring use of white phosphorus in densely populated areas, resulting in severe civilian casualties, long-term environmental destruction, and devastating psychological effects.¹⁹ In conflicts worldwide, white phosphorus has burned thousands of civilians, including children, and

12. *White Phosphorus*, WORLD HEALTH ORGANIZATION (JAN. 15, 2024), <https://www.who.int/news-room/fact-sheets/detail/white-phosphorus> [https://perma.cc/H25J-X9ED]; Collins, *supra* note 1.

13. Collins, *supra* note 1.

14. Collins, *supra* note 1.

15. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons 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, Oct. 10, 1980, 1342 U.N.T.S. 171 [hereinafter Protocol III].

16. *Id.*

17. Collins, *supra* note 1.

18. Brendan Rascius, *what is white phosphorus-and why is it so controversial? Israel accused of using it in Gaza*, MIAMI HERALD (Oct. 13, 2023), <https://www.miamiherald.com/news/nation-world/world/article280507374.html> [https://perma.cc/DUJ2-C9ZK]; *Lebanon: Evidence of Israel's unlawful use of white phosphorus in southern Lebanon as cross-border hostilities escalate*, AMNESTY INT'L (October 31, 2023), <https://www.amnesty.org/en/latest/news/2023/10/lebanon-evidence-of-israels-unlawful-use-of-white-phosphorus-in-southern-lebanon-as-cross-border-hostilities-escalate/> [https://perma.cc/J6FU-PC6C].

19. Rascius, *supra* note 18.

contaminated water supplies, making entire regions uninhabitable.²⁰ For example, during the conflicts in Syria and Iraq, white phosphorus has been used in urban centers, leading to mass displacement and permanent injuries among civilian populations.²¹

This section will argue that existing regulations are grossly insufficient and fail to uphold the fundamental principles of international humanitarian law, which prioritize the protection of civilians in armed conflict.²² The strategic military use of white phosphorus as a smokescreen and signal flare has often taken precedence over humanitarian concerns, making it unlikely that nations will voluntarily adopt stricter prohibitions.²³ However, the continued and well-documented misuse of this weapon underscores the urgent need for reform. If direct regulation proves politically unfeasible, alternative mechanisms must be explored to curb its abuse.²⁴

Thus, this Note will propose alternative solutions in Part VI, including broadening accountability through international legal bodies, establishing clearer definitions of incendiary weapons in current treaties, and suggesting regional enforcement mechanisms that bypass political gridlock at the international level. In addition, this Note will argue that universal jurisdiction can be used by states to prosecute those responsible for white phosphorus misuse, thereby creating legal precedents that may deter future violations.²⁵ Without substantial reform, the cycle of white phosphorus abuse will continue, and irreversible damage will be done to civilian populations across the globe.

If existing regulations are too weak to prevent the misuse of white phosphorus, then individual countries must take the initiative to hold perpetrators accountable. One way to achieve this is through universal jurisdiction, an international law doctrine that enables states to prosecute persons for serious crimes committed outside their territory if such crimes fall under universally accepted offenses such as crimes against humanity, torture, war crimes, and genocide.²⁶ As there is overwhelming proof of civilian harm caused by white phosphorus, universal jurisdiction can be exercised by states in order to prosecute military personnel and officials responsible for its unlawful deployment. This approach would bypass the loophole of international treaties and provide a direct path to accountability.

However, prosecuting such cases on a state-by-state basis is not enough.

20. WORLD HEALTH ORGANIZATION, *supra* note 12; Justin Salhani, *Israel's toxic legacy: White phosphorus bombs on south Lebanon*, AL JAZEERA (Mar. 25, 2024), <https://www.aljazeera.com/features/longform/2024/3/25/israels-toxic-legacy-bombing-southern-lebanon-with-white-phosphorus> [<https://perma.cc/8ATY-A3HQ>].

21. Collins, *supra* note 1.

22. Ahmad, *supra* note 11, at 100.

23. Collins, *supra* note 1.

24. *Id.*

25. *Universal jurisdiction: A preliminary survey of legislation around the world – 2012 update*, AMNESTY INT'L (Oct. 9, 2012), <https://www.amnesty.org/en/documents/ior53/019/2012/en/> [<https://perma.cc/PM2B-XST8>].

26. *Id.*

This Note suggests the creation of an international committee to oversee and prosecute the misuse of incendiary weapons. Similar to organizations like the United Nations Human Rights Council or the ICC, this specialized body would focus solely on monitoring, investigating, and prosecuting those who authorize and carry out the unlawful use of white phosphorus. There is a need to invest resources in such an institution because the humanitarian cost of incendiary weapons far outweighs their military benefits.

This need is particularly urgent in areas heavily affected by white phosphorus attacks, such as Gaza, which has a population of approximately 2 million people, nearly half of whom are children.²⁷ The indiscriminate and wide use of incendiary weapons amidst densely populated zones exacerbates an already dire humanitarian crisis. An organization responsible for monitoring the application of white phosphorus would not only bring justice to the offenders but also collect and document evidence on white phosphorus usage, providing crucial evidence in subsequent proceedings. Through an institutionalized process of oversight and prosecution of abuses, the world could make considerable strides toward preventing subsequent humanitarian disasters resulting from the use of these weapons.

I. THE EVOLUTION AND REGULATION OF CHEMICAL WARFARE

A. *What Is Chemical Warfare?*

Chemical warfare, defined as the use of chemical agents to cause harm or death in armed conflict, has a complex and often grim history. Chemical agents differ from traditional weapons, which exert physical effects directly, in that they are specifically intended to disrupt the physiological processes of living things.²⁸ This type of warfare indiscriminately and prolongedly harms not only combatants but also civilian communities, with catastrophic consequences that can persist long after hostilities have ended.²⁹ The agents of chemical warfare can be classified into several categories, including toxins, asphyxiants, and incendiary agents.³⁰ The agents have played significant roles in shaping military strategy and international law during the 20th and 21st centuries.

The earliest large-scale application of chemical warfare was in World War I, when military forces used chlorine and mustard gas against other troops in

27. Linah Mohammad, *Children make up nearly half of Gaza's population. Here's what it means for the war*, NPR (Oct. 19, 2023), <https://www.npr.org/2023/10/19/1206479861/israel-gaza-hamas-children-population-war-palestinians> [<https://perma.cc/C62A-85FC>].

28. K. Ganesan, S. K. Raza & R. Vijayaraghavan, *Chemical Warfare Agents*, 2 J. PHARM. & BIOALLIED SCI. 166 (2010), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3148621/> [<https://perma.cc/K7EE-AVEG>].

29. *Id.*

30. *Id.*

combat.³¹ The atrocities of the agents made a lasting impression on war tactics and evoked widespread outcry among civilians. The indiscriminate use of chemical weapons not only caused casualties but also traumatized entire populations, and it became a psychological weapon that persisted in the collective memory.

B. The First Attempt to Regulate

Reacting to the indiscriminate destruction wrought by chemical weapons, the international community moved to create regulations on their use. This resulted in the Geneva Protocol of 1925, which sought to ban the use of asphyxiating and poisonous gases in warfare.³² The Protocol expressly prohibited the use of "asphyxiating, poisonous, or other gases, and all analogous liquids, materials, or devices."³³ Nevertheless, notwithstanding its importance as the first significant international treaty to deal with chemical and biological weapons, the Geneva Protocol had some deficiencies. It banned the use of chemical weapons alone but not their development, production, or storage.³⁴ Therefore, it created a loophole that allowed states to continue producing chemical agents, rendering the treaty ineffective.

In spite of the Geneva Protocol, the utilization of chemical weapons continued in future wars, most egregiously in the Iran-Iraq War during the 1980s.³⁵ Not only were chemical agents employed against military forces, but they were also used against civilian populations, revealing once again the shortcomings of the current rules.³⁶ The flagrant disregard of the Geneva Protocol during this period illustrated the necessity for a more comprehensive regime to deal with chemical weapons.

In response to these ongoing problems, the Chemical Weapons Convention (CWC) was implemented in 1993. This treaty expanded on the Geneva Protocol by prohibiting not just the use of chemical weapons but also their development, production, acquisition, and stockpiling.³⁷ It included verification and enforcement measures, which made it one of the strongest arms control treaties available. The CWC broadly defined chemical weapons, in an effort to close the loopholes that had, up to then, permitted states to evade responsibility.³⁸

There remain difficulties in the categorization of incendiary weapons,

31. JEFFREY K. SMART, *History of Chemical and Biological Warfare: An American Perspective*, in MED. ASPECTS OF CHEM. AND BIOLOGICAL WARFARE 9, 16 (1997).

32. *Id.* at 29.

33. Geneva Protocol, *supra* note 4.

34. *Id.*

35. Javed Ali, *Chemical Weapons and the Iran-Iraq War: A Case Study in Noncompliance*, 8 NONPROLIFERATION REV. 43 (2001).

36. *Id.* at 52.

37. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction art. I, Jan. 13, 1993, 1974 U.N.T.S. 45 [hereinafter CWC].

38. *Id.*

including white phosphorus. Although incendiary weapons are dealt with under Protocol III of the CCW, white phosphorus is not a chemical weapon according to the CWC or the CCW.³⁹ This ambiguity has resulted in abuse in several conflicts, and it has been used by certain states to utilize white phosphorus in a manner that would possibly constitute war crimes if the weapon were deemed a chemical agent.

*C. Why the International Criminal Court Does Not
Prosecute Chemical Warfare*

The formation of the ICC in 2002 was a significant development in the international fight against war crimes, including those related to chemical weapons. Article 8 of the Rome Statute specifically enumerates the use of biological, chemical, and eludes to nuclear weapons as war crimes.⁴⁰ The fact still is that the ICC has a limited jurisdiction to try individuals for chemical warfare.

There are two important requirements that must be fulfilled for the ICC to exercise jurisdiction: (1) the crime must either have been committed on the territory of a state party to the Rome Statute or by a national of a state party; and (2) the ICC will need to determine whether the alleged crime is subject to its jurisdiction.⁴¹ Regrettably, the above requirements pose formidable challenges. Because many states are not parties to the Rome Statute, the ICC's ability to hold offenders of chemical warfare accountable is limited. The threshold of proof for determining jurisdiction is so stringent that it becomes almost impossible to prosecute the offenders.⁴²

As noted by international law scholar William Schabas, the challenge of enforcing international law in cases of war crimes highlights the shortcomings of the ICC's jurisdictional framework.⁴³ This is particularly concerning given ongoing conflicts where chemical weapons may be utilized. The absence of effective legal mechanisms too frequently leaves an impression of impunity for those who commit such atrocities.

The history of chemical warfare reveals a disappointing reality: in spite of the establishment of international agreements banning such lethal weapons, they have not been abandoned. Although the Geneva Protocol and the CWC were intended to prevent chemical attacks, enforcement under the Rome Statute remains sporadic due to jurisdictional limitations.⁴⁴ Some weapons' classifications add complexity to the case. White phosphorus, for example, an incendiary chemical

39. *Id.*

40. Rome Statute of the International Criminal Court art. 8 (xxvii), July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute].

41. Ahmad, *supra* note 11.

42. *Id.* at 108.

43. William A. Schabas, *The International Criminal Court and Non-Party States*, 28 WINDSOR Y.B. ACCESS TO JUST. 1, 3 (2010).

44. *Id.*

capable of causing extensive and indiscriminate destruction, is not necessarily banned under chemical weapons conventions. Due to this legal loophole, its misuse is frequently never punished. Aside from classification problems, it is very difficult to prosecute those who use chemical weapons due to the ICC's limited jurisdiction.

The Rome Statute mandates that the ICC prosecute only when the crime was perpetrated within a party state or against a national of a party state.⁴⁵ These limitations have the operational consequence of rendering prosecution practically impossible even when solid evidence of chemical weapons use exists. Political barriers and legal technicalities further prevent or delay accountability. If the ICC and the Rome Statute do not apply to white phosphorus, then why does the CWC govern its use?

II. THE ROLE OF WHITE PHOSPHORUS IN MODERN WARFARE AND LEGAL FRAMEWORK

A. "Willie Pete": Understanding White Phosphorus

White phosphorus is an extremely reactive allotropic.⁴⁶ It is wax-like, colorless or white, highly flammable, and dangerous when exposed to oxygen.⁴⁷ This agent is soft and can easily be cut into pieces, which ignite spontaneously when exposed to air. The substance burns at approximately 1,500°F.⁴⁸ It produces a dense, toxic smoke when reacting with atmospheric oxygen; visibility cannot be seen past the smoke. Because of its extreme reactivity, white phosphorus is a hazardous chemical and requires special handling to prevent accidental ignition.⁴⁹ White phosphorus is soluble in organic solvents and is commonly used in the production of phosphoric acid and fertilizers, though it is most notoriously used as a weapon.⁵⁰ The substance is a key component in various munitions such as smoke shells, grenades, and artillery rounds.⁵¹

White phosphorus is often referred to by its military nickname, "Willie Pete."⁵² The origins of that name remain unknown, but it is believed to have been a term coined by soldiers to describe the substance during World War II.⁵³ American soldiers used the term "Pete" to refer to any phosphorus-based smoke round and incendiary shell.⁵⁴ It thus became used often during military

45. *Id.* at 2-3.

46. Racijs, *supra* note 18.

47. *Id.*

48. Marc Garlasco et al., *Rain of Fire- Israel's Unlawful Use of White Phosphorus in Gaza*, HUM. RTS. WATCH, 3 (Mar. 25, 2009), <https://www.hrw.org/reports/iopt0309webwcover.pdf> [<https://perma.cc/E6P4-92DX>].

49. Racijs, *supra* note 18.

50. *Id.*

51. *White Phosphorus*, *supra* note 12.

52. Collins, *supra* note 1.

53. *See id.*

54. *Id.*

campaigns with such types of ammunition, and the phrase has since widely been recognized in military circles when referring to the white phosphorus mention.⁵⁵ The nickname is now used by civilians, as many military video games have begun using the term.⁵⁶

The use of this nickname demonstrates how soldiers and military personnel often take a more colloquial approach to the dangerous weapons they use in combat. Despite the playful nature of the term, the use of Willie Pete is far from benign. The effects of white phosphorus, particularly when used in civilian areas, are catastrophic and result in horrific suffering for civilians exposed.

As mentioned, white phosphorus is a highly reactive chemical, and its implications for humans are very adverse. White phosphorus burns immediately upon exposure to air, producing heat and toxic gases that can cause human injury.⁵⁷ Its most fundamental hazard is the tendency to ignite at contact with oxygen. This leads to severe burns to the skin and internal organs if inhaled.⁵⁸ When white phosphorus is used in civilian areas, the consequences can be lethal. The chemical burns caused by white phosphorus are often deep and irreversible.⁵⁹ These burns are unlike typical fire burns because they continue burning until the phosphorus is deprived of oxygen.⁶⁰ The burns are extremely painful and could cause long-lasting tissue damage. Further, once phosphorus penetrates the skin, it can further damage muscles, nerves, and blood vessels.⁶¹

Inhalation of the white phosphorus fumes is equally dangerous. The toxic smoke produced by burning white phosphorus can cause severe respiratory distress and lung damage.⁶² The phosphorus pentoxide reacts with water in our respiratory system to form phosphoric acid.⁶³ This reaction causes chemical burns to the lungs, leading to difficulty breathing, lung disease, and death.⁶⁴ The inhalation of phosphorus smoke can cause liver and kidney damage.⁶⁵ The use of white phosphorus is equally harmful to the environment. The substance burns hot enough to potentially destroy vegetation and deep soil.⁶⁶ It can also contaminate water supplies and cause mass destruction when deployed in densely populated areas.⁶⁷

55. *Id.*

56. *Willy Pete*, CALL OF DUTY WIKI, https://callofduty.fandom.com/wiki/Willy_Pete [<https://perma.cc/ZL2N-K7HH>] (last visited Dec. 20, 2025).

57. *White Phosphorus*, *supra* note 12.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, WHITE PHOSPHORUS TOX FAQS (1997), <https://www.atsdr.cdc.gov/toxfaqs/tfacts103.pdf> [<https://perma.cc/EZH7-QL9N>] (last visited Oct. 17, 2024).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *See id.*

All of these issues come into play when white phosphorus is used in zones of armed conflict. In areas that already have little to no aid, deploying white phosphorus can be costly. Civilians will have no way to treat the resulting chemical burns or other health issues. They also cannot fix the environmental impact with the limited relief they have, worsening their situation.

Nevertheless, white phosphorus continues to be used even in modern military conflicts. The widespread use of white phosphorus is mainly due to its practical advantages as a smoke screen and fire starter. These advantages are realized during combat situations where movement may need to be concealed.

One of the key tactical reasons militaries use white phosphorus is its inherent ability to create thick smoke.⁶⁸ When ignited, white phosphorus produces a dense, white cloud that can obscure vision, thus acting as a smoke cover for troops. This smoke not only obscures movement from enemies but also upsets enemy targeting systems, including infrared and optical sensors, making it difficult to strike the intended target.⁶⁹

White phosphorus is also used to mark targets, with common contexts including artillery and airstrikes.⁷⁰ The fact that white phosphorus burns fiercely and for a long time makes it a very effective means of indicating the enemy's positions for subsequent attacks. The chemical's incendiary nature also makes it useful for destroying stockpiles and enemy vehicles.⁷¹ However, the use of white phosphorus as a weapon becomes controversial when it is deployed in or around civilian areas. While its military utility is often cited as justification, the human cost can be staggering.

B. The Convention on Certain Conventional Weapons and Gaps in Its Enforcement

The CCW, adopted in 1980, aimed to mitigate the humanitarian effects of specific weapons that were considered excessively injurious or indiscriminate.⁷² In fact, under the CCW, there is an added protocol called Protocol III, dedicated to incendiary weapons alone.⁷³ The Protocol defines incendiary weapons as those “primarily designed to set fire to objects or to cause burn injury to persons” and prohibits their use in civilian areas.⁷⁴ However, there are significant loopholes, especially with respect to white phosphorus. Since white phosphorus is often considered a dual-use material that has legitimate military uses, such as to cover troop movements by creating smoke or to illuminate targets, it is not,

68. Logan Nye, *The Legal Argument for Willie Pete as a Weapon*, WE ARE THE MIGHTY (Dec. 15, 2022, at 6:59 PST), <https://www.wearethemighty.com/popular/white-phosphorous-legal-war-weapons/> [https://perma.cc/8XMM-Z89C].

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. Protocol III, *supra* note 15.

74. *Id.* at 171-72.

strictly speaking, prohibited under Protocol III unless employed indiscriminately against civilian targets.⁷⁵

Aside from the limitations identified above, enforcement of the CWC and Protocol III has been problematic. Key states, including the United States, Israel, and Russia, have either failed to ratify certain provisions or have interpreted them in ways that allow the continued use of controversial weapons like white phosphorus.⁷⁶ The United States has ratified the CCW, but with reservations regarding Protocol III, which limits its enforceability in American military operations.⁷⁷ This selective adherence undermines the universal applicability of these treaties and complicates efforts to hold violators accountable.

Besides, there is no express classification of white phosphorus either as a chemical or incendiary weapon within the ambit of these treaties. Thus, its usage falls into a regulatory gray area. The ambiguity allows states to justify their deployments under the guise of military necessity, even when they cause significant harm to civilians. This loophole has been exploited in numerous conflicts, including in Gaza, Iraq, and Syria, where white phosphorus has been used in densely populated areas with devastating consequences.⁷⁸

The historical development of international regulation on chemical and incendiary weapons demonstrates both progress and persistent challenges. While the Geneva Protocol, the CWC, and Protocol III of the CCW established important norms, their limitations leave huge gaps in accountability. The dual-use nature of white phosphorus, combined with its exclusion from more robust regulatory frameworks, underlines the demand for more stringent international standards. Closing these gaps will require not only revisiting existing treaties but also adopting new mechanisms to address the unique challenges posed by weapons like white phosphorus in modern warfare. This historical context provides a foundation for understanding the current regulatory landscape and the urgent need for reform.

III. DOCUMENTED WHITE PHOSPHORUS ATTACKS AND IMPACT

While some countries argue that its primary purpose is to create smokescreens or to serve as a lighting source during battle, its application in civilian areas has raised serious humanitarian and legal concerns, as evidence of its use in such areas has become available. White phosphorus often leaves severe injuries, civilian casualties, and long-term environmental damage, but only

75. Nye, *supra* note 68.

76. Alan Arms & Marija Ristic, *Israel/OPT: Identifying the Israeli army's use of white phosphorus in Gaza*, CITIZEN EVIDENCE LAB: AMNESTY INT'L (Oct. 13, 2023), <https://citizeneyvidence.org/2023/10/13/israel-opt-identifying-the-israeli-armys-use-of-white-phosphorus-in-gaza/> [https://perma.cc/U52T-UKDR].

77. S. REP. NO. 110-22 (2008) at 3-4, <https://www.congress.gov/congressional-report/110th-congress/executive-report/22/1> [https://perma.cc/UG2V-6CDB] (last visited Sep. 10, 2025).

78. Rascius, *supra* note 18.

weak enforcement provisions exist under international law.

A. Israel (2008)

The most widely known use of white phosphorus was in Operation Cast Lead (2008-09), when Israeli troops used white phosphorus shells in Gaza.⁷⁹ Human rights groups, including Amnesty International and Human Rights Watch, and a United Nations fact-finding mission found that white phosphorus shells were used in civilian areas, including around schools, hospitals, and United Nations bases.⁸⁰ The material's incendiary nature led to severe burns, destruction of civilian infrastructure, and many deaths.

Although Israel initially denied the use of white phosphorus, later admissions justified its use as a means of creating smokescreens and concealing troop movements.⁸¹ Senior Military Analyst Marc Garlasco argued that deploying such a weapon in a crowded urban environment violated international humanitarian law.⁸² The UN 71-page report (2009) stated that these actions could have been war crimes because the indiscriminate impact of white phosphorus on civilians and infrastructure was evident.⁸³

The effects of this attack were felt beyond immediate death tolls. Gaza's water and soil sources were polluted, rendering farming operations almost impossible in targeted zones.⁸⁴ Structures and houses were left permanently damaged, aggravating the humanitarian situation in an already dire area.⁸⁵ Although worldwide condemnation ensued, legal measures were scant, illustrating the difficulties of bringing state actors to book for the use of white phosphorus.

B. US-Led Coalition in Iraq and Syria (2017)

White phosphorus use has not been limited to state-state conflicts. White phosphorus munitions were utilized by the U.S.-coalition in Iraq and Syria to attack ISIS in Mosul, Iraq (2016-17) and Raqqa, Syria (2017).⁸⁶ Although the coalition claimed the material was used primarily to generate smokescreens and target enemy positions, video footage showed its use in urban areas. Eyewitness accounts further alleged that the attacks caused civilian fatalities and the

79. Garlasco, *supra* note 48.

80. *Id.*

81. *Id.* at 4.

82. *Id.* at 62.

83. *Id.* at 65.

84. *Id.* at 55.

85. *Id.* at 49-56.

86. *Iraq/Syria: Danger from US White Phosphorus*, HUM. RTS. WATCH (June 14, 2017), <https://www.hrw.org/news/2017/06/14/iraq/syria-danger-us-white-phosphorus> [<https://perma.cc/8SJ7-SJ4X>].

displacement of entire neighborhoods.⁸⁷

Amnesty International and Human Rights Watch reports documented horrific wounds to civilians.⁸⁸ White phosphorus burns continue to smolder in the victim's body, rendering treatment virtually impossible and frequently lethal or permanently crippling.⁸⁹ Uncontained spread in urban areas is the cause of widespread destruction.⁹⁰ Not much has been done regarding such conduct despite overwhelming proof, which likewise signifies loopholes for international law enforcement of incendiary weapons.

C. Russia's War on Ukraine (2022)

The use of white phosphorus by Russian troops has been widely reported since February 2022, when Russia invaded Ukraine to fight on Luhansk's soil.⁹¹ The evidence consisted of videos supplied by the authorities in Ukraine, satellite photographs, and eye reports seemed to indicate that the bombings were likely incendiary white phosphorus bursts.⁹² Notwithstanding the subsequent investigations, experts view the use of such weaponry targeting civilians as an international humanitarian law violation.

White phosphorus was reportedly used in Mariupol, where residents described widespread fires, burns, and damage to homes and hospitals.⁹³ As in earlier conflicts, the Russian-aligned officials deny reports that they used incendiary munitions against civilian targets, but the evidence is compelling nonetheless.⁹⁴ If true, the attacks would be war crimes under the Geneva Conventions, but enforcement is complicated by geopolitical forces.⁹⁵

D. Israel's Use of White Phosphorus in Lebanon (2006 and 2023)

In the 2006 war between Israel and Hezbollah, Lebanon accused Israel of using white phosphorus weapons in southern Lebanon.⁹⁶ The Lebanese government and medical officials reported civilian casualties from severe burns

87. *Id.*

88. *Id.*

89. *Id.*

90. Marc Garlasco, *supra* note 79.

91. Juliette Bénézit & Marie Slavicek, *War in Ukraine: What are white phosphorus bombs?*, LE MONDE (Mar. 25, 2022, 5:29 CET), https://www.lemonde.fr/en/international/article/2022/03/25/war-in-ukraine-what-are-white-phosphorus-bombs_5979151_4.html [<https://perma.cc/FN5N-7PHJ>].

92. *Id.*

93. Yuras Karmanau & Adam Schreck, *Ukraine investigates claim that phosphorus munitions were dropped in Mariupol*, PBS NEWS (April 12, 2022, 11:05AM EDT), <https://www.pbs.org/newshour/world/ukraine-investigates-claim-that-phosphorus-munitions-were-dropped-in-mariupol> [<https://perma.cc/AA3G-QFTW>].

94. *Id.*

95. Geneva Protocol, *supra* note 4.

96. Salhani, *supra* note 20.

that were consistent with white phosphorus exposure.⁹⁷ Israeli forces initially denied the claim, but later confirmed it, again justifying their actions as military necessities on a battlefield and not as attacks on civilians.⁹⁸

The long-term consequences of such attacks were catastrophic. In addition to immediate casualties, the environmental destruction rendered large areas unlivable, as contaminated land and water resources disrupted agriculture and local economies.⁹⁹ As in Gaza, there was no accountability for these attacks, reflecting the weaknesses in international enforcement mechanisms.

Israel has indicated, as recently as 2023, that it has again employed white phosphorus in South Lebanon and Gaza, sparking renewed global outrage.¹⁰⁰ Human Rights Watch has verified the presence of white phosphorus shells among civilian populations through video and eyewitness accounts.¹⁰¹ The use of this chemical weapon in civilian residential areas escalated tensions and caused severe injuries among civilians. The latest incidents once again highlight how white phosphorus remains a repeat perpetrator of contemporary warfare, even as it is nearly universally reviled and exists in a state of legal ambiguity.

E. The Broader Impact: Civilian Harm and Environmental Damage

White phosphorus inflicts multi-dimensional harm on civilian populations. The unusual combustion characteristics of the material make it essentially impossible to extinguish once it has come into contact with skin, often causing deep tissue burns that are fatal or permanently disfiguring.¹⁰² Survivors face long-term medical consequences, including chronic pain, respiratory distress, and psychological trauma from witnessing the gruesome wounds inflicted on their communities.

In addition to the immediate human loss, environmental pollution is one of the most serious consequences of white phosphorus use. The chemical contaminates water and soil, rendering the affected land uninhabitable for humans.¹⁰³ Wildlife is not spared either, as poisoned water sources and burnt landscapes lead to ecosystem collapse in the affected regions.¹⁰⁴

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Questions and Answers on Israel's Use of White Phosphorus in Gaza and Lebanon*, HUM. RTS. WATCH (Oct. 12, 2023), <https://www.hrw.org/news/2023/10/12/questions-and-answers-israels-use-white-phosphorus-gaza-and-lebanon> [<https://perma.cc/TJ8H-AJGN>].

102. *White Phosphorus*, *supra* note 12.

103. United Nations Environment Programme, *Damage to Gaza Causing New Risks to Human Health and Long-Term Recovery*, NEW UNEP ASSESSMENT, (June 18, 2024), <https://www.unep.org/news-and-stories/press-release/damage-gaza-causing-new-risks-human-health-and-long-term-recovery> [<https://perma.cc/3RXW-F2N8>].

104. *See generally*, Antoine Kallab & Leila Rossa Mouawad, *The Socio-Environmental Impact of White Phosphorous Ammunition in South Lebanon: Analysis and Mitigation Strategies*,

For example, the residue of white phosphorus bombings in Gaza impeded reconstruction and posed long-term health risks through lingering contamination.¹⁰⁵ The same environmental devastation was seen elsewhere, including Mosul and Raqqa, underscoring the enduring effects of white phosphorus use in urban warfare.¹⁰⁶

IV. THE FIRST REFORMS: STRENGTHENING INTERNATIONAL REGULATIONS OF INCENDIARY WEAPONS

The international legal framework governing incendiary weapons, particularly white phosphorus, is in dire need of reform. The existing treaty, Protocol III, has proven insufficient to adequately regulate the use of white phosphorus, especially in civilian contexts. Although Protocol III prohibits the use of incendiary weapons in populated areas, ambiguities and a lack of comprehensive enforcement have allowed states to exploit loopholes in the law, with civilians suffering the most consequences.¹⁰⁷ The following section offers reforms for the augmentation of existing protocols and the creation of new treaties to fill in the knowledge gap that has created an accountability shortfall with respect to the use of incendiary weapons like white phosphorus.

A. Banning White Phosphorus Completely

The most immediate and self-evident reform would be to ban white phosphorus as an outright, scheduled chemical weapon under existing international accords. But this prohibition is impractical since it has essential military applications, including illumination, signals, and generating smoke screens to cover up the movements of troops.¹⁰⁸ If an outright prohibition were feasible, it would most likely have already been included in past chemical warfare norms, such as the CWC or the CCW. The reason that it is outside of these bans is exactly due to its acknowledged tactical value, which renders a complete ban unlikely to receive international acceptance. Rather, reforms need to concentrate on constraining its use in manners that reduce civilian damage while maintaining its legitimate military roles.

B. Strengthening Protocol III

The reform of Protocol III is a key first step toward better regulation of

AUB NATURE CONSERVATION CTR. (Nov. 2023), <https://www.aub.edu.lb/natureconservation/Documents/Brief%20WP%20English.pdf> [<https://perma.cc/7SCP-CGJM>].

105. See HUM. RTS. WATCH, *supra* note 86.

106. *Id.*

107. Unchecked Harm: The Need for Global Action on Incendiary Weapons, HUM. RTS. WATCH (Nov. 2022), https://www.hrw.org/sites/default/files/media_2022/11/incendiariesreport_11.08_final.pdf [<https://perma.cc/959R-JWAL>].

108. Collins, *supra* note 1.

incendiary weapons. The first to be discussed is the definition of incendiary weapons under the protocol. As it stands, the treaty language fails to capture the full scope of weapons like white phosphorus.¹⁰⁹ Redefining the standards of incendiary weapons is a crucial step toward addressing this gap. This would entail broadening the definition to include dual-use materials like white phosphorus, which serve legitimate military purposes yet cause devastating effects in civilian areas. Such an expanded definition prevents states from exploiting technicalities to continue using this weapon in populated regions, forcing legal language to keep pace with evolving battlegrounds.

A second area of reform involves clearer prohibitions on the use of incendiary weapons in civilian areas. While Protocol III already prohibits the use of incendiary weapons against civilian targets, it does not account for the effects of dual-use weapons like white phosphorus, which can be used for military purposes while still causing significant civilian harm.¹¹⁰ This loophole should be closed by revising the protocol to explicitly prohibit any use of an incendiary weapon, including white phosphorus, in an urban or other densely populated environment. This would remove any gray areas or wiggle room and guarantee that any military benefit derived from these weapons would not come at the expense of civilian lives and infrastructure.

Another key area of reform needed is the inclusion of non-state actors within the scope of Protocol III. Non-state actors, such as insurgent groups and militias, have increasingly used weapons during urban warfare in conflicts in recent times.¹¹¹ However, these actors generally fall outside the jurisdiction of traditional international treaties, and accountability mechanisms are lacking for their actions.¹¹² This gap calls for a revision to Protocol III, ensuring ways to hold non-state entities responsible for using incendiary weapons.¹¹³ In this way, international law would extend these prohibitions to non-state actors, further developing and solidifying its system regulating incendiary weapons, while preventing such groups from exploiting loopholes in the law.

The prosecution of the use of white phosphorus as an incendiary weapon often relies on proof of intent, which is quite difficult to prove under international law.¹¹⁴ White phosphorus is a dual-use item: it may be used for legitimate military purposes, including creating smoke screens or illumination to mark targets, but it may also be weaponized with devastating impacts on

109. Protocol III, *supra* note 15.

110. *See id.*

111. *Middle East and North Africa 2024*, AMNESTY INT'L (<https://www.amnesty.org/en/location/middle-east-and-north-africa/report-middle-east-and-north-africa/>) [<https://perma.cc/4KVC-TVRR>] (last visited Sep. 14, 2025).

112. *See id.*

113. *Id.*

114. Matthew J. Aiesi, *The Jus in Bello of White Phosphorus: Getting the Law Correct*, LAWFARE (Nov. 26, 2019), <https://www.lawfaremedia.org/article/jus-bello-white-phosphorus-getting-law-correct> [<https://perma.cc/F4WT-6F9X>].

civilians and infrastructure.¹¹⁵ The latter would need to be evidenced clearly as having been deployed with the intent to cause harm to non-combatants¹¹⁶ specifically, or to violate humanitarian considerations per se, and not to fulfill a legitimate military purpose.¹¹⁷ This is problematic in an armed conflict where the same act, such as attacking a location, can be perceived as both a strategic imperative and an intentional attack on civilians.¹¹⁸ Furthermore, military forces can use the vagueness of their legal standing by claiming tactical necessity to employ the device, while evading liability for the incidental damage it inflicts.¹¹⁹ The legal gray area involved makes it exceedingly difficult to develop a case that meets the burden of proof necessary for prosecution under international law.

Finally, to ensure all these changes are effective, provisions for monitoring compliance and reporting are necessary. A strong monitoring and enforcement system would provide greater transparency and accountability for those using incendiary weapons.¹²⁰ Proposals for such bodies could include the establishment of an international commission empowered to investigate incidents involving white phosphorus and other incendiary weapons. This body would be able to impose sanctions on violators and provide greater avenues for affected communities to report violations. This would also have the added effect of fostering transparency initiatives that might include regular reporting by state parties on military practices and the use of incendiary weapons, which would keep the international community vigilant in its protection of civilians.

C. Ratifying a New Treaty

Besides strengthening Protocol III, there is an urgent need to broaden the scope of the CCW to more effectively deal with the use of white phosphorus in civilian areas.¹²¹ This would include punishing the use of white phosphorus in populated areas as a serious violation of international law. While Protocol III discusses incendiary weapons in general, a more explicit framework for regulating white phosphorus could emanate from the CCW. This extended framework would, once and for all, establish that the use of white phosphorus as a weapon of war, especially in urban areas, is an unacceptable breach of

115. *Id.*

116. *Practice relating to Rule 1, The Principle of Distinction between Civilians and Combatants*, ICRC DATABASE: CUSTOMARY IHL: PRAC., <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule1> [<https://perma.cc/XG9B-V45W>] (last visited Sept. 14, 2025).

117. Collins, *supra* note 1.

118. Luigi Daniele, *Incidentality of the Civilian Harm in International Humanitarian Law and its Contra Legem Antonyms in Recent Discourses on the Laws of War*, 29 J. OF CONFL. & SEC. L. 21 (2024), <https://doi.org/10.1093/jcsl/krae004> [<https://perma.cc/CZ75-B29M>].

119. Collins, *supra* note 1.

120. Maya Brehem, *Protecting Civilians From the Effects of Explosive Weapons: An Analysis of International Legal and Policy Standards*, U.N. INST. FOR DISARMAMENT RSCH. (Aug. 2012), <https://unidir.org/files/publication/pdfs/protecting-civilians-from-the-effects-of-explosive-weapons-en-293.pdf> [<https://perma.cc/D7HN-8UVV>].

121. Collins, *supra* note 1.

international humanitarian law and human rights, which warrants stronger deterrents and penalties.¹²²

Second, the expanded CCW should provide for binding compliance measures, including sanctions, audits, and penalties against violators. Today, the CCW depends on voluntary compliance, which has proven farcical in the face of violations by state and non-state actors.¹²³ The introduction of binding mechanisms would require states to comply with international regulations on incendiary weapons and establish penalties for non-compliance. These actions could include financial penalties, trade embargoes, and limitations on military assistance for states identified for irresponsible or unlawful use of white phosphorus.

D. This Note's Sample Reform to Protocol III

Because this note urges a drastic revision of current regulations, the following is a sample treaty on incendiary weapons that differs from Protocol III in addressing its shortcomings and closing remaining loopholes. The proposed system has more specific definitions, stricter limits on the deployment of such incendiary weapons, and binding enforcement provisions to ensure compliance. The reform to Protocol III would be as follows:

Prohibition and Regulation of White Phosphorus and Incendiary Weapons in Civilian Populations aims to fill existing loopholes and establish strict regulations regarding the use of incendiary weapons. *Article 1* makes a provision for the field of application such that this protocol will extend to the production, use, and stockpiling of all incendiary weapons, including white phosphorus, in international armed conflicts.¹²⁴ The bans are on both state and non-state actors, including insurgents and paramilitary groups.¹²⁵ *Article 2* is particularly aimed at the use of incendiary weapons in or adjacent to civilian-populated areas.¹²⁶ "Close proximity" is not less than 5,000 meters (approximately 3.1 miles)¹²⁷ from any civilian center, a definition which will be determined and updated by the International Regulatory Commission on Incendiary Weapons (IRC-IW).¹²⁸ The IRC-IW will also be charged with conducting surveys and updating geographic classifications of civilian and military zones to ensure conformity. Any use of incendiary weapons in civilian

122. U.N. SCOR, 78th Sess., 9632d mtg. at 16, U.N. Doc. S/PV.9632 (Resumption 1) (May 21, 2023), <https://documents.un.org/doc/undoc/pro/n24/140/54/pdf/n2414054.pdf> [<https://perma.cc/5A73-32FK>].

123. U.N. Convention on Certain Conventional Weapons, art. 3, Oct. 10, 1980, 1342 U.N.T.S. 137.

124. Protocol III, *supra* note 13.

125. *Id.*

126. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) art. 2, Oct. 10, 1980, 1342 U.N.T.S. 137.

127. This number is given as an example and is subject to change.

128. This Committee does not currently exist but would be created to oversee the use of incendiary weapons.

spaces will constitute a grave violation of international humanitarian law.

Article 3 establishes procedures for verification and compliance by creating an International Monitoring and Enforcement Body (“IMEB”). IMEB will be authorized to conduct surprise inspections, impound forensic evidence, and document claimed violations. In addition, all state parties are mandated to submit annual reports on their military’s use, storage, and deployment of incendiary weapons.¹²⁹ Failure to comply will have sanctions, including economic sanctions, restrictions on military aid, and potential referral to the ICC for prosecution.

Article 4 has very limited exceptions, and incendiary weapons are employed only against unoccupied, fixed military positions subject to stringent IMEB verification. Any state or non-state actor that wishes to utilize such weapons must obtain advance permission, except for cases of imminent and verifiable national defense needs. With these measures, this proposed protocol aims to strengthen international norms and encourage responsibility in the use of incendiary weapons.

V. THE SECOND REFORM: ALLIANCES AND THE CREATION OF NEW INTERNATIONAL BODIES

A. Regional Alliances

Regional cooperation and agreements can also be a crucial factor in improving international standards for regulating incendiary weapons.¹³⁰ Regional cooperation and agreements would mean regional neighbor-states coming together to build commonly unified standards for the application and trade of incendiary weapons.¹³¹ This may involve bilateral commitments¹³² regarding the ban on production, sale, and use of white phosphorus, or an agreement to cooperate in investigations and prosecutions for unlawful use. Examples from other areas of international law, such as regional arms control agreements, can serve as a model for how such initiatives could work. Additionally, regional organizations could bridge gaps among states resistant to international norms, enabling dialogue and cooperation on regulating incendiary weapons.

Such regional partnerships could further extend to regional pacts on the humanitarian effects of incendiary weapons and shared efforts in monitoring

129. See *Myths and Realities about Incendiary Weapons*, HUM. RTS. WATCH (Nov. 14, 2018), <https://www.hrw.org/news/2018/11/14/myths-and-realities-about-incendiary-weapons> [<https://perma.cc/BL4X-65A9>].

130. *Disarmament*, U. N., <https://www.un.org/en/global-issues/disarmament> [<https://perma.cc/6Y2F-QNBS>] (last visited Feb. 16, 2025).

131. *Id.*

132. Adam Hayes, *Bilateral Contract: Definition, How it Works, and Example*, INVESTOPEDIA (Apr. 22, 2024), <https://www.investopedia.com/terms/b/bilateral-contract.asp> [<https://perma.cc/ZBT7-9FCB>].

and enforcement. The pacts could provide aid to the victims of white phosphorus incendiary attacks and establish methods for investigating violators and holding perpetrators accountable. Similarly, regional agreements could nurture cooperation among neighboring states and create momentum for broader international reforms, with improved mechanisms to enforce laws regulating incendiary weapons.¹³³

A multi-faceted approach is required to regulate incendiary weapons such as white phosphorus: strengthening existing treaties, introducing binding mechanisms to ensure greater compliance, and increasing international cooperation. Reinforcing Protocol III of the CCW and making the CCW as comprehensive as possible are key to the critical humanitarian and environmental impacts of white phosphorus.¹³⁴ But for this reform to actually take hold, what must complement it is a more robust enforcement mechanism and regional coordination to ensure accountability is secured, and recurrence is avoided.¹³⁵ In addressing these gaps in international law, the international community could go a long way toward putting an end to the ignoble use of white phosphorus in civilian concentrations and limiting its horrific effects.

B. The Creation of New International Bodies

Apart from the original reform, this note introduces the creation of new international institutions to regulate the use of incendiary weapons. The IRC-IW and the IMEB would be the primary institutions to regulate, monitor, and ensure compliance with the newly proposed international norms on the use of incendiary weapons, in particular white phosphorus.¹³⁶ These institutions would be established under multilateral agreements, with both state and non-state actors, and would exist within the broader framework of international humanitarian law.¹³⁷

C. Establishing the IRC-IW and IMEB

The creation of the IRC-IW and IMEB would be a multilateral agreement to be ratified by a large majority of state parties. The agreement would establish the composition, mandate, and jurisdiction of these bodies. The

133. Press Release, Security Council, Today's Challenges Require More Effective and Inclusive Global Cooperation, Secretary-General Tells Security Council Debate on Multilateralism, U.N. Press Release, SC/15140 (Dec. 14, 2022), <https://press.un.org/en/2022/sc15140.doc.htm> [<https://perma.cc/F8K2-DXZJ>].

134. *Id.*

135. *Id.*

136. "They Burn Through Everything:" *The Human Cost of Incendiary Weapons and the Limits of International Law*, HUM. RTS. WATCH (Nov. 9, 2020), <https://www.hrw.org/report/2020/11/09/they-burn-through-everything/human-cost-incendiary-weapons-and-limits> [<https://perma.cc/D6GT-BT3G>] (proposing institutions analogous to those regulating CCW Protocol III).

137. *Id.* (envisioning multilateral mechanisms within international humanitarian law framework to strengthen incendiary weapons regulation).

IRC-IW would be an administrative body responsible for demarcating the geographic boundaries between civilian and military areas in which incendiary weapons are banned or controlled.¹³⁸ IMEB, on the other hand, would be an enforcement authority, monitoring compliance with the new legal regime, conducting investigations, and imposing penalties on defaulters.

These institutions would be funded through obligatory contributions from signatory nations, international institutions, and voluntary contributions from parties committed to applying international humanitarian law.¹³⁹ The treaty will also establish an independent review committee of legal and military experts, human rights groups, and representatives of communities affected by armed conflict to achieve transparency and accountability in their actions.

D. IRC-IW: Regulation

The IRC-IW would be tasked with establishing clear geographical criteria for the employment of incendiary weapons.¹⁴⁰ It would establish and revise an international registry that categorizes areas of conflict, areas with civilians, and military battlefields of operations. The registry would be regularly updated using satellite imagery, ground surveys, and consultations with humanitarian organizations operating in conflict zones.¹⁴¹

The IRC-IW would also provide advisory opinions on the legal status of particular weapons under international law. It would provide annual reports on incendiary weapon employment and provide suggestions to the United Nations and state parties for reforms needed in law.¹⁴² The IRC-IW would also play a significant role in developing training materials for military officers on compliance with the newly introduced limitations on incendiary weapons.

E. IMEB: Monitoring and Enforcement

IMEB will be the principal enforcement mechanism, enforcing the revised regulations through independent investigations and compliance audits. IMEB could conduct unannounced inspections on military bases, weapons storage

138. *Id.* (proposing administrative mechanisms to enforce spatial restrictions on incendiary weapons under international humanitarian law).

139. Magdalena Sapala & Sophia Stutzmann, *Understanding the Financing of Intergovernmental Organisations*, EUR. PARLIAMENTARY RSCH. SERV., EUR. PARL. DOC. (PE 652.084) (2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652084/EPRS_BRI\(2020\)652084_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652084/EPRS_BRI(2020)652084_EN.pdf) [<https://perma.cc/U5SR-UM6P>] (last visited Sep. 17, 2025) (demonstrating that other intergovernmental institutions receive funding this way making it a practical way for this proposed organization to receive funding as well).

140. U.N. OFF. FOR DISARMAMENT AFFS., *The United Nations Office for Disarmament Affairs hosted an event on the regulation of Incendiary Weapons*, (Dec. 6, 2024), <https://disarmament.unoda.org/en/updates/united-nations-office-disarmament-affairs-hosted-event-regulation-incendiary-weapons> [<https://perma.cc/YL32-HCCG>].

141. *Id.*

142. *Id.*

facilities, and combat zones where suspected use of incendiary weapons occurs.

IMEB would rely on a combination of satellite imagery intelligence, forensic analysis of battle site wreckage, and testimony by target civilians and NGOs. IMEB would compile evidence and report findings to a global court, the ICC, or send files to a new judicial body assigned to prosecute allegations of violations against the prohibitions on incendiary weapons.

IMEB would also implement a whistleblower mechanism to encourage military staff and civilians to report abuse of white phosphorus and other incendiary weapons. Protection from intimidation would be ensured for whistleblowers, and evidence collection must be free from political or military interference.

F. Sanctions and Accountability Mechanisms

The IRC-IW and IMEB would each have enforcement provisions to ensure perpetrators' accountability through diplomatic, economic, and legal means. States that violate the treaty can be penalized with economic sanctions, military aid suspension, and potential trade restrictions on arms sales.¹⁴³

For state responsibility, military commanders and government leaders responsible for the use of incendiary weapons among civilian populations would be taken to the ICC or to a special treaty tribunal. Incendiary weapons users who were non-state actors could be found guilty of criminal charges and then face international arrest warrants and asset freezes, cutting off their financial resources to engage in operations.

The establishment of the IRC-IW and IMEB would provide a robust framework for the regulation and enforcement of bans on incendiary weapons, particularly white phosphorus. Through the application of clear geographical controls, autonomous monitoring, and rigorous accountability procedures, these organizations would significantly reduce the misuse of incendiary weapons in conflict zones. The success of these organizations would depend on mass international cooperation and an unwavering commitment to enforcing humanitarian law in modern warfare.

VI. THE LAST REFORM: UNIVERSAL JURISDICTION

Although other reforms will take years to be ratified, the final reform discussed in this note emphasizes that it is now up to individual countries to act. The final recommendation involves prosecuting crimes under universal jurisdiction, empowering countries to prosecute individuals regardless of where the crimes were perpetrated. This approach not only fortifies the global fight against impunity but also encourages states to participate positively in

143. Michael Galant, *US Sanctions Policy: Asked Questions*, CTR. FOR ECON. & POL'Y RSCH. (Feb. 25, 2025), <https://cepr.net/publications/us-sanctions-policy-frequently-asked-questions/> [https://perma.cc/J422-GR3L].

implementing international justice and law.

A. What Is Universal Jurisdiction?

Universal jurisdiction provides a unique and powerful legal mechanism for the prosecution of individuals responsible for the unlawful use of white phosphorus in war.¹⁴⁴ While amending existing protocols, as discussed in the preceding parts of this note, would significantly strengthen the legal regime for incendiary weapons, universal jurisdiction is an independent means of assurance of accountability. This principle allows states to prosecute suspects of serious crimes such as war crimes and crimes against humanity, regardless of where the suspected crimes were committed or the nationality of the perpetrator.¹⁴⁵ Given the disastrous humanitarian consequences of white phosphorus used in populated neighborhoods, universal jurisdiction is one feasible path in the pursuit of justice when the aggressor state declines or is unable to prosecute its own government leaders or soldiers.

The rationale behind universal jurisdiction is that certain crimes, like war crimes and crimes against humanity, are so grave that they concern the international community at large.¹⁴⁶ The indiscriminate effects of white phosphorus, when deployed in a civilian zone, cause severe burns, damage to the environment, and long-term harm to civilians, making its use qualify under these definitions of international crimes.¹⁴⁷ When white phosphorus is employed intentionally or indiscriminately in a way to attack civilians or cause unnecessary suffering, it violates the fundamental principles of international humanitarian law, those of distinction and proportionality. These violations are prosecutable under universal jurisdiction, as they constitute the type of crimes that have already been tried in international courts.

One of the most important advantages of universal jurisdiction is its potential to circumvent political and legal obstacles that often bar prosecution within the state where the crimes were committed.¹⁴⁸ The majority of states that have used white phosphorus in civilian areas have failed to prosecute their own soldiers, typically citing national security or military necessity as justifications.¹⁴⁹ In such instances, universal jurisdiction provides an alternative

144. *Universal Jurisdiction*, THE CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/> [https://perma.cc/6H7B-QRDH] (last visited Sep. 24, 2025).

145. *Id.*

146. *Universal Jurisdiction*, TRIAL INT'L, <https://trialinternational.org/topics-post/universal-jurisdiction/> [https://perma.cc/EYK8-2FZM] (last visited Sep. 25, 2025).

147. Collins, *supra* note 1.

148. AMNESTY INT'L, *Universal Jurisdiction: The duty to enact and enforce jurisdiction – Introduction*, Index No. IOR 53/002/2001, at 5 (Aug. 31, 2001), <https://www.amnesty.org/en/documents/IO53/002/2001/en/> [https://perma.cc/ZP34-UQVV].

149. *Id.*

avenue of justice by allowing third-party states to prosecute offenders.¹⁵⁰ The principle of universal jurisdiction has been used effectively in numerous instances of prosecuting war crimes and crimes against humanity, and there exists a sound precedent for its application to white phosphorus abuses.¹⁵¹

B. Examples of Universal Jurisdiction

One of the best examples of the application of universal jurisdiction is the prosecution of individuals responsible for the Rwandan Genocide. Following the 1994 atrocity, several European nations, including Belgium¹⁵² and France, exercised universal jurisdiction to prosecute Rwandan officials and militia members who fled the country.¹⁵³ These cases demonstrate that even when a government does not wish to prosecute its own citizens, the international legal framework can still be utilized to prosecute criminals. Similarly, the International Criminal Tribunal for the former Yugoslavia ("ICTY") used the precepts of universal jurisdiction to prosecute individuals who perpetrated war crimes in the Balkan wars of the 1990s.¹⁵⁴ These cases established a precedent for the prosecution of war criminals beyond their home jurisdictions, reaffirming the principle that egregious violations of international law ought not to go unpunished.

More recently, universal jurisdiction has been invoked in response to war crimes committed during the Syrian Civil War.¹⁵⁵ Several European states, including Germany and Sweden, have arrested and prosecuted Syrian officials suspected of torture, extrajudicial killings, and other human rights abuses.¹⁵⁶ Several European nations, including Germany and Sweden, have employed universal jurisdiction to prosecute individuals for war crimes committed in the Syrian Civil War.¹⁵⁷ In Germany, the landmark Al-Khatib trial commenced in April 2020, the first international prosecution of state-sponsored torture in

150. *See Id.*

151. *Id.* at 21-27.

152. Luc Reyndams, *Belgium's First Application of Universal Jurisdiction: The Butare Four Case*, 1 J. INT'L CRIM. JUST., 428 (2003).

153. Pierre Lepidi, *Le docteur Eugène Rwamucyo condamné à vingt-sept ans de réclusion pour complicité du génocide des Tutsi au Rwanda*, [Dr. Eugène Rwamucyo sentenced to twenty-seven years in prison for complicity in the genocide of the Tutsi in Rwanda] LE MONDE (Oct. 31, 2024), https://www.lemonde.fr/afrique/article/2024/10/31/le-docteur-eugene-rwamucyo-condamne-a-vingt-sept-ans-de-reclusion-pour-complicite-du-genocide-des-tutsi-au-rwanda_6368021_3212.html/ [https://perma.cc/XQ44-NUGD].

154. Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, art. 1, U.N. Doc. S/RES/827 (1993) (amended Sept. 2009), https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf [https://perma.cc/Y3R8-CLSU].

155. *First criminal trial worldwide on torture in Syria before a German Court*, EUR. CTR. FOR CONST. & HUM. RTS., <https://www.ecchr.eu/en/case/first-criminal-trial-worldwide-on-torture-in-syria-before-a-german-court/> [https://perma.cc/6DAR-HQLG] (last visited Feb. 16, 2025).

156. *Id.*

157. *See id.*

Syria.¹⁵⁸ The main defendant, Anwar R., a former President Bashar al-Assad government official, was found guilty in January 2022 of crimes against humanity, including murder and torture.¹⁵⁹

Likewise, Sweden has sought actively to bring Syrian war crimes to justice. Swedish prosecutors charged Lina Ishaq, aged 52, with genocide, crimes against humanity, and war crimes in September 2024 for her role in Syria between 2014 and 2016.¹⁶⁰ She is alleged to have assisted the Islamic State (“IS”) in buying and enslaving Yazidi women and children and subjecting them to grave suffering and cruel treatment while being held captive at her home in Raqqa.¹⁶¹ It was the first time that Sweden had made such an indictment.

These prosecutions have been made possible by domestic legislation that embraces universal jurisdiction, which allows courts to prosecute extraterritorially committed crimes. The success of these cases demonstrates that universal jurisdiction can be a useful tool for prosecuting violations of international humanitarian law when international courts are unable to become involved because of jurisdictional limitations or political factors.

Exercising universal jurisdiction over white phosphorus offenses would require states to expand their national laws to explicitly place incendiary weapons within the scope of prosecutable crimes. Even though international law has already prohibited the indiscriminate use of incendiary weapons in civilian areas, mechanisms for enforcement remain absent. Such states that are willing to prosecute based on universal jurisdiction must have clear legal thresholds for when the deployment of white phosphorus constitutes a war crime or crime against humanity. This could involve amending domestic legislation to cover violations of Protocol III as prosecutable crimes under domestic jurisdictions.

Universal jurisdiction, for all its promise, is not without challenges. Political factors typically enter the picture on whether states choose to bring cases, as prosecuting individuals from powerful countries can damage diplomatic relations.¹⁶² It might also be difficult to secure sufficient evidence to demonstrate intentional misuse of white phosphorus, particularly in war zones where access to forensic evidence and witness testimony is limited. Nevertheless, satellite photography, forensic investigation, and international cooperation have increased the ability of courts to make sound cases against offenders. International agencies and human rights groups play a significant role in documenting atrocities and supporting prosecutions under universal jurisdiction with evidence.

On the basis of the previous success of universal jurisdiction for the prosecution of war crimes, there is a strong legal and moral argument for its

158. *Id.*

159. *Id.*

160. *Sweden charges woman with genocide, crimes against humanity in Syria*, REUTERS, <https://www.reuters.com/world/sweden-charges-woman-with-genocide-crimes-against-humanity-syria-2024-09-19/> [<https://perma.cc/52G8-JX3G>] (last visited Feb. 16, 2025).

161. *Id.*

162. AMNESTY INT’L, *supra* note 148 at 38.

application to the use of white phosphorus in warfare. Where states do not legislate for or prosecute the unlawful use of incendiary weapons, universal jurisdiction offers a pathway to accountability.¹⁶³ By prosecuting individuals responsible for the use of white phosphorus in civilian zones, the international community can contribute to consolidating the principle that egregious humanitarian law violations will not be tolerated, wherever they occur and whoever commits them.¹⁶⁴ While legal amendments to existing treaties are crucial, universal jurisdiction is an essential and distinct mechanism in the fight against impunity for unlawful use of incendiary weapons.

VII. POTENTIAL ISSUES ARISING FROM THE REFORMS

The introduction of these reforms carries potential problems. At the top of the list is the possibility that states would be hesitant to sign the amended Protocol outlining these new initiatives. The overwhelming majority of states have been reluctant to vest powers in agencies above the state or to encode principles of law under which external states might exert surveillance powers over domestic processes. This reluctance can be driven by a need to maintain sovereignty, political risk aversion, or opposition to the perceived intrusiveness of international law into domestic legal systems.¹⁶⁵ If the edited Protocol fails to secure sufficient ratifications, the entire edifice of accountability could be undermined, and enormous gaps in enforcing international law could follow.

Beyond ratification problems, the establishment of new global institutions to monitor compliance with and enforce these changes introduces a new level of complexity. To be effective, such organizations would require clear jurisdictional authority and, in most cases, approval by member states to pursue enforcement. This dependence on international cooperation can create severe bottlenecks; states can impose limiting conditions or engage in protracted negotiations, thereby hindering the expeditious dispensation of justice. Moreover, a state's political culture can determine the extent to which it will cooperate with international institutions, especially in cases involving influential individuals or politically sensitive matters.¹⁶⁶ Selective cooperation erodes the effectiveness and legitimacy of these new institutions.

The exercise of universal jurisdiction also poses its own set of challenges regarding the cost of money and prosecutorial resource priorities.¹⁶⁷ Prosecution under universal jurisdiction can be extremely expensive, as it entails establishing legal frameworks, training law enforcement and the judiciary, and building investigative capacity.¹⁶⁸ Most countries, especially poorer ones, may

163. *See id.*

164. *See id.*

165. Mark A. Pollack, *Who Supports International Law, and Why?: The United States, the European Union, and the International Legal Order*, 13 INT'L J. CONST. L. 873, 873-900 (2015).

166. *Id.*

167. AMNESTY INT'L, *supra* note 148.

168. *Id.*

find the above expense prohibitive.¹⁶⁹ Hence, the implementation of justice for global crimes could take a back seat to other national issues deemed of higher priority. Under such circumstances, the states' potential ability to opt out of universal jurisdiction trials presents a prominent issue, leading to disparate use of justice across jurisdictions.

The principle of universal jurisdiction could also be incompatible with the political priorities of most nations.¹⁷⁰ Leaders may find prosecution inconvenient or unnecessary, particularly if they are politically powerful or represent national interests. The reluctance to prosecute can be enhanced by apprehension for public opinion, potential backlash, or diplomatic relations with other nations. In these environments, the invocation of universal jurisdiction can become selectively exercised, defeating its very purpose of universal accountability for odious crimes.¹⁷¹

The interplay of these challenges is intended to highlight the complexity of changing international legal regimes. Even as the aim of such reforms is to raise the level of accountability and deter future crimes, the pragmatic considerations of implementation must be considered. States may find it difficult to balance their national interests with the demands of international law and thus may have varying levels of commitment towards prosecuting international crimes.¹⁷² For this purpose, policymakers and advocates need to recognize and address these potential issues so that a more effective, sustainable, and equitable system of global justice is established.¹⁷³ The future will be a collaborative effort to coordinate consensus among nations, develop robust legal frameworks, and ensure that the pursuit of justice is not a plague of political or economic expediency.

CONCLUSION

The evolving nature of international law is a barometer of wider changes in society and among states' priorities. As the world becomes more integrated, states' responsibilities no longer end at their frontiers but call upon their involvement to safeguard human rights and bring justice to the perpetrators of atrocities. However, the note has identified that, despite such transformations in legal frameworks, most nations still prioritize military needs and national security over the welfare of their people.¹⁷⁴ Such misplaced prioritization not only helps maintain a culture of impunity but also undermines the very fabric of justice and human rights.

169. *Id.*

170. *Id.*

171. *Id.*

172. See *Understanding the International Criminal Court*, INT'L CRIM. CT. (2018), <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf> [https://perma.cc/A2V2-2AH2] (last visited Sep. 13, 2025).

173. *Id.*

174. See Exec. Order No. 14,183, 90 Fed. Reg. 8757 (Jan. 27, 2025).

The humanitarian impact of this neglect is severe and should not be exaggerated.¹⁷⁵ Failure to adequately react to crimes against humanity, genocide, and war crimes results in extensive victim and community suffering.¹⁷⁶ It denies them their right to justice and allows future perpetrators the latitude to do it again, establishing a culture of impunity that entrenches cycles of violence and repression.¹⁷⁷ The cycle will be perpetuated as long as states chase military objectives before humanitarian concerns, leaving at-risk groups with no protection or recourse.

In addition, the note has demonstrated that the global community must confront the unpleasant truth that the mechanisms in place today may not be sufficient to deal with the scale and complexity of these humanitarian issues. The resistance to ratifying new protocols, the hurdles posed by the establishment of international institutions, and the hesitancy to prosecute suspected persons under universal jurisdiction all point to a world in which accountability is illusory. The world is changing, but the responses of the majority of countries lag behind, reflecting a significant disparity between the principles of international law and the political circumstances that govern state behavior.

While moving ahead, it should be realized that solutions to such humanitarian issues involve an effort on the part of individual countries and the whole international community. Cooperation, communication, and shared responsibility for upholding human rights are essential components of a successful strategy against impunity. States need to be persuaded to cherish the safeguarding of their people and realize that military might can never be attained at the expense of justice. Instead, a robust system of law that guarantees accountability on the part of the perpetrators needs to be envisioned as a pillar of national security and stability.

Furthermore, it is essential that civil society, advocacy groups, and global communities join hands to raise awareness about such pressing humanitarian emergencies. With an awakened public opinion, greater understanding of the consequences of impunity for international stability and human rights, and action to pressurize their governments, advocacy can exert pressure towards constructive action. This collective response must include the voices of victims and excluded groups, so that their own stories and appeals for justice constitute the focal point of the international law and accountability discussion.¹⁷⁸

By and large, the above issues listed in this note are less than bureaucratic hurdles; they are a grave humanitarian emergency calling for immediate attention and response. The interplay between national interest, security needs, and the pursuit of justice must be approached with care and tact. The international community must now re-evaluate its approach to crimes against

175. See Collins, *supra* note 1.

176. See *id.*

177. See *id.*

178. *Justice for Chemical Attacks*, CW TRIBUNAL, <https://www.cwtribunal.org/#hero/> [https://perma.cc/P86J-3MKL] (last visited Sept. 24, 2025).

humanity and recognize that a nation's power is not measured by its defense but by how it upholds the rights and dignity of every individual. It is only through a continued dedication to reform, accountability, and partnership that we can expect to build such a world where justice will be the standard and victims' voices are heard, opening the door to a more humane and equitable society.