

## THE BEDROCK OF CONFLICT: UNDERSTANDING GENERAL PRINCIPLES IN THE LAW OF WAR

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### ABSTRACT

In the realm of armed conflict and international humanitarian law, general principles form the cornerstone of legal frameworks that safeguard human rights and limit the brutality of warfare. This research article delves into the fundamental general principles that underpin the Law of War, shedding light on their historical evolution, practical significance, and contemporary relevance. We explore the moral and legal foundations upon which these principles are built, emphasizing their role in promoting humanitarian values during strife. By examining the interplay between these principles and the rules of engagement, we gain a deeper understanding of their vital contribution to the protection of civilians and combatants alike. In a world where conflicts persist, it is crucial to comprehend and appreciate the bedrock upon which the Law of War stands. This article aims to provide a comprehensive insight into these general principles, offering a critical perspective that underscores their importance in maintaining ethical standards in armed conflicts.

**Keywords:** Armed Conflict, General Principles, Humanitarian Values, International Humanitarian Law, Law of War

### INTRODUCTION

The legal framework that controls behavior and acts during armed conflicts (*jus in bello*) is the Law of War, also called International Humanitarian Law (IHL). It refers to the area of international law that works to lessen the effects of armed conflict by protecting people who are not fighting and regulating the strategies and equipment employed by combatants. Concerns for the welfare of individuals and the alleviation of human suffering serve as the driving forces behind the Law of War. The phrase "law of war" refers to a body of rules intended to protect people and property that armed conflicts may harm. These rules may have been established through accords or customary practices. It also places limitations on the sides of the combat, limiting their ability to use whatever strategies or weapons they choose. The Geneva Conventions (GC) and the Hague Conventions (HC), as well as any subsequent

treaties, case law, and international common law, are all included in the scope of its coverage. The text specifies the standards and responsibilities of warring states, neutral states, and combatants concerning one another and those who are protected, which usually refers to non-combatants. Its goal is to strike a balance between humanitarian concerns and military requirements while setting legal restrictions on combat to lessen its debilitating effects and ease human suffering. Significant transgressions of the law of war are referred to as war crimes. The behaviour of armed troops during war or an armed conflict is governed by the law of war, also referred to as *jus in bello*. The choice to wage war or engage in armed conflict is expressly governed by the *jus ad bellum*, which also covers acts that violate peace and constitute acts of aggression (Hussain, N., Khan, A., & Chandio, L. A. 2023). All facets of international

military confrontations are governed by the *jus in bello* and *jus ad bellum*, two parts of the laws of war. The legislation must be followed by nations who are bound by the pertinent treaties. The Nuremberg War Trials also looked at a number of widely accepted unwritten laws of war. Additionally, they define the permissive rights and constraints on how these powers should act in reference to irregular forces and non-signatories. foreign humanitarian law clearly distinguishes between standards that apply in internal armed conflict and those that do not in foreign armed conflict. There is a lot of criticism directed at this sector (Mangku, D, G. S, 2021).

International law experts disagree on the relationship between the law of war and international human rights (IHRL) legislation. This discussion adds to a larger discussion on the inconsistency of international law. While advocates of the constitutionalist approach see the law of war as a subset of international human rights law, pluralist researchers see the two as independent fields. In essence, those who favor different, independent administrations stress the differences in applicability; the law of war exclusively pertains to armed conflict. On the other hand, viewing things from a systems viewpoint indicates that IHRL includes the law of war. It is made up of both general rules that are applicable to all situations and specific laws that apply to particular people or groups of people, such as refugees (as defined by the 1951 Refugee Convention), children (as defined by the 1989 Convention on the Rights of the Child (CRC)), and prisoners of war (as defined by the 1949 Third GC). These situations include armed conflict and military occupation (Solis, G. D. 2021).

### **HISTORICAL DEVELOPMENT OF LAW OF WAR**

Since the beginning of time, people have made an effort to protect themselves from the worst effects of conflict. International agreements controlling fighting, which included clauses for the rights and protection of armed conflict victims, did not, however, come into existence until the second half of the 19th century. The current law of war was significantly influenced by the work of two people. Guillaume-Henri Dufour, a Swiss military officer, and Swiss businessman Henry Dunant. During his travels in Italy in 1859, Dunant saw the terrible

effects of the Solferino battle. He wrote about his experiences in "A Memory of Solferino," which was published in 1862, after returning to Geneva. Dunant's views were swiftly and vigorously supported by General Dufour, who had personal military experience, by leading the diplomatic conference in 1864 that resulted in the adoption of the first Geneva Convention. The "committee of Five" was established in 1863 by Dunant and Dufour, Gustave Moynier, and Théodore Maunoir. It was an international board of trustees whose goal was to aid injured service members. This would become the ICRC in 1876 (Khan, A., Hussain, N., & Oad, S. 2023).

The law of war consists of two branches: (a) The 'Geneva Convention', a set of regulations that safeguards individuals affected by armed conflicts, including incapacitated military personnel and non-combatant civilians. (b) The 'law of The Hague' refers to a set of laws that define the rights and responsibilities of parties involved in armed conflict. These regulations restrict the types and techniques of warfare that can be used.

Combatants: Combatants are defined as members of a Party's military forces who are engaged in a war in accordance with Article 43(2) of the 1977 Additional Protocol I, with the exception of medical staff and chaplains who are covered by Article 33 of the Third Convention. The right to direct combat between combatants exists (Hussain, N., Khan, A., Chandio, L. A., & Oad, S. 2023).

Non-combatants refer to individuals who are not actively involved in combat or fighting during a conflict, particularly civilians, army chaplains, or army doctors (Rudenko, V. N., & Fishman, L. G. 2022).

### **EXPLORING THE CORE TENETS: GENERAL PRINCIPLES IN THE LAW OF WAR**

Three fundamental principles govern the manner in which a side involved in an armed conflict may undertake military operations, specifically the execution of hostilities. The following are the regulations on Distinction, Proportionality, Limitation, and Military necessity. Their objective is to safeguard civilians from the impact of hostilities. Despite these regulations, there is a restriction on causing unnecessary harm or excessive suffering,

which serves to protect soldiers and other lawful targets of attack. The concepts have been effectively organized in Additional Protocol I (AP-I). They are present in the conventional legal framework governing international and non-international armed conflicts, known as the Law of War. The principles of the law of war should be contained inside its own rules and regulations. However, these principles can also assist in interpreting the law when there is ambiguity or disagreement regarding legal matters. The ratio of ideals to interests varies depending on the subject at hand. Military factors may restrict the idea of humanity during wartime by emphasizing destruction. The notion of humanity, however, lies at the core of legal legislation in other circumstances, such as the protection of the injured and the deceased (Board, D. I. 2019). (a) Distinction, (b) Proportionality (c) Military necessity (d) Limitation

#### **PRINCIPLE OF DISTINCTION**

*“Parties shall at all times distinguish between civilian and combatants and between civilian objects and military objectives (API, Art.48)*

- *“You may not attack everyone!”*
- *“You may not attack everything!”* (Khan, A. S., Bibi, A., Khan, A., & Ahmad, I. 2023)

The fundamental principles of differentiation demand that all parties to an armed conflict recognize the distinction between fighters and military targets as well as non-combatants and non-military entities. One party has the option to strategically prepare and carry out an attack that only targets other fighters or military targets during an armed conflict. It is forbidden to target civilians as a group or an individual unless they are actively taking part in acts of war. Attacks must strictly be limited to military targets and not be directed at civilian targets. Military objectives are limited to things that significantly support military operations owing to their nature, location, purpose, or use and whose destruction, capture, or neutralization would clearly benefit the military under the current conditions. Common military objects are the actual places where enemy combatants, their gear, and weapons are located. These places include bases, structures, and important locations. It also covers the means of military communication and movement. An essential rule of the Law of War is the prohibition of harming anyone who is hors de fight. For instance,

a soldier may be justified in pursuing an adversary under normal circumstances. However, it is forbidden to physically assault that soldier if he or she surrenders or becomes hurt and is no longer a threat. Additionally, if they meet the requirements for being a prisoner of war, they can be eligible for substantial securities (Greenspan, M. 2022).

Without any qualifiers, the clause is firmly established in Articles 48 and 52(2) of AP-I. Mexico stressed the significance of Article 52 during the Diplomatic Conference that led to the Additional Protocols’ approval. Mexico stated that this article shouldn’t be subject to any reservations because doing so would undermine Protocol I’s goals and guiding principles. Additionally, the Amended Protocols II and III to the Convention on Certain Conventional Weapons (CCW) both forbid attacking civilian targets. Furthermore, planning strikes against civilian demonstrators with a specific focus on non-military targets during international armed conflicts is considered a war crime under the requirements of the International Criminal Court’s (ICC) Statute. Numerous thorough military manuals specify the requirement to distinguish between civilian and military targets as well as the prohibition of carrying out strikes against non-combatant objects. The concept of distinction, as stated in Article 48 of Additional Protocol I, is expressly recognized as a well-established customary norm of international law in the Swedish Manual on the Law of War. A number of jurisdictions have passed laws making it illegal to target civilian objects during hostilities. There are further official justifications that use this idea. States that are not parties to Additional Protocol I or were not parties at the time of this practice are included (Rudi Natamiharja, R. N. 2019).

The early draft of Additional Protocol II contained a distinction between non-combatant entities and military targets. But finally, it was taken out as part of a larger initiative to encourage the acceptance of a more condensed text. It is crucial to remember that Additional Protocol II does not contain this restriction or expressly forbid planning attacks against non-military targets. Some contend that such actions may potentially fall under the expansive definition of general protection in Article 13(1) of AP II. Later legislation governing non-international armed conflicts, notably Amended Protocol II to the

Convention on Certain Conventional Weapons, has incorporated the prohibition against planning assaults against civilian objectives. The denial is also featured in AP III to the CCW, which was added to the Convention's Article 1 in 2001 and is applicable to non-international armed situations. The concept of distinguishing between civilian objects and military objectives is used by the Second Protocol to the HC for the Protection of Cultural Property as a basis for defining the preservation of cultural property in non-international combat situations (Gheorghe, S. 2023).

### **PRINCIPLE OF PROPORTIONALITY**

*“Launching an attack that is expected to result in unintended harm to civilians or damage to civilian objects that outweighs the expected military benefit is strictly forbidden.”*

The proportionality concept serves to limit and protect against potential harm done to people. The least amount of injury to civilians should be caused, and if harm is unavoidable, it must be proportionate to the military advantage achieved. Article 51(5)(b) of the API, which forbids strikes when the harm to civilians would be excessive compared to the military benefit sought, is the article that most conspicuously utilizes the idea of proportionality. The phrase “collateral harm” is frequently used in this area, which is a combat zone. If the text itself forbids it, the rule cannot be used to circumvent particular insurances or create exceptions to rules. The idea of proportionality is part of the rules of war, just like the necessity concept. For instance, since organized attacks on people are illegal, a legal analysis of proportionality is not necessary. A blatant violation of the Law of War is any direct attack on even a single non-combatant who is not engaged in hostilities. Only when an attack is directed at a legal military target does proportionality apply (Sassòli, M. 2019).

“The principle of proportionality in assault is explicitly stated in Article 51(5)(b) of AP I and reiterated in Article 57” (Khan, A., Iqbal, N., & Ahmad, I. 2022).

France objected to Article 51 during the Diplomatic Conference debating the passage of the APs because of their alleged complexity, which it claimed would seriously impair military defense operations against an invader and undermine the inalienable right to

lawful defense. In spite of AP I's extensive provisions, France made no objections to this agreement. Mexico stressed the significance of Article 51 during the Diplomatic Conference on the approval of the APs. According to Mexico, any objections to this item would undermine the foundation of Protocol I and run counter to its goals and justifications. Additionally, during the Diplomatic Conference, a number of States expressed worry that the proportionality rule may endanger the safety of the civilian populace. They did not, however, offer an alternate strategy to deal with the problem of accidental harm brought on by strikes on legitimate targets. According to the UK, Article 51(5)(b) provided an important definition of a notion that was quickly becoming acknowledged by all States as a key principle of international law relating to armed conflict. Additionally, Protocol II and Amended Protocol II to the CCW contain provisions relating to the proportionality of assault. Similar to this, starting an attack with the intent to do so while knowing that it will cause unintended casualties, harm to civilians, or damage to civilian property that would be obviously excessive in relation to the tangible and immediate military benefit anticipated is regarded as a war crime in international armed conflicts, according to the Statute of the ICC (Cohen, A., & Zlotogorski, D. 2021).

Although the preamble of AP II explicitly applies the principle of humanity to the Protocol, it has been argued that AP II implicitly applies the norm of proportionality in assault. As a result, when putting the Protocol into effect, the proportionality principle cannot be ignored. Modern treaty laws that deal with non-international armed conflicts, such as Amended Protocol II to the CCW, have included the ideas. It is also incorporated into a number of other documents that deal with non-international armed conflicts. The proportionality of attack is a military doctrine that is established in non-international armed confrontations. A number of jurisdictions have implemented laws making it illegal to violate the proportionality principle during any armed conflict. The National Appeals Court of Argentina acknowledged the proportionality in assault principle as a part of customary international law in the 1985 Military Junta judgment. This principle is also the subject of numerous authoritative interpretations that relate to armed conflict in general as well as non-



international armed conflict in particular. As previously indicated, the States' arguments before the International Court of Justice (ICJ) in the nuclear weapons case were couched in general terms that applied to all armed conflicts (Khan, A. 2018).

#### **PRINCIPLE OF MILITARY NECESSITY**

The use of force that is required and suitable to accomplish a conflict's legitimate goal is permitted by the principle of military necessity.

The use of force that is required to accomplish a battle's legal goal—the enemy's entire or partial surrender while minimizing the loss of lives and resources—is permitted under the principle of military necessity. It does not, however, give permission to carry out operations that are otherwise prohibited by the law of war. Military necessity is a key idea in the law of war and frequently the one that conflicts the most with the protection of humanitarian interests. armed necessity enables armed troops to take part in operations that could cause extensive damage and injury. The idea of military necessity recognizes that winning a war is a valid concern within the parameters of international humanitarian law. The idea of military necessity does not, however, give the military carte blanche to disregard any humane considerations and behave however they like. It must be read in light of particular exclusions and in accordance with alternative Law of War principles. The Law of War's provisions really contain the idea itself. The specified objects that are eligible for legal attack are listed in AP I's Article 52. When the language explicitly forbids it, the idea cannot be used to trump up specific guarantees or create exceptions to general rules. Unless absolutely necessary for military purposes, it is forbidden to use property of extraordinary significance to a population's cultural heritage for operations that are likely to expose it to destruction or harm. This rule is noted in various military manuals. These manuals include those from nations that have not ratified the Hague Convention. In addition, a few of military manuals assert that it is a horrible conduct to utilize a privileged position for illegitimate ends. Additionally, state practice explicitly prohibits exploiting civilian property to protect military operations (Khan, A., & Hussain Shah Jillani, M. A. 2019).

*Waiver in case of imperative military necessity:*

The relevance of the waiver in circumstances where cultural property is used due to vital military requirements has been made clear by the Second Protocol to the HC for the Protection of Cultural Property. As long as there is no other way to achieve a comparable military advantage, the phrase implies that a waiver based on military necessity could be used to take advantage of cultural property, resulting in its destruction or damage. The Protocol also stipulates that the authority necessary to establish the presence of such a necessity must be at a specific level. This translation was not a point of contention when the Second Protocol was being negotiated. It is important to distinguish this administration from the restrictions on exploiting social property stated in Article 53(2) of AP I and Article 16 of AP II, which do not allow for a waiver in situations of absolute military necessity. As was made clear by numerous justifications given at the Diplomatic Conference that resulted in the adoption of the APs, these articles were created to address a small number of important cultural items, specifically those that make up the social or spiritual heritage of "individuals" (i.e., humanity), whereas the Hague Convention's scope is wider and includes items that make up the cultural heritage of "all individuals." Even without any official marks, the property covered by the Additional Protocols must have a certain level of importance that is obvious to everyone (Khan, A., Bhatti, S. H., & Jillani, M. A. H. S. 2021).

#### **PRINCIPLE OF LIMITATION**

"The Parties involved in an armed conflict do not have unlimited freedom to choose methods or means of warfare, as stated in Article 35.1 of the API."

- "You are prohibited from utilizing any and all means and methods!"

Within every armed conflict, the parties involved do not have unrestricted freedom to select methods and tools of warfare. Ultimately, the law of war imposes restrictions on the manner in which weapons and military tactics can be employed. Arms and techniques that have the potential to cause unnecessary harm or excessive suffering are prohibited. The purpose of this principle is to prohibit weapons that inflict excessive or unnecessary harm on enemy soldiers, resulting in long-lasting effects or rendering them incapable of continuing the conflict. It pertains, for example, to

weapons designed to cause injuries that are challenging to treat or that lead to a slow and violent death. The policy does not explicitly prohibit weapons, such as a collection of guns or ammunition designed to penetrate armor, which, even when efficiently employed, can unintentionally cause harm due to their design rather than their use (Khan, A., Khan, A. S., & Khan, I. 2022).

### **HUMANITY**

The employment of weapons, ammunition, and methods of warfare that cause excessive injuries and undue suffering is strictly forbidden according to the API, Article 35.2. The basic concept that inspired Henry Dunant, the founder of the ICRC, was the notion of humanity, which was notably absent during the battle of Solferino in 1859. The principle asserts that every individual possesses the inherent ability and aptitude to demonstrate respect and care for others, including their sworn adversaries. The concept of humanity is crucial to the human experience and serves as a distinguishing factor between people and animals (Khan, A., Javed, K., Khan, A. S., & Rizwi, A. 2022).

### **CONCLUSION**

Examining core ideas from the Law of War is essential to maintaining humanity's ethical framework in the midst of the chaotic environment of armed conflict. We have examined the antecedents, applications, and present significance of these fundamental concepts in this essay. Throughout our journey, it has been highlighted how crucial these values are for respecting everyone's dignity, safeguarding human rights, and minimizing the atrocities of war. In the context of armed conflict, the ideas of diversity and proportionality offer moral direction together with the broader idea of humanity. They lay an essential moral foundation that the world community must constantly advance and solidify in its attempts to build a society that is more just and caring. In conclusion, it is obvious that understanding and upholding these essential principles is not only required by law but also by morality. Their continued importance demonstrates the world community's enduring commitment to easing the suffering brought on by war. Understanding and using these ideas is essential in a world that is always changing. Those who sustain the

enduring principles of compassion and justice have the responsibility of protecting their sacredness. This study makes a small progress in understanding the Law of War's intricacies and the important role that general principles play within it. We hope that our research fosters a deeper understanding of and renewed dedication to upholding the ideals represented in these principles, promoting the goal of humanitarianism despite adversity.

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