University of Continuing Education

جامعة التكوين المتواصل

Lectures in International Humanitarian Law

Directed to third-year law students– LMD – Distance Learning

Field: Law and Political Science specializing in public law– Fifth Semester

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International Humanitarian Law

Introduction

Dear student,

We present to you this series of distance learning lectures in International Humanitarian Law, which focus on understanding the means and methods of warfare during armed conflicts, as well as the various forms of protection enshrined in international treaties and instruments that frame the general legal structure of this branch of law.

The objectives of the course are to teach students the fundamental principles of International Humanitarian Law (IHL), as well as to provide an environment that allows them to apply this knowledge to realistic case studies and participate in a full day of simulation exercises. International humanitarian law aims to protect individuals and civilian objects during armed conflict, mitigate the horrors of war, and reduce its impact. It also seeks to protect those who no longer take part in the conflict, such as prisoners of war, the wounded, and the sick.

Several international conventions have been adopted to codify customary international law that applies during armed conflict. Among the most significant of these are the four Geneva Conventions signed on August 12, 1949, along with their two Additional Protocols adopted in 1977, and the 1954 Hague Convention for the Protection of Cultural Property, among others. These conventions collectively emphasize the need to disseminate the rules of international humanitarian law and implement the necessary legislative and administrative measures at the national level to apply international humanitarian law.

These conventions emerged as a response to the devastating wars that severely affected humanity due to the grave violations that occurred during these conflicts. Armed conflicts are among the most difficult periods a nation can face, especially in terms of the suffering endured by civilians and even soldiers. Such suffering includes random killings, torture, genocide, crimes against humanity, excessive use of dangerous weapons, and their indiscriminate use against those with no involvement in the conflict. These wars lead to the destruction of civilian infrastructure, the loss of innocent lives, family displacements, and other repeated violations of all human, spiritual, religious, and moral values.

These lectures are centered on defining the concept and nature of International Humanitarian Law, as well as its main international sources such as treaties (including the Geneva Conventions, The Hague Conventions, and their Additional Protocols) and customary international.

The material highlights the circumstances surrounding war and the means to mitigate its consequences and reduce its impact. This includes the prohibition of torture, humiliation, and inhumane treatment of combatants during warfare, and it emphasizes the protection of persons who no longer participate in hostilities, such as prisoners of war, the wounded.

Furthermore, it outlines the scope of application of IHL to specific categories, through the study of the foundations and ethics of dealing with individuals who have ceased to fight or are unable to continue fighting. The lectures also clarify the types of protection afforded to civilian objects and protected property during armed conflicts.

The main themes addressed in these lectures aim to shed light on the essential aspects of protection established by various international instruments and agreements that govern the general legal framework of IHL, both in times of war and peace. This is achieved by explaining the key provisions, the nature of IHL rules, and the principal international treaties and instruments that support them (such as the Geneva Conventions, Hague Conventions, and the Additional Protocols).

The lectures also highlight the legal framework that defines the ethical foundations during combat, such as respecting the dignity of military personnel who fall in battle, the prohibition of torture, humiliation, and inhumane treatment of combatants, as well as the protection of persons and civilian objects during both international and non-international armed conflicts.

Chapter one: The Concept and Origins of International Humanitarian Law

Lastly, this material focuses on the realities of war and how to alleviate its suffering and reduce its effects, particularly by highlighting the protection of those no longer taking part in hostilities (prisoners of war, the wounded, and the sick). It also discusses the types of weapons

prohibited by treaties, and the legal responsibility of military commanders to inform their subordinates about the rules of warfare, as well as the consequences of violating the provisions of the Hague and Geneva Conventions and their related protocols.

Section one: The Concept and Origins of International Humanitarian Law

History shows us that there has always been war – often waged with great barbarity and resulting in immense suffering, but since the earliest of times, people have also set limits to what can and cannot be done during fighting in an effort to minimize suffering. From traditional wars in the Pacific, to Arab and Islamic traditions, to customs in Indonesia, Somalia and the Sahel – as long as wars have been fought, efforts have been made to protect people from the worst of its consequences. However, modern-day international humanitarian law, while reflecting these traditional ideals, has a more recent origin story.

The codification of IHL into treaty law began in the nineteenth century. Since then, countries have agreed to a series of practical rules, based on the bitter experience of modern warfare. As armed conflict continues to evolve, so too do the rules that apply to them. For instance, the development of new weapons, such as exploding bullets and chemical weapons, have led to the introduction of rules to constrain or even prohibit their use

First: Definition of International Humanitarian Law

Many scholars of international law, as well as certain international actors, have attempted to establish a clear and comprehensive definition of International Humanitarian Law (IHL) based on academic studies and field experiences, particularly over the past century. Some have defined it as *"a set of rules applicable in armed conflicts to combatants and to the means and methods of warfare (Hague Law)."* Others have described it as *"the set of provisions that protect individuals who have ceased to take part in hostilities or who never participated in them, as well as civilian objects affected by the armed conflict (Geneva Law).*[1]*"* A third group considers it a branch of international human rights law. These differing perspectives

[1] Emily Crawford، Alison Pert ،International Humanitarian Law, 2nd edition ،cawwidge, 2022. ,p.52

highlight the diversity of opinions among legal scholars and international actors regarding the definition of this legal field.[2]

The renowned legal scholar Jean Pictet, in his work published by the Henry Dunant Institute in Geneva, Switzerland, outlined the content of International Humanitarian Law from two perspectives. The first is a broad definition, which encompasses all international provisions and treaties that guarantee the respect, dignity, and humanity of individuals[3]. A segment of legal scholars supports this broad definition, defining IHL as *"an independent legal branch encompassing all legal and customary rules that ensure respect for human integrity, dignity, and rights."*[4] However, some international law scholars, who argue that it leads to overlap and confusion with international human rights law, have criticized this broad interpretation. Moreover, this view merges all rules regulating warfare (Hague Law) under the umbrella of IHL.

The second perspective is a narrower definition, where some scholars define IHL as *"the set of rules found in the Geneva Conventions that protect individuals who are no longer able to participate in military operations, such as the wounded, shipwrecked, and prisoners of war, as well as persons not involved in combat, such as civilians and humanitarian workers."* Others define it as *"rules that regulate combat operations and aim to minimize damage caused by military necessity."* [5]However, this narrow view has been criticized for artificially separating **Geneva Law** and Hague Law, which in reality form two complementary components of/ IHL and cannot be considered in isolation.

The International Court of Justice (ICJ), in its advisory opinion requested by the World Health Organization regarding the legality of the threat or use of nuclear weapons, emphasized that to determine whether such use is

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[2] Claude, Emmanuelli, International Humanitarian Law, Edition Yvon Blais ,2009 ,p.246

[3] Nicolas, Tsagourias, International humanitarian law: cases, materials and commentary, Cambridge, United Kingdom, Cambridge, United Kingdom, Cambridge University Press, 2018, p.129

[4] Claude, Emmanuelli, op.cit. p.215

[5] Jean, Pictet, La formation du droit international humanitaire, RICR, Juin 2002, Vol.84 N°846, 2002, p.219

unlawful, one must refer to the **principles and rules of IHL**. It highlighted two fundamental principles of International Humanitarian Law:

1. The protection of civilian populations and objects, which prohibits the use of weapons that fail to distinguish between civilian and military targets.
2. The prohibition of unnecessary suffering, thereby limiting the freedom of combatants in choosing methods and means of warfare.[6]

The Advisory Service of International Humanitarian Law of the International Committee of the Red Cross (ICRC) defines IHL as:

"A set of international rules, established by treaty or customary law, that are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. For humanitarian reasons, these rules limit the rights of the parties to a conflict to choose the means and methods of warfare and protect persons and objects that are or may be affected by the conflict."[7]

Most legal scholars have agreed upon a unified and comprehensive definition of IHL, stating that it is:

"A body of customary and written rules whose primary aim is to protect individuals, property, and places not directly involved in military operations (its material scope), during armed conflicts (its temporal scope)."[8]

Under this comprehensive definition, International Humanitarian Law seeks to protect individuals not participating in combat, such as civilians, humanitarian workers, religious personnel, and journalists, as well as those who are no longer capable of fighting, such as the wounded, shipwrecked, and prisoners of war. It also extends to the protection of certain **objects**, such as cultural property, civilian infrastructure, military medical facilities, and ambulances.

[6] Gary, D. Solis ‹The Law of armed conflict: International Humanitarian Law in war, third, edition, 2021, p.123

[7] Jean, Pictet, Les principes du droit international humanitaire, édition vault, Paris, 1987, p.132

[8] Emily Crawford,op.cit,p.68

This general agreement among scholars has led to the widespread adoption of terms such as **"Law of Armed Conflict"** or **"Law of War"** to refer to IHL. Academic institutions and legal professionals now generally define International Humanitarian Law as:

"A set of rules intended to limit the effects of armed conflicts for humanitarian reasons. It protects persons who are not, or are no longer, participating in hostilities and imposes restrictions on the means and methods of warfare."[9]

Notably, IHL does not address the justification or legality of starting a conflict; rather, it regulates the conduct of parties once the conflict has begun. IHL is considered a branch of public international law, primarily composed of treaties, customary international law, and general principles of law (see **Article 38** of the Statute of the International Court of Justice for sources of international law).[10]

Regarding its terminology, what was once commonly referred to as the **"Law of War"** has shifted, based on a recommendation from the **United Nations**, to the more precise term **"Law of Armed Conflict"**, which applies to specific circumstances involving the use of force. Today, the predominant and modern term adopted by most legal scholars and international actors is "International Humanitarian Law", which is considered to apply in all situations involving individuals directly or indirectly affected by armed conflict.

It is important to distinguish between International Humanitarian Law (IHL), which governs the conduct of parties involved in armed conflicts (jus in bello - the law in war), and Public International Law, particularly as enshrined in the United Nations Charter, which regulates the legality of a state's use of armed force against another state (jus ad bellum- the law on the use of force)[11].

While the UN Charter originally prohibits the use of force, it provides for two exceptions that allow states to resort to it:

[9] Davitti, Daria, Investment and human rights in armed conflict: charting an elusive intersection, hearth publication, 2020, p.213

[10] Nicolas, Tsagourias, op.cit, p.129

[11] Claude, Emmanuelli, op.cit. p.132

1. **Factual exception**: The right of self-defense in response to an armed attack, in order to protect a state's sovereignty and territorial integrity.
2. **Legal exception**: When the United Nations Security Council authorizes the use of armed force.

International Humanitarian Law is often referred to as the **"Law of War"** or the **"Law of Armed Conflict"**, and is defined as:

"A set of rules designed to limit the effects of armed conflict for humanitarian reasons. It protects persons who are not, or are no longer, directly or actively participating in hostilities and imposes restrictions on the means and methods of warfare."[12]

IHL does not concern itself with whether the causes of a conflict are legitimate or not. Instead, it focuses on regulating the behavior of the parties once an armed conflict has erupted. International Humanitarian Law is a branch of Public International Law, which is primarily composed of international treaties, customary international law, **and** general principles of law (see **Article 38** of the Statute of the International Court of Justice for sources of international law).

As mentioned earlier, a clear distinction must be made between:

1-International Humanitarian Law (jus in bello), which regulates conduct during armed conflicts; and

2-The Law on the Use of Force (jus ad bellum), as codified in the UN Charter, which determines the **legality of initiating force** between states.[13]

Again, the Charter prohibits the use of force except in two main cases:

3- Self-defense in response to an armed attack;
4- Authorization by the UN Security Council under Chapter VII of the Charter.

Most international legal scholars have agreed on a unified definition of International Humanitarian Law, which is:

"A body of customary and written rules whose main objective is to protect individuals, property, and objects that are not directly involved in military

[12] Nicolas, Tsagourias, op.cit, p.138
[13] Emily Crawford,op.cit,p.72

operations (its material scope), during times of armed conflict (its temporal scope)".[14]

Accordingly, IHL provides protection to individuals who do not take part in combat, such as civilians, humanitarian workers, religious personnel, and journalists, as well as those who are no longer able to fight, such as the wounded, shipwrecked, and prisoners of war. It also extends protection during armed conflicts to specific objects, such as cultural property, civilian infrastructure, military medical units, and ambulances.[15]

While this field of law was traditionally referred to as the **"Law of War"**, the term "war" was abandoned based on a recommendation by the United Nations, and replaced with the term **"Law of Armed Conflict"**, which applies to specific situations involving the use of force. Today, the majority of scholars and practitioners have adopted the modern term **"International Humanitarian Law"**, which is now understood to apply in all situations and to all persons directly or indirectly related to armed conflict.[16]

In general, IHL applies in the following situations:

- International armed conflicts

- Non-international armed conflicts

- Internal conflicts

On the other hand, there are certain situations that fall outside the scope of application of international humanitarian law. Among the most prominent are certain types of armed violence that are not considered "armed conflicts" according to the rules of this law, such as internal tensions, disturbances, riots, demonstrations, and similar events.

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[14] Jean d'Aspermont,Jérôme de Hermitienne, Droit International humanitaire,édition A.pedone, Paris, 2012, p.154

[15] Gary, D. Solisop.cit, p.123

[16] Davitti, Daria, 2020, op.cit., p.222

Secondly: The Historical Development of International Humanitarian Law

The idea of protecting human beings from the horrors of war has existed in various forms across different civilizations throughout history. However, it was in the 19th century that the international community succeeded in humanizing war and armed conflicts. This branch of law witnessed significant development through the codification and moralization of many wartime practices.[17]

The emergence of international humanitarian law can be attributed to two key events:

1. The establishment of the International Committee of the Red Cross (ICRC) in 1863.
2. The signing of the Geneva Convention in August 1864, aimed at improving the condition of wounded soldiers in the field.

The Swiss humanitarian Henry Dunant, who was deeply disturbed by the severe atrocities he witnessed firsthand during the Battle of Solferino, initiated both events. In response, he wrote a book entitled *"A Memory of Solferino"*, in which he proposed two ideas[18]:

-The necessity of creating a relief organization in every country to aid victims of war.

-The need to establish laws that permit the treatment of wounded soldiers regardless of their affiliation.

Following the Dole Conference in Switzerland in 1863, the International Committee of the Red Cross was founded. It became a neutral, non-governmental global organization that, for over a century and a half, has sought to uphold a degree of humanity during armed conflicts. Its work is

[17] Claude, Emmanuelli, op.cit., p.185

[18] Maher Jamil, Abu Khawat, International Humanitarian Aid-a contemporary analytical and applied study in light of public international law, Dar Al-Nahda Al- Arabi, first edition , 2009,p.80

guided by the principle of setting limits to warfare itself - in terms of both how military operations are conducted and how soldiers behave[19].

Given that many wars throughout history were characterized by brutality and lacked any humanitarian regulation, the need arose to establish international rules to govern the initiation and conduct of hostilities, define the conditions of war, and prohibit various associated violations.

International humanitarian law, as we know it today, was not born overnight. Its historical evolution can be divided into four main phases:

1. Ancient Times:

Since ancient times, warfare and armed conflicts were marked by destructive practices with the aim of annihilating the enemy. No written or universally recognized rules existed among the warring parties.

However, some civilizations stood out:

-Chinese civilization in the 5th century BC introduced a legal and humanitarian approach to war, including the protection of prisoners of war, humane treatment, and the prohibition of attacking countries in mourning.

-In **Babylonian civilization**, certain war-related rules were established, such as the necessity of declaring war and protecting envoys. King **Hammurabi**, in the preamble of his Code, used language suggesting the avoidance of unjust aggression.

-Ancient Egyptians adopted compassionate practices in war, including showing mercy to enemies, caring for the sick, and burying the dead.

-In **Greek civilization**, wars were generally defensive rather than offensive, and concepts of natural law and human rights began to emerge.

-The **Roman Empire** later emphasized unity among soldiers and denounced unnecessary wars. The concept of war criminals — now part of modern international humanitarian law — first appeared during this period, along with the saying: "Once wounded, the enemy becomes a brother."[20]

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[19] Nicolas, Tsagourias, op.cit, p.136

[20] Jean d'Aspermont, Jérôme de Hemptienne, op.cit, p.123

2. The middle Ages:

Although ancient Jewish law did not recognize any rules of war and allowed the killing of enemies indiscriminately, certain humanitarian principles appeared before the distortion of the faith, such as the humane treatment of prisoners, feeding them, and compassion toward animals during wartime. Some duties were also imposed on fighters, particularly during sieges.

Before the Roman adoption of Christianity, Christian teachings emphasized human equality and mercy. In the 11th and 12th centuries, brutal wars broke out in Europe, including the Crusades against Muslims, with many inhumane violations occurring. Nevertheless, some war regulations emerged, such as :

***"The Peace of God"**, which protected non-combatants and certain properties from the ravages of war.

***"The Truce of God"**, which prohibited war during specific times or religious festivals[21].

It is widely acknowledged that **Islam** was the first religion to establish genuine and just rules of war. Islam placed strict restrictions on warfare, allowing it only in exceptional cases. When war was permitted, clear regulations governed the conduct of hostilities, protecting non-combatants and setting ethical standards. These principles-outlined in the Qur'an and Sunnah-predated modern international humanitarian law. Key principles include:[22]

A. Adherence to treaties:

Moreover, fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned. "If they seek help from you in matters of religion, then you must help them-except against a people with whom you have a treaty".

B. Legitimacy of war and prohibition of aggression:

War is not the default relationship with others - peace is. War is allowed only in self-defense or out of necessity. «Fight in the way of Allah those

[21] Nicolas, Tsagourias, op.cit, p.154
[22] Emily Crawford, op.cit., p.83

who fight you but do not transgress. Indeed, Allah does not like transgressors"[23] .

C. Prohibition of killing non-combatants:
Prophet Muhammad (peace be upon him) forbade the killing of the elderly, children, women, and religious clergy who do not participate in combat "Do not kill an old man, a small child, or a woman, and do not act treacherously…".

D. Prisoner exchange:
Islam allowed for prisoner exchanges and permitted captives to pay a ransom for their freedom.

3. The European Renaissance:

During the Renaissance, European thinkers, jurists, and philosophers began to discuss humanitarian principles in war, especially during conflicts Between Catholics and Protestants. Notable figures like Montesquieu and Jean-Jacques Rousseau advocated for regulating the conduct of fighters, including:[24]

-Prohibiting the destruction of civilian property unless justified by military necessity.

-Distinguishing between combatants and civilians.

4. The Modern Era:

While many societies had long conceptualized the protection of people during wars, it was in the 19th century that significant progress was made. The **Battle of Solferino** (between the French and Austrian armies in northern Italy) marked a major turning point in the movement to uphold human rights during armed conflicts. It inspired the initial efforts to codify the rules of war- what would later become international humanitarian law.

The first concrete steps toward creating this legal framework were the two humanitarian proposals made by the Swiss citizen **Henry Dunant**,

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[23] Gary ‹D., Solisop, op.cit., p.147
[24] David, E., Droit de l'homme et droit humanitaire, in Mélanges De housse, Paris, Nathan-Labor, 1999, p. 175

who was horrified by the atrocities he witnessed in Solferino. In 1862, he published his book "A Memory of Solferino", in which he proposed:[25]

- **First:** The creation of relief societies during peacetime composed of trained nurses to care for the wounded in wartime leading to the establishment of the **International Committee of the Red Cross** in 1863.

- **Second:** The legal recognition and protection of volunteers assisting medical personnel during conflicts.

In 1863, a special committee called the Geneva Society for Public Welfare-composed of Henry Dunant, two Swiss doctors, and representatives from 16 countries-organized a conference in Geneva to discuss Dunant's proposals. The key recommendations of this conference were:[26]

A. The establishment of a national relief society in each country to assist war victims and grant it legal protection.

B. The adoption of a common distinctive emblem to identify protected persons and objects during armed conflicts.
C. The formulation of legal rules permitting the treatment of wounded soldiers regardless of nationality.

Indeed, the International Committee for the Relief of the Wounded, proposed by Dunant in 1863, was founded and later became known as the **International Committee of the Red Cross**. This neutral and non-governmental global organization has, for over 150 years, worked to maintain a degree of humanity in times of armed conflict, guided by the principle of placing limits on war itself-including the conduct of hostilities and the behavior of soldiers[27].

Thirdly: Importance of IHL

International Humanitarian Law (IHL) is a set of regulations designed to limit, for humanitarian reasons, the effects of armed conflict. It aims to protect those who do not take part in hostilities or no longer do, and to limit the methods and means of warfare. The complexity of modern conflicts,

[25] Claude, Emmanuelli, op.cit. p.223
[26] Davitti, Daria, op.cit, p.226
[27] Maher Jamil, Abu Khawat, op.cit,p.80

coupled with the availability of information and the growing media attention, has increased interest in humanitarian issues[28]. Knowledge of IHL is a valuable asset, even essential, for anyone interested in or working in a conflict-affected country, involved in humanitarian work, or wishing to work within an international criminal tribunal.

First, there are treaties. Before discussing the role treaties play, which is fundamental in the law of armed conflict, it should be noted that there is no area of international law with more treaties or greater codification than the law of armed conflict. To begin, we will present the three most important series of conventions in IHL, which we will frequently refer to throughout the course[29]. Presenting them means placing them in their historical context and briefly mentioning their content. We will then analyze the provisions in detail in the relevant chapters where necessary.

The first codification of the law of armed conflict occurred at the very end of the 19th century, namely in 1899, with the revision conference of 1907. The next revision conference would have taken place in 1914, but it was not held due to the outbreak of World War I[30].

There had been some attempts before the Hague in 1899 to codify the laws of war in general, but they were unsuccessful, notably the Brussels Conference of 1874. This failure was primarily due to strong divergences between states on specific issues, particularly the status of combatants, which was highly controversial at the time. This remains a controversial issue today, but not in the same way. At that time, the problem was that militarily powerful states only wanted to recognize members of regular armed forces as combatants, while smaller states, sometimes lacking a regular army, argued that civilians who took up arms spontaneously to defend their country should also be recognized as combatants. A consensus could not be reached on this sensitive issue. It is a delicate matter because the aim is to distinguish between combatants and civilians in order to

[28] Davitti, Daria, op.cit, p.211
[29] Emily, Crawford,op.cit,p.94

[30] Plattner, D., Assistance to the civilian population: The development and present state of international humanitarian law; May-June 1992, p.138

protect civilians. If the distinction between the two is unclear, it becomes complicated in IHL. This issue could not be agreed upon[31].

Thus, although significant preparatory work had been done, there was no international law of war. There was internal codification, as for example, the United States had a very good codification in the Liber Code, which they applied during the American Civil War (the War of Secession).

The outcome came in 1899 with the Hague Conference, whose main objective was not to codify the laws of war. The primary purpose of this conference was twofold: on one hand, disarmament, and on the other, the peaceful resolution of disputes. The aim was, at least in part, to prevent war, not so much to organize or establish rules for it, but to prevent it through arbitration, initially mandatory, because a dispute resolved is a dispute that will not lead to war[32]. Disarmament was also an important Focus, based on the 19th-century thesis that excessive militarization leads to armed conflicts.

As for the resolution of disputes, little progress was made because states prioritized their sovereignty and refused to submit to an arbitral tribunal that would decide on their behalf. The only outcome was optional arbitration—if desired, it was possible to resort to an arbitrator, but this was compatible with sovereignty. As a means of preventing war, this was not very effective, as it relied on the will of states, and only a few cases would be submitted to arbitration. For major disputes, a state would never agree[33].

Thus, the conference failed on both fronts. At this point, the conference simply acknowledged that it could not succeed, even though expectations were very high. It was the first major peace conference. The only outcome that seemed possible was to address the law of armed conflict. Why did they think this could be achieved? Because preparatory work had already been done. There were some points of disagreement, but the majority of the work had already been accomplished at the Brussels Conference of 1874. This is why the Hague Conventions were adopted. There were four conventions in 1899, and they grew to fourteen if we also count the

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[31] Jean d'Aspermont, Jérôme de Hemptienne, op.cit, p.158

[32] Martinus Nijhoff, Byron, C., A Blurring of the Boundaries: the Application of International Humanitarian Law by Human Rights Bodies, Virginia Journal of International Law, 2007, p. 847

[33] Gary, D., Solisop, op.cit., p.198

declaration, a treaty text, in 1907. Thus, a small beginning in 1899, followed by a significant expansion in 1907.

One of the objectives of International Humanitarian Law (IHL) is also to protect civilians, medical and religious personnel, and those who are no longer taking part in hostilities (prisoners of war, the wounded, etc.). Civilians who participate in hostilities are no longer protected as such[34]. Whether they regain this protection once they cease hostile activities is not definitively settled, although a 2006 study by the International Committee of the Red Cross (ICRC) asserts that they do.

Individuals who are not, or no longer, participating in hostilities are entitled to respect for their life and physical and mental integrity. Those who have laid down their arms or who are wounded can no longer be killed or injured. Prisoners of war and civilians under enemy control have the right to the respect of their life, dignity, personal rights, as well as their political or religious beliefs.

Fourthly: Implementation and Codification of International Humanitarian Law (IHL)

In general, IHL is considered applicable only in situations of armed conflict. This is true for most of its rules, but some must also be respected in peacetime. For example, IHL obliges States to take practical and legal measures to improve the dissemination of IHL. They must appoint legal advisors for the armed forces, develop national implementation legislation, and ensure that the text of the conventions is translated into the national language(s).

1- Implementation of International Humanitarian Law (IHL)

In addition to these preventive measures, States are also required to take repressive actions, notably by prosecuting war criminals. Officers and those in positions of authority are not only required to prevent violations of IHL but also to sanction them.

Legal assistance to States in times of conflict also falls under this domain. The Geneva Conventions provide for the possibility of appointing one or more neutral States as protecting powers. However, this option has not been used since World War II. Today, this role is generally carried out

[34] Nicolas, Tsagourias, op.cit, p.169

by the ICRC, which plays an important role in promoting and implementing IHL.

The development of international criminal law has greatly contributed to filling the gaps in public international law. Thanks to it, individuals who have committed serious international crimes can be brought to justice in national courts or international tribunals. Several ad hoc tribunals have been established in the past with jurisdiction limited to a specific conflict, such as those for the former Yugoslavia or Rwanda. The International Criminal Court (ICC), which has been recognized by 122 States, has been operational since 2002. It can prosecute international crimes, including serious violations of IHL (referred to as war crimes). These primarily include crimes such as:

-Summary and deliberate executions

-Torture and inhuman treatment

-Deliberately causing great suffering

*Intentional attacks on the civilian population

-The displacement and deportation of entire population groups

-The use of prohibited weapons or combat methods

-Looting.

2-Codification of Humanitarian Law:

The origins of humanitarian law go back to ancient history. The concept of rules regulating war is recognizable in every culture, religion, and tradition. It is closely linked to the history of war. In all historical periods, leaders set up rules and taboos that determine what is allowed and what is forbidden in military activities. These rules aim at trying to maintain control, discipline, and efficiency of military forces. They also aim at limiting the impact of violence and destruction, on the physical and mental integrity of combatants, in order to facilitate their return to society after the conflict has ended. Finally, they were intended to limit the destruction of the adversary's territory and population with a view to the return to peace.

The first laws of war were not universal but rather regional. Indeed, the first Chinese treaty was drafted by Sun Tzu during the seventh to sixth

centuries BC. Most of its principles were inspired by religion and aimed at humanizing social, political, and military relationships. However, these rules were enforced only between people of the same cultural background. If the enemies did not speak the same language or were from a different religion, these rules were not respected. The theory of "just wars" or "holy wars" is an illustration of the ambiguity of such a phenomenon. This theory progressively moved from the requirement of "just war" (holy or just goals) to the requirement of "just means." Subsequently, European lawyers such as Grotius, Vittoria, or Vattel, as well as Muslim lawyers such as Chaybani, transformed moral standards into legal rules, thereby anticipating contemporary universal codification.

It is worth noting that, in the area of jus ad gentium , important Islamic writings were drafted before—and therefore probably influenced—European codification. This development was confirmed by contemporary international law that limits the conditions under which a State may resort to force while humanitarian law restricts the means and methods of war allowed, regardless of the objectives pursued.

The codification of international humanitarian law intensified during the nineteenth century, driven by the nongovernmental humanitarian initiatives and the diplomatic conferences that led to the adoption of these conventions by States.

A private Swiss organization, the International Committee of the Red Cross, created by Henri Dunant in Geneva after witnessing the lack of medical care provided to the victims of the battle of Solferino in 1859, played a key role in this codification and in the implementation of relief. In Solferino, Henri Dunant discovered the hidden face of military confrontations between the major powers of the time: 40,000 dead and wounded from both armies were left where they lay to become prey to pillagers on the battlefield. In 1864, Dunant was involved in the drafting of the first Geneva Convention for improving the fate of injured soldiers, and he invited States to sign it at a diplomatic conference specially convened for the purpose.

This convention proposed, among other things, that States accept the work of a neutral and independent medical relief committee authorized to fetch and care for wounded and sick soldiers, whatever their nationality. During the war of 1870, the Committee extended its relief actions to prisoners of war not covered by the first Convention. Thus the offer of neutral

humanitarian relief preceded international humanitarian law and served as the basis for its later codification by States.

In 1868, the Imperial Cabinet of Russia adopted the Saint Petersburg Declaration, which prohibited the use of certain weapons and "fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity." This text asserted that the only legitimate object that States should endeavor to accomplish during war is to weaken the military forces of the enemy and that they should abstain from employing arms that uselessly aggravate the sufferings of disabled men or render their death inevitable. It defined the dialectics specific to humanitarian law, which accepted "useful suffering" for reasons of legitimate and objective military necessity while limiting "pointless suffering" by regulating the means and methods of war and creating a right to relief.

The 1870 war put this dialectical humanization of war to the test, as States attempted to limit concessions concerning the neutrality of medical relief. At the peace conference convened in The Hague in 1899, States demanded a rapid revision of the Geneva Convention of 1864. They left the right to relief initiative to the Geneva Convention and themselves adopted conventions relative to the peaceful settlement of international conflicts as well as regulation concerning the law and customs of war on land. These conventions and regulations from The Hague conference in 1899 were added to and amended at the second international peace conference convened in The Hague in 1907. The regulation concerning the laws and customs of war on land, annexed to the fourth Convention of 1907, summarized the rules and principles that continue to provide the framework for the law on contemporary conflicts.

World War I (1914–1918) was a further test of the balance between humanitarian and military necessities and created new needs in terms of relief. During this conflict, the ICRC positioned itself as an essential interlocutor for States and demonstrated the importance of its role as a neutral intermediary by maintaining a certain level of dialogue between the belligerents and, through its own relief initiatives, compensating for the law's insufficiencies in addressing the scale of the needs created by such an intense conflict.

Furthermore, the application of the principle of reciprocity—the cornerstone of general international law—created dangerous legal vacuums relative to treatment and right to relief, as States were only bound to respect the right to relief for combatants of a State having ratified the same

conventions. For this reason, in 1926, the ICRC called for a review of the provisions relative to the treatment of wounded or sick soldiers and drafted an additional convention on the treatment of prisoners of war. The majority of the relief needs of combatants were thus covered by the new Geneva Conventions of 1926. However, there were still no regulations concerning relief for civilian populations. In 1934, the ICRC submitted a draft international convention to States concerning the condition and protection of civilians of enemy nationality on territory belonging to or occupied by a belligerent.

This draft was met with considerable reticence on the part of the different chancelleries, which considered this to be a mission that should be restricted to States and their armies. The examination of this text was interrupted by the outbreak of World War II. As a result, the ICRC's action with regard to civilians during World War II was unsupported by humanitarian law.

World War II was a theater of horrors where methods of total war rubbed shoulders with techniques of mass extermination. Given the events, it had become unthinkable to ignore the gaps in humanitarian law concerning the protection of civilians. Consequently, at the end of the war, and despite the creation of the United Nations tasked with guaranteeing peace and international security, a more ambitious phase of codification of humanitarian law got underway. The four Conventions adopted in Geneva on 12 August 1949 were the fruit of this recodification. The first three unified and improved on existing humanitarian law, until then spread across the various Geneva and Hague Conventions and relating only to the protection of wounded or sick combatants or prisoners of war.

The fourth Convention, devoted to the protection of civilian populations in time of war, was a political and legal revolution. It instituted several categories of civilians protected by international law according to the type of risk to which they are exposed: poverty, occupation, deportation, attacks, sickness and injury, detention, internment, and the like. However, it did not cover the obligations of State parties to a conflict with regard to their own civilians. This gap was filled in 1977 by two Additional Protocols, which unified protection with reference to the notion of civilian victims of conflict and without mention of enemy nationality.

This development, written into Protocol II, was thus applicable to non-international armed conflicts, which by their nature take place within the borders of a single State and oppose national armed forces against parts of their own population.

The fourth Convention restructured and set forth, in a single text, the rules relating to both methods of warfare and relief. It prevented States and armies from avoiding responsibility for the populations placed under their control, while also providing for the rights of impartial humanitarian organizations, acting as neutral intermediaries, to deliver effective relief and safeguard the rights of the most vulnerable. These Conventions recognized the dual role of the International Committee of the Red Cross both as a guardian of humanitarian law tasked with safeguarding its interpretation and proposing new codifications and as a relief organization ensuring the protection of victims. They acknowledged the special union between States and private humanitarian initiatives by annexing the statutes of the ICRC to the Geneva Conventions.

However, the situations covered by the Geneva Conventions continued to be centered on armed conflicts between States, with the situation of non-international armed conflicts covered only by their Common Article 3.

The conflicts that have taken place over the past fifty years do not really enter this category. They have been marked by fights for independence and decolonization and numerous internal conflicts, some of which have been internationalized through the direct or indirect intervention of other States.

The two Additional Protocols added to the Geneva Conventions in 1977 took account of two major changes in the form and methods of war: the fact that civilians were being targeted and becoming victims increasingly often and the growing number of internal conflicts.

Additional Protocol I extended the protection of victims of international armed conflicts already covered by the fourth Geneva Convention of 1949. Additional Protocol II created a completely new framework of protection for victims of non-international armed conflicts, which until then had only been covered by Common Article 3 to the Geneva Conventions of 1949.

The specific difficulty of Additional Protocol II is that it has to address the political and military imbalance of non-international armed conflicts. Indeed, it acknowledges that within the same national boundaries, the government's armed forces are opposed to organized armed dissidents or opposition groups. Additional Protocol II thus clearly enters the domain of national sovereignty.

Its content is an analogical but simplified transcription of the key provisions of the law on international conflicts concerning methods of warfare and right to relief for civilian populations. However, the definition

and the rights of combatants arrested and detained in relation with the conflict are kept to a minimum, and it is essentially left up to the parties to the conflict to come to an agreement.

Many of the provisions of international humanitarian law have been contested and undermined by military actions carried out as part of the global war on terror launched in the wake of the terrorist attacks of 11 September 2001 in the United States. Yet humanitarian law continues to evolve in order to address these new challenges. The jurisprudence of national and international courts has in many cases reestablished an interpretation of humanitarian law that both conforms to its spirit and is adapted to the so-called new situations.

The recognition in 2005 of an extensive corpus of rules of customary international humanitarian law compiled by the ICRC simplifies and facilitates the application and interpretation of this law in new and complex conflict situations.

Fifthly: Relationship of International Humanitarian Law (IHL) with Related Laws

International humanitarian law is often linked with other branches of law that are closely connected and overlapping in application. In some cases, these branches share similarities, and in others, they differ in terms of the legal principles and elements they apply. Two of the most significant legal frameworks related to IHL are **international human rights law** and **international criminal law**.

The International Humanitarian Law (IHL) is primarily applicable in situations of armed conflict (with notable exceptions for certain rules, such as the duty of States to prevent or the rules regarding civilian populations in occupied territories) and protects specific groups of individuals who are not or no longer taking part in hostilities[35]. All parties to the conflict are required to respect it, including non-regular troops.

Human rights protect all human beings. They are subjective rights, inherent, inviolable, inalienable, and independent of nationality. Human rights primarily engage States. They take full effect in peacetime, and certain human rights conventions even provide that many rights guaranteed in times of necessity – that is, in situations of armed conflict – may be

[35] Claude, Emmanuelli, op.cit. p.139

temporarily suspended. Beyond these exceptions, human rights largely remain applicable during wartime and complement the rules set forth by IHL[36].

1. Relationship Between IHL and International Human Rights Law

The relationship between IHL (International Humanitarian Law) and human rights law is a very complex matter. Human rights law is more modern and more developed than IHL in many respects, and so it is not useless for us to refer to human rights law.

It is more "modern" and more "developed" because, at the universal level, human rights law took off in 1966[37]. The vast majority of instruments were concluded after that, especially in the 1970s, 1980s, and 1990s, so it is relatively modern. If we consider IHL, the 1907 Hague Regulations were important, but we can't exactly call that "state-of-the-art"; the Geneva Conventions of 1949 date back to 1949, which is still quite old. It is from the era of warfare.

Human rights law is therefore clearly more modern, and it is also more developed. This may be surprising, but not so much because human rights law has many conventions. Even though the texts of these conventions may be brief, the rights they enumerate are often supplemented by a great deal of secondary law, i.e., law produced by oversight bodies, the Human Rights Council, and jurisprudence from the courts involved, as there are tribunals in this area. In contrast, in IHL, there is none of tha[38]t. There is no oversight body that produces reports or opinions; there is no case law; there is no tribunal specifically for IHL. There are regional human rights tribunals, but no IHL tribunal. All these fora allow human rights law to evolve, so we must not only consider the provisions contained in conventions but also everything that develops around those provisions through all these sources that gather around the conventions, which ultimately gives human rights law a great deal of precision due to this extensive practice.

Therefore, we can benefit from that. When we have some very general provisions on fair trial in IHL, like in the Geneva Conventions, and we

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[36] Diop, Mamadou fallylou, Droit international des droits de l'homme et Droit international humanitaire : réflexion sur la complémentarité de deux faces d'une même médaille, collection générale, 2015, p.62

[37] Jean d'Aspermont, Jérôme de Hemptienne, op.cit, p.156

[38] Emily, Crawford,op.cit,p.124

compare them to the provisions in Article 6 of the European Convention on Human Rights or Article 14 of the International Covenant on Civil and Political Rights. along with all the jurisprudence and reports that surround them, we can feel like a very poor relative when it comes to the Geneva Conventions. However, we also realize that by drawing from the sources of human rights law, we can give real substance to the principle of a fair trial[39].

Moreover, the utility of human rights law lies in the fact that there are oversight bodies. This is an additional point. There are oversight bodies, and therefore, there is sometimes the possibility of indirectly having IHL's implementation monitored by human rights oversight bodies. This provides a sort of sanction for IHL through the human rights bodies, since we do not have any bodies that do this for IHL itself. The International Committee of the Red Cross is not one of them. The ICRC is not there to investigate and condemn states; it is there to ensure compliance with IHL, and it does so with its characteristic discretion. Often, nothing is made public; if anything does come to light, it usually means the ICRC is not happy [40].

Both IHL and international human rights law are branches of public international law. They are distinct yet complementary. Each aims to protect individuals from abuse and arbitrary treatment[41].

-Human rights law applies at all times - in both peace and war- and safeguards inherent human dignity.

-IHL, on the other hand, applies exclusively during armed conflicts.

Thus, in times of armed conflict, both legal frameworks apply complementarily.

-Shared Principles Between IHL and Human Rights Law:

-Both aim to ensure that the requirements of war do not conflict with respect for human dignity.

-Both protect human values and the sanctity of the human person.

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[39] Diop, Mamadou fallylou, op.cit, p.62
[40] Davitti, Daria, op.cit, p.239
[41] Martinus Nijhoff, Byron, C., A ,op.cit, p. 849

-Both prohibit **torture** in all its forms.

-Both criminalize **reprisals**, **collective punishment**, **hostage-taking**, and **forced displacement**.

-Both emphasize respect for **family life**, **religious beliefs**, and **customs** during armed conflict.

-Both protect and guarantee **private property**[42].

-Differences:

-IHL applies only during armed conflicts, while human rights law applies at all times (in peace and war).

-Under IHL, a state cannot excuse itself from its obligations by invoking national security, as its obligations arise from treaty ratification[43].

-Under human rights law, a state may derogate from certain rights during a state of emergency.

-Other Common Principles:

-War must not violate human dignity.

-Human beings not taking part in hostilities must not be harmed.

-Torture is absolutely prohibited.

-Prisoners must only be asked to provide identity-related information-coercion be forbidden.

-The legal status and rights of captured fighters must be respected.

-Family ties and communication are highly valued - the International Tracing Agency in Geneva collects and transmits information on prisoners.

-Private property is protected.

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[42] Nicolas, Tsagourias, op.cit, p.169

[43] Davitti, Daria, op.cit, p.254

-There should be no discrimination in aid, treatment, or services- assistance must be given based on need only.

-Security, protection, and reassurance must be guaranteed- reprisals, collective punishment, and hostage-taking are prohibited.

-Civilians may not be used to shield military objectives.

-Looting, indiscriminate attacks, and acts of reprisal are strictly forbidden.

2. Relationship Between IHL and International Criminal Law

The connection between international humanitarian law and international criminal law lies in the latter's role in addressing and punishing crimes that occur during armed conflicts and violate IHL.

-The Relationship is based on Three Main Elements:

A. Shared Objectives:

Both aim to **protect individuals** during armed conflicts and hold perpetrators accountable.

B. Scope of Application:

- IHL applies during international and non-international armed conflicts, primarily focusing on protecting **combatants and victims**.

- International criminal law has a broader application, covering not only war-related crimes but also crimes affecting the international community at large, such as **genocide** and crimes against humanity[44].

C. Legal Sources:

- IHL is based on classical sources of public international law, as outlined in **Article 38 of the Statute of the International Court of Justice**.

- International criminal law draws primarily from national criminal laws and codifies IHL violations, giving them criminal consequences.

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[44] Diop, Mamadou fallylou, op.cit., p.75

Fourth: Principles, Rules, and Limits of International Humanitarian Law

IHL is founded upon a set of **principles** that are either explicitly stated in treaties, inferred from their contexts, or derived from customary law. These principles form the **core content** of IHL and are binding on parties in conflict. However, its application faces practical **limitations in the field**.

1. Principles of International Humanitarian Law

In every branch of law where there is a wealth of detailed rules, general principles, perhaps paradoxically, play an important role. This is simply because the multitude of detailed rules, the dust of detailed regulations, makes the branch of law in question no longer visible. At this point, the general principles of law help to restructure the various contents of this branch of law in a slightly more visible way and provide them with a backbone[45]. This is why International Humanitarian Law (IHL), which has many detailed rules, also has general principles of considerable importance. Therefore, it is a branch of law where general principles are also significant, perhaps more so than in other branches of law.

What are the main principles on which IHL is based?

The objective of International Humanitarian Law (IHL) is to limit, as much as possible, the suffering and destruction inherent in war. IHL therefore operates on the principle that armed conflicts will always occur and seeks to limit their consequences by setting rules for the conduct of war, which all parties to the conflict are required to respect[46].

Reciprocity and its absolute legal force are, in fact, the fundamental principles of IHL. This is why its application is not tied to the origins of the war. Unlike other areas of international law, IHL does not concern itself with determining who is right or wrong; it establishes rules that are applicable to all parties.

[45] Claude, Emmanuelli, op.cit. p.187
[46] Nicolas, Tsagourias, op.cit, p.174

In this context, we speak of *ius ad bellum*, which authorizes states, under certain conditions, to use force. It is important to clearly distinguish between these two areas of law due to their different objectives[47].

More recently, the development of *ius contra bellum*, or a law against war, has emerged. In practice, the United Nations Charter prohibits the use of force, with two exceptions: the right of self-defense and situations where the Security Council authorizes such measures to maintain or restore international peace.

What are the most important provisions of IHL?

The rules of IHL can be summarized according to the following logic: the means of harming the enemy are restricted by law. Certain weapons and combat methods are illegal, and a minimum standard of humanity must be guaranteed, particularly in relation to those who are not or no longer taking part in hostilities[48].

1/Principle of Humanity

It is relatively rare for international law to contain a principle with as moral a connotation as the principle of humanity. This principle, which some prefer to call the "principle of humane treatment," informs the entire body of Geneva Law. It is the cardinal principle of the Geneva Conventions, found in this general form, humane treatment, in Articles 12, 13, 14, and 27 of Geneva Conventions I-IV. A particular variation of the principle of humanity or humane treatment is found in the Martens Clause.

2/Principle of Military Necessity

In the past, that is, before 1949 and more specifically, before 1945, at the end of the war, the principle of military necessity had a value and scope different from what it has today. At that time, the principle was rather dazzling because it meant that sometimes a belligerent could set aside a rule of the law of armed conflict by simply pleading necessity. It was a bit like the principle "necessity knows no law"; when fighting for survival in an

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[47] Plattner, D., Assistance to the civilian population: The development and present state of international humanitarian law; May-June 1992, p.138

[48] Emily Crawford,op.cit,p.176

armed conflict, one must have the possibility to invoke necessity to free oneself from obligations that cannot be respected, under the threat of causing disproportionate damage or perhaps even losing the war.

In other words, the principle of military necessity was sometimes considered, in certain circles, as a kind of state of necessity that could be invoked generally. The state of necessity is defined in Article 25 of the State Responsibility Project, except that it was given much broader scope than the state of necessity defined by the International Law Commission[49].

Post-war tribunals, starting with the Nuremberg jurisprudence, emphatically rejected this conception of military necessity, and it is true that it is legally dangerous. If a belligerent can subjectively decide at any moment that it does not want to apply a particular rule because it is in a state of necessity, then this, legally, would mean that the law of armed conflict is not truly binding, that it is purely a potestative order: one can choose not to apply it, and if one wants to apply it, it is enough to invoke necessity.

We deduce that the principle of military necessity has two faces; it is truly a Janus. On one hand, it frees from the application of the rules of the law of armed conflict when those rules allow for it. Here, it serves the military by loosening their hands. On the other hand, there is a restrictive balance: any destruction or other military action that impacts the enemy and is not militarily necessary is prohibited because the recognized purpose of war is solely to break the enemy's resistance, not to do things that are unrelated to that.[50]

In the 19th century, this principle had both aspects-liberating when needed, constraining when actions must always be measured by the goal of breaking the enemy's resistance. It was the central principle of the law of armed conflict in the 19th century[51]. Today, it has been subsumed, reduced, but it still exists in its two aspects, albeit resized. Resized because it is not a general reason that can be invoked for every rule of the law of armed conflict, but only for a few rules that provide for military necessity as an exception. The second aspect is the prohibition of unnecessary destruction. Therefore, the principle of military necessity remains an important one.

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[49] Diop, Mamadou fallylou, op.cit, p.95
[50] Gary ‹D., Solisop, op.cit., p.198
[51] Jean d'Aspermont ‹Jérôme de Hemptienne, op.cit, p.185

3/Principle of Limitation

The principle of limitation is already outlined in Article 22 of the Hague Regulations of 1907. Article 22 states, "The belligerents do not have an unlimited right in choosing the means of harming the enemy." This is, of course, a fundamental rule of IHL, and it is rightly said to be a principle. It means that total war is never legitimate. The means of harming the enemy and targeting its resistance are not all permissible[52]. Total war is not allowed; it would negate any limitation in war, which is the very essence of IHL. At the same time, this also shows the fundamental structure of IHL, which is not about authorizing acts of war but rather limiting the belligerent's freedom to ensure that excessively destructive actions are not permitted. Thus, the principle of limitation operates as a limit against total war, which would be far too generalized a destruction, and on the other hand, indicates the very structure of the law, which is based more on prohibitions, particularly in Hague Law.

4/Principle of Distinction

The principle of distinction is found particularly in Article 48 of Additional Protocol I. Distinction means that each belligerent must, at all times, distinguish between civilians and civilian objects on one side, and military objectives, that is, military personnel and military objects, on the other side, and only target the latter, not the former. In simpler terms, one must distinguish between civilians and military personnel and only attack the military during the armed conflict.[53]

5/Principle of Proportionality

This is clearly a cardinal principle upon which the entire body of Hague Law is based, because without this principle, war would immediately become total. If one could attack everything that is civilian, there would no longer be a limit; one could attack everything, as there is military and civilian, and nothing else.

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[52] Maurice, thorelli, Le droit international humanitaire, 2e édition, presse universitaire de France, 1989, p.128

[53] Droege, C., Elective affinities? Human rights and humanitarian law, Revue Internationale de la Croix-Rouge, 2008, p. 568

This principle is foundational to the legal system, and these are fundamental keys to understanding these general principles.The principle of proportionality has a specific meaning in IHL, one that should not be confused with its meaning in human rights law or elsewhere, such as in administrative law.

In IHL, proportionality means that there must be a certain relationship between, on the one hand, the military advantage sought through an action and, on the other hand, the "collateral" civilian damage inflicted.

It happens that when attacking a military objective, this is the only thing one is authorized to attack, and one cannot ensure that this attack will not have some impact on civilians surrounding the military target, whether they be people or property. In simpler terms, in attacking the military objective, one must calculate the potential deaths of civilians and damage to civilian buildings or other installations[54]. This is permitted in IHL, but there must be a certain relationship between the military advantage pursued and the collateral civilian damage. If the collateral civilian damage significantly exceeds the military advantage, then the principle of proportionality would prevent the attack from going ahead in that way, causing that kind of collateral damage.

What is common to these general principles is that they form the foundation of the legal system of IHL and explain its major articulations. The rest consists of detailed rules. If we take the principle of humanity, it informs the entire body of the Geneva Conventions. Every provision found in the Geneva Conventions is a provision aimed at ensuring the humane treatment of protected persons in one way or another.

2-The Normative Quality of the Principle of Proportionality:

Proportionality is relevant beyond IHL. Although it does not apply in the same way in every field, it always contains the common idea of a balance between elements which, if they change, must all guarantee the same ratio of magnitude. Often, this equilibrium concerns interests that oppose each other. Proportionality is omnipresent in public international law. For example, it can be found in international investment law and arbitration, maritime delimitation, WTO law, the protection of human rights bodies.

[54] David, E., op.cit, p. 198

More specifically, proportionality is a fundamental principle of IHL, alongside the principles of distinction and precautions in attack. It governs the protection of civilians and civilian objects in the conduct of hostilities. It has a limiting role (p. 4) that impacts targeting, including in the choice of weapons used, the precautionary measures required to be taken, and the anticipated incidental civilian harm, which must not be disproportionate to the expected military advantage.

Norms of IHL embody a delicate balance between military necessity and the principle of humanity. When adopting IHL's provisions, States sought to find an appropriate balance between these competing interests. In this sense, the St. Petersburg Declaration of 1868 explicitly recognizes the need to reconcile the necessities of war with the laws of humanity. Therefore, each legal rule and principle of the law of armed conflict manifests and incorporates a balance (p. 41) of these opposing interests to reach an equilibrium. Proportionality is the link between those countervailing interests when they lead to conflicting results.

Proportionality is a general principle of IHL (p. 48), and a source of international law (p. 81). But general principles can perform other roles. They can operate as a tool to fill gaps in conventional and customary international law (avoiding non liquet) or as a means of interpreting other rules of international law, or of supporting legal reasoning. Moreover, principles of law can act as a foundation of the international legal system or as a means of strengthening its systematic character.

-The Rule of Proportionality in the Conduct of Hostilities:

In addition to being a principle of IHL, proportionality is a rule relating to the protection of civilians in the conduct of hostilities. The three elements that lead to its characterization as a rule are its codification, its specific scope, and its all-or-nothing operation.

Codification consists of adopting a norm into writing. Proportionality devoted to the protection of civilians and civilian property in the conduct of hostilities, as enshrined in articles 51(5)(b), 57(2)(a)(iii), and 57(2)(b) of AP I, is the first codification (p. 6) of the rule of proportionality. It codifies the general principle of proportionality in a particular case that allows it to regain the quality of a rule. The rule is recognized as customary based on State practice and opinio juris. Moreover, its codification clearly attests to its status as law. This avoids the long and laborious demonstration of State practice and opinion juris required to establish uncodified customary

international law. It is also the first necessary step in demonstrating its status as a rule.

In addition to being codified, the rule of proportionality has a specific scope. It applies in a particular context, in the conduct of hostilities and prescribes a specific type of proportionality: the balance of interests. It also determines the elements to be weighed. The rule of proportionality requires that the anticipated incidental loss of human life and damage to civilian objects should not be excessive in relation to the concrete and direct military advantage expected from the destruction of a military objective. The balance is composed of, on the one hand, the military advantage expected from the destruction of a military objective, and on the other hand, the incidental damage caused by the military intervention, i.e., the harm to civilians and civilian property.

The limited circumstances to which the rule of proportionality applies demonstrate its specific scope. The rule applies only when a military objective (legitimate target) is the object of an attack and incidental damage is foreseeable. Moreover, the rule applies only to an attack. Not every military operation in an armed conflict constitutes an attack.

Finally, the proportionality rule operates according to an "all-or-nothing" (p. 24) model. This means that once the conditions for its application are met, it must be complied with in full. The principle of proportionality, on the contrary, offers variable solutions since it operates according to the "plus-or-minus" (p. 427) scheme. Principles are norms that require something to be achieved to the greatest extent possible according to the factual possibilities and within the limits imposed by other competing principles. They are "optimization requirements"(p. 47) characterized by the fact that they can be satisfied to varying degrees and the appropriate level of satisfaction depends not only on factual, but also on legal and political possibilities. Rules, on the other hand, are either satisfied or not satisfied, with no room for discretion. They are called "fixed points" (p. 2) in the field of factual and legal possibilities.

Article 51(5)(b) AP I requires an "all or nothing" assessment of proportionality. Its violation automatically leads to a breach of the obligation. The fact that manifest disproportionality constitutes a war crime further demonstrates this "all-or-nothing" aspect. Weighing the elements in the balance is certainly delicate, but the consequence of the violation is pre-determined. Either the rule is respected because the

incidental effects are legally justified, or the rule is violated because the anticipated harm is disproportionate to the expected advantage to be gained. From this perspective, the implementation of the principle of proportionality in IHL differs from that of the rule. The principle is adjacent to the norm to which it relates. It can be seen as a complementary legal instrument. Its violation does not systematically constitute a breach of the relevant norm, or an independent offence. The principle of proportionality applies to many provisions, but unlike the rule of proportionality it is not a provision in itself.

-Martens Clause:

The Martens Clause, introduced by Russian delegate Fyodor **Martens** in the preamble to the 1899 Hague Convention, affirms that in cases not covered by written law, persons remain protected under the principles of humanity and the dictates of public conscience.

The 1868 Declaration of St. Petersburg also emphasized that civilization must lead to minimizing the suffering of war through the application of military necessity and humanitarian treatment.[55]

The Martens Clause is a realization of the principle of humanity. It is separate because of its uniqueness. It was inserted into the Hague Convention II of 1899 and IV of 1907. Since then, the Martens Clause has been incorporated into various texts, including the Geneva Conventions, in the provisions dealing with denunciation of these conventions. It can also be found in the 1980 Convention on Certain Conventional Weapons in the preamble, and notably in Article 1(2) of Additional Protocol I[56].

This clause reads as follows: "Until a more complete code of the laws of war can be enacted, the High Contracting Parties deem it appropriate to affirm that, in cases not included in the regulations adopted by them, the populations and belligerents remain under the protection and empire of the principles of international law, as they result from established usages between civilized nations, the laws of humanity, and the demands of public conscience." It is a rather old formulation that clearly reflects the 19th century.

This clause did not have the same legal value before World War II and before the Geneva Conventions. It was a preambular clause-beautiful,

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[55] Claude, Emmanuelli, op.cit. p.236
[56] Nicolas, Tsagourias, op.cit, p.184

generous, kind, honored in words but often ignored in practice. It was only in a revisionist and courageous manner that the U.S. military tribunal in Nuremberg, in the 1948 Krupp case, considered the Martens Clause as more than just an empty wish and that it had become part of positive law. In 1948, this was not quite true, but since then, it has certainly become so, not least because this clause was incorporated into operational provisions of the Geneva Conventions, as well as into the Protocols and other instruments[57].

The original meaning of the Martens Clause is still valid: it ensures that when a matter is not regulated-when there is a gap, in other words, in the law of armed conflict-there cannot be applied the "residual freedom rule," which would normally apply. The term "residual freedom rule" means, "what is not prohibited is permitted."[58]

When IHL was not as codified as it is today, as was the case in 1899 and 1907, there were more gaps than regulations. This could be somewhat problematic in suggesting to states that for anything not expressly regulated in the convention, they were free to do as they pleased, since it was not prohibited. With the Martens Clause, an effort was made to limit this principle, saying that if something is not expressly prohibited, it does not mean it is permitted; it still has to be

These represent the minimum humanitarian standards applicable in all times, places, and circumstances. They are widely accepted, even by states not party to IHL treaties.

This clause appears in the 1899 and 1907 Hague Conventions, all four Geneva Conventions, Protocols I & II, and the 1980 Convention on Certain Conventional Weapons. It holds that in situations not covered by treaties, civilians and combatants remain protected by the principles of international law, the laws of humanity, and the dictates of public conscience.

The Nuremberg Tribunal applied this principle when adjudicating Nazi war criminals after WWII. Under this clause, persons and property not addressed by treaties are safeguarded by customary law and general humanitarian principles. Its importance lies in protecting civilian property

[57] Martinus Nijhoff, Byron, C., A ,op.cit, p. 852
[58] Emily Crawford,op.cit,p.197

not explicitly covered by treaties-including cultural heritage, the environment, infrastructure, and facilities with dangerous potential[59].

However, the interpretation of this clause remains contested: whether the principles of humanity and public conscience are legally binding standards or mere moral guidelines. The Nuremberg Tribunal, in the *Krupp* case (1948), held that the Martens Clause carried legal weight beyond pious statements, asserting that customary international law and principles of humanity must apply in treaty gaps.

3-Key Principles of IHL (Drawn from the Geneva and Hague Conventions):

- Protection and humane treatment of persons not participating in hostilities or no longer able to fight.
- **Sanctity of human life** - war does not justify attacks on those outside the conflict.
- **Prohibition of all forms of torture**.
- Parties detaining enemies must **respect their dignity**, obtain **identity information only**, and **ensure legal protections**.
- Prisoners retain their **legal personality**, rights, and must receive **news from their families** (handled by the Geneva **International Tracing Agency**).
- **Protection of civilian property**.
- **Non-discrimination** in treatment and medical care for victims and civilians.
- **Prohibition of reprisals, collective punishment**, and **hostage taking**.
- **Accountability** for war crimes and crimes against humanity-with due process guaranteed during **investigation, trial**, and **execution of punishment**.
- **Prohibition of using civilians as human shields**.
- Ban on **plundering, indiscriminate attacks**, and **acts of treachery** on the battlefield.[60]

-Distinguishing Between the Geneva and Hague Law Principles:

To differentiate between the principles of **Geneva Law** and Hague Law, we present each separately:

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[59] Martinus Nijhoff, Byron, C., A ,op.cit, p. 858

[60] Diop, Mamadou fallylou, op.cit., p.157

B. Geneva Law Principles :

- Right to participate in hostilities within the limits of the law of armed conflict.
- Obligation to assist **wounded, sick, shipwrecked**, and **starving civilians** without discrimination.
- **Humane treatment** of all persons under the authority of an enemy power.
- The **rights of persons under occupation** are inalienable.
- **Occupation** does not confer sovereignty over the occupied territory.
- **Release of prisoners and civilian detainees** at the end of hostilities[61].

C. Hague Law Principles:

The 1868 St. Petersburg Declaration marked a turning point in the development of Hague Law, stressing that:

-"The progress of civilization must reduce the sufferings of war"
-"The only legitimate aim of war is to weaken the enemy's military forces"Hague Law focuses on **regulating the conduct of hostilities**, including weapon use and battlefield behavior.[62]

Key principles include:

- **Principle of Humane Treatment**:
  A core pillar in IHL, requiring the **humane treatment of all persons**, especially when not covered by specific treaty provisions.
  This principle ensures:

-Protection of non-combatants and humane treatment.

-Prohibition of all torture.

-Recognition of the legal personality of prisoners and the need to communicate family news.

-Respect for civilian property.

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[61] Jean, Pictet, op.cit, p.132

[62] Plattner, D., op.cit, p.154

3-Restrictions on weapons and tactics used in warfare.

-Equal treatment in assistance and medical care for all victims.

-Prohibition of collective punishment and reprisals.

-Ban on hostage-taking during armed conflict.

-Legal consequences for war crimes, with fair legal processes.

-Prohibition of using civilians to shield military targets.

-Ban on looting, indiscriminate attacks, and treachery in warfare.

- Principle of Military Necessity

The only legitimate objective that states may pursue during war is to weaken the enemy's military forces. That means that what is necessary to weaken the enemy is legitimate, whereas what is not helpful to attain that goal is illegitimate. From this principle, the parties to a conflict use only the force necessary to achieve the objective of warfare, which is to incapacitate the opponent and gain victory. Once that aim is achieved, anything beyond it loses justification under necessity[63].

Certainly, international humanitarian law (IHL) prohibits invoking the principle of military necessity as a legal justification for unlawful acts that contravene treaties and international instruments. Its rules also reject that parties to a conflict may appeal to military necessity in pursuit of **absolute military advantage**. Rather, it limits the freedom of parties to choose means and methods of warfare[64]. This is affirmed in the preamble of the St. Petersburg Declaration, which states, "the necessities of war must yield to the requirements of humanity." Likewise, the preamble of the 1907 Hague Convention IV declares that the "laws, rules, and usages of war ... are part of the public conscience and the interest of civilization."[65] In its fifth paragraph, it underscores that war's pains should be reduced "to the extent permitted by military necessity." The annexed regulations to that

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[63] Droege, C., op.cit, p. 572

[64] Claphalm, A., Human rights obligations of non-state actors in conflict situations », Revue internationale de la CroixRouge, 2006, p. 499

[65] Emily Crawford, op.cit,p.143

Convention also prohibit destruction or seizure of enemy property except when required by military necessity.

One must not interpret military necessity as allowing any means or methods of warfare simply because they serve a military purpose, nor as a rationale free from constraints—even though parties in armed conflict have the right to select means and methods of warfare. The prevailing rule is that weapons or means whose use would cause **excessive or pointless suffering** are prohibited. This rule not only protects non-combatants from harm, but also spares combatants from suffering that exceeds what is necessary to remove the adversary from the fight.Hence, the parties' right in any armed conflict to choose means and methods of warfare is not absolute, but subject to limitations: the prohibition on weapons and methods that cause pointless suffering or superfluous injury.

One can highlight key principles contained in both the Hague and Geneva regimes in more detail:

-Distinction (between civilians and military objectives):

Attacks against civilians, civilian objects, and incidental civilian losses are prohibited when directed intentionally. The assault must be limited to legitimate military objectives — armed forces and facilities that contribute to military action. The principle of proportionality must be observed at all times. Civilian harm must be minimized, though it is not in itself unlawful so long as it is incidental and not excessive[66].

The Geneva system rests on respect for human dignity and protection of non-combatants and those who have ceased fighting, treating them humanely. The First Additional Protocol (to the Geneva Conventions) explicitly supports this principle. It mandates that civilians must not be targeted, and civilian property should not be attacked, though incidental harm may occur in lawful operations. One must distinguish between civilian objects and military objectives during military operations. Also, the choice of means and weapons must ensure the least possible harm and suffering.

In 1996, the International Court of Justice reaffirmed the principle of distinction, noting it aims to protect civilian populations and property by

[66] Alexandre, Hay, dimensions internationals law humanitarian, Pedon, Institut Henry Dunant-Unesco, 1986, p.184

distinguishing combatants from non-combatants, and military objectives from civilian objects. This principle supports forbidding attacks on purely civilian buildings such as houses, places of worship, hospitals, schools, and cultural heritage sites; only military objectives may be attacked[67].

Under this principle, a number of subrules follow:

- It is forbidden to attack places devoid of military use.
- One cannot target charitable institutions, historical monuments, or cultural heritage sites.
- Attacks are prohibited on engineering works or infrastructure that pose a danger to civilians unless used for military purposes.
- The use of civilians to shield military objectives is prohibited.
- Civilian objects may not be attacked for revenge or sabotage.

In practice, applying distinction is difficult: parties often use highly destructive weapons (nuclear, chemical, biological) or indiscriminate weapons (landmines, booby traps, incendiaries) whose effects cannot be precisely controlled.

- Proportionality:

This principle means that military operations must not cause civilian damage disproportionate to the concrete and direct military advantage anticipated. It entails a separate evaluation by neutral bodies or organizations not party to the conflict, which may assess whether an attacker complied with the obligation to minimize harm and suffering[68].

Proportionality is linked with lawful weapons: the target must be a military objective under IHL. An attack is unlawful if expected incidental harm is excessive relative to the military advantage. It is also a general principle of international law protecting private property.

Often this principle comes into play during conflict when a legitimate attack on a military objective causes collateral civilian/materiel damage. Its application is extremely complex, especially when a party (for example, in

[67] Nicolas, Tsagourias, op.cit, p. 179
[68] Claude, Emmanuelli, op.cit. p.258

the Israeli–Palestinian context) inflicts destruction on civilian property disproportionate to military goals.[69]

- Other Prohibitions and Constraints :

- Ban on certain weapons: chemical, biological, some explosives, and restrictions on indiscriminate conventional weapons like landmines and nuclear arms.
- Prohibition of perfidy (treachery) during combat (which differs from lawful ruses).
- Respect for the person of an adversary who surrenders or is hors de combat (no longer able to fight).
- Occupation is a factual status and does **not** confer sovereignty; the occupier may take control of property for security but does not gain ownership.

-Fundamental Rules of IHL:

Based on the Geneva and Hague Conventions and derived principles, the following are among the essential rules that conflicting parties must respect:

-Persons unable to fight or not participating directly in hostilities are entitled to life, bodily and mental integrity, and humane treatment without discrimination.

-It is prohibited to kill or injure enemies who have surrendered or are hors de combat.

-Wounded and sick must be collected and cared for by the party in whose power they are. This includes medical personnel, medical units, transport, and equipment, protected by the emblem of the Red Cross/Red Crescent, which must be respected.

-Combatants and civilians under enemy control maintain their rights, dignity, beliefs, and may correspond with families and receive relief.

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[69] Claphalm, A., op.cit, p. 516

-Everyone is entitled to fundamental legal guarantees: no one is guilty unless proven, no torture or cruel, inhuman, or degrading treatment or punishment[70].

-Parties do not have unlimited freedom in means and methods of warfare. Weapons or methods causing unnecessary suffering or superfluous injury are prohibited.

-Parties must distinguish always between civilians and combatants. Civilians may never be attacked; attacks are permitted only against military objectives.

-Some limitations of IHL:

*It does not forbid the use of force entirely.

*Parties to a conflict are assumed to have **reasonable objectives**.

*Its rules do not cover every affected person in a conflict.

*It does not consider the political purpose of the armed conflict.

*The principle of humanity is constrained by military necessity.

*In dealing with the ICC, the Court must reconcile rights under public international law (sovereign rights of states) with rights under IHL (rights of parties to the conflict).

Fifth: Sources of International Humanitarian Law:

Most international legal scholarship classifies the sources of IHL among the same sources of international law as in Article 38 of the Statute of the International Court of Justice, namely written and unwritten sources. These include:

-treaties that codify what is established as binding customary practice in times of armed conflict,

[70] Cryer, R., The Interplay of Human Rights and Humanitarian Law: The Approach of the ICTY, Journal of Conflict and Security Law, 2010, p. 518

-Customary rules, which are among the oldest sources, arising from field practices of a number of international bodies[71].

1. International Treaties:

IHL consists of a large number of treaties and protocols. Some of the most important are:

a. The Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864):

This treaty, dated 22 August 1864, emerged due to a special initiative by the "Geneva Committee" in 1863, when the Swiss federal government promoted a governmental conference to adopt a treaty aimed at improving the condition of wounded military personnel in the field. A number of European states were invited, resulting in this pioneering treaty in human rights. Key articles provided for:[72]

-Neutrality of medical services, medical transport, and personnel;

-Respect for civilian volunteers aiding relief;

-Provision of medical assistance without discrimination;

-Use of a distinctive emblem – a red cross on a white background.

b. The Geneva Convention of 1906 on improving the condition of the wounded and sick in the field:

Signed in July 1906, this treaty supplemented the 1864 Convention, expanding its scope to include "the sick" and increasing the number of articles to 33, signifying substantial additions. It also introduced the principle of reciprocal treatment (mutuality).

c. The Geneva Conventions of 1929:

A diplomatic conference in Geneva in 1929 produced two treaties:

-The updated "Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Field" (39 articles), which paid greater

[71] Claude, Emmanuelli, op.cit. p.262
[72] Arnold, R., Quenivet, N., op.cit, p.367

attention to medical aviation and ambulance services. It also allowed for additional emblems beyond the Red Cross, such as the Red Crescent and Red Lion and Sun.

-The "Geneva Convention relative to the Treatment of Prisoners of War," dated 27 August 1929, with 37 articles covering life in captivity, rights, state protection, the role of the Red Cross, and the creation of a "tracing agency" to collect information about prisoners and facilitate family contact[73].

d. The Four Geneva Conventions of 1949:

After WWII, Switzerland called for a conference in Geneva in 1949. The outcome was four Geneva Conventions, currently in force, plus three additional protocols. Nearly 190 states are parties. These Conventions chiefly protect those who are not fighting (civilians, medical and religious workers, relief personnel) or who are no longer capable of fighting (wounded, sick, shipwrecked, prisoners of war). The Conventions and their additional protocols obligate states to take measures to prevent or end "grave breaches" in war, and punish those responsible.

Key developments in these Conventions:[74]

- Revision and development of earlier Geneva Conventions and of Hague law, and creation of protections for victims of naval war (shipwrecked wounded and sick).
- Extension of IHL to internal armed conflicts, to ensure minimum humane treatment among parties to internal strife.
- Protection of civilians under occupation, emphasized for the first time (though some states did not accept this fully until the 1977 Additional Protocols).

e. The Additional Protocols to the Geneva Conventions of 1977:

-Protocol. I: (for victims of international armed conflicts): This supplements the 1949 Geneva Conventions and includes recognizing national liberation movements as combatants (in some cases), broadens protection for medical units and civil medical services, recognizes civilian

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[73] Emily Crawford,op.cit,p.184

[74] Martin, nijhoff, Convention de Genève du 12aout 1949, Edition, CICR Publisher, Geneva, - Protocol 1,1986.p.92

volunteers, and establishes legal machinery for investigating serious violations of IHL.

-Protocol II: (for victims of non-international armed conflicts): This protocol develops rights for categories of fighters in conflicts that do not reach the level of international war. It defines non-international armed conflict, reaffirms non-intervention in domestic matters (i.e. IHL should not become a vehicle for interstate interference), strengthens guarantees for non-combatants, ensures detainee rights, and ensures state parties apply its provisions[75].

- Other treaties relevant to Geneva law include:

- The St. Petersburg Declaration of 1868 (on banning certain explosive projectiles).
- The Hague Declaration of 1899 banning expanding bullets ("dum-dum").
- The 1925 Geneva Protocol prohibiting poison gas and germ warfare.

I-Treaties and Protocols Related to the Protection of Victims of Armed Conflicts

Name of Convention/Protocol	Date	Description
1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)	1949	This convention protects wounded and sick combatants, as well as personnel providing them care, and the buildings and equipment (including means of transport) used for their benefit. It also regulates the use of the Red Cross, Red Crescent, and Red Lion and Sun emblems.
2. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)	1949	Extends protection to combatants who are shipwrecked at sea and regulates their treatment, as the First Geneva Convention did not cover this category.
3. Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)	1949	Protects members of armed forces who fall into enemy hands, setting out their rights and the obligations of the detaining power, including standards of treatment.
4. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)	1949	Establishes rules to protect civilian populations, especially in occupied territories, and addresses issues of occupation and deprivation of liberty.

[75] Gary ،D., Solisop, op.cit., p.205

Name of Convention/Protocol	Date	Description
5. Additional Protocol I Relating to the Protection of Victims of International Armed Conflicts	1977	Supplements the four Geneva Conventions by providing fundamental guarantees for persons not taking part in hostilities during international armed conflicts, and sets rules for the protection of civilians and essential civilian infrastructure.
6. Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts	1977	Supplements the Geneva Conventions by establishing guarantees for persons not participating in hostilities during non-international armed conflicts, including rules for the protection of civilians and vital infrastructure.
7. Additional Protocol III Relating to the Adoption of an Additional Distinctive Emblem	2005	Adds the Red Crystal as an additional distinctive emblem alongside the Red Cross and Red Crescent.
8 Convention on the Rights of the Child	1989	Expands protection for children in armed conflicts (Article 38) and establishes a monitoring committee (Article 43) to follow up on implementation by States Parties.
9. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	2000	Supplementing the Convention on the Rights of the Child, it requires States to refrain from forcibly recruiting children under 18.
10. International Convention for the Protection of All Persons from Enforced Disappearance	2006	Aims to ensure that no one is subjected to enforced disappearance, including during armed conflict.

II- Treaties Restricting, Prohibiting, or Regulating Certain Weapons

Name of Treaty	Date	Description
1. Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol)	1925	Prohibits the use of asphyxiating, poisonous, or other gases, as well as bacteriological methods of warfare.
2. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction	1972	Prohibits the development, production, stockpiling, acquisition, and retention of microbial or other biological agents or toxins not justified for peaceful purposes.
3. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons	1980 2001	Prohibits or restricts the use of certain conventional weapons deemed excessively injurious or having indiscriminate effects.

Name of Treaty	Date	Description
4. Protocol I on Non-Detectable Fragments	1980	Prohibits weapons that injure by fragments undetectable by X-rays.
5. Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (as amended)	1980	Prohibits the use of mines, booby traps, and other devices against civilians and restricts their use against military targets, including in non-international conflicts.
6. Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons	1980	Prohibits the use of incendiary weapons against civilians or civilian objects, and restricts their use against military targets.
7. Protocol IV on Blinding Laser Weapons	1995	Prohibits the use of laser weapons specifically designed to cause permanent blindness.
8. Protocol V on Explosive Remnants of War	2003	Assigns responsibility for explosive remnants of war to parties controlling affected areas and encourages marking, clearance, and destruction efforts.
9. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction	1997	Prohibits the development, production, acquisition, stockpiling, retention, and use of chemical weapons.
10. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Treaty)	1997	Prohibits the use, stockpiling, production, and transfer of anti-personnel landmines.
11. Convention on Cluster Munitions	2008	Prohibits the use, production, transfer, and stockpiling of cluster munitions, and any assistance in such acts.

III.Treaties Related to the Protection of Cultural and Environmental Property

Name of Treaty	Date	Description
1. Convention for the Protection of Cultural Property in the Event of Armed Conflict	1954	Protects cultural property, including monuments and works of art of historical, artistic, or architectural importance, and applies also to non-international conflicts.
2. First Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict	1954	Aims to prevent the export of cultural property from occupied territories and ensure its protection and return.
3. Second Protocol to the 1954 Hague Convention for the Protection of	1999	Expands rules protecting cultural property, strengthens safeguarding measures, and applies to both international and non-international conflicts.

Name of Treaty	Date	Description
Cultural Property in the Event of Armed Conflict		
4. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)	1976	Prohibits the military or hostile use of environmental modification techniques or geophysical changes that have widespread, long-lasting, or severe effects.

Here are the principal sources in order:

-The Conventions of IHL:

The first convention is not actually part of the law of armed conflict; it concerns arbitration. Not all conventions address the law of armed conflict, but the majority of the Hague Conventions do fall under the law of war or the law of armed conflict, as it was called at the time. **Convention IV**, along with the annexed regulations of **The Hague Convention IV** relating to the laws of war on land, specifically regulates all important issues concerning the law of armed conflict as they existed in 1899 and 1907. We refer to **Convention IV** because it is the one that is still used today[76]. The **Hague Convention IV** with its annexed regulations dates from 1907. The 1899 version, which is largely identical, is referred to as **Convention II**.

The text of this convention is relatively short, with brief provisions under the title "Regulations concerning the laws and customs of war on land" dated October 18, 1907. Why is this text still important today? It is important, and one should not make the mistake of thinking that since this text is from 1907, it is outdated. It is true that it has been over a century, but some sections of this regulation remain of utmost importance, and the Hague Court of Justice frequently cites them first[77].

The first significant section in this text concerns the means and methods of warfare that are prohibited, particularly in **Article 23**, one of the longest articles in this Hague Convention, and more specifically in the regulations, which contains a series of letters from "a" to "h," prohibiting certain means or methods. For example, it prohibits killing or injuring an enemy who has laid down their arms or can no longer defend themselves and is at the mercy of the enemy. It also forbids the use of weapons or projectiles designed to

[76] Gary ‹D., Solisop, op.cit., p.164
[77] Alexandre, Hay, op.cit, p.186

cause unnecessary suffering, as well as poisoned weapons. Article 23 is probably still the most frequently cited article of this convention toda[78]y. It remains relevant because the principles codified here were not revisited in other conventions, as they were already contained in **Hague Convention IV**, which is now considered customary international law. This was acknowledged by the International Military Tribunal at Nuremberg.

The second important section in this text concerns occupied territories, specifically the last articles (42 and following) of Section III on the military authority over the territory of the enemy state. Articles 42 through 56 contain provisions on occupied territories and the law of military occupation. Among these, Articles 42 and 43 are of particular importance. Article 42 defines an occupied territory-when is a territory considered occupied? In the jurisprudence of the International Court of Justice, whenever a territory is occupied, or armed activity occurs, the case often begins with Article 42 of the regulations[79].

The **Fourth Geneva Convention** also contains rules on occupied territories, but it does not define them, as this was already covered in The Hague regulations. Article 43 is the constitutional provision regarding occupied territories, which tells us that the occupant is responsible for maintaining public order and civil life within the occupied territory and that, unless absolutely necessary, the laws and institutions of the occupied territory should not be altered. This is therefore the most important framework provision.

-The Fifth Hague Convention of 1907: addresses neutrality in land warfare. All the other conventions pertain to maritime law and are largely outdated.

-The Geneva Conventions of 1949:

The Geneva Conventions of 1949 are the I to IV conventions. We will present these conventions from the perspective of their applicability and later from a substantive perspective. The four Geneva Conventions of 1949

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[78] Emily Crawford,op.cit,p.199

[79] Arnold, R., Quenivet, N., International Humanitarian Law and Human Rights Law: towards a New Merger in International Law, Leiden, Calogerolopoulos-Stratis, Genève, IUHEI, 1984, p.367

represent the core of today's humanitarian law. They are therefore the most important codification we have, spread across four conventions[80].

- **Convention I** deals with military personnel, specifically the wounded or sick on land during wartime.

- **Convention II** addresses wounded, sick, or shipwrecked military personnel at sea. The primary difference between the first and second conventions lies in the theater of war—land versus sea—not the personnel involved. The personnel are the same, and the circumstances leading to protection (wounding, illness, or shipwreck) are the same. The distinction is purely based on the theater of war, i.e., land versus sea. The reason for separating the two conventions is that the organization of care for the wounded and sick differs significantly on land and at sea, due to the limited resources at sea, such as hospital ships, as opposed to more decentralized care on land[81].

- **Convention III** is about the protection of prisoners of war. This convention is notably longer and more detailed than the first two. There is some overlap in application between Conventions II, III, meaning that if an enemy soldier is captured without injury or illness, Convention III applies and **I**. However, if the same soldier is captured or surrenders with injuries or illness, both Convention I and Convention III (or, depending on the situation, Convention II and Convention III) would apply[82].

- **Convention IV** is concerned with the protection of civilians. The first three conventions are not new in the sense that there were older Geneva Conventions, which the 1949 version revised. However, **Convention IV** is entirely new as civilians were not previously protected by IHL except in a few scattered provisions, particularly in the laws of military occupation under the Hague regulations of 1907.

The Fourth Geneva Convention is the longest, with around 150 articles, while the first has about 50 provisions, yielding a ratio of 1:3. In total, the Geneva Conventions contain more than 500 articles, including annexes, which is a significant codification compared to the Hague conventions, which, concerning land warfare (the non-maritime theater of war), contained only 56 provisions, generally very brief, taking only two or three lines. The

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[80] Pictet, J., Commentaire de la 4eme Convention de Genève de 1949 relative à la protection des personnes civiles en temps de guerre, Genève, CICR, 1952, p.192

[81] Diop, Mamadou fallylou, op.cit, p.187

[82] Cryer, R., op.cit, p. 543

articles of the Geneva Conventions, on the other hand, are usually long and detailed. After the atrocities of World War II, it was necessary to start anew and produce new laws to replace the outdated ones, whose provisions had proven insufficient[83].

-Important Conventions of International Humanitarian Law:

The oldest treaty that has retained its significance to this day is the 1907 Hague Convention concerning the Laws and Customs of War on Land. Unlike other instruments from the same era that have become obsolete, this treaty remains an important part of IHL.

Another significant treaty is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (SR 0.520.3).

However, the most frequently cited instruments are the 1949 Geneva Conventions and their Additional Protocols of 1977. These were developed based on older texts and are complemented by a fourth convention specifically dedicated to the protection of civilians.

A third Additional Protocol was adopted in Geneva in 2005. It introduces a new distinctive emblem in the form of a red crystal, which is used by certain national societies in place of the Red Cross or the Red Crescent.

The four Geneva Conventions are divided as follows:[84]

I. Improvement of the condition of wounded and sick members of armed forces in the field
II. Improvement of the condition of wounded, sick, and shipwrecked members of armed forces at sea
III. Treatment of prisoners of war
IV. Protection of civilians in times of war

The Additional Protocols complement the Conventions as follows:

-Additional Protocol I, relating to the protection of victims of international armed conflicts

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[83] Jean d'Aspermont ‹Jérôme de Hemptienne, op.cit, p.206
[84] Pictet, J., o, p.198

-Additional Protocol II, relating to the protection of victims of non-international armed conflicts

-Additional Protocol III, relating to the adoption of an additional distinctive emblem

-The Protocols of IHL:

There are three additional protocols to the 1949 Geneva Conventions, and the Third Additional Protocol is not of interest here, as its subject matter is minor and of very little practical importance. The 2005 Third Additional Protocol introduced a new protective emblem since Israel struggled to adopt the Red Crescent or the Red Cross, desiring a distinct emblem.

The two additional protocols of 1977 are of great importance. What happened between 1949 and 1977 to justify the adoption of new texts? In other words, why did the Geneva Conventions prove insufficient? There are at least four areas where gaps appeared after 1949 [85].

Some of these protocols have been revised, such as the second protocol, which was revised in 1999 to make it applicable to non-international armed conflicts. There are five protocols, some of which have been revised, which creates a treaty law issue as some states are bound only by the older version, while others are bound by the revised version[86].

We will explain in detail its official sources as follows:

2-Customary Rules:

After examining conventional law, one might think that customary law plays no role in armed conflicts, making the discussion superfluous. This would be a mistaken conclusion. Customary law does play a role, and in some cases, even a very important role. Unfortunately, it sometimes plays a shadowy role.

How can customary law be useful in IHL?

Certain situations are "glaringly obvious." The first and most obvious situation is when a specific rule is contained in a convention that is not universally ratified, meaning some states are parties to it while others are

[85] Claude, Emmanuelli, op.cit. p.198
[86] Pictet, J., op.cit, p. 202

not. In this case, the conventional rule can only be applied to the states that are parties. As the **Vienna Convention on the Law of Treaties** (Article 34) states: pacta tertiis nec nocent nec prosunt (treaties do not affect third parties). This means that in an armed conflict, one state might be bound by a certain rule, while another belligerent state may not be.

Customary law helps unify this by ensuring that if a rule is part of customary law, it applies to all belligerents, to all states, if it is a universally recognized rule of customary law. Customary law thus has a harmonizing and unifying effect. It will need to be checked whether specific provisions in conventions that are not universally ratified are also part of customary law[87]. This is particularly important for Additional Protocol I and Additional Protocol II, as these protocols have provisions that are not universally ratified, unlike the Geneva Conventions, which are widely accepted.

In literature, customary law can also have other uses. There are certain areas of IHL where there are significant gaps. The best example is the law of non-international armed conflicts. There is very little written law in this area-**Article 3** common to the Geneva Conventions, **Protocol II** for those who have ratified it, and a few other texts, mostly in the laws of weapons, apply to both types of conflicts (international and non-international armed conflicts).

As there are few written provisions and many gaps, customary law is used to fill some of these obligations for belligerents in non-international armed conflicts. This means that the law of non-international armed conflicts is not static, as codified in 1977, but continues to develop through subsequent norms born from customary law. The study of customary law, as conducted by the ICRC, provides the basis for this.

Customary law helps to develop the law of armed conflict and fills gaps. This law still remains in a chaotic state, and customary law has only partially clarified the uncertainties. However, the **International Criminal Tribunal for the former Yugoslavia** (ICTY) has consistently referred.[88]

Although treaty ratification is generally necessary for a state to be bound by specific treaties, many states are parties to armed conflicts that are subject

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[87] Jean, Pictet, op.cit, p.154

[88] Yves, Sandoz, Christophe, Swinarski, Bruno, Zimmermann, commentaire des protocoles additionnels de 8juin 1977p.106

to IHL even if they have not ratified certain treaties (for instance, some have not ratified Protocol II of the Geneva Conventions)[89].

Notably, in many non-international-armed conflicts the Common Article 3 of the 1949 Geneva Conventions is the only treaty provision that applies. Thus, many IHL norms are part of **customary international law**-derived from widespread state practice and opinio juris (belief that a rule is legally binding). Bodies like the Red Cross and consistent state conduct contribute to shaping these customary rules. These apply to all parties to a conflict, regardless of treaty ratification.

Because many contemporary conflicts are non-international, and some states have not ratified certain protocols, there is a gap in treaty law; customary law fills many of these gaps.

Section Two: Scope of Application of IHL

Protection under IHL includes both international and non-international armed conflicts. All individuals are equal before the law regarding their legal status and rights. The law grants special protection to categories such as wounded, sick, prisoners, civilians, journalists, women, children, medical personnel, clergy, and others. Protection also extends to civilian objects, cultural property, and civilian infrastructure during armed conflict[90].

First: Subject-Matter (Material) Scope of IHL

The subject matter is restricted to situations of **international or non-international armed conflict**—that is, where there are hostile parties, military forces, attacks, and means/methods of warfare. IHL is designed to protect rights and interests that conflict with those of the opposing side.

1. International Armed Conflict

The four 1949 Geneva Conventions' **Common Article 2** provides that they apply in case of **declared war** or any other armed conflict between two or more of the High Contracting Parties, even if one does not declare war. They also apply in all cases of occupation, even if there is no armed resistance[91].

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[89] Nicolas, Tsagourias, op.cit, p. 185

[90] Diop, Mamadou fallylou, op.cit., p.123

[91] Yves, Sandoz, Christophe, Swinarski, Bruno, Zimmermann, op.cit,p.115

Protocol I of 1977 extends this by giving **national liberation wars** the status of international armed conflicts in certain cases, particularly in the exercise of peoples' right to self-determination, as in the UN Charter and other instruments.

To determine whether an armed conflict is international, the criteria include: at least two states (parties to the conflict), continuous combat in time and space, and application of IHL obligations accordingly.

1/Causes of international armed conflict may include:

-Border disputes.

-Temporary occupation to force compliance with an obligation.

-Bombing of cities or populated areas to force political concession[92].

2/Parties to international armed conflict include:

-Regular state armies.

-Militias or volunteer corps if they meet certain conditions (command structure, distinctive signs, open carrying of arms, respect for IHL).

-Civilians bearing arms under certain circumstances (e.g. in occupied territory).

-Persons accompanying the armed forces (e.g. war correspondents, religious personnel, medical staff, etc.)[93].

2. Non-International Armed Conflict

These are confrontations within the territory of a single state between the regular armed forces and armed groups, or between such groups. They might take the form of rebellion, uprising, civil war, or internal armed struggle. Geneva Conventions and Protocol II deal with these. Common Article 3 of the 1949 Conventions is the minimal treaty provision for many such conflicts. The law applicable in such conflicts is primarily domestic law supplemented by IHL treaty rules and customary IHL.

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[92] Nicolas, Tsagourias, op.cit, p. 190

[93] Davitti, Daria, op.cit, p.266

a-Conditions for a non-international armed conflict include:

-Presence of organized armed groups with command structure.

-Sustained combat beyond mere internal disturbances.

-Parties have capacity/control and willingness to respect IHL rules. The law has developed elaborate rules regulating various aspects of warfare. Some highlights:

-Armed (violent) means and deceptive means (ruses) are both regulated.

- Means of Violence

From Hague 1907 etc., weapons and methods may be lawful or unlawful. Examples of unlawful means:

- Weapons or explosives causing unnecessary suffering or superfluous injury.
- Spread-type bullets, expanding ("dum-dum") bullets.
- Poison gas, chemical and biological weapons.
- Killing or attacking persons who have surrendered or are hors de combat.
- Use of landmines or weapons with indiscriminate or severe harmful effect.

Lawful means are those not prohibited and that military necessity allows, constrained by the other IHL principles (distinction, proportionality, humanity)[94].

1/ International and Internal Conflicts

IHL distinguishes between international armed conflicts and non-international armed conflicts. Initially, only international conflicts were governed by IHL, while internal conflicts were considered internal matters for the States. Today, however, more and more rules originally applicable to international conflicts have been extended to internal conflicts[95]. Thus, all the Geneva Conventions and their first protocol apply to international conflicts, while only Common Article 3 of the Geneva Conventions and the second protocol are applied to internal conflicts.

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[94] Emily Crawford,op.cit,p.245

[95] Jean, Pictet, op.cit, p.196

The ICRC, the entire body of IHL is sometimes respected through ad hoc agreements made by the warring parties. It is also widely acknowledged today that many customary law rules apply not only to international conflicts but also to internal conflicts[96].

-Deceptive Means (Ruses vs Perfidy)

-Perfidy is prohibited. Defined in Protocol I, acts that betray the enemy's trust by pretending to be protected, in order to kill, injure, or capture. Examples:

*Using emblems like Red Cross, UN emblem to shield a military action.

*Using truces/ceasefires as cover for ambush.

*Allegations or actions of negotiation envoys abused for attack.

*Spying under false uniform or non-military dress.

-Permissible deception (ruses of war) are allowed so long as they are not treacherous or violate good faith obligations. Examples:

*Feigned retreats.

*False information about troop positions.

*Mines set on roads to delay enemy advance.

*Provoking confusion in the enemy's perception but without violating protected statuses or emblems[97].

2/ Naval Armed Conflicts

Naval armed conflicts are hostile operations in which a state's naval military force engages with that of another state, or enemy aviation attacks naval or land military forces of a state. These conflicts are governed by various declarations and international conventions, including:

- Paris Naval Declaration of 1856
- Hague Convention of 1907

[96] Davitti, Daria, op.cit, p.274
[97] Maurice, thorelli, op.cit,, p.145

- London Naval Declaration of 1909
- Washington Treaty of 1922 on submarine warfare

1-Naval Forces

They are divided into two categories:

- ***Regular naval forces***: These include warships belonging to the combatant states, commanded and crewed by military officers and sailors (naval fleet). They fly the war flag and bear military insignia. Also included are non-combat warships such as aircraft carriers, troop transports, and supply ships. All officers and soldiers aboard are considered combatants.
- ***Irregular (non-regular) naval forces***: States may employ non-regular sea units, relying on volunteered naval persons, which may include[98]:

a) Fishing vessels (also known as privateers) armed by a state for the purpose of going to sea to attack enemy warships or merchant ships, either to destroy them or capture them.
b) Volunteer ships: Private shipowners who place their vessels at the disposal of their governments, wearing military uniform and adhering to the Law of War, are treated like members of the naval armed forces.
c) Conversion of merchant ships into warships: Under the 1907 Hague Convention IV, merchant vessels may be converted to combatant ships, thereby gaining status as warships if conditions are met.

2-Means in Naval Warfare

a) Submarines and torpedoes: Because of their danger, their use has been regulated by treaties including the 1922 Washington Treaty and the London Treaties of 1930. Some of the rules are:[99]

-Surprise attacks are limited to enemy warships, not merchant ships carrying non-combatants.

-Merchant ships may not be attacked unless they refuse to stop for inspection after being warned, or reject being placed under seizure.

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[98]Emily Crawford,op.cit,p.168

[99] Musaad Abdel-Rahman, Zidan, United Nations intervention in armed conflicts that are not of an international character, Dar Al- .Kutub Legal House, Egypt, no edition 2008, p.106

-Merchant ships must not be destroyed without ensuring the safety of their passengers.

-Attacking merchant ships is prohibited unless the crew refuses inspection after warning.

3-Naval mines:

Their use is permitted in war, provided that neutral states (or states not party to the conflict) are not harmed by their deployment. Mines are not permitted on the high seas in a way that endangers neutral or non-involved states; their use is generally restricted to the territorial waters of combatant states. The 1907 Hague Convention VIII regulates naval mines; it prohibits automatic mines being placed near enemy shores and ports, and requires combatant states after war to do everything feasible to clear mines they placed.

4-Naval combat operations:

-Bombardment of enemy ports and coastal defensive works (but buildings devoted to religion, hospitals, historical monuments etc. should not be targeted).

-Naval blockade: A state may impose a naval blockade of enemy coasts for military necessity by preventing ships from entering or leaving ports, or cutting off maritime communications.

-Right of capture (prize): Enemy ships, warships or merchant vessels, may be seized under certain circumstances (see Hague Convention XII, 1907).

c. Aerial Armed Conflicts

These are combat operations involving aerial forces over land territory or over the territorial / internal waters of states, possibly extending to archipelagic passages, straits, or even international waters in certain cases (for example, for resource exploitation in deep seas not under national jurisdiction)[100].

-Air Forces: Composed of military aircraft of various kinds: fighters, interceptors, bombers, often reconnaissance and transport aircraft. They

[100]Gary ‹D., Solisop, op.cit., p.201

must bear a visible external sign of their military status and nationality, be commanded by regular military officers, have uniformed personnel with distinguishing insignia. Those captured are to be treated as prisoners of war.

-Means of aerial warfare: Aerial warfare is subject to many of the same rules as land and naval warfare: prohibition of poisonous or chemical weapons, biological weapons, protecting persons not taking part in hostilities, respecting surrender, etc. The draft Hague Convention of 1923 included criteria for aerial bombardment, notably that targets must be military objectives, with protection for civilians who have no involvement in the fighting.

Secondly: Personal Scope of Application of IHL (Protected Persons Categories)

International humanitarian law grants special protection to several categories of persons, distinguishing between those who are combatants but are no longer fighting (prisoners, wounded, sick, shipwrecked) and those who never took part in the hostilities (civilians, women, children, journalists, medical personnel, etc.). These protected persons are safeguarded from violations, especially when they are not military targets.

1. Protected Combatants, Wounded, Sick, and Shipwrecked

- The Geneva Convention of 1864 and subsequent revised Conventions protect combatants who have ceased fighting or are unable to fight: wounded, sick, shipwrecked.
- These Conventions define "wounded and sick" as those, military or civilian, who because of injury or illness need medical care and abstain from hostilities.
- Shipwrecked persons are those in danger at sea or other waters due to accident or the sinking of their ship, and who do not take part in hostilities. Their protection lasts until they reach a safe status under the treaties, provided they refrain from further acts of hostility[101].

[101] Claude, Emmanuelli, op.cit. p.206

2. Prisoners of War

-Among protected categories under IHL are prisoners of war (POWs). Common Article 3 to the four Geneva Conventions (1949) prohibits certain acts against protected persons, including POWs[102].

-Geneva Convention III (1949) treats POW status as not a punishment but a status arising from capture. Article 4 lists categories considered POWs:

*Members of the armed forces of a party to the conflict.

*Militias and volunteer corps (meeting certain conditions).

*Persons who accompany the armed forces without being regular combatants.

*Crews of maritime or air transport.

*Civilians of non-occupied territory who spontaneously take up arms to resist invasion (under certain conditions).

Some categories are excluded: medical and religious personnel retained by the capturing state to assist POWs are not POWs themselves in that capacity; spies and mercenaries usually are not POWs though they may have some limited protections.

- Rights of POWs during internment:

Some of their rights include:

- **Humane treatment** (Geneva III, Art. 13; Protocol I, Art. 10).
- Respect for personality and honour (Art. 14, Geneva III).
- Access to medical care, free of charge (Arts. 28-32, Geneva III).
- Equality of treatment without discrimination (regardless of race, religion, political opinion, etc.).
- Freedom to practice religion (Art. 34, Geneva III).
- Correspondence with families / Red Cross / tracing services (Arts. 70-77, and Art. 123).
- Right to a fair trial (for any POW facing charges), with judicial guarantees in international and non-international conflict.

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[102] Nicolas, Tsagourias, op.cit, p.194

3. Civilians

- The four Geneva Conventions (1949) grant general protection to civilians during armed conflicts. They are defined (Geneva Conventions, Art. 4; Protocol I, Art. 50) as persons who at any time and in any form are in the power of a party to conflict or in occupied territory, and who are not nationals of such party, not members of the armed forces, etc.
- Article 50 of Additional Protocol I (1977) gives detailed legal status: a civilian is someone who does *not* belong to combatant categories (armed forces, militias, volunteer units fulfilling conditions, etc.).

- Key Protection Rules for Civilians:

- **Protection of women**: Fourth Geneva Convention, Art. 27, special protection from attacks on their honor and dignity, rape, coercion, or cruel/inhuman treatment. Protocol I, Art. 76 emphasizes protection from sexual violence especially rape.
- **Protection of children**: Geneva Conventions + UN decisions stress shielding children from impact of military operations; prohibition on recruitment/use for hostilities; Additional Protocol I, Art. 77 grants special protection and care when harmed. Even newborns are included.
- **Protection of medical/health workers**: Protected so long as they do not engage directly in hostilities. They may move through combat zones to help wounded/sick. They must be respected, not penalized, not forced to perform non-humanitarian tasks, etc. This includes medical personnel, religious personnel attached to medical units, Red Cross / Red Crescent services. Medical facilities and relief operations are to be protected[103].
- **Protection of humanitarian relief workers**: To ensure aid reaches civilians, IHL provides specific protections for neutral and impartial relief personnel, civil defence, etc. The occupying power must allow civil relief operations, supply food, medical supplies to civilians under occupation etc[104].
- **Protection of war correspondents / journalists[105]**: Defined in Geneva /UN conventions; war correspondents captured may be treated as POWs. Protocol I, Art. 79 provides protections: journalists should be protected like

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[103] Diop, Mamadou fallylou, op.cit., p.184

[104] Emily Crawford,op.cit,p.169

[105] Rana Ahmed, Hegazy, International Humanitarian Law and its Role in Protecting Victims of Armed Conflicts, Dar Al-Manhal Al-Lubani, Beirut, first edition 2009, p.131

civilians provided they engage only in professional duties; allowed identity cards; immunity from intentional targeting; must be provided safe condition if not participating in hostilities.

4. Violations Affecting Protected Persons

Armed conflict often inflicts serious harms on protected persons, creating obstacles for enforcement of IHL. Many treaties from 1864 through the Geneva Conventions (1949) and the 1977 Additional Protocols explicitly outlaw certain violations against protected persons and civilians.

Thirdly: Material Scope of Application of International Humanitarian Law (Protected Objects, Places, and Things)

The general rules protecting civilian objectives in the law of armed conflict are based on the principle that **only** military objectives may be lawfully attacked. Accordingly, international humanitarian law grants special protection to certain objects and installations that are not military in character and which, by nature, purpose or use, do *not* contribute effectively to military action, but rather serve civil purposes or contribute to human life. The categories of protected objects, places, and things include

1. Civilian Objects and Protected Cultural Property

The general rules protecting civilian objectives in the International Humanitarian Law are based on the principle that only military objectives may be lawfully attacked.

***-Definition*:**

Civilian objects are all things or installations that are not military objectives and do not by their nature, purpose or use effectively contribute to military action. Examples include schools, places of worship, hospitals, bridges, engineering works, and in general anything dedicated to civilian purposes[106].

[106] Doswald-Beck, L.,Vité, S., «International humanitarian law and human rights law, Revue internationale de la Croix-Rouge, 2013, p. 98

***-Nature of protection*:**

*They must be spared as much as possible during military operations.

*Attackers must take necessary precautions if there is any possibility of attack[107].

*Looting, destroying, or commandeering enemy property is prohibited, except when required by military necessity.

*Hospitals may not be attacked unless used to commit acts harmful to the enemy, and only after a warning has been given.

*Deliberate and unlawful attacks on civilian property are prohibited.

*Violations of the protection due to civil objects are war crimes[108].

- ***Cultural property*:**

*Because cultural property is part of humanity's shared heritage, modern IHL gives it special protection in times of armed conflict and at all times.

*Hague Convention of 1954 was the first treaty to define cultural property in detail: Article 1 provides that the following are cultural property:

a. Artistic, historical or archaeological monuments having inherent historical, archaeological or artistic value.
b. Buildings or movable cultural property primarily and actually dedicated to cultural purposes described in (a).
c. Centers containing large collections of such objects, referred to as memorial centers or historic monuments[109].

The Practices of reprisals against cultural objects are prohibited. They should be marked or designated so as to ensure their protection. Under Article 8(2)(b)(iv) of the Rome Statute (Statute of the International Criminal Court), "historical monuments" are listed among protected cultural property, and attacking them is a war crime.

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[107]Cryer, R., op.cit, p. 553
[108] Nicolas, Tsagourias, op.cit, p.202
[109] Musaad Abdel-Rahman, Zidan, op.cit, p.153

- ***Other protected places / objects*:**

engineering works and installations dangerous by nature (e.g. nuclear power plants), medical units and medical transport (healthcare facilities, vehicles used for medical purposes), etc.

2. Places of Worship

- Under Additional Protocol I to the Geneva Conventions (1977), places of worship are explicitly among the civilian objects that must be protected in armed conflict.
- Because they are sacred, symbolically and spiritually significant, they are part of cultural and religious heritage. For Muslims, this includes mosques and religious schools; for Christians, churches, cathedrals, etc.

3. Objects and Properties Indispensable for the Survival of the Civilian Population

- Given their fundamental importance, objects and property essential to civilian survival are prohibited from attack, destruction, removal (displacement), or disabling, unless absolutely necessary.
- Examples: farms, livestock, drinking water infrastructure, irrigation works, food supplies, etc.

4. The Natural Environment

- Additional Protocol I prohibits methods and means of warfare intended or expected to cause widespread, long-term and severe damage to the natural environment. This includes pollution of climate, surface or ground waters, vegetation and animal life, natural resources.
- Such damage may degrade the structure of the land, change natural features or human-made structures essential for the environment.

5. Violations Against Civilian and Cultural Objects

- Examples include: destruction of homes by an occupying power (Israel in Palestine), demolition of civilian housing, use of dynamite, bulldozers, rockets, bombs.
- There have been instances of entire neighborhoods being destroyed (e.g. Jenin camp in 2002), damage to educational buildings, attacks on historical and religious sites, cultural heritage properties.

Such attacks are prohibited under IHL; e.g. Article 53 of Additional Protocol I (1977) prohibits attacks on cultural property; the Hague and Geneva Conventions also require respect for civilian structures.

Chapter Two: the Use of Weapons and Repressives Mechanisms to Deter Serious Violations of IHL

The commission of violations by states of the various provisions and rules guaranteed by the international instruments protecting the categories provided for in international treaties and conventions entails their international responsibility - whether civil or criminal - for their leaders and high-ranking officials.

To reduce such violations, it is necessary to provide mechanisms and guarantees that ensure the implementation of international humanitarian law, as well as to prevent and suppress such violations.

SectionOne: Prohibited Weapons in International Humanitarian Law

Humane rules in war seek to limit the destructive effects of weapons by banning those arms which are excessively injurious, cause superfluous suffering, or are indiscriminate in effect.

- The St. Petersburg Declaration (1868) expresses the principle that weapons "which increase the suffering of the wounded or make their deaths inevitable … are contrary to the laws of humanity."
- Also, under the **Martens Clause**, even where treaties do not explicitly cover certain weapons, combatants and civilians remain protected under customary law, principles of humanity, and the public conscience.

First: Nature of Weapon Prohibitions in International Treaties

- In IHL, some prohibitions are **absolute**: a weapon is forbidden in *all circumstances*, e.g. use of poison, certain chemical or biological weapons.
- Other prohibitions apply depending on the context: a weapon or method may be lawful in one circumstance and unlawful in another (e.g. attacking military vs civilian targets). These are judged under IHL principles (distinction, proportionality, necessity, humanity).
- The treaties (Hague, Geneva, Protocols) often include both kinds: absolute bans, and conditional prohibitions.
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Secondly: Types of Weapons Internationally Prohibited

Here are categories of arms and means that IHL prohibits, at least in many treaties and by customary law:

a) ***Explosive projectiles or those filled with incendiary substances weighing less than 400 grams:***
– Prohibited under the St. Petersburg Declaration of 1868; reaffirmed in Article 23(e) of the 1907 Hague Regulations; and finally in Article 35(2) of Additional Protocol I (1977).

b) ***Expanding bullets ("dum-dum" bullets):***
– Prohibited by the 1899 Hague Declaration banning bullets, which expand or flatten easily in the human body.

c) ***Poisonous or asphyxiating gases:***
– The 1899 Hague Declaration; the Washington Treaty (1922); and the Geneva Protocol of 1925 prohibit these[110].

d) ***Poison and poisoned weapons:***
– Prohibited, because they violate trust (perfidy), humanity, etc. This prohibition exists in the 1907 Hague Regulations, Geneva Protocols, etc.

e) ***Biological weapons:***
– Use of germ weapons was prohibited by the 1925 Geneva Protocol. Later, the 1972 Biological Weapons Convention (entered into force in 1975) banned use, development, stockpiling, etc.

f) ***Chemical weapons:***
– The 1925 Protocol prohibits use of toxic gases, and later the Chemical Weapons Convention (CWC, 1993/1997) comprehensively bans production, possession, use, and destruction of chemical weapons.

g) ***Weapons or methods of warfare that cause widespread, long-term, and severe damage to the natural environment:***
– Prohibited under Additional Protocol I, Article 35(3).

h) **Nuclear / atomic weapons**:
– Highly debated; some argue they are legal under certain circumstances (if used only against military targets, with restrictions), others argue they are categorically prohibited. There is no treaty that universally bans all nuclear weapons, though their use is constrained by IHL principles (especially proportionality, distinction, uncontrollable harm).

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[110] Emily Crawford,op.cit,p.187

i) ***Other conventional weapons***:

-Treaties and protocols prohibit or restrict some conventional arms that are excessively harmful or indiscriminate, such as:

-Incendiary weapons under Protocol III of the CCW.

-Laser weapons aimed to cause permanent blindness (Protocol IV to certain treaties).

-Anti-personnel landmines (Ottawa Convention, 1997) which prohibit use, production, stockpiling, and transfer and require destruction.

- Technological advances mean that new weapons keep emerging, and whether a new type is prohibited must be evaluated case by case under IHL principles (especially prohibitions on unnecessary suffering or excessive harm).

- If there is a treaty text that prohibits a certain weapon, then that prohibition is binding.
- If no explicit text exists, then legality is judged under customary law and general IHL principles. Key among these are the principles of military necessity and proportionality.
- Military necessity means that the use of weapons and methods must be necessary to achieve a legitimate military goal (e.g. defeating the enemy). Any pain, injury or damage that goes beyond what is necessary becomes unlawful.
- Proportionality requires that incidental civilian damage should not be excessive compared to the anticipated military advantage.
- These two principles together generate prohibitions of weapons that cause unnecessary suffering or are indiscriminate. For example, weapons that cause long-term environmental damage, widespread harm, etc., may be prohibited.
- You see these principles in many treaties: in Hague IV (1907) Article 22 ("The right of the belligerents to adopt means of injuring the enemy is not unlimited"), and Article 23 (which prohibits weapons or projectiles that cause unnecessary suffering). Additional Protocol I (1977), Articles 35(1) and 35(2) repeat these prohibitions. Article 36 of Protocol I also requires a party contemplating acquiring or developing a new weapon to make sure whether its use would be prohibited in all or some circumstances under IHL or other international law obligations.

- However, modern weapons of mass destruction or large-scale weapons often raise difficult interpretive issues. Many treaties (and states) have not yet adopted absolute prohibitions on some contemporary weapons. Therefore, much depends on how new weapons are evaluated — keeping in mind both treaty law and customary law, and the foundational principles (distinction, proportionality, necessity, humanity)[111].

Section Two: Responsibility Arising from Violations of International Humanitarian Law

In cases where criminal responsibility arises, it is borne by the individuals who committed such violations, due to the crimes they perpetrated (Article 5 of the Rome Statute of the International Criminal Court). Civil responsibility, on the other hand, is borne by the state that violated the rules of war. The state is obligated to provide compensation when necessary and is also responsible for all acts committed by individuals belonging to its armed forces (Article 3 of the Hague Convention on the Laws of War).

This civil responsibility results in compensation for damages, and claims may be brought before the International Court of Justice. Types of reparations include:

- **Restitution**
- **Compensation**
- **Satisfaction**

(as set out in the Draft Articles on Responsibility of States for Internationally Wrongful Acts)[112].

First: International Responsibility Resulting from Violating the Geneva Conventions

The **Geneva Conventions of 1949** and their **Additional Protocols of 1977** play a crucial role in affirming the responsibility of states to provide compensation to victims of military operations during armed conflicts. This is clearly stated in **Article 3** of the **Hague Convention (IV) of 1907** on the laws and customs of war on land, which affirms that a belligerent state that violates the provisions of the annexed regulations is liable to pay

[111] Rana Ahmed, Hegazy, op.cit, p.182

[112] Claude, Emmanuelli, op.cit. p.254

compensation and is responsible for all acts committed by its armed forces[113].

Similarly, **Article 91 of Additional Protocol I** imposes liability on parties to the conflict and obliges them to pay adequate compensation for violations of IHL committed by individuals forming part of their armed forces.

Moreover, **Article 41 of the 1907 Hague Regulations** is explicit regarding sanctions resulting from violations of IHL rules and customary laws. It clearly requires prosecution of violators and offenders and mandates compensation for the harm caused by such violations.

Following international armed conflicts, several national and international bodies and committees were established to guarantee the right to compensation for victims of IHL violations. Among them is the **International Committee of the Red Cross (ICRC)**, which is a core international body mandated to protect war victims and provide humanitarian assistance. However, the ICRC lacks legal authority to issue binding rulings on claims brought by victims of violations, limiting its role in securing compensation.

Another example is the **United Nations Compensation Commission (UNCC)** established in 1991 by **UN Security Council Resolution 687**, in the aftermath of the **Second Gulf War**. This resolution required **Iraq** to compensate for losses and damages caused to protected categories due to its illegal occupation and invasion of **Kuwait**. As a result, Iraq was held internationally responsible for all damages, including environmental destruction, depletion of natural resources, and harm caused to other states, individuals, and foreign companies due to its unlawful actions[114].

Armed conflicts and wars are often accompanied by violations of the provisions and rules of international humanitarian law. Such violations,

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[113] Doswald-Beck, L.,Vité, S., op.cit, p. 142

[114] Alma, Baccino astrada, manual on the rights and duties of medical personnel in armed conflicts, ICRC, league of Red-Cross Socities, Geneva 1982.p. 228

especially concerning protected categories under IHL, are usually the result of deliberate or negligent conduct by international legal actors.

According to legal doctrine and jurisprudence, this behavior entails international responsibility for the individuals involved and for the resulting harm. This includes both civil and criminal liability. We will therefore explain the **civil** and criminal responsibilities resulting from violations of the Geneva Conventions.

Secondly: Civil Responsibility of States for Violating the Geneva Conventions

A state bears civil liability when it commits acts prohibited under international law. Penalties for states that violate the protective provisions of IHL during international armed conflicts include reparations for losses and compensation for harm caused.

Thirdly: Criminal Responsibility of Individuals for Violations of the Geneva Conventions

Following international armed conflicts, several national and international bodies and committees were established to guarantee the right to compensation for victims of IHL violations. Among them is the **International Committee of the Red Cross (ICRC)**, which is a core international body mandated to protect war victims and provide humanitarian assistance. However, the ICRC lacks legal authority to issue binding rulings on claims brought by victims of violations, limiting its role in securing compensation.

International law no longer limits responsibility solely to states. International organizations may also be held accountable as legal persons under public international law. Additionally, **individual criminal responsibility** has emerged as a key principle, especially regarding violations committed in the course of military duties.International humanitarian law affirms the **individual responsibility** of persons for crimes that constitute serious breaches of its provisions and undermine the foundations of the international community.

1. Concept of Individual Criminal Responsibility

Responsibility arises when a person commits an act that violates an international legal obligation. Individual criminal responsibility refers to

the international accountability of a natural person for unlawful acts that constitute violations of IHL provisions protecting various categories.

A person bears criminal responsibility when committing grave breaches defined in IHL treaties- particularly war crimes - whether by planning, ordering, participating in, inciting, or directly executing them.

The significance of individual criminal responsibility lies **in** protecting international interests by punishing the perpetrators. Thus, its function is deterrent and punitive.

Five rules govern individual criminal responsibility for international crimes:[115]

1. **Official status does not exempt a person from liability**: Whether a person is a head of state or a senior official, he or she is not immune from prosecution, nor is this a reason for reducing the penalty. (See Article 7 of the Nuremberg Charter, Article 7(2) of the ICTY Statute, and Article 27 of the Rome Statute.)
2. **Superiors are criminally responsible for their subordinates' crimes**: If a superior knew or had reason to know that a subordinate was about to commit or had committed crimes, and did not take reasonable measures to prevent or punish them. (See Article 7(3) of the ICTY Statute, Article 86(2) of Additional Protocol I, and Article 28 of the Rome Statute.)
3. **Obedience to superior orders is not an excuse**: Following orders does not exempt a person from criminal liability, although it may be a mitigating factor if justice so requires. (See Article 8 of the Nuremberg Charter, Article 7(4) of the ICTY Statute, and Article 33 of the Rome Statute) .

Article 33 sets out conditions under which a person may be exempt:

-The person was under a legal obligation to obey orders;

- The order was not manifestly unlawful (genocide or crimes against They did not know the order was unlawful;

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[115] Roberge M.-Cl., The new International Criminal Court A preliminary assessment; December 1998, p.84

-humanity are always manifestly unlawful).

4. **There are other grounds for excluding criminal responsibility**, listed in Article 31 of the Rome Statute, including:

-Mental illness preventing understanding of the criminal nature of the act;

-Involuntary intoxication causing loss of control;

-Acting under imminent threat of death or grave harm;

-Mistake of fact or law that negates criminal intent.

5. **Modes of individual liability include**:

-Committing a crime alone, jointly with others, or through another person (even if the latter is not criminally responsible);

-Ordering, instigating, or inducing the commission of a crime;

-Aiding, abetting, or assisting in the commission or attempted commission of a crime (including supplying the means).

b. Scope of Individual Criminal Responsibility

This section examines the question: Who can be held criminally responsible - soldiers, commanders, or both? Can obedience to orders be a valid defense?

- Soldiers and the defense of superior orders:
One of the principles developed by the **Nuremberg Tribunal** was that superior orders are **not a valid defense**. A person is responsible if they had the freedom to disobey clearly illegal orders but chose to comply anyway. (See Article 8 of the Nuremberg Charter.)

-Military commanders' responsibility:
A commander or person effectively acting in that capacity is criminally responsible for violations of IHL committed by forces under their control, as recognized under the **Rome Statute**. A commander is liable:[116]

[116]Gary ‹D., Solisop, op.cit., p.225

-If he knew (or should have known) that the forces were about to commit crimes;

-If he failed to take necessary and reasonable measures within his power to prevent or punish the crimes;

-If he failed to exercise proper control over the forces under his command.

This principle applies to all officers in the chain of command, regardless of their rank, if they knew (or had reason to know) of violations by subordinates and failed to act.

Finally, Article 27 of the Rome Statute affirms that official capacity (head of state, government official, etc.) does **not** exempt a person from criminal responsibility, nor does it justify a reduction of sentence[117].

- War Crimes and Crimes against Humanity :

There are various definitions of these crimes, which refer to different sanction systems at both national and international levels. These crimes were clearly codified after the Second World War at the international level, in the Statutes of the International Military Tribunals of Nuremberg and Tokyo established by the Allies, in the 1949 Geneva Conventions and their 1977 Additional Protocols (under the name of "grave breaches" of these conventions), and later in 1993 and 1994 in the Statutes of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda.

The Statute of the International Criminal Court (ICC), adopted in July 1998 and entered into force on July 1, 2002, provides the most comprehensive list of crimes punishable by an international judicial body. The Rome Statute has played an essential role in harmonizing the definitions of these crimes at both national and international levels. As of April 2013, 122 states had ratified the Rome Statute.

We will now present the systems of repression and the definitions of these crimes as contained in: the National Level:

- national legislation,
- the statutes of ad hoc international tribunals (I),
- the ICC Statute (II), and

[117]Claude, Emmanuelli, op.cit. p.292

- the Geneva Conventions and their Additional Protocols (III).

1. **At the National Level:**

Crimes against peace, war crimes, crimes against humanity, and genocide are provided for and defined by the penal codes of different countries, under designations and content that vary according to national legal systems. The Rome Statute of the ICC has enabled a harmonization of national and international definitions of these crimes.

The prosecution of such crimes before national courts has often proven perilous. These crimes are generally committed during conflicts and frequently involve national armed forces and public officials. The national judiciary often lacks the independence, impartiality, or resources necessary to conduct such trials.

2. Universal Jurisdiction:

Military disciplinary codes in each country establish mechanisms for sanctioning behavior that violates military regulations. These sanctions, handled by national military or civilian justice, aim to maintain internal discipline within the armed forces and to ensure compliance with commanders' orders. However, they do not allow for holding the highest political or military authorities accountable.

The 1949 Geneva Conventions expanded the jurisdiction of national courts to prosecute such crimes even if committed in another country, by codifying the principle of *universal jurisdiction*. This principle stipulates that all states undertake to search for and prosecute before their courts the perpetrators of certain serious crimes—particularly war crimes and crimes against humanity—even if the state has no link with the accused, the victim, or the acts committed. To use this jurisdiction, states must incorporate it into their domestic law.

The punishment of war crimes and crimes against humanity therefore depends in practice on international judicial cooperation and the action of international criminal tribunals. To avoid total impunity for these crimes, the law provides that they be *not subject to any statute of limitations*. This means that there is no time limit for their prosecution, and legal proceedings may be undertaken even many years after the events, when the political or military context allows for such prosecutions.

3. Imprescriptibility:

At the international level, several mechanisms exist for repressing such crimes. The definition of "grave breaches" under the 1949 Geneva Conventions, prosecuted under the principle of universal jurisdiction, differs somewhat from the definitions of war crimes and crimes against humanity established by international criminal tribunals.

It took the United Nations fifty years to draft a *Code of Crimes against the Peace and Security of Mankind.* The list of crimes continued to grow, incorporating genocide, terrorism, and others. However, the UN failed to have this code adopted or to create a permanent international tribunal to prosecute such crimes until 1998. International repression of these crimes thus took place on an ad hoc basis, with the creation of temporary tribunals for Nuremberg, Tokyo, the former Yugoslavia, and Rwanda.

The Statute of the International Criminal Court was adopted in Rome on July 17, 1998. Under certain conditions, it is responsible for prosecuting perpetrators of genocide, crimes against humanity, and war crimes when the states concerned are unable or unwilling to do so themselves.

The jurisprudence of the Nuremberg Tribunal distinguishes between several types of crimes committed during wartime: crimes against peace, war crimes, and crimes against humanity.

According to Article 6 of the Nuremberg Statute:

-**Crimes against peace** concern "the planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties. Crimes against peace are not imprescriptible.

-**War crimes** include:

*the murder, ill-treatment, or deportation of civilian populations in occupied territories for forced labor or other purposes;

*the murder or ill-treatment of prisoners of war or persons at sea;

*the execution of hostages, plunder of public or private property;

*the wanton destruction of towns or villages;

*devastation not justified by military necessity.

These crimes are committed in time of war and are not subject to any statute of limitations.

-Crimes against humanity:

concern "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war, or persecutions on political or religious grounds, whether or not these acts constitute a violation of the domestic law of the country where they were perpetrated, when such acts are committed in connection with any crime within the jurisdiction of the Tribunal."

To prevent the absence of a permanent international tribunal from leading to impunity for such crimes, the UN adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity on November 26, 1968 (General Assembly Resolution 2391 [XXIII]). This means that prosecutions may be initiated even many years after the events. Only 54 states have ratified this convention to date.

This principle was incorporated into the Rome Statute of the International Criminal Court, signed in 1998 and ratified by 122 states as of April 2013. Article 29 of the Rome Statute states: "Crimes within the jurisdiction of the Court shall not be subject to any statute of limitations."

Articles 7 and 8 of the Rome Statute provide definitions of crimes against humanity and war crimes under the jurisdiction of the ICC. These provisions represent a significant step forward in the codification of international law. The definitions are complemented and clarified by the *document* Elements of Crimes, adopted by the Assembly of States Parties to the Rome Statute. This document sets out the conditions required to establish the existence of specific crimes and the guilt of their perpetrators.

- **Article 7 (Crimes against humanity)** explicitly states that the definition applies to acts committed even outside any armed conflict. It also adds *enforced disappearances* to the list of criminal acts.
- **Article 8 (War crimes)** defines these crimes differently from the "grave breaches" of the 1949 Geneva Conventions and the 1977 Additional Protocol I. Since not all states have ratified the Additional Protocols, the

prohibitions and crimes defined therein are not universally binding as customary law.

The Rome Statute therefore bases its jurisdiction on grave breaches of the Geneva Conventions and its own definition of war crimes, which it considers to be part of customary international humanitarian law. The provisions of the 1977 Additional Protocols remain binding on states that have ratified them.

-Crimes Applicable to International or Internal Armed Conflicts:

Article 8 introduces two new elements in the definition of crimes applicable to both international and internal armed conflicts:

- rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence constituting a grave breach of the Geneva Conventions;
- the conscription or enlistment of children under the age of 15 into national armed forces or their active participation in hostilities.

Articles 8(2)(c)–(f) fill the gap concerning war crimes in non-international armed conflicts and provide a precise definition summarizing the prohibitions contained in Article 3 common to the four Geneva Conventions and other serious violations of the laws and customs of war applicable to non-international conflicts.

Certain acts prohibited by Additional Protocol II—such as deliberately starving civilians, using them as human shields, launching attacks knowing they will cause excessive civilian casualties, and using prohibited weapons—are not included in this definition. However, these prohibitions continue to apply to states that have ratified Additional Protocol II, as well as by virtue of customary law. of Crimes Against Humanity (Article 7 of the Rome Statute)

-Crimes against Humanity According to International Criminal Tribunals:

International humanitarian law, through its various conventions, sets out crimes that refer to different sanction systems at both national and international levels. These crimes have been clearly codified in the statutes of both ad hoc and permanent tribunals.

-Definition of Against Humanity: (Article 7 of the Rome Statute)

For the purposes of the Statute, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1. Murder;
2. Extermination;
3. Enslavement;
4. Deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or other forms of sexual violence of comparable gravity;
8. Persecution against any identifiable group on political, racial, national, ethnic, cultural, religious, gender, or other grounds recognized as impermissible under international law;
9. Enforced disappearance of persons;
10. The crime of apartheid;
11. Other inhumane acts intentionally causing great suffering or serious injury to body or mental or physical health.

-Definition of War Crimes: (Article 8 of the Rome Statute)

The Court has jurisdiction over war crimes, particularly when they are committed as part of a plan or policy or as part of a large-scale commission of such crimes. It distinguishes between crimes committed in **international armed conflicts** and those committed in **non-international armed conflicts**, reflecting the provisions of the Geneva Conventions. (The translation continues with the detailed enumeration of war crimes as presented in your text, matching the structure of the Rome Statute.)

-international Criminal Court (ICC):

Alongside humanitarian relief, the demand for justice and the fight against impunity form a central element of humanitarian law.The 1949 Geneva Conventions and the 1977 Additional Protocol I do not use the term "war crimes"; they distinguish between ordinary and grave breaches. Only grave breaches trigger the principle of universal jurisdiction, allowing prosecution before any national court, regardless of the nationality of the perpetrator or

victim, or the place where the crime was committed. These provisions apply only to international armed conflicts.

The definition of grave breaches differs slightly from that of war crimes contained in the Statute of the International Criminal Court. According to Rules 156–161 of the ICRC Study on Customary International Humanitarian Law (2005), these rules apply to war crimes committed in both international and non-international armed conflicts. Rule 156 specifies that "serious violations of international

-Remedies for Serious Violations of Humanitarian Law, War Crimes, Crimes against Humanity, and Genocide

- Victims of serious violations of humanitarian law may, in principle, file complaints before foreign national courts based on the universal jurisdiction principle provided in the four 1949 Geneva Conventions. However, such complaints may fail if states have not incorporated this obligation into their domestic legislation.
- Victims cannot directly refer cases to the International Humanitarian Fact-Finding Commission; only states may do so.
- Victims of genocide, war crimes, and crimes against humanity may refer their cases to the Prosecutor of the International Criminal Court, though they cannot initiate prosecutions themselves.
- The principle of universal jurisdiction also applies to cases of torture under the 1989 Convention against Torture.
- Victims also have access to ordinary judicial remedies at the national level.
- Regional or non-judicial remedies also exist internationally for victims of serious human rights violations. However, these are not criminal in nature and therefore only engage the responsibility of the state, not individuals.

Section Tree: Mechanisms Established to Deter Violations of International Humanitarian Law (IHL)

The law of armed conflicts, also known as international humanitarian law, was established to protect human beings from the various violations they may suffer during armed conflicts. It grants special protection to all categories of persons present during such conflicts, which makes this law inherently humanitarian. However, its binding nature remains dependent on the extent to which the parties involved in the conflict respect its provisions. This necessity calls for the existence of mechanisms that ensure compliance

with the law and impose sanctions on those who violate it or commit breaches of its rules.

The effectiveness of these mechanisms depends on their actual implementation and field operation. Several international criminal tribunals have been established and entrusted with the task of prosecuting serious crimes committed during military operations. However, these tribunals have often failed to impose truly deterrent and just punishments, particularly concerning the prosecution of those responsible for grave breaches of the four Geneva Conventions in the former Yugoslavia and in Rwanda. Some of these criminals even escaped punishment, which rendered the tribunals incapable of achieving genuine justice due to their composition, the bureaucracy that plagued them, and the many difficulties they encountered both before their establishment and during their functioning.

The international community's need for a permanent and effective international criminal judicial body led to intensified efforts in this field. This hope was realized when the United Nations Conference held in Rome, Italy, on July 17, 1998, adopted the *Statute of the International Criminal Court (ICC)*. The ICC was entrusted with the task of prosecuting war criminals, bringing them before the court, and imposing the most severe penalties upon them if found guilty—without regard to their immunity, rank, or high position within their states.

In addition to this, there exists a range of non-judicial mechanisms that directly or indirectly contribute to the implementation of international humanitarian law. These mechanisms seek to raise awareness among states and reduce the recurrence of violations during armed conflicts. Nevertheless, hotspots of tension between states—or even within states themselves—continue to flare up from time to time and in different places, resulting in numerous violations. Therefore, these mechanisms must reinforce their role in preventing and suppressing such violations and putting an end to their repetition.

Numerous mechanisms have been established to ensure compliance with the provisions of international humanitarian law, as well as to impose penalties on those who commit violations of IHL. Therefore, we will examine the bodies responsible for monitoring and enforcing the implementation of IHL provisions:

First: Repressives Mechanisms to Deter Serious Violations of IHL

Due to the heavy loss of life and property resulting from the First World War, the idea of establishing an international criminal judiciary emerged to consider various violations affecting IHL rules. This was aimed at reducing repeated violations of IHL over time. However, before addressing the role of international justice in deterring and suppressing committed and potential violations, we will first examine the role of **national judiciary systems** in ensuring respect for IHL provisions[118].

1- National Judiciary

The four Geneva Conventions highlighted the necessity for contracting parties to take legislative measures to impose effective criminal sanctions on persons committing, or ordering the commission of, acts defined in Articles 49, 50, 129, and 146 of the 1949 Geneva Conventions. One effective legal method of enforcing IHL is for national legislatures to grant national courts jurisdiction to punish IHL violations regardless of the perpetrator's nationality or the location of the crime—whether committed inside or outside the state's territory. This universal jurisdiction is either enshrined in domestic law or stipulated by international treaties, as is the case in the preamble of the Rome Statute of the International Criminal Court[119].

Universal jurisdiction refers to the national judiciary's authority to prosecute and try perpetrators of IHL violations and international crimes, regardless of the location of the act or the nationality of the perpetrators or victims. This principle is enshrined in the second paragraph of Articles 49, 129, and 146 of the Geneva Conventions, which states:

"Each contracting party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers and in accordance with the provisions of its own legislation, hand such persons over for trial to another

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[118] Juriste sans frontières, Le Tribunal pénal international de La Haye : le droit à l'épreuve de la purification ethnique, édition L'Harmattan, 2000, p.77

[119] Emily Crawford,op.cit,p.218

High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case."

This clause demonstrates the obligation of states to cooperate in prosecuting war criminals, either by trying them themselves or by extraditing them. Extradition is one of the enforcement mechanisms outlined in the Geneva Conventions of 1949 and is part of the "extradite or prosecute" principle[120].

Notable applications of national jurisdiction in repressing IHL violations include high-profile trials in France of Nazi criminals such as Klaus Barbie, Paul Touvier, Maurice Papon, and others like Wenceslas Munyeshyaka (linked to the Rwandan genocide of 1994), and Jean-Claude Duvalier, former dictator of Haiti residing in France.

The Belgian judiciary also investigated complaints concerning the Rwandan massacres, as many Belgian and Rwandan victims filed complaints against Leo Delcroix, the then-Minister of National Defense.However, despite international law's recognition of universal jurisdiction over international crimes, several challenges hinder its application. These include the presence of perpetrators in states that do not recognize or implement universal jurisdiction and lack extradition agreements. Nonetheless, the role of national courts in suppressing and preventing IHL violations remains crucial[121].

2- International Judiciary

This includes international military tribunals established by the Allies in 1945 to try Axis powers for serious violations during WWII, such as the **Nuremberg** and **Tokyo** trials. These tribunals were created in response to the massive human suffering caused by war crimes and gross breaches of humanitarian law.

Between the Nuremberg and Tokyo trials and the early 1990s, no international criminal courts were established, despite numerous atrocities. It was not until the wars in the former **Yugoslavia (1991)** and the **Rwandan**

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[120] Michel ‹Bélanger ‹Droit International Humanitaire ‹édition Gualino ‹Paris, 2002, p.39

[121] Roberge M.-Cl., op.cit, p.123

Genocide (1994) that the international community responded by creating ad hoc international criminal tribunals to try perpetrators[122].

Later, a permanent body—the **International Criminal Court (ICC)**—was established to prosecute those responsible for the gravest crimes, thus we will discuss:

1. Temporary International Criminal Tribunals
2. The Permanent International Criminal Court (ICC)

1. Temporary International Criminal Tribunals

These can be divided into two categories:

A. Tribunals whose jurisdiction has ended

-The Nuremberg Military Tribunal **(1945)**

-The Tokyo Military Tribunal **(1946)**

B. Ongoing Temporary Tribunals:

-The International Criminal Tribunal for the former Yugoslavia (ICTY)

-The International Criminal Tribunal for Rwanda (ICTR)

A. Defunct Military Tribunals:

-Nuremberg Military Tribunal (1945):
Established by the **London Agreement**, this tribunal tried major Nazi war criminals. Article 6 of its Charter identified three core crimes:

- Crimes against peace
- War crimes
- Crimes against humanity

War crimes included acts like deportation of civilians, forced labor, killing POWs, destruction of cities without military necessity, etc. Of the 24 indicted, 22 were tried—12 sentenced to death, 3 to life imprisonment, others to various prison terms, and 3 acquitted.

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[122] Juriste sans frontières, op.cit, p.95

-Tokyo Tribunal (1946):
Established by General MacArthur for crimes committed by the Japanese during WWII. Article 5 of its Charter listed:

- Crimes against peace
- War crimes
- Crimes against humanity[123]

However, it lacked provisions like Article 9 of the Nuremberg Charter, which allowed declaring certain organizations criminal. Though criticized for political bias and American dominance, the tribunal established key precedents in international criminal law and confirmed personal criminal responsibility under international law.

B. Active Temporary Tribunals:

ICTY (1993):
Created by **UN Security Council Resolution 827**, this tribunal had jurisdiction over serious violations of IHL in the former Yugoslavia:

- Grave breaches of the Geneva Conventions
- Violations of the laws or customs of war
- Genocide
- Crimes against humanity

Unlike the WWII tribunals, ICTY prosecuted individuals from all parties involved in the conflict. Despite indictments of 75 individuals by May 1995, non-cooperation by Serbia and Montenegro hindered the tribunal's effectiveness.

-ICTR (1994):

Following the Rwandan Genocide between the **Hutu** and **Tutsi**, which resulted in hundreds of thousands of deaths, the UN Security Council issued **Resolution 955** to establish the ICTR. Based in **Arusha, Tanzania**, its jurisdiction included:

- Genocide

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[123] Rana Ahmed, Hegazy, op.cit, p.211

- Crimes against humanity
- Violations of Common Article 3 of the Geneva Conventions
- Violations of Protocol II (1977)

The tribunal had authority over:

- Rwandans committing crimes in Rwanda or neighboring countries
- Non-Rwandans committing crimes in Rwanda

Despite challenges, including lack of cooperation from some African states and demands from Rwanda for capital punishment, the ICTR played a significant role in advancing international criminal justice[124].

3. The International Criminal Court (ICC)

The need for a permanent, effective international criminal body led to the adoption of the Rome Statute on July 17, 1998, establishing the **ICC**. The Court's mission is to prosecute individuals for:

- Genocide
- Crimes against humanity
- War crimes
- The crime of aggression (as per Article 5 of the Statute)

Unlike temporary tribunals created after the fact, the ICC is a pre-existing institution with prospective jurisdiction only (no retroactivity). It is independent from the UN but cooperates with it.

The ICC operates under five core principles:

1. Established by treaty among member states
2. Non-retroactive jurisdiction
3. Complementary to national jurisdictions
4. Limited to the four specified crimes
5. Applies only to individuals (not states or organizations)

[124] Juriste sans frontières, op.cit, p.126

-Jurisdiction & Complementarity

Article 17 of the Rome Statute emphasizes the complementarity between the ICC and national courts: the ICC acts only when states are unable or unwilling to prosecute offenders genuinely.

-Challenges to ICC Jurisdiction

However, there are several exceptions and limitations that hinder the ICC's effectiveness:[125]

- **Article 16**: The UN Security Council can defer investigations/prosecutions for 12-month periods, renewable indefinitely—threatening the court's independence.
- **Article 124**: Allows new member states to opt out of war crimes prosecution (Article 8) for seven years after joining.

-Procedures and Penalties

The ICC combines various global legal traditions and adheres to international human rights standards. The maximum penalty is life imprisonment, and although the Court itself does not apply the death penalty, states may apply it domestically.

Trials must be conducted in the presence of the accused, who also retain the right of appeal. States that refuse to cooperate may face sanctions from the Assembly of States Parties, including diplomatic or economic measures. The UN Security Council can intervene only if it referred the case.

Based on the principles, jurisdiction, and operations described above, the ICC plays a central role in deterring and punishing violations of international humanitarian law, particularly through its focus on accountability and the prevention of impunity for the most serious crimes affecting the international community[126].

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[125]Musaad Abdel-Rahman, Zidan, op.cit, p.219

[126] Roberge M. Cl., op.cit, p.183

Secondly: International Bodies Responsible for Monitoring the Implementation of International Humanitarian Law (IHL):

International conventions ensure the application and respect of the rules of International Humanitarian Law in all circumstances, whether in peacetime or during armed conflicts. To implement this oversight on the ground, international mechanisms have been established—within the framework of the United Nations and beyond, whether political, judicial, or humanitarian in nature—to ensure that states comply with this law. Among these is the **International Committee of the Red Cross (ICRC)**, which plays an active role in enforcing IHL.

Thus, we ask: What is the International Committee of the Red Cross, and what is its role in enforcing respect for and application of IHL?

Thirdly: The Role of the International Committee of the Red Cross (ICRC)

The ICRC was founded in **1863** by **Henry Dunant**, following his visit to the battlefield of a town in northern Italy (between the Austrian and French armies), which resulted in **40,000 dead and wounded soldiers** left without care due to the lack of medical services. Henry Dunant published his book **"A Memory of Solferino"**, in which he issued two important appeals:

- The creation of **relief societies during peacetime**, equipped with medical personnel to care for the wounded during wartime.
- The **recognition and protection of volunteers** assisting army medical services, through an international agreement.

In 1863, a charitable association was formed—**"Geneva Society for Public Welfare"**—composed of five members, including the founder, with the aim of applying these ideas to assist wounded soldiers in Europe, showing compassion toward them and their families. This led to the establishment of the **"International Committee for the Relief of the Wounded"**[127].

Following the creation of this committee, its founders began promoting Dunant's ideas to gain international recognition and formal status. The **Swiss government** organized a diplomatic conference in **Geneva in 1864**,

[127] Juriste sans frontières, op.cit, p.175

attended by 12 state representatives, who adopted the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. It called for the creation of a **national Red Cross society** in each country. This call was quickly answered, spreading with the rise of new nations across continents. The goal was **to** prevent and alleviate human suffering without discrimination **and to** protect human dignity.

In **1876, Turkey** requested to use the symbol of the **Red Crescent** instead of the Red Cross out of respect for the feelings of Muslim soldiers. Both **Turkey and Iran** reserved the right to use the Red Crescent.

-Components of the Movement:

- The International Committee of the Red Cross (ICRC)
- National Red Cross and Red Crescent Societies (National Societies)
- The International Federation of Red Cross and Red Crescent Societies (IFRC).

We can distinguish the role of the ICRC between two different situations:

a) Its Role During Armed Conflicts:

This role is derived from the 1949 Geneva Conventions and their 1977 Additional Protocols, which aim to protect human rights in both international and non-international conflicts. The ICRC:

- Makes **recommendations** to authorities on practical preventive measures to improve the situation of affected individuals.
- **Monitors** the application of humanitarian law when hostilities end.
- Works to ensure compliance through advocacy with warring parties.
- Urges states to take steps to implement treaties (such as the Ottawa Treaty banning landmines, and treaties limiting the use of explosives).
- **Assists post-war states** in meeting their obligations (protecting the wounded, searching for the missing, etc.)[128].

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[128] Stroun, J., International criminal jurisdiction, international humanitarian law and humanitarian action; December 1997, p.147

b) Its Role in Peacetime:

As the guardian and promoter of IHL, the ICRC plays an essential role in applying its provisions during peace, in four main areas:

- **Promoting and spreading awareness** of IHL.
- **Teaching IHL** in military academies and universities.
- **Visiting detainees** and prisoners.
- **Restoring family links**.

Despite this, the ICRC faces numerous challenges in monitoring the implementation of IHL. Therefore, it adopts a multidimensional strategy, both legal and technical, including:

- Assisting states in adopting national laws compatible with IHL.
- Sharing knowledge and experiences.

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening international humanitarian law (IHL). As a specialized structure of the ICRC, the Advisory Service furthers the participation in and national implementation of IHL treaties by States. With a global network of legal advisers, it complements the work of national authorities by advising States on specific domestic implementation measures required to give effect to their IHL obligations. The Advisory Service provides legal advice and technical support, assists in capacity building efforts, and facilitates the exchange of information on national measures of implementation. It also supports the work of national IHL bodies established by States to improve IHL implementation processes at the domestic level. The Advisory Service discharges its mandate through a broad variety of means, ranging from bilateral contacts, to working with international and regional organizations, hosting expert workshops and regional or national meetings for Government representatives, and developing tools and specialized documents. In particular, it actively encourages States to ratify the ICC Statute and works with them on the review or, when necessary, the amendment of their existing national legislation to ensure they meet their obligations under IHL and international criminal law.

- The International Fact-Finding Commission:

The Commission was officially constituted in 1991 and is a permanent international body whose main purpose is to investigate allegations of grave breaches and serious violations of international humanitarian law. The Commission's primary purpose is to contribute towards the implementation of, and ensure respect for, IHL in armed conflict situations. The Commission is thus an essential mechanism to help States ensure the international humanitarian law is implemented, and respected during times of armed conflict.

The IHFFC stands at the service of parties to an armed conflict to conduct enquiries into alleged violations and to facilitate, through its good offices, the restoration of an attitude of respect for that body of law.
The IHFFC is a permanent body of 15 independent experts, acting in their personal capacity, elected by the 76 States Paries that have made a declaration of recognition.

The Commission fulfills its mandate notably by:

-Enquiring into any facts alleged to be grave breaches or serious violations of IHL.

-Facilitating through its good offices the restoration of an attitude of respect for the Conventions and AP I.

-Reporting its findings to the States involved and making such recommendations as it deems appropriate.

- Enquiry Procedures

When a complaint is initiated, the enquiry is to be undertaken, unless the parties otherwise agree, by a chamber of seven members: five members of the Commission, not nationals of any party to the conflict, appointed by the President of the Commission based on equitable representation of the geographical areas. After consultation with the parties to the conflict, and two ad hoc members, again not nationals of any party to the conflict, one to be appointed by each side.

The chamber is to invite the parties to assist it and to present evidence. The chamber may seek such other evidence, as it considers appropriate and may carry out an investigation of the situation on the ground. The chamber is to fully

disclose all evidence to the parties, which have the rights to comment on it and challenge it.

Once that procedure of the gathering of evidence is complete, the chamber is to make findings. It is the Commission itself, which submits to the parties a report on those findings, along with such recommendations as it may consider appropriate. If the Commission is unable to secure sufficient evidence for factual and impartial findings, it is to state the reasons for that inability. The Commission may not report its findings publicly, unless all the parties to the conflict agree.

-Role of the Commission

Recent years, the Commission has focused its activities on participation in the worldwide dissemination and implementation of international humanitarian law, enhancement of knowledge about the Commission, and the potential role it can play, drawing attention to the requirements of States and international organizations regarding fact-finding and good offices, in particular in the light of new legal and political developments, the promotion of the recognition of its competence and the gathering of international support with a view to fulfill the important role it has been given by the international community.

In May 2017, the Commission was asked by the Organization for Security and Co-operation in Europe (OSCE) to lead an independent forensic investigation (IFI) in relation to an incident that occurred in Eastern Ukraine and caused the death of a paramedic and the injury of two monitors of its Special Monitoring Mission to Ukraine (SMM). The aim of the independent forensic investigation was to establish the facts of the incident by conducting a post-blast scene forensic investigation and technical assessment against the background of international humanitarian law.

This commission is an open body for states but is not a judicial entity. It is a permanent and apolitical body, composed of 15 members elected for five years, and works to:

- Investigate any act described as a violation **or** serious breach under the conventions and protocols.
- Facilitate the return to compliance with the provisions of IHL through good offices.

In the event of violations, the commission has the right to take a public position condemning these violations if it believes doing so would help those affected or at risk.

fourtly: The United Nations and International Humanitarian Law

One of the purposes of the United Nations, according to **Article 1, paragraph 3 of the UN Charter**, is to address international issues of a humanitarian nature. For this purpose, the Security Council must address these issues during armed conflicts to maintain international peace and security. UN bodies are thus expected to ensure respect for human dignity and work to alleviate suffering and protect civilians during armed conflicts.

However, today's reality shows that the current generation is facing worse atrocities than the generation that drafted the UN Charter, with wars rife with violations of IHL and the UN's inability to enforce IHL or even protect civilians or its own personnel, as mandated[129].

In this section, we examine the UN Charter's provisions regarding the use of force and acts of aggression.

1. The Use of War According to the UN Charter

A reading of the Charter reveals **two categories** regarding resorting to war:

a. *Unlawful Wars* ***under the UN Charter:***

- Resorting to war **before** submitting a dispute to arbitration, mediation, or international court.
- Declaring war against a state that has accepted arbitration, judicial rulings, or **Security Council** resolutions.
- **Wars of aggression** initiated by a state against a UN member (violating international obligations).
- A conflict between two states (one or both are UN members), where one refuses the Security Council's decision and resorts to war.

[129]Emily Crawford,op.cit,p.228

b. *Lawful Wars* ***under the UN Charter:***

- **Defensive war**: Responding to or repelling a military attack from another state.
- Resorting to war **after** exhausting the organization's mechanisms and no decision is reached unanimously.

Unlawful wars may expose the **aggressor state to military and economic sanctions**. Hence, the Charter obliges states to settle disputes peacefully using methods outlined in **Article 33**, such as:

- Negotiation
- Mediation
- Arbitration
- Judicial settlement

Before discussing the practice of the United Nations, it might be useful to answer a preliminary question: Does the UN have the power to deal with humanitarian issues arising from armed conflict?

In order to find an adequate answer we must consider the Organization's objectives. Article I of the Charter entrusts the United Nations inter alia with maintaining international peace and security, and empowers the Security Council to take necessary action to maintain and to restore peace. In carrying out this duty the Security Council must act «in accordance with the Purposes and Principles of the United Nations.» Article I of the Charter, like Article 55, enjoins the UN «to promote and encourage respect for human rights and for fundamental freedoms for all. " Charter does not mention international humanitarian law.

But the theme of this Symposium, and hence of this paper, is not the promotion of human rights by the UN, but rather the Organizations involvement in the promotion and implementation of international humanitarian law. In my view, however, there is no doubt that the Charter's notion of " human rights and fundamental freedoms for all " also includes what the United Nations itself has called " human rights in armed conflicts ", and what is referred to as " international humanitarian law " in this paper.

My view is naturally based on the premise that humanitarian law and human rights law are not completely separate fields of law, and that is my opinion. Both human rights law and international humanitarian law set limits

to violence against human life and dignity. While human rights standards apply in all circumstances, humanitarian law is law devised specially for armed conflicts. Thus, the two bodies of law have a distinct raison d'être.

However, human rights law and humanitarian law share a common basis and sometimes overlap. In certain circumstances, both may be applied to the same situation. The outbreak of violence within the territory of a State is, of course, the obvious example of such simultaneous applicability of rules upholding human rights and the international humanitarian law governing non-international armed conflict.

Without attempting to settle finally the sometimes-esoteric discussion about the relationship between human rights law and international humanitarian law, we are on safe ground with the view that, in the practice of the United Nations, various UN bodies deal routinely with questions relating to international humanitarian law. The origin of this practice, and certainly its most conspicuous expression, is probably Resolution XXIII of the International Conference on Human Rights (Tehran, 1968), which became General Assembly Resolution 2444 ((XXIII)), of 1968.

Under the title «Respect for human rights in armed conflicts ", that resolution codified basic humanitarian principles applicable le in all forms of armed conflict, and at the same time gave decisive impetus to the process which eventually lead to the adoption, in 1977, of the two Protocols additional to the Geneva Conventions. Closer to our time are the various resolutions of the UN General Assembly calling on States to become party to the 1977 Protocols. In his address to the International Conference for the Protection of War Victims (Geneva 1993) the UN Secretary-General stressed the role of his Organization in heightening the effectiveness of international humanitarian law and identified three forms of action: standard-setting, diplomatic and jurisdictional. In addition, in his most recent annual report the Secretary-General referred as a matter of course to international humanitarian law as one of the tasks, which the UN Office of Legal Affairs had to shoulder.

On a more political level, the following developments deserve mention. In An Agenda for Peace, the UN Secretary-General extensively discussed the need for an «integrated approach to human security " and emphasized the necessary commitment of the United Nations 'human rights system to the achievement of a peaceful order. The General Assembly took the matter

up in its 1992 session and adopted a resolution entitled " An Agenda for Peace: preventive policy and related matters " , with the following preamble paragraph: Emphasizing that international peace and security must be seen in an integrated manner and that the efforts of the Organization to build peace, justice, stability and security must encompass not only military matters. but also, through its various organs within their respective areas of competence, relevant political, economic, social, humanitarian, environmental and developmental aspects.

This statement reveals the clear intention of the UN's highest body to include humanitarian considerations in its approach to safeguarding or restoring international peace and security. True, the word «humanitarian» in the resolution should not be understood in a technical sense. Nevertheless, the wider meaning of «humanitarian» includes the narrower, technical one, as used in «international humanitarian law «. Furthermore, it should not be overlooked that resolution 47/120 A does not assign any new powers to the General Assembly, the Security Council or the Secretary-General. It is an expression of the General Assembly's determination, among other things, to give more weight to humanitarian matters when dealing with issues of international peace and security.

So much for the jurisdiction of the United Nations in humanitarian law matters, as reflected by the Charter and the Organization's practice. Has current international humanitarian law anything to say on the United Nations 'responsibility with regard to it? Suffice it to recall that the 1949 Geneva Conventions do not mention the United Nations. Protocol I, on the other hand, refers to the UN in its Part V "Execution of the Conventions and of this Protocol".

According to Article 89, where there have been serious violations of the Geneva Conventions or Protocol I, the States party to those treaties must undertake «to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter. «Article 89 is but an expression of the Herger omens character of international humanitarian law and, correspondingly, of the undertaking by all States party to the Geneva treaties not only to respect their own commitment but also "to ensure respect for the Conventions/Protocols in all circumstances ".

In its Final Declaration, the International Conference for the Protection of War Victims (Geneva 1993) took up the idea of Article 89 and stressed

the obligation of the participating States to act in cooperation with the UN and in conformity with the UN Charter to ensure full compliance with international humanitarian law in the event of genocide.

It is, nevertheless interesting to note that the subsequent meeting of governmental experts did not recommend giving the United Nations the task of convening " periodical meetings of the State Parties to the 1949 Geneva Conventions to consider general problems regarding the application of international humanitarian law, " but asked the depository, the Swiss Government, to do so. This recommendation remains to be adopted by the 26th International Conference of the Red Cross and the Red Crescent, to be held in Geneva from 03 to 07 December 1995.

Now, we may safely conclude that the power of the United Nations to deal with matters of international humanitarian law is undisputed, in theory as well as in practice. Moreover, it appears that the ICRC never had any difficulty in accepting this.

2. Concept of the Use of Force in the UN Charter:

According to **Article 2, Paragraph 4**, the use of force is **strictly prohibited** when directed against the **territorial integrity** or **political independence** of a UN member, or in a way that contradicts the purposes of the UN."Force" here should be understood in a broad sense, not limited to military action. It can include economic or political pressure, a view supported by the 1969 Vienna Convention on the Law of Treaties, which included a declaration against all forms of coercion.

The Charter absolutely prohibits the use of force, except in the case of self-defense (Article 51), which is subject to strict conditions:

- Armed aggression
- Of a serious military nature
- Immediate and direct

The use of force is also permitted through UN bodies under Chapter VII in cases of threats to peace. Other exceptions include:[130]

[130] Maurice, thorelli, op.cit, p.194

- **Use of force by liberation movements** in self-determination struggles.
- **Use of force upon the request** of a sovereign state.

Article 39 defines threats to peace, breaches of peace, and acts of aggression. Aggression is defined as the use of armed force by one state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the UN Charter.

3. Acts of Aggression and Their Forms:

General Assembly resolutions define **two types of aggression**:

a. Direct Aggression:

This refers to military aggression by one state against the sovereignty of another, with intent and actual military action. Aggression includes even threats of force, which may take forms such as:

- Explicit or implicit messages demanding policy changes
- Joint defense treaties implying force if demands are rejected

b. Indirect Aggression:

This usually involves:

- A state participating in the planning of aggression
- Assigning another state to launch an illegal war on its behalf

The Security Council has discretionary power to evaluate such acts.

4. Acts of Aggression as per UN General Assembly Resolution 3314 (Article 3):

These include:[131]

- A state **invading or attacking** another's territory, even temporarily.
- **Bombardment** or use of weapons against another state's territory.
- **Blockade** of ports and coasts by armed forces.
- **Attack on land, sea, or air forces** of another state.

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[131] Michel, Bélanger,op.cit, p.68

• Use of **stationed troops** in a host state in violation.

-The Security Council's role in IHL:

The UN Security Council has a primary responsibility for maintaining international peace and security, which includes upholding international humanitarian law (IHL). The Council does this by issuing resolutions that call for compliance with IHL, monitoring IHL violations, establishing mechanisms like the Working Group on Children and Armed Conflict, authorizing prosecutions, and ensuring the protection of civilians and humanitarian workers in peace-keeping operations.

-Calls for compliance: The Council issues resolutions that explicitly call for parties in conflict to comply with international humanitarian law.

-Monitors violations: It monitors IHL violations through reports and briefings from the Secretary-General and heads of UN agencies.

-Protects civilians: The Council emphasizes the protection of civilians in peacekeeping operations and has established specific mechanisms like the Working Group on Children and Armed Conflict to address specific violations.

-Holds perpetrators accountable: The Council can establish criminal courts or refer situations to the International Criminal Court (ICC) to prosecute perpetrators of serious IHL violations.

-Imposes sanctions: It can impose sanctions against those responsible for the most serious violations.

-Protects humanitarian personnel: The Council takes action to protect UN and humanitarian personnel, ensuring they can access populations in need.

-Addresses specific threats: The Council passes resolutions on specific issues related to IHL, such as the protection of persons with disabilities in armed conflict and the issue of missing persons.

-the Council's role is evolving:

***Increased focus:** There has been an increased focus on IHL in recent years, particularly under the "Protection of Civilians in Armed Conflict" agenda item.

***Implementation assessment:** The Council is now being encouraged to assess the effectiveness of the measures it has taken, review its procedures, and strengthen its actions to be more effective.

Summary

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