International Humanitarian Law

E-Content for students of semester IV, Patna Law College, Patna University.

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Fundamental Principles and rules of IHL

- Principles
  - Military Necessity
  - Humanity
  - Proportionality
  - Distinction
  - Precaution
  - Martens Clause

- Rules relating to:
  - protection of specific categories of persons
  - limitation on means and methods of warfare
Military Necessity

- It is permissible to use those measures not forbidden by international law which are necessary to secure the complete submission of the enemy as soon as possible with the least expenditure of personnel & resources.

- Thus parties to a conflict may only resort to those means and methods that are necessary to achieve the legitimate military purpose of a conflict and that are not otherwise prohibited by IHL.

- Recognises that use of force during armed conflict is legal, within the limits set out by IHL.

- Further recognises that legitimate military targets can be attacked/destroyed and enemy combatants killed, for legitimate military purposes.
Military necessity does not admit of cruelty - that is, the infliction of suffering for the sake of suffering or for revenge,... nor of torture to extort confessions.
The principle of humanity forbids the parties to a conflict to cause any suffering or destruction that is not required to achieve the legitimate purpose of a conflict.

In other words, it is forbidden to inflict suffering, injury or destruction not actually necessary to accomplish a legitimate military purpose.

This is the very purpose of IHL and aims at protecting the victims of armed conflict.
Victims of armed conflict

- Certain category of soldiers
- Persons deprived of personal liberty
- Civilians
When I was in the military I always made it my first mission to burn the enemy's crops!

(William J. Crowe)
IHL strikes a balance

Use of armed force to attain legitimate military objectives & complete submission of the enemy is lawful. It is forbidden to inflict suffering, injury or destruction not actually necessary to accomplish a legitimate military purpose.

The balance between MILITARY NECESSITY and HUMANITY is achieved through the application of the principle of PROPORTIONALITY.
Collateral damage shall be proportionate to the concrete and direct military advantage anticipated.

- What is a collateral damage?
  Collateral damages are incidental loss of civilian life, injury to civilians & damage to civilian objects.

- What is a military advantage?
  A military advantage is the total or partial destruction, capture or neutralisation of a combatant or military objective necessary for the ultimate submission of the enemy.
PROPORTIONALITY
Distinction

- Parties to a conflict shall at all times distinguish between:
  - the civilian population and combatants
  - civilian objects and military objectives

- Attacks shall be directed solely against combatants and military objectives.
Precaution

- The parties must take constant care to spare civilians and civilian objects during military operations.

- This include double-checking that a target is indeed military objective or effectively warning the civilian population before an attack.
We do everything humanly possible, consistent with military necessity, taking many chances to avoid civilian casualties, at all costs.

— James Mattis —
The Martens clause was first mentioned in the Preamble to the Hague Conventions on the Laws and Customs of War on Land. Later on this clause was relied upon in the Nuremberg jurisprudence, emphasized upon by the International Court of justice and human rights bodies, and was further declared in many humanitarian law treaties that regulate the means and methods of warfare.

It was reiterated in the 1949 Geneva Conventions for the Protection of Victims of War, the 1977 Additional Protocols to those Conventions,' and the Preamble to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, in slightly different versions.
Fundamental rules of IHL

- People who are hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.

- It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.

- The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, facilities, transports and equipment. The red cross and red crescent emblems are the signs of such protection and must be respected.
Fundamental rules of IHL

- Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

- Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he or she has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.
Fundamental rules of IHL

- Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering.

- Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilians and civilian property. Attacks shall be directed solely against military objectives.
THANK YOU