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The Law of Armed Conflict: International Protectionof Civilian Persons in Time of War

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ABSTRACT: The purpose of this study is to evaluate the extent to which of the practice of the International protection of civilian person in time of war. As we know that the International humanitarian law and human rights law are complementary. They both seek to protect human dignity, though they do so in different circumstances and in different ways. In times of war or armed conflict, a special system of law, [International humanitarian law], comes into effect. It is a set of rules especially adapted to armed conflict that serves to protect the victims of war (civilians, prisoners, displaced persons, etc.) and to regulate the conduct of hostilities. The principal purpose of International Humanitarian Law is to protect the life, health and human dignity of civilians, as well as combatants no longer involved in hostilities because they are captured, wounded or sick, and to limit the rights of parties in conflict to use certain means and methods of warfare, in sum, The aim is to minimize the suffering and damage caused by armed conflict. Therefore, the international community has arranged the armed conflict several provisions, such as the Hague Convention of 1907, Geneva Convention of 1949, and Additional Protocol I and II of 1977.

Keywords: International Protection, International Humanitarian Lawand Armed Conflict.

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I. INTRODUCTION

According to International humanitarian law [law of war or law of armed conflict], there are three types of conflicts that are recognized by international humanitarian law: international armed conflict, internationalized armed conflict, and non-international armed conflict/internal conflict. These conflict will give affect or create the victims of war. i.e. for their dereogable rights.

In doing so, International humanitarian law may be said to protect the "core" of human rights in times of armed conflict. These core protections include the prohibition of slavery, the prohibition of torture and other forms of cruel, inhumane or degrading treatment and the prohibition on the retroactive application of the law. Unlike other rights (such as freedom of speech, of movement and of association) that may be abrogated in times of national emergencies, the core protections afforded by International humanitarian law can never be suspended.

International humanitarian law is a body of international rules and principles, established by treaty and custom, which places restrictions on the use of violence in armed conflict in order to:

1. Regulate the conduct of hostilities, in particular to set limits on methods and means of warfare, and;
2. Protect persons not (or no longer) taking part in hostilities (i.e. civilians or sick or wounded soldiers), balancing realistically and pragmatically between military necessity on the one hand and principles of humanity on the other

The failure to classify a state of affairs as an 'armed conflict' has grave legal and humanitarian consequences (Duxbury, p.10). This is because, International humanitarian law has a close relationship with human rights law that aims to protect the rights and dignity of civilians during peace and armed conflict with parties of the conflict having legally binding obligations concerning the rights of persons not involved in the conflict (United Nations, 2010).

The aim of this paper is to show that the abstract view of international humanitarian law impacts the definition of an armed conflict who has related with international human rights law.

II. REVIEW OF RELATED LITERATURE

2.1Definitionsof the Types of the Armed Conflict

In the context of armed conflict, the concept of protection encompasses "all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law.This definition was agreed in 1999 by a wide group of humanitarian and human-rights agencies regularly convened by the International Committee of the Red Cross (ICRC) in Geneva. It was subsequently adopted by the Inter-Agency Standing Committee (IASC), the forum for coordination, policy development and decision-making involving the key UN and non-UN humanitarian partners. Under the leadership of the Emergency relief Coordinator, the IASC develops humanitarian policies, agrees on a clear division of responsibility for the various aspects of humanitarian assistance, identifies and addresses gaps in response, and advocates for effective application of humanitarian principles.

The law of armed conflict is clearly based on our customs and traditions and our experience of armed conflict throughout the ages. A good example is the universal ban on poisoning as a form of warfare, which dates back to ancient times when, for example, the military on both sides would issue orders not to poison wells, as much for their benefit as for that of the civilian population – they might need the water one day. Over the years, these customs, traditions and experiences have developed into "hard law", namely customary international law and treaty law [Geneva law, Haque law, and Developments treaty law] . Both are legally binding. [ICRC, 2002, P.8] - Customary international law results from the general and consistent practice applied by States out of a sense of legal obligation.

According to Article 43 of Additional Protocol I, 1977 to Geneva Convention, 1949, that armed conflict of category, provide:

a. The armed forces of a party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct or its subordinates, even if that party is represented by a government or an authority not recognized by an adverse party. Such armed forces shall be subject to an internal disciplinary system which, inter alia: shall enforce compliance with the rules of international law applicable in armed conflict;
b. Members of the armed forces of a party to a conflict (other than medical personnel and chaplains covered by article 33 of the third convention) are combatants, that is to say, they have the right to participate directly in hostilities; and
c. Wherever a party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other parties to the conflicts.

In another side, Additional Protocol (II) to the Geneva Conventions of August 12, 1949 expands upon the rules applicable during non-international armed conflicts (conflicts between nations and non-state armed groups, or alternatively, between two or more non-state armed groups). While comprised of only 28 Articles, this Protocol builds upon the codified framework of laws applicable during non-international armed conflicts, limited primarily to Common Article 3 of the 1949 Conventions. Presently, 167 nations are State Parties to this Protocol. The United States has not ratified the second Additional Protocol.

2.1.1 International Armed Conflict

The definition of international armed conflict according to the Geneva Conventions of 1949, common article 3 is basically that, the situation has to be within the territory of a high contracting party/state and assumes that an armed conflict exists when the situation reaches a certain level that distinguishes it from other forms of violence such as riots, sporadic and isolated forms of violence (situations of internal disturbances) (Geneva convention common art 3, (Vite, 2009). In addition, the Article 2 states that "all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance" (Geneva Convention, 1949, common art.2). This means that the occurrence of international armed conflict is clear, that is, it would be a conflict between the legal armed forces of two different states. A good example would be the North Korean-South Korean war of 1950, and etc.

2.1.2 Internationalized Armed Conflict

The second armed conflict recognized by international humanitarian law is a new phenomenon known as 'an internationalized armed conflict'. The situation of an internationalized armed conflict can occur when a war occurs between two different factions fighting internally but supported by two different states (Stewart, 2003, p 315). The most visible example of an internationalized armed conflict was the conflict in the

Democratic Republic of Congo in 1998 when the forces from Rwanda, Angola, Zimbabwe and Uganda intervened to support various groups in the DRC (Stewart, 2003, p. 315).

2.1.3 Non International Armed Conflict

In addition to the two above mentioned conflicts, non-international armed conflicts, according to common article 3 of the Geneva Convention, are 'armed conflicts that are non-international in nature occurring in one of the High contracting parties' (Geneva Convention, common article 3, 1949). This means that one of the parties involved is non-governmental in nature. However, common article 3 also states that it does not apply to other forms of violence such as riots, isolated and sporadic acts of violence. This definition has made it difficult to make a clear distinction between a mere disturbance and an armed conflict, therefore relying heavily on the political will of states to classify the situation as an armed conflict.

According to Article 3 common articles of the Geneva Convention 1949, which reads:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
b) taking of hostages;
c) outrages upon personal dignity, in particular humiliating and degrading treatment;
d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 3 requires the parties to treat victims of non-international or internal armed conflicts in accordance with the principles laid down in Article 3, paragraph 1. In addition, Article 3 of the Geneva Conventions of 1949 provides a guarantee of treatment under the principles of humanity, regardless of the status whether as a rebel or the nature of the armed conflict itself. In Article 3 of the Fourth Convention of 1949 there are all the main subjects of the treatment of war victims according to the 1949 Conventions, so that this article is called "Convention in Miniature". Legal protection of the rights of victims to the hors de combat classes, as mentioned in Article 3 paragraph (1) sub paragraphs a, b, c, and d are non- derogable rights which must guaranteed in a peaceful state as well as in a state of armed conflict/war by accommodating the principles of humanitarian law such as the principle of humanity and chivalry in the convention.This article emphasizes the parties of the great participants to treat the victims of the conflict humanely and without discrimination. [Mochtar Kusumaatmadja, 2003, P.53]

According to Hans Peter Gasser [1993, P.25]"Non-international conflict is an armed confrontation that takes place within the territory of a country, ie between the government on the one hand and the armed resistance group on the other. Members of the armed resistance group are either described as rebels, revolutionaries, separatist groups, freedom fighters, terrorists or other similar terms fighting to overthrow the government, or to gain greater autonomy within the country, or in order to Secede and establish their own state. The causes of such conflicts vary; Often the cause is the neglect of minority or other human rights by a dictatorial government that leads to divisions within the country"

Dieter Fleck [1995, P.4], "Non-international armed conflict is a confrontation between the existing government authority and groups of person subordinate to his authority, which is carried out with arms within national territory and reaches the magnitude of armed riot or civil war"; Pietro Verry [1992, P.32-36], provide that "Non-international armed conflict is characterized by fighting between the armed forces of a state and dissident or rebel armed forces….However a conflict in the territory of a State between two ethnic groups may be classed as a non-international armed conflict provided it has the necessary characteristic of intensity, duration and participation"

Furthermore, for a situation to be classified as a non-international armed conflict, it has to achieve two variables, namely: the hostilities have to reach a certain minimum level of intensity (Vite, p 75; ICRC, 2008, p

3) and form in a collective character; and there has to be a level of organization of the parties (Vite, p 75).The classification of a situation to be an armed conflict means that international humanitarian law comes into force immediately; this means that it provides a framework for the behavior of belligerent parties and the protection of non-combatants and the respect of the environment and the property of civilians.However, there are still situations that are recognized as armed conflicts but there are still breaches of international humanitarian law. In such situations, the role of the Security Council comes in to play in its role of promoting international peace and security according to the UN Charter (Chapter 7, 1945). In the recent times, the Security Council has been more proactive in promoting human rights especially in situations of armed conflicts by imposing economic and political sanctions and more specifically in the establishment of tribunals as is the case of Yugoslavia, Sierra Leone (Dieter Fleck, 2008, p 275).

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. [Article 1 Paragraph 4 Additional Protocol II].

This protocol, which develops and supplements Article 3 common to the Geneva Conventions of August'12,1949 without modifying its existing conditions of application, shall apply to all armed conflict which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of August '12,1949, and relating to the protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed force and dissident armed forces orother organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

Generally, the difference between humanitarian law and the law of human rights is that the humanitarian law deals with the consequences of conflicts among the states or between states and some other speciafically defined belligerent, but the law of human rights is concerned with the controversies between the government and individuals inside the state borders [Marjo'n Muskhat cited by GPH. Haryomataram].Dustin Lewis [2012, P.1] differentiate between International humanitarian law and International human right law, inter alia:

1. International human rights law and international humanitarian law are often perceived as legally synonymous, aiming to achieve similar objectives through legal protection. Yet while they share important features, these two bodies of law have distinct origins, and in many ways constitute distinct projects;
2. At its core, international human rights law seeks to regulate the relationship of the government to its population in order to spur the government to do what is necessary to ensure the safety and well-being of its population, while allowing the population to pursue their desires unencumbered by unwarranted government intrusion;
3. International humanitarian law, also known as the law of armed conflict is more limited, applying only during armed conflict and seeking generally to inject a modicum of humanity into wartime by regulating the means and methods of warfare and protecting those not, or no longer, directly participating in hostilities, and aims primarily to limit the effects of hostilities on populations, whether civilians, detainees, the wounded, the sick, or those otherwise hors de combat. [Yoram Dinstein cited by Theodor Meron, 1998, P.348-349]

The two bodies of law have met, are fusing together at some speed, and that in a number of practical instances the regime of human rights is setting, general direction, as well as providing the main impetus, for the revision of the law of war, or in another word that International humanitarian law and human rights law are complementary. Both try to protect human dignity, even though they do it in different situations and in different ways.

III. DISCUSSION

3.1 The Relationship Between Customary Law and Treaty Law

The law of armed conflict is made up of customary international law and treaty law. The relationship between treaty law and customary law is an important one, both generally and in the specific context of international humanitarian law, where a lot of the ground is covered by treaty. Indeed, if all States were parties to all of the treaties on this subject, there would be relatively little scope for a discussion of the role of customary law, for normally treaties prevail over custom. But there is room for a customary IHL, both because there is not 100 per cent participation in the treaties, and because there is some ground that the treaties do not – or arguably do not – cover.

Bing Bing Jia [2010,p.81] state that there two additional facts also underline this relationship's importance, namely:Firstly, it is a particularly pertinent issue in international judicial practice. The constituent documents for international judicial bodies always provide a list of formal sources without limiting their scope -

The best example is, of course, Art. 38 of the Statute of the International Court of Justice. The dividing line between the sources is usually indicated by the different ways in which a rule is formed. The sources of treaties and custom are the primary ones in which to look for the rule, so that the interaction between them often exists from the beginning of the life of those judicial bodies. A good example is that of the Report of the UN Secretary-General, S/25704, endorsed fully by the UN Security Council in May 1993, [Prosecutor v. Duško Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 133], for the purpose of establishing an international tribunal to prosecute serious violations of international humanitarian law in the former Yugoslavia, later known as the ICTY.

In that report, the Secretary-General spelled out the body of customary law to be applied by the ICTY, which included the following treaties: 1) the Geneva Conventions of 12 August 1949 for the Protection of War Victims; 2) the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; 3) the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 and 4) the Charter of the International Military Tribunal of 8 August 1945. The list effectively outlined the sources of applicable law for the purpose of the ICTY. - In the Report of the Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993, paragraph 34, the Secretary-General tried to immediately ensure that the ICTY would not violate the principle of legality in its future work. The guarantee he found was in mandating the ICTY to apply customary law, the large portion of whose rules, however, originated in humanitarian treaties.

Secondly, this topic is of equally great importance to agents of States in general, as manifested in the daily work of diplomats, legal advisers, government officials and, of course, national legislators. As regards treaties to which they have expressed consent to be bound, States employ both approaches of incorporation and transformation, so that international obligations become applicable within their domestic systems. However, they would need to decide what to do with a treaty to which they will not become a party, but which, or some provisions of which, display the tendency to become customary rules. It may also be recalled that, with respect to customary law, apparently all States in the world adopt the incorporation method [A. Cassese, 2005, p.224]. Two scenarios may emerge from this tendency.

The rationale behind this statement may be two-fold. Firstly, the very rule that make treaties binding upon their parties is one of customary law. This is, of course, the axiom of *pacta sunt servanda*. The interpretation of treaties, so important to the settlement of many inter-State disputes, has to be conducted in the light of general international law, and, despite the controversy surrounding them, considerations of *jus cogens*. [P. Weil, 1983,p. 413, 425–430].Secondly, treaties reflect or generate customary law. Even where treaties create new law, thus themselves becoming known as law-making treaties and prevailing over customary law,[Cf. H. Thirlway, 1991, p.60] the law so created by the treaties will undergo a process of transformation into customary law to become law in the true sense of the word. Otherwise, it remains conventional law in essence due to the operation of the rule of general international law that treaties do not bind third parties (the cause and effect relationship between the two parts is not necessary good: the latter is not the cause for the former).

3.2 Protection of Civilians in Armed Conflict

During armed conflict, civilians often pay a heavy price. They may face daily threats of violence and death as they find themselves inadvertently caught up in the middle of a conflict. Despite being protected under international humanitarian and human rights law, civilians continue to be the victims of violence and are sometimes deliberately targeted by belligerents. These deliberate attacks can include campaigns of sexual violence or deliberate killings to instil fear and coerce compliance from the local population.

In the context of armed conflict, the concept of protection encompasses "all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law."

International Humanitarian Law, based on the concepts of *jus ad bello*, is defined to be the law of war. This means that the laws involved are meant to be active in a situation of an armed conflict or during war. However, just like international law, international humanitarian law requires the political will of states for a situation to be considered as an armed conflict, so that the law can be in force.

The scenario has therefore arisen that states have been adamant to recognize a situation as an armed conflict for certain political reasons. [Gertrude C. Chelimo, 2011, abstract], and he add also in his conclution, states that "the politics behind classification of armed conflicts as often brought about the failure of international humanitarian law in playing its part. Because of states' interests, conflicts continue to happen with breaches of human rights and destruction of property continuing to happen. For international humanitarian law to play a crucial part, it needs to adapt and continuously evolve to cater for the changing dynamics of conflicts experienced today".

Human rights in armed conflict can be divided into two categories, namely:Rights granted to lawful or privileged combatans, i.e., combatan respecting the laws of war and meeting the conditions which that body of

law establishes; Includes two things, namely: they have the rights to status of prisoners of war once they are placed horse de combat by force of circumstances (being wounded, sick, or shipwrecked) or by choice (laying down their arms; and lawful combatants also have the right not to be targets of biological, or chemical weapons, poisons, and several types of bullets or projectiles; and the human rights accorded to civilian related to the civilian population anywhere, civilian enemy aliens in the territory of a belligerent state; and the civilian population in occupied territory. [Yoram Dinstein in Theodor Meron, 1998, P. 348-349]

Protections for civilians in armed conflict are contained in international humanitarian, human rights, refugee and criminal law. Numerous UN Security Council resolutions have also increasingly dealt with the protection of civilians in armed conflict, for instance by reminding warring parties of their legal obligations. The character of armed conflict now sees an increased blurring of the distinctions between adversaries and the way they use force to achieve political goals. Future conflict will blend the lethality traditionally associated with state conflict and the fanatical and protracted fervour of irregular warfare [Frank G. Hoffman 2007, P.3], for these view, we can see through the summarises the international legal framework for the protection of civilians in armed conflict.

Table 1
International Obligations to Respect and Protect Civilians

During armed conflict, civilians and combatants "hors de combat" are entitled to specific protection under international humanitarian law providing that they are not, or are no longer, taking a direct part in hostilities. Intenational humanitaian law requires parties to a conflict to respect and protect civilians. In the conduct of military operations they must distinguish at all times between combatants and civilians, and only direct attacks against suspected combatants and other military objectives. They must take constant care to spare civilians and civilian objects from the effects of hostilities. Amongst other things, this means that civilians must not be the target of physical attacks or subjected to acts of violence such as killing, maiming, torture and other forms of ill-treatment (including sexual violence), preventing the provision of medical care, slavery, forced recruitment and hostage taking. Civilian property must not be targeted. The forcible displacement of the civilian population is also prohibited unless required for the security of the population or imperative military reasons. International humanitarian law, so calls on parties to authorise impartial humanitarian assistance to populations affected by the conflict.
In addition international human rights law instruments may provide further protection. In times of armed conflict states may exceptionally derogate from certain rights under strictly defined circumstances, however, a number of human rights, central to the protection agenda, can never be suspended: the right not to be arbitrarily deprived of life; the prohibition of torture or cruel inhuman or degrading treatment or punishment; the prohibition of slavery and servitude and the prohibition of the retroactive application of criminal laws.
Specific population groups such as women, children and the disabled, benefit from additional protection provided for in specific conventions.
Individuals who have crossed an international border to escape persecution or conflict in their country of origin are protected by international refugee law. Refugees must not be forcibly returned to countries where their life or freedom would be threatened ("nonrefoulement"-through principle of non-refoulement). They must also be afforded basic human rights guarantees during their stay in the country of asylum.
International criminal law and the creation of institutions such as international tribunals, including the International Criminal Court, are increasingly important in establishing mechanisms to ensure there is no impunity for perpetrators of gross violations of international humanitarian law and human rights.
In addition to this international legal framework the UN Security Council has also adopted a number of relevant resolutions including on the protection of civilians in armed conflict (which mentions specific groups such as refugees and Internally Displaced People (IDPs), women, peace and security and children affected by armed conflict.

Based on the above explanation, international law has confirmed that the1949 Geneva Conventions consist of four sections that provide protection against:

1. The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick Members of Armed Conflict in the Field, of August 12, 1949);
2. The Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Conflict at Sea, of August 12, 1949);
3. The Geneva Convention (III) relative to the Treatment of Prisoners of War, of August 12, 1949); and

4. The Convention (IV) relative to the Protection of Civilian on Persons in Time of War, Geneva, 12 August 1949.

The four Geneva Conventions have been updated with two Additional Protocols known as the 1977 Protocol as follows:

1. Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protections of Victims of International Armed Conflict (Protocol I); and
2. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Related by that, there have the principal instrument of international law and principal instrument of International human rights. They are:

Principal Instruments of International humanitarian law, namely:

- ✓ Declaration of St. Petersburg 1868 and 1907
- ✓ The Hague Conventions1899
- ✓ The Geneva Conventions1949;
- ✓ Convention for the Protection of Cultural Property 1954;
- ✓ Additional Protocols I & II to the Geneva Conventions 1977;
- ✓ Convention on Certain Conventional Weapons (CCW) & Three Original Protocols 1980;
- ✓ Convention on Chemical Weapons 1993;
- ✓ Protocol IV to CCW on Blinding Laser Weapons 1995;
- ✓ Convention on Anti-personnel Mines 1997;
- ✓ Statute of the International Criminal Court 1998;
- ✓ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000;
- ✓ Protocol V to CCW on Explosive Remnants of War 2003;
- ✓ Additional Protocol III to the Geneva Conventions 2005;
- ✓ Convention on Cluster Munitions 2008.

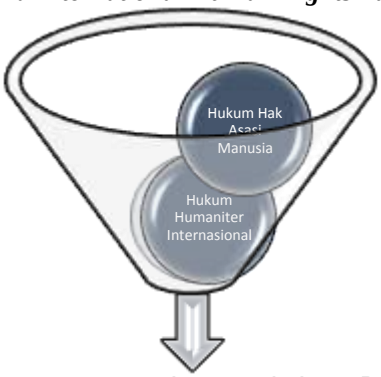
Principal Instruments of Human Rights**,** namely:

- ✓ Slavery Convention Concerning Forced or Compulsory Labor (ILO) 1926;
- ✓ Universal Declaration of Human Rights 1948;
- ✓ Convention on the Prevention and Punishment of the Crime of Genocide 1948;
- ✓ European Convention for the Protection of Human Rights and Fundamental Freedoms 1950;
- ✓ International Convention on the Elimination of All Forms of Racial Discrimination 1966;
- ✓ International Covenant on Civil and Political Rights (UN) 1965;
- ✓ International Covenant on Economic, Social and Cultural Rights (UN) 1966;
- ✓ American Convention on Human Rights 1969;
- ✓ Convention on Elimination of All Forms of Discrimination against Women 1979;
- ✓ African Charter on Human and Peoples' Rights 1981;
- ✓ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984;
- ✓ Convention on the Rights of the Child 1989;
- ✓ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families1990;
- ✓ Worst Forms of Child Labor Convention 2000;
- ✓ International Convention for the Protection of All Persons from Enforced Disappearance 2006; and Convention on the Rights of Persons with Disabilities 2006.

In addition, that the laws of war and humanitarian law are essentially indivisible but inseparable because they are a combination of the two main principles of military necessity and the principle of humanity; however, the parties to the dispute are obliged to observe the humanitarian principles in which they are prohibited to use violence that can lead to excessive injury or undesirable suffering. Actually, if all these core protections are brought together, it can be seen that both International humanitarian law and human rights law set forth essential basic rights. The common to International humanitarian law and international human rights law is:

(1) No discrimination base on race, color, sex or religion;
(2) Right to life;
(3) No torture;
(4) No cruel treatment;
(5) No humiliating or degrading treatment;
(6) No slavery;
(7) No-retroactive application of the law.

Image 1
Common to International Humanitarian Law
And International Human Rights Law



Non Discrimination on race, color, sex and religion; Right to life; No torture; No cruel treatment; No humiliating or degrading treatment; No slavery; No retroactive application of the law

Historically, international humanitarian law as a whole pre-dates the development ofthe modern body of human rights in the process and structure of international law.Both systems of law are highly specialized, with international humanitarian law beingmore densely codified in the Geneva Conventions of 1949 and the Additional Protocols to those Conventions of 1977. [Chaloka Beyani, 2005, p.56-57], he add also, that by common definition, human rights are entitlements inherent in all human beings and protect the attributes, characteristics, and values of being human, based on respect for human dignity and the worthiness of being human. In the words of the International Court of Justice, human rights constitute elementary considerations of humanity and their protection is strictly a humanitarian objective which gives rise to generally binding obligations in international law.

IV. THE BASIC PRINCIPLES OF THE LAW FOR THE PROTECTION OF CIVILIAN POPULATIONS IN ARMED CONFLICT

4.1 DistinctionPrinciple

The law of armed conflict was born on the battlefield. Its aim is to provide protection for the victims of conflict and to lay down rules for the conduct of military operations, good practical rules with which legally obliged to comply as members of the profession of arms. As we know, in international law, that the main principles of international humanitarian law is principle of distinction where a combatant should distinguish a non combatant (including a soldier) who has surrendered from a soldier and the distinguishing of military targets from civilian territories, it's means that there must always clearly distinguish between combatants and civilians or the civilian population as such. Combatants may of course be attacked unless they are out of action, i.e. they are hors de combat. Civilians are protected from attack but lose that protection whenever they take a direct part in hostilities for the time of their participation. Similarly, in armed conflict situation must always distinguish between military objectives which can be attacked and civilian objects which must be respected. The word "object" covers all kinds of objects, whether public or private, fixed or portable. [ICRC,2002, P. 12 and 15].

In Article 48 [Basic rule] Additional Protocol I, 1977 state that "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives." The only legitimate object of attack in an armed conflict is military personnel or property. This does not mean that civilians cannot be legally harmed or killed under the law only that civilians and civilian property should not be the object or the purpose of the attack. [Protects non-combatants]. - Combatants also are entitled to protection. For this, the Additional Protocols say that (1) Suffering inflicted on an opponent must not go beyond what is necessary to achieve a legitimate military objective; (2) Combatants no longer capable of fighting may not be attacked; (3) In an international conflict, captured combatants must be presumed to be prisoners of war, and are therefore entitled to protection under the Geneva Conventions; and (4) Prisoners of war who cannot be cared for must be set free. [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I*)*, 8 June 1977, Article 48. See Also Commentary]

The principle of distinction is important to have clear criteria to distinguish the civilian population fromcombatants. Any confusion of the devission between the two groups will inviteable endanger protection

granted under the law of war. [Haryomataram, GPH, 2005] In the same line, Dahniar [2017, P.174] state that normativelly, the distinction principle can eliminate the possibility of violations committed by the soldiers as defenders of state against the civilian population, that is, through the application of such principles and without disregarding the principle of chivalry, it can avoid the violation of humanitarian law by observing human rights law, especially the implementation of the principle of humanity, since war crimes will create grave human rights violations which are international crimes.

In the convention, there are many articles relating to the consequences and ill-treatment of civilians residing in the occupying territory rather than the articles governing the rule of war/conflict. Prohibited actions have been mentioned in Articles 27 to 34. These actions can be seen in the following table:

Table.2
International Wrongful Acts as affirmed in the Geneva Convention [IV]

No	Articles [Status and Treatment of Protected Persons-Part III]	Content of Articles of the Convention IV relative to the to the Protection of Civilian on Persons in Time of War/Conflict [Section I-Provisions common to the territories of the parties to the conflict and to occupied territories]
1	Article 27 [Treatment] I. General Observations	Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.
2	Article 28 [II. Danger Zones]	The presence of a protected person may not be used to render certain points or areas immune from military operations.
3	Article 29 [III. Responsibilities]	The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.
4	Article 30 [Application to Protecting Powers and Relive Organization]	Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them. These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations. Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other

		organizations whose object is to give spiritual aid or material relief to such persons.
5	Article 31 [Prohibition of Coertion]	No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.
4	Article 32 [Prohibition of corporal punishment, torture, etc]	The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.
5	Article 33 [Individual responsibility, collective penalties, pillage, reprisals]	No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.
6	Article 34 [Hostages]	The taking of hostages is prohibited

4.2 Propotionality Principle

Loss of life and damage to property *incidental* to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained." [U.S. Army Field Manual FM27-10: Law of Land Warfare]. The key here is the word incidental, meaning outside of the military target. This means that when considering a target the damage to civilians and their property cannot be excessive in relation to the military advantage gained. Proportionality is not a requirement if the target is purely military. This principle brings with it an obligation to consider all options when making targeting decisions: verify the target, timing (is there a time when fewer civilians will be around?), weapons used, warnings and evacuations for civilian populations. [U.S. Army Field Manual FM27-10: Law of Land Warfare (July 1956), Page 5, Paragraph 41]

4.3 Military Necessity Principle

Every injury done to the enemy, even though permitted by the rules, is excusable only so far as it is absolutely necessary; everything beyond that is criminal." – Napoleon [Solis, Law of Armed Conflict p.258]. The principal of military necessity prohibits things such as wounding or permanently injuring an opponent except during the fight, torture to exact confessions and other activities simply used to inflict additional damage on the enemy that does not further the military objective. The Liber Code defines the prohibited activity as, "in general, … any act of hostility that make the return to peace unnecessarily difficult. [Gary D. Solis, 2010, p. 258]. - This principle is enshrined in the preamble to the 1868 St Petersburg Declaration, which states that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy" and that "for this purpose it is sufficient to disable the greatest possible number of men". Today we would of course also include women.

The principle of military necessity protects good commanders andallows them to fulfil their mission. If an action is necessary. Just ensure it is within the law and complies with all the other principles, in particular those of distinction and proportionality. The army must never use military necessity as an excuse for slackness, indifference, poor planning or leadership. Military necessity is built into the law; it cannot be invoked to justify violations of the law.

Professor Wolff Heintschel von Heinegg, (2005, p.75) states that "The law of armed conflict is an order of necessity. It applies in exceptional cases where the international collective security system of the UN has failed. This order of necessity is founded on a compromise between military necessity and humanitarian considerations. Because this legal order is addressed to professionals engaged in an armed conflict it is vital that the rules are clear. The purpose of laws of war are not to determine whether there is a right to resort to force for that is governed by jus ad bellum. Unfortunately over the last two decades States have consistently confused jus ad bellum with jus in bello considerations reflecting a dangerous emerging trend. Any suggestion that undermines the application of jus in bello by considerations based upon jus ad bellum or even the just war

theory must be resisted. As Immanuel Kant noted, commentators like Grotius and Pufendorf are "vexatious comforters"

4.4Unnecessary Suffering Principle

"It is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering." [Additional Protocol I, Article 35.2] –[Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 35.2. See also Commentary]

V. RESPONSIBILITY ON THE PROTECTION OF CIVILIANS IN ARMED CONFLICT

A number of actors share the moral, legal and practical responsibility for the protection of civilians. However, by virtue of their sovereignty a state has the primary responsibility for protecting and meeting the basic needs of its civilians in times of armed conflict as well as peace. When a state manifestly fails to protect its population from genocide, war crimes, ethnic cleansing or crimes against humanity, the international community has a responsibility to act. This principle is enshrined in the concept of Responsibility to Protect [R2P].

Sovereignty and human rights typically are seen as fundamentally opposed: the rights of states pitted against the rights of individuals; 1648 (the Peace of Westphalia) versus 1948 (the Universal Declaration of Human Rights). Sovereignty entitles states to non-interference in their internal affairs. There would seem to be few more purely internal matters than how a state treats its own nationals on its own territory. But that is precisely the focus of internationally recognized human rights. International human rights obligations thus are regularly seen as: assaulting (Mills, 1998, p.10; Clapham, 1999, p.533; Cardenas, 2002, p.57), challenging (Aceves,2002; Butenhoff,2003, p.215-216), besieging (Weiss & Chopra,1995), undermining (Schwab & Pollis,2000, p.214), busting (Lutz 1997, p.652), weakening (Jacobsen & Lawson,1999), chipping away at (Kearns, 2001, p.522), compromising (Krasner, 1999, p. 125), contradicting (Forsythe, 1989, p.6), breaking down (Bettati,1996, p.92), breaching (Lyons & Mayall,2003, p. 9), perforating (van Hoof, 1998, p.51), or eroding (Ayoob,2002, p.93; Henkin,1999, p.3-4; Lapidoth,1995). State sovereignty-which is presented as giving way (Aceves,2002, p.265), even surrendering (Lauterpacht,1968 [1950], p.304-311), to higher human rights norms that "provide legal and moral grounds for disregarding the sovereign rights of States." (Shen,2000,p.435) "Human rights have revolutionized the international system and international law." (Henkin,1995, p.4344).

According to Steinberger (2000, p.512) "A sovereign state "is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign State or to foreign law other than public international law", and (p.518) "Sovereignty is a legal status within but not above public international law. As a juridical status protected by international law, it is embedded within the normative order of this law". Jennings & Watts (1992, p.122) "International law replicates this ordinary understanding."Sovereignty is supreme authority." Wheaton (1866, p.31) "Sovereignty is the supreme power by which any State is governed" Vattel (1916 [1758]: Bk. II, Ch. IV) "The sovereign is the person to whom the Nation has confided the supreme power and the duty of governing." While in the Black's Law Dictionary, 7th edition, (1999) "Sovereignty: 1) Supreme dominion, authority, or rule. 2) The supreme political authority of an independent state. Supremacy, the right to demand obedience" [All the aouthor's opinion cited by Dahniar, 2017,p.31]

"Current legal theory holds that countries are totally able to determine their own internal policies." (Brown & Alexander,1994). This is nonsense. Sovereignty is the right, not the ability, to determine one's policies. Like any right it may or may not be effectively enjoyed, infringed, violated, or ignored. "Sovereignty has become steadily less absolute. Even for a so-called superpower internationalism is inescapable." (Howe 1995, p.129) Unilateralism and internationalism, however, have nothing to do with sovereignty (supreme authority in one's own territory). They concern the costs and benefits of unilateral or collective action. "No sovereign state, and not all state sovereignties together, seem to be sovereign enough to solve the problems of our human society at the end of the twentieth century" (Henkin,1999, p.6). Sovereign authority, however, is no guarantee of the capability to solve any particular problem. These sovereigns recognized each other, not abstract territorial entities. And the rights of sovereigns are determined by the practices of the society of sovereign states, not by theoretical or conceptual logic. [Dahniar, 2017, p.32]

At the UN World Summit in September 2005, Heads of State and Government of all UN member States signed up to the 'Responsibility to Protect'. This concept recognises that States are primarily responsible for protecting their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The international community should help them to exercise their responsibility and use peaceful means to

promote protection, but if peaceful means are inadequate and national authorities are manifestly failing to protect their populations, collective action can be authorised by the UN Security Council.

To implementation the Universal Declaration of Human Rights, United Nations through all states to continue to promote a shared understanding of responsibility to protect and is committed tohelping States build capacity to protect their populations from genocide/etnic cleansing [Art., 6] war crimes, [Art.8] and crimes against humanity [Art.7], and to assisting those which are under stress before crises and conflicts break out.

VI. THE ROLE OF HUMANITARIAN ACTORS IN THE PROTECTION OF CIVILIANS

A number of international humanitarian organisations and their agencies have mandates to work on different aspects of the protection of civilians. The Office of the United Nations High Commissioner for Refugees (UNHCR) is internationally mandated to work with states to ensure the protection of refugees according to the 1951 Refugee Convention. The International Committee of the Red Cross (ICRC) is a neutral and independent institution with a particular mandate for overseeing the implementation and development of IHL (mainly the Four Geneva Conventions of 1949 and their Additional Protocols of 1977). ICRC actively works with all parties in a conflict to protect affected persons, including civilians, persons deprived of their liberty and the wounded and sick. Includes National and international humanitarian NGOs.[ICRC's Report, 2012, p.6]

Humanitarian actors may have mandates or roles related to the protection of civilians, the responsibility for protecting civilians affected by armed conflict lies first and foremost with the parties to the conflict (state forces and, in times of internal conflict, additionally with non-state forces). Moreover, the protection activities of humanitarian organisations can never be a substitute for political action on the part of the international community to address protection crises.

As can be seen from the above, international action to protect civilians in the midst of a conflict can be taken in many different spheres, by many different actors. It needs to be carried out in a coordinated and complementary manner, while respecting universal principles and taking into account the specific mandates of each actor.

6.1 Strengthening international political action on protection

Based on the report of the United Nations, there have some urgent things to protection civilian in armed conflict, inter alia:

1. The UN Security Council has increased its commitment to the protection of civilians in armed conflict in recent years. Many peace operation mandates now include protection as a mandated task. And thematic Security Council resolutions on protection issues, such as UN Security Council Resolutions 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflict, or UNSCR 1325 (2000) on women, peace and security, continue to develop the international normative framework. But the Council could be doing more. Most importantly, the Council should be prepared to act quickly and concertedly to prevent and respond to protection crises: holding governments to account and where necessary considering sanctions as well as referrals to the International Criminal Court.
2. The UN's human rights fora, including the UN General Assembly and the HumanRights Council and their mechanisms (such as Special Rapporteurs), have longconsidered protection of civilians issues in the context of human rights violations. It isimportant that these bodies continue to monitor such situations credibly, includingholding governments to account for violations of their international obligations.
3. Most UN Security Council peace support operation mandates now include protection of civilians as a mandated task. The UK is often at the forefront of advocating for comprehensive protection language in Council mandates and will continue to push for a more systematic approach. Agreement to strong and specific language on protection is often difficult due to the divergent views of Council members on needs and approach.
4. The Security Council receives regular reports from the Secretary-General on the progress of mandate implementation – normally on a six monthly basis and just before a mandate renewal. However, the coverage of protection issues in these reports is inconsistent. Improved coverage of protection in the Secretary-General‟s reporting is important, as is better coverage of protection in oral reporting to the Council. More input on and a greater focus on protection in Council discussions would mean the Council is better informed when it considers the renewal of a mandate.
5. Execution of protection tasks within a peace operation varies widely depending on the resources available, the approach of the mission leadership – including military commanders, and the capability, ethos and training of the troop and police contributing countries. None of the major international or regional organisations running peace operations has a fully formed doctrine on the execution of protection tasks. At a

very practical level, it is not always clear to troops and police what is expected of them. The development of guidance and military/police doctrine, within both the UN and regional organisations such as the African Union, and where necessary at a national level, is important.

6. Peace operations need to make better use of local peace-building capacity to complement their own efforts. Planning of peace operations should include analysis of local capacity, and making and retaining effective contact with local peacebuilding organisations should be standard within peace operations.
7. Effective and independent monitoring and reporting of compliance with human rights and International humanitarian law in situations of conflict is critical to raise awareness of protection issues, and provides the necessary evidence base for political and legal action.

In accordance with international law, states are responsible for protecting their citizens from abuses. However, in some circumstances states may not have the capacity to adequately protect their civilians. Protection requires legitimate, accountable and capable national security and justice institutions (military, police, prisons, courts) that provide equitable and effective security and justice services in accordance with the rule of law. They need to be responsive to citizens" needs; be able to understand and meet domestic and international human rights and humanitarian law obligations; and be particularly responsive to gender-based and sexual violence as women and children are disproportionately affected in conflict and post-conflict situations.

6.2 Protecting Rights in Situations other than Armed Conflict

In situations of political or social unrest, the population often becomes the target of human rights violations and other violence, including by state institutions such as the police or the military. Such situations can escalate into armed conflict. Victims of natural disasters have often lost relatives, their belongings and their homes, becoming more vulnerable to human rights violations.

Parties to armed conflict must take all required measures to respect and protect civilians. States bear the primary responsibility to respect and ensure the human rights of their citizens and other persons within their territory. When states and other parties lack the capacity or will to respect their obligations, humanitarian organisations have an important role to play. Parties to conflict need to agree to and facilitate neutral, impartial and independent humanitarian aid reaching populations in a safe, timely and unimpeded way. Unfortunately, in many conflict affected countries humanitarian access is increasingly unsafe, delayed and otherwise restricted, leaving millions of vulnerable people deprived of life-saving protection and assistance.

VII. CONCLUSION

War is the fact of life, but there have the rules to protecting civilians populations, combatans incudes prisoners of war in armed conflict situation. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.

A civilian is any person [individual or population civilians] who doesn't belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. It's means that the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

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