

Ministry of Higher Education and Scientific Research



University Center Aflou

Institute of Law and Political Science

Law Department



***Lectures in international humanitarian
law***

***Directed to third-year law students
specializing in public law -***

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Introduction:

It is the consideration through which the need for international humanitarian cooperation to rescue victims can be justified. From this standpoint, the human right to protection emerged based on moral rules a long time ago. However, these rules may turn into legal rules in the strict sense, if international persuasion of the importance of this continues through It has entered the realm of customary or codified law, and one of the clearest examples of this is the legal rules for protecting victims of war and armed conflicts in general, under which international humanitarian law has been established by providing¹ protection to civilians in the midst of armed conflicts

History has noticeably accelerated, transformations have accelerated, distances have shrunk, space and time have disappeared, and man's feeling in this era has increased that he is part of a broader and more comprehensive world than his own world, and he has reached the stage of awareness of the priority of grading common human interests in light of the peoples of the world being exposed to International .² many humanitarian crises, such as wars and disasters humanitarian law has become a nature required by human nature, as human life has been characterized from time immemorial by forms of

¹Maher Jamil Abu Khawat, International Humanitarian Aid, a contemporary analytical and applied study in light of public international law, Dar Al-Nahda Al-Arabi, first edition, 2009, p. 13

²In September 2013, Mr. Ban Ki-moon, Secretary-General of the United Nations, called for holding the first World Humanitarian Summit in Istanbul in 2016. The summit aims to define the humanitarian agenda to become more effective, comprehensive and accountable, and in general to enable it to adapt to a changing world to a greater degree

cooperation and solidarity between members of one society and between different societies among them. The source of all of this is moral considerations. It is worth noting that international humanitarian law is linked to the established protection of the civilian which It results in many ¹ ,population in the midst of armed conflicts wounded, sick, and injured by bullets, shells, shrapnel, mines, and other means of destruction, which require the protection of civilians in ² the midst of these situations

Enriching the standard of international humanitarian law requires familiarity with all of the study axes established within the ministerial program, according to the following

The concept of international humanitarian law

The emergence and development of international humanitarian law

- Fields of international humanitarian law
- Prospects of international humanitarian law
- Contributions of Prince Abdelkader Al-Jazairi

In order to understand all of these details, we will contribute by raising the following problem: **How did successive international events contribute to the crystallization of international humanitarian law, and how did the latter establish the protection of the human individual in light of the grave violations that humanity is witness?**

¹Ali Sadiq Abu Haif, Public International Law, Ma'arif Institute, Alexandria, tenth edition, p. 81 ,1972

²Bojtal Salah El-Din, The Right to Humanitarian Assistance, a comparative study in light of the provisions of international humanitarian law and human rights, Alexandria University Thought House, first edition 2008, p. 9

The first axis : The origins and development of international humanitarian law

The rules restricting military operations were established approximately 150 years ago, with the main goal of protecting humanity from the violations caused by wars. They contributed to laying the first building block for the Charter of International Humanitarian Law. As a result, international norms and unwritten rules emerged that regulate issues of war in the related aspect. With respect for humanity, then these efforts soon began to bear fruit, as a result several bilateral treaties were concluded to exchange prisoners with different degrees of preference. During this period, regulations issued by countries to their forces, the “Lieber Code,” emerged, aiming to restrict methods offighting.

Thus, the law applicable at that time to wars was limited, whether in terms of time or place, meaning that it applied to one battle or a specific conflict, and these rules differed according to time, place, morale, and civilization.

Wars have prevailed between tribes and peoples throughout time and civilizations, and alongside them appeared some manifestations of mercy and leniency stemming from humanitarian principles, such as the laws of Hammurabi, the Hittites, and the ancient Egyptians.¹

War is a factor that has targeted the relationship between different human groups throughout human history, as Ibn Khaldun summarized this by saying, “ **There are types of wars. Throughout history, war**

¹ Website <https://ar.wikipedia.org/wiki> .Date of access : 01-08-2023 , at: 10:06

has had rituals, traditions, and customs that show that the fighter has continued to exist in creation since God disavowed it, ” which in its entirety includes the international rules that govern war. At the present time, which has developed since ancient times, where brutality¹ and tyranny ruled the wars of ancient times

was characterized by the establishment of the rules, principles and customs of war derived from the Holy Qur’an and the Sunnah of the Prophet, as the Holy Prophet, peace and blessings be upon him, used to advise his armies that he sent to war, saying, “Go in the name of God, by God, and with the blessing of the Messenger of God. Do not kill a mortal old man, **nor A small child, not a woman, and do not go to extremes and lay down your spoils and do good and do good. Indeed, God loves those who do good.**” It established the protection of women, the elderly, and children, the good treatment of prisoners, the prohibition of killing or abusing them, the prohibition of finishing off the wounded, and the prohibition of mutilating the bodies of the dead, which is one of the basic rules established within the requirements of the Geneva Conventions

Among Abu Bakr Al-Siddiq’s commands to Yazid bin Abi Sufyan when he sent him at the head of an army to the Levant, he said: “As for what follows... I advise you to do ten things: Do not kill a woman, a boy, or an old person, and do not cut down fruit trees or palm trees, and do not burn them, and do not destroy a villager. “Do not gnaw a sheep or a cow except for its food, and do not shackle

¹ website <https://blogs.icrc.org/alinsani/2018/11/22/2256> Access date: 01-08-2023 , at: 11:00 /

yourself or become cowardly” which we in turn consider to be a humanitarian danger in embodying international rules in the future to¹protect humans

On the external level, many customary rules have emerged that establish the theory of war, the theory of the law of peoples, and the principles of natural law, which left behind the criteria for distinguishing between combatants and non-combatants, which is due, a fortiori, to the increase in hostilities in this era of time. Jean-Jacques **Rousseau** expressed According to this position in his book The Social Contract, war is a relationship of one state with another state, and individuals in it are enemies only incidentally

The features of international humanitarian law emerged after a fierce battle on the land of Silferino in the province of Lombardy, Italy , between the Austrian forces on one side and the forces of France and Sardinia on the other side, which left heavy human in addition to the death of the wounded who died afterward as ²,losses a result of deficiencies in medical services. The Swiss citizen, Henry Dunant, took the initiative in his book, “Silverino Memorial,” to raise the extent of the violations that shook the conscience of the world due to the horrific events that occurred. At the end of his book, Dunant called for the preparation of neutral medical relief personnel in times of peace, to provide the minimum medical services in times of peace. During the war, **Henry Dunant** sent four citizens from Switzerland to

¹ Website<http://www.fawaed.tv/episode/9032> .Access date: 01-08-2023 , at: 11:15

² Website<https://www.icrc.org/ar/doc/resources/documents> Access date: 01-09-2023 , at: 09:12

form the Five-Year Committee, which was later known as the International Committee of the Red Cross In 1864, this committee was able to urge the Swiss government to hold an international conference in which 16 countries participated

These efforts resulted in the conclusion of the Geneva Convention for the Improvement of the Condition of the Wounded in Field Armies, according to which first aid and medical care are provided to combatants, the wounded and the sick without any discrimination, and the provision of humanitarian aid and respect for members of the medical services whose members are distinguished by the emblem of the Red Cross on a white ground, which we in turn consider to be the first building block for codifying International humanitarian law, which was followed by several international agreements, the most important of which were the four Geneva Conventions of 1949 and the Two Additional Protocols of 1977

The second axis: the meaning of international humanitarian law

I have Dr. **Amer Al-Zamali** defined international humanitarian law as: “A branch of public international law whose customary and written rules aim to protect affected persons in the event of an armed conflict. It also aims to protect funds that are not directly related to¹” .military operations

Dr. Amer Al-Zamali's definition raised the role of customary rules and conventions in settling humanitarian problems resulting from

¹ Amer Al-Zamali, Introduction to International Humanitarian Law, available on the website <https://www.politics-dz.com/> .access date: 01-09-2023 , at time: 10:01 ,

international and internal armed conflicts by limiting the authority of warring states to use means of warfare and protecting people and objects that may be harmed

Attempts continued, and **Jean Pictet defined** it as: “that customary momentum of public international law that is inspired by human feeling and focuses on protecting the human individual from¹” .the remnants of hostile operations

Mahmoud Sharif Bassiouni also defined it as: “the totality of international norms that aim to protect certain categories of individuals and property and prohibit attacks to which they may be exposed during armed conflicts, whether these conflicts have an international character or a non-international character, since the basic source of these international norms is derived from Of treaty law and²customary international law

Therefore, the aforementioned presentation refers to the rationalization of war by restricting the methods of fighting and protecting people and objects not participating in the war, and on the other hand, the trend towards codifying international norms to become the rules of an agreement in the correct sense whose primary goal is to protect humanity. I would like to point out in this presentation that the use of the appropriate term for expression The law of war or armed

¹ ,John Pictet, The Origins of International Humanitarian Law, available on the website <https://www.icrc.org/ar/doc/resources/documents/misc/65ffbl.htm> access date: 01-08-2023 , , at: 12 :31

² Muhammad Al-Sharif Bassiouni, Introduction to International Humanitarian Law and International Control of the Use of Weapons, available on the website <https://www.neelwafurat.com/itempage.aspx> . access date: 09-01-2023 , at 10:20 ,

conflict has emerged since the conclusion of the United Nations Charter, which used the term “use of force” because war is illegal in the United Nations Charter, until the late sixties following the Tehran Conference in 1968

What is established from this relationship is that international humanitarian law is part of public international law whose rules are linked to international ethics, which considers the human person as a basic focus that addresses him in the same way as addressing states. Public international law was not able to impose its respect on members of the international community, so this law came with the provisions it contains. To impose the requirements of the international humanitarian system, humanitarian law therefore includes most of the rules that protect humans in times of armed conflict by granting protection to civilians, which constitute the basic elements of human¹.development and protection

Therefore, humanitarian law includes two basic sections, namely international humanitarian law, or the law of armed conflict, and international human rights law

The third axis: principles of humanitarian law

Although international humanitarian law is a law like other international laws, it is unique in its operation with certain principles upon which it is based, and it has special features that distinguish it from other international laws, and among these principles are

First: The principle of humanity

¹ The relationship between international humanitarian law and public international law, available on the website <https://www.politics-dz.com> .accessed: 10-01-2023 , at 14:32 ,

The principle of humanity aims for the human personality to be a subject of permanent consideration in all circumstances. This principle excludes any discrimination based on race, sex, ethnicity, or creed, to be understood from that

The human being is the subject of international protection in the midst In ¹ .of situations of international and non-international armed conflicts this regard, Articles: 12-12-12-13, respectively, common to the four Geneva Conventions of 1949, indicate in their second paragraphs: “... on the parties to Those under its authority must treat them humanely, take care of them, and strictly prohibit any attack on their life or use of violence against them. In particular, they must not kill them, exterminate them, subject them to torture or life-scientific experiments, or intentionally leave them without treatment or medical care. Or create conditions that expose them to the risk of infection ²”...with diseases or infection of wounds

On the other hand, the International Committee of the Red Cross considered the principle of humanity to be a basis for undertaking humanitarian work, which establishes a legal and ethical basis in humanitarian work. This law applies to civilians regardless of their gender, nationality, color, race, beliefs, or cultural or ethnic

¹ Jaafour Islam, The Principle of Humanity Applied to International Conflicts, a memorandum submitted for the Master's degree in Public International Law, Mouloud Mammeri University Tizi Ouzou, Algeria, 2009, available on the website -

<https://dl.ummo.dz/bitstream/handle/ummo> Access .date : 01-08-2021, at: 19:03

² .See Articles: 12-12-12-13 respectively of the Four Geneva Conventions of 1949

affiliations in the country. Areas and hotspots witnessing armed
¹conflicts

Second : The principle of military necessity

This principle aims to restrict the methods of fighting by refraining the parties to the conflict from carrying out military actions that are not justified by military necessity, or exaggerating in carrying out these actions without justification. In this regard, the drafter referred to the law contained in the text of Article: 54 of the First Additional Protocol attached to the Geneva Conventions held in : 12- relating to the protection of victims of international armed ,1949-8 conflicts, as follows: “It is prohibited to attack, destroy, remove, or disable objects and materials indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas that produce them, crops, livestock, and drinking water facilities.” And its networks and irrigation works, if the intention is to prevent them from being accessed by the civilian population or the adversary, due to their vital value, regardless of the motive, whether it is with the intention of starving civilians, or to force them to flee, or for any other motive.” Then the fifth paragraph came to stipulate an exception to the practice limits Given the urgent military ² of these behaviors within the necessity, it stipulates that “taking into account the vital requirements

¹ :International Committee of the Red Cross, available at the website <https://www.icrc.org/ar/doc/resources/documents/misc/about-the-icrc-311298.htm> accessed: , 01-10-2021, at Time: 15:31

² Article: 54 of the First Additional Protocol annexed to the four Geneva Conventions held on: August 12, 1949, and relating to the protection of victims of international armed conflicts, dated June 10, 1977

of any party to the conflict, in order to defend its national territory against invasion, a party to the conflict shall be permitted to strike in retaliation for the danger mentioned in the second paragraph within such territory under its control if military necessity dictates.”

¹”Urgent“

Third: The principle of discrimination

The legal wording contained in the text of Article: 48 of the First Additional Protocol of: 1977 indicates that “the parties to the conflict shall work to distinguish between the civilian population and combatants, and between civilian objects and military objectives exclusively, in order to ensure respect and protection of the civilian ² . population and civilian objects

According to the text of Article 52 of the First Additional Protocol of 1977, military objectives mean “...objectives that make an effective contribution to military action, whether by their nature, location, purpose, or use, and whose complete or partial destruction is achieved, or Capturing it, or disabling it in the circumstances ³ .prevailing at the time, is a definite military advantage

The legal reading of the text of the above two articles indicates that the principle of distinction is comprehensive to cover the

¹ Article: 54 , Paragraph: 5 of the First Additional Protocol annexed to the four Geneva Conventions held on: August 12, 1949, and relating to the protection of victims of .international armed conflicts, dated June 10, 1977

² Article: 48 of the First Additional Protocol annexed to the four Geneva Conventions held on: August 12, 1949, and relating to the protection of victims of international armed conflicts, .dated June 10, 1977

³ See Article: 52 of the First Additional Protocol to the Four Geneva Conventions held on: August 12, 1949, and relating to the protection of victims of international armed conflicts, dated June 10, 1977

prohibition of using any weapon with indiscriminate effect, or causing severe or long-term damage to the environment

Fourth: The principle of proportionality

This principle was embodied in the content of Article 35 of the First Additional Protocol of 1977, which considered

The right of the parties to the conflict to choose methods and -1 means of combat is not a right that is not restricted by restrictions Prohibition of the use of weapons, missiles, materials and means of -2 combat that would cause unjustified injuries or suffering It is prohibited to use means and methods of combat that are -3 intended to, or may be, “It is expected to cause severe, widespread and ¹”.long-term damage to the natural environment

The legal reading of the text of the above article indicates that military actions should not exceed the requirements necessary to achieve the desired military goal, which is to destroy or weaken the enemy’s military power, and that the belligerents should not inflict on their opponents harm that is disproportionate to the purpose of the armed conflict. In this regard, the Petersburg Declaration of the year 1864 was established. For this principle in its preamble, through 1864 which it was considered, “... the progress of civilization must be aimed at alleviating the disasters of war as much as possible, and the

¹ Article: 35 of the First Additional Protocol annexed to the four Geneva Conventions held on: August 12, 1949, and relating to the protection of victims of international armed conflicts, dated June 10, 1977

only legitimate goal that states aim at during war must be to weaken¹ the enemy's military forces

.Fifth: The principle of a fair trial

The legal formulation contained in the text of Article: 3 common to the four Geneva Conventions of the year: 1949 and Articles: 11 and 58 of the First Additional Protocol of the year: 1977 established all serious violations of the rules of international humanitarian law that amount to war crimes and are considered internationally prohibited. Which requires prosecution and punishment

In this regard, Article 8 of the Statute of the International

“ :Criminal Court of 1998 referred to grave violations as

a - grave violations in accordance with the Geneva Conventions of ,August 12, 1949

b - other serious violations of the laws and customs applicable to , international armed conflicts within established international law

C - In the event of armed conflicts not of an international character, violations are considered grave in accordance with Article 3 common ,to the four Geneva Conventions of August 12, 1949

D - Other serious violations of the laws of war and customs applicable

¹ The principle of proportionality means "how to deal with the target to be attacked after determining the legitimacy of this attack thanks to the principle of distinction. The principle of proportionality determines the means and the level of intervention to achieve a balance between military necessity and humanitarian treatment. Any defect in the application of this principle exposes the perpetrator to the reality of violating the law under the title excessive ."usage

to armed conflicts not of an international character, within the
1”.established scope of international law

Violations of international humanitarian law include one of the forms of criminalization included within the substantive jurisdiction of the International Criminal Court from the point of view of Articles: **6, and 8 bis** , so that the five principles presented above establish a **8,7** basis and starting point for international humanitarian law, the effectiveness of which may depend on the extent of its commitment to its principles and the achievement of its goal

Fourth axis: Characteristics of international humanitarian law

International humanitarian law seeks to remedy and alleviate the suffering of victims, reduce and alleviate human suffering in all circumstances, and aims to protect life and health and ensure respect² for the human being

Since international humanitarian law requires states to agree to the entry of humanitarian organizations to provide the duty of protection, this has a major impact on the emergence of the principles of humanity and integrity that must be taken into account. In general, the principles of humanitarian action in international humanitarian law include the following

First: Commitment to the principle of humanity, Second: Commitment to the principle of integrity, Third: Commitment to the

¹ . See Article 08 of the Statute of the Permanent International Criminal Court of 1998

².Maher Jamil Abu Khawat, previous reference, p. 113

principle of neutrality, Fourth: Commitment to the principle of non-discrimination

First : Commitment to the principle of humanity

Reading the Geneva Convention of: 1949 and its Additional Protocols of: 1977 allows clarifying the meaning of the word humanitarian” within the framework of this law. The word “humanitarian” in itself appears only rarely in the conventions, except “for the few articles in which it appears, especially Article: 3, common to the Geneva Conventions, which was considered That every person The ¹,who does not participate in the fighting is treated humanely purpose of international humanitarian law is to allow persons not participating in the fighting and the civilian population at least to live and survive, and therefore humanitarian action includes providing the following services to victims

Health coverage in accordance with Article 16 of the First Protocol, so that activities must be consistent with the honor of the medical profession, which itself relies on provisions of a legal nature

Face all arbitrary measures of detention or even urgent judicial -
² procedures

Humanitarian work not only seeks to alleviate suffering, but it also seeks to prevent it from occurring and to strengthen solidarity

¹Ahmed Atto, Legal Regulation of Humanitarian Aid in Armed Conflicts, a note submitted to obtain a Master’s degree , University of Algiers, specializing in Public International Law, .p. 78 , 2013-2012

²John Luc Blondal, the meaning of the word humanitarian in the context of the basic principles of the Red Cross and Red Crescent, International Review of the Red Cross, second year, issue: November 10 - December 1989, p. 418

among peoples, in order to protect the dignity of the individual and defend the human individual

General Assembly Resolution No. 43/131 also affirmed the principle of humanity by saying that the principles of humanity must be above all consideration for all those who provide humanitarian aid. The principle of humanity is a basic condition for every humanitarian action, and it is also considered, a fortiori, the first principle that organizations follow . Non-governmental organizations whose .motivation is always to ensure the alleviation of human suffering

Resolution No. 46/182 affirmed the same principle within the guidelines that stipulate the necessity of providing protection in accordance with humanitarian principles

Second: Commitment to the principle of integrity

Integrity is defined as a working principle in the humanitarian context, meaning that humanitarian work must be carried out according to an objective standard, that is, the provision of humanitarian aid is carried out on the basis of objective standards¹ without any other considerations during armed conflicts

The issue of integrity means staying away from any form of discrimination, whether with regard to gender, religion, or even political opinion, and this was emphasized at the twenty-fifth International Conference of the Red Cross and Red Crescent In the same context, the United Nations General².Movement in 1982

¹.Boujlal Salah al-Din, previous reference, p. 87

²The basic principles of the International Red Cross and Red Crescent Movement are humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

Assembly sought to include the principle of integrity as one of the basic principles that accompany international humanitarian law. It stated in its resolution No.: 42/182 that humanitarian work must be carried out in accordance with the principle of integrity, and to confirm the previous offer came the legal formulation contained in the text Article 18, Paragraph 02 of the Second Additional Protocol of ¹to emphasize the same principle 1977

Third : Commitment to the principle of neutrality

Neutrality is considered one of the most important principles that must be adhered to by states and organizations working in the humanitarian field during international and non-international armed as such is the duty to refrain ² conflicts. What is meant by neutrality from carrying out any action that would serve the interests of one of the parties to the conflict. There are those who believe that neutrality is A conservative stance toward conflicting parties or ideologies with the aim of maintaining everyone's trust. That is, it is a means that ³ allows for action and not an end in itself

Boujalal Salah El-Din considered the principle of neutrality to be an obligation that should not be linked to a political process coupled with any use of military force, but only to protect the interests of all victims, and humanitarian organizations should not interfere in

These values that govern the work of the International Movement are the basis of the approach it follows when providing assistance to those in need during armed conflicts

¹ See Article: 18, Paragraph: 2 of the Second Additional Protocol to the Four Geneva Conventions held on: August 12, 1949, and relating to the protection of victims of non-international armed conflicts , dated June 10, 1977

².Maher Jamil Abu Khawat, previous reference, p. 122

³.John Locke Blondal, op. cit., p. 420

any disputes of a political, ideological, or religious nature. It is noted that Specialists in the United Nations use the phrase: “ **impartiality** ”¹ instead of using the term neutrality as an expression of not tipping the balance of humanitarian action in favor of one of the parties to the conflict. Given the importance of the principle, international resolutions have followed that stress its necessity and importance, including what was stated in the General Assembly resolution. : No. considering: “... principles... **and impartiality** ... must be ,131 _ 43 ”.above all else for all those who practice humanitarian work

Resolution 46-182 also urged in its second paragraph that humanitarian action must be carried out in accordance with the² principles of neutrality

On the other hand , the San Remo Institute of International Humanitarian Law emphasized in its guidelines on the right to humanitarian assistance the need to be guided by neutrality. The Institute of International Law of 1989 also commented on the principle of neutrality by saying: The offer made by a state, a group of states, an international governmental organization, or an organization Neutral humanity... **It cannot be considered an unlawful intervention** ... The principle of neutrality is also not free from criticism and skepticism. Some believe that the principle of neutrality means a negative idea, which is abstinence and indifference, while others believe that there is no need for personal commitment and participation in it. In fact, and given the problems that the latter raises

¹.Boujlal Salah al-Din, previous reference, p. 88

².Ahmed Atto, previous reference, pp. 81-82

within the context of humanitarian work, we will try to examine the most important of these problems

Neutrality and violation of human rights :1

Neutrality raises the problem of non-governmental organizations, which claim to provide humanitarian aid, and denounce violating the rules of international humanitarian law at the same time. This position was expressed by Mario Petati, who said: “There is no doubt that neutrality is a basic condition for humanitarian work, but it is not as acceptable today as it was.” Previously, it was necessary to have a comprehensive idea of its dire consequences in some cases, and therefore the second generation concerned with humanitarian work, that is, the generation of French doctors, and many of the medical and health non-governmental organizations established at the end of the sixties, which rejected the negative effects of paralyzing neutrality, won. From now on, it is not acceptable for neutrality to lead to stagnation, justify abstention, and promote opportunism in the¹ humanitarian field, otherwise the price will be massive corruption

Humanitarian work requires gaining and maintaining trust, and therefore humanitarian organizations must refrain from taking any position on the causes of conflict. The international reality has witnessed several attacks as a result of failure to adhere to the principle of neutrality, the most recent of which was targeting the International Relief and Works Agency for Palestine Refugees

¹ Mario Bettati, *humanitaire and international expert in the development of l'homme and the new architecture of Europe*, published by the institute of the city of La Paix and Nice Development, 1991, p. 169.

(UNRWA), where the director The agency, **John Jung** , publicly criticized Israel for killing women and children and striking civilian targets during its war on the Gaza Strip. The Israeli army's response was to strike the agency's stores and warehouses in the Gaza Strip, and bomb the UNRWA schools in which civilians were taking shelter

1

Therefore, the principle of neutrality remains a basic principle that prohibits taking any position on the causes of conflict, and it is not enough to carry out humanitarian missions to gain acceptance by states, as states often begin to denounce interference in their internal affairs, and therefore it is necessary to gain and maintain the

2 confidence of states

Neutrality and the use of military force :2

There is no doubt that the use of armed force to impose humanitarian action raises many doubts about the concept of neutrality and its availability. However, the UN Security Council ³ issued many resolutions emphasizing humanitarian considerations, including delivering and securing relief work, based on the fact that depriving victims is in itself a threat to international peace and security, and we mention Resolution No. 770 on 8/13. / 1992, which considered that the tragic situation in Bosnia and Herzegovina

¹.Maher Jamil Abu Khawat, previous reference, p. 125

².Boujlal Salah al-Din, previous reference, p. 91

³The UN Security Council issued Resolution No.: 929 on July 22, 1994, through which it authorized France to use all necessary means to achieve adequate support for the distribution of relief supplies and all humanitarian assistance work in Rwanda. It also formed multinational forces in Albania in accordance with Resolution No.: 1101 in March 28, 1997 to deliver humanitarian aid and supplies to those in need

constitutes a threat to international peace and security, and that providing humanitarian aid is an important work undertaken by the However, the ¹,UN Security Council to restore peace to the region process of making decisions by the Security Council in such cases is not automatic, but rather requires following a set of steps, which are

A - Requesting the parties to immediately cease fire, to create the appropriate situation in which humanitarian aid can be provided

B- Protecting humanitarian workers, and if necessary, using military force for self-defense

C - In order to protect civilians, peacekeeping forces may be allowed to use force in order to secure the protection of civilians, as an inherent jurisdiction of the International Security Council, by taking the necessary measures in accordance with the requirements of Chapter Seven of the Charter, so that it is considered a non-neutral party to the subject of the conflict, but the question is: **What To what extent does armed force affect the principle of neutrality?**

Jurisprudence in this field is divided into two directions

A: Violating the principle of neutrality and using military force

This opinion considers that the process of protecting civilians, coupled with armed force and unilaterally, is an interference in the affairs of the state and is unacceptable under international texts and conventions, and therefore does not meet the criterion of neutrality. As an example of this, in 1987, Indian aircraft dropped food and

¹.Maher Jamil Abu Khawat, previous reference, p. 129

medicines by parachute in Jaffna (Sri Lanka).) in the Tamil region, with the aim of ensuring humanitarian protection, to be classified as an unconfirmed humanitarian operation given that the civilian aircraft¹ were accompanied by Mirage military aircraft

B: Violating the principle of neutrality and protecting humanity

Some jurists consider that military accompaniment of a humanitarian organization for the purpose of protecting civilians does not lose its humanitarian character Denis Platter expressed this by² saying: “Military escort for the purpose of providing humanitarian work to one of the members of the International Red Cross and Red Crescent Movement. This aid does not lose its neutral character as long as this party controls the lands through which the convoy passes or in which humanitarian assistance is provided.” I fully agree with the principles and methods of military escort, as long as the goal of this escort is to protect humanitarian supplies from bandits and criminals under common law, provided that the escort procedure is only used as an exception and as a last resort, and after examining the details of the advantages and disadvantages of such a procedure, we can be guided by the second opinion and direction, On the basis that the protection of civilians is not affected by force and therefore does

¹Marion Harrouff Tafel, Neutrality and Impartiality, the importance and difficulty of guiding the International Red Cross and Red Crescent Movement by these two principles, International Review of the Red Cross, second year, issue: November 10 - December 1989, p. 447

².Maher Jamil Abu Khawat, previous reference, p. 129

not affect the neutrality of humanitarian action, as long as two conditions are met

The first condition: the existence of exceptional and non-postponable circumstances that require the provision of humanitarian aid

The second condition: the absence of any actors on the ground other than the armed forces, or the inability of humanitarian¹ organizations to meet humanitarian needs

In summary of what was previously mentioned, with the availability of these two conditions, it is possible to cooperate to support the humanitarian activities of the United Nations in situations of armed conflict, in order to dispel the trend of interfering in the internal sovereignty of states, especially if military force is used in relief operations, all in order to embody neutrality in work. The² humanitarian

Fourth : Commitment to the principle of non-discrimination

Non-discrimination means that humanitarian work is provided without discrimination for any reason, such as colour, gender, race, language, religion, or even political opinion. Acceptance of humanitarian work stops if it is based on discrimination. To this end, many international resolutions and rulings have affirmed this. The presentation, in particular, is the resolution issued by the Institute of International Law in September 2003, which affirmed the following: Humanitarian work is carried out without discrimination and is not “

¹.Maher Jamil Abu Khawat, previous reference, p. 129

².Maher Jamil Abu Khawat, same reference , p. 130

based on prohibited reasons, taking into account the most vulnerable
”.groups

Article 12 of the First and Second Geneva Conventions stipulates the same principle by saying: “The wounded, sick and shipwrecked members of the armed forces and other persons referred to in the following article must in all circumstances be respected and protected, provided that it is understood that The term “drowned” means those who drowned for any reason, including emergency landings of aircraft¹.on water or falling into the sea

The parties to the conflict who are under its authority must be treated humanely and cared for without discrimination on the basis of sex, race, nationality, religion, political opinions, or any other similar criteria... In the same context, Article 13 of the Fourth Convention affirmed the observance of The principle of non-discrimination in the event of the exercise of humanitarian activity for the benefit of the civilian population against certain effects resulting from war, by saying: “The provisions of Part II include the entire population of the countries participating in the conflict, without any unfair discrimination based in particular on race, nationality, religion, or

¹ See Article 12 of the First Geneva Convention , relating to the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Armed Forces in the Field, signed on August 12, 1949, and the Second Geneva Convention, relating to the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked of Armed Forces at Sea, signed on August 194 ,12

political opinions, "It is intended to alleviate the suffering resulting from the war. "¹

Article 27 of the Fourth Geneva Convention affirms respect for protected persons in all circumstances by saying Protected persons have the right in all circumstances to respect for their persons, honour, family rights, religious beliefs, customs and traditions, and must be treated humanely at all times, and protected in particular against all acts of violence or threats, and against insults and public curiosity. ²"

In confirmation of this meaning, when the Second Additional Protocol of 1977 spoke about the protection of the wounded and sick in the field, it emphasized that these people be treated humanely. also prohibits medical personnel, when performing their ³ Article 9 duties, from giving priority to any person unless this is for medical reasons in the text. As follows: "...medical personnel may not be required to give priority to any person in the performance of their duties unless this is done on medical grounds. ”

Resolution No. 43/131 issued by the United Nations General Assembly also affirmed the same principle in the event of natural disasters and similar urgent situations. The principles of non-

¹ See Article 13 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949

² See Article 27 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949

³Article 7, paragraph 2, of the Second Additional Protocol of 1977 stipulates the following: These persons must, in all circumstances, be treated humanely and receive, without delay, “ the care and medical attention required by their condition, without delay, and no discrimination should be made between them for any consideration other than medical ”.considerations

discrimination must be above all considerations by those who can
¹ provide humanitarian aid

The principle of non-discrimination is based on two specific operating rules

Lack of distinction, whether in times of peace, war or turmoil - 1

The appropriateness of assistance to needs. Non- - 2
discrimination and proportionality are the negative and positive poles
² of any impartial humanitarian action

In summary of what was previously mentioned, we conclude that international humanitarian law is based on a basic principle, which is integrity, to ensure support for the principle of non-discrimination, on which humanitarian action must be based, in all circumstances to ensure that protection activities meet the specific and most urgent in ³ needs of civilians. This therefore requires identifying the actors
The field of humanitarian work, human rights and protection
⁴.activities

The fifth axis: Sources of international humanitarian law

The sources of international humanitarian law vary between customary sources represented by international custom and written sources represented by international treaties

¹.Maher Jamil Abu Khawat , previous reference, p. 118

².Ahmed Atto, previous reference, p. 88

³.Maher Jamil Abu Khawat, previous reference, p. 121

⁴International Committee of the Red Cross, Professional Standards for Protection Activities Carried Out by Humanitarian and Human Rights Actors in Armed Conflicts and Other Situations of Violence, February 2013, p. 22

The first topic: international custom and international treaties

The sources of international humanitarian law are divided into customary rules and written rules

Section One: Customary Rules

Custom plays a fundamental role in forming the rules of international humanitarian law because humanity has intended to establish rules and principles of war by relying on the requirements of different religions and cultural patterns, so that it constitutes custom and the principles of humanity regarding the conduct of military operations and the harm that can be inflicted on the enemy or on people who may be affected by calamities . War is an undeniable source of international humanitarian law. The importance of custom as a source of international humanitarian law appears through the historical study of the development of this law. Therefore, we say that international humanitarian law is an affirmation of ancient customary rules that were developed and expanded upon their codification. In addition , it was agreed that The basic covenants are considered declaratory covenants, and this is what the Nuremburg Court considered regarding the Hague Regulations . They are also binding even for countries that have not adhered to them

Addressing custom as a source of humanitarian law has its historical significance because the gathering of civilizations and religions calls for humanity, which indicates that humanitarian law has historical roots imprinted with prevailing values. Although the

Christian religion considers people as brothers and prohibits unjustified bloodshed, the Church was called to formulate the theory of just war, the goal of which is to provide formal relief to consciences by reconciling the highest moral ideal of the Church with the political¹ necessities surrounding it

is based on the idea that the war waged by a legitimate monarch is a war willed by God, and that the committed acts of violence lose every characteristic of sin, because the opponent in this case is the enemy of God, and the war he wages is an unjust war

This theory analyzed everything against those described as evil , considering war against them an obligatory punishment. As a result , each party claimed the justice of its cause, which expanded the circle of massacres and massacres under the guise of truth mixed with hypocrisy. This theory was the basis of the Crusades , which were the² worst example of a just war

had the primary credit for establishing humanitarian rules in times of war at a time when the just war theory prevailed in Europe, so that Islamic law and its jurists unanimously agreed that jihad was lawful to protect the Islamic call and repel aggression against Muslims . Therefore, Sharia established an integrated humanitarian system for the conduct of combat operations

First: placing restrictions on the conduct of fighting: it is not permissible to point the sword at anyone except the fighter. Thus,

¹ Ali Sadiq Abu Haif , previous reference, p. 86

² Ahmed Atto, previous reference, p . 93

Sharia law was the first to distinguish between combatants and non-combatants, a distinction that Europe has known in the modern er

These restrictions are extracted from the directives of the Messenger, peace and blessings be upon him, to the army: “Do not kill a mortal old man, nor a young child, nor a woman , and do not go to excess, and lay down your spoils, and reform and do good. Indeed, (”.God loves the doers of good

For his part, Abu Bakr Al-Siddiq, may God be pleased with him, recommended to Yazid bin Abi Sufyan when he sent him at the head of the army to the Levant that he should pay ten, and said: “Do not kill a woman , a child, or an old man, and do not cut down fruit trees or palm trees, and do not burn them, and do not leave an old man. Do not slaughter a sheep or a cow except for what it has eaten, and do not (1 become cowardly or be unfaithful

Second: Concerning the prisoners: he prayed Islam calls for preserving human dignity in wars, and the reference to kindness to prisoners came in the Almighty’s saying: ((Treat prisoners well))

These humanitarian principles, which were transmitted by Islamic law, were transferred to some Christian writers who advocated mercy, such as Victoria and Suarez, and they adopted some religious systems, such as the peace of God and the truce of God, which are systems aimed at abolishing the brutal customs of war

The godfather of international law, Grotius, was credited with attacking the theory of just war in his well-known book, “The Law of

¹ Maher Jamil Abu Khawat, same reference , p. 1 42

War and Peace” for the year 1623-1624, in light of the experience he lived during the religious Thirty Years’ War. He denounced the massacres and suffering and called for the necessity of establishing rules to control the behavior of the belligerents, such as It is not permissible to kill the defeated and not to destroy property except for necessary military reasons . This is considered a significant contribution by the writer to the rules of international law that regulate the state of war and reflects the extent to which it is influenced by

¹ Islamic ideas

Jurists after Grotius continued their interest in studying the law of war at the beginning of the eighteenth century, during which states settled in their modern legal form and the emergence of some customary rules and customs related to the conduct of military operations and the form of martial law from that

Hospital immunity-

Do not treat the wounded and sick as prisoners of war-

Protecting and assisting doctors and religious guides among - prisoners

Preserving the lives of prisoners and exchanging them without - ransom

There is now some kind of protection for the civilian population

From these customary rules, Jean-Jacques Rousseau derived a social rule that he mentioned in The Social Contract, which states that war is not a relationship between a state and a state. Individuals are

¹ Boujlal Salah al-Din, previous reference, p . 9 8

only occasional enemies, and their hostility is not based on the fact that they are human beings, but rather on the basis that they are soldiers, and by laying down their weapons and surrendering, they once again become human beings, and no human being has the right¹ to attack them

The Paris Convention of 1856 regarding the treatment of combatants in naval wars is considered an embodiment of some of these concepts and norms related to the conduct of war, although some give precedence to the communication issued by the US Department of Defense in 1838 as the starting point in the modern development of this law because it stipulates the necessity of addressing the crimes that have been committed . During the War of Independence

These customs and agreements that were supportive within a specific geographical scope and at a specific time remained in place until they were embodied on a global level in texts and agreements that constitute the written sources of humanitarian law or the law of armed conflict

:Section Two: Written Rules

The written sources of international humanitarian law are represented by two types of rules

The rules stipulated in the La Hague Law -1

The rules stipulated in Geneva law -2

It is noteworthy that with the issuance and appearance of the first protocol attached to the Geneva Conventions in 1977

¹ .Ibid

These two issued distinctions no longer have any historical value except for their fusion of the two laws together through its inclusion of many of the provisions regarding the means and methods of combat stipulated by The Hague

The written sources of international humanitarian law are those concluded agreements with an international dimension, most of which codified the customs and customs that prevailed in the field of armed¹ conflicts

Because these agreements are based on customs, they are considered declaratory agreements that are effective even before countries that have not ratified them, in accordance with the Vienna Convention of 1969 regarding treaties

Anyone who follows the development of written sources of international humanitarian law notes that they are rules that came as a response to a painful incident. Therefore, the commentator says, “The rules of international humanitarian law always come too late for a”.war

The Geneva Convention of 1864 relating to improving the condition of wounded soldiers in the field is considered the first global achievement in the field of humanizing war, and it was followed by the Constitution of the Swiss Confederation of 1874, Article 12 of which stipulated that the Federal Court be transferred to consider crimes and misdemeanors directed against human law. Then followed the Hague Conventions of 1899 and 1907

¹ See the four Geneva Conventions of 1949

:First: The Hague Law

The Hague Law, or the law of war, defines the rights and duties of belligerents in the conduct of military operations and restricts the choice of means of warfare

arose mainly from the Hague Conventions of 1899, amended in which is the convention relating to the conformity of naval warfare to the principles of the Geneva Convention of 1864 relating to the amelioration of the condition of military wounded in the field

were transferred to the Geneva Convention of 1929 and 1949 regarding the legal status of prisoners of war, the wounded and shipwrecked in naval militias, and the legal status of the civilian population in occupied territories

The Hague Convention of 1899 is considered an inevitable result of what resulted from the (Naval Lissa) battle in the war between France and Austria in 1866, with which the provisions of the Geneva Convention of 1864 were not compatible, which prompted the preparation of this convention to make these provisions compatible¹with naval warfare

The Hague Conventions of 1907

On October 18, 1907, five agreements were concluded in The Hague to regulate the provisions of land and sea disputes, the duties of the warring parties, and the centers of neutral countries

agreement : the start of hostilities

¹ See the Hague Convention 1899

This agreement relates to the start of hostilities between warring countries. This agreement requires the contracting parties, before launching a war, to give a warning to the other party in the form of a declaration of war, and it also requires neutral countries to announce this

agreement : especially respect for the laws and customs of land warfare

:The agreement affirms the following principles

first principle : Until a complete code of the laws of war is issued, the High Contracting Parties declare that in cases not covered by the provisions they have adopted, the population remains under the protection and authority of the principles of the law of the people

principle : Contracting States must issue to their armed forces instructions that are consistent with the regulations attached to the Convention regarding respect for the laws and customs of land warfare

principle : **The provisions of this agreement** shall only be applied between the contracting parties

Fourth Principle: Every contracting party that violates the provisions of this agreement is responsible and obligated to compensate for all acts committed by persons belonging to its armed forces

was attached to this agreement, stipulated in 56 articles, which¹ included special provisions on the following issues

¹ . Maher Jamil Abu Khawat , previous reference, p. 143

- **Definition of combatants** : Articles One, Two, and Three of the Appendix stipulate that the laws of war do not apply to the army only, but also apply to militias and demobilized units, and also apply to residents of non-occupied territories who take up arms on their own when the enemy approaches to resist the forces. The armed forces of the parties to the conflict may also consist of combatants and non-combatants
- **Identification and treatment of prisoners of war:** Article 4 stipulates that a prisoner of war is under the authority of the enemy government and not under the authority of the individuals or units that captured him. Articles 05 to 20 stipulate provisions for the treatment of prisoners
- **The sick and wounded:** Article 21 of the Annex referred to the Geneva Convention of 1906 regarding service to the wounded and sick
- **Restricting hostilities** : Article 22 stipulates the restriction, stressing that combatants do not have the absolute right to choose the means of causing harm to the enemy. Articles 23 to included the rest of the prohibited acts, such as using 28 treachery to kill, using weapons that cause unjustified damage, and not destroying property unless military necessity requires it
- **Spies: Article 29 defines** a spy as a person who collects information in the area of operations of a party to the conflict through falsification or concealment

Article 30 gave protection to the spy who must be tried while enjoying the status of a prisoner of war

➤ **Territories** : Article 42 defines occupied territory as the land of the state that is under the actual authority of the enemy's army

Paragraphs 43 to 56 of the annex specified the legal status of the occupied territory and the status of the population so that the occupying authority may not violate the laws in force in the country, not force the population to deal with them, and not issue collective¹ punishments

Convention : On the rights and duties of neutral states in naval war

This agreement includes in its thirty-three articles the rights and duties of neutral states in naval warfare, and it includes the following²:rules

First: Respecting the neutral state, by refraining from carrying out in its territory or territorial waters any action that would violate neutrality, including the risk of any hostile act, whether detention is an exercise of the right of inspection carried out by a warship, as well as the warring state's refusal to form a spoils court on its land. Neutral or on board a ship in neutral waters

Second: The warring countries prevent ports and neutral waters for their naval operations against their opponents or the establishment of communications stations

¹ See Protocols I and II of 1977

² .Same reference and location

Third: Neutral states refrain from supplying ships or ammunition to the warring state. The neutral state must also prevent equipping or supplying a ship under its authority with weapons

Fourth: The neutral state does not commit to preventing or passing weapons used by the army or fleet of one of the warring states

Fifth: The neutral state must treat both parties without bias in terms of conditions, restrictions, and prohibitions regarding the entry of warships or their spoils into its ports for a period of twenty-four hours to carry out the necessary repairs without adding anything to its capabilities... provided that if they refuel in a state Neutral may not be .supplied again until after three months

agreement : concerns the spoils court

This agreement came with 57 articles that included provisions related to the International Court of Spoils, which is the body that hears appeals filed against national courts that. ...in seizing a ship during a naval war. These provisions can be summarized as follows

The extent of the legality of seizing a ship... is determined by -1 the judicial authority of the belligerent party that seized it. The decision may be appealed before the International Spoils Court in the following cases

- When it comes to ownership by a neutral country
- When it comes to goods owned by the enemy being loaded onto a ship owned by a neutral country, or the ship belonging to the enemy has been seized in the territorial waters of a neutral country

- When the seizure was carried out in violation of the rule of an agreement between the warring parties

Procedures Appeal -2

- The appeal shall be made by the neutral state or by any neutral person
- The appeal shall be brought before the international court composed of judges appointed from the contracting parties

If the court deems the seizure unlawful, it shall order the return of the ship along with the necessary compensation

The Fifth Convention: Concerning the rights and duties of¹ neutral states and neutral persons in the event of land war

This agreement came in 25 articles and included provisions related to

✓ Rights and duties of neutral powers

The rights of neutral powers revolve around ensuring that the sanctity of their territories is not violated by the warring states by preventing them from crossing their territories, establishing communications stations, or using any station that the warring state had established before the war

✓ :As for the duties of a neutral state

does not allow warring forces to pass over its territory, establish communication stations, or use stations that were established before the war

¹ See the Geneva Conventions of 1949

The neutral state applies the same restrictions and prohibitions to the warring parties

Combatants detained and wounded treated on neutral -3 territory

- If a neutral state receives combat armies, it must detain them in camps far from the theater of operations and provide them with .the supplies required by humanitarian rules
- As for the sick and wounded, the neutral state permits them to pass through its territory, provided that the trains transporting them do not carry fighters or military equipment. The provisions .of the Geneva Convention apply to them

¹ Neutral people -4

Citizens of a country that does not participate in the war are considered neutral, but a neutral person may not take refuge in his neutrality if he commits a hostile act against one of the warring parties or performs an act for the benefit of one of the parties while volunteering to fight

To define a hostile act, Article 18 included the following acts from the enumeration of hostile acts

- ✓ Providing one of the warring parties with supplies or loans

Providing services related to police affairs or civil administration

¹ Wissam Nemat Ibrahim Al-Saadi, International Humanitarian Law and the efforts of the international community to develop it, first edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2014. p. 85

In addition to the 1899 and 1907 Conventions , there are agreements and protocols that fall within the Hague Law because they relate to combat satellites, including

- ✓ The Saint Petersburg Declaration of 1868 prohibits the use of certain projectiles in wartime, such as dum-dum-type explosive bullets
- ✓ The Geneva Protocol of 1925 prohibits the use of poisonous and asphyxiating gases and bacteriological weapons
- ✓ The 1954 United Nations Convention for the Protection of Cultural Property in Times of Armed Conflict and its Additional Protocols
- ✓ The 1980 United Nations Convention prohibiting the use of certain conventional weapons, such as incendiary and blinding weapons
- ✓ Weapons Convention
- ✓ The 1997 Ottawa Convention on the acquisition, production, stockpiling, transfer and use of anti- personnel mines

Second: Geneva Law

This law, and the various agreements that enter into it, aim to protect the individual from the scourge of war and to protect civilian objects and objects , the Natural Epidemics Agreement

Geneva law is embodied in many international agreements, which¹are

¹ Mouloud Ahmed Musleh, a dissertation entitled (The Relationship between International Humanitarian Law and International Human Rights Law), submitted for a master's degree in public law from the Faculty of Law and Politics, Arab Open Academy, Denmark, 2008, p. 78

❖ **The Geneva Convention of 1864 relating to improving the condition of wounded soldiers in the field** . This agreement is considered the first beginning of international humanitarian law in view of the ten articles it contains, which establish rules that guarantee the protection of wounded soldiers. It stipulates the immunity of ambulances, hospitals and military hospitals and the necessity of their protection. And respect her

Neutrality and protection of medical personnel and civilian - volunteers who contribute to relief work and providing assistance

The presence of a special emblem on hospitals, which must be - carried by medical service personnel, which is (a red cross on a white patch)

The Geneva Convention of 1864 regarding the improvement of the condition of wounded soldiers in the field is considered a major achievement, even though it does not include penalties for the crimes contained therein. The idea of this agreement grew out of radical transformations in pronouns. The honor of calling for its establishment goes to a young Swiss man from Geneva called “Henri Dunant,” who was shaken by the events he witnessed in the Italian city of Solferino as a result of the war between the soldiers of Napoleon III (the Frenchman) and the armies of Maximal of Austria in 1859. He was particularly horrified by seeing the wounded, piled up in churches, dying from shock In pain, while they could have been saved if they had been treated

As a result of his influence, he wrote a book called “Solferino’s Memorabilia,” in which he reported the tragedies he witnessed and¹included a double wish

- Establish a voluntary relief association in each country, which will be organized in times of peace to provide health services to the army in times of war
- That countries ratify a sacred agreement principle that provides legal protection for military hospitals and medical personnel

Upon learning of this book, celebrities took the initiative to encourage and support it , including Victor Hugo, who said, “You arm”.freedom and serve humanity, and I applaud your noble efforts

Likewise, among the readers of Dunant's book was one of the heads of charitable societies, Gustave Moigner, who invited his association to study Dunant's proposals and try to reach a practical result with them. Dunant was able to convince Napoleon to invite him, and Moigner formed a permanent committee that began meeting in and this is considered Heaven is the founding body of the Red ,1863 Cross and the main driver of the Geneva Conventions. Then representatives of sixteen countries met in Geneva and laid the foundation for what was later called the Red Cross, which at that time²represented a project to relieve the wounded

¹ Wissam Nemat Ibrahim Al-Saadi, op. cit., p. 102

² Mawlud Ahmad Musleh, previous reference, p. 85

This conference was not authorized to address legal issues, and that was the reason for a diplomatic conference called for the following year, during which the Geneva Convention was concluded, that is, in the year 1864, indicating the true beginning of international¹ humanitarian law

The Ottoman Empire signed the 1864 agreement and the agreements that followed it, but it expressed a reservation about using the red crescent instead of the cross, and this was approved. Then Iran requested that the lion and sun emblem be accepted, and China and Japan did not find anything wrong with the red cross emblem if it was². It is similar to the flag of Switzerland and has no religious meaning

❖ **Geneva Convention of 1906: for the amelioration of the condition of wounded and sick military personnel in the field**

This agreement is a development and amendment to the 1864 agreement in that it added protection to another category of patients, and included thirty-three articles. The agreement attempted to confront the difficulties inherent in the 1864 agreement, as it paid attention to land wars, cared for their victims, and required respect for soldiers, the sick, and the wounded, and their treatment, regardless of their nationalities, by the authorities of the state under whose control they fell

❖ **The Geneva Convention of 1929:** In view of the suffering that resulted from the First World War, which the Geneva Convention of 1906 did not succeed in treating or reducing, it

¹ Boujlal Salah al-Din, previous reference, p . 103

² Boujlal Salah al-Din, previous reference, p . 123

was necessary to review the behavior of the combatants and to review the treaties in force. Therefore, a diplomatic conference was held in Geneva in 1929, which concluded three agreements

The first: related to improving the condition of wounded and sick military personnel in the field. It is considered a new and amended version of the 1906 Convention. It contains 39 articles and approved the use of two other emblems in addition to the red cross: the red crescent and the red lion and sun

The second: related to the treatment of prisoners of war. It included 77 articles related to the life of the prisoner, providing him with protection, and benefiting from the services of the International Committee of the Red Cross and its agencies designated to collect information about prisoners and exchange it with their families. These¹.issues were partly addressed in the Hague Convention

The third: specifically to improve the condition of wounded, sick, and shipwrecked members of the naval forces, and was an amendment to the Hague Conventions of 1899 and 1907

This agreement was not able to confront the tragedies of World War II with its terrible weapons , which exterminated tens of millions of people, fighters, civilians, women and children who had no role in the battle. Therefore, it was decided to hold negotiations on a global level to confront these calamities and limit the scourge of international crime. This was embodied in the conclusion of the four Geneva Conventions of 1949

¹ See the four Geneva Conventions of 1949

❖ The Four Geneva Conventions of 1949

These agreements, which have more than four hundred articles, are considered the most recent and include a code of rules that protect the individual in the event of armed conflict. This is after the international community demonstrated the human tragedies caused by World War II, whether in lives or in objects or objects . These agreements were concluded as a result of the diplomatic conference called by the Swiss government in Geneva in 1949

The First Agreement: This agreement is considered an amendment and development to the Geneva Convention of 1929 regarding improving the condition of wounded and sick military personnel in the field

The Second Convention: It concerns improving the condition of the wounded, sick and shipwrecked of the armed forces at sea and is considered a development of the Hague Convention of 1907

Convention : Relates to the treatment of prisoners of war and is an amendment and development of the provisions of the Geneva Convention of 1929

The Fourth Convention: Concerns the protection of civilians in times of war. It is considered the first specific agreement related to this matter, because the Hague Convention of 1907 partly addressed the relationship between the occupier and the inhabitants of the occupied territory, so that its texts are considered a supplement to the protection of civilians

General provisions of these agreements

The four Geneva Conventions contain general texts and¹ application rules

-1 - Application cases:

The agreements were often neglected during World War II on the pretext that they were legally valid. Therefore, one of the basic steps required in 1949 was to put in place texts that invalidate such arguments, so that the agreements include a stipulation that they must enter into force immediately after the outbreak of war operations and not only when war is officially declared

The Geneva Convention of 1906 and the Hague Convention of 1907 included a clause stating that the obligations of the treaty are not applied during the conflict unless all the adversaries have signed the treaty. During World War I, the conflicting countries were evading their obligations because they were not signatories to the agreement, and this resulted in the fate of Terrible for the victims in some countries during World War II simply because some countries had not ratified the 1929 Convention on the Treatment of Prisoners of War

To remedy this deficiency, Article 2 of the 1949 Convention stipulates that the parties to the conflict are bound by the Convention with respect to a state that is not a party to it if the latter state accepts its provisions. Therefore, if a country that is not a signatory to the agreement announced that it would abide by its provisions or

¹ International Legal Protection of Human Rights in Armed Conflict, United Nations Publications, 2011

implemented it, the opponents had a legal obligation to treat it the same way. This principle was applied during the Suez War in 1956

Identifying violations : The agreements specified the cases -2 that constitute a serious violation and obligated countries to enact legislation imposing penalties on violators and identified the following serious violation:

- ✓ Acts committed against individuals protected by conventions: such as murder, torture, and inhuman treatment
- ✓ Acts committed against prisoners of war: forcing them to serve in the forces of a hostile state and depriving them of the right to .a fair trial
- ✓ Acts committed against civilians: such as exile, deportation, and arrest

The International Committee of the Red Cross notes that some countries have enacted laws prohibiting such violations, although these laws are insufficient, such that a person cannot be tried unless what he committed is also considered a crime under national law

In a desire to help countries fulfill their obligations, the Committee tried in 1956 to develop a standard law, but this effort was¹.futile due to differences in legal philosophies

These violations are considered war crimes and are major international crimes. They have a legal nature that differs from other international crimes because they have a special status in the considerations of international law. Some authors believe that their

¹ The Second Protocol annexed to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

criminal nature is established according to a principle that has been established in this law since the end of the Middle Ages. Even today, even if this criminal nature does not appear clearly sometimes, it is because peace treaties that end wars have been prepared to include clauses specifically amnestying the perpetrators of these crimes

War crimes are those committed against the laws and customs of war. Paragraph B, Article 6 of the Nuremberg Court Regulations, defines these crimes as: “acts that constitute a violation of the laws and customs of war.” It is noted that the prosecutors at the Nuremberg Trials unanimously agreed to define war crimes as “acts committed by those accused of violating the laws and customs of war, international agreements, internal criminal laws, and general principles of criminal¹ law recognized in all civilized countries

The origin of these crimes goes back to the customary rules that prevailed in the nineteenth century, then in the Hague Conventions of 1864 and 1907, then in the list of the War Crimes Committee of 1899 Responsibilities of 1919, then in the list of the United Nations Committee of War Criminals in 1942, then in the Nuremberg List (paragraph B). From Article 6) of 1945, and the Tokyo International Regulations Article 05 of 1946, then in the sixth principle of the Nuremberg Principles and in the draft legalization of crimes against peace and security of mankind Article 02/12 and in the Hanif Conventions signed in 1949 to protect victims of war in Articles 50 of The first agreement, 51 of the second agreement, 130 of the third

¹ Optional Protocol to the Convention on Human Rights on the involvement of children in armed conflict

agreement, and 147 of the fourth agreement. Then in Articles 11 and of the addendum to these agreements signed in 1977, which was 85 clear in calling things by their names when describing the grave violations committed in contravention of its provisions or the agreements that it supplements as “War crimes.” There is no longer room for interpretation or tension in the face of the frankness of the¹.text

It is noted that the Four Geneva Conventions require signatory countries to amend their legislation to punish these acts. Among these countries are those who are satisfied with a general text that considers violating the rules of international law a crime, and among them are those who worked to amend their penal law, if their constitution does not allow anyone to be punished unless he decides The text of a declaration to punish him, meaning that it does not accept the direct application of international law because of the legality of crimes and punishments and because of the presence of a text in the Geneva Conventions obligating signatory governments to amend their laws as they explicitly pledged to do. A number of countries have accomplished this amendment, and a number of others are in the process of making it, but other than these They signed the agreements and committed themselves to amending their legislation, but they have not done anything so far. They issued certain legislation, but their courts did not abide by it, or the rulings of these courts were

¹ Amending Article I of the 1980 Convention on Conventional Weapons

superseded by decisions from the highest military authorities, so the¹ crimes of war criminals went without actual punishment

This is what happens regularly in Israel. Only a few months after the signing of the annex in 1977, an Israeli officer was sentenced to death and accused of torturing and killing four prisoners of war during the Israeli invasion of southern Lebanon in 1978. However, General Etienne, Chief of the General Staff, annulled the ruling and pardoned him. Simply put, this war criminal. This is just war, simple as that. This is just an example of a successive series of such actions that contradict the spirit and letter of international humanitarian law

It is true that a state that undertakes to abide by international law, such as issuing internal legislative texts to punish war crimes, and does not implement its commitment is considered internationally² responsible

It is true that according to the rules set forth in the Nuremberg Regulations and its provisions, a competent international court does not need a national internal text according to which those accused of these war crimes are punished. The texts of international law are sufficient, but what are the limits of the state's international responsibility in the absence of an international judicial authority armed with binding jurisdiction? To decide on it, which is what the international community is suffering from, and what is the actual legal value of enumerating war crimes in international treaties without

¹ Protocol V on Explosive Remnants of War (added to the 1980 Convention on the Use of Conventional Weapons.

² International Convention for the Protection of All Persons from Enforced Disappearance

stipulating the existence of an independent international criminal judicial authority ready to judge their perpetrators, and who is the one who guarantees that national courts try citizens of a country on charges of committing war crimes? While they may be considered national heroes from the point of view of public opinion in their country, or let us say the majority of this public opinion

These and other questions constitute the essence of the real problem of the legal nature of international criminal law, including the part that relates to the punishment of crimes stipulated by humanitarian law. When the penalty is imposed or non-existent, the question seriously arises about the nature of the obligation that lacks any supporting evidence in terms of whether it is a legal obligation or¹ merely a moral and ethical obligation

In clearer terms, in what is known as international humanitarian law, we are now faced with a number of paradoxes. There are grave violations that this law considers to be international war crimes, and for which states and individuals assist both countries and individuals who commit them (regardless of their functional qualities), but without the presence of an international criminal judicial authority to rule on them. Which makes it subject to the national judiciary alone (if states commit to issuing legislation establishing such a competent judiciary) or without any actual criminal punishment at all, unless its perpetrators fall into the hands of the enemy (then this enemy becomes an adversary and arbitrator) or in a group whose penal laws

¹ Nagham Ishaq Zia, A Study in International Humanitarian Law and International Humanitarian Law, International Committee of the Red Cross Publications, December 2014 , p. 34 , Rights Law

allow the punishment of war criminals. These are regardless of their nationality and whether they are a party to the armed conflict in question or not

Joint responsibility: Conventions establish shared responsibility between people who commit serious violations and those who order them to commit them, and those who can be tried as accomplices

The agreements do not allow a person to defend himself under the responsibility of the state

4-¹ Protocols attached to the four agreement

The wars that broke out after the conclusion of the Geneva Conventions of 1949 demonstrated the shortcomings and shortcomings of the agreements, especially those related to the special protection of civilian victims of conflicts who are exposed to dangers and calamities by modern methods of warfare. Therefore, the necessity of developing Geneva law and supplementing it with new complementary provisions emerged . The most important efforts were the efforts of the International Committee of the Red Cross, which ² was the first to draft these conventions

In 1965, the Twentieth International Conference of the Red Cross in Vienna issued Resolution No. 28 in which it urged the International Committee of the Red Cross on the need to develop and develop international humanitarian law. In line with this recommendation, in this committee sent a memorandum to all states parties to the 1967

¹ The Additional Protocols to the Four Geneva Conventions of 1977

²Convention on the Prohibition of the Use of Environmental Modification Techniques for Military or Other Hostile Purposes 1976

Geneva Conventions . It called on it to consider what was decided by the Twentieth International Conference regarding the development and development of international humanitarian law and to review some parts of the current law of war in order to think about establishing protection for the victims of war against its indistinguishable dangers. In 1968, the United Nations Conference on Human Rights held in Tehran called on the Secretary - General To the United Nations until it contacts the International Committee of the Red Cross in order to prepare studies on this subject, and in the year the aforementioned International Committee informed the 1968 representatives of the national Red Crescent, Red Cross, Lion and Sun Societies that it was preparing a new study on the confirmation and development of the law . International humanitarian law applicable in ¹.armed conflicts

The main direction that its followers saw was not to prejudice the four Geneva Conventions in terms of amendment, organization or reformulation, and that what was best was to develop new protocols to .attach to these conventions and complement their provisions

In the year 1969, the Twenty-First International Conference of the Red Cross, held in Istanbul, issued its Resolution No. (13), in which it recommended that the International Committee of the Red Cross work with the necessary activity to pursue its efforts to develop draft rules that complement the currently existing rules of international

¹ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological and Toxic Weapons and on Their Destruction) Convention of 1972

humanitarian law. The conference also recommended that the Committee call To convene a conference of governmental experts for consultation in order to prepare these rules

The International Committee of the Red Cross conducted consultations with a number of international and regional national bodies and organizations, which resulted in the necessity of dividing the study of the subject into two parts. The first deals with the rules of protection in cases of international armed conflicts, and the second deals with the rules of protection in cases of non-international armed conflicts that have become A phenomenon that cannot be ignored in ¹human life

The Committee prepared two draft protocols and sent them to the countries invited to participate in the Conference of Governmental Experts, which was held in 1971. It discussed these two drafts, but the need arose to hold a second session of the Conference of Governmental Experts because the experts of the first session did not .reach a final result on the subject

The two projects passed in successive sessions of the Diplomatic Conference until the year 1977, when in the fourth session they were approved in the presence of representatives of 109 countries. The number of ratifiers for the first protocol reached 155 countries, while more than 136 countries joined the second

As a result of its four sessions, the Diplomatic Conference issued the following two documents

¹ Nagham Ishaq , previous reference, p. 43

The First Additional Protocol to the Geneva Conventions signed - regarding the protection of victims of international armed ¹ in 1949 conflicts. It consists of 102 articles. This protocol is complementary to the four Geneva Conventions and includes the first chapter of a special rule for the peoples of the Third World . The activists of the liberation movements stated that liberation wars are considered an international armed conflict, and then the second chapter of it, which deals with the wounded, sick, and afflicted at sea, complemented the provisions of the first and second agreements and gave the same protection to civilians. As for the third chapter, it dealt with the methods and means of combat and the legal status of the combatant and the prisoner of war. This chapter is the one that merged the Hague Law and the Geneva Law because it dealt with many of the rules stipulated in The Hague and supplemented them in a way that is compatible with modern conflicts. As for the fourth chapter, it focused on the civilian population with the aim of providing them with the ² greatest protection from the dangers of conflict

The Second Additional Protocol to the Geneva Conventions signed in 1949 regarding the protection of victims of non-international armed conflicts (Annex Protocol II) consists of 28 articles

Article 3, common to the four Geneva Conventions, dealt with non-international armed conflicts, but the Second Additional Protocol dealt with it in detail, and the two annexes were written in six equally authentic languages, including our Arabic language

¹ The Additional Protocols to the Four Geneva Conventions of 1977

² .Ishaq Zia's melody, previous reference and placement

In this session, the Diplomatic Conference issued a set of decisions (recommendations) stating that he should be human, unless he was created of flesh and blood. However, the state is a mere device that is more like a robot , and it often creates humanitarian positions and does not stop. From calling for justice and declaring the noblest feelings, it presents an accurate picture of false pretense in the service¹ of selfish arrogance

Therefore, international law, above all else, is nothing but the outcome of the interests of the parties to it (i.e. states). However, people who have power within the state often seek , under the pressure of public opinion, which has an important role in our days, to exercise a positive influence in formulating and implementing the law. This applies to charitable institutions that seek to ensure that some justice and mercy prevail in the world, even when violence erupts. They also work to ensure that the law includes some humanitarian aspects for the benefit of the individual

This work, which the Red Cross has been committed to since its establishment more than a hundred years ago, can only advance with patient perseverance without excessive ambition. The provisions of any treaty that lacks realism will be immediately rejected, even if it is dictated by sincere love for the good of all, or in any case no one will

¹ The two additional protocols to the four Geneva Conventions of 1977 that strengthen the protection of victims of international armed conflicts (Additional Protocol I) and the protection of victims of non-international conflicts (Additional Protocol II).

respect it. Thus , its purposes are not achieved. However , there are¹ some other factors that compensate for these shortcomings

requirement : the peremptory nature of its legal texts

The rules of international humanitarian law, before anything else , have a mandatory nature and are not optional. Thus, the Vienna Convention on Treaties in 1969, after defining in Article 35 the imperative provision as “a rule accepted and recognized by the international community with all its states as a standard that may not be violated and cannot be amended except.” With a new rule in public international law that has the same character, it once again stipulated in Article 60 that (the provisions prohibiting retaliation against protected individuals contained in such treaties) are not of this peremptory nature

The most important of which is Resolution No. 21 regarding the dissemination of international humanitarian law applicable in armed conflicts. Inspired by this, regional conferences were held in Warsaw (for European and North American countries), in Mombasa (English-speaking Africa), and in Kuala Lumpur (for Asian and Oceanic island² countries) . And in Tunisia (for French-speaking African countries)

In the year 1949, and in accordance with its Resolution No. 49/48, the General Assembly said that the Geneva Conventions had gained

¹ Saadoun Abdel Amir Jaber, an article entitled International Humanitarian Law and the p. 76 ,2018 ,Stages of Its Development, published on the Al-Hiwar Al-Mutamaddin website

² Wissam Nemat Ibrahim Al-Saadi, International Humanitarian Law and the efforts of the international community to develop it, first edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2014. p. 89 ,

universal acceptance, even though the positions of countries regarding them and the two protocols were different. While some countries agreed and ratified the first protocol because it was unbalanced in view of the provisions it approved, it was considered wars. Liberation is an international conflict that gives protection to the combatants of the occupying forces. This is in view of Israel's occupation of Arab lands so that resistance is not, in its view, legitimate. The nature of¹ international humanitarian law requires the following

First: International humanitarian law is part of the law of war: Therefore, since war threatens the existence of states themselves, when all their energies are mobilized for battle, the rules of war are more threatened than others by not adhering to them. In addition, war hinders the imposition of sanctions on those who violate them. Those rules

International humanitarian law is a law related to the state, and states are the ones who conclude and implement it. The state, which Nietzsche described as a "cold monster," represents before other nations the interests of its citizens and assumes the leadership of collective egotism. As a force dedicated to serving the direct interests of the people, if a state official shows that he takes into account the problems of another nation, he is immediately accused of treason, and this is the complete tragedy in the field of international² politics and in major international institutions

¹ Tongue by Ishaq Zia , op. cit

² Rome Statute of the International Criminal Court 1998

International humanitarian law is based on a humanitarian basis, as is understood from its name, and the International Red Cross cannot always announce that any state succeeds another state that has previously. If it ratifies the Geneva Conventions, it is automatically bound by them.

It is generally recognized that the failure of one party to implement a treaty may ultimately lead to the other party absolving of its obligations, or justify the cancellation of the treaty, similar to any contract subject to, for example, internal laws. However, this does not apply to the Geneva Conventions, as they remain valid in all circumstances and are not subject to the condition of reciprocity. The mind can never accept that a warring party would mistreat prisoners, for example, or kill them because its opponent committed such crimes. This would be a serious violation of the principle of humanity, and only innocent people would suffer as a result of it. While most treaties aim to preserve the interests of contracting states, the law has. The international humanitarian system has a different nature and an infinitely higher rank. It determines the destinies of people. The matter here is not about mutual benefits, but rather a set of objective rules that announce to the world the guarantees that every human being has the right to. Every country is committed to itself, just as it is committed to other countries, and the issue is the issue of human life¹ and not the issue of material gains.

¹ p. 84 ,Saadoun Abdul Amir Jaber, previous reference

The reluctance of one of the belligerents to implement one of the Geneva Conventions, citing negligence on the part of the opponent, is tantamount to committing reprisals against protected persons, while the Conventions completely prohibit reprisals, and this prohibition has been reaffirmed by New recently, while the 1969 Vienna Convention on the Law of Treaties stipulates in Article 60 that any serious violation of a multilateral treaty by one of its parties gives the other parties the right to suspend the implementation of the agreement in whole or in part. Any breach of any provision considered essential for the purposes of the Treaty is considered a serious violation . The same article stipulates that this rule does not apply to provisions related to the protection of the individual contained in treaties of a humanitarian nature, especially provisions that prohibit any type of reprisal against individuals protected by the treaties . In view of the impeccable nature of the Geneva and Hague Conventions and the lofty values they defend, and because of their antiquity and the spread and impact of their influence throughout the world, it can now be confirmed that these conventions have largely lost the image of mutual treaties within the framework of relations between countries and that they have come to represent... Absolute obligations

International humanitarian law primarily consists not only of written rules, but also of customary rules that will be included in the written code of law accordingly. In reality, this entire law is nothing but a new confirmation of old customary rules that were developed

and expanded upon their codification. In addition, it is binding even¹ on countries that have not officially joined it

Each of the Geneva Conventions contains an article that states that the High Contracting Parties are free to terminate their contract, that is, to withdraw unilaterally from the international community participating in the agreement after giving a period of one year

But in any case, it is agreed that this is just a formal text. Since the first Geneva Convention was drawn up more than a hundred years ago, no country has withdrawn from the agreement. So how can we imagine that a country could think of rejecting such elementary civilizational rules

In addition to the basic principles contained in the Geneva Convention, it naturally includes secondary provisions that cover, for example, scientific methods of application. If we assume that a country does not find any embarrassment in announcing its withdrawal from one of the Geneva Conventions, even if it is as I said, no. It is conceivable that it thus decomposes these secondary rules alone. It cannot nullify the basic principles nor evade the duty to adhere to them, because these principles have today become part of². the law of peoples

Third: The international and individual deal of rights

Does international humanitarian law directly grant rights to individuals or does it grant rights to the states of which they are

¹ The Second Protocol annexed to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

² p. 88 ,Saadoun Abdul Amir Jaber, previous reference

nationals? Until recently, most thinkers emphasized that international law only concerns states alone. Today, there are more liberal ideas, as many believe that international law can be granted to individuals Rights. Although humanitarian provisions are still international in nature, there is no doubt that their real purpose is to protect the individual. The state is not an end in itself , but it is merely a means. When what is said is said and what is done is done, the state does not¹.exist except through the individuals who constitute it

and Red Cross were undoubtedly one of the effective driving forces of this development. In 1949, the Geneva Conventions broke out strongly and firmly on this path that was cleared. Article 7 common to the conventions stipulates that (it is not Protected persons may, under any circumstances, waive some or all of the rights guaranteed to them) under these agreements or under special agreements concluded in their favor, when necessary. Article 6 stipulates that any special agreement must not have a harmful effect on the situation of the protected persons whom the agreement specifies or restricts . The rights guaranteed to them. There are other provisions that enable individuals to defend these rights

As we all know, there was a trend parallel to this development in the human rights sphere, which culminated in Article 26 of the European Convention , which gives individuals the right to submit a

¹ p. 98 ,Saadoun Abdul Amir Jaber, previous reference

request to the Human Rights Committee, which has judicial authority¹

Do you think these official texts agree with the interpretation of the traditional school called the dual school, or did they come as a result of wording errors? Not the tiger. The exceptions to the traditional rule were so numerous and so important that the rule itself has now become ineffective

well by saying that the rules of international humanitarian law have evolved from a contractual agreement into a legal treaty, and it does not seem that such a development can be reversed

Fourthly: The priority of the individual

We have previously pointed out , and we will point again and again, to the rulings that affirm the priority of the individual and thus shake the authority of state sovereignty, which until now was considered too powerful to be shaken. These rulings are isolated facts but they are stages in the gradual and continuous development of the , law of peoples. This development stemmed from the philosophy of the eighteenth century and has now reached its logical conclusion

Most countries, for example, are subject to international law, the scope of whose application is always expanding, by rejecting any claim to unleash the freedom to resort to war to settle disputes, and by exercising self-restraint in the conduct of war if war is destined to² break out

¹ Same reference and location

² Rome Statute of the International Criminal Court 1998

We found in the Geneva Conventions multiple examples of this trend. When countries signed without objection in 1864 the first convention in which they agreed to treat the wounded in a humane manner without discrimination according to nationality, this was a commitment on their part towards their nationals. This trend is still more prominent in the Fourth Convention of 1949, the second part of which applies to the entire population

set limits to their powers when they agreed in 1929 to the existence of international oversight by the protecting powers and then by the International Committee of the Red Cross, with the aim of ensuring the correct application of the Geneva Conventions and the presence of neutral observers on their territories. States also agreed to a system of sanctions that ensures respect for humanitarian rules. Thus since then, states have become responsible for any violation , committed and must stop the violation and punish its perpetrators . Moreover, states have abandoned the use of the traditional weapon of retaliation, at least against individuals protected by the Geneva Conventions

Article 3 , common to the four Geneva Conventions, was one of the decisive features. Contrary to what used to happen in the past under the rule of classical traditions, the state was not free to treat as it wished those who revolted against the existing regime , and thus it¹.became restricted by obligations towards those who violated it

¹ See Article 3 of the Four Common Geneva Conventions of 1949

Gradually, the goal of international law began to be seen as providing all individuals with the minimum and permanent guarantees of protection, even from the authorities of their country. There is no doubt that this development will continue because it responds fully to social needs and nature . Humanity. But he will not reach the end of his goal unless international law is applied through courts and regulatory bodies, which are themselves supported by an international force capable of imposing its decisions. It is clear that this requires a new organization of the world similar to the internal organizations of nations . If this is achieved, one can imagine that the world will be completely free of wars. But we are still far from this happy hope. Although it is clear that the time in which states can do what they see fit, regardless of the basic rights of their citizens, has passed. It is no longer possible to declare the principle of state sovereignty in the face¹ of human sacred rights

still have to discuss another issue. Until recently, states had the right to declare war out of their political needs, and states derived this right from their complete sovereignty. The situation began to change with the Charter of the League of Nations and the Kellogg-Briand Treaty in 1928. As an extension of this logical thinking, the United Nations Charter prohibited war, or even asylum . violence, even if the Security Council is authorized to use military measures against any aggressor state. Today there are only three types of conflict that are not prohibited : measures taken by the United Nations to restore peace,

¹ p. 90 ,Saadoun Abdul Amir Jaber, previous reference

legitimate self-defense, and internal conflict over which the United Nations has no authority

If we now welcome the achievement of the prohibition of war, it is difficult to ignore the blame that this achievement has incurred. Since war has become a condemned act, no country now likes to make the mistake of declaring war. Unfortunately, the war is still taking place as it was before, but no one dares to admit that he is doing so. Of course, states do not usually apply the law of armed conflict because they deny that they are actually a party to the conflict. Another result of the ban is the unexpected resurgence of the ancient idea of just war, an idea that caused so much damage in the Middle Ages and which in the nineteenth century seemed to have vanished forever, just as legends fade away. Today, war is considered just if it breaks out in the cases we described above. Unfair if it contradicts the principles of the¹ Charter

But even if it seems that the international community is on the way to a setback in this regard, there is no doubt, in our opinion, that the vital issues and the rules of international humanitarian law must be taken into account in all disputes, whether legal or illegal, and this has been the case since 1942. When Quincy declared, I saw an important distinction between the right of resort to war, which defines the circumstances in which force may be resorted to, and these are circumstances in which a distinction can be made, and the jus in bello, which defines the means of war and must apply to all equally, and so

¹ The Second Protocol annexed to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

on if waging war is a crime. Warfare in an inhumane manner is a¹ double crime

:Legal status of the parties to the conflict

The application of humanitarian law does not affect the legal status of the parties to the conflict)) A formula like this has been mentioned since 1949 in Common Article 3 of the Geneva Conventions regarding non-international disputes, and experience has proven its great importance as it is the “safety valve” that can Allaying political fears. Commitment to international humanitarian law does not require any state to recognize its adversary as a belligerent, nor² does it allow this adversary to use it as an excuse for other purposes

It should be noted, however, that in fact , when any government acknowledges the application of Article Three, it acknowledges that there is a conflict within its borders, that there is a conflict within its borders , and that there is “ another party to the conflict” that becomes the subject of the law within the framework of international humanitarian law, but this statement must not be taken into account. In any case, it constitutes an obstacle to the application of the article

And from It is known that the First Protocol supported the procedures that guide the appointment of the protecting powers, although the belligerents rarely resorted to this basic procedure despite

¹ Saadoun Abdel Amir Jaber, an article entitled International Humanitarian Law and the p. 76 ,2018 , Stages of Its Development, published on the Al-Hiwar Al-Mutamaddin website

² Previous reference, p. 86, Saadoun Abdel Amir Jaber

everything, and this is often for political reasons, as they do not want to legally recognize the opponent

Therefore, the Protocol now stipulates that “ the appointment and admission of Protecting Powers for the purposes of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict. ” (Article 05, Paragraph 05). But the Protocol goes further when it states more generally that “ the application of the agreements and this Protocol , as well as the conclusion of agreements stipulated in the agreements, shall not affect the legal status of the parties to the conflict” (Article 04). Thus, judgment is an attribute of ¹.principle

Sixth axis : The relationship between international humanitarian law and other laws

The relationship between international humanitarian law and other laws is determined as follows

First: The relationship between international humanitarian law and public international law

Omar Saadallah believes that public international law is: “a set of legal rules that establish rights and duties among members of the international community by regulating the relationship of parties among themselves, protecting the dignity of individuals and peoples, preserving peaceful coexistence between states and developing cooperation between them.” As for the doctor: “ **Muhammad Talaat Al-Ghunaimi** believes that international law “includes most of the

¹ See Protocol II on prohibiting or restricting the use of mines, booby traps and other devices

principles and rules that civilized countries consider binding in their mutual relations and which are embodied through agreement and ¹” .treaty rules

The above-mentioned definitions suggest a pattern of interrelation and interconnection between international humanitarian law and public international law, which appears clearly by reading the text of Article 38 of the Statute of the International Court of Justice issued on December 16, 1920, which stipulates that “the mission of the court is to decide the disputes presented.” In accordance with international law, it applies in this regard: A- International agreements , B- International custom, C- General principles of law, D- Judicial decisions and the doctrines of major authors in public law, E- This text

does not result in any infringement of the court’s authority to To decide the case based on the principles of justice and fairness if the ²” . plaintiffs agree to that

Second: The relationship between international humanitarian law and international human rights law

Omar Saadallah believes that international human rights law “is a set of international legal rules and principles that guarantee all individuals and peoples the enjoyment of their economic, social, cultural, and civil and political rights, and directly aims to achieve

¹ :Muhammad Talaat Al-Ghunaimi, The Law of Peace in Islam, available on the website <https://books-library.online/a-12363-download> .Access date: 01-08-2021, at: 11:13

² ,The Statute of the International Court of Justice, available on the website <https://ar.wikipedia.org/wiki> .date of access: 01-10-2021, at: 14:03 ,

”their well-being

The two laws are similar in that each of them seeks to protect human rights, and differ in the following aspects

A - International humanitarian law aims to protect humans and their property in the midst of situations of international and non-international armed conflicts, while the rules of international human rights law extend to include the protection of human rights in real time. Peace and war

B - The rules of international humanitarian law embody several guarantees for victims of armed conflicts in order to alleviate their pain and suffering, such as the right to health care, the right of detainees to correspond with their families, and the right to humanitarian assistance. As for the rules of international human rights law, they are concerned with issues of freedom of thought, belief, and ¹ .association, and the right to Development

C- The rules of international humanitarian law are binding on parties to a conflict, while the rules of international human rights law are binding on governments in their relationship with individuals

Third: The relationship between international humanitarian law and international refugee law

A refugee is every person who is found outside his country of origin and is threatened with being subjected to attacks or having his basic rights violated, because of his person or beliefs. This person may not be able or unwilling to return to his home country because the

¹ :The basic guarantees of international humanitarian law, available on the website <https://ar.guide-humanitarian-law.org> .Access date: 01-08-2021, at 15:19 /

¹ .government of his country is unable or unwilling to protect him
The application of each of these two laws to the refugee varies according to the following considerations: - The rules of international refugee law are applied to refugees in a state that is not a party to the armed conflict

The rules of international humanitarian law, represented by the - Fourth Geneva Convention of 1949, are applied to refugees in a state party to the armed conflict. 1949 regarding civilians, and Article 73 of the First Additional Protocol of 1977 on the basis that they are foreigners residing in the territory of a state that is not a party to the
².conflic

Fourth: The relationship between international humanitarian law and internal laws

Internal laws target the total internal legal rules that states apply to their citizens within the state, and highlight the relationship between international humanitarian law and internal laws through the - :following

Harmonizing national legislation and the rules of international ,humanitarian law

Adopting internal legislation to standards that are compatible with - ,international humanitarian law

¹ :See the Convention relating to the Status of Refugees, available on the website <https://www.ohchr.org/ar/professionalinterest/pages/statusofrefugees.aspx> Access date: 01- .at 11:15 ,2021-09

² See Article 73 of the First Additional Protocol annexed to the four Geneva Conventions concluded on August 12, 1949 and relating to the protection of victims of international armed .conflicts dated June 10, 1977

Structuring A national body in the field of international humanitarian - law.

Therefore, the aforementioned presentation indicates that the relationship between humanitarian law and other laws is a complementary relationship at the national and international levels,¹ and there is no dissonance, contradiction, or conflict between them

seventh axis : areas of international humanitarian law

Since armed conflicts constitute the material scope of international humanitarian law that we discuss in this section, there is no escape from defining the concept of international and non-international armed conflicts, which require the application of the four Geneva Conventions of 1949, and the two protocols attached to them of 1977.

First: The concept of armed conflicts

War is considered an exceptional case, due to the destruction and devastation it causes, especially for civilians, civilian objects, and human life facilities. The matter does not require study and analysis to recognize what wars cause to civilians. International law has reached the point of treating these groups affected by wars in the year 1949 by adopting conventions. The Geneva Four, during which the first rules for relief work for the civilian population appeared, and were² supplemented by the two Additional Protocols of 1977

¹ :The relationship between international law and internal laws, available on the website <https://www.asjp.cerist.dz/en/article/37071> .access date: 01-08-2021, at 16:10 ,

².Maher Jamil Abu Khawat, previous reference, p. 38

Definition of armed conflicts :1

Armed conflicts represent the material scope of international humanitarian law. In recent times, the term (international armed conflicts) has been widely used, instead of war, in the writings of modern international law jurists or international treaties and rulings of international courts, out of their conviction that the former is more appropriate than the latter to deal with cases of armed conflicts in and based on that, we will define armed ,¹ every way. Its forms conflicts, both international and non-international

A: Definition of international armed conflicts

The Four Geneva Conventions of 1949 defined international armed conflicts in their second common article as follows: “These conventions apply in cases of declared war or any other armed clash that breaks out between two or more High Contracting Parties. The Second Additional Protocol of 1977 added in Article: 1 / 4 The armed conflicts in which peoples fight against colonial control and foreign occupation against racist regimes are an exercise of the right of peoples to self-determination, which is affirmed by the Charter of the United Nations and the Declaration on the Principles for Friendly Relations and Cooperation between States. Thus, conflicts led by Foreign .² national liberation movements are considered anti-colonial

¹Adam Abdul Jabbar Abdullah Bidar, Protecting Human Rights During International Armed Conflicts between Sharia and Law, Al-Halabi Legal Publications, Beirut - Lebanon, first edition, 2009, p. 22

²Article 1, paragraph 4, of the First Additional Protocol of 1977 stipulates the following: The situations referred to in the previous paragraph include armed conflicts in which peoples “struggle against colonial domination and foreign occupation and against racist regimes, in the

control or racist entities and regimes within international armed conflicts as a result of urgent efforts to include them within this International armed conflicts are generally characterized by ¹.scope being

Continuous conflict in time and space-

A conflict that arises between international entities that enjoy full -² international capacity, that is, between subjects of international law

There is another armed conflict called an international **armed** conflict. This conflict concerns internal hostilities that become international. From this standpoint, I can enumerate the cases through which an internal armed conflict turns into an international armed conflict, and they are as follows

If the revolutionaries or rebels win, a new state will emerge, if - the revolutionaries decide to secede to form a new government, that is, ³ overthrow the existing regime

Other countries may recognize the rebels as combatants or revolutionaries, as the internal conflict has international repercussions

Providing assistance by states or international organizations to - one of the conflicting parties, as here the international nature of the conflict appears

exercise of the right of peoples to self-determination, as well as It was enshrined in the Charter of the United Nations and the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations

¹.Adam Abdul-Jabbar Abdullah Bidar, previous reference, p. 25

².and Jalal Salah al-Din, previous reference, p. 122 B

³.Adam Abdul-Jabbar Abdullah Bidar, previous reference, p. 27

Based on the above, the following is required to protect civilians during armed conflicts

A- The occurrence of an armed conflict (international or internal

B - The suffering of the civilian population living in the conflict zone from the absence or lack of basic supplies necessary to keep them alive and in good health

C - The inability of the party to the conflict under whose control¹ civilians live to provide these basic supplies

It should be noted that the application of international human rights law does not stop during armed conflicts, but rather continues to apply, and states must adhere to and respect it, meaning that in the event of armed conflict, international human rights law is applied, along with international humanitarian law, and in accordance with the considered Specifically for the² principle of privatization, the latter is first, that is, the rules of international humanitarian law are rules for specification of the rules of international human rights law, and the International Committee of the Red Cross's commentary in this regard on the same conflict states that: "Any dispute arising between two states would lead to intervention by members of the armed forces."

¹Legal Regulation of Humanitarian Relief Works in Armed Conflicts , , Wael Ahmed Allam College of Law, United Arab Emirates University, Journal of Sharia and Law, Issue: 52 Dhu p. 449 , al-Hijjah 1433 October 2013

²The principle of specificity or the specific rule is considered to take precedence over the general rule (the principle of the specific restricts the general) is among the rules recognized in international and domestic law. That is, when a subject is governed by two rules, one general and the other specific, the specific rule is the one that is applied considering that the specific texts Be more effective than generic texts

Even if one of the parties denies the existence of a state of war, it does¹ not matter how long the conflict lasts or even the number of victims

However, in the end, the provisions of the Geneva Convention of and the First Additional Protocol, which was adopted on June 1949 remain as the general rule, and it is considered the basic ,1977 ,10² reference compared to the provisions of those scattered agreements

B: Definition of non-international armed conflicts

Article 1, paragraph 1, of Additional Protocol II of 1977 emphasized the material aspect of the Protocol on Non-International Armed Conflicts by saying

covered by Article 1, from Additional Protocol II to the Geneva Conventions of 1949, relating to the protection of victims of international armed conflicts . Which takes place on the territory of one of the High Contracting Parties between its armed forces and dissident armed forces or other regular armed groups and exercises under responsible command over part of its territory such control as enables it to carry out continuous and coordinated military operations and is able to implement this Protocol

This Protocol does not apply to situations of internal disturbance and tension such as riots, incidental violence and other acts of a ”.similar nature that are not considered armed conflicts

The use of the term non-international armed conflicts was confirmed in the Second Additional Protocol of 1977, where the latter

¹ :Website www.1.umn.edu/humant, Chapter Sixteen, entitled Monitoring during periods of .armed conflict, access date: 01-07-2021 , pp. 4-5

².Ahmed Atto, previous reference, p. 37

distinguished between non-international armed conflicts and international armed conflicts towards conducting a precise analysis to classify the type of armed conflict. The human rights process may begin with a review of international humanitarian law or human rights ratified by the country or countries to which it applies, ¹ instruments and it must then be decided whether there is an international armed conflict or not. In the same context, the International Committee of the Red Cross considered that an armed conflict that is not of an international character requires the fulfillment of a set of conditions in order for the armed conflict to be considered an internal conflict. Not of an international character, which are

A - A minimum level of violence that exceeds in intensity internal disturbances and tensions such as riots and occasional acts of ,violence

B - A minimum level of military organization, meaning the presence of a responsible leadership capable of respecting the law of ,war

C - A minimum level of territorial control, including continuous and coordinated military operations

¹International humanitarian law distinguishes between four types of armed conflict, the rules and instruments applicable to each of which vary

The international armed conflict to which the four Geneva Conventions of 1949, the First 1- Additional Protocol of 1977, the Hague Rules, and other legal rules apply

International armed conflicts that constitute wars of national liberation, and are defined by 2- and subject to the First Additional Protocol of 1977

Non-international armed conflicts that are subject to the regulation of Article 3 common to 3- the four Geneva Conventions and to some customary standards

Non-international armed conflicts regulated by the Second Additional Protocol of 1977 4-

It is worth noting that the distinction between armed conflicts that are not of an international nature and international armed conflicts reveals a clear difficulty in this path, as the criteria for distinction must depend, in one way or another, on legal standards that are characterized by stability, in order to control the differences in their applications from one conflict to another and from one region.

¹ Regional to regional

Jurisprudence has attempted to develop *ijtihad* regarding the distinction between international armed conflicts and armed conflicts that are not of an international nature, as there have been many for the purpose of arriving at a comprehensive criterion that ², attempts prevents the distinction between them, which emerged as follows

Similarities : Both international armed conflicts and armed - conflicts that are not of an international character have the same material effects regarding the conflict, as military force is used, which results in many violations and humanitarian, economic and social risks

Differences : International armed conflicts differ from armed conflicts that are not of an international character through the following points:

¹Musaad Abdel-Rahman Zidan, United Nations intervention in armed conflicts that are not of an international character, Dar Al-Kutub Al-Lawaniyya, Egypt, no edition 2008, p. 21

²Since ancient times, the Greeks have tried to define the distinction between international and non-international conflicts. Aristotle said: A war with non-Greeks is a war with barbarians. He added that these wars are similar to hunting animals and that they are just wars. This type of conflict is equal to international wars in their modern sense. Aristotle also added that wars Which are among the Greeks themselves are diseases, and this type of conflict, in our opinion, is equivalent to armed conflicts that are not of an international character in their modern sense

On the geographical level: The conflict in international armed conflicts is between two states and on their territory, or at least within the territory of one state, and this conflict is required to be between two international parties, unlike armed conflicts that are not of an international nature, which are between local parties and within one¹.state. Where the conflict continues within its territory

On the security level: This type of conflict, whether international or non-international, results in a disruption of international peace and security , and its effects extend even to other countries, whether in the form of refugee displacement and the impact on economic relations. As for armed conflicts that are not of an international nature, they also have effects. Which causes the destruction of economic and social facilities within the countries in question, in addition to serious violations that affect human life

On the legal level: The legal rules governing both conflicts differ. In international armed conflicts, the provisions of international law are applied immediately as soon as the conflict arises by activating the texts of the Four Geneva Conventions and the First Additional Protocol of 1977. As for non-international armed conflicts, the Second Additional Protocol of 1977 is directly applied: 1977, unless it extends in a way that the authorities in the state are unable to control it, in which case these conflicts can be dealt with

¹ :See the website<https://ar.guide-humanitarian-law.org/content/article> Access date: 01-09- / 2021, at 11:06

internationally by activating the provisions of Article 3 common to the
¹ four Geneva Conventions of 1949

As we are studying and analyzing armed conflicts that are not of an international character, we noticed the sharp and controversial jurisprudential disagreement, so to speak, between civil wars and armed conflicts that are not of an international character, so we decided to address this part in some detail, so as not to leave room for ambiguity in the nature of the relationship between them . It is worth noting that the term civil wars is, historically, older in use than armed conflicts that are not of an international character, as jurisprudence has long been accustomed to describing internal armed conflicts as civil wars, in contrast to armed conflicts that are not of an international character, which began to be used. Since the emergence of the four
² Geneva Conventions of 1949

Civil war is the internal war in a country whose parties are different groups of the population, each of whom sees his enemy and those who want to remain neutral as traitors who cannot coexist with

¹Article 3 of the Fourth Geneva Convention states: “In the event of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict is obligated to apply, as a minimum, the following provision
 Persons taking no direct part in the hostilities, including members of armed forces who /1 have laid down their arms and persons placed hors de combat by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction based on race or Colour, religion, belief, sex, birth, wealth or any other similar criterion. For this purpose, the following acts are prohibited in relation to the above-mentioned persons, and remain prohibited at all times and places

A/ Attacks on life and physical integrity, especially murder in all its forms, mutilation, cruel treatment, and torture

B/Taking hostages, -C) Assault on personal dignity..., -D) Issuing judgments and -
 ”...implementing punishments without holding a trial

².Musaad Abdul Rahman Zaidan, previous reference, p. 58

him or work with him in the same territorial division, but with the multiplicity and diversity of reasons provided for the outbreak of civil wars. The most effective solution throughout the ages remains peaceful negotiation. There are many reasons for the outbreak of this type of war, which may be for political, class, religious, ethnic, or¹ regional reasons, or a combination of these factors

Civil wars are considered one of the forms of armed conflicts that are not of an international nature, and which have developed with the development of international relations, as they have been viewed under traditional legal systems as an internal matter that may not be dealt with internationally, regardless of the war of liberation against colonialism, which has been considered a type of war. Eligibility that may not be raised internationally

international legal rules , jurisprudence began to retreat from its position in this regard and began to set strict conditions so that international law could be applied to civil wars, and after the spread of national liberation movements in many countries, the emergence of international organizations, whether global or regional, and the issuance of many charters and decisions. Traditional theories that support the right to national liberation and resistance to colonialism began to give way in the face of contemporary principles and systems,

¹.Example of civil wars: Greek Civil War 1946/1949
Korean Civil War: 1950/1953
Indonesian Civil War: 1965/1966

especially after the Geneva Conventions of 1949 and the two
¹ Additional Protocols attached to them of 1977

Therefore, we support the trend that considers that armed conflicts that are not of an international character are the same as civil wars, because the two terms express the emergence of an internal armed conflict between the conflicting parties in one state. Therefore, if the conflict is called a civil war, an armed conflict, or an armed conflict of a non-international character, International, as all of them are terms that give one meaning and express the same situation, although we prefer to use an armed conflict that is not of an international nature, so that there is consistency between jurisprudential opinions and international decisions and agreements and so that some jurisprudential differences that may result from differences in some words can be overcome even though they give the
² same meaning

A: Definition Internal disturbances and tensions

Through this section, we will define internal disturbances and tensions, given that each of them carries within it different meanings from the other

Definition of internal disorders -

Internal disturbances are defined as situations that include a state of confrontation between the ruling authority and dissidents that includes a degree of danger and persistence, and which includes the use of violence during them. These situations take various forms,

¹.Musaad Abdul Rahman Zaidan, previous reference, p. 59

².Musad Abdul Rahman Zaidan, same reference, p. 63

including the use of violent acts during them, rebellion, and conflict between semi-organized groups and the ruling authority , and despite To prevent this conflict from becoming widespread, the authorities carry out security operations that sometimes reach the point of using ¹ armed force in order to restore stability and order

Definition of internal tensions

Internal tensions are caused by many political, religious, ethnic, or even racial and social problems Among them, they constitute an extension of an armed conflict or internal disturbances, and result in many arrests and detentions for security or administrative reasons

In light of the above, we see that there are areas of agreement between non-international armed conflicts and internal disturbances, in that both of them express acts of violence directed against the authority in the state or between warring parties within the same state, and the possibility of threatening the entity of the state and having serious regional repercussions. On neighboring countries , because they may result in regional instability, as is the case in the Balkans and ² the Great Lakes region in Africa

In general, the international trend in respecting human rights in light of contemporary international law can be observed in countries avoiding any human rights violations in these cases and increasing practical applications in the international community of international protection mechanisms for human rights in a way that leads to the

¹Zuhair Al-Hasani, The Effectiveness of International Humanitarian Law, International Review of the Red Cross, Fifth Year, Issue: September 27 - October 1992, p. 374

².Musaad Abdul Rahman Zaidan, previous reference, pp. 85-86

protection of these rights within the requirements of legitimacy, that¹ is, in accordance with the provisions of Public international law

Axis Eight : Parties covered by protection

The comprehensiveness of international humanitarian law extends to cover situations of international and non-international armed² conflicts

First: Victims of armed conflicts

Specialists and those interested in the issues and issues of wars, their causes and backgrounds, as well as those familiar with the rules of international law, agree mainly on the necessity of protecting the victims of armed conflicts, including civilians, prisoners of war, and even legitimate combatants, and providing respect for them

and economic balance , and a fundamental change in priorities and values occurs. Everything changes depending on the course of the war. Those who do not participate in the war find themselves deprived of the support of the authorities, and those who were in a critical situation before the events become more affected. They are exposed to the possibility of being stripped of basic necessities for their health, if³ not their survival

Yoram Dinstein considered that the category of civilians are the victims of international or internal armed conflicts who are protected by international humanitarian law. Therefore, civilians are the ones

¹Salwan Rashid Al-Singawi, Humanitarian Intervention in Public International Law, Qandil Publishing and Distribution House, Amman, first edition 2005, p. 8

²Rana Ahmed Hegazy, International Humanitarian Law and its Role in Protecting Victims of Armed Conflicts, Dar Al-Manhal Al-Lubani, Beirut, first edition 2009, p. 88

³.Boujlal Salah al-Din, previous reference, pp. 150-151

who are affected in one way or another by the consequences of armed conflicts. Casualties often occur among civilians who do not participate in hostilities as they are victims. It is an obvious issue that does not require knowledge or analysis to discover or acknowledge, so many different experiences have confirmed that there is an urgent need to formulate legal rules concerned with protecting the civilian population in times of war. This also shows the problem of detained¹ prisoners of war or political detainees and their need for assistance. Receiving food and medicine supplies sent to them, Remy Rosbach lists a number of medical assistance that can be provided to victims of including² ,armed conflicts

- Protecting sick and vulnerable men, women and children and their freedom of movement to hospitals
- Taking care of urgent medical cases
- Creating appropriate conditions to enable residents to obtain food supplies and safe drinking water

Second: Residents of occupied territories or encircled areas

Article 69 of Additional Protocol I stipulates the following:
,Fundamental needs in the occupied territories The occupying power must, in addition to the obligations specified in Article 55 of the Fourth Convention regarding food and medical supplies, ensure, to the best of its capabilities and without any unfair discrimination, the provision of clothing, bedding, means of shelter, and other essential

¹.Rana Ahmed Hegazy, previous reference, p. 89

². Boujlal Salah al-Din, previous reference, pp. 151-152

supplies for the survival of the civilian population of the occupied territories, as well as what It is necessary for worship... Article 17 of the Fourth Geneva Convention mentions the situation of besieged persons by saying: “The Parties to the conflict shall endeavor to establish local arrangements for the transfer of the wounded, sick, infirm, elderly, children and postpartum women from besieged or encircled areas, and for the passage of men of all religions and personnel of medical services and medical equipment to ... these areas.

Third: Foreigners

Article 38 of the Fourth Geneva Convention affirms the “following

With the exception of some special measures that may be taken pursuant to this Convention, particularly Articles 27 and 41, the status of protected persons continues to be regulated in principle in accordance with the provisions relating to the treatment of foreigners in peacetime, and in any case the following rights are granted to them:

- 1- They may receive individual or collective relief supplies sent to ,them
- 2- They must receive medical treatment and hospital care, as required by their health condition, to a similar extent to what is ,provided to nationals of the state concerned
- 3- They are allowed to practice their religious beliefs and obtain spiritual assistance from their clergy

4 - If they reside in an area particularly exposed to the dangers of war, they are allowed to move from that area in the same manner as nationals of the State concerned

5- Children under fifteen years of age, pregnant women, and mothers of children under seven years of age must benefit from any preferential treatment accorded to nationals of the state concerned.”¹

Fourth: Civilians present in the territory of one of the parties to the conflict other than the occupied territories

This is confirmed by Article 70 of the First Additional Protocol, stating:²

Relief work of a neutral, civilian character shall be carried out “ without unfair discrimination for the civilian population of a territory under the control of a party to the conflict, other than the occupied territories, if they are not provided with sufficient periods referred to in Article 69, provided that the parties concerned agree to these actions. Offers of relief shall not be considered In which the above-mentioned conditions are met, including intervention in armed conflict or unfriendly acts, priority shall be given when distributing relief consignments to those persons, such as children, pregnant women, maternity cases, and wet nurses, who are eligible to receive

¹ Article: 38 of the Fourth Geneva Convention relative to the Protection of Civilian Signed on: August 12, 1949

² Article 70 of the First Additional Protocol annexed to the four Geneva Conventions concluded on August 12, 1949, and relating to the protection of victims of international armed conflicts dated June 10, 19

preferential treatment or special protection in accordance with the Fourth Convention or this Protocol. ¹

There are principles in the field of assistance that are suitable to serve as guidelines for the work of humanitarian organizations, including:

The principle of humane treatment : Humane treatment of victims of armed conflicts, internal disturbances and tensions, and their humane treatment

of necessary assistance : providing victims with food and medical supplies

family assistance : enabling victims to contact their families and friends and receive financial support

The principle of special protection : giving some groups special treatment, especially children, the elderly, and women with burdens

The principle of shelter security : enabling victims to reside in appropriate places

The principle of non- discrimination : non-discrimination between victims for any considerations

ninth axis : Prince Abdul Qadir's contributions to the formulation of international humanitarian law

First of all , it should be noted that the decree issued by Emir Abdelkader at the beginning of the year 1843 regarding the rules regulating the dealings of his state's soldiers and soldiers with the

¹ Article 70 of the First Additional Protocol annexed to the four Geneva Conventions concluded on August 12, 1949, and relating to the protection of victims of international armed .conflicts dated June 10, 1977

French colonial occupation of Algeria, truly constitutes the first threshold for modern international humanitarian law because of the humanitarian rules and principles it contains that establish the rules of a future convention

This is in addition to the crystallization of some principles, which later formed the basis on which the International Red Cross and Red Crescent Movement was built, especially in the field of humanizing war and the necessity of treating soldiers who are unable to fight, whether prisoners or wounded, humanely without any discrimination. In fact, the former President To the International Committee of the Red Cross, Mr. **Jakob**Kellenberger confirmed this meaning in his , testimony when he stated that: “Emir Abdelkader gave early and without prior knowledge a faithful description of what now constitutes the daily work of the delegates of the International Committee of International Humanitarian Law: namely, supporting Prisoners and ¹”ensuring respect for their rights, as well as reassuring their families

First: Humanize him And he created war

The principles, values and ethical behaviors that Prince Abdul Qadir established were not only evident in the noble methods of dealing with prisoners of wars that he fought, but also in the army’s combat methods and methods of communicating with its opponents and enemies, stemming from his high morals and the power of

¹ Islam as [a](https://blogs.icrc.org/alinsani/2020/04/30/3718/) reference for the protection of prisoners of war, the contribution of Prince Abdelkader Al-Jazairi to the development of international humanitarian law, available on the website <https://blogs.icrc.org/alinsani/2020/04/30/3718/> date of access: 12-01- 2021, at: , .15:41

humanitarian discourse that does not attack the enemy's humanity. It¹ does not offend his faith or harm his sanctities

Prince Abdul Qadir, who is deeply rooted in the provisions of the true Islamic religion and follows the noble Prophetic guidance, has sought to succeed in establishing the idea of humanizing war and creating fighting, and the features of this are evident as follows:

Prince Abdul Qadir established the doctrine of his army in accordance with Islamic rules, which view jihad for the sake of God as a self-effort that elevates the struggling self to the level of holding oneself accountable so that it does not deviate or transgress, and a lofty value that must be preserved through reconciliation between the legitimate goals of defending land, honor, and belief on the one hand. And the necessity of respecting what must be respected in the human nature of enemies, whether in times of victory or defeat

Emir Abdelkader adopted the principle of humane treatment despite the defeats, tragedies, and calamities that he, his army, and his he nor his leaders committed anything Neither .people experienced that offends the morals of war or distorts the symbolism of the just cause of the Algerian people against a brutal colonial power that wanted to impose its hegemony over them with the force of iron and fire

He practically embodied the principle of humanity since his arrival in leadership by humanizing war and distancing himself from the brutal traditions and outdated barbaric practices that prevailed in

¹ .Previous reference and position

the wars of the past, such as avoiding capturing soldiers and cutting off their heads and ears instead and considering them as spoils of war. In this regard, he issued a unilateral decree requiring the leaders and soldiers of his army to adhere to respect Human dignity of enemy¹combatants

Second: Leadership in the treatment of prisoners

Emir Abdelkader's humanitarian stances with the prisoners remain a landmark, as they had a profound impact on consolidating the morals of war and human rights in modern history. In his tireless pursuit of humanizing war and alleviating the pain of prisoners, Emir Abdelkader was not content with merely enacting relevant legal rules (Decree of 1843).), but it established established practices and customs within the framework of an integrated policy of humanitarian law, which we find today enshrined in the Geneva Conventions of²especially the Third Convention ,1949

In addition to his strong respect for the religious convictions of the prisoners, despite his disagreement with them, as he would never accept that a prisoner be forced to change his religion under the pressure of fear and threat, Prince Abdul Qadir was the first to enact the principle of the priest (cleric) visiting the prisoners and prisoners, not for the purpose of enabling them to practice their prayers. And not only their religious rituals, but also to enable them to communicate,

¹ Islam as [a](https://blogs.icrc.org/alinsani/2020/04/30/3718/) reference for the protection of prisoners of war, the contribution of Prince Abdelkader Al-Jazairi to the development of international humanitarian law, available on the :website<https://blogs.icrc.org/alinsani/2020/04/30/3718/> date of access: 12-01- 2021, at: , .15:41

² .Previous reference and position

through the cleric, with their relatives and families and to obtain everything that might alleviate the burden of their families, such as money, clothes, books, etc.

Thus, the famous letter sent by Prince Abdelkader to Bishop Dipeche in 1841 preceded the Geneva Conventions by a full century in affirming the rights of prisoners to visitation, the freedom to practice religious rituals, and to communicate with their families and others (rights enshrined in Articles 34, 38, and 71 of the Geneva Convention). The third of 1949), and in no way can we ignore, when discussing the Emir's thought regarding the treatment of prisoners, his strong rejection of the idea of “ **exchanging prisoners as a commodity in the war market.**”

Emir Abdul Qadir was liberating prisoners out of respect for their humanity and to preserve their rights as human beings, not as a commodity subject to the worst forms of exploitation and bargaining. This was evident in two positions of the Emir that impressed his enemies before his friends, and recorded them in that history in golden letters:

The first of them was in the year 1841, when Emir Abdelkader ordered, with all chivalry and chivalry, to continue the release of the French prisoners who were in his possession in implementation of a prisoner exchange agreement with the French occupation army, even though the latter violated his pledges and evaded the agreement by refusing to release the Algerian prisoners. The second was in 1842,

when Emir Abdelkader ordered the release of the French prisoners instead of killing them after he did not find any food to feed them. This matter impressed the butcher Marshal Saint-Arnaud, who admitted that Emir Abdelkader had returned to him all the prisoners who were in his possession without conditions and without exchange,¹ even though he... He was able to get rid of them

So, through the aforementioned presentation, we say that Emir Abdul Qadir established the humanization of war, the creation of fighting, and the dominance of the spirit of human brotherhood in the harshest and most ferocious conditions of combat

Conclusion:

The importance of international humanitarian law is linked to the importance of protecting people and their rights in times of armed conflict. International humanitarian law also includes a set of laws and agreements that aim to define the rules of armed conflicts and ensure respect for the basic rights of individuals who do not participate in the fighting or who have lost their protection due to the conflict.

International humanitarian law addresses issues such as the protection of civilians, hospitals and medical transport in conflict zones, the definition of prisoners of war, and the arbitration of the

¹ Islam as a reference for the protection of prisoners of war, the contribution of Prince Abdelkader Al-Jazairi to the development of international humanitarian law, available on the website <https://blogs.icrc.org/alinsani/2020/04/30/3718/> date of access: 01-12- 2021, at: , .15:41

humane treatment of people harmed during conflict. International humanitarian law aims to reduce the suffering of individuals affected by conflicts and to provide a framework for humanitarian behavior under these circumstances.

By promoting the concept of responsibility and justice, international humanitarian law seeks to realize the principle of humanity in conflict. The international community must promote compliance by states and individuals with those laws and ensure their effectiveness through appropriate sanctions in the event of non-compliance.

Ultimately, the application and strengthening of international humanitarian law remains vital to ensuring human rights and human dignity in conflict situations, through international cooperation and adherence to the principles of justice and humanity.

These principles and rules are fundamental in creating a system aimed at reducing human suffering during armed conflicts. However, achieving compliance with these principles remains an ongoing challenge with some legal and political challenges to their effective implementation.

But in the end, and in light of what is happening in the Gaza Strip, we say that there is no international humanitarian law in terms of genocide and the brutal targeting of women and children. The Zionists target civilians in a clear and public violation of laws and human

rights. Here we wonder about the existence of international humanitarian law and international human rights law or not, and therefore I Personally, and in my own opinion, international humanitarian law does not exist in the face of its stagnation in defending civilians and children in the Gaza Strip.

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