

International Humanitarian Law's Principles

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Abstract:

This paper deals with the content of the principles of International Humanitarian Law's (IHL) that all warring parties must respect and adhere to. Therefore, its concept and types will be discussed. Emphasis will be placed, in particular, on the two sections of the humanitarian principles: those deriving from Geneva law, and those emanating from the Hague Law, whatever their connection to the use of military force or the conduct of hostilities.

Keywords: International Humanitarian Law's Principles; General principles; Specific principles; Humanitarian principles; humanitarian action.

Introduction

No armed conflict or war is devoid of dead, wounded, prisoners, and displaced persons, nor of looting, and destruction. And the international community, with the aim of mitigating the effects of armed conflicts, has sought, since ancient times, to regulate and legalize the conduct of these conflicts by establishing humanitarian legal rules that began in the form of moral rules, which over time turned into norms and then ended up after their codification in international agreements, into rules that are affected and are still affected by, modification and development steadily by the field practice that resulted in the stability of a set of legal principles that are a source of IHL that still enriches. These diverse principles, which are constantly evolving, are one of the main reasons for the enrichment of humanitarian law, which requires development and innovation as a result of the tremendous technological progress.

This explains why these principles are of great importance within the system of IHL.

These legal principles are what grant legitimacy to military operations, through which each party seeks to compel the other party to abandon its will and surrender to the enemy's demands. The use of military means and warlike methods will not be legitimate unless carried out within the framework of those legal principles.

In fact, the legal principles on which IHL is based and which are part of it are many, scattered, diverse and not specified in a text or specified in a list.

Since this was the case, the researcher had to ask a very important question: What are the principles on which IHL is based, what are its sections, what are their types, and what are they meant to begin with?

Hence, this study aims to:

- Highlighting the meaning of the principles of IHL after determining the meaning of what is meant by this law.
- Determining the sections and types of principles on which the IHL is based.

This is what the researcher is trying to answer by using scientific methods imposed by the nature of the subject; therefore, it is imperative to use the descriptive approach to extract and review the principles and analytical approach for interpretation, criticism and conclusions.

The answer to the problem raised will be in two parts. In the first, we will discuss: Introducing the principles of IHL and in the second part humanitarian principles.

The first Section: Introducing the principles and types of IHL.

We begin this section by talking about what is meant by the principles of IHL before addressing the types of these principles.

Article I: What is meant by the phrase “principles of IHL1

This phrase consists of two parts: the word “principles” and the phrase “IHL”.

Therefore, it is necessary to define IHL first.

Paragraph I: Definition of IHL (IHL).

IHL is a set of rules that seek to limit the humanitarian consequences of armed conflict. Sometimes referred to as the law of armed conflict or the law of war. The primary purpose of IHL is to restrict the means and methods of combat that may be used by parties to a particular conflict, and to ensure the protection and humane treatment of persons who are not or have ceased to take direct part in hostilities.

Concisely, IHL incorporates the rules of international law that define the minimum humanitarian standards that must be respected in any situation of armed conflict¹

IHL is the body of conventional and customary law applicable in times of armed conflict and seeks to limit the effects of such conflicts by restricting the use of means and methods of warfare. They are intended, for humanitarian reasons, to protect civilian objects and persons, who are not taking a direct or active part in hostilities or who have ceased to take a direct or active part in hostilities or who have come under the authority of the belligerent parties.

IHL, like all natural and human sciences, has fundamentals and axioms on which it is based and forms the starting point for its application.

Therefore, this law, like other legal branches, is based, in the absence of a legal text, on a set of principles that can evolve according to the development of armed conflicts.

Paragraph II: The Meaning of the Principles of IHL.

The meaning of the principles of IHL. The word "principles" is the plural form of the word "principle" and means the law or the basis on which our ideas are based or the rule that must be worked with or that everyone must follow, such as the laws that are observed in nature or the way in which a certain system is built, and the word "law" is a name attributed to the principles.

Proceeding from the above, the legal principle can be defined as the rule of the legal rule that can be applied to another legal rule. So it becomes the application of the principle in case of absence of the rule. the judge applies it and it takes the place of the legal rule.

However, despite the importance of the legal principles, it is difficult to determine their meaning because they express the vitality of the legal system and a tool for its development.

The principles that derive from the detailed provisions of the law and that can serve as a basis for deriving detailed provisions for matters for which no special provision has been made.

Some believe it as a set of rules characterized by their general nature, recognized by national legislations of most countries regardless of the legal system they belong to, while ; others view it as essential because it dominates a set of detailed rules branching from it, meaning that they are guiding and motivating rules for other rules.²

After these basic definitions, we can say that the principles of IHL are the general principles that a judge can apply in the field of this law when a case is presented to him and he does not find an applicable legal rule. The principle takes on the role of a legal rule.

So, IHL principles are therefore those that can be applied in the absence of legal rules during armed conflict.

Since IHL is a branch independent of other branches of public international law, it naturally has its own principles, as well as other principles related to public international law that it shares with other branches of international law.

Hence, we conclude that IHL is based on two types of principles. "General principles" like other branches of international law and "Special principles" that belong to it alone as a law independent of other branches of international law. Each of these types of principles is discussed below.

Article II: Types of principles of IHL

As already noted, IHL is based on two types of principles.

The first is general and the second is specific.

Paragraph I: General Principles of IHL.

The general principles of IHL are the principles on which this law is based, like other branches of public international law.

Those principles are characterized by generality and has been approved by different legal systems and is valid for all domestic and international legal systems.

Every branch of public international law, including IHL, is based on it, of course, because it is an integral part of public international law.

The Statute of the International Court Justice³ has referred to it as "general principles of law recognized by civilized nations" as an independent source of public international law.

However, if there is no agreed definition or list of these general principles, their essence lies in all the principles recognized in evolving national legal systems.

We mention but are not limited to, some of them such as:

The principle of human self-immunity, which stipulates that an attack on the life of those who do not participate or are no longer able to participate in hostilities.

The principle of preventing various forms of torture, which obligates any enemy subject under his authority not to force or coerce him into providing any type of information or data about them unless they provide it voluntarily.

The principle of respect for honour, family rights, belief, and traditions, the principle of respect for legal personality, and the principle of ensuring individual property⁴.

The principle of the right of peoples to self-determination, which is considered one of the most important legal principles in public international law, as friendly relations between countries depend primarily on it.

The principle of equality before the law, which states that individuals are equal before the law and therefore there must be no discrimination between them when the law is applied to them. IHL has emphasized this

principle when ensuring protection for victims of armed conflicts. It requires that all persons protected under IHL be treated humanely and without discrimination.

There are many other principles that together constitute general legal principles of the domestic legal system that have been transferred to the field of international law due to their applicability to cases and topics regulated by public international law. Maurice Aubert referred to them as principles common to the French Declaration of the Rights of Man and of the Citizen of 1789 and IHL⁵.

It is worth noting that these principles do not have a prominent role in implementing IHL due to the difficulty of defining them with sufficient precision. But once formally defined, they can be of crucial importance because they lead to independent international obligations⁶.

It is worth noting that these general principles of IHL apply in times of peace and war, unlike the specific principles of IHL that apply only in times of armed conflicts.

Paragraph II: specific Principles of IHL.

These special principles concern only IHL because they are independent of other branches of international law. They apply only in the event of armed conflict. Unlike the general principles of international law which apply in times of peace and war.

These special principles are not considered an independent source of this law as much as they express conventional and customary legal rules. It is distinguished by the fact that it has been established as international norms and established in international agreements related to this law. Its obligation lies in the obligation⁷ of the legal text in which it is based⁷.

So, the principles of IHL are two types of principles: a specific type of IHL, which are the specific principles of this law, on which it is alone based, without other branches of general international law, and a general type which it is based on IHL, along with other branches of public international law.

The principles of IHL are of two types: a type specific to this law that is based on it alone and not on other branches of public international law, and a general type that is based on it alongside other branches of public international law.

The specific principles of IHL differ from its general principles, but they overlap with the term "humanitarian principles", which sometimes overlaps with them and sometimes differs from them because it has two meanings: one broad and the other narrow. If its broad meaning means the specific principles of IHL themselves, its narrow meaning is different, as it means "the principles of humanitarian action", which are the principles designated to guide the work of relief organizations and agencies in armed conflicts.

In the second section, we will discuss in detail the humanitarian principles in their broad sense, after delving into their narrow meaning.

The second Section: humanitarian principles.

Humanitarian principles, in their broad sense: As we mentioned, they are the same as the specific principles of IHL, and they represent a summary of this law (IHL). Therefore, they are considered the core of the law of armed conflict. This is what prompted us to discuss it at length in this regard.

They are easier to comprehend and concise in content than the Convention's legal articles⁸. In their entirety, they are either principles that express the essence of the law, principles that are deduced from the context of the legal text itself, or principles that were explicitly formulated in international agreements after their emergence from international norms⁹.

In fact, these principles are many and varied. Specialists have differed in dividing and defining it. Some have divided it, based on the integration of IHL and human rights law, into the principles of "Hague Law" and "Geneva Law."¹⁰ Some others also divided it, based on nature, into a tripartite division represented by basic principles, general principles, and other principles¹¹.

These humanitarian principles, on which IHL is based and seeks to disseminate, are all considered basic principles of this law because they establish the guidelines that can be resorted to in the absence of a text. It

represents an easy-to-disseminate summary of IHL and is even considered a skeleton, as the jurist Jean Pickett described it¹².

The International Court of Justice has mentioned them as basic principles, in more than one document, and has even divided them into three sections despite the instability of the nomenclature between “basic general principles of humanitarian law¹³” and “main principles.¹⁴”

It was divided as Basic principles relating to the conduct of hostilities, Basic principles governing the treatment of persons who fall into the power of an adversary, Basic principles related to the implementation of IHL¹⁵.

But we can divide these humanitarian principles into two parts: those emanating from Geneva law and those inspired by The Hague Law.

Article I: principles of Geneva law

They can be divided into two types. Principles concerned with the implementation of IHL, and Principles related to the treatment of persons and the management of the work of relief agencies and organizations.

Paragraph One: Principles related to the implementation of IHL.

The advisory opinion on the legality of the threat or use of nuclear weapons defined the basic principles related to the implementation of IHL as three principles: the obligation to respect and ensure respect for IHL, the provision of assistance, and in addition to the principle of the prohibition of genocide, which we preferred to include in the principles related to the conduct of hostilities.

Thus, the principles related to the implementation of IHL are represented in two principles. They are the principle of the obligation to respect and ensure respect for IHL and the principle of providing assistance.

1/ The principle of the obligation to respect and ensure respect for IHL.

This principle is expressed by the First Additional Protocol of 1977, as well as the First Common Article of the Geneva Conventions of 1949, which stipulates that the High Contracting Parties undertake to respect this Convention and to guarantee its respect in all circumstances.

2/ The principle of providing humanitarian assistance.

Humanitarian assistance is an effective and practical means of ensuring respect for IHL.

Therefore, we find the international community appreciating the meaningful measures taken by national and international agencies and international governmental and non-governmental organizations in order to provide humanitarian assistance.

The International Institute of Humanitarian Law also recognizes the necessity of taking the necessary measures to provide relief to people during armed conflicts.

This Institute believes that this principle requires respect for the sovereignty of states and the principles of solidarity and international cooperation, which are essential elements of the right to humanitarian assistance¹⁶.

This principle requires providing assistance to everyone who needs it, regardless of their religious, ethnic, or sexual affiliation... Rather, people must be helped impartially and without discrimination.

Paragraph two: Principles related to humanitarian action and the treatment of persons

We find the basic rules regarding the treatment of persons who fall into the hands of the enemy in Common Article 3 of the four Geneva Conventions of 1949, which is considered a mini-treaty within the conventions because it includes the basic rules of the Geneva Conventions in a condensed form. It demands that all persons detained by the enemy be treated humanely and not be discriminated against or subjected to harm. Therefore, the basic principles for the treatment of persons under enemy authority are based on the right of the person under enemy authority to humane treatment **without discrimination**. It is based on the **principle of humanity** and the principle of non-discrimination.

1/ The principle of humanity

IHL imposes the principle of HUMANITY as a practical right at the heart of conflict to reconcile military and human imperatives.

The principle of humanity of IHL constitutes the minimum level of humanitarianism that applies at all times and in all circumstances, and which is accepted even in countries that are not party to the conventions, because it expresses the prevailing custom among peoples.

This principle of humanity was stipulated in Article 3 common to the four Geneva Conventions, which constitutes a mini-agreement within the conventions that includes the basic rules of the Geneva Conventions in a condensed form, which constitutes a remarkable advance because it applies to non-international conflicts and includes for the first time cases of non-international armed conflicts. It is so because none of its provisions may be excluded, especially its demand for humane treatment of all persons detained by the enemy and not to discriminate against them or expose them to harm. It also specifically prohibits murder, mutilation, torture, cruel, inhuman and degrading treatment, hostage-taking and unfair trial.

The International Court of Justice has derived from this principle the obligations of IHL required in times of peace as well as in times of armed conflicts. The obligation to notify marine minefields is imposed by IHL on states not only in times of armed conflicts but also in times of peace¹⁷.

The Court also argued, based on this principle, that the principles contained in Common Article 3 are binding in all armed conflicts, regardless of their legal classification and whatever the treaty obligations of the parties to the conflict¹⁸.

The International Criminal Tribunal for the Former Yugoslavia has decided that humanitarian considerations are an illustration of one of the general principles of international law that must be used when interpreting and applying the broad international rules provided by treaty law¹⁹.

2/ The principle of non-discrimination

The provisions of IHL prohibit discrimination between persons, as well as the rules of customary international law as well as some international treaties and other international instruments. As well as the legislation of some countries.

Common Article 3 of the Geneva Conventions provides examples of the harmful discrimination it prohibits. It prohibits “any adverse discrimination based on race, colour, religion, belief, sex, birth, wealth or any other similar criteria.”

The principle of non-discrimination is also one of the basic principles on which the Red Crescent and Red Cross movements focus.

The practice of States has enshrined Rule Eighty-Eight of the Rules of Customary International Law²⁰, prohibiting unfair discrimination in the application of IHL on the basis of race, colour, sex, language, religion or belief, political or other opinions, national affiliation or social status, wealth, birth or other status, or on any other similar criteria of practice that are attended by both law and custom.

The provisions of IHL also emphasize non-discrimination. According to Additional Protocol I, “the practice of apartheid and other methods based on racial discrimination, contrary to humanity and professionalism, and which would undermine personal dignity” are grave violations²¹.

With regard to international treaties and other international instruments in which racial discrimination constitutes a crime against humanity, we mention the International Convention for the Suppression and Punishment of the Crime of Apartheid²². The Statute of the International Criminal Court²³.

As for the legislation of countries whose legislation prohibits racial discrimination as a crime against humanity, we mention, for example, Australia, Canada, the Congo, Mali, New Zealand, and the United Kingdom. The legislation of many countries also includes this rule, such as Armenia, Belgium, Canada, and Colombia.

Article II: principles of Geneva law

The principles inspired by the Hague Law can also be divided into two types. The first type is the principles related to the use of military force. and principles for the conduct of hostilities.

Paragraph One: Principles related to the use of force

Since the use of military force, which is the most important feature of armed conflicts, is lawful and legitimate when exercised within the rules of engagement that must be followed within the framework of military necessity, taking into account the principle of proportionality, the principles of **military necessity** and **proportionality** are considered two fundamental principles compared to the other basic principles of IHL because of their connection to military force.

Therefore, those principles must be taken into account when using legitimate violence within the rules of engagement.

1/ The principle of military necessity

This principle imposes to conflict's parties to carry out military operations through the use of means and methods of combat within the limits of forcing the enemy to abandon his will and surrender to the will of the other party. Therefore, the use of military equipment, plans or tricks in armed conflict that would, for example, annihilate the enemy is considered as an illegal act²⁴. Meaning that the use of combat means and methods of warfare must be within the limits required by military necessity.

The preamble to the St. Petersburg Declaration of 1868²⁵ states that the only legitimate purpose of states during war is to weaken the enemy's military forces by isolating as many men as possible from the fight. It stated that the use of weapons that would unnecessarily aggravate the suffering of men cut off from the fight or lead inevitably to their killing is an exceeding of the desired goal and is a violation of the laws of humanity²⁶.

Therefore, a balance must be made between military necessity and humanitarian necessity²⁷.

That is, it is permissible to use only the means of coercion necessary to achieve the goal of war without any additional unnecessary violence. Therefore, all violence that is not necessary to achieve this goal is violence that has no purpose²⁸.

2/ The principle of proportionality

This principle is a fundamental principle of IHL because it focuses on balancing humanitarian considerations and military necessity. The combatant is not permitted to use it as a justification for the arbitrary use of excessive force. It restricts the use of force to a defensive action proportional to the aggression occurring. It also imposes certain restrictions, such as prohibiting methods of warfare that cause unnecessary suffering, and protects the civilian population from indiscriminate attacks and destruction of their private property.

IHL requires combatants to respect this principle, which is one of its most prominent principles, as it is based on seeking to spare civilians the negative effects of armed conflicts and limit grave violations in order to alleviate the suffering of those affected.

What is meant by this principle is the commitment to use weapons that are appropriate to the circumstances surrounding military operations by balancing the military advantage that will be achieved as a result of military action and other humanitarian considerations, especially when a civilian target turns into a military target due to the concealment of a weapon or ammunition or due to the disappearance of fighters in a civilian place, for example. Although this place has become a military target, the law requires the combatant to apply the principle of proportionality.

This principle also requires restricting the state's right to use the means and methods it wants to achieve its victory over the opponent. It requires it to use what is appropriate for its purpose without causing excessive or unnecessary damage.

Therefore, this principle requires the warring party not to exceed, when undertaking military actions against the enemy it is fighting, the severity and extent of the armed attack launched by this enemy and the seriousness of the threat it represents²⁹.

According to this principle, and since the primary goal of armed conflict is to weaken the enemy's power, not to annihilate him, or to harm the environment and surroundings, it is not permissible for one of the parties

to the conflict to use nuclear weapons, in the ongoing armed conflict between the two parties, if the other party is using conventional weapons³⁰.

The matter is subject to this principle when it is not possible to avoid causing incidental damage among civilians or between civilian objects. Therefore, decision-makers must refrain from launching the attack, or at least suspend it if it is expected that it will cause incidental loss of civilian lives or damage to their property that is in excess of what is expected from the tangible and direct military advantage³¹.

Therefore, today this principle has become part of modern strategies that are based on using the minimum in armed conflict because Human genocide does not contribute to achieving military victory³².

Paragraph Two: Principles relating to the conduct of hostilities.

The Advisory Opinion on the Legality of the Threat or Use of nuclear weapons identified three basic principles relating to the conduct of hostilities: the **principle of distinction**, the principle of **prohibition of causing unnecessary suffering**, and the principle of the Martens requirement.

1/ The principle of discrimination

This principle is one of the fundamental principles of IHL. It basically means distinguishing between two matters during hostilities. The first issue relates to the distinction between combatants and civilians (i.e. non-combatants), because military actions may only be directed against military personnel. The second issue is related to the distinction between military installations or military objectives on the one hand and civilian installations or civilian objects on the other hand³³

According to the advisory opinion of the International Court of Justice³⁴, the "principle of distinction" is considered the first of the main principles forming the fabric of IHL. The International Court of Justice considers that the principle of distinction between combatants and non-combatants "aims to protect the civilian population and civilian objects and establishes the distinction between combatants and non-combatants. States

should not make civilians the target of attack, and must therefore not use weapons that do not distinguish between civilian and military objectives.”³⁵

Professor Fritz Kalshugen believes that the principle of distinction between combatants and non-combatants is a cornerstone of IHL ³⁶.

This principle emerges from the basis of IHL, represented by the postulate that the only acceptable goal in times of armed conflict is to weaken the enemy’s military capabilities.

The Saint Petersburg Declaration of 1868 is considered the first to embody this principle. Then the legal rules in the Conventions came to confirm this principle. It was stipulated in the Annex to the Fourth Hague Convention of 1907 regarding respect for the laws and customs of war on land in Article Twenty-Five (25), then the Ninth Hague Convention on Bombardment by naval forces in wartime in Article 1 as well as the Hague Rules of 1923 in Articles 22 and 24.

2/ The principle of prohibition of causing unnecessary suffering.

It is known that when countries wage wars, they depend on human and material resources. In order to weaken the enemy's human resources, states resort to one of the available and effective means to paralyze the enemy's power, namely killing, wounding, assault and capture. If it is possible to weaken the enemy by arresting members of its armed forces and capturing them, then capture is preferable to wounding and killing, and if wounding achieves the state’s goal of paralyzing the enemy’s ability and forcing it to surrender, then wounding will be preferable to killing³⁷, and so on.

Therefore, the international community resorted to the prohibition of causing unnecessary suffering, or if you like, the prohibition of inflicting unnecessary suffering.

The meaning of this principle of prohibition of causing unnecessary suffering, which the International Court of Justice considers to be the main principle related to the conduct of hostilities, and the second that forms the fabric of IHL³⁸, is the prohibition of the use of weapons that cause serious injury or unjustified suffering.

The meaning of the prohibition of causing unjustified pain to combatants is the prohibition of the use of weapons that, for example, cause harm to them or aggravate their pain in vain. That is, states do not have absolute liberty to choose the means they use³⁹.

It was mentioned in Article 23 (e) of the Hague Regulations of 1899 and 1907.

As mentioned in Article 35 (2) of the First Protocol of 1977 which prohibits the use of weapons, missiles, materials and means of combat that are likely to cause unnecessary injury or suffering.

Conclusion

We conclude by listing some suggestions after presenting the research results, which are as follows:

The legal principle is the rule of the legal rule that is applied in the absence of the latter. It is the basis upon which one relies when deriving the detailed ruling on the issue for which no special ruling has been provided.

There are two types of principles of IHL. One of them is general, on which all branches of international law are based, which are the general principles of IHL, and the other is specific to IHL, called the specific principles of IHL.

The humanitarian principles or principles of IHL, which are considered the core of the law of armed conflict, can be divided into two parts: the principles of Geneva law and the principles of The Hague law.

The principles of Geneva law relate either to the implementation of IHL, which is the principle of the obligation to respect and ensure respect for IHL and the principle of providing humanitarian assistance, or to humanitarian action and the treatment of persons represented by the principle of humanity, the principle of non-discrimination, the principle of integrity and the principle of neutrality.

The principles of the Hague Law relate either to the use of force, which is the principle of military necessity and the principle of proportionality, or to the management of hostilities, which is represented by the principle of

distinction, the principle of prohibiting the infliction of unnecessary suffering, the principle of the Martens Clause, and the principle of prohibiting genocide.

Based on the above, the following can be suggested:

To limit the effects of armed conflicts and protect objects and persons under the authority of warring parties, everyone should pay attention to the principles of IHL. Especially on:

Member states of the Geneva Conventions, educating their citizens about the importance of these principles.

All those responsible for implementing the rules of IHL must comply with what its principles require in the absence of the required legal text.

Specialized legal professionals, contributing to raising awareness of these principles.

Researchers in humanitarian law attempt to research the subject of these principles.

In conclusion, we thank God and we all hope that we have succeeded in completing this research.

endnotes

¹ نيلس ميلزر، لقانون الدولي الإنساني (مقدمة شاملة)، اللجنة الدولية للصليب الأحمر (ICRC)، أغسطس 2016، ص 19.

² <https://www.fdc.ma/FDC/coursardistant/supportsprof/Bouzelmat/03042020.docx>

³ Article Thirty-Eight (38) of the Statute of the International Court of Justice.

⁴ عامر الزمالي، مدخل إلى القانون الدولي الإنساني، الناشر وحدة الطباعة والإنتاج الفني في المعهد العربي لحقوق الإنسان، تونس، 1997، ص 27.

⁵ موريس اوبير، المرجع السابق.

⁶ نيلس ميلزر، المرجع السابق، ص 26.

⁷ Marco Sassoli, Antoine A. Bouvier, and others, "How Does law Protect in War", int. committee of red cross, Geneva, 1999, P. 97 and P. 105.

⁸ عامر الزمالي، المرجع السابق، ص 29.

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• عامر الزمالي ، المرجع السابق، ص 27.

¹⁰ عامر الزمالي ، المرجع السابق، ص ص 28 29..

¹¹ هشام بشير، إبراهيم عبد ربه إبراهيم، المدخل لدراسة القانون الدولي الإنساني، الطبعة الأولى القاهرة، المركز القومي للإصدارات القانونية، 2012، ص 90.

¹² Jean Pictet, Development and Principles of International Humanitarian Law, Nijhoff Law Specials No. 2, Martinus Nijhoff Publishers, Dordrecht, 1985, pp 586

¹³ Military and Paramilitary Activities in and against Nicaragua, op. cit. (note 5), p. 113, para. 218.

¹⁴ Legality of the Threat or Use of Nuclear Weapons, , Dissenting Opinion of Judge Koroma (note 6), p. 257, para.78

¹⁵ فانسان شيتاي، مساهمة محكمة العدل الدولية في القانون الدولي الإنساني، ص 5. انظر الموقع:

<https://www.icrc.org/ar/doc/assets/files/other/icgcontribution.pdf>

¹⁶ مبادئ توجيهية بشأن الحق في المساعدة الإنسانية، المعتمدة من قبل مجلس إدارة معهد سان ريمو الدولي للقانون الدولي الإنساني في دورته المنعقدة في أبريل 1993. انظر جامعة مينسوتا على الموقع:

<http://hrlibrary.umn.edu/arab/icrc6.html#:~:text=%D9%8A%D9%81%D8%AA%D8%B1%D8%B6%20%D8%A7%D9%84%D8%AD%D9%82%20%D9%81%D9%8A%20%D8%A7%D9%84%D9%85%D8%B3%D8%A7%D8%B9%D8%AF%D8%A9%20%D8%A7%D9%84%D8%A5%D9%86%D8%B3%D8%A7%D9%86%D9%8A%D8%A9,%D9%85%D8%B9%D8%A7%D9%82%D8%A8%D8%AA%D9%87%D9%85%20%D8%A8%D8%B3%D8%A8%20%D8%AA%D9%82%D8%AF%D9%8A%D9%85%20%D9%87.%D8%B0%D8%A7%20%D8%A7%D9%84%D8%B7%D9%84%D8%A8>

¹⁷ نيلس ميلزر، المرجع السابق، ص 26.

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الدعوى)، 9 أبريل (نيسان) 1949، تقارير محكمة العدل الدولية، الصفحة 22.

¹⁸ International Court of Justice, Case Concerning Military Activities in and Against Nicaragua, (Nicaragua v. United States of America) (Nicaragua Case), Judgment (subject matter), June 27, 1986, para. 218.

¹⁹ International Criminal Tribunal for the Former Yugoslavia, The Prosecutor v. Kupreskic et al, Case No. 16-T-14-IT-95, Judgment (Trial Chamber), January 2000, para. 524.

²⁰ One of the rules of customary international law applicable in international and non-international armed conflicts.

²¹ Article 85 (4) (c) of Additional Protocol I,

²² www.fishbase.org

²³ Article 7(1)(j).

²⁴ حث سعد بن محمد العتيبي، القانون الدولي الإنساني بين الالتزام والتجاهل، مجلة القوات العربية السعودية المسلحة، الرياض، 31، العدد 89، السنة 1993، ص 56.

²⁵ International Treaty The international treaty called the St. Petersburg Declaration was concluded in 1868 in the city of St. Petersburg during the Russian Empire with the aim of prohibiting the use of certain missiles in times of war.

²⁶: إعلان سان بطرسبورغ، مكتبة حقوق الإنسان بجامعة مينيسوتا بالولايات المتحدة الأمريكية على الموقع :

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²⁷ Y. Sandoz, C. Swinarski, B. Zimmermann (eds), Commentary on the Additional, Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1389-1397. ICRC/Martinus Nijhoff, Geneva/Dordrecht, 1978،

²⁸ المبادئ الأساسية للقانون الدولي الإنساني، سلسلة القانون الدولي الإنساني رقم 2، 2008، ص 4.

²⁹ القانون الدولي المتعلق بسير العمليات العدائية، مطبوعات الصليب الأحمر، جنيف، 2001، ص 92.

³⁰ د. ليدل هارت، نظرة جديدة إلى الحرب، تعريب أكرم ديرى، الدار القومية للطباعة، مصر، 1965، ص 10.

³¹ Articles 51(5)(b), 57(a)(ter) and (b) of Additional Protocol I and Rules 14, 18 and 19 of customary international humanitarian law.

³² مطبوعة الاتحاد البرلماني، "احترام القانون الدولي الإنساني وكفالة احترامه" اللجنة الدولية للصليب الأحمر، جنيف، رقم 1، 1999، ص 25..

³³ Marco Sassoli، Antoin Bouvier، Op. cit.، P. 145

³⁴ In the case relating to military and paramilitary activities in Nicaragua.

³⁵ Legality of the Threat or Use of Nuclear Weapons, , Dissenting Opinion of Judge Koroma (note 6), p. 257, para.78

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³⁷ جان بكتيه، مبادئ القانون الدولي الإنساني، اللجنة الدولية للصليب الأحمر، جنيف، 1975، ص 37 و ص 39.

³⁸ Legality of the Threat or Use of Nuclear Weapons, op. cit. (note 6), p. 257, para.78

³⁹ Ibid.