

THE MAIN INSTRUMENTS OF INTERNATIONAL HUMANITARIAN LAW

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Abstract: International humanitarian law (IHL), also known as the “law of armed conflict” or “the law of war,” is a key branch of international law that regulates conduct during armed conflict. The primary purpose of IHL is to limit the effects of armed conflict on persons and property, by protecting persons not directly participating in hostilities (such as civilians, medical personnel, and humanitarian personnel) and by restricting the means and methods of warfare. The principal instruments of IHL are international treaties, fundamental principles, and customary law. These instruments establish norms governing the conduct of belligerents and ensure respect for the fundamental rights of victims of armed conflict.

Keywords: armed conflict; law; convention; treaty.

Introduction

The rigor of respecting fundamental rights and freedoms goes beyond the framework of the Communities, becoming a strong point in the external relations existing at the level of the Union. The existence of the multitude of agreements that have been concluded with numerous countries includes provisions that may go as far as to envisage the suspension of relations or the denunciation of agreements in the event of

a serious violation of fundamental human rights and freedoms by one of the contracting parties (Corsei, Zisu, & Toncu, 2023, p. 55).

International humanitarian law (IHL) is a set of legal norms (Bădescu, 2008, p. 25) designed to protect persons not directly participating in hostilities (such as civilians, prisoners of war and the wounded), as well as to limit the methods and means of waging war. The origins of IHL can be found in the desire of the international community to humanize armed conflicts and reduce unnecessary suffering.

The main instruments of IHL constitute the legal basis for the application of these rules. These are international treaties and conventions that establish clear rules on the protection of persons and property during war. The Geneva Conventions and their Additional Protocols, the Hague Conventions and other specific treaties concerning the prohibition of certain weapons are essential for the implementation of and respect for IHL.

The adoption of these instruments is a manifestation of international solidarity and a shared commitment to respect fundamental human rights even in the most dire circumstances. They are applicable both in international armed conflicts and, to a certain extent, in non-international conflicts, reinforcing the principles of humanity, proportionality and distinction.

This section explores the most important instruments of IHL, their relevance in the contemporary context and their contribution to reducing the devastating impact of wars on humanity.

1. The Geneva Conventions and Additional Protocols

The Geneva Conventions and their Additional Protocols are the foundation of international humanitarian law (IHL). They regulate the protection of victims of armed conflict, establishing universal standards for humanitarian treatment and limiting the suffering caused by war. Adopted at various stages, they reflect the international community's efforts to humanize war. They provide a comprehensive and detailed framework for the protection of individuals and the regulation of

hostilities during armed conflict. They establish universal standards for the limitation of human suffering, with particular emphasis on the protection of civilians, prisoners of war and essential infrastructure. However, compliance with and effective application of the rules remains a challenge in the context of contemporary conflicts, underlining the importance of international commitment to uphold IHL.

The Geneva Conventions (1949) and their Additional Protocols (1977 and 2005) therefore represent the pillars of international humanitarian law (IHL). These legal instruments establish clear rules for the protection of persons affected by armed conflicts and regulate the methods and means of waging war.

Adopted after the Second World War, the four Geneva Conventions were designed to provide humanitarian protection during international armed conflicts. They have been ratified by almost all states in the world, making them instruments of universal application.

Thus:

1. First Convention

- Protects the wounded and sick of armed forces in land conflict.
- Regulates their treatment and establishes rights for medical personnel and medical units.

2. Second Convention

- Protects the wounded, sick and shipwrecked of armed forces at sea.
- Includes provisions for medical ships and the rescue of crews in maritime conflict zones.

3. Third Convention

- Regulates the treatment of prisoners of war.
- Provides standards for conditions of detention, prohibits torture and ill-treatment, and guarantees fundamental rights such as contact with families.

4. Fourth Convention

- Protects the civilian population under the control of a belligerent power, including in occupied territories.

- Prohibits reprisals against civilians, forcible transfer and collective punishment.

Additional Protocols (1977 and 2005)

The Additional Protocols supplement and expand the protections provided by the Geneva Conventions, adapting the rules to the new realities of armed conflict.

1. Additional Protocol I (1977)

- Applies to international armed conflicts.
- Provides for:

- a. Enhanced protection for the civilian population, prohibiting attacks on civilians and civilian objects;
- b. Extended protection for essential infrastructure and the environment;
- c. Strict rules on methods and means of warfare;
- d. Recognition of the rights of combatants in national liberation movements.

2. Additional Protocol II (1977)

- Regulates non-international armed conflicts (such as civil wars).
- Provides for:

- a. Protection of the civilian population against acts of violence;
- b. Prohibition of attacks on persons not taking a direct part in hostilities;
- c. Standards for the treatment of persons deprived of their liberty.

3. Additional Protocol III (2005)

- Introduces the distinctive emblem of the Red Crystal, alongside the traditional symbols of the Red Cross and Red Crescent, to avoid religious or cultural associations.

The main aspects regulated by the Conventions and Protocols are:

1. Protection of persons
 - Civilians, the wounded, sick, prisoners of war, medical and humanitarian personnel benefit from special protection.
 - The use of violence, torture, collective punishment and reprisals against protected persons is prohibited.
2. Limitation of methods and means of warfare

- Methods that cause unnecessary suffering or that affect civilians indiscriminately are prohibited.
- Biological, chemical and other inhumane weapons are prohibited.
- 3. Obligation to respect and implement IHL
 - States parties must respect and implement the provisions of the Conventions, including by adopting domestic legislation to sanction war crimes.

Importance of the Conventions and Protocols

- Universality: Almost all states in the world have ratified the Conventions, which gives them a universal character.
- Relevance: These instruments remain essential in contemporary conflicts, protecting victims regardless of the nature of the war.
- Evolution: The additional protocols demonstrate the ability of IHL to adapt to new forms of conflict and technologies of warfare.

The Geneva Conventions and their Additional Protocols constitute the backbone of international humanitarian law. They ensure a minimum of humanity in war (Pictet, 1952-1987, p. 55), protecting the most vulnerable and imposing restrictions on actors involved in conflicts. The importance of respecting and implementing these norms is crucial for limiting the suffering caused by wars and promoting international peace and security (Sassòli, Bouvier, & Quintin, 2011, p. 37).

2. Other relevant treaties and conventions

International Humanitarian Law (IHL) is a body of legal rules designed to protect persons affected by armed conflict and to limit the methods and means of waging war. While the Geneva Conventions and their Additional Protocols form the core of IHL, they are complemented by numerous other international treaties and conventions that respond to the specific challenges of modern conflicts.

In addition to the Geneva Conventions and their Additional Protocols, IHL is supported and expanded by a number of international

treaties and conventions that regulate specific aspects of armed conflict. These instruments complement the fundamental rules of IHL, addressing topics such as the prohibition of inhumane weapons, the protection of war victims and accountability for war crimes.

I. Conventions on the Prohibition and Limitation of the Use of Weapons

1. Chemical Weapons Convention (1993)

- Objective: Prohibits the development, production, stockpiling and use of chemical weapons.

- Key principles:

- a. Obligation to destroy all existing stockpiles of chemical weapons.
- b. Prohibition of the use of chemical weapons under all circumstances.

2. Biological and Toxin Weapons Convention (1972)

- Objective: Prohibits the development, production and stockpiling of biological and toxin weapons.

- Provisions:

- a. States parties must destroy stockpiles of such weapons and refrain from their use.

3. Anti-Personnel Mine Ban Convention (Ottawa Treaty, 1997)

- Objective: Prohibits the use, stockpiling, production and transfer of anti-personnel mines.

- Additional provisions:

- Obligation to clear mined areas and assist victims.

4. Convention on Cluster Munitions (2008)

- Objective: Prohibits the use, production and transfer of cluster munitions, which have devastating effects on civilians.

- Features:

- a. Obligation to destroy existing stockpiles.

- b. Protection of civilians in affected areas.

5. Convention on Certain Conventional Weapons (1980)

- Objective: Regulates the use of weapons that cause unnecessary suffering or have indiscriminate effects.

- Additional Protocols:

- a. Prohibition of incendiary weapons and anti-personnel mines.

- b. Limitations on the use of weapons with undetectable fragments.

II. Treaties on the protection of the environment during armed conflict

1. Convention on the Prohibition of the Use of Environmental Modification Techniques for Military Purposes (1976)

- Objective: Prohibits the use of environmental modification technologies that can cause widespread destruction.

- Examples: Prohibition of the intentional triggering of earthquakes, floods or other natural phenomena.

2. Outer Space Treaty (1967)

- Objective: Prohibits the deployment of nuclear weapons or other types of weapons of mass destruction in outer space.

- Enforces the peaceful use of outer space.

III. Conventions relating to the protection of victims of armed conflicts

1. Convention relating to the status of refugees (1951)

- Objective: Protects persons who have been forced to leave their country due to armed conflicts.

- Provides for:

a. Fundamental rights for refugees, such as the right to asylum.

b. Prohibition of the forced return of refugees to countries where their lives would be in danger (the principle of non-refoulement).

2. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)

- Objective: Protects cultural property (monuments, historic sites, works of art) during armed conflicts.

- Provisions:

a. Prohibition of the use of cultural property for military purposes.

b. Obligation to avoid its destruction.

3. Convention on the Rights of the Child (1989) – Optional Protocol on the Involvement of Children in Armed Conflict (2000)

- Objective: Protects children from recruitment and use in armed conflict.

- Provides for:

a. Prohibition of recruitment of children under the age of 18 into armed forces.

b. Reintegration measures for children affected by war.

IV. Instruments on individual criminal responsibility for war crimes

1. Rome Statute of the International Criminal Court (1998)

- Objective: Establishes a permanent court to try international crimes, including:

a. War crimes.

b. Crimes against humanity.

c. Genocide.

- Provides for:

a. Holding political and military leaders accountable for violations of IHL.

b. Criminalization of the use of prohibited weapons.

2. Convention against Torture (1984)

- Objective: Preventing torture and other cruel, inhuman or degrading treatment.

- Obligations:

a. States must investigate and punish acts of torture.

b. Torture is considered a crime under international law.

3. Genocide Convention (1948)

- Objective: To prevent and punish genocide.

- Definition: Genocide involves acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

V. Other regional treaties and conventions

1. Kampala Convention on the Protection of Internally Displaced Persons (2009)

- Mainly addressed to humanitarian crises in Africa, this convention regulates the protection of internally displaced persons due to armed conflict.

2. African Union and Organization of American States instruments:

- Regulates regional conflicts, refugee protection and compliance with IHL in local conflicts.

VI. Principles of Customary International Law

Many rules of IHL are recognized as customary international law, applying universally, regardless of whether a state is a party to the relevant treaties. For example:

- Prohibition of attacks against civilians.
- Protection of prisoners of war.
- Prohibition of the use of chemical and biological weapons.

The international treaties and conventions applicable to IHL form a complex and well-developed framework that regulates multiple aspects of armed conflict. From the protection of civilians and the environment to the prohibition of inhumane weapons and criminal liability, these legal instruments reflect the commitment of the international community to reduce human suffering and promote respect for the rules of war. However, compliance with these norms remains a major challenge, especially in contemporary conflicts.

Conclusions

This is why it is rightly stated that human rights issues are of international concern and do not fall under the domestic jurisdiction of states, which legitimizes not only the right of intervention of international bodies, but also their obligation to intervene whenever violations of human rights, which characterize any human community, are at issue (Corsei & řtefănoaia, 2022, p. 73).

Therefore, the main instruments of International Humanitarian Law – such as the Geneva Conventions, the Additional Protocols, the Hague Conventions and the treaties prohibiting certain types of weapons – represent the fundamental pillars of the regulation of wars in the spirit of humanity. These instruments reflect the commitment of the international community to protect persons who do not take part in hostilities and to limit the suffering caused by armed conflicts.

Over time, they have evolved to respond to modern challenges, such as new types of conflicts and weapons. However, their practical

application faces numerous challenges, including lack of respect for the rules, non-state actors involved in conflicts, and the complexity of contemporary wars.

Compliance with and implementation of these instruments depend on the will of States, the action of international organizations, and collective efforts to build accountability. International tribunals, as well as humanitarian institutions, play a crucial role in ensuring respect for these rules and in punishing violations.

In conclusion, IHL instruments remain indispensable in protecting human dignity and limiting the atrocities of war. However, to maintain their relevance, they must be complemented by concerted action, adaptations to the new realities of conflict, and closer collaboration between States and international bodies. Only in this way will the fundamental principles of humanity and justice be respected even in the most difficult times.

References

Bădescu, G. (2008). *International Humanitarian Law*. Universul Juridic. International Committee of the Red Cross (ICRC). Official Text of the Geneva Conventions of 1949 and the Additional Protocols of 1977 and 2005. Available online: www.icrc.org

Corsei, A., Zisu, M.A., & Țoncu, S. (2023). The European Union and Fundamental Human Rights. *AGIR Bulletin*, 4.

Corsei, A., & Ștefănoaia, M.A. (2022). Romania and Human Rights According to European Regulations. *Acta Universitatis Danubius Vol. 18*, 2.

International Criminal Court. *Rome Statute*. Available online: www.icc-cpi.int

Dinstein, Y. (2016). *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge University Press.

Greenwood, C. (1996). Historical Development and Legal Basis of the Law of Armed Conflict. In *Fleck, D. (Ed.), The Handbook of International Humanitarian Law*. Oxford University Press.

OPCW (Organization for the Prohibition of Chemical Weapons). Chemical Weapons Convention (CWC). Available online: www.opcw.org

United Nations. Resolutions and reports on IUD enforcement. Available online: www.un.org

Pictet, J. (Ed.) (1952-1987). *The Geneva Conventions of 1949: Commentary*. International Committee of the Red Cross.

Sassòli, M., Bouvier, A. A., & Quintin, A. (2011). *How Does Law Protect in War?* International Committee of the Red Cross.

Shaw, M. N. (2021). *International Law*. Cambridge University Press.