



## PUBLIC INTERNATIONAL LAW IN ARMED CONFLICTS

**Zuxriddin Ismailov Maqsudjon o'g'li,**

Jahon iqtisodiyoti va diplomatiya universiteti,

Xalqaro huquq fakulteti 3-bosqich talabasi

[zuxriddinismailovls@gmail.com](mailto:zuxriddinismailovls@gmail.com).

**Ilmiy rahbar: F.M.Tashev**

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### ABSTRACT

*This article examines the application of public international law during armed conflicts, with particular focus on international humanitarian law. It analyses the distinction between jus ad bellum and jus in bello, the treatment and rights of prisoners of war, the principle of distinction between civilians and combatants and between civilian and military objects, the protection of the wounded and sick, and the international conventions restricting or prohibiting certain types of weapons. Drawing on the Hague and Geneva Conventions, Additional Protocol I of 1977, and other instruments, the article illustrates the historical development and practical significance of humanitarian law in regulating the conduct of warfare.*

### Introduction

When discussing international law in the context of armed conflicts, international humanitarian law is often the first body of law that comes to mind. The branch of law that governs how warfare is conducted is known as jus in bello, or humanitarian law, and it is intended to minimise the suffering inflicted during the course of war by protecting its victims. By contrast, jus ad bellum, the law governing the resort to force, regulates the circumstances in which the use of force between states is acceptable. For many centuries, states accepted the use of force as a legitimate way of settling disputes, effectively legalising war as a method of resolving conflict.<sup>1</sup>

The codification of the laws of war began in earnest with the 1899 and 1907 Hague Conventions, and continued through the Geneva Conventions of 1949 and their Additional Protocols of 1977. Together, these instruments establish the framework within which the conduct of hostilities, the treatment of prisoners of war, the protection of civilians and civilian

<sup>1</sup>International Committee of the Red Cross, What are jus ad bellum and jus in bello?

objects, the care of the wounded and sick, and the regulation or prohibition of particular weapons are governed.

This article traces the development and content of these rules across five thematic areas: the foundations of jus ad bellum and jus in bello and the early efforts at codification; the treatment of prisoners of war and the requirements for irregular combatants to qualify for that status; the principle of distinction between civilians and combatants and between civilian and military objects; the protection of the wounded, sick and those rendered hors de combat; and the international restrictions and prohibitions placed on particular categories of weapons. The article concludes with an assessment of the continuing relevance of humanitarian law as a body of customary obligations binding on all states.

## **Main Body**

### **1. The Foundations of Jus ad Bellum and Jus in Bello**

After the First World War, the Covenant of the League of Nations called on states to respect the territorial integrity and political independence of other states, and urged that disputes between members be brought before the League for consideration.<sup>2</sup>

The 1899 and 1907 Hague Conferences codified the laws of war into two successive conventions, with the 1907 Convention on the Rules of War on Land superseding its 1899 predecessor. The 1907 Convention defined what constitutes "belligerents", set out how states must treat prisoners of war (POWs), regulated the means permissible for injuring the enemy, and established rules governing armistice, capitulation and truce.<sup>3</sup>

Warring parties typically bring into battle not only regular armies but also irregular corps, such as militia, volunteer units, and inhabitants who take up arms against an occupying force. The 1907 Hague Convention sets out four requirements that such corps must meet in order for the laws of war to apply to them: they must operate under a commander responsible for the conduct of his subordinates; they must wear a fixed distinctive emblem recognisable at a distance; they must carry arms openly; and they must conduct their operations in accordance with the laws and customs of war. Meeting these conditions entitles members of such corps to be treated as POWs and to enjoy the corresponding protections.

### **2. The Treatment of Prisoners of War**

All POWs must be treated humanely, and may be interned in a town, fortress, camp, or other location. The Third Geneva Convention expands the conditions under which POWs may be interned, requiring that camps be located in healthy areas not exposed to fire from the combat zone, and prohibiting the use of POWs to shield military objectives from direct enemy fire.<sup>4</sup>

The Hague Convention permits detaining states to make use of the labour of POWs, provided they are paid at the same rate as soldiers of the detaining state's own forces would receive for equivalent work. The Geneva Convention dedicates an entire section to this matter: under Article 49, officers may never be compelled to work, while other ranks may be assigned to labour according to their age, physical fitness, sex and rank, and any applicable national labour laws must be respected. A further important protection is found in Article 13, which safeguards the dignity of POWs by prohibiting acts of violence, intimidation, or public insult against them, and by protecting them from public curiosity. This provision means that a

<sup>2</sup>Covenant of the League of Nations, Articles 11-12.

<sup>3</sup>Regulations Respecting the Laws and Customs of War on Land, Chapter I (Hague Convention IV, 1907).

<sup>4</sup>Third Geneva Convention (1949), Section II, Chapter I.

detaining state may not use measures of reprisal against POWs, nor display them publicly, for example on television, to confess to alleged crimes or to criticise their own government.

### **3. The Principle of Distinction: Civilians, Combatants and Objects**

At all times, parties to a conflict must distinguish between the civilian population and combatants, and between civilian objects and military objects. Article 50 of Additional Protocol I (1977) defines a civilian as any person who does not fall within any of the categories of combatant set out in Article 4 of the Third Geneva Convention: members of the armed forces and any militia or volunteer corps forming part of them; members of organised resistance movements meeting the conditions described above for POW status; members of regular armed forces who profess allegiance to a government or authority not recognised by the detaining power; and inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist invading forces without having had time to form themselves into regular units, provided they carry arms openly and respect the laws and customs of war.

The civilian population is protected against the dangers arising from military operations and must not be made the object of attack. Article 51 of Additional Protocol I prohibits indiscriminate attacks, namely those that strike military objectives and civilians or civilian objects without distinction, or that may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated. An attack is justified only where it confers a significant military advantage or substantially degrades the capabilities of the opposing party.<sup>5</sup>

Particular protection is afforded to objects indispensable to the survival of the civilian population, the loss of which would cause the population to starve. These include foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works; such objects must not be attacked, destroyed, removed or rendered useless for the purpose of denying them to the civilian population, whatever the motive, whether to starve civilians, force their movement, or for any other reason. Similar protection extends to installations containing dangerous forces, such as dams, dykes and nuclear electrical generating stations, given the severe consequences that an attack on such installations could have for the civilian population. Even where a military objective is located in the vicinity of such installations, it may not be attacked if doing so risks releasing the dangerous forces concerned. The Protocol nonetheless permits attacks on such objects in narrowly defined circumstances: where the object is being used for a purpose other than its normal function and in regular, significant and direct support of military operations, and there is no feasible alternative means of terminating that support; where such support involves a nuclear electrical generating station providing significant and direct support to military operations and the attack is the only feasible way to terminate that support; and provided that, in all cases, the attack does not leave the civilian population without adequate supplies of food and water such that it would be caused to starve or be forced to move.<sup>6</sup>

### **4. The Protection of the Wounded, Sick and Hors de Combat**

Special protection is extended to those who are hors de combat — literally, “out of combat” — whether due to sickness, wounds, or detention. Such persons are protected against violence to life, mutilation, torture and cruel treatment. Article 12 of the First Geneva Convention

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<sup>5</sup>Protocol I to the Geneva Conventions (1977), Article 51.

<sup>6</sup>Protocol I to the Geneva Conventions (1977), Chapter III.

provides that the wounded and sick must not be left without medical assistance, and prohibits wilfully exposing them to contagious diseases or other conditions detrimental to their recovery. Article 15 requires parties, at all times and particularly after an engagement, to take all possible measures without delay to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, and to ensure they receive adequate care; the dead must also be searched for and protected against despoliation.<sup>7</sup>

Mobile medical units, hospital ships, and medical personnel engaged in the search for, collection, transport or treatment of the wounded and sick are to be respected and protected in all circumstances, and must not be the object of attack.

### **5. Restrictions and Prohibitions on Means and Methods of Warfare**

One might assume that war is won simply by eliminating the enemy's forces by whatever means necessary, but the laws of war have long dictated otherwise: the means of injuring the enemy are not unlimited. The foundations of this principle were laid in 1868 at St. Petersburg, where seventeen nations declared that the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy, and that it is sufficient to disable the greatest possible number of men without inflicting unnecessary suffering upon those who are already disabled or whose disablement secures the object of the war.<sup>8</sup>

This was the first international agreement aimed at banning weaponry that aggravated human suffering beyond what was necessary to achieve a military objective. The Hague Conventions subsequently banned weapons designed to kill or wound at an exponential rate, including poisoned weapons and projectiles calculated to cause unnecessary suffering. Article 23 of the Hague Regulations specifically prohibits killing or wounding enemy combatants treacherously; killing or wounding an enemy who has laid down arms or who, having no means of defence, has surrendered; making improper use of a flag of truce, the national flag, military insignia or uniform of the enemy; and destroying or seizing enemy property, unless such destruction or seizure is imperatively demanded by the necessities of war.<sup>9</sup>

Additional Protocol I of 1977 advanced two further principles: first, that it is prohibited to employ weapons, projectiles, and methods of warfare of a nature to cause superfluous injury or unnecessary suffering; and second, that it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.<sup>10</sup>

The 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons introduced a further principle prohibiting the use of weapons that cannot distinguish between civilians and combatants. This includes mines, booby-traps and other devices designed to be triggered remotely or by the unsuspecting actions of a victim, and which may injure or kill any person, civilian or combatant, who happens to disturb or activate them. The Convention prohibits the use of such weapons against civilians and their placement in cities, towns, villages or other concentrations of civilians; they may be placed only in or near military objectives, and special precautions, such as warning signs and fencing, must be

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<sup>7</sup>First Geneva Convention (1949), Articles 12 and 15.

<sup>8</sup>Declaration of St. Petersburg, 1868.

<sup>9</sup>Hague Regulations (1907), Article 23.

<sup>10</sup>Protocol I to the Geneva Conventions (1977), Article 35.

taken to protect civilians. The Convention also addresses incendiary weapons, which are designed to set fire to objects or cause severe burns through chemical reaction, and prohibits their use against concentrations of civilians, including by air-delivered attack on a military objective located within such a concentration.<sup>11</sup>

Anti-personnel mines, designed to detonate by the presence, proximity or contact of a person (as distinct from anti-tank or other anti-vehicle mines), are subject to a more sweeping prohibition under the 1997 Ottawa Convention, which prohibits the use, stockpiling, production and transfer of such mines and requires each party, under Article 5, to destroy all stockpiled and emplaced anti-personnel mines within ten years of becoming a party.<sup>12</sup>

A further category of prohibited methods of warfare concerns deliberate manipulation of the natural environment for hostile purposes. Additional Protocol I prohibits methods or means of warfare intended or expected to cause damage to the environment that is widespread, long-term and severe — the three criteria together sometimes referred to as the “troika” — a standard later reflected in the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, negotiated between the United States and the Soviet Union.<sup>13</sup>

### Conclusion

International humanitarian law regulates how states must conduct themselves in times of war and armed conflict. Although internal disturbances such as riots remain primarily a matter of domestic policy, international humanitarian law has increasingly become a tool for regulating the conduct of even internal armed conflicts. From the 1868 St. Petersburg Declaration through the Hague Conventions, the Geneva Conventions of 1949, and the Additional Protocols of 1977, a coherent body of rules has developed governing the treatment of prisoners of war, the protection of civilians and civilian objects, the care of the wounded, sick and shipwrecked, and the restriction or prohibition of weapons that cause unnecessary suffering or indiscriminate harm.

These rules reflect what may be regarded as the fundamental rights of human beings in times of war: the protection of civilians, the respect owed to medical personnel, the honouring of surrender and capitulation, and the duty to assist the wounded, the shipwrecked and the sick who are no longer taking part in hostilities. Such protections are the product of customs developed over the course of human history, and as such bind all states as a matter of obligation rather than choice. This is reflected in Common Article I of the 1949 Geneva Conventions, under which the provisions of the Conventions apply to all cases of declared war or of any other armed conflict arising between High Contracting Parties, even where one of the parties to the conflict is not itself a party to the Conventions.

Taken together, these instruments demonstrate that, even amid the violence and necessity of armed conflict, international law preserves a core of protections for those who are not, or are no longer, taking part in hostilities. The continuing challenge lies not in the content of these rules, which remain comprehensive and well established, but in ensuring their consistent

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<sup>11</sup>Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (1981), with Protocols I, II and III.

<sup>12</sup>Ottawa Convention on the Prohibition of Anti-Personnel Mines (1997), Article 5.

<sup>13</sup>Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977).

observance by all parties to a conflict, whether state or non-state actors, and in the ongoing development of the law to address new means and methods of warfare as they emerge.

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