

International Humanitarian Law (IHL) -Lecture Notes Chapters 6-9

Melaku A. (LL.B., LL.M.)
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Chapter VI: Conduct of Hostilities

Distinction between Hague Laws and Geneva Laws

- As we have briefly discussed in chapter 1, IHL is usually divided into two as Geneva Laws and Hague Laws.
- The Geneva Laws generally refer to the four Geneva Conventions and additional protocols thereto. The Geneva laws deal with the protection of persons and property.
- The Geneva Laws provide list of categories of protected persons and property and provide them protection against the effects of hostilities by requiring belligerents to respect and ensure in all circumstances the minimum standards set therein.
- On the other hand, the Hague Laws refer to laws that were adopted in The Hague and those that generally are designed to regulate the conduct of hostilities, particularly, regulating the means and methods of warfare. For example, treaties relating to the use of weapons are regarded as forming part of Hague Laws.
- However, it should be stressed that the Hague laws have the same objective, i.e. minimizing the evils of armed conflict. The Hague laws do so by laying down what are permissible and prohibited attacks, prohibiting or restricting the use of certain weapons /means of warfare & by prohibiting or restricting certain methods of warfare.

- In addition, the two laws have **merged in the Additional Protocol I** to the Geneva Conventions.

The Protection of the Civilian Population against the Effects of Hostilities

- As we have already discussed in chapter 2, the rules of IHL provide protection to civilian population against the effects of hostilities.
The basic rule on this is provided under Article 48 of Additional Protocol I to the Geneva Conventions. It states that
“In order to ensure respect for and protection of civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”
- It also goes on to state,
“...the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy. Thus for this purpose it is sufficient to disable the greatest possible number of men...”

- This article clearly states that civilians and civilian objects cannot be the target of military attacks, as it is not justified by military necessity/objectives. In other words, the belligerents should target only military objectives.

Permissible attacks, military objectives and military necessity

- As per Article 25 of the Hague Regulations of 1907 and latter Protocol I, **only military objectives may be attacked.**
- It is claimed that there is no intrinsic character that makes an object a military object; rather, it is the use or potential use of an object that makes it military object, thus making its attack as an attack directed against military objectives.
- **All these have prevented the formulation of an exhaustive list of military objectives.**

Permissible attacks, military objectives and military necessity...ctd

- Under the definition provided for by Article 52(2) of Protocol I, **an object must fulfill two cumulative criteria to be a military objective.**
 - **First, the object has to contribute effectively to the military action of one side,**
 - **second, its destruction, capture, or neutralization has to offer a definite military advantage for the other side.**
- The fulfillment of the two criteria must be determined considering “the circumstances ruling at the time.” **If the two criteria are met, there is a military necessity to attack the military objects.**

Prohibited attacks and acts

- Methods of warfare are limited/restricted under IHL. In particular, IHL prohibits certain kinds of attacks.
- As we have discussed in chapter 2, **the civilian population may never be attacked. This prohibition includes those attacks aimed at terrorizing the civilian population** (*see Arts. 48, 51(2) & 85(3) of Protocol I and Art.13 of Protocol II*).
- **IHL also prohibits attacks directed at civilian objects** (*see Arts. 52-56 & 85(3) of Protocol I*).

- **Even those attacks directed at a legitimate military objective are regulated by IHL as such attacks must not be indiscriminate.**
 - Thus, **the weapons utilized must be capable of being directed at the specific military objective & the means used must be in proportion to the military necessity** (*see Art. 51 (4) & (5) of Protocol I*).
- **Reprisals against civilians or civilian objects are also prohibited under IHL.** (*see Arts. 51(6), 52 (1), 53(c), 54(4), 55(2) & 56(4) of Protocol I*).
- **IHL also prohibits abuse of this prohibitions. In other words, civilians and the civilian population and civilian objects may not be used to shield a military objective from attack.** (*see Art. 28 of Convention IV & Art. 51(7) of Protocol I*).

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- IHL prohibits attack on civilian object, which are all objects not falling under the definition of military objectives (*see Arts. 48, 52, & 85(3) of Protocol I*).
- **Thus, a civilian object is one not contributing to military action because of, e.g., its location or function and because its destruction would provide no military advantage.**
- In addition, IHL grants other objects **special protection**. These include:
 - **cultural objects;**
 - **objects indispensable for the survival of the civilian population such as water;**
 - **the environment (as means and methods of warfare with the potential to cause widespread, long-term, and severe damage to the environment are prohibited);**

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- **works and installations containing dangerous forces (e.g. dams, dikes, and nuclear electrical power generating stations are also considered specially protected objects and may not be attacked even if they constitute military objectives).**
- **Attack of a military objective in the near vicinity of such installations is also prohibited when it would cause damage sufficient to endanger the civilian population.**
- The special protection of these works and installations ceases only under restricted circumstances (see art.56 (2) of Protocol I).
 - **Medical equipment (including transport used for medical purposes) is a final group of specially protected objects against which attack is prohibited.**

Precautionary measures

- As we have also discussed under **principle of precaution**, in chapter 2, care must be taken to spare the civilian population and objects when attacking a legitimate objective. *(see Arts. 51(8) and 57 of Protocol I).*

Means and Methods of Warfare

- This section discusses the prohibited or restricted use of weapons and prohibited methods of warfare.
- As we have discussed under the previous chapters, **IHL prohibits weapons that cause superfluous injuries or unnecessary suffering.**
- **There are several agreements within the international law that prohibit or limit the use of certain weapons for that reason.**
- The use, production, stockpiling/storing, and transfer of anti-personal landmines are prohibited according to the Ottawa Treaty of 1997.
- Convention on prohibitions or restrictions on the use of certain Conventional Weapons which may be deemed to be excessively Injurious or to have Indiscriminate effects (CCW).
- It Establishes the framework for prohibiting certain weapons.
- This convention includes **5 protocols:**
 1. CCW **Protocol on Non-Detectable Fragments (Protocol I)**- Prohibits the use of weapons that injure by fragments that cannot be detected by X-rays.
 2. CCW **Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II)**- Prohibits the use of mines, booby-traps and other devices against the civilian population and restricts their use against military targets.

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3. **CCW Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III)** - Prohibits the use of incendiary weapons against civilians and civilian objects and restricts their use against military targets.

4. **CCW Protocol on Blinding Laser Weapons (Protocol IV):-** Prohibits the use of laser weapons that are specifically designed to cause permanent blindness.

5. **CCW Protocol on Explosive Remnants of War (Protocol V):-** Makes States Parties as well as non-state actors responsible for explosive remnants of war in territory under their control, and urges users of explosive ordnance to provide assistance to facilitate the marking and clearance, removal or destruction of explosive remnants of war.

- These treaties are binding on states that have signed and ratified them.
- **The 1925 Geneva Protocol prohibits the use of biological and chemical weapons. The Protocol is considered a customary international law and is, therefore, binding on all states regardless of whether they signed it or not.**
- **In 1972 and 1993, conventions were adopted to prohibit the use as well as the production, transfer, and stockpiling of biological and chemical weapons.**
- These treaties are binding on states that have signed and ratified them.

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- **Generally, the prohibited means of warfare include various kinds of weapons of indiscriminate character and/or those that cause unnecessary suffering. This includes in particular;**
 - i. Bullets that expand or flatten easily in the human body;**
 - ii. Projectiles used with the only purpose to spread asphyxiating/suffocating or poisonous gases;**
 - iii. Projectiles weighing less than 400 grams, which are either explosive or charged with fulminating or inflammable substances;**
 - iv. Poisons or poisoned weapons;**
 - v. Asphyxiating, poisonous or other similar gases and bacteriological means; bacteriological (biological) and toxin weapons.,**
 - vi. Environmental modification techniques having widespread long-term or serious effects as means of destruction, damage or injury;**
 - vii. Certain conventional weapons of the indiscriminate character and weapons that may cause excessive injury or suffering.**

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- The right of the parties to a conflict to choose methods of warfare is, again, restricted (Article 35 of Additional Protocol I). The Methods of warfare prohibited under IHL (treaties or customary international law) include the following:
 - 1. Treacherous killing or injuring members of the armed forces of the adversary;**
 - 2. Torture aimed at receiving information of any kind;**
 - 3. Misuse of distinctive national and international emblems, signals, flags;**
 - 4. The killing of a truce envoy and of persons accompanying him (trumpeter, bugler, drummer);**
 - 5. Perfidy (disloyalty, betrayal...);**
 - 6. Allowing a town or an area to be looted.,**
 - 7. Attacking, bombing or destroying medical facilities, hospital ships (medical transports), medical aircraft which have appropriate distinctive signs, medical personnel;**

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8. Killing or injuring persons of the adverse party who laid down arms or surrendered, having no means of defense;
9. Attacking persons *hors de combat* and persons who parachuted from an aircraft in distress (with the exception of paratroopers);
10. Destruction or seizure of the enemy's property, unless such actions are required by military necessity;
11. Capture of coastal fishing, vessels or vessels used for local navigation hospital ships and ships that have research and religious missions;
12. Genocide and apartheid;
13. Bombing of unprotected cities, ports, villages, dwellings, historical monuments, churches, hospitals by military aircraft or sea vessels, provided these sites are not used for

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- 15. Giving order that there shall be no survivors to threaten an adversary therewith, or to conduct hostilities on this basis'.**
- 16. Forcing persons of the adverse party to take part in hostilities against their country;**
- 17. Use of starvation among civilian population;**
- 18. Destruction of cultural property, historical monuments, places of worship, etc., which constitute cultural or spiritual heritage of people, as well as their use in support of military effort.**

Chapter VII: The Law of Non-International Armed Conflicts

Introduction

- The scope and number of IHL treaty rules governing NIACs are far **less extensive than those applicable to IACs.**
- Internal armed conflicts are covered by **Article 3 common to the Geneva Conventions, by Additional Protocol II to the Conventions adopted in 1977, and by a certain number of other treaties** (e.g. the 1980 convention on Conventional Weapons).
- Over a period of time it has become clear that, as a result of state and international practice, many rules applicable in international armed conflicts have also become applicable in internal armed conflicts as **customary international law.**

Distinction between International and Non-international Armed Conflicts and Applicable Laws

- As we have addressed them in chapter 1, we have the **law of international armed conflict and the law of non-international armed conflict**.
- In determining which regime of law is applicable to a certain conflict, it becomes crucial, first, to ascertain whether the conflict is **international or non-international**. There is also an evolving third type of conflict called **internationalized armed conflicts**.
- As we have briefly discussed them in chapter 1, International armed conflicts are conflicts between states. They are inter-state armed conflicts.
- Non-international armed conflicts are generally armed conflicts taking place within the boundaries of one country between the government forces and nongovernment armed groups (rebels) or among rebels themselves. There is no other States participation in the conflict. Thus, they are sometimes referred to as **internal armed conflicts**.

Distinction between International and Non-international Armed Conflicts and Applicable Laws...ctd

- The notion of internationalized armed conflicts is not clear but it is understood, in one sense, as armed conflicts sharing the feature of both international and non-international armed conflicts. It is also understood as conflicts originally non-international (internal) in nature but that have taken a different form because of the involvement of other States (3rd party) in support of any of the groups fighting.
- **James G. Stewart** states the term internationalized armed conflict includes war between two internal factions both of which are backed by different States; direct hostilities between two foreign States that militarily intervene in an armed conflict in support of opposing sides; and **war involving a foreign intervention in support of an insurgent group fighting an established government.**
- Determining the applicable law to such internationalized armed conflict is relatively difficult. However, characterizing a conflict is necessary to determine the regime of IHL applicable to it.

Distinction between International and Non-international Armed Conflicts and Applicable Laws...ctd

- The law of NIACs is more recent. **States have for a long time considered such conflicts as their internal affairs governed by their domestic laws and no State is ready to accept that its citizens would wage a war against their own government.**
- To apply all rules of contemporary IHL of international armed conflicts to non-international armed conflicts would be incompatible with the very concept of the contemporary international community composed of sovereign States. Thus, currently we have two separate branches of IHL to be studied, interpreted and applied based on the nature of the conflict.

The rules applicable to Non-International armed conflict

- **Today, non-international armed conflicts occur much more frequently and entail more suffering than international armed conflicts.**
- **Laws that regulate NIACs, include: Common article 3, Protocol II, rules of customary international law, general principles of IHL and finally rules of international armed conflicts analogically applicable to non-international armed conflicts.**

1. Rules of Common Article 3 and of Protocol II of the Geneva Convention

- While detailed rules were only applicable in IACs, only one article has been agreed upon regarding NIACs. This article contains identical provisions and incorporated in all four Geneva Conventions as Article 3, and hence called **common Article 3**.
- Common Article 3 sets out a number of important protections that all parties to a conflict respect, and applies to any armed conflict ‘not of international character’.
- It is now **considered to be part of a customary international law**.
- The minimum protection provided is stated broadly as humane and non-discriminatory treatment, in all circumstances, of persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* due to sickness, wounds, detention or any other cause.
- It prohibits any adverse distinction founded on any ground/criteria stated therein.

- **Common Article 3 also provides for protection of the above listed persons against certain treatment by specifically prohibiting certain acts. These prohibited acts are;**
 1. violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 2. taking of hostages;
 3. outrages upon personal dignity, in particular humiliating and degrading treatment;
 4. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- **Common Article 3 also calls for the collection and care of the wounded and the sick.** Thus, the parties to a conflict are duty bound to respect and apply these minimum protections.
- It also calls for the parties to a conflict to endeavor to bring into force, by means of special agreements, all or part of the other provisions of the Geneva Conventions.
- In addition, it **allows an impartial humanitarian body, such as the ICRC, to offer its services to the parties to the conflict.**

Rules of Common Article 3 and of Protocol II of the Geneva Convention...ctd

- However, **common Article 3** has two shortcomings:
 - First, **it provides only a minimum of protection**. For example, it is silent on issues relating to freedom of movement, does not explicitly prohibit rape, and does not explicitly address matters relating to the methods and means of warfare.
 - Second, while common Article 3 does not **define ‘armed conflicts not of international character’**, in practice this wording has left room for governments to contest its applicability to situations of internal violence inside their countries.
- The adoption, in 1977, of **Additional Protocol II** to the Geneva Conventions was aimed at filling these gaps.
- Protocol II sets out numerous important guarantees for the protection of those affected by non-international armed conflicts.
- It expands the protection offered by common Article 3 to include prohibitions on collective punishments, violence to health and physical and mental well-being, acts of terrorism, rape, enforced prostitution and indecent assault, slavery and pillage.

Rules of Common Article 3 and of Protocol II of the Geneva Convention...ctd

- In addition, it includes provisions for the protection of children, for the protection and rights of those detained for reasons related to the conflict, and provides fair trial guarantees for those prosecuted for criminal offences related to the conflict.
- **There are also articles dealing with the protection and care of the wounded, sick and shipwrecked and the protection of medical and religious personnel.**
- **Protocol II also prohibits attacks on the civilian population, the use of starvation as a method of war, and the arbitrary displacement of the civilian population.**
- The protections offered by Protocol II are a considerable improvement on common Article 3. However, measured against the rules for inter-state wars/international armed conflicts/, they are still quite basic.

Rules of Common Article 3 and of Protocol II of the Geneva Convention...ctd

- The most serious omissions concern the many specific protections for civilians against the effects of hostilities found in Protocol I.
 - *For example, Protocol I prohibits direct and indiscriminate attacks on civilians, including providing examples of specific types of prohibited indiscriminate attacks; it places fairly detailed obligations on armed forces regarding precautions to be taken to ensure protection of the civilian population and civilian objects; and it establishes rules regarding non defended localities and demilitarized zones.*
- Protocol II provides only a few general rules on these matters.
- However, the bigger difficulty with Protocol II is that the protection it offers only apply in internal conflicts meeting a certain threshold of intensity and nature.
- Since neither the Protocol nor any other agreement allows for an impartial outside body to decide on whether or not the criteria are met to apply the Protocol, it is largely left to the goodwill of the government concerned.

Rules of Common Article 3 and of Protocol II of the Geneva Convention...ctd

- This goodwill is often lacking. Admitting the application of the Protocol is seen as conferring international legitimacy on the opposition forces.
- The result is that there are many situations of internal violence including those leading to thousands of deaths-where there are no clear treaty rules in place to regulate important aspects of the behavior of armed forces and armed groups involved.

2. Customary laws of non-International armed conflicts

- In addition to the treaty rules, internal armed conflicts are still regulated by the rules of customary international law.
- Like common Article 3, Martens clause (which is recognized under the preamble of Protocol II & stresses on the principles of humanity and the dictates of the public conscience) provides important protections.
- It shows a concrete recognition and acceptance by States that rules of customary international law above and beyond existing treaty rules can apply to fighting inside countries [NIACs].

3. General Principles of International Humanitarian Law

- In addition to the treaty rules and rules of customary international humanitarian law, **the general principles on the conduct of hostilities may also be applicable to internal armed conflicts** (NIACs).
- These general principles applicable to internal armed conflict, as we have discussed under chapter 1, include **the principle of distinction, the principle of military necessity, the principle of proportionality, and the right to relief (humanitarian assistance)**.

4. Analogical application of the Law of IACS to NIACs

- The law of international armed conflicts may also analogically apply to regulate internal armed conflicts, i.e. NIACs.
- There is a necessity of analogy of law of internal armed conflict with the law of international armed conflicts.
- First, there are cases where the precise rule resulting from

- Second, **certain rules and regimes of the law of IACS have to be applied in NIACs to fill gaps in the provisions applicable to it**, to make the application of its explicit provisions possible, or to give them a chance to be applied in reality.
- The law of NIACs contains no definition of military objectives nor of civilian population. Such a definition is, however, necessary to apply the principle of distinction applicable in both fields and the explicit prohibitions to attack the civilian population, individual civilians, and certain civilian objects. Thus, **the definition found in the law of IACS shall apply to NIACs.**
- **A striking feature of the law of non-international armed conflicts is that it foresees no combatant status, does not define combatants and does not prescribe specific obligations for them; its provisions do not even use the term “combatant.”**
- Prohibitions or restrictions on the use of certain weapons contained in the law of IACS shall also analogically apply to NIACS.
- Moreover, the rules on the use of emblem shall also analogically apply to NIACs.

Analogical application of the law of IACs...ctd

- Generally, it becomes necessary to analogically apply certain rules of the law of IACs to situations of NIACs for reasons stated above. But such analogy must be approached carefully as there are limitations to it.

Parties bound by the law of NIACs

- From the point of view of the law of treaties, Article 3 common to the four Geneva Conventions and Protocol II bind the **States party to those treaties**. Even customary international rules of IHL would normally bind only States.
- Nevertheless, **this obligation of States includes a responsibility for all those who can be considered as agents of those states.**
- **IHL must, however, also bind non-state parties in a non-international armed conflict. This includes not only those who fight against the government but also armed groups fighting each other.**
- **While the law of non-international armed conflicts binds both States party and non-State armed groups, there are difficulties on the legal mechanisms for its implementation, particularly on the part of non-state armed groups. There are questions on how rebel groups respect and enforce the rules of IHL and their responsibility, if violations occur.**

Chapter VIII: Implementation of IHL

General problems of implementation of international law and specific problems of implementation of IHL

- As we know, one of the shortcomings of the international law, in general, is its enforcement, which is dependent on the willingness of the sovereign states. That is why international law is usually considered as weak law.
- Because of the shortcomings of the general mechanisms of enforcement [of international law], IHL had devised specific mechanisms of its own and adapted general mechanisms to the specific needs of victims of armed conflicts. *In the next sections, we will discuss the available mechanisms of implementing IHL.*

Measures to be taken in peacetime

- The humanitarian aspect, in particular the respect of IHL, shall be prepared in peacetime. **If soldiers are not properly instructed in peacetime, the rules of IHL will not be respected in case of armed conflict.**

Measures to be taken in peacetime...ctd

- Similarly, **the whole population** must have a basic understanding of IHL in order to realize the application of its rules during armed conflicts.
- The measures to be taken in peacetime also include the **translation of the instruments of IHL into national languages**.
- Furthermore, **if international treaties have to be transformed by national legislation into the law of the land for their applicability, such legislation should be adopted, in peacetime**, as soon as the State has become a party to the relevant instrument.
- **Legislation sanctioning violations [of IHL] should also be adopted.**
- Finally, certain practical measures must be taken by States for them to be able to respect IHL.
- **Qualified personnel and legal advisors have to be trained in peacetime so as to be operational in wartime.**
- **Combatants and certain other persons need identity cards or tags to be identifiable.**
- **Military objectives have to be separated as far as possible, from protected objects and persons.**

Respect [of IHL rules] by the Parties to the Conflict

- IHL obliges parties to a conflict to respect its rules. Under Article 1 common to the Geneva Conventions and Protocol I, **States undertake to respect the rules therein in all circumstances. Thus, they are bound by what they have agreed on. This is the principle of *pacta sunt servanda*.**
- Thus, parties engaged in an armed conflict have the duty to respect the rules of IHL. In other words, they should refrain from committing acts prohibited and perform acts/measures prescribed by the rules of IHL.
- In addition to the above obligations **states should:**
 - ✓ **supervise the conduct of their agents to make sure that they are in line with the requirements of IHL.**
 - ✓ **conduct inquiries when there are allegations of misconduct and apply appropriate sanctions.**
 - ✓ **provide complaint-handling mechanisms.**
 - ✓ **appoint protecting powers that will work for the**

The Obligation to Ensure Respect

- Under Article 1 common to the Geneva Conventions and Protocol I, States also undertake to ensure respect for IHL.
- The International Court of Justice (ICJ) has, in the Nicaragua v US case, recognized this principle to belong to a customary international law and to also apply to the law of non-international armed conflicts.
- **It is not only the state parties to the conflict who shall ensure the respect to the rules of IHL but also those states which are not parties to the conflict. The obligations under IHL are, therefore, certainly obligations erga omnes.** ¹⁰
- It is, however, controversial which measures each State thus entitled and obliged may take under the law of State responsibility. But common Art.1 endorses in legal terms the moral idea that **ensuring a minimum of humanity to victims of armed conflicts** is a common responsibility of all States and of all human beings.

Scrutiny by Protecting Powers and the ICRC

- During war (armed conflict), it is necessary to have a neutral state(s) to talk to each party to the conflict and thereby supervise (or even assist them in) the implementation of IHL.
- **Protecting powers are neutral states (states that are not parties to the conflict) that are chosen (appointed) by the parties of the conflict to oversee the implementation of IHL by both parties to the conflict.**
- IHL provides that its rules “shall be applied with the co-operation and under the scrutiny of the Protecting Powers.”
- **IHL makes the designation of protecting powers an obligation to parties to international armed conflicts** (see Art.5 (1) of AP.I).

Scrutiny by Protecting Powers and the ICRC...ctd

- The Geneva Conventions and AP.I incorporate many provisions on the **tasks of the protecting powers**, which include:
 - visit to protected persons,
 - supervision of relief measures and evacuations,
 - reception of applications by protected persons,
 - assistance to judicial proceedings against protected persons,
 - transmission of information, documents, and relief goods,
 - the offering of good offices and others.
- Most of these tasks are also assumed by the ICRC with the effect that there will be increased supervision of the respect of IHL.
- **Because of its mandate, the ICRC can fulfill most of the functions of protecting powers on its own without acting as a substitute of a protecting power when the latter's appointment is not successful.**
- **Generally, the Geneva Conventions and AP.I provide supervision by protecting powers and the ICRC as one mechanism of ensuring the implementation of IHL by the parties to a conflict.**

The Role of National Red Cross and Red Crescent Societies

- National [Red Cross & Red Crescent] Societies can promote the implementation of IHL within their own countries. They may take a range **of measures contributing to the implementation of IHL**. These include:
 - ✓ discussing with national authorities the need for adherence to IHL rules,
 - ✓ making national authorities aware of the need for IHL implementing legislation,
 - ✓ drafting legislation and/or commenting on drafts to be adopted,
 - ✓ promoting legislation to protect the emblem,
 - ✓ monitoring the use of the emblem,
 - ✓ disseminating IHL on their own,
 - ✓ reminding national authorities of their obligation to disseminate IHL,
 - ✓ providing national authorities with advice and materials on dissemination,

The Role of National Red Cross and Red Crescent Societies...ctd

- National societies of neutral States also play a role in this field when they lend their assistance to a party to a conflict or when they serve under the auspices of the ICRC.

The Role of the United Nations & NGOs

- The primary objective of the UN is to prevent war (by restricting the use of force), not to regulate the conduct of war.
- One purpose of the UN is to maintain international peace and security. The Security Council is particularly authorized to take appropriate measures when it determines that there is a breach or threat to international peace and security.
- In fulfilling its primary objective, the UN Charter permits, for instance the Security Council to authorize the use of force (Under Chapter VII), in which situations IHL applies.
- On the other hand, the UN has taken a number of steps to ensure the respect of IHL. **The establishment of the ad hoc tribunals for the Former Yugoslavia and Rwanda demonstrates that the UN Security Council, in fact, regards violations of IHL as breaches of or threats to international peace and security.**

The Role of the United Nations & NGOs...ctd

- Another role of the UN may be manifested through the work of its main judicial organ, i.e., **the International Court of Justice (ICJ)**, which may interpret IHL when its advisory opinion is sought or when a case is led to it.
- The UN Charter makes no mention of IHL. The purposes and principles of the UN are expressed in human rights terms (see Arts. 24 (2), 1 (3) & 55 (c)). Therefore, **the UN traditionally refers to IHL as “human rights in armed conflict.”**
- Conceptually, the UN cannot be considered as a “party” to a conflict nor a “Power” as understood by the Conventions. In practice, however, peacekeeping and peace enforcement operations can involve, with or against the will of the UN, hostilities with the same characteristics and humanitarian problems to be solved by IHL as traditional armed conflicts.
- There are lots of issues regarding the applicability of IHL to such events.
- **NGOs** also play a role in the implementation of IHL. They can do so by providing humanitarian assistance to victims of armed conflicts, monitoring, reporting and mobilizing public opinion, and through advocacy of IHL.

International Responsibility for Violations of IHL

- Violations of IHL lead to **state and individual responsibility**.
- In the traditional structure of international law, it was only States that assumed to violate IHL and made responsible for such violations. Nevertheless, the growing branch of international law has developed those rules which regulate individual behavior and individual responsibility for their violations.
- The responsibility of individuals under international law was affirmed in the **Nuremberg and Tokyo trials** held after the end of WWII.
- IHL obliges States to suppress all its violations. Certain violations, called war crimes are criminalized by IHL. The concept of IHL war crimes includes but is not limited to the violations listed and defined in the conventions and Protocol I as grave breaches.
- **IHL requires States to enact legislation to punish such grave breaches, to search for persons who have allegedly committed such crimes, & to bring them before their own courts or to extradite them to another State for prosecution.**

International Responsibility for Violations of IHL...ctd

- IHL confers on all States **universal jurisdiction** over grave breaches.
- The principle of universal jurisdiction is classically defined as ‘a legal principle allowing or requiring a State to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim’.
- This principle is said to derogate from the ordinary rules of criminal jurisdiction requiring a territorial or personal link with the crime, the perpetrator or the victim.
 - The rationale behind it is broader: ‘ it is based on the notion that certain crimes are so harmful to international interests that states are entitled-and even obliged to bring proceedings against the perpetrator, regardless of the location of the crime and the nationality of the perpetrator or the victim’.
- **Generally, universal jurisdiction allows for the trial of international crimes committed by anybody, anywhere in the world.**

- The Princeton Principles on Universal Jurisdiction provide **list of crimes over which States can exercise universal jurisdiction**. They include:
 - i. piracy,
 - ii. slavery,
 - iii. war crimes,
 - iv. crimes against peace,
 - v. crimes against humanity,
 - vi. genocide, and
 - vii. torture.
- Generally, International law empowered and in certain cases mandated states to prosecute crimes that were regarded as harming the whole international community.
- Nevertheless, implementation of the general principle remained difficult... and ...the principle is not applied uniformly everywhere.

International Responsibility for Violations of IHL...ctd

- Apart from national prosecutions, individuals were brought before **international ad hoc courts/tribunals**. The first among these tribunals is **the International Military Tribunal at Nuremberg** established by the **London Agreement of August 1945**.
- The London Agreement has defined the jurisdiction of the tribunal. **Many Nazi officials were prosecuted before this tribunal.**
- **The International Criminal Tribunal for the former Yugoslavia & the International Criminal Tribunal for Rwanda (ICTY & ICTR respectively) are examples of such tribunals.**
- The statutes establishing such tribunals set out the crimes that fall within the jurisdiction of each tribunal.
- These are ad hoc tribunals established to address certain crimes committed in certain geographic location or during specific period.
- However, we can understand that **this is employed as a means of ending impunity.**

- **Currently, we have a permanent international court called International Criminal Court (ICC) having jurisdiction over war crimes.**
 - The Court is established pursuant to the Rome Statute of the International Criminal Court, which was adopted at a diplomatic conference in Rome, on 17 July 1998.
- The Statute entered into force on 1 July 2002, and the Court is now fully functional at its seat in The Hague.
- **According to Article 5 of the Rome Statute, the International Criminal Court has jurisdiction over genocide, crimes against humanity, war crimes, and crimes of aggression.**
- **However, the Court operates as a complement, not as a substitute to national courts. Consequently, it can exercise jurisdiction only if a State is unable or unwilling to prosecute persons suspected of such violations.**
- Today, despite some challenges in the implementation and arguments of unevenness, the international criminal responsibility of individuals for violation of IHL is beyond any doubt. **Thus, prosecution before international tribunals (courts) is one mechanism for the implementation of IHL.**

Chapter IX: IHL in the Ethiopian Context

Legal Regimes Governing IHL in Ethiopia

- IHL has to be incorporated into and applied through domestic legal systems.

A) International Instruments ratified by Ethiopia

- According to some sources, until January 14, 2009, Ethiopia has ratified all the four Geneva Conventions with their Additional protocols and the 1954 Hague Convention on the protection of cultural property.
- As you all know, by virtue of Article 9(4) of the FDRE constitution, since these conventions form an integral part of the law of Ethiopia, they should be respected and applied.

B) The FDRE Constitution

- In addition to Article 9(4), there are a number of important provisions of the constitution which have direct relevance to IHL. Few of them are as addressed below:
- **Article 28** provides that **the criminal liability of persons who commit crimes against humanity shall not be barred by period of limitation.**
- The Constitution, however, does not provide the definition of crimes against humanity. It rather states crimes against humanity are to be defined according to international agreements ratified by Ethiopia and by other laws of Ethiopia (E.g., the criminal code).
- However, it also provides an illustrative list of what constitutes crimes against humanity including genocide, summary executions, forcible disappearances or torture.
- In our previous discussions, we learned that these crimes constitute grave breaches of the Geneva Conventions with respect to which States have the duty to prosecute.

The FDRE Constitution...ctd

- Our Constitution goes further and says these crimes cannot be subject to period of limitation, amnesty or pardon. Thus, persons who commit crimes against humanity at peacetime or during war cannot go free. They can be prosecuted and punished at any time. This significantly contributes to the fight against impunity.
 - **Article 18 of the Constitution on the prohibition against inhuman treatment is also relevant to the protection of victims of war. Sub-article 1 states that every one (civilian, combatant or prisoner of war) has the right to protection against cruel, inhuman or degrading treatment or punishment. This provision shall apply even in case of armed conflict.**
 - Moreover, many of the **Constitutional provisions on human rights** can be invoked to provide protection to victims of armed conflict and thereby regulate the behavior of parties to an armed conflict.
- As the general provisions of the Constitution are to be enforced through specific laws, we need to consider some of them. Let us, then, discuss the FDRE criminal law, which gives effect to international treaties and constitutional provisions relating to IHL.

C) The FDRE Criminal Code

- The FDRE Criminal Code was promulgated in 2004 by Proclamation No. 414/2004 and has taken into consideration the Constitution as well as IHL treaties ratified by Ethiopia.
- The Criminal Code of Ethiopia, among other things, provides a list of prohibited behavior during armed conflict (war) and provides the corresponding punishment.
- **By imposing criminal responsibility on persons who violate it, the criminal law is meant to ensure the respect of the laws of war.**
- **The Special Part of the Code** (Part II), in its title II (starting from Article 269), deals with crimes of violation of international law.
 - **This part of the Code is intended to ensure the enforcement and respect of international law including but not limited to international humanitarian law.**
- As these crimes can be committed during an armed conflict, the provisions are relevant in regulating the behavior of parties to the conflict.

- **The Criminal Code of Ethiopia penalizes;**

- 1) Genocide - [Article 269](#);
- 2) War crimes against the civilian population- [Article 270](#);
- 3) War crimes against wounded, sick or shipwrecked persons or medical services - [Article 271](#);
- 4) War crimes against prisoners and interned persons- [Article 272](#);
- 5) Pillage, piracy and looting- [Article 273](#);
- 6) Provocation and preparation regarding the above listed crimes- [Art. 274](#);
- 7) Dereliction of duty towards the enemy- [Article 275](#);
- 8) Use of illegal means of combat- [Article 276](#);
- 9) Franc Tireurs- [Article 278](#);
- 10) Maltreatment of, or dereliction of duty towards, wounded, sick or prisoners- [Article 279](#);
- 11) Denial of justice- [Article 280](#);
- 12) Hostile acts against international organizations (including the ICRC)- [Article 281](#);
- 13) Abuse of emblems and insignia of international humanitarian organizations- [Article 282](#);
- 14) Hostile acts against the bearer of a flag of truce- [Article 283](#);

The FDRE Criminal Code...ctd

- It can also be argued that some provisions of Title III of Part II dealing with military crimes and crimes against the defense forces and the police are relevant to IHL.
- Generally, the special part of the Criminal Code is aimed at protecting of victims of warfare as well as regulating means and methods of warfare. By so doing, the provisions are intended to ensure the respect of the minimum standards of conduct set under international humanitarian law.
- In addition to the criminal law, the proclamation establishing the Defense Force and the military manual foreseen therein are relevant in understanding the rules that regulate warfare. But clear understanding of the scope of laws of war applicable under Ethiopian legal system requires further research.

Application of IHL in Ethiopia

- As discussed earlier, to a certain extent, the rules of IHL are incorporated into the Ethiopian legal system through the Constitution and the Criminal Code sanctions their violation. However, their practical application is a subject to be explored.