



HUMANITARIAN LAW

Introduction into International Law



CONTENTS

- 1) INTRODUCTION**
- 2) FUNDAMENTAL PRINCIPLES OF HUMANITARIAN LAW**
- 3) HISTORIC OVERVIEW OF HUMANITARIAN LAW**
- 4) SELECTED INSTITUTIONS OF HUMANITARIAN LAW**

INTRODUCTION

- Humanitarian law, *ius in bello*, governs the conduct of warfare under international law
- Combination of customary principles and norms together with particular technical provisions of international treaties

FUNDAMENTAL PRINCIPLES OF HUMANITARIAN LAW

- Four principles of humanitarian law
- **A) Principle of Humanity**
 - Supplementary to the other three principles
 - Preamble of the II. Hague Convention of 1899, IV. Hague Convention on the Laws and Customs of War on Land (October 18, 1907)
 - The legality of the Treat or Use of Nuclear Weapons, advisory opinion of 8 July 1996, dissenting opinion of judge Shahabuddeen, p. 405
- **B) Principle of Military Necessity**
 - (a) the use of force is regulated, (b) that force is necessary to achieve as quickly as possible the partial or complete submission of the adversary, (c) that force is no greater than needed to achieve this, and (d) that it is not otherwise prohibited

FUNDAMENTAL PRINCIPLES OF HUMANITARIAN LAW

■ **C) Rule of Distinction**

- To distinguish between combatants and civilian population, as well as between military targets and civilian objects
- Combatants → legitimate targets, they can also legally take part in the hostilities

■ **D) Principle of Proportionality**

- Additional Protocol I (1977) to the Geneva Conventions of 1949 → Art. 57(2)(a)(iii)
- New institution (after WWII)
- Vietnam war
- Particular proportion between collateral damages and military advantages - no absolute rule for quantitative determination

HISTORIC OVERVIEW OF HUMANITARIAN LAW

- As part of the positive European law of nations in the 19th century
- **1864 St. Petersburg Declaration** Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight
- **Hague Peace Conferences** of 1899 and 1907 → Hague Conventions
 - Friedrich Martens → the Martens Clauses
- **1949 Geneva Conventions**
- **Additional Protocol I (1977)** relating to the Protection of Victims of International Armed Conflicts
- **Additional Protocol II (1977)** relating to the Protection of Victims of Non-International Armed Conflicts
- **Additional Protocol III (2005)** relating to the Adoption of an Additional Distinctive Emblem

SELECTED INSTITUTIONS OF HUMANITARIAN LAW

- Combatants and Civilians
- Prisoners of War

COMBATANTS AND CIVILIANS

- **Maxim of the rule of distinction**
 - **Civilians** - not to take part in hostilities
 - **Combatants** - active part in hostilities → Additional Protocol One to the Geneva Conventions of 1949
 - Lawful
 - Unlawful
- Sui generis category of levée en masse
- Perfidy → Art. 37 Additional Protocol One to the Geneva Conventions of 1949

PRISONERS OF WAR

- Additional Protocol One to the Geneva Conventions of 1949 → Art. 45
- *A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power.*