

UNIT 14.- INTERNATIONAL PROTECTION OF HUMAN RIGHTS

1.- GENERAL ASPECTS. 2. THE PROTECTION OF HUMAN RIGHTS AT THE UNIVERSAL LEVEL: THE WORK OF THE UNITED NATIONS. A) THE UNIVERSAL DECLARATION OF HUMAN RIGHTS OF 1948. B) THE 1966 INTERNATIONAL COVENANTS ON HUMAN RIGHTS. PROVISIONAL MEASURES. C) OTHER UN HUMAN RIGHTS CONVENTIONS. D) SPECIAL PROCEDURES FOR THE PROTECTION OF HUMAN RIGHTS. 4. PEACEKEEPING OPERATIONS. 3. INTERNATIONAL PROTECTION OF HUMAN RIGHTS AT THE REGIONAL LEVEL. A) THE WORK OF THE COUNCIL OF EUROPE. B) THE WORK OF THE EUROPEAN UNION. C) THE WORK OF THE OAS. D) THE WORK OF THE AU. 4. THE PROTECTION OF VICTIMS OF ARMED CONFLICTS. A) VICTIM PROTECTION. B) THE APPLICATION OF IHL



Esta obra está protegida con una [Licencia Creative Commons Atribución-NoComercial-SinDerivar 4.0 Internacional](https://creativecommons.org/licenses/by-nc-nd/4.0/).

1.- General aspects

- Definition: essential attributes of persons that are inherent to their nature and dignity.
 - ❖ Classical IL: treatment of its nationals by a State was part of its exclusive national competence, which was not subject to international control. BUT the treatment of foreigners by a State was regulated by IL (diplomatic protection).
 - ❖ After World War II: Realisation of two important facts and radical change.
 - ✓ In many cases it is the State itself that is the first and most important violator of human rights.
 - ✓ Undeniable relationship between respect for human rights within States and the maintenance of peace in the international community.
- Era of the United Nations: the protection of human rights has progressively become a priority objective of contemporary international law, and numerous international standards have been developed, sometimes also including mechanisms to ensure their implementation.
 - ❖ This matter no longer falls within the exclusive domestic jurisdiction of States
 - ❖ No longer covered by the provision contained in Article 2, 7 UN Charter of no intervention.
- Status of IHR:
 - ❖ [ICJ 1970 Barcelona Traction, Light and Power Company case](#) (Belgium v. Spain): obligations erga omnes.

- ❖ ILC works on State responsibility: international norms relating to the protection of human rights are part of the global "public order" in the contemporary international community.
- Composition: Traditionally, there has been a distinction between civil and political rights (CPR) and economic, social and cultural rights (ESCR).
 - ❖ CPR impose essentially negative obligations on the State, which can be guaranteed at any time and place.
 - ❖ ESCR imposes essentially positive obligations on the State, whose realization depends more on the development conditions of each country, and therefore cannot be subject to the same guarantee mechanisms as the former.

The catalog of internationally recognized human rights has expanded, with the appearance of new categories of rights such as the so-called "collective human rights" (the rights of peoples) and other rights sometimes called "solidarity rights" (right to development, right to the environment, right to peace, etc.).

BUT: ALL HUMAN RIGHTS ARE UNIVERSAL, INDIVISIBLE, INTERDEPENDENT AND INTERRELATED.

2. The protection of Human Rights at the universal level: the work of the UN

- UN Charter:
 - ❖ Preamble
 - ❖ Art. 1.3
 - ❖ Art. 13.1
 - ❖ Art. 55 (c)
 - ❖ Art. 56
 - ❖ Art. 76 (c)
- But: no enumeration of the rights...
- ECOSOC:
 - ❖ task of "making recommendations with a view to promoting respect for, and observance of, human rights and fundamental freedoms for all" (Art. 62.2).
 - ❖ mission of setting up "commissions ... for the promotion of human rights" (art. 68).
 - ✓ 1946: an intergovernmental subsidiary body, the Commission on Human Rights, composed of 54 Member States elected on the basis of a quota system designed to ensure equitable geographical representation.
 - ✓ 1993: GA established an Office of the High Commissioner for Human Rights, with a mandate to promote and protect the enjoyment and full realization of all human rights for all.

- ✓ 2006: GA Resolution 60/251 replaced the Commission on Human Rights with the Human Rights Council, an intergovernmental subsidiary body of the GA, composed of 47 Member States, which has assumed and expanded the functions assigned to the former Commission on Human Rights.
- Decisive work in the development of a series of universal legal instruments for the protection of human rights that have considerably expanded the corpus iuris gentium in this area+monitoring mechanisms.

a) *The Universal Declaration of Human Rights of 1948*

- Lacuna of the Charter on the enumeration of the human rights and fundamental freedoms was soon filled by the GA Resolution 217 (III) December 10, 1948 Universal Declaration of Human Rights:
 - ❖ Includes civil and political rights as well as economic, social and cultural rights.
 - ❖ Are recognized for all human beings (art. 1), “
 - ❖ without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (art. 2.1).
 - ❖ The rights recognized:
 - ✓ right to life to liberty and security;
 - ✓ prohibition of slavery, servitude;
 - ✓ prohibition of torture and cruel, inhuman or degrading treatment or punishment;
 - ✓ right to recognition as a person before the law;
 - ✓ right to equality before the law;
 - ✓ right to an effective remedy before national courts and right to a fair trial;
 - ✓ right to the presumption of innocence and the principle of legality;
 - ✓ right to respect for private and family life;
 - ✓ right to freedom of movement of persons;

- ✓ right to asylum in case of persecution;
- ✓ right to a nationality;
- ✓ right to marriage;
- ✓ right to property;
- ✓ right to freedom of thought, conscience and religion;
- ✓ right to freedom of opinion and expression;
- ✓ right to freedom of peaceful assembly and association;
- ✓ right to participate in the government of the country of which one is a national;
- ✓ right to social security and to the fulfillment of the economic, social and cultural rights indispensable for human dignity;
- ✓ right to work and to protection against unemployment;
- ✓ right to equal pay for equal work;
- ✓ right to just remuneration;
- ✓ right to organize;
- ✓ right to rest and periodic vacations with pay;
- ✓ right to an adequate standard of living;
- ✓ right to education;
- ✓ right to take part in the cultural life of the community;
- ✓ right to copyright protection;
- ✓ and right to the establishment of a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

- ❖ Value: As a resolution of the General Assembly, is not formally binding on the Member States, nor does it establish any legal mechanism to ensure the effective realization of the rights enunciated.
 - ✓ However, the Declaration is "undoubtedly the expression of the legal conscience of Humanity, represented in the UN and, as such, the source of a "higher law", a higher law whose principles cannot be disregarded by its members".
 - ✓ In practice: guideline of inspiration and a higher criterion of interpretation for the international or domestic bodies called upon to shape positive international human rights law.
- The human rights proclaimed in the UDHR were positivized by two International Covenants, both adopted on December 16, 1966 ([GA Resolution 2200 \(XXI\) of 16 December 1966](#)):
 - ❖ The International Covenant on Economic, Social and Cultural Rights (ICESCR).
 - ❖ The International Covenant on Civil and Political Rights (ICCPR).

b) The 1966 International Covenants on Human Rights

a) *The International Covenant on Civil and Political rights and its Additional Protocol.*

➤ [GA Resolution 2200 \(XXI\)](#)+ Additional Protocol on individual communications.

➤ Content:

- ❖ State duties/obligations: to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - ✓ Obligations of results.
 - ✓ Immediately enforceable (respect and protection).
- ❖ Rights recognized:
 - ✓ Collective right of peoples to self-determination.
 - ✓ Individuals rights:
 - the right of everyone to life;
 - the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
 - the prohibition of slavery, servitude and forced labor;
 - the right to liberty and security of person;
 - the right to humane treatment in the case of deprivation of liberty;
 - the prohibition of imprisonment for debt;

- the right to freedom of movement of persons;
 - the prohibition of arbitrary expulsion of aliens;
 - the right to a fair trial and the presumption of innocence;
 - the principle of legality;
 - the right to recognition of the legal personality of every human being;
 - the right to respect for private and family life;
 - the right to freedom of thought, conscience and religion;
 - the right to freedom of expression;
 - the prohibition of propaganda for war and advocacy of national, racial or religious hatred;
 - the right to peaceful assembly;
 - the right to freedom of association;
 - the right of children to protection and nationality;
 - the right to political participation
 - equality before the law,
 - The right of ethnic, religious or linguistic minorities to have their own cultural life, to profess and practice their own religion and to use their own language.
- ❖ Monitoring compliance with the obligations (Part IV): establishment of an independent monitoring body: the Human Rights Committee, composed of 18 independent persons that can carry out its work through various procedures.
- ✓ Reports system: States have to submit reports to the Human Rights Committee on the measures they have adopted that give effect to the rights recognized in the Covenant. The Committee will study the national reports and make general comments. The Committee's comments will be communicated to the States parties and may be communicated to the ECOSOC, which will include a summary of these comments in its report to the GA.

✓ Communications system:

- The Covenant also provides that the Committee may receive and consider "communications" from a State party alleging that another State party is not fulfilling its obligations under the Covenant, provided that both States have recognized the competence of the Committee in a declaration to that effect.
 - Procedure: the Committee will make its good offices available to States with a view to reaching a friendly settlement. If a friendly settlement is not reached, the Committee shall prepare a report containing a brief statement of the facts and any written or oral submissions made by the States parties concerned and, with the prior consent of the parties concerned, the matter may be referred to a Special Conciliation Commission which shall prepare its findings and observations. A summary of these proceedings shall be included in the Committee's report to the GA.
- The Optional Protocol to the International Covenant on Civil and Political Rights, adopted together with the Covenant on 16 December 1966, recognizes the competence of the Committee to receive and consider communications from individuals whose rights have been violated by the State under whose jurisdiction they fall, provided that State is a party to the Protocol.
 - When an individual communication is submitted, the Committee examines the allegations contained in the communication and any explanations or statements by the State and submits its observations to the State Party concerned and to the individual, including a summary in its annual report to ECOSOC and the GA.

b) *The International Covenant of Social, Economic and Cultural Rights*

➤ [GA Resolution 2200 \(XXI\)](#).

➤ Content:

- ❖ State duties/obligations: to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
 - ✓ Obligations of conduct.
 - ✓ are not always immediately realizable and therefore not directly enforceable
- ❖ Rights recognized:
 - ✓ Collective right of peoples to self-determination.
 - ✓ Individuals rights:
 - the right of everyone to work,
 - to enjoy just and favorable conditions of work,
 - to form and join trade unions,
 - to social security,
 - to an adequate standard of living,
 - to the enjoyment of the highest attainable standard of physical and mental health,
 - to education
 - to take part in cultural life.
- ❖ Monitoring compliance procedures:

- ✓ Reports system: Commitment of States Parties to submit reports to ECOSOC on the measures they had adopted and the progress made, in order to ensure respect for the rights recognized.
 - 1985: ECOSOC established a Committee on Economic, Social and Cultural Rights, composed of 18 independent persons with competence in the field of human rights, which is responsible for considering the reports submitted by States Parties.
 - The results of the Committee's examination and the comments of other competent bodies are forwarded to the ECOSOC, which in turn submits periodic reports to the GA with "general recommendations" to ensure respect for the rights recognized in the Covenant.
- ✓ Communications system of the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights ([GA Resolution 63/117 of December 10, 2008](#)): The Protocol establishes three modalities of action before the Committee on Economic, Social and Cultural Rights:
 - Communications submitted by individuals or groups of individuals concerning violations committed by States Parties to the Protocol. In this case, the Committee shall use its good offices to bring about a friendly settlement and, if this is not achieved, shall forward its views and recommendations to the parties concerned, to which the State concerned shall reply in writing within six months, indicating the measures taken.
 - Communications in which a State party alleges that another State party is not fulfilling its obligations under the Covenant (such communications may be submitted only when the States concerned have deposited a declaration recognizing the competence of the Committee to that effect). In such a case, the Committee shall exercise its good offices to seek a friendly settlement and, if a friendly settlement is not reached, shall prepare a report setting out the relevant facts and statements made by the parties.

- Information from any reliable source concerning grave or systematic violations by a State Party to the Protocol. In this case, the Committee may carry out an "inquiry procedure" with respect to States that have recognized this competence by means of an additional declaration. The results of the inquiry procedure may be summarized in the Committee's annual report to ECOSOC.

c) *Other UN Human Rights Conventions*

- UN effort to codify human rights through numerous international treaties on specific subjects:
 - ❖ Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;
 - ❖ Convention relating to the Status of Refugees of 1951 (and its 1967 Protocol);
 - ❖ Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966;
 - ❖ Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1978;
 - ❖ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;
 - ❖ Convention on the Rights of the Child of 20 November 1989;
 - ❖ International Convention for the Protection of All Persons from Enforced Disappearance of 2006.
 - ❖ Convention on the Rights of Persons with Disabilities of 2006.

- Many: specific mechanisms for monitoring implementation (bodies responsible for monitoring compliance with human rights obligations assumed by States).
 - ❖ [GA Resolution 68/268 on April 9, 2014](#), on Strengthening and improving the effective functioning of the human rights treaty body system.

d) Special procedures for the protection of Human Rights

- Other additional protection procedures developed at the UN, established by resolutions of the competent bodies and not by human rights treaties:
 - ❖ ECOSOC resolution 1235 (XLII) established a procedure to study situations revealing gross and flagrant violations of human rights through the appointment of special rapporteurs or representatives or other special review bodies to prepare reports for subsequent consideration by the Human Rights Council.
 - ❖ The special procedure established in ECOSOC resolution 1503 (XLVIII) provides that the Human Rights Council may take cognizance of communications denouncing gross violations of human rights and initiate a confidential procedure ending with an ECOSOC report or an inquiry, if the State concerned agrees to this.
 - ❖ GA Resolution A/RES/60/251 on March 15, 2006, mandates the Human Rights Council to conduct a "universal periodic review" based on objective and reliable information on the fulfillment by each State of its human rights commitments, supplemented by an interactive dialogue with the country under review.

3. The protection of Human Rights at the regional level

a) The work of the Council of Europe

- Council of Europe: international organization created on May 5, 1949.
- Ideological community based on the triple pillar of parliamentary democracy, the rule of law and respect for human rights.
- Treaty system for the recognition and guarantee of human rights:
 - ❖ Key instrument: the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome-November 4, 1950) supplemented by sixteen additional protocols.
 - ✓ Obligations of State parties:
 - recognize the rights and freedoms enumerated in Part I of the Convention
 - "to everyone within their jurisdiction" (Art. 1)
 - obligations of result by virtue of which the rights recognized are immediately enforceable.
 - Essentially protects civil and political rights, although it also protects some rights of a social and cultural nature.
 - ✓ Rights recognized by the Convention:
 - The right of everyone to life;
 - the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
 - the prohibition of slavery, servitude and forced labor;
 - the right to liberty and security;

- the right to a fair trial;
 - the principle of legality;
 - the right to respect for private and family life;
 - the right to freedom of thought, conscience and religion;
 - the right to freedom of expression;
 - the right to freedom of peaceful assembly and freedom of association;
 - the right to marry;
 - the right to an effective remedy before a national authority in case of violation of the rights and freedoms recognized by the Convention;
 - The prohibition of discrimination.
- ❖ Amendment of Protocol 11: European Court of Human Rights (ECtHR) as the fundamental body for monitoring compliance with the obligations assumed by the States and guaranteeing the rights recognized.
- ✓ Composed of a number of judges equal to the number of States parties to the Convention (currently 47).
 - ✓ Genuine system of judicial guarantee of human rights through a Court competent to hear not only cases between States Parties, but also individual claims brought by natural or legal persons against the State that has violated their rights.
 - Procedure for individual applications:
 - Admissibility phase: Verify whether the alleged facts constitute a *prima facie* violation of the rights and freedoms recognized in the Convention and its Protocols; if the application meets the conditions of admissibility provided for in Article 35 (exhaustion...

- of domestic remedies, etc..).
- Admitted applications: Adversarial examination phase
 - settlement of the case. If this settlement takes place, the ECtHR issues a decision with a brief summary of the facts and the solution agreed upon by the parties.
 - If no amicable settlement is reached, the procedure continues until a reasoned judgment of the ECtHR declares whether or not there has been a violation of the rights recognized by the Convention and its Protocols.
- ✓ The judgments of the Court are final and binding, and must be complied with by the States and transmitted to the Committee of Ministers of the Council of Europe, which "shall ensure their execution" (Art. 46).
- ❖ The European Social Charter of 1961 + Additional Protocol to the European Social Charter of 1988 + the Protocol of Amendment to the European Social Charter of October 21, 1991 (not yet entered into force), and by the Additional Protocol to the European Social Charter Establishing a System of Collective Complaints of November 9, 1995. There is also a Revised European Social Charter of May 3, 1996.
- ✓ Original structure:
 - Part I contains an extensive list of rights that are considered only "as the objective of a policy which will pursue by all appropriate means, at both the national and international levels, the realization of the conditions necessary to ensure the effective exercise" of these rights.
 - Part II develops in detail the content and scope of the rights to be protected.
- ✓ Peculiar and complex protection technique (Part III): no uniformity in the obligations assumed.

- Each of the Contracting Parties undertakes, first, to consider Part I of the Charter "as a declaration setting out the objectives to be achieved by all appropriate means";
- Second, "to consider itself bound" by at least five of the seven specific articles contained in Part II;
- And, thirdly, "to be bound in addition" by such additional number of articles or paragraphs of Part II of the Charter as each Contracting Party may choose, provided that the total number of provisions by which a State is bound shall not be less than ten articles or 45 paragraphs, and it may optionally accept such additional number of articles or paragraphs as it may deem appropriate (Art. 20).
- ✓ Monitoring of compliance:
 - To the Secretary General of the Council of Europe: biennial report by State parties on the provisions accepted and (at the request of the Committee of Ministers) reports on the provisions not accepted.
 - To a Committee of Experts, established by the Charter.

b) The work of the European Union

-
- The founding treaties of the European Communities, adopted in the 1950s, did not include any explicit mention of human rights. Case law of the Court of Justice:
 - ❖ Evolution in the case law: fundamental rights of the individual underlie the general principles of Community law, respect for which is guaranteed by the Court of Justice" and that the safeguarding of these rights, "although inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community".
 - Lack of positivization:
 - ❖ Revisions of the treaties: references to HR.
 - ❖ Accession of the EU to the European Convention for the Protection of Human Rights (problems for accession).
 - ❖ EU own declaration of HR: EU Charter of Fundamental Rights of 2000.
 - Treaty of Lisbon: respect for human rights as one of the values on which the EU (art. 2 TEU). General objective of all policies.
 - ❖ Specific provisions on the regime of protection of human rights in the EU: Article 6 TEU.
 - ✓ The TEU has positivized human rights by incorporating "by reference" the Charter of Fundamental Rights of the European Union and establishing that it "shall have the same legal value as the Treaties".

- ✓ It has also confirmed that respect for human rights constitutes one of the values underpinning the EU and forms part of the general principles of law, respect for which is guaranteed by the Court of Justice of the EU.
- ✓ Furthermore, the TEU includes a clear mandate for the Union to accede to the European Convention for the Protection of Human Rights.
- ❖ Respect for human rights must be guaranteed in the EU Member States: Article 7 a preventive control mechanism for the risk of violation of the values set out in Article 2, as well as a sanction mechanism in the event of a "serious and persistent" violation of these values by a Member State.

c) *The work of the Organization of American States (OAS)*

- Charter of the Organization of American States (OAS), 30/4/1948: protection of human rights as one of its founding principles.
- American Declaration of the Rights and Duties of Man (2/5/1948) no conventional character.
- 1959: Inter-American Commission on Human Rights (IACHR 7 independent persons elected by the OAS Assembly), was created to promote respect for the human rights defined in the American Declaration.
- 22/11/1969: American Convention on Human Rights (Pact of San José).
 - ❖ Rights and freedoms that the States Parties undertake to respect and guarantee.
 - ❖ Judicial body for their protection: the Inter-American Court of Human Rights (IACtHR).
 - ❖ Supplemented by the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of November 17, 1988 (the Protocol of San Salvador) and by the Protocol to the American Convention on Human Rights to Abolish the Death Penalty of June 9, 1990.
- Amendment of the OAS Charter by the Protocol of Buenos Aires 27/2/1967: protection mechanisms:
 - ❖ IACHR:
 - ✓ may hear individual complaints against a State Party alleged to have violated the rights enshrined in the American Declaration or the Convention and also inter-State...

communications (States that have recognized the IACHR's competence).

- Seek a friendly settlement and, if no such settlement is reached, they will be the subject of a report that the Commission may decide to make public.
- ✓ Formulate recommendations to the governments of the OAS member states to adopt progressive measures in favor of human rights, as well as appropriate measures to promote due respect for those rights.
- ✓ Request the governments of the member states to provide it with reports on the measures they adopt in the area of human rights.

❖ IACtHR:

- ✓ Hear communications submitted to it by States that have accepted its jurisdiction for this purpose (Art. 62) and matters submitted to it by the Commission itself, which may refer to the Court individual or State communications that have not been resolved by means of a friendly settlement.
 - Judgments must be reasoned and are final and unappealable, and the Parties undertake to comply with them.
- ✓ Issue advisory opinions on matters submitted to it by OAS Member States/OAS organs.

d) The work of the African Union (AU)

-
- Organization of African Unity (OAU) (replaced by the African Union in 2000):
 - ❖ African Charter on Human and Peoples' Rights of June 27, 1981: accommodate the traditions specific to their continent and to reflect their particular conception of the human rights to be protected.
 - ✓ The States Parties recognize, on the one hand, human (or individual) rights and, on the other hand, the rights of peoples (not defined concept).
 - ✓ They recognize the rights, duties and freedoms set forth in the Charter, but do not assume an obligation of result or an immediately enforceable commitment. The States Parties appear to undertake only to adopt legislative or other measures to implement these rights, duties and freedoms; it is thus an obligation of conduct.
 - ✓ Body to monitor compliance: the African Commission on Human and Peoples' Rights.
 - To ensure the protection of human and peoples' rights under the conditions set out in the Charter.
 - To receive communications from States Parties to the Charter in the event that they have reasonable grounds to believe that another State Party has violated the provisions of the Charter.
 - To receive "other communications" relating to human and peoples' rights, other than those that may be submitted by States.

- Communications submitted will only give rise to the issuance of a non-binding report to be submitted to the Meeting of Heads of State and Government.
- ❖ Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (1998):
 - ✓ Hear all cases and disputes relating to the interpretation and application of the Charter and the Protocol, as well as all other relevant human rights instruments ratified by the States concerned (Article 3). The Court may hear applications submitted to it or may refer them to the Commission (Article 6).
 - The following may be parties before the Court: a) the Commission; b) a State Party that has submitted a case to the Commission; c) a State Party against which a complaint has been lodged; d) a State Party whose national has suffered a violation of its human rights; and e) African intergovernmental organizations. In addition, the Court may allow individuals and non-governmental organizations (NGOs) with observer status before the Commission to bring applications directly before it concerning States that have so accepted by a declaration to that effect (Article 5(3) and 34(6)).
 - ✓ Advisory function by issuing opinions at the request of an OAU Member State, the OAU itself, any organ of the OAU or an African organization recognized by the OAU, on any legal question relating to the Charter or any relevant instrument relating to human rights, provided that the subject matter of the opinion does not concern a case pending before the Court.

2.- The protection of victims in armed conflict

- Protection during armed conflict has two trends:
 - ❖ Development of international rules of conduct in warfare regarding means and methods of combat: *ius in bello (laws and customs of war)*.
 - ❖ Development of international conventions with a primarily humanitarian purpose of protect victims: *international humanitarian law*.
 - ✓ After the battle of Solferino, the insistent action of Henry Dunant led to the creation of the International Committee of the Red Cross (ICRC).
 - ✓ The adopting the Convention for the Amelioration of the Condition of Soldiers Wounded in the Field (Geneva, August 22, 1864), which was revised on several occasions and supplemented by other international treaties.
 - ✓ At present: the four Geneva Conventions, adopted on 12 August 1949, and the two Protocols additional to them, also adopted in Geneva on 8 June 1977:
 - The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I);
 - The Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II);
 - The Convention relative to the Treatment of Prisoners of War (Convention III);

- the Convention relative to the Protection of Civilian Persons in Time of War (Convention IV).
 - Protocols on the Protection of Victims of International (Protocol I) and Internal (Protocol II) Armed Conflicts.
- Because of its humanitarian purpose, international humanitarian law is closely related to international human rights law: conflict relations.

a) *Victim protection*

- The four Geneva Conventions are based on the provisions of conventions adopted in the 19th century and have a customary origin:
 - ❖ Content: provisions protecting combatants, including prisoners of war, the wounded, the sick and shipwrecked.
 - ❖ The protection of the civilian population during armed conflicts: Geneva Convention IV. Increase number of civilian casualties: 1977 Protocols (unequal protection).
 - ✓ Protocol I: victims of international armed conflicts.
 - ✓ Protocol II: victims of internal armed conflicts.
- i. *Provisions applicable in international armed conflicts (IAC).***
- Protections of Geneva Conventions+Additional Protocol I.
- Definition of IAC:
 - ❖ Art. 2 common to Geneva Conventions: Principle of effectiveness (1) cases of declared war or any other armed conflict arising between two or more High Contracting Parties; and (2) all cases of total or partial occupation of the territory of a High Contracting Party, even if such occupation meets with no military resistance.
 - ❖ 1977 Protocol: Broadened the definition including wars of national liberation (“armed conflicts in which peoples are fighting against colonial domination and foreign occupation and against racist regimes in the exercise of the right of peoples to self-determination”).

- Provisions protecting victims (protected persons or property) of international armed conflicts:
 - ❖ Some breaches are considered "**grave breaches**": war crimes.
 - ✓ In Geneva Conventions I and II: intentional murder, torture or inhuman treatment, including biological experiments, intentional infliction of great suffering or serious injury to body or health, destruction and appropriation of property not justified by military necessity and carried out on a large scale in an unlawful and arbitrary manner.
 - ✓ In Geneva Convention III: intentional murder, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, forcing a captive to serve in the armed forces of the enemy Power or depriving such captive of his right to a fair and impartial trial in accordance with the provisions of this Convention.
 - ✓ In Geneva Convention IV: intentional murder, torture or inhuman treatment, including biological experiments, wilful infliction of great suffering or serious injury to body or health, unlawful deportations and transfers, unlawful detention, coercing a protected person to serve in the armed forces of the enemy Power or depriving him of his right to a fair and impartial trial in accordance with the provisions of the present Convention, the taking of hostages, the destruction and appropriation of property not justified by military necessity and carried out on a large scale in an unlawful and arbitrary manner.
 - ✓ Protocol I: to endanger, by an unjustified act or omission, the health or physical or mental integrity of persons in the power of the adverse Party or who are interned, detained or otherwise deprived of their liberty on account of a situation referred to in Article 1; to subject such persons to any medical act not in accordance with generally recognized medical standards that would not apply in analogous medical circumstances to non-custodial nationals of the Party performing the

act; physical mutilations, medical or scientific experiments, removal of tissues or organs for transplantation, unless justified under the conditions indicated in Article 11.1; "any deliberate act or omission that seriously endangers the health or physical or mental integrity of any person in the power of a Party other than the Party on which he is dependent, whether it violates any of the prohibitions set forth in paragraphs 1 and 2, or fails to comply with the requirements described in paragraph 3; to launch an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such an attack will cause excessive loss of civilian life, injury to civilians or damage to civilian objects; to launch an attack against works or installations containing dangerous forces in the knowledge that such an attack will cause excessive loss of civilian life, injury to civilians or damage to civilian objects; making undefended localities and demilitarized zones the object of attack; making a person the object of attack knowing that he is hors de combat; making perfidious use, in violation of Article 37, of the sign of the Red Cross, Red Crescent or Red Lion and Sun or of other protective signs recognized by the Geneva Conventions or this Protocol; the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies or the deportation or transfer within or out of the occupied territory of the whole or part of the population of that territory, in violation of Article 49 of the Fourth Convention; the unjustifiable delay in repatriating prisoners of war or civilians; the practice of apartheid and other inhuman and degrading practices based on racial discrimination involving an outrage upon personal dignity; the targeting of clearly recognized historical monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and which have been accorded special protection under special agreements resulting in extensive destruction thereof, where there is no evidence that the adverse Party has used such property in support of the military effort and where such historic monuments, places of worship or works of art are not located in the immediate vicinity of ...

military objectives; depriving a person protected by the Geneva Conventions or referred to in paragraph 2 of this Article of his right to a fair and impartial trial.

ii. Provisions applicable in internal armed conflicts (iac).

- Protections in art. 3 common to Geneva Conventions+Protocol II
- Definition of iac:
 - ❖ Art. 3 common: In order not to be conflicts of an international character it is only required that the armed conflict does not involve two or more States and that the conflict arises in the territory of a State that is a Contracting Party to the Geneva Conventions.
 - ❖ Protocol II (reduced and fragmented the legal regimen): its provisions apply only to armed conflicts "taking place in the territory of a High Contracting Party between its armed forces and dissident armed forces or organized armed groups which, under the direction of a responsible command, exercise such control over a part of that territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."
 - ✓ Common Article 3 of the four Geneva Conventions of 1949 will apply to all internal armed conflicts.
 - ✓ Protocol II will apply only to internal armed conflicts involving the official armed forces of the State involved in the conflict.
- Provisions for the protection of victims of internal armed conflicts are inferior to that enjoyed by victims of international armed conflicts:
 - ❖ Minimum protection of common art. 3: Persons taking no direct part in hostilities, including members of the armed forces who 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, color, religion or belief, sex, birth or fortune, or any other similar criteria. They are prohibited, at any time and place: a) attacks on life and bodily integrity, especially murder in all its forms, mutilation, cruel treatment, torture and torture; b) hostage taking; c) violations of personal dignity, especially humiliating and degrading treatment; d) sentences handed down and executions without prior trial before a legitimately constituted court, with judicial guarantees recognized as indispensable by civilized peoples.

- ❖ Protocol II: Provision criminalizing certain "prohibited conduct" such as "a) attacks on the life, health and physical or mental integrity of persons, in particular homicide and cruel treatment such as torture and mutilation or any form of corporal punishment; b) collective punishments; c) hostage-taking; d) acts of terrorism; e) attacks on personal dignity, in particular humiliating and degrading treatment, rape, forced prostitution and all forms of indecent assault; f) slavery and slavery, in particular humiliating and degrading treatment, rape, forced prostitution and all forms of indecent assault; e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; f) slavery and the slave trade in all their forms; g) pillage; h) threats to perform the aforementioned acts" (art. 4).

b) The application of International Humanitarian Law

- Distinction between "grave breaches" (war crimes) and "other breaches" (Conventions and Protocol I):
 - ❖ With regard to "grave breaches" or "war crimes":
 - ✓ Search for persons accused of having committed or having ordered the commission of any of the "grave breaches".
 - ✓ Bring them before its own courts, regardless of their nationality.
 - ✓ To adopt the necessary legislative measures to determine the appropriate penal sanctions to be applied to persons who have committed or have given orders to commit the "grave breaches" set forth in each of the Conventions and in Protocol I.
 - ❖ As regards acts contrary to the remaining provisions of each of the four Geneva Conventions and Protocol I: to take "necessary" or "appropriate" measures to ensure that all acts contrary to those provisions cease.
- Persecution in domestic courts left situations in impunity: jurisdiction of international tribunals to try international crimes (certain acts or omissions committed by individuals that were particularly odious because they were contrary to the standards of civilization).
- Milestones in the process of defining and enforcing individual criminal responsibility before international tribunals for the commission of international crimes:
 - ❖ International Military Tribunals of Nuremberg and Tokio.

- ❖ UNSC acting under Chapter VII: International Criminal Tribunals for the former Yugoslavia and for Rwanda in 1993 and 1994: war crimes applicable in international armed conflict.
- ❖ Codification work of the International Law Commission, which led to the adoption of the Rome Statute of the ICC by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (ICC) on July 17, 1998.
- ❖ Creation of internationalized criminal tribunals with the establishment of the "Special Panels" in Timor Leste, the Special Court for Sierra Leone, the Extraordinary Chambers in Cambodia and the Special Tribunal for Lebanon were created.
- Establishment of the international responsibility of the individual for the commission of "international crimes", defined in the statute of each international tribunal, and enforceable before each tribunal in accordance with its own Statute.



Esta obra está protegida con una [Licencia Creative Commons Atribución-NoComercial-SinDerivar 4.0 Internacional](https://creativecommons.org/licenses/by-nc-nd/4.0/).