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Analysis of the Instruments of the International Humanitarian Law for the protection  
of children in armed conflicts within the period of 1990-2015

Graduate thesis prior to obtaining a Bilingual Bachelor in International Studies minor  
in Foreign Trade

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## **IN DEDICATION TO**

This work I dedicate mainly to God, who has given me the necessary strength to address this important subject.

Secondly I want to dedicate this work to my fiancé Jeremiah, who never doubted my potential and has supported me at all times throughout this arduous process.

I also dedicate to my family who constitute a very important pillar in my life and I hope to make them proud with this achievement.

Finally, I would like to dedicate this work to all those who have experienced an armed conflict, especially those children who have been able to overcome so much pain.

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## **RESUMEN**

Este trabajo se enfoca en el análisis del Derecho Internacional Humanitario y su aplicación en casos de conflictos armados en la época post-guerra fría, donde la población civil, especialmente niños han sido los principales afectados. Por medio de una investigación formativa donde se ha recopilado información primaria y secundaria el presente trabajo explica la utilidad y participación del Derecho Internacional Humanitario y de los Organismos Internacionales en la realidad de niños en conflicto armado; seguido por la elaboración de propuestas para una aplicación útil de esta norma y de la situación que viven los niños en hostilidades internas e internacionales.

## **ABSTRACT**

This work focuses on the analysis of the International Humanitarian Law and its application in cases of armed conflicts in the post cold-war era, where the civilian population, specifically children have been the most affected. Through formative research which includes primary and secondary information, this paper explains the usefulness and participation of the International Humanitarian Law and International Organizations in the reality of children in armed conflict; followed by the development of proposals for a useful application of this law with regards of children living in both domestic and international hostile situations.

## INTRODUCTION

Throughout history, mankind has witnessed constant armed conflicts, which have had a strong impact on civilians, especially children. After the end of World War II, it became evident that the civilian population directly suffered the effects caused by armed conflicts. As a result, the Fourth book of the Geneva Convention of 1949 was created, which protects civilians in times of war, and additionally it completes the four books of the Geneva Conventions of 1949 along with their Additional Protocols of 1977. Together the 1949 and 1977 Geneva conventions form the International Humanitarian Law, which aims the protection of combatants and noncombatants in armed conflict.

The International Humanitarian Law is a norm that contains imperative principles of the customary international law. This law is also considered as the humanization of war, which explains the conduct of fighting in armed conflicts. This behavioral code includes the respect of human dignity above all. Moreover, one of the most important points of this law is to protect the civilian population, which has a special protection during armed conflicts. For that reason, the parties of the hostilities should apply the principle of distinction between combatants and noncombatants. The civilian population cannot be seen as a target of war since it would be a violation of the law of war. Unfortunately, after the Cold War, the world began a new order, from 1990 to the present time; this new post-cold war era has been characterized by hostility against the civilian population, having children as their main victims.

After the Cold War, modern conflicts were known for terrorizing civilian population; "...conflicts have become more cautious and systematic than ever" (Machel, 1996). During the 90's around two million of children died due to armed conflicts. Also in the first decade of the twenty-first century was reported that the same number of children resulted death from armed conflicts, along with around twelve million children that have been forcibly displaced from their homes as a result of the circumstances exposed above (UNHCR, 2012).

Therefore, this work's objective is to explain in its first chapter the theoretical frame of the International Humanitarian Law, which is the solid base for the next chapters. Within the analysis of the International norm, it will describe its origins, sources

such as international treaties, customary law and general principles of law, followed by the theory and the similarities with Human Rights. Additionally, it will describe the different characteristics of the humanitarian law. Also this work will address the notion of international armed conflict and non-international armed conflict, and how it involves the norms in each situation. Finally, this first chapter will point out the role of international organizations with regards of the application of the International Humanitarian Law.

The second chapter of this paper focuses on describing the diagnosis of the reality of children in armed conflicts. Therefore, in this first part it details the six grave violations committed against children during war. Also, along with the violations of the international law during war, different examples will be describing events that had happened around the world by having as focal time the post-cold war era from 1990 to current times. This present time is considered as a new world order, and it is clear to see the struggles left by the former cold war and new ways of aggression and terrorism. In the second part of this chapter, interviews with humanitarian activist who have been in the action field during armed conflicts have been provided. They tell their experiences on how they have seen the International Humanitarian Law and Human rights been violated during conflicts. Finally, in the third part of this second chapter Ecuador's situation has been addressed with regard this topic, even though this country has not suffered from a severe armed conflict. However, Ecuador has done some initiatives with implementation of the International Humanitarian Law within the domestic law of the country and is exposed in this last part of the chapter.

Finally, in the third and last chapter of this paper, the main objective is to develop actions and proposals for the situation of children in armed conflicts, after the analysis of the International Humanitarian Law. However, it was considered necessary to do a brief analysis about the current international system and how relations between countries are managed, and it also describes the difficulties of coming with solutions regarding armed conflicts worldwide. Nevertheless, it was possible to present realistic proposals that can be applied to have a better usefulness of the humanitarian law.

Therefore, this formative work with qualitative information has as main purpose to provide truthful information and to describe the actual reality that some countries

deal with during armed conflicts. Also, this paper seeks to rescue the importance of the International Humanitarian Law, which was thought to be the norm that offers dignity and protection during hostilities when human lives are silenced and overlapped with power and political interest.

## **CHAPTER 1: ANALYSIS OF INTERNATIONAL HUMANITARIAN LAW**

### **1.1 Introduction**

International Humanitarian Law (IHL) emerged as a response to the lack of normative and conduct that armed conflicts involve, due to their nature. Therefore, with the purpose of protecting people who combat and those who do not within conflicts, International Humanitarian Law was established. It is nothing more than a branch of Public International Law, which purpose is the call to action. The call to action means that International Humanitarian Law guarantees at least a minimum degree of humanity in the most inhumane situations that exist, which are wars or any other type of armed conflict. The definition provided by the Red Cross, the agency that acts in favor of the causes involved in International Humanitarian Law says:

“International Humanitarian Law is the body of international norms, of conventional origin or customary law, specifically destined to be applied in armed conflicts, international or not, that limits, for humanitarian reasons, the right for each side in conflict to freely choose their methods and means used for war, or protect the affected people and goods, from the conflict (Swinarski, 1984).”

As can be seen in the definition of International Humanitarian Law, this law is only applicable in situations of war and armed conflicts, which is why it can also be denominated War Law, since it provides the most humane conduct to approach conflict. Additionally, among other definitions by legal scholars there are:

“International Humanitarian Law is the body of international legal norms, conventional or based on the customs, that have as an objective to limit the use of violence in internal or international armed conflicts, to regulate the handling of hostilities and safeguard and protect the people who do not participate in combat, civilians and noncombatants, also the military or combatants that may have fallen wounded, sick, shipwrecked or prisoners of war. (Hernandez)”

“International Humanitarian Law is a considerable part of Public International Law that is inspired by the sense of humanity and is centered on the protection of the individual in case of war. (Pictet)”

In conclusion, the main objective of International Humanitarian Law can be

summarized as the law that guarantees the safeguarding a negligible amount human dignity for people involved in combat or people that are only victims under the framework of armed conflicts. It should be taken into account that War Law is the set of laws most oriented towards human beings' dignity, because it fights against the most ruthless acts of destruction such as armed conflicts and what it does is redeem certain universal conducts; for example, to not attack civilians or to simply provide medical treatment for a wounded combatant. Nevertheless, this branch of law cannot be carried out without the support of the international community, which plays an important role in these events. Hence, international agencies and nations have to adopt these norms as principles and within their internal normative. For the following states have to implement and respect International Humanitarian Law so it can obtain strength and impact in its application.

Therefore the main objective of this chapter is to address the theoretical body behind International Humanitarian Law, which means, to analyze its sources, history, among other factors that constitute it as a norm worthy of respect. Hence, the origin of this branch of law will be pointed out first, citing the sources that constitute it, also adding an outline and historic evolution that this norm has built in connection with the norms that integrate it. Secondly, the similarity and importance of Human Rights will be highlighted. Thirdly, there will be a description of the most important characteristics that this normative possesses accordingly. Fourthly, there will be an analysis of the concept of armed conflict both internal and international in the field of International Humanitarian Law. Finally, the first chapter will conclude with the description with the description of the most international agencies for the application of the norms within this branch of law.

## **1.2 Historical Overview**

### **1.2.1 Origin and Sources of International Humanitarian Law**

To be able to understand the origin of International Humanitarian Law, it is necessary to take into account that war has existed since the beginning of humanity. Although war is considered a ruthless act that externalizes the worst of humankind, it has always been subject to certain rules and principles. Throughout human history the development of rules is outstanding, despite the fundamental differences among ideological concepts of political, moral, cultural and socio-economic nature that separate different civilizations, there is a common content involved in situations of war (Swinarski, International Committee of the Red Cross, 1991)

Since the origin of International Law there has been a need that arises from the interests that states have to submit armed conflicts between states and civilizations to a regime of law. This regime has the purpose of aligning to fundamental principles for international social harmony, to maintain the situation under “reasonable limits” and to prevent war or any type of armed conflict to be labeled as barbaric.

Hence, the precise origin of International Humanitarian Law is uncertain. Only the history of war can be traced back, as well as the customs that civilizations have acquired through time as the main characters of those events. States have been the authors in the recognition of this law and have accepted a cluster of rules based on the sad experience of wars. In this way, most countries have accepted the practice of these rules and acknowledge them as mandatory due to the fact that they are considered universal and general principles.

International Humanitarian Law has been the object of many arguments regarding its legal origin, since many scholars and legislators believe that this law is outside of Public International Law. Nevertheless, there are many theories that hold that International Humanitarian Law is a branch of Public International Law, because they share the same sources and are mostly considered a customary law. Thanks to the progressive growth of law throughout history, this law has been able to become more conventional.

Likewise, it should be taken into account that International Humanitarian Law, as a

branch of Public International Law, has a strong influence of the internal normative from different countries that have added to the creation of these rules with the purpose of regulating behavior during times of armed conflict in the best way possible on which International Humanitarian Law is based on. Therefore, as mentioned before, International Humanitarian Law shares the same sources with Public International Law and they are: treaties, customs and fundamental principles of Public International Law.

**Treaties:** This source mainly constitutes the positive and conventional character that International Humanitarian Law acquired when it adopted the first code of the 1864 Geneva Convention. This convention is considered the first written normative with a static nature, where a group of nations came together in Geneva to design a codification that would regulate and organize the practices of countries during armed conflicts. Treaties are considered guidelines and instructions that are legally consolidated to assure the most humane conduct as possible in situations of war. These treaties are open for the international community to ratify and apply them more effectively.

The first Geneva Convention in 1864 was a treaty to improve the conditions of wounded soldiers. This first convention had Henry Dunant, founder of the International Red Cross, as an advocate who helped the wounded on the battlefield. That is where Dunant realized there was a need for the creation of rules for the international community to adopt when wars or conflicts of any type occur. On the other hand, the wounded at sea motivated the creation of the Hague Conventions of 1899 and 1907. Prisoners of war are also protected under the Hague and Geneva Convention of 1925 as a consequence of World War I.

Additionally, after the devastating Second World War, where there were uncountable and serious effects over the civilian population, the IV Geneva Convention was codified. It included the rules and responsibilities for states and individuals regarding the safeguarding of civilian property and population during armed conflicts (Vinuesa, 1998). Finally, the last treaty is the additional protocol of the Geneva Conventions of 1997 which cover the areas that were not taken into account in the previous codes; for example, internal conflicts. In 1997 Additional Protocols I and II were created, one covers the Geneva Convention and the other the Hague.

**Custom:** Both International Humanitarian Law and Public International Law emerged as customary law, given the fact that without the common rules from previous wars there would be no evolution in conventional rules. Hence, to define the custom as a source in this type of law, we must first take into account that customary law emerges thanks to a generalized, representative and uniform practice among states, which acknowledge a custom as mandatory.

In order to create customary rules, it is necessary to work both materially (with actions) and verbally (on behalf of the state's). This would enable the creation of a custom between states. In International Humanitarian Law, the customs that contributed to the conventional formation of the law were:

“Material actions involve the behavior on the battlefield, the use of certain weapons and the treatment of different types of people. Verbal actions include military manuals, internal laws and jurisprudence, the instructions of the security and armed forces, military communications during war, diplomatic messages in sign of protest...” (Henckaerts, 2005).

The customary aspect of International Humanitarian Law is noticeable. Other sources such as doctrine and jurisprudence have helped confirm that origin. For example, a renowned scholar, Meron, pointed out that the Geneva Conventions have many dispositions based on customary norms, some of them can even be considered as *ius cogens*. Likewise many scholars have commented on the Additional Protocols of the Geneva Conventions. These protocols are considered one of the best examples of the content of customary law, since it consists of norms of International Law that have previously existed yet have been interpreted, combined with principles and doctrines that were finally transformed and inscribed in Positive Law.

**General Principles of International Humanitarian Law:** General principles are very important in the subject of law, since they are valid even when countries are not subject to them or part of treaties that express people's' customs. The principles within International Humanitarian Law are conceived as the base to provide a minimum of humanity in a context applicable to time, place and circumstances.

General principles are considered to be interpretation guides that emphasize and facilitate the understanding of International Humanitarian Law's final objective, to

protect victims' dignity in the case of armed conflicts. Both internal and external conflicts adhere to the same general principles that consist of guaranteeing the application within the parameters marked by the law of the minimum degree of humanity in combat and armed conflict among states, which has to respect the dignity of combatants and noncombatants.

Within The Hague and Geneva Conventions and their Additional Protocols there are six main general principles of positive norms that have a conventional aspect due to their codification, which is also customary; since the generalized practices that states have adopted throughout the development of International Humanitarian Law.

1. **Principle of Limitation:** This principle grants the right to choose the methods and tools involved in combat or conflict. Therefore, this principle strictly limits combatants' freedom regarding methods and means to operate in combat; because they always have to follow the rules found in Conventions. For example: in Article 5 of the Additional Protocol I of the Geneva Conventions there is a reference that prohibits the use of weapons that cause superfluous or unnecessary damage. It is clarified in this principle that the use of nuclear, biological or chemical weapons does not attend humanitarian needs. Hence, they are not legal in times of conflict.
2. **Principle of Military Necessity:** This principle is found in the Declaration of Saint Petersburg of 1868, it indicates that the only legitimate purpose for states to be involved in armed conflicts is to weaken enemy armies. This principle is linked to the principle of military objectivity, which has as an objective to attack goods, locations and weaken enemy armies with actions within a conflict.
3. **Principle of Humane Treatment:** This constitutes a fundamental pillar of International Humanitarian Law due to the fact that the nature of this principle is the protection and treatment of combatants, whether they have been captured as prisoners or wounded, and the objective is for their dignity to be respected. In the same manner, non-combatants, those who not partake in hostilities should be treated humanely and with no discrimination regarding their gender, nationality, race, religion or political beliefs. Like

Jean-Jaques Rousseau said, “War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation (Diaz, 2009).”

4. **Principle of Distinction:** The principle of distinction is basically the duty that countries involved in armed conflicts have to instruct their combatants about the obligation of distinguishing between people that are actively participating in armed conflicts and civilians that are simply victims of the surrounding circumstances. Likewise combatants should distinguish between civilian goods and military objectives and targets. The purpose here is to protect the civilian population that does not partake in conflicts, therefore respect their dignity. In the IV Geneva Convention there are several articles that highlight how to protect civilians during times of war.
5. **Principle of Proportionality:** This principle holds that military action must be proportional to the attack on a military target. This means that if an attack is effective to weaken the enemy’s military objectives, even if involves losing many lives both civilians and combatants, it is acceptable because it is a military advantage. Yet, it is very important to take into account that the principle of proportionality does not exonerate or exclude excessive violence or weapons of mass destruction. These military actions do not justify illicit acts. They are only actions that show the prevalence of one enemy over the other. This principle is linked to the principle of military need, which justifies drastic measures in circumstances of conflict that are necessary and proportional to guarantee to weaken and even destroy the enemy, with the hope of losing the lowest possible amount of lives and resources.
6. **Principle for the environment:** This is the most recent principle officially incorporated into International Humanitarian Law. Since the 1960s, environmental decay has been a problematic issue due to several wars and internal strife that existed at that point in time. However, the war in Vietnam sparked awareness about this subject, because the country was devastated by

the large scale deforestation that the means and methods of combat used in the jungle, which had a high cost not only of human life but unfortunately also of living beings in nature. Therefore, this principle seeks to promote the idea among the parties involved in combat to take into account the harm they cause to nature.

### **1.2.2 Historical Evolution of International Humanitarian Law**

The history of International Humanitarian Law traces back to the history of war and the customs that have been acquired throughout time by mankind. War is part of the history of humanity. It is through wars that we have today's present. "War is a universal manifestation of human nature, in the relationships among individuals as well as with organized social groups, peoples and nations (Peytrignet)."

The evolution of International Humanitarian Law has its origin in the year 1,000 BC, because even in those times rules were established to protect victims of armed conflicts during times of hostilities. Ancient civilizations did this not because it was a humanitarian response but because of the economic costs that the use of more violent methods implied and the repercussions that brought upon the army and the nation. However, the measures taken for economic purposes had a strong humane impact, to protect people and their resources during times of hostilities. (Bouvier, Peace Operations Training Institute).

For example, the prohibition of killing war prisoners was established far before the Geneva Convention of 1949. Former civilization like Ancient Egypt kept prisoners alive, to both safeguard the lives of future slaves and to expedite prisoner exchange. Another example that can be seen as the beginning of a custom is in certain patterns in Africa. There were rules about how to initiate hostilities between different peoples, which generally had a code or a declaration of war like in Europe. Throughout the many historical examples, where there has been a special treatment in connection with hostilities, no matter what civilization or nation, there has always been a standard of action; this means an order and an objective.

Between the 16th and 18th century in Europe, the age of reason, a humanitarian practice started to develop. Before leaving for war or any conflict, warriors gathered and discussed the principles that would be respected and followed during hostilities.

For example, to arrange an armistice that could suspend war for 2 days in order to attend the wounded. These practices are very important guidelines that helped forge the International Humanitarian Law we have today.

The event that detonated the creation of IHL was the Battle of Solferino. This battle took place in the north of Italy in 1859 where the French army combatted the Austrian army. In that exact place and at that precise time was a man named Henry Dunant, who was from Switzerland, a philanthropist and businessman. Dunant was horrified by the tragedies that he saw in that battle, not because of the violence itself but rather by what was left. There were thousands wounded on the battlefield, helpless. So Dunant gathered volunteers from nearby villages to help the wounded. When Dunant returned to Geneva, he published a book called *A Memory of Solferino* in 1864, where he narrated what he saw during the battle and all the helplessness of those wounded at war.

“When the sun came up on the twenty-fifth June 1859 it disclosed the most dreadful sights imaginable. Bodies of men and horses covered the battlefield: corpses were strewn over roads, ditches, ravines, thickets and fields...The poor wounded men that were being picked up all day long were ghastly pale and exhausted. Some, who had been the most badly hurt, had a stupefied look as though they could not grasp what was said to them... Others were anxious and excited by nervous strain and shaken by spasmodic trembling. Some, who had gaping wounds already beginning to show infection, were almost crazed with suffering. They begged to be put out of their misery, and writhed with faces distorted in the grip of the death struggle ...” (Dunant, 1986).

Additionally, Dunant suggested in his book measures to improve the treatment of victims of war, the three proposals he presented were:

1. Establish voluntary societies in each country to help with auxiliary service for doctors in times of peace and conflict.
2. Adopt international treaties, guaranteeing the protection of voluntary medical teams that serve during and beyond war.
3. Adopt an international emblem to identify and protect medical teams and

their resources.

These three proposals had an impact all over the world, particularly in Europe. Each proposal was the forecast of what has been developed until now:

1. The first proposal helped form the ICRC and the Red Crescent societies, there are currently 179 in the world.
2. The second proposal was the guide and motivation to codify the first Geneva Convention of 1864.
3. The third proposal gave way to the adoption of the trademark/emblem of the Red Cross and Red Crescent.

In 1863 a committee in Geneva gathered physicians, military forces, diplomats and scholars for a conference with the purpose of verifying the feasibility of Dunant's proposals. By 1864 a conference was organized with diplomatic purposes. States were represented with the purpose of showing veracity and commitment with the conference. Finally, on August 22, 1864 the First Geneva Convention took place. Its main mission was to improve the conditions of those wounded at war. This international treaty was open for universal ratification, which offers states the freedom to adhere to a treaty for the benefit of the individuals that partake in hostilities. Therefore, the first international treaty among nations in favor of humanitarian causes, determines the history of modern IHL. Since customs and principles were materialized in Positive Law, it is respected and involves active participation on behalf of states for its precise application.

### Illustration 1. Chronological Progress of International Humanitarian Law

<b>FORMACIÓN DEL DERECHO INTERNACIONAL HUMANITARIO</b>	
1000 AD	Formaciones consuetudinarios humanitarias iniciales Formación consuetudinarios humanitarias regionales (mundialmente) Conclusión de tratados conteniendo cláusulas humanitarias (cláusulas sobre paz, armisticio, capitulación)
1864	<b>Primera Convención de Ginebra</b>
1868	Declaración de San Petersburgo
1899	Convenciones de La Haya
1906	<b>Revisión de la Primera Convención de Ginebra</b>
1907	Convenciones de La Haya
1925	Protocolo de Ginebra sobre armas químicas
1929	<b>“Primera” y “Tercera” Convenciones de Ginebra</b>
1949	<b>Primera, 2da, 3ra y 4ta Convenciones de Ginebra + Art. 3 Común*</b>
1954	Convención para la protección de la propiedad cultural
1977	<b>Protocolos adicionales a las Convenciones de Ginebra de 1949</b>
1980	Convención sobre el uso de armas convencionales
1993	Convención sobre armas químicas
1995	Protocolo relacionado a armas láser cegadoras
1996	Revisión de la convención de 1980
1997	Convención sobre minas anti-personales (Tratado de Ottawa)
Nota: Los Tratados del Derecho de Ginebra están en negrillas; los instrumentos del Derecho de La Haya están con letras comunes.	

**Source:** Peace Operations Training Institute: International Humanitarian Law and Armed Conflict Law. Available at:

[http://cdn.peaceopstraining.org/course\\_promos/international\\_humanitarian\\_law/international\\_humanitarian\\_law\\_spanish.pdf](http://cdn.peaceopstraining.org/course_promos/international_humanitarian_law/international_humanitarian_law_spanish.pdf)

There are two tendencies, according to scholars, within IHL. First is the Geneva current, which took place in 1864, as mentioned before, this current has the objective of promoting humanitarian rules and the protection of war victims; for example, to offer medical services to combatants, the wounded and the civilian population. The main advocate of the Geneva current is the Red Cross. This institution is officially in charge of applying and implementing its normative. On the other hand is The Hague

current. This convention arose with the declaration of Saint Petersburg in 1968. This current has the objective of limiting and banning specific methods and means used for war.

With the Geneva Convention of 1864 and The Hague Convention of 1868 as the original conventions, the following conventions are merely reforms and implementations that are necessary to add in accordance with the passing of time and new circumstances that seem different to the conditions of wars near the end of the 19<sup>th</sup> century and throughout the 20<sup>th</sup> century. In 1899, for instance, Czar Nicholas II summoned a peace conference in which the famous Martens clause was adopted. It states that in a case where there is no normative, the law of nations must be followed, in favor of civilized peoples.

In 1906 the Geneva Convention was examined and articles were added to the treaty while conserving its essence and objective. In 1907 the first peace conference of The Hague was also revised. New rules were defined concerning naval wars, rights and duties on behalf of armed forces in times of armed conflicts. Additionally rules concerning prisoners of war were introduced. After World War I, which was between 1914 and 1918, there were many new situations during the war that had not been codified before. Therefore, in 1925 a new protocol was adopted to ban the use of gas. In 1929 a new conference was programmed to reformulate the existing rules and implement the treaty for prisoners of war. These new conferences and approaches to new topics manifested as a response to the new events that took were caused by World War I.

Following the historical events after World War II, in 1949 the Geneva Convention as we know it was adopted. The Geneva Convention is composed by IV conventions. The First is 1864 and is about the protection of the sick and wounded. The Second, adopted in 1907, is about the protection of shipwrecked people. The Third Convention of 1929 is about prisoners of war. Finally, the Fourth Convention is a result of the devastating Second World War. This new convention was born due to the need of protecting the civilian population that was the target during the time of conflict. Therefore in 1949 the convention was adopted with the purpose of establishing protection for the civilian population in times of war. This was followed by the adoption of Article 3 that is common to all four Geneva conventions. It

focuses on armed conflicts that are not international.

Many years after the Geneva Conventions were established, several nations –backed by important agencies- decided to retake diplomatic conferences about the 1949 Geneva Conventions, since they considered it necessary to include topics that had not been taken into account more thoroughly in the previously written conventions. Therefore, in 1977 the Additional Protocols to the Geneva Conventions of 1949 were created. There are two additional protocols. The first is about the protection of victims in armed conflicts, which is a deeper extension of the Fourth Geneva Convention of 1949. The second protocol is about the protection of victims in armed conflicts that are not international. This protocol is a necessary extension to what had been incorporated in Article 3, which is common in all Four Geneva Conventions of 1949.

Subsequently to the Additional Protocols to the Geneva Conventions of 1949, there have been several conferences and many additional treaties to The Hague Conventions have been written. These new conferences are more focused on licit methods and means of use in armed conflicts, whether they are national or international. For example, in 1980, thanks to the sponsorship of the United Nations, a conference was adopted regarding the prohibition of the use of non-conventional weapons. This conference the use of incendiary weapons and mines was banned. Then in 1993 another conference addressed the prohibition of chemical weapons, which had been stated in the Geneva Protocol of 1925. In this way, efforts have been made to continue limiting the methods and means of use in armed conflicts with the purpose of receiving support on behalf of the international community and respect for both The Hague and Geneva Conventions that together comprise IHL.

To conclude, history often responds many doubts, especially when the purpose is to understand the beginning and creation of International Humanitarian Law. History clearly shows the origin took place by means of war and pursuit of human beings to establish rules and customs that, despite war or any conflict, keep a minimum degree of humanity and avoid falling into barbarism that distances human beings from the purpose of progressing towards civilization. Thanks to the customs accumulated throughout time in many wars and armed conflicts for the first time it was possible to transform a conventional set of rules to protect combatants and noncombatants in

armed conflicts.

Norms have presented a great degree of evolution and rules have continued to be implemented to have a more complete law that protects people who participate and do not in armed conflict. The victims of those conflicts and confrontations have nothing to do with the wishes and objectives of states. That is why a norm was created to limit those states regarding the methods they use to make wars. They are offered a guide to protect their citizens in case of a conflict. States have the tools to validate and apply these norms and look after the dignity of human beings.

### **1.2.3 Jus ad Bellum – Jus in Bello**

As has been seen previously, war is as old as humanity. It plays an important role in history, in the normative of Public International Law and in international relations. In ancient times war was considered a licit action, which every country had the right to exercise due to the sovereignty acquired under the status of nation-state. This implies that when a country is sovereign it has the faculty of self-limitation. This self-determination is granted to a state and therefore the right to wage war. A famous XVII century philosopher, Hobbes, whose most renowned piece of work is *Leviathan*, describes the natural state of human beings.

The state of war is found in this natural state. This is used by the branch of realism in international relations. This state of war justifies, according to Hobbes, that “as rational being we can view war as everyone against everyone to satisfy the interests of some, so we can agree that peace is good and therefore the means to achieve peace are also good” (Stanford Encyclopedia of Philosophy, 2014). This short quote by Hobbes portrays how ancient realism justifies the ends without caring about the means that are used to reach that end. The famous quote “the end justifies the means” by Niccolo Machiavelli depicts the state’s interests, because often no attention is paid to the way in which they achieve their goals and the methods they use. Unfortunately the method applied often is war, which requires the strongest part to show its prevalence.

Jus ad Bellum is the law of war. This law has been used often throughout history. Hence, through its common use it developed many customs that regulated the way in which licit acts between nation-states took place. For example, one custom was to

declare war and the end wars with an armistice. This transformed peace treaties and gave place to Public International Law and International Humanitarian Law.

However, after all the acts committed in World War Two, it was banned to recur to force to solve conflicts. Therefore, the right to war no longer exists. Even in the United Nations Charter, states are banned from using war. Nevertheless, since every rule has exceptions, the same applies to this one. War is not a means to solve hostilities, but there are cases where armed conflicts can be justified and they are:

1. **Collective Security Measures:** prevents forceful measures against a state that represents a threat for peace and international security. This exception has become stronger lately, far to the policies of members of the Security Council. For example, the United States justified the invasion of Iraq to stop the use of chemical weapons, which were a threat to the world.
2. **War of National Liberation:** This second point is highly complex and politicized, since it refers to cases where peoples are under foreign or colonial domination and have the right to self-determination. It is not always necessary to recur to the pretext of an abusive resource to unleash a war. However, if the reasons for a nation to recur to conflict are independence or freedom from a majority-driven power, under this exception it is considered valid.
3. **Defensive War or of Legitimate Defense:** Finally the third exception is the right to react against an aggression. According to Christophe Swinarski, this exception is the most dangerous and the one that endangers the prohibition of war the most. This is because countries have the right to protect themselves when they feel threatened or attacked. In the United Nations Charter there are no examples of aggression defined. Therefore this exception is open, subjective and of free interpretation in each country. What is not an aggression for one nation can be for another; hence, anyone can apply force to protect their sovereignty. There are many examples of wars based on legitimate defense, such as the conflict between Peru and Ecuador, Israel and Palestine, the USA and Iraq, among others.

In spite of these exceptions, one fact is clear, war is currently banned. What used to be Jus ad Bellum has now become Jus in bello (Law applicable during war). Jus in bello is the addition of the Geneva and Hague Conventions, both of which constitute International Humanitarian Law. The purpose is to achieve, by means of Jus in bello or International Humanitarian Law, actions with a higher degree of humanity and under a set of rules described in codes of conduct about treaties about methods and proper treatment during times of hostility. Jus in bello is an aid to end confrontations and to offer a minimum of humanity in the most inhumane situations that armed conflicts involve.

### **1.3 International Humanitarian Law and Human Rights**

In 1948, the Universal Declaration of Human Rights was approved. These rights are inherent to human beings, no matter their nationality, place of residence, gender, ethnic origin, color, religion, language or any other status. Human Rights imply both rights and obligations. International Law of Human Rights establishes the obligation of states to act in a certain way or to refrain from certain acts with the purpose of promoting and protecting Human Rights and fundamental individual or group liberties.

On the other hand, International Humanitarian Law is a set of rules that pursues, for humane purposes, to limit the effects of armed conflicts. This right protects people who do not participate in hostilities and also restricts the methods and means used in armed conflicts. The prohibition of the use of force was declared in the United Nations Charter. Yet, International Humanitarian Law has the duty to be applied in an equal way to all the perspectives involved in an armed conflict, regardless if the conflict is justified or not.

In 1966, the formulation of universal instruments for Human Rights sparked an uncountable number of theoretical controversies and practical confusions regarding the scope of application of Human Rights and International Humanitarian Law. However, during the conference the following was proposed: “peace is a fundamental condition for the full respect of Human Rights and war is the denial of that right”. This means that International Humanitarian Law is a set of rules that involves Human Rights. Yet, some legal scholars have disagreed. So there are three

tendencies that explain the connection between International Humanitarian Law and Human Rights.

1. **Integrationist Thesis:** For the people who agree with this thesis, IHL is a part of Human Rights and vice versa. There are people in this same branch that affirm that IHL comes first and therefore is the base for the formation of Human Rights.
2. **Separatist Thesis:** This branch completely disagrees with the integrationist thesis, because it states that IHL and Human Rights derive from different branches and that any proximity between the two could provoke confusion when they are applied. This branch highlights the objective of each one. For example, Human Rights protect individuals against internal judicial order (the state). On the other hand, IHL protects individuals in case the same internal order aforementioned can no longer offer protection if the individual is the victim of an armed conflict.
3. **Complementary Thesis:** This branch affirms that IHL and Human Rights are different systems, yet they complement each other.

The rules of IHL and Human Rights can be presented differently. However, their subject is very similar because both protect individuals. The main difference between both is that the foundation of IHL is based on the protection of the principle of distinction, which is to know the difference between civilians and combatants during armed conflicts, while under the law of Human Rights this specification is unknown; because Human Rights can be applied during conflicts and in times of peace.

Human Rights are indivisible, inalienable, inderogable, inherent and universal among other characteristics that make Human Rights a guarantee of human dignity. However, to accomplish this objective, it has to be taken into account that Human Rights involve as many obligations as rights. States assume obligations when they are under an international treaty, therefore the state should respect, protect and follow what is signed, in the case the Declaration of Human Rights, in which a state's main objective is to comply the positive action of enabling access to Human Rights. In the same way, states that are under the Geneva Convention of 1949 and its corresponding protocols have the obligation to respect and protect combatants and

civilians with the guidelines provided under International Humanitarian Law.

Therefore, the main difference between Human Rights and IHL are the mechanisms of application. IHL is applied when there are hostilities and armed conflicts, whereas Human Rights are applied permanently. Likewise, the institutions in charge of each branch of within both are different; the ICRC is in charge of implementing IHL, while the UN handles the Human Rights Commission. There is also the Inter-American Court of Human Rights which has specialized agencies with the objective of defending and promoting Human Rights. It can be concluded that both Human Rights and IHL are complementary, in their application and primary objective, since both are branches of law that conceive a common concern for the respect of human life.

## **1.4 Characteristics of International Humanitarian Law**

### **1.4.1 Non-bilateral Aspect**

International Humanitarian Law and Human Rights share many common characteristics, since both protect human dignity and because both are humane laws they are mandatory as are all treaties. This obligation is under the *pacta sunt servanda* (agreements must be kept) principle. This principle is fundamental in conventional treaties. Also, if a state agrees to ratify a treaty, it does so voluntarily and knows about the obligation involved in being part of any treaty.

The mandatory aspect of International Humanitarian Law does not respond only to the reciprocity that is expected or for the sides involved to fulfill their part, the obligation is also unilateral or *erga omnes*; this term refers to the fact that a state acquires a double obligation, to respect and ensure respect. The first obligation that should be respected is in the scope of internal organization of a state. The second obligation is to ensure respect. This is explained by the fact that the state should protect and respect the law in the eyes of the international community. According to Elizabeth Salmon (2004), states play the role of both creators of norms and the main executors of those norms. Since *Erga omnes* gives states a double obligation, it therefore also applies it to international and internal environments in cases of armed conflicts (p.35).

A fundamental principle in the Law of Treaties is the bilateral or reciprocal aspect that it outstandingly has within its conventionalism. This means that there is an international commitment and a balance of rights and obligations. However, as regards protection of human beings, both International Humanitarian Law and Human Rights lack a bilateral aspect. In most treaties obligations are not only for the parties who sign them but also for the individuals under the jurisdiction of a state. Therefore, not only states but also individuals are the main beneficiaries of humanitarian obligations.

The International Court of Justice manifested in its advisory opinion in 1951 that in the cases of Human Rights and International Humanitarian Law:

“In this type of treaties the signing states do not have self-interest; they only have, above all, a common interest: the completion of the proposals that constitute the purpose of the Convention. Consequently, in a convention of this type it is not possible to speak of a contractual balance between rights and obligations.” (International Court of Justice, 1951).

In the Inter-American Convention on Human Rights, articles 74 and 75 also make a reference to the non-bilateral aspect that it possesses:

“When states approve these treaties, they are subjects to a legal order in which, for the common good, assume several obligations, not in relation to the other states but towards individuals under their jurisdiction.” (Inter-American Convention on Human Rights, 1982).

Not only is the non-bilateral aspect of Human Rights and International Humanitarian Law discussed at an international level and within international agencies, but also the court of justice in Colombia also speaks about them in sentence C-291 of 2007:

“The obligation to respect and ensure respect of International Humanitarian Law is not a non-bilateral or reciprocal feature, the satisfactory role of states does not depend on the compliance of the parts involved in a conflict. The non-bilateral aspect of International Humanitarian Law has currently acquired a customary feature due to the recognition on a level of international organizations and Human Rights agencies.” (Ramirez, 2009).

In addition to the non-bilateral feature common in both IHL and Human Rights it is important to highlight that both have a traditional scheme, due to their origin and basis. Moreover, they are found in normative multilateral treaties. These treaties are open, so different countries can be part of these treaties; because they are of a universal nature. On the other hand, these treaties contain a bivalent feature. This means that show agreement and will while they involve common interests of the entire international community.

These treaties have a traditional scheme like any other treaty. Hence, it is presumable that in case there is a failure to comply it can be reported. Yet, in IHL treaties complaints do not have an effect while the plaintiff is in an armed conflict. This is written clearly in the Geneva Convention of 1949, in four books, in articles 62, 63, 142 and 158:

“...a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.” (IV Geneva Convention, art. 158, 1949).

Moreover, in IHL and Human Rights the reciprocity clause is different. In the Vienna Convention of 1969 the power of non-compliance was introduced in an international treaty. This implies that if one party does not fulfill any treaty disposition they can be subject to scrutiny and there could be a demand against them that could lead to the nullification of the treaty. Nevertheless, there is an exception within article 60, clause 5, where it says:

“The dispositions related to the protection in treaties of a humanitarian nature, particularly the dispositions related to the prohibition of all forms of retaliation regarding people protected by those treaties.” (Vienna Convention, 1969).

With this important clause, accentuation in subsection 5 of article 60 of the 1969 Vienna Convention, it is clear that any treaty that has as an objective to protect human beings and preserve humanitarian acts and cannot easily be detached from such treaties. There are universal principles that should be safeguarded are found in humane treaties, because these principles and treaties acquire an intrinsic nature that

requires a general mandatory nature.

#### **1.4.2 Imperative Nature of International Humanitarian Law**

The imperative norm, known as *ius cogens*, in article 53 of the Vienna Convention of 1969 is defined as. “An imperative norm of general international law is a norm that is accepted and acknowledged by the international community of states as a group as a norm that does not admit opposing agreements and can only be modified by an ensuing norm of general international law with the same nature”. Some legal scholars have suggested that when “the international community of states as a group” does not refer to a unanimous agreement of the whole international community, it refers to the need of a consensus among participants.

The norms of *ius cogens* represent unalienable human attributes. These attributes are founded and based on values, principles and shared customs among different cultures and social systems. States neither have the ability conclude treaties on humanitarian law, nor can they arbitrarily dispose of voluntarily agreed commitments with the international community and with the citizens under their jurisdiction. States that are in conflict acquire a nature of absolute commitment and the call to action in favor of humanity, which to respect and ensure respect for humanitarian norms.

Article 6 of the first three books of the Geneva Convention of 1949 and Article 7 of book IV of the relevant treaty says: “no special agreement can inflict damage to the situation (of protected people), as is regulated by the present Convention, nor can any restrict the rights that this concedes, the absolute nature has been acknowledged and it irrevocably under applicable humanitarian principles in internal and international conflicts.”

As mentioned in Article 60, clause 5, of the Geneva Convention of 1969, humanitarian norms are irrevocable. This clause also states that treaties of a humanitarian nature are not subject to state retaliation, because it should respect and place treaties first to protect human beings in case of an armed conflict or under circumstance. These treaties are not subject to change. In the book *Notions of International Humanitarian Law*, the author, Elizabeth Salmon, quotes Araceli Mangas:

“If humanitarian norms have a general acceptance, they are neither bilateral obligations nor is their violation or accusation absolves the duty to respect them. General norms produce erga omnes obligations. If the benefitting subjects cannot renounce their rights, if the state cannot exonerate or find a cause that excludes legality, many safeguards clearly mean that we are before ius cogens norms.” (Mandas, 1992).

Clearly the way in which IHL has been analyzed is in alignment with what was mentioned by Araceli Mangas. Therefore, this type of law involves ius cogens norms. However, it must be understood that this aspect is not found in all of IHL norms; it only accompanies a few. For instance Article 3 in the IV books of the Geneva Convention of 1949. This shows that the aforementioned article is essentially an imperative norm, it also has the characteristic of being a common article in all IV books.

“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 by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria" (IV Geneva Convention, art. 3, 1949).

Though it is difficult to specify all of the ius cogens norms that are within IHL, what can be identified are the scopes in which International Humanitarian Law cannot be altered. For example, the prohibition of attacking a civilian population or provoking hunger among them as a method of combat, also to deny the fundamental dispositions for prisoners of war; in the case of a non-international armed conflict, to protect the sick and wounded and a human treatment for the adversary once they have given up their weapons, among others.

An important aspect that should be taken into account with ius cogens norms is that even though many IHL norms are imperative, they should not be considered as inviolable. The notion of inviolability is rare in legal norm, since there are no legal norms that cannot be violated because the likelihood of an infraction is inherent to the essence of judicial norm per se. The effect that an imperative norm causes is the

prohibition or nullification of an agreement among the states that can abolish it. (Mangas, 1992).

#### **1.4.3 Irrevocable Nature of International Humanitarian Law**

The irrevocable nature of International Humanitarian Law has an additional attribute; it is of “inalienable nature”. Both characteristics go hand in hand when referring to the Geneva Convention of 1949 in all IV books in (Art. 7/I, 7/II, 7/III, 8/IV) stipulate that: “...can, under no circumstance, renounce rights granted in the present Convention”. This disposition is found in the IV books that constitute the Geneva Convention of 1949, whose purpose is for every person who has been a victim of war to have granted protection under the present convention. However, if these people (victims) can be the target of pressure from an opposing power. Or, in the case of internal conflicts, like Araceli Mangas mentioned in Article 3 especially and in the article mentioned before about the inalienability of the right, victims cannot renounce to the right of being protected. The convention's guarantee of those rights to individuals must prevail, even if they are under pressure of national authorities to refuse those rights. Therefore, in both national and international armed conflicts states are obliged to act according to humanitarian conventions and to refrain from influencing over victims' will, which is by moral and intrinsic law individual and must be protected.

#### **1.4.4 Martens Clause**

This clause gives IHL a general characteristic, which means, as has been studied, that IHL is a customary law and the Martens clause is part of that custom. The origin of this clause was Russia's pursuit of a diplomatic meeting to discuss new agreements to honor a new strategy of negotiation. In 1899 a conference was programmed with the objective of debating about including or not dispositions about occupying territory to the 1874 Declaration of Brussels.

The Belgian delegation was against adding dispositions to the current declaration, arguing that these dispositions granted excessive power to the occupying power. They also objected to the fact that the declaration did not provide norms to respect citizens within an occupied territory. Likewise Great Britain joined motion and supported the Belgian delegation. However, the Soviet Block and Germany did not

agree. They wanted to proceed with the dispositions.

Yet, Frédéric de Martens, Russian delegate, in view of the discrepancy, taking into account that this convention was at risk, decided to act and proposed to adopt the following clause:

"Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience" (Hague Convention II 1899).

This clause is not only used in this convention but also in an IHL disposition. Since its objective is to legally cover both judicial and practical empty spaces and gaps that may follow, whether they are in other conventions or during the course of hostilities; in case these situations are not taken into account in conventional norms.

Therefore this clause is customary, this proves that states codify and use norms that come from existing customs as a reference which have been founded on general principles that maintain their validity beyond conventional context. As time passes by, it is confirmed that most of IHL's norms are considered customary. Hence, these norms should be applied by states with the principle of universality as a basis.

Even the International Court of Justice, in an advisory opinion, pointed out that humanitarian principles have been considered by civilized nations as mandatory for states, even beyond all conventional bonds (Salmón 2004, p.34).

## **1.5 International Humanitarian Law and Armed Conflict**

### **1.5.1 Classification of an Armed Conflict**

As has been mentioned before, International Humanitarian Law is a set of conventional and customary norms that are applied in the case of conflict. Article 2 of all four Geneva Conventions of 1949 points out:

"...the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting

Parties, even if the state of war is not recognized by one of them".

Though, after World War II the word war was replaced by armed conflict, since the act of war became illicit. However, the term armed conflict includes and is applied in various situations. Several definitions of an armed are indicated here.

Jean Pictet, ICRC advisor, in a comment made about the 1949 Geneva Convention said: "All litigation that emerges between two states and provokes the intervention of members of the armed forces is an armed conflict." (Savegnano).

The criminal court of the Former Yugoslav Republic established that an armed conflict is when "there is use of force between states or a prolonged situation of armed violence between governmental authorities and organized armed groups or among these groups within a state" (Prosecutor vs Tadic Case, 1997).

Likewise, the Criminal Court of Rwanda indicated that "the term armed conflict itself suggests the existence of hostilities between armed forces organized in a major or minor degree" (Prosecutor vs Musema Case, 2000).

For Elizabeth Salmon, author of the book "Introduction to International Humanitarian Law (2004)" an armed conflict encompasses four fundamental elements:

1. Armed violence of forcé.
2. Time extensión.
3. Organization of groups involved in the conflict.
4. Involvement of different groups in the armed conflict, whether it is international or not.

Within the framework of the Geneva Convention of 1949 and the II Additional Protocols of 1977 it was established that both types of recognized conflicts in conventions where of international and non-international nature. Likewise, it's worth recalling that it is established in the United Nations Charter clearly when armed conflict is acceptable and allowed to happen. These three exceptional situations, as they are labeled by the United States Charter, express the following:

1. Measures of Collective Security: this exception refers to state or group that appears to be a threat to international security.
2. War of National Liberation: This second point refers to a people that are under the mercy and the domain of another state, it has the right to Independence and detach itself from the majority in power.
3. Legitimate Defense: The most commonly used exception for the international community, as has been mentioned, is when a state feels threatened or attacked by another state. Therefore, legitimate defense grants the right to react to attacks to protect its own sovereignty.

Hence, when an armed conflict takes place, particularly an international case, it happens for three reasons. War is not the appropriate term to label a hostile event between states or armed groups. The term is International Humanitarian Law, Public International Law and Human Rights call them either international or non-international armed conflict.

### **1.5.2 International Armed Conflict**

In the terminology involved in the subject of international relations international armed conflicts are abbreviated as IAC. This conflict is basically an armed conflict where two or more countries are involved. According to Christophe Swinarski there are three categories to qualify an armed conflict. The first is about qualifying the parties involved in the conflict. The second is about international agencies; for example the United Nations or regional agencies or the OAS in the case of the American continent. Finally, the third is the International Committee of the Red Cross (ICRC); this agency is the main director of International Humanitarian Law.

Another aspect to analyze in armed conflict is the scope of application and the reach it can have in the case of a IAC. For Elizabeth Salmon there are four features involved in international armed conflicts, they are: *ratione materia* (reason of the substance), *personae* (of the people), *temporis* (of time) and *loci* (place/space).

Firstly, reason of the substance means the norm that protects and supports IHL in a conventional way. Likewise, the concept of substance refers to the content of this law as regards its application to CAI. As mentioned before, the substance of IHL and

CAI is in the four Geneva Conventions of 1949 and their respective protocols of 1977. These regulations are clearly established, when applicable to international armed conflict, in Article 2 of the 1949 Geneva Convention. They highlight the following:

“... The Convention will be applied in the case of a war declaration or any other armed conflict that emerges between two or more High Contracting Parties. The Convention shall also be applied in all cases of total or partial occupation of territory of a High Contracting Party.”

Both of these situations are covered under IHL as valid to accept an armed conflict. Yet, the UN, ICRC and within the context of Article 2 of the 1949 Geneva Conventions, the struggle of a people against an imperial power is also included. This last situation honors the principle of self-determination of peoples. In addition, it coincides that after the 1949 Geneva Convention came into effect, followed by the post war period, the desire for independence in many colonies began. Therefore, it was very appropriate to include the struggle against colonial domination in IHL's scope of application.

Secondly, another scope of application is the person's reason. The policies of armed conflicts are practically found aimed at states or movements of national liberation. On many occasions states are considered as the main recipients of rules and dispositions of IHL, since they are demanded to acquire an international responsibility erga omnes, which means to respect and ensure respect of IHL's regulations.

Nevertheless, many critics and scholars of IHL regulations encourage us to not wait for states to be the main guardians or caretakers that assure that rules are followed. They believe that individuals should see to it that states abide the dispositions of compliance, since individuals are the main weapon that can guarantee responsibility. In the same way individuals can independently align to foundations, projects and voluntary work that seek to help in armed conflicts.

People can be involved in international organizations, like the United Nations and the blue helmet program, who help in times of conflict, as well as the Red Cross, which is the agency that oversees IHL and works hard in the midst of all armed

conflicts around the world. There are also programs that oversee and help within international alliances with military and commercial objectives, like NATO, which participated in the Kosovo conflict. In sum, states are the main actors and high contractors in the dispositions of armed conflicts. Yet individuals can also put pressure when the time comes to ensure that these norms are respected.

As a third point is the application due to time. This aspect must consider the temporary characteristic that an armed conflict has. Even if a conflict lasts for a long time, it will eventually end. Therefore, regarding time, IHL is applied as soon as hostilities began and it stops as stop as they stop; also if there is a military occupation for any reason.

This should take place in theory, yet, it is quite different in practice. IHL persists after a ceasefire, because in many cases the parties involved still have to repatriate the wounded, prisoners, etc. However, the hardest part of IHL's work can be seen in the help given to the civilian population that remains devastated after the hostilities. This should not cause a great impact over the civilian population, because they are not supposed to be a military target. Nevertheless, due to the failure of compliance, the civilian population is the most affected. Therefore IHL has the duty of looking after civilian, those wounded after conflict, even when the hostilities have allegedly ended.

Finally, the last scope of application of IHL is regarding place and space. This particular aspect is about applying International Humanitarian Law when an armed conflict occurs in a determined geographical space. Therefore, space is undoubtedly linked to a geographical site where armed confrontations are taking place. This geographic circumscription can refer to the territory where belligerents are from, like the places where prisoners of war are kept or where civilians, refugees or those displaced and nationless are held hostage. Any geographical site with a problem of this sort means that International Humanitarian Law is involved.

In addition, Public International Law in the Vienna Convention of 1961 and within International Humanitarian Law also has an institution called Protecting Powers. These institutions are very important in times of armed conflicts, though in practice they are not used often. "Protecting powers are in charge of safeguarding the parties

interest in the enemy country, and particularly to look after the application of the Geneva Protocols of armed conflicts” (Swinarski, 1984).

The resource of adopting protecting powers can be applied in the case of an armed conflict between two countries and it generally causes sever diplomatic relations. In extreme situations of conflict, diplomatic relations can fully break off and can even affect financial and commercial relations, which increases tension to handle affairs between nations. Therefore, the international community, after both world wars, has maintained a position to conserve world peace and has the UN as the regulatory body and intermediary in these matters, with the power to pressure countries to fix their affairs through the protective powers that have the duty to do oversee IHL.

One of the clearest examples of the use of this resource is the conflict between Argentina and the United Kingdom over the Falkland Islands in 1982. Argentina resorted to Brazil and the United Kingdom to Switzerland to represent their interests concerning the conflict, safeguarding the integrity and trust of the country they represented.

Likewise, the Geneva Convention of 1949 indicates that aside from the protecting powers, the contesting parties have trust an agency that offers the same guarantees as the protecting powers. These agencies would have the same role. They are considered substitutes of the protecting powers. Therefore, the state in conflict requests an agency to safeguard the contesting parties’ interests neutrally. However, if one of the parties fails to find a protecting power in a neutral country or a substitute through an organization, the convention established that the International Committee of the Red Cross will fulfill that task. Hence, IHL projects protection for people involved in conflicts and states’ interests dynamically by establishing a neutrality environment, at least conventionally.

### **1.5.3 Treatment of protected people in an International Armed Conflict**

Treatment is in reference to the 1949 Geneva Convention that, as mentioned before, has four books. The first book or Convention I is about the wounded and sick among armed forces. Convention II is about members of the armed forces that are sick or are shipwreck survivors. Convention III is about POWs, prisoners of war. Finally, Convention IV addresses the protection of civilians in times of war. International

Humanitarian Law protects the people aforementioned under its law, guaranteeing the best human treatment in times of conflict. However, for purposes of focus, this research will focus on the IV Geneva Convention, concerning the protection of civilians during armed conflicts.

### **Protection of the Civilian Population**

As mentioned before, concerning general principles of International Humanitarian Law, among several of the six previously asserted principles, is the principle of distinction. This principle is considered as a fundamental part of civilian protection, because to honor this principle implies knowing how to differentiate between a combatant and a non-combatant in an armed conflict. Likewise, the principle of distinction applies to goods. Therefore, military objectives must be differentiated from civil goods. Civilian goods cannot be military targets, let alone civilians.

A civilian population is identified by not participating actively in hostilities. Therefore, a definition that would define a civilian population is any person that inhabits a territory within a state that is involved in an armed conflict and International Humanitarian Law has the duty of protecting such people in a privileged manner, because they are not partaking in hostile acts.

Indeed, it is very important to remember that the IV book of the Geneva Convention of 1949 is the product of World War II's events. Unfortunately, the civilian population lacked a protection policy in former armed conflicts throughout human history. This is because, in the past, the civilian population was not a target of opposing forces, instead it was the combatants. However, throughout time, war became a monster that devoured everything in its way. For instance, Elizabeth Salmon (2004) quotes Sassoli Marco and Bouvier Antoine who calculated that in World War I the ratio of dead combatants was 200 per each dead civilian. Consecutively, in World War II, the ratio increased to 1:1, which means that for every combatant that died, a civilian died. Finally, in the Vietnam War, calculations show that for each 20 civilian deaths, 1 combatant died. The numbers are alarming, to see how the loss of civilian lives has increased during armed conflicts.

The priority that civilian protection has in the normative should not be considered or interpreted in an absolute manner, since it is referred to under the framework of

management of hostilities. This framework involves, for example, not: using civilians as human shields in the case of an armed conflict, bombing civilian goods or locating military objectives near large civilian populations where these civilians can be harmed. Therefore, since the civilian population is protected, it cannot be seen or used with the purpose of gaining military advantage or to weaken the adversary.

International Humanitarian Law, especially in the IV book of the 1949 Geneva Convention, protects the civilian population without prejudice. However, there are special cases that require a special type of protection, in case they require a higher degree of attention or are more vulnerable. It is important to highlight that this does not imply that the principle of non-discrimination is ignored. Nevertheless, it also does not mean that there is not a preferential treatment for people that require priority attention like: women, children, journalists in dangerous areas, refugees and those internally displaced.

Previously, it was mentioned that the focus of this thesis paper would be on the protection of civilians. Yet, the most specific focus is on the protection of children in under International Humanitarian Law during armed conflicts. This is because children are considered to be in the group of civilians with priority attention under this regulation and unfortunately children are among the most affected during hostilities.

### **Protection of children in an International Armed Conflict**

There is no doubt that the civilian population is the most affected in times of armed conflicts, especially children who are presented as victims in the new tendencies of modern armed conflicts. According to statistics up to the year 2000, around two million boys and girls have been reported killed by direct causes of armed conflicts (UNICEF, 2010). These numbers are shocking, even more having a normative that specifically protects and safeguards the civilian population. Nevertheless, the law is currently evolving and continues implementing its normative to protect civilians, among them children, during armed conflicts in a better way.

In 1989, for instance, the Convention on the Rights of the Child was created and promoted by UNICEF. In Article 38 it addresses the duty that States have to respect and look out for the norms of International Humanitarian Law that applies to

children during an armed conflict. Additionally, in 2002, an optional protocol was implemented to the Convention on the Rights of the Child regarding specifically the participation of children in armed conflicts. Therefore, children are still present in the international Agenda as a main subject; since they are still part of the normative that guarantees the well-being of children during an armed conflict.

When IHL addresses children, they are granted special respect. However, in each circumstance children should be addressed in accordance with their age. Within the category of children there are: newborns and breastfeeding babies, minors under seven, minors under twelve, minors under fifteen and minors under eighteen. Under the framework of children in an armed conflict, the greatest fear and absolute prohibition is for armed forces to turn children into soldiers.

Therefore, IHL provides measures to avoid that minors under the age of 15 at least do not participate in armed conflicts; even though the convention for children's rights stated that the minimum age to be part of a group of armed forces is 18 and anyone under that age is minor. Moreover, when there have been cases of forced recruitment and children under the age of 15 have been used, this law has marked these acts as war crimes. For this reason children are considered very vulnerable within the context of an armed conflict, because they can be used for different motives to perform illicit acts y this is what IHL tries to avoid by means of its regulations.

#### **1.5.4 Non-International Armed Conflict**

The abbreviation used to refer to non-international armed conflicts is NIAC, this type of conflict refers to major degree hostilities within a same territory, where organized armed groups are involved. In the last decades, analyses have determined that internal conflicts are more frequent than international conflicts. Since a new form of international conflicts has unleashed, including armed groups opposed to local governments within a country.

The 1949 Geneva Convention speaks solely about international armed conflicts. However, Article 3 as well as the four conventions speaks about the possibility of a conflict that is not international. Therefore, it provides applicability of International Humanitarian Law for internal conflicts. However, after World War II, followed by

the Cold War, a new problem was unleashed. There were many internal conflicts in many countries, in which International Humanitarian Law could only refer to Article 3 of the 1949 Geneva Conventions to take action in those circumstances. Even though Article 3 is very vast, it does not cover the need of total protection that an internal conflict requires.

In the article I of Additional Protocol II of the 1949 Geneva Conventions defines a non-international conflict as: "...a conflict occurring 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 over a part of that territory such control that allows operations Military operations and to implement this Protocol" (II Additional Protocol 1977).

Within the definition given by the Additional Protocols of the 1949 Geneva Conventions four constituent components can be found to address a non-international armed conflict, they are:

1. The conflict takes place within the territory of a determined country.
2. The armed forces of this nation are opposed to the armed forces that do not acknowledge their authority.
3. These armed groups are under the authority of a responsible leadership.
4. This armed group dominates part of the nation's territory.

The first constitutive component is very clear. A non-international armed conflict takes place in a determined geographic circumscription. For example: Angola, Nicaragua, and El Salvador, among other States that have had internal conflicts. The second component, for an internal conflict to be labeled as such, is that the distinction of the armed forces must be clear and organized. If there is no such organization, the opposing forces cannot be identified and all there are simply disorganized people against government forces, it means that it is simply an internal disruption. Hence, to be able to address a non-international conflict, it is necessary to identify the difference between rebel groups or armed dissidents and the armed forces that are loyal to their government. In this way it can be identified as an internal conflict.

The third component is to have a responsible command that answers the actions of opposing forces and shows a level of moderate organization for the armed dissident group. The fact that this armed force responds to orders, has an action plan and a specific objective to reach, it means that we are facing a non-international armed conflict. Finally, the fourth component is that the power and effectiveness of this armed group towards the State is not temporarily with sporadic disturbances. Since, with part of the territory under custody, wherever continuous militant actions take place, resulting in an internal armed conflict, which does not have a determined duration but rather its actions between armed groups and State forces have prolonged clashes until further notice.

### **Article 3 as a system of protection of IHL**

Article 3, which is common to all Geneva Conventions of 1949, is an article that has caused controversy in the legal world due to its reach, broadness and protection. The 1949 Geneva Conventions are customary norms of IHL that are applied in international armed conflicts. That was the origin of its creation, due to previous wars that caused an endless amount of losses of both civilians and combatants. Therefore, when the Article 3 in the IV Geneva Conventions refers to and applies IHL norms in a non-international conflict, it opens a space for a completely new subject in matters of armed conflict and humanitarian conduct regarding these circumstances.

Very often, Article 3 is labeled as a “mini-Convention” within the 1949 Geneva Conventions. This article, like IHL itself, has the objective to protect and guarantee the most humane treatment as possible in times of a non-international armed conflict. The minimum standard of Article 3 dispositions is reflected in the treatment given to nonparticipants actively or directly in armed conflicts, whether they are wounded, prisoners of war or in particular the civilian population. Therefore, Article 3 bans the following in NIAC:

- Attacks against life and physical integrity like: homicide, torture, mutilations, among others.
- Taking prisoners and hostages.

- Attacks against personal dignity, humiliating treatment, for example: sexual abuse.
- Passing sentences and extrajudicial executions without recurring to a legally constituted tribunal.

Among its dispositions, Article 3 states that the ICRC can offer its services to the wounded and sick in non-international armed conflicts. Additionally, in the present article, the last part requests the signing parties of the convention to do whatever is possible to put into effect the required dispositions.

These mentioned dispositions are not against the principle of nonintervention in internal affairs within the nation, though this type of conflict takes places within a territory that is inside a state, these dispositions do not affect in any way the internal judicial state of any country.

“... the application of the preceding provisions shall not affect the legal status of the Parties to the conflict.” (Geneva Conventions 1949, art. 3)

In fact, the request consists of the party in conflict to adopt these dispositions in such circumstances to be able to offer and apply International Humanitarian Law in accordance with its stipulations.

### **1997 Additional Protocol II and its IHL protection system**

1949 Geneva Conventions are signed, ratified and have few limitations across the world's nations. Yet, the Additional Protocols of 1977 were not as welcomed by the international community. Since so few countries signed the commitment to the convention's dispositions the year they were published. In addition, the process was too long for many nations.

According to Christophe Swinarski, author of several books about IHL and official advisor of the ICRC, countries that had not signed nor ratified 1977 Additional Protocol II, Article 3 of the 1949 Geneva Conventions would be the applicable norm in non-international armed conflicts. In the nations that accepted adherence to of the dispositions in a NIAC, in Latin America for instance: El Salvador, Ecuador, Bahamas, Saint Lucia, Saint Vincent and the Grenadines, Bolivia and Costa Rica, the

additional protocols did have an effect and will be applied in the case of internal conflicts in countries that have ratified the aforementioned protocol.

1977 Additional Protocol II has more specific dispositions that protect the wounded, shipwreck survivors, the sick, prisoners of war and civilians in a more assertive manner. Within the protection of people, there is a civilian population that cannot be a target of attacks; it cannot be displaced arbitrarily, among other circumstances that are stipulated in the protocol. In addition, this protocol extends its normative to civilian good, for example: cultural goods, places of worship, constructions and installations that are dangerous like nuclear power plants, among others. Moreover, the normative includes and protects goods that are indispensable for the population's survival. This means that a State cannot starve a population nor apply collective punishment; that is against 1977 Additional Protocol II.

Among the rules that protect certain categories of victims, is the case of children. Children, as mentioned before, are high priority subjects within a legal framework of peace. They also will be if a State is involved in a non-international armed conflict. Children have a special status that protects them due to their vulnerability. Additionally, in the 1977 Additional Protocol II there is strong emphasis to state that children under the age of 15 should not participate in armed conflicts. They cannot be recruited by armed forces of any kind. It is very important for this case to be protected under the regulation because, unfortunately, in many internal armed conflicts children have been a key role in performing brutalities. However, this subject will be analyzed thoroughly in the second chapter of this thesis.

In fact, this protocol is considered as progress in the judicial field of International Humanitarian Law, since it broadens the protection of people and goods, besides the fact that it points out the protection of certain categories of victims. Without a doubt, it is an achievement to have more topics covered by International Humanitarian Law and to see that nowadays most countries of the international community have already ratified the additional protocols of the 1949 Geneva Conventions, which shows greater reach of these regulations and how these topics have become a matter of global awareness.

## **1.6 International Organizations and the International Humanitarian Law**

The main actors of International Humanitarian Law are States, which are the High Contracting Parties in conventions under IHL, such as: the Geneva and The Hague Conventions and the Additional Protocols. However, throughout time and the evolution of international relations, States now seek to be represented by international organizations. These governmental organizations, nowadays, have become another actor that supports the application of International Humanitarian Law. Likewise, non-governmental organizations, are an essential part of the execution of norms in this humanitarian law.

Not long ago, States still clung onto sovereign power of self-determination and use of legitimate force. Therefore, the option to form international humanitarian organizations had been very difficult, until World War II. After this historical landmark, countries have agreed that it is fundamental to promote peace. So, nations now pursue greater cohesion among countries and better diplomatic relations. They have consented to the constitution of international organizations and the possibility to adhere to these organizations, since the treaties remain as open.

Currently the international scenario is composed by international organizations that intervene in a great way in issues concerning current needs. Some of the international organizations that stand the most in their humanitarian labor in armed conflicts are: the International Committee of the Red Cross (ICRC), United Nations (UN) and the Organization of American States (OAS).

### **1.6.1 International Committee of the Red Cross**

The ICRC is the most important NGO when it comes to the protection of IHL. This grand International Committee, as it is currently called, was created in 1863 after Henry Dunant, a Swiss businessman, who wrote “A Memory of Solferino”. Solferino was a place where a battle between the Austrian and French armies took place, which left many dead and wounded over the battlefield. This Swiss businessman was an eyewitness of war’s brutality. He saw so many young men agonizing after battling. This terrible experience led Henry Dunant to meditate about the urgent measures that he considered necessary for an armed conflict. Therefore, as a conclusion, I am leaving 3 points that should be discussed and articulated by a group of diplomats and

scholars.

The 3 points that Dunant established pointed out the following: 1) Establish voluntary societies in each country to help doctors in times of conflict and peace with auxiliary service. 2) Adopt international treaties guaranteeing the protection of the voluntary medical team that serves during war and beyond war. 3) Adopt an international emblem to identify and protect the medical team and resources.

The three points analyzed by Dunant were not only the foundation for the creation of the International Committee for the Red Cross with its indistinguishable emblem, but also the great step that needed to be taken in order to finally shape a (conventional) code in connection with a humane treatment for war victims. A Memory of Solferino forged what is not International Humanitarian Law and an international committee that is committed to humanitarian aid, honoring Henry Dunant's good work that was designed 150 years ago for the victims of armed conflicts.

The International Red Cross consists of a series of institutions, such as: the International Committee for the Red Cross, national societies of the Red Cross, the Red Crescent and International Federation of the Red Cross. These institutions meet every four years with the High Contracting Parties of the Geneva Conventions of 1949 at a conference where they debate the responsibilities that have been acquired by means of ratification of the aforementioned treaty. Generally, when speaking about the Red Cross institution, which has a legal identity in International Criminal Law, it refers to the International Committee of the Red Cross, which structure is considered as one of the largest, as well as the one in charge of overseeing the application of International Humanitarian Law.

The ICRC has been working for over 150 years, and it continues to evolve in accordance with current circumstances. It is also considered an innovative institution that faces the challenges that the world presents it. Yet, though the ICRC has a particular level of adaptation, its mission is the same that was established decades ago. According to the International Committee, its mission is defined in the following terms:

“The International Committee of the Red Cross is an impartial, neutral and independent organization with an exclusively humanitarian mission to protect the

lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also strives to prevent suffering through the promotion and strengthening of universal humanitarian law and principles. Founded in 1863, the ICRC gave origin to the Geneva Conventions and the International Red Cross and Red Crescent Movement, which international activities in armed conflicts and other situations of violence are directed and coordinated (ICRC, 2009)”

### **Illustration 2: Red Cross and the Red Crescent logo**



**Source:** International Committee of the Red Cross: Iraq: the ICRC increases its activities to help more than 1.5 million people. Available at:

<https://www.icrc.org/spa/resources/documents/news-release/2014/10-30-iraq-assistance.htm>

Within the definition of the mission that the International Committee of the Red Cross carries out, different characteristics can be observed, such as: neutrality, Independence, among others. In addition to the ICRC’s numerous principles and characteristics, it also has several functions. For instance, it acts like an international agency with a legal status. In a document issued by the ICRC, Yves Sandoz (1998) speaks about the different functions that the ICRC has. He classified the functions the following way: vigilance, encouragement, advocacy, guardian angel, actor and watchdog.

This first function, vigilance, which the author describes about IHL, refers to the normative of the law itself. The ICRC is expected to analyze regulations and

compare them with the population's actual needs. This means that IHL regulations should be revised and adapted to current situations. That is what the vigilance function is about. According to Sandoz, International Humanitarian Law requires clarifications. For instance, there has been confusion at the moment of demanding application, regarding the terminology of active hostilities and the determination of the applicability of the Conventions. A current example is Israel and the Palestinian territories. Though the normative of IHL still causes doubts in its application, the purpose of the vigilance function is to revise norms constantly and in the case of a normative that is not upheld or is ambiguous, it can be amended.

The second function is called animation. This is closely tied to the first function mentioned before. What the ICRC seeks through this function is to open possible solutions to problems presented by the vigilance function. This means that the ICRC presents and manifests the possible mistakes that exist in the existing regulation both in the 1949 Geneva Conventions and the 1977 Additional Protocols and pursues lines of action to improve the points analyzed and reviewed before. Therefore, the animation function tries to remedy the problems found by the vigilance function. An important example that still has a long way to travel is the regulation for the protection of the environment during armed conflicts.

When the four Geneva Conventions were formulated, the protection of the environment was not mentioned. The focus was placed on people mainly, whether they were combatants or noncombatants. Environmental issues did not gain force on a global scale until the Vietnam War, where there was vast deforestation. After many attempts on behalf of the ICRC, many initiatives have been launched to cover this issue with more clarity. The ICRC and the UN have worked together on this subject; they have elaborated several reports that suggest army obligations regarding the environment.

The third function is promotion. The ICRC carries out this function by convincing states to adhere to the existing instruments of International Humanitarian Law, diplomatic conferences or any initiative that upholds IHL. The International Committee of the Red Cross is an institution that is permanently attentive to inform states about the latest news and different actions that states can be involved in.

Moreover, the function of promotion. It also refers to the fact that the ICRC periodically sends each state reminders about the ratified treaties and the importance of their compliance. These reminders are important, because the signature of a High Contracting Party is not enough to be involved in the mission of IHL. Therefore, the ICRC sends reminders about the obligation that states acquired by being part of the 1949 Geneva Conventions and the Additional Protocols of 1977.

The fourth function is that of guardian angel, this means that the Red Cross Committee as mentioned in the conventions was granted the arduous task of guarding the law. The implications that this point has are quite simple, however, they are very difficult to apply. It is therefore the duty of the ICRC to protect International Humanitarian Law in such a way that it does not allow States to ignore it or to hold on so much that it actually causes harm to the same right and weakens it. What is sought is to generate a respect in such a way that the State can comply with what has been agreed upon.

The fifth function mentioned by Sandoz is that the ICRC is an actor. This may be the role that characterizes the International Red Cross the most. The ICRC's work in the affected areas during armed conflicts is very frequent and worthy of mention, since the duty best performed by this institution lies in the medical care of combatants and civilians. Around the world volunteering in the medical area of the red cross is well recognized, and thanks to the acceptance of global citizenship, this institution has a good team in each country. However, when we talk about the ICRC acting in favor of protecting and enforcing Conventions, we still have a long way to go. One of the major criticisms of the International Committee of the Red Cross is its lack of action when the high contracting parties themselves violate the agreements. Therefore, this area must still be specialized in order to have a greater influence on the international scene.

Finally, the sixth function according to this article of Sandoz is called the "watchdog". This function is the most difficult and is often confused, since what this function seeks is to channel warnings when a state is violating an international humanitarian law treaty. However, the neutrality of the Red Cross Committee is a very strong and distinctive principle of this institution, and under this principle the ICRC does not fulfill the role it has been given by monitoring non-compliance.

Indeed, this clash between the duty to monitor and be neutral is a point of great disagreement, since what the International Committee of the Red Cross seeks is harmony between countries and that they respect the norm, and is very delicate for the Red Cross make strong denunciations to countries that are fundamental pillars in our international system. Therefore, the ICRC has shown a low profile when it has been tried to publicly say non-compliances with the norm, and the consequences have been that these violations are left in the shadow. In order to have better results on this point, the ICRC can not work alone, but the UN has to support with calls for attention, mainly by the Security Council, so that both institutions seek to maintain and restore the peace.

With these six functions mentioned above, one can observe and understand the series of work and responsibility that the ICRC has on its shoulders, without a doubt, it is the institution that works the most independent within its mission, even if there are shortcomings. This body is very competent both in the legal area, doctrine, and in the field of International Humanitarian Law. The ICRC's web portal is very broad, and one can see the magnitude of its work.

The ICRC on its website details the activities carried out for the protection of the civilian population. They currently maintain 8 key operations such as Afghanistan, Colombia, Iraq, Mexico, Nigeria, Syria, South Sudan and Yemen. These countries have very serious internal armed conflicts and therefore, the Red Cross is carrying out its work maintaining information about the actions taken in these places.

### **1.6.2 United Nations Organization**

The UN is the largest international organization, and it is the most important on a global scale. Almost all countries are members. Aside from having six main bodies as a head, the UN also has subsidiary bodies, functional commissions, specialized agencies, different departments and programs. The UN, like other international organizations, was shaped after a landmark that transcended human history, World War II. The duty given to the United Nations was to maintain peace and international security. Therefore, as has been mentioned before, war was banned in the United Nations Charter. The name to label a situation of hostility started to be armed conflict. Hence, though there is no *jus ad bellum* at present, “the right to war”, there

is a “war conduct” that is *jus in bello*. International Humanitarian Law is a norm that traces the guidelines of conduct in armed conflicts.

In the United Nations Charter three exceptions are mentioned where hostilities can exist and they can be intervened by the UN. To remember the three types of exceptions that have been addressed before are: 1) Measures of Collective Security, 2) War for National Liberation, 3) Legitimate Defense. When permissiveness is analyzed this way, it can be seen that current armed conflicts are legally justified within these exceptions, which indicate that what has been established in the United Nations Charter has left a great degree of interpretation in reference to this subject. IHL has been more difficult to apply, since many countries have used these exceptions to justify armed conflicts and take up actions that under the norm of International Humanitarian Law are inadmissible.

The UN has not had any relation with IHL, since it is a different branch of law. Besides, the UN manages many areas particularly of International Relations and Public International Law. The way to integrate the UN in the Geneva Conventions of 1949 and the Additional Protocols of 1977 has been analyzed. Yet, the UN still has to cover several characteristics that only nation-states have. Even though the UN is a legal entity, it has been difficult for it to take part in multilateral conventions. The United Nations has specific objectives. One of them is to promote peace among nations and avoid what happened after 1945. However, armed conflict lay in the nature of power among countries. Unfortunately after World War II, the Cold War was another global threat. As a consequence, the Security Council decided to send a group of militants as observers for the first time as an operation to supervise the Arab-Israeli Conflict in 1948.

The supervision operation in 1948 was the first that the Security Council sent to defend the protection of security and international peace. In the stage of the Cold War there were many armed conflicts. Yet, the Korean War was a detonator for the UN to establish a tight bond with IHL and set up a team who knew how to manage IHL and Human Rights principles at the time of an armed conflict (Zwanenburg, 2013). During the historical period of the Cold War was when peacekeeping groups were formed, also known as the blue helmets. This group works hand in hand with the Red Cross. Therefore, the group in charge of peacekeeping must abide the

principles of International Humanitarian Law, because they work in conflicting environments.

As has been mentioned before, IHL derives from customary law. This type of customary source has universal principles that should be taken into account in order to mitigate the hostilities among countries. This peacekeeping initiative is very important for International Humanitarian Law. It is also a fundamental contribution to aid during hostilities. In addition, peacekeeping is considered to be the most effective tool on behalf of the United Nations, since it represents a neutral organization and favors the attempts of conflict resolution.

Peacekeeping could be defined as one of the range of activities undertaken by the UN and other international actors to maintain international peace and security around the world. Peacekeeping is an effective and designed technique to aid in the implementation of peacemaking arrangements (Peace Operations Training Institute, 2010). All peacekeeping regulations are found in the Charter of the United Nations in Chapter VIII.

Peacekeepers are people who will perform peacekeeping and are characterized by wearing blue helmets. This particular group seeks to bring peace in the midst of conflicts. In order for this group to be sent to a conflict zone, the Security Council with its 15 members, including 5 permanent members, must reach an agreement and dictate their dispatch to an established area. However, if one of the permanent members of the UN (US, UK, France, China and Russia) vetoes the proposal of peacekeeping, peacekeeping actions can not be carried out.

Peacekeeping by the United Nations has evolved over time, and for this reason when discussing the history of peacekeeping the UN separates into three stages: 1) Peacekeeping Operations during the Cold War in 1945-1987, 2) Post-Cold War Peacekeeping Operations in 1988-1996, 3) Peacekeeping Operations at present 1997-present. Within the evolution of peacekeeping it is important to know the process of UN intervention in an armed conflict. First there is a conflict prevention, this type of prevention is done by States, or by the Secretary General of the UN. Second part of this process is the establishment of peace, in this part it seeks that the conflicts do not advance and that there is diplomatic action to negotiate between the parties involved.

The third point is peacekeeping, this is the point where peacemakers have evolved enormously, from being observers to becoming interventionists in favor of peace together to a great team like the International Red Cross. In the fourth aspect is the Implementation of peace, in this part the Security Council intervenes and can apply certain coercive measures in the intervention in favor of "peace". As a final point, the fifth aspect is peacebuilding, this occurs after applying the previous process and with the peacemakers who continue to intercede even though the fire has ceased. Peacebuilding means that the country that has been in conflict has the ability to manage an atmosphere of peace and create the conditions necessary for their country to be able to re-establish itself after the cessation of hostilities.

### Illustration 3: Principles Guides of the UN Peacekeeping operation



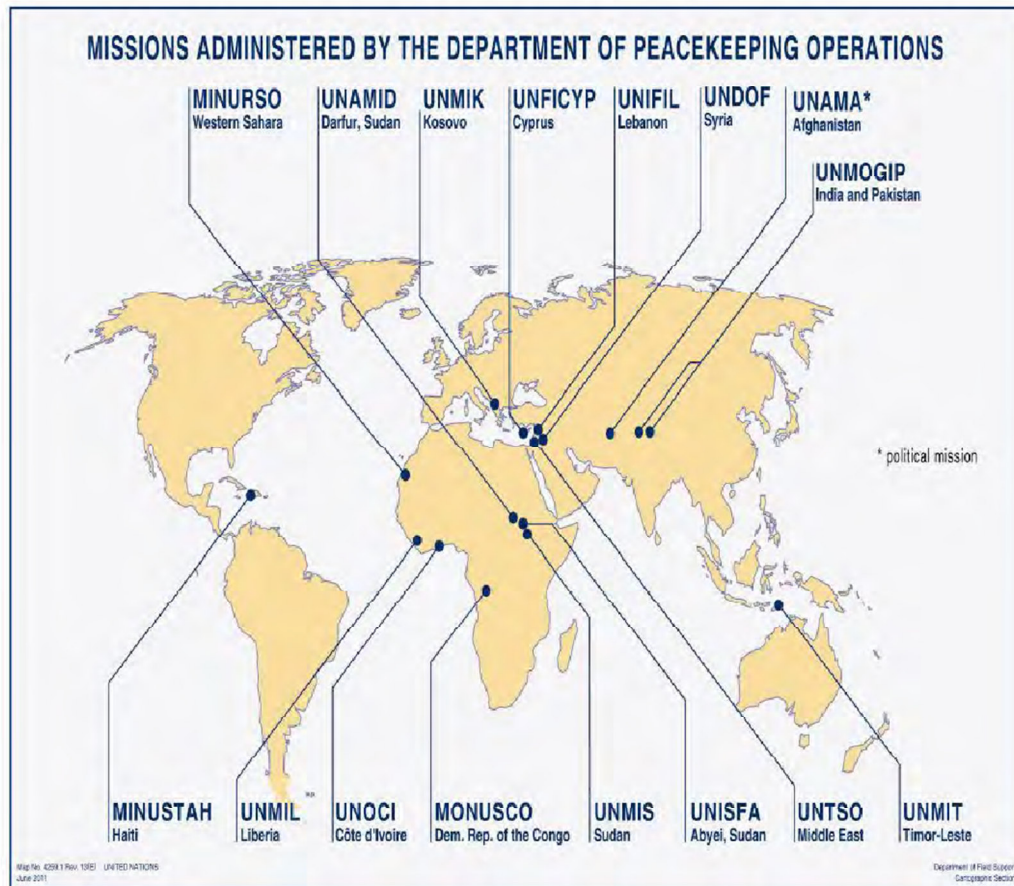
**Source:** Peace Operations Training Institute: Principles and Guidelines for UN Peacekeeping Operations page 27. Available at:

<https://www.peaceopstraining.org/courses/principles-and-guidelines/>

Currently, peacekeeping operations are in 4 continents with a total of 16 operations spread actively all over the world. Many of them coincide with the conflicts that the Red Cross covers as special operations due to the degree of conflict's intensity. Nowadays, peacekeeping operations not only cover international peace and security,

they have also included different actions to enable political processes, civilian protection, demobilization and reintegration of former combatants, to promote and protect Human Rights and help reinstate the rule of law (United Nations). The following map indicates the United Nations' 16 current peacekeeping operations.

#### Illustration 4: Peacekeeping Operations Map



**Source:** Peace Operations Training Institute: Principles and Guidelines for UN Peacekeeping Operations page 129. Available at:

<https://www.peaceopstraining.org/courses/principles-and-guidelines/>

Despite having various duties within its protection, peacekeeping, the most relevant task which currently demands greater focus is civilian protection. Although various NGOs are committed to this challenge, the far-reaching need to protect civilian population during a period of conflict or post-conflict is very broad. Hence, by means of its peacekeeping the UN may take action and act as a shield of protection

for civilians. The main focus of this paper is the protection of civilian population with special attention towards children that are the main victims of armed conflicts. Therefore, it's enabling to address the protection that the UN provides for this vulnerable group during war.

Among the array of duties within peacekeeping, the UN must act as attorney, facilitator, and as advisor on the objectives of the mission in every aspect related to child protection. Likewise, it shall monitor and denounce serious abuses against children. However, the UN works with children affected by armed conflicts through specialized agencies and fields, such as the UNHCR which works with refugees, displaced persons, stateless persons, amongst others. The major areas of operations that the UNHCR holds are in Afghanistan, Colombia, The Democratic Republic of Congo, Mali, Pakistan, Syria, Jordan, Lebanon, Turkey, and Iraq. If we compare amongst the displaced persons and refugees, there is a close tie with armed conflicts, being that war motives are the main reason of why these situations occur where people are forced to leave their countries.

The UNHCR indicates the seriousness of the situation of children in armed conflicts by means of the alarming figures on their website, which establish that more than two million children have died in armed conflicts, six million have been mutilated or injured, and one million have become orphans. The UNHCR's general task is to guarantee access of asylum for victims of armed conflicts whose lives are at risk. Those which will help upkeep the people's fundamental rights and which will also not allow forced returns to countries where people's integrity may be harmed. The UNHCR's main duty dealing with children is to provide legal protection, as states in the 1989 Convention on Children's Rights and the 1951 Convention on Refugee's Status. Furthermore, a special concern is given to refugee children to seek that children may not be separated from their families, to prevent sexual exploitation, recruitment by military forces, as well as to gain access to education.

### Illustration 5: Refugee Children in Africa



**Source:** UNHCR: Framework for the Protection of Children. Available at:

<http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/Publicaciones/2014/9456>

Another program that helps children in armed conflicts is UNICEF; this United Nations fund is an agency specialized specifically in overseeing children's needs. Among its functions, it addresses the subject of children that are victims of armed conflicts. It is safe to say that one of the most considerable advances that UNICEF has had was to promote an international convention about children's rights. This project had results in 1989, where a convention was instituted to safeguard rights for children in different fields, within education, health, mortality, protection, among other important aspects. In this universal convention on children's rights, subjects related to armed conflicts were addressed. Most of the Geneva Convention of 1949 and the Additional Protocols of 1977 were embodied. Though there is criticism about these norms within the Convention on the Rights of Children, for the UN and many countries it was a sign of progress to manage and face this subject from different legal norms and international organizations.

Additionally, the UN counts on an Office of the Special Representative of the Secretary-General to address the issue of children in armed conflicts. This specialized office was created by UNICEF, General Assembly and Human Rights Council initiatives. In conjunction these three agencies realized that the issue of

children in armed conflicts was serious and required to be considered a priority, which is why it was assigned a special office to maintain work reports and the initiatives about the subject that are presented by different campaigns around the world up-to-date.

This office is in charge of the issues of children in armed conflicts counts on well-articulated reports and academic articles about the reality that these children face in an armed conflict, as well as the normative bodies that protect children. In fact, the UN does a great job with its different branches that constitute this broad international agency. International Humanitarian Law and Human Rights are the most important legal protection in armed conflicts, where IHL puts pressure on states to act according to rules between each other and Human Rights apply internally.

Finally, to finish addressing specialized UN agencies that work with armed conflicts, it is inevitable to mention the International Criminal Court (ICC). This independent branch of the UN is fundamental, because it represents a criminal court that is in charge of deciding over and interpreting controversies under a legal order and rules of International Humanitarian Law and Human Rights. Therefore, the ICC is the first permanent and independent court with the capacity to investigate and bring before justice those who have committed serious crimes against IHL, such as war crimes, crimes against humanity and genocide (ICC). There are an endless amount of cases that have been left unpunished regarding violations of IHL. However, there are cases that have been in executed concerning Rwanda, Sierra Leone and Kosovo, among others. The function of the ICC is very complex, but the need to have an updated court that argues defends justice against these violations is fundamental for the international community.

### **1.6.3 Organization of American States**

The OAS complies in accordance with the dispositions of the United Nations Charter. It is administered regionally and abiding the same principles. To put the OAS' purposes into effect, it is based on four fundamental pillars: democracy, human rights, safety and development. In addition it uses necessary tools for political dialogue and cooperation to achieve its objectives as a regional agency. The OAS is comprised by countries that are geographically in the American continent. Therefore,

it has 35 members which have been ratified by the OAS Charter. IHL is not linked to this organization. However, the OAS has worked with a special focus on Human Rights at a regional level.

The International Committee of the Red Cross as the main promoter of International Humanitarian Law is in charge of reaching different organizations to reaffirm state's responsibility towards IHL. Therefore, the ICRC after several attempts to speak with the head of the OAS and with so many current armed conflicts, both organizations initiated new approaches to promote IHL and its dissemination to each member state to show their responsibility and pertinent attention towards the issue. The following initiatives on behalf of both organizations regarding respect for the endorsement of IHL gained strength after 2001.

In general, each member of the OAS affiliates independently and sovereignly to the Geneva Conventions of 1949 and the Additional Protocols of 1977. Yet, many states that do not show signs of armed conflict forget what was agreed before. However, within our American continent there have been armed conflicts throughout the 20<sup>th</sup> century when the Geneva Convention was in effect. In fact, there is still some conflict in Colombia; though peace talks have commenced between the Colombian government and FARC group. Therefore, promoting International Humanitarian Law is essential within regional agencies, as well as addressing armed conflicts and their consequences.

Firstly the ICRC together with the OAS has focused on encouraging and promoting International Humanitarian Law among members of the OAS by means of a petition of adhesion to IHL international treaties. The Organization of American States has promoted for member states of the regional organization to participate in the Geneva Convention of 1949, the Additional Protocols of 1977, International Humanitarian Fact-Finding Commission (IHFFC), Protocol to the Convention on the Rights of the Child in connection with the participation of children in armed conflicts. Both the ICRC and OAS believe that international instruments are the cornerstone for IHL; hence, all of the countries in the region should participate.

The Geneva Convention of 1949 has all 35 members of the OAS as signing parties of the convention, the Additional Protocol I of 1977 has 33 OAS members, the

Additional Protocol II of 1977 has 32 members of the regional American organization, the International Humanitarian Fact-Finding Commission has only 11 OAS member states and lastly the Protocol to the Convention on the Rights of the Child has 12 OAS member states.

There is still work to do regarding all the members of the OAS and their involvement in the aforementioned treaties, particularly the International Humanitarian Commission, since not all countries count on a commission dedicated to promote IHL within their countries as applied with Human Rights. Both by laws are very important for people's general knowledge. As a second point, the OAS and the ICRC focus on promoting IHL within countries, in such a way that they adopt indispensable legislative measures to guarantee the respect of IHL during times of peace and in times of armed conflict. For instance, one of the initiatives in countries such as Nicaragua and Bolivia has been to stipulate sanctions under these regulations in case there is an improper use of the Red Cross or Red Crescent's emblems. Furthermore, the ICRC and the OAS have worked to provide assistance and legislative and penal advisory regarding internal norms in each country to facilitate the adaptation and incorporation of new norms and sanctions in case of IHL violations. In 2002, Colombia adopted penal code that sanctions crimes committed against people and objects protected by IHL. This advance is very important for International Humanitarian Law, because when it is implemented in countries within its legal system, spreads and extends the required respect that it deserves as a useful regulation for human beings.

As a third point, without a doubt, the Inter-American Court of Human Rights (IACHR) must be cited. As mentioned before in this chapter, Human Rights and International Humanitarian Law are not the same body of laws. However, they are not as different as is often assumed. The biggest difference between these two regulatory bodies is that IHL is applied during armed conflicts and Human Rights are applied in times of peace. Both regulatory bodies have similar characteristics, because the main purpose of IHL and Human Rights is to protect the dignity of human beings. Moreover, neither IHL nor Human Rights have a bilateral nature, that imperative unites them and makes them a type of bylaw worthy of respect and capable of making itself respected. Therefore, when addressing Human Rights in the

case of the Inter-American Court, we can also see how close this institution is to IHL. The International Committee of the Red Cross established a framework of exchange of scientific and public information between member states of the IACHR, to obtain information about Human Rights and International Humanitarian Law within the institution. This agreement intends to fortify the protection of people under both bylaws. The most troubling issue for the Red Cross in the Americas is the Colombian case. Therefore, the purpose of this agreement of exchange of information is to address cases with greater relevance and that have an urgent nature, like the actions of the ICRC in Colombia and applying IHL in that context.

Fourthly, the OAS also takes into account the Inter-American Institute of Human Rights (IAIHR). The ICRC acts as a guardian angel of IHL and maintains good relations with the IAIHR. In fact, both institutions share commitments of cooperation, responsibility, projects and events to promote IHL and Human Rights, in this case mainly about refugees. In 2002, the Inter-American Institute of Human Rights organized an interdisciplinary course, which was taught by the famous scholar Jean Pictet, who was invited to prepare a class called “Let’s explore Humanitarian Law” (International Committee of the Red Cross, 2002). The target of this workshop was to reach youths and deepen objectives and the reach of these types of IHL initiatives with ICRC to promote information about Humanitarian Law.

Finally, as the last point, the OAS not only Works together with the ICRC but also with specialized agencies under the UN such as UNICEF, that provides information about children and how they are treated regarding IHL and Human Rights. Likewise, the OAS works with UNHCR through which International Law and International Humanitarian Law applies to refugees in Mexico, Colombia and Ecuador. The OAS is also linked to UNESCO and promotes the protection of cultural goods in the case of an armed conflict. To conclude, the OEA, despite having several issues to address as a regional entity, also tries to integrate issues regarding armed conflicts and the promotion of IHL to its tight agenda.

## 1.7 Conclusion

Throughout this first chapter there has been information and an analysis about the wide reach of International Humanitarian and the importance that it has within global scenarios. However, though this law is not fully applied how it is expected to be, it should be taken into account that it is still up-to-date, is in constant evolution and adapts to according to current times. International Humanitarian Law and Human Rights both have principles and characteristics that differentiate them from other types of law, because it's in their nature to protect human dignity.

When matters of great importance are addressed, these rights and laws should be the most applied and defended, not only by nations but also citizens should know their rights and demand their fulfilment; particularly in times of hostilities, where International Humanitarian Law intends to guarantee a minimum degree of humanity in the most inhumane conditions. As Christophe Swinarski said: "The primary purpose of the international humanitarian law is to try to make the reason voice be heard in situations where weapons silence the conscience of men, and to remind that any human being, that even an enemy, remains a person worthy of respect and compassion (Introduction of the IHL, p.16)"

Therefore, International Humanitarian Law in essence protects and defends combatants and noncombatants within the environment of both a national and international armed conflict. Its reach has expanded throughout the years of having a more extended normative in non-international environments. Likewise, regarding the protection of the civilian population, since in the last decades civilians have been the main victims of these conflicts. International Humanitarian Law could not work without the support of nations that are the High Contracting Parties. However, the Promoting Body in charge of its fulfillment is the International Committee of the Red Cross, which has acquired a great responsibility before the international community in extreme cases such as war.

This institution is not only known for its medical rescue work in circumstances of extreme urgency, but also because it promotes respect for the guidelines of the 1949 Geneva Conventions and their 1977 Additional Protocols. Furthermore, it relies with help from specific agencies of the UN that have been mentioned throughout this

chapter as peacekeeping groups, the UNHCR and UNICEF, which work with the ICRC to mitigate the cases of armed conflicts.

Unfortunately, this noble-minded work is not done continuously; since constantly more conflicts appear and many violations of norms can be seen which concern civilians, especially children. Therefore, this first chapter serves as a theoretical framework to be able to make a diagnosis of the reality that is lived during an armed conflict. To conclude this chapter, it is important to remember the words of Jean-Jaques Rosseau when he said: "War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation".

## CHAPTER 2: DIAGNOSIS OF THE REALITY OF CHILDREN IN ARMED CONFLICTS

### 2.1 Introduction

*“Adults go to war, but they don’t realise what damage they are doing to children”* –  
A Nicaraguan Child (Machel, 1996)

Once analyzed in the first chapter the reach that the International Humanitarian Law norms have over international and domestic armed conflicts, one can assume that its application is effective, besides that the majority of the States of the international community are part of the IHL as contracting parties of the Geneva conventions, in which States have acquired the roll of respecting and make respect the IHL. However, the normative and the theoretical part are not displayed in the same way in the actual practice. The truth is that there are a lot of violations and unfulfilled laws in the International Humanitarian Law during situations of armed conflicts.

Although, war is an illegal act according to the United Nations Charter, States justify their participation in war, through one of the exceptions provided by the UN Charter as it was mentioned in chapter 1 of this paper. Generally, war is justified as self-defense. Therefore, there is not a certain way to know which of the parties has applied legitimate defense in the conflict. However, without blaming who started the conflict, whether is international or non-international conflict, States have the duty to comply with the International Humanitarian Law, which presents the guidelines and the humanization of war. It simply tries to foster the treatment of combatants and noncombatants with dignity. Even though, in reality "dignified treatment" is the main and missing piece in this situation, because States do not make justice of this fundamental part. Besides that, the most frustrating part of war is to see civilian population devastated and be the main war target. In the Fourth Geneva Convention of 1949 points out that civilian population at any time can be target of opposing forces.

Within the protection of the civilian population, there are particular cases that require special protection, because there are groups of priority attention. As part of this group, children are the main protected group. Children have this priority treatment because they are the most vulnerable during armed conflicts. According to the

UNICEF's statistics of 2010, previously mentioned in chapter one, it is estimated that around two million children have died directly from armed conflicts in the last ten years. The ACNUR has also pointed out that twelve millions of children have been displaced and asked for refugee. Therefore, children are prone to more risks of abuse, abandonment, violence, exploitation, human traffic or force recruitment during hostilities (UNHCR, 2012).

Therefore in this second chapter of this work, the main objective is to address the reality of children in armed conflicts . For that reason, the first part of this chapter will talk about the ways of how armed conflicts have affected children, from forced recruitment, abandonment, sexual attacks, lack of education and among other ways of making children victims of hostilities. In this aspect of the chapter the timeline of the events addressed here are between 1990-2015, because this period of time represents modern armed conflicts. Additionally, in the second part of this chapter it will narrate experiences lived by humanitarian activist, that have witnessed armed conflicts, and have seen the situation of children involved in the conflicts. Finally, the last part of this second chapter points out the International Humanitarian Law and children's right during armed conflicts within the Ecuadorian legislation.

## **2.2 Reality of Children in armed conflicts**

The reality of war is raw and disastrous, even more when children are unjustly involved in it. Throughout history war has taken an extremely high number of children. According to Graca Machel, a war children activist (1996), in her book "Impacts of war on children" comments that modern conflicts are more cautious and systematic than ever (1), and that civil population, especially children have become the main targets of opposing forces. The objective nowadays of international and non-international armed conflicts is to terrorize civilian population. Machel also comments that these new conflicts are characterized by high rates of violence and brutality such as violations, poisoning of crops and even genocides. During the 1990's around 2 million of children died because of armed conflicts and 20 million of children in the same decade were left as refugees or displaced from their homes (Machel, 1996).

After the end of the cold war 1991, it was thought that no more conflicts were going to occur. Nevertheless, the end of the cold war opened a new phase called post-cold war era. This new time period had a strong impact in countries that received help and aid by the Soviet Union. Also, new armed conflicts in this world scheme started to appear and they were not only between countries, but between ethnicities, religion and different groups within a country. These domestic armed conflicts in the 1990's have marked the new phase of making war and terrorism. The regions most affected by these systematic wars have been: Africa, the middle east, some part of Europe and a few cases in Latin America.

After the cold-war, The United States policies dominated a new international world order. The US was known as the hegemonic power after the war. This new world order opened up new regional tensions, and this country with a strong anticommunism system shook a little bit the situation worldwide. Therefore by the 90's the number of armed conflicts arose. The armed conflicts that happened by the end of that decade were: former Yugoslavia, Sierra Leone, Liberia, Rwanda, Argelia, Angola, Uganda, Democratic Republic of Congo, Somalia, Sri Lanka, Afghanistan, Colombia, El Salvador, Tibet, The Philippines, Egypt, Israel, Palestine, West Sahara, Iraq and Kuwait.

In the same way, in the beginning of the twenty-first century new armed conflicts kept appearing, and old armed conflicts have not ceased fire. In this new world order, the confrontations keep evolving and conflicts have worsen in the way they do terrorism, conflict between religions, especially for jihadist. This new century's conflicts so far are: Afghanistan, Angola, Sierra Leone, Democratic Republic of Congo, Colombia, Iraq, Pakistan, Yemen, Sri Lanka, Myanmar, Syria, South Sudan, Gaza, Somalia Nigeria, Mali, Mexico, Ukraine, Iran, The Philippines, Libya, Egypt, Uganda, and Tunisia

In the reality of children in armed conflicts in latin america between the 80's and the 90's there were domestic armed conflicts in some countries, and it brought great consequences to the civil population, especially to the children. The majority of children that were victims in these conflicts came from poor communities and indigenous minority groups. Therefore these children were more vulnerable during hostilities. The armed conflicts that have stood out in this region has been: Colombia,

El Salvador, Nicaragua, Peru and Guatemala. Also countries such as Brazil and Mexico present a lot of hostilities due to drug dealing, but they are not considered as a domestic armed conflict.

Modern conflicts' problems are that small countries that have been presenting a great deal of instability, also have been manipulated by stronger powers and have helped reached other countries interests. Therefore, domestic conflicts with foreign help have been fighting for natural resources, for example, Sierra Leone and Angola. These countries had internal hostilities due to diamonds. As another example there is ivory conflict in countries like South Sudan. Additionally, the most fight over resource has been oil, causing very devastating civil wars and conflicts in countries in the middle east, an outstanding example is Syria and Iraq. Lastly, as another example of conflicts over natural sources is drug production, and there is this conflict that has been for the last 30 years and it is the colombian conflict. Moreover, another factor of armed conflicts is arms trafficking, which are also financed by narcotraffic and are usually sold by strong power to rebel groups within a conflicted country.

In effect, the transition in this post cold-war era has brought many conflicts over natural resources. This world keeps focusing in its own convenience and interest when it comes to power and money. In these modern conflicts children are highly affected not only physically but in these new wars, there has been introduced this modality of forced recruitment of children, making them soldiers at a short age.

These violations of children's rights are unforgivable within the scheme of the International Human Rights, and sadly keeps happening. Therefore, this first part of the second chapter of the paper focuses on the actual facts and what has been happening around the world in regards of the reality of children in war. According to one of the specialized branches of the OAS "the Inter American Institute of children's rights" says:

"Childhood and youth fundamental rights are been more infringed. To begin, there are two ways in which childhood and youth can get involved in war. The first one is when children and teenagers are direct victims of an armed conflict, suffering from destruction, abuse, lack of protection in their physical and mental health, and forced displacement. The second way of infringing children and teenager's rights is more

evident, and it is by recruiting children by force and making them active combatants in the war. “ (Instituto Interamericano del niño, 2002)

Therefore, the focuses that will be addressed in this paper are the two types of victimization of children during hostilities according to the Children Interamerican Institute. The first focus is when children are direct victims of the conflicts, in other words, when the consequences of hostilities impact their lives such as: death, wounds, sexual abuse, among others. The second focus, it is when children are made participants of war, by either forced recruitment or voluntary recruitment, both make them authors of crimes. Also, besides of addressing this two types of victimization during war, this chapter will mention the six grave violations committed to children during armed conflicts.

### **2.2.1 Non Combatants Minors**

As it was mentioned previously, when addressing about non-combatant minors the term refers to all children who directly received the effects of armed conflicts in their lives. Out of the six grave violations committed in armed conflicts against children, five of them are applied to non-combatant children, and they are: 1) Killing and maiming of children, 2) Sexual violence, 3) Attacks against schools and hospitals, 4) Abduction of children, 5) Denial of humanitarian access.

All These types of assaults against children are addressed and are condemned in the International Humanitarian Law. In fact, the international community has openly talked about children in armed conflicts, and has expressed its discontent for the lack of fulfillment of the International Law in the reality of the hostilities. However, there have been many international gatherings with the objective of addressing this important topic, the crude reality in these 25 years after the cold war is very different, with many imbalances in regards of the fulfillment of the law during armed conflicts. In this part of non-combatants minors the five violations perpetrated against children will be detailed and also examples of different armed conflicts within the 90's and this new century will be provided.

## **Killing and maiming of children**

The universal law of prohibiting violence towards civilians, especially, the protection of the physical integrity of civilians, with no cruelty and torture during armed conflicts has played an important role in the customary law. The respect of the lives of the non-combatants has not been a recent incorporated law, it can be said that it has been a morality principle that has been established for a long time as part of the customary law when making war. Part of this custom is to protect children and women during hostilities.

Article 3 of the IV books of the Geneva Conventions of 1949 it is known to be the common article, because it is the main source of protection and application during armed conflicts, actually within this article it covers the notion of protection during an international armed conflict or a domestic armed conflict. According to the UNICEF the estadistic of death children due to conflicts go up around 2 million. On the other hand, children that have been heavily wounded goes around to 6 million. Moreover, in this statistics, it also says that during civilian attacks between the 80% to the 90% of victims are children (2010). One of the reasons why children are being targeted and victims in armed conflicts is because the States that present this problem are usually populated by young people, therefore in their statistics young adults and children are the most affected.

Concerning the topic of killing and maiming of children in armed conflicts, there are usually three very important principles broken of the IHL. These three principles are: Humanity, distinction, and proportionality. It is important to remember that these principles are part of the customary law and States have the duty of respecting it during armed conflicts, therefore the lack of fulfillment of these principles are not justifiable by any State.

The principle of humanity protects civilian people, who must be treated with dignity without discrimination of sex, nationality, raze, religion or political party. The second principle broken in this type of violation is principle of distinction, in which the combatants ought to distinguish war targets and this refers to attack only soldiers and military objectives and not civilians and their possessions. Finally the third broken principle is the principle of proportionality, and it happens when soldiers

justify civilians lives and civilians assets with war cause.

Therefore, the principle of proportionality is to target only military objectives in order to weaken the enemy, in this part the civilian population do not play any role. For that reason, civilians cannot be targeted; this principle is clearly expressed in the conventions of the International Humanitarian Law in the part of military targets and civilian objects.

An example of a conflict that has prevailed for some years is Congo's conflict (Democratic Republic of Congo), this conflict is known as the deadliest conflict since World war II. It started since 1994, and has been a war caused by natural resources, which are abundant in DRC territory. Statistics show that more than 5.4 million people have died in this conflict, and out of that total 2.7 million have resulted to be deaths of only children. The life expectancy in the DRC is only 47 years old, compared to countries like England which has 79 years old. There is an overwhelming difference of 32 years between these two countries, besides it is estimated that 1 of every 5 children die before reaching the age of 5 in The Democratic Republic of Congo (War Child, 2014).

These very serious numbers from the DRC are mostly caused by armed conflict and the precarious condition that this country lives in. The UN has sent around twenty thousand peacekeeping operations to this conflict. Also the ICRC maintains constant operations with regards of health care and surveillance of the International Humanitarian Law in this area. However, this particular conflict has gone out of the hand of the international community, and it has not only been uncontrolled but this case is not presented in the international agenda. Unfortunately, this types of conflicts take the back seat when it comes to addressed issues in the world scene, and only international organizations that have as their duty to watch over people's dignity during armed conflicts are part of the compromise of the protection of the civilian population during hostilities.

#### Illustration 6: A child in the DRC's armed conflict



**Source:** Zuzeeko's Blog. DR Congo: Worst Place to be a woman. Available at:

<http://www.zuzeeko.com/2010/09/dr-congo-worst-place-to-be-woman.html>

Another example of this type of grave violation during armed conflicts is in the 90's during the Rwandan genocide, this conflict was caused by the clash of ethnicities between the Tutsis and Hutus. The Tutsis were the ethnic minority in Rwanda and they got massacred by the Hutus. This is one of the most traumatic events during the civilian wars in Africa. It is estimated that between April 6th to July 16th of 1994, in around of a hundred days approximately 800,000 to one million of Tutsis and a part of Hutus were killed. Even though the number of deaths during this conflict might be higher due to difficulty of counting burned bodies, it just adds to the fact that this is one of the most tragic events in human history. It is estimated that more than 6 men, women and children were killed every minute of every hour for three months straight during this genocide (SURF survivors Fund, 2011).

According to the UNICEF out of the 800,000 victims of the genocide at least 300,000 were children (UNICEF, 2012). Among this devastated statistics only 300,000 to 400,000 people actually survived the genocide, and 75,000 of them were children that were left orphan. In this next illustration published by the newspaper El País in 2010 tells the story of Rwandan children begging to Congolese soldiers to

be let to cross the border to be reunited to their mothers in 1994.

**Illustration 7: Children of the DRC begging to cross the border.**

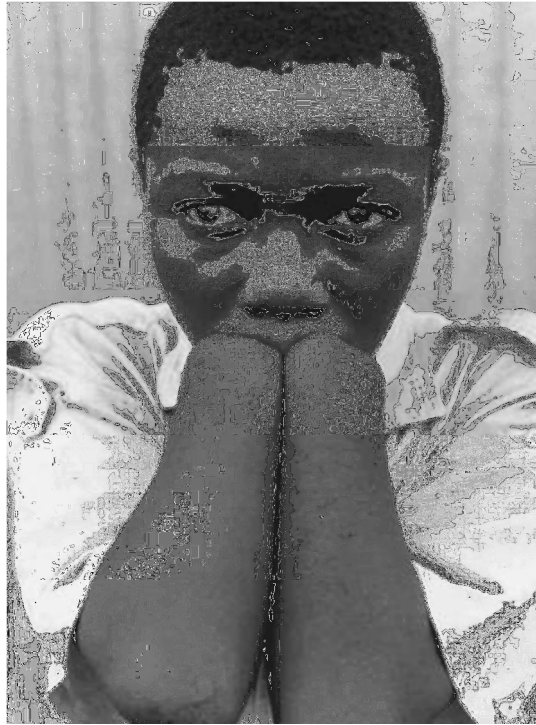


**Source:** Diario El País, sección Internacional. 12/Enero/2010. Available at:

[http://elpais.com/diario/2010/01/12/internacional/1263250808\\_850215.html](http://elpais.com/diario/2010/01/12/internacional/1263250808_850215.html)

The number of cases of maimed and wounded children in armed conflict according to the UNICEF in the last decade goes around 12 million. Usually the means to get civilians wounded during war is through bombing or in other types of conflicts children are wounded when they had been working in mines where their lives are exposed to great physical danger. The children that have survived the armed conflicts carry out with them scars for life not only physical but psychological as well. Another example of physical violence towards the civilian population during war happened in Sierra Leone. Rebel groups during the civil war and famous blood diamond war in Sierra Leone cut civilians hands so they will be defenseless, most of them were children.

### Illustration 8: Maimed Child from Sierra Leone



**Source:** 20minutos Blog. 06/Octubre/2008. Available at:

<http://blogs.20minutos.es/enguerra/tag/sierra-leona/>

In the killing and maiming aspect of children in Latin America, conflicts such as Colombia, Guatemala, Nicaragua, El Salvador and Peru took the lives of many children. The source of the conflicts in these countries were caused by a mixed of different ideologies between marxist and liberals as consequence of the cold war, also it is important to notice that these countries have gone through many economical problems. Besides that, the main source of money for this countries is agriculture and new laws towards this area were applied in these countries which also rose a lot of discontentment from people. Another factor for armed conflicts in these countries are the social and cultural clashes between the people, because of the indigenous minorities and different ethnical groups that have been neglected by the Government throughout years are parts of the reasons of the armed conflicts as well.

It is estimated that in the Colombian conflict from 1985-2016 out of the 100% of the death tolls of the armed conflict 82% are civilians (Diario El País, 2013). In June 2016, a very important fact in history has happened, the Colombian Government

finally has signed the peace treaty with the FARC group, after 52 years of constant conflict.

**Illustration 9: Children in the Colombian armed conflict**



**Source:** Diario el País Colombia: Icbf acompaña a niños y niñas víctimas del conflicto armado. (09/Abril/2015). Available at: <http://www.elpais.com.co/elpais/colombia/noticias/icbf-acompana-ninos-y-ninas-victimas-conflicto-armado>

**Sexual Violence against children**

Sexual Violence constitutes a crime against humanity, and it does not matter if it is perpetrated during war or peacetime. This immoral act is condemned by The Human Rights and the International Humanitarian Law. Sexual assaults are considered a war crime, in the Geneva Convention of 1949 in its article 3 any type of sexual abuse is forbidden against children and adults. Also in article 27 of the fourth book of the Geneva Convention of 1949 says: “Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.”

Even though sexual abuse is committed against boy and girls during armed conflict, the reality of a girl in war is very different from a boy in war. Their functions and the mistreatment is shown in different ways. Generally, the most common attack against girls during war is through sexual abuse. These girls at a short age may become sexual slaves and most of the time they can present unwanted pregnancy, also they may present sexual diseases, such as AIDS. In the Rome Statute of the International Criminal Court in its article 7 letter (g) states: Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity constitute war crimes and crimes against humanity (Roman Statute, 2002).

As Graca Machel, an activist for the rights of children involved in armed conflicts, said in her book "The Impact of War on Children", the conflicts of this new post-Cold War era are more systematic than ever, because it terrorizes the civilian population. One of the most horrifying ways to terrorize is through rape. In the conflict of the Democratic Republic of Congo, an estimated of 200,000 women and girls had been sexually abused (War Child, 2014).

The Syrian civil war is one of the latest conflicts presented nowadays and it has had a very big impact in the world. This war started as a consequence of the famous Arab spring in 2011. however, this conflict has reached high levels of violence. The Syrian conflict has as the root of the conflict the religion clashed within the Islam religion. This conflict also has caused the migration of great amounts of the people.

According to the newspaper "The Telegraph" of the United Kingdom, one of the tactics of war used by the rebel groups of Syria is sexual violence. Girls and Boys under the age of 12 are being sexually abused. Another rising problem in the scope of the conflict in Syria is child marriage. Even though this activity has been a present reality before the war, from 2011 child marriage has risen as result of the conflict. In the case of young girls, they are obligated to get marry to old men and there have been many cases where these men have kept them as sexual slaves. As reported by the UN and narrated it by Fucsia Magazine around 60,000 girls has been assault sexually in Sierra Leone between 1991 to 2002, and more than 40,000 in Liberia in 1989-200, around 60,000 in the Bosnia Genocide between 1992-1995, at least 4,000 in Uganda during the armed conflict there, and around 6,000 in Colombia. These are

data during armed conflicts and not counting boys or adult females.

**Illustration 10: Girls sexually abused by the Islamic State in Iraq**



**Source:** HazteOir.org. Tortured and sexually abused girls by the Islamic State  
Available at: <http://www.hazteoir.org/noticia/64952-ninas-torturadas-y-violadas-estado-islamico-aumentan-su-calvario-sometidas-abortos>

**Attacks against schools and hospitals**

During an armed conflict it is absolutely forbidden to attack schools or hospitals. Therefore, the principle that has to prevail in an armed conflict is the principle of distinction, because it is not only about just attacking the enemy but knowing what to attack. In the Humanitarian Law the flagrant attack to civilians assets and public spaces go against the law. Both, schools and hospitals constitute necessary buildings and provide human rights. Consequently, to target any school or hospital, it is not only violating the International Humanitarian Law but also Human rights and the customary law in general. In the article 48 of the I Additional Protocol of the Geneva Conventions of 1949 says: “In order to ensure respect for and protection of the 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”. In this article, the principle of distinction is clear and demanded during armed conflicts.

In the IV book of the Geneva Convention of 1949 there is an exclusive section that protects hospitals in armed conflicts and in the 18th article it expresses: “Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict”. It is important to state that in the present time hospitals not only provide medical care but most of the time also are used for shelter for refugees during hostilities.

Therefore, people that are not safe at home go to hospitals to take shelter under protected ground. Nonetheless, in practice many establishments like hospitals and schools are being bombed as well. In July 2014, the Israeli army attacked UN schools in Gaza. The UN commander Navi Pillay accused Israel of war crime to have attacked public spaces and have killed around of 35 people (Diario La Tercera, 2014).

UN schools sheltered around 250,000 people, so when the establishment is attacked, it is deliberately killing many civilians. Also the UN commander Pillay said that Israel is not only attacking schools and hospitals but also attacking civilian objectives such as water distributions and power structures, which a violation in the international law as well. Also, Israel is the one in charge to provide water and power as being the main land owner to the palestines occupied territories (Telesur, 2014).

### **Illustration 11: Palestinian children after a school attack in Gaza**



**Source:** El Ventano: Israel bombs schools and hospitals in Gaza. 22/Julio/2014.  
Available at: <https://elventano.es/2014/07/israel-bombardea-escuelas-y-hospitales.html>

In the Israeli-Palestinian conflict in July 2014, around 600 palestines died and more than 3,000 people resulted wounded, among the victims at least 121 were children (El Ventano, 2014).

### **Abduction of children**

The abduction of children within an armed conflict is an illegal act under the International Law, likewise to keep children as hostage. Both cases are contemplated as illegal in the International Humanitarian Law and Children's Rights. It is important to stress that this violation of the IHL carries with it larger consequences towards children. When an armed forced group kidnaps children during hostilities, generally this activity is followed by these series of aggressions such as: forced recruitment, death and maiming, sexual assaults, forced child labor and children trafficking. Therefore, after abduction many violations that have been addressed previously in this chapter are also perpetrated against children during armed conflicts. In article 35 of the Convention of Children's Rights in 1989 says: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form".

In effect, the abduction of children is a war tactic during hostilities, because through the abduction, opposing groups use those children to do illegal children trafficking, prostitution and sexual slavery. All these forms of aggression against children are crystallized during war, and this is an example of the arbitrary privation of freedom that children live during conflict. Nowadays, the armed group that has been using this war tactic to terrorize civilian population are jihadist groups of the Islamic State. These groups have been abducting young girls in the north of Iraq and Syria, and they have been using them as sexual slaves. These girls are sold as merchandise or are given to men that only take advantage of them and then they kill them. The majority of the victims of these groups come from ethnic minorities.

Another example of hostage that affected deeply the world was in 2014 and 2015, when the Nigerian jihadist group “Boko Haram” kidnapped 279 girls from a school in the north of Nigeria. Data estimates that this terrorist group has kidnaped around 2,000 girls and women. From 2015 until the beginning of 2016 this group has been negotiating some of their hostages. During 2014 and 2015 these kidnaps went viral through the media and a campaign was launched as replied to these atrocities called “bring back the girls”. This campaign was created and it woke up a lot of interest around the world. In 2015 the Nigerian army rescued around 275 women and girls from this terrorist group. Among the testimonies of some girls, it was found that this group has been sexually abusing them, demanding forced labor in the jungle, and also training them to kill. (BBC Mundo, 2015).

**Illustration 12: Kidnapped girls and boys by the Nigerian group “Boko Haram”**



**Source:** BBC Mundo: Niñas secuestradas en escuela en Nigeria son "obligadas a matar en nombre de Boko Haram". 29/Junio/2015. Available at: [http://www.bbc.com/mundo/noticias/2015/06/150629\\_nigeria\\_secuestradas\\_boko\\_haram\\_ep](http://www.bbc.com/mundo/noticias/2015/06/150629_nigeria_secuestradas_boko_haram_ep)

**Denying Humanitarian Access**

This constitutes as a war crime and a crime against humanity denying humanitarian access. This norm is stipulated in the IV Geneva Convention of 1949. Also, letting humanitarian access in any conflict is considered a custom law and it has been accepted by all the contracting parties of the International Humanitarian law. Every country that is part of this law has accepted the duty of facilitating help for the civilian population, also countries have to provide relief and impartiality when giving supplies to the civilian population without prejudices of race, age, religion, gender and political ideology. In effect, the violation of this norm to people, especially children equals to condemn them to death, either by letting them starve or by not providing medical care. Therefore, by providing humanitarian help during hostilities fits into the principle of humanity talked previously on chapter one.

“Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs,

clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.” (IV Geneva Convention of 1949, Art. 23)

Likewise, in order to access humanitarian help into a conflict, it is very important to count on specialized staff to attend the rising needs in the war. Therefore, the Security Council through resolutions has decided to provide access to authorized staff into protected zones during war such as shelters, schools, hospitals and among other establishments to covered emergencies. The Humanitarian staff has free access to transport help into different territories. However, the humanitarian personnel has to carry an insignia of the organization that are representing, so they can be able to be distinguished between the civilian population and humanitarian personnel. For instance, the red cross organization carry either a red cross on vest or a half moon, also UN peacekeepers wear blue helmets (United Nations Children in Armed Conflicts, 2013).

Denying humanitarian access has risen a lot of suspects about the transparency in dealing war. The Rome Statute with the UN letter agree on considering a war crime when humanitarian personnel has been target in a conflict. Additionally, within the Rome statute to use methods like starvation is a way of denying humanitarian access, the UN has different branches providing humanitarian care through the Office of coordination of humanitarian affairs (OCHA), the Central Emergency Response Fund (CERF), the UN refugee agency (UNHCR), the UNICEF. Also the International Committee of the Red Cross that is the organization that promotes, applies the IHL and provide medical care in armed conflicts.

### **Illustration 13: Humanitarian Assistance for children**



**Source:** United Nations: Humanitarian Affairs. Available at:

<http://www.un.org/es/sections/what-we-do/deliver-humanitarian-aid/index.html>

#### **2.2.2 Child Soldiers**

The recruitment of children in armed forces either by the government or by opponent groups constitutes a grave violation of the IHL. When a child is considered a child soldier, this term does not only imply that children carry weapons and are involved in wars, this term also means that children are used as messengers, cooks, sexual slaves. When children are force recruited by any armed forces they are taken away their right to live a dignified childhood.

When a child becomes a soldier, the recruiting groups force them to give up their right to simply live, and worst of all, these groups turn some children into machines that commit crimes such as murder, mutilation, rape, and torture. The groups not only use them as tools to end lives like their own parents or siblings, but these children also end up with their own lives. Children who have survived these armed conflicts are no longer the same, their lives are left to carry serious psychological, emotional consequences of acts committed and lived throughout the war.

The UNICEF definition for a child soldier reads as follows: "A boy and girl soldier is any person under the age of 18 who is a member of any regular or irregular armed force or armed group in any capacity, for example to be: cooks, porters, messengers, and anyone accompanying these groups that are not family members. It includes girls and boys recruited to engage in sexual activities and / or to enter into compulsory marriage. The definition, therefore, refers not only to a child who carries, or has carried arms. "(Principles of Cape Town, 1997)

Therefore, any child under the age of 18 who engages in one of those activities in a conflict is considered a child soldier. Additionally, in the meaning of the word recruiting must be understood that it can be mandatory, forced or voluntary recruitment. Mandatory recruitment is when the same villages or parents force children of certain ages to serve and join groups in order to be part of an armed conflict. Forced recruitment is when regular or irregular armed forces kidnap boys and girls and force them to play a role in favor of their activities during conflict. Finally, voluntary recruitment happen when orphan children who rely on armed groups to be provided by food and shelter regardless of the role they have to be involved in.

In the International tradition of war, children did not go to the front in wars, because the armor was very heavy, and that could not give them capacity to fight. In addition, having children in the war has always been prohibited, young people were trained and after they were physically ready and able to fight for their nation they were part of the armed forces. However, from the 80's and 90's it began this new modality of incorporating children into the armed forces, since modern weapons can become small and easy to handle. The reasons why both regular and irregular armed groups and forces recruit children according to the Humanium NGO are for the following reasons:

“Children are recruited because they are more docile, more obedient and manipulated more easily than adults. In addition, they are less aware of the danger and it is difficult for them to fully perceive the meanings of "absence" or "death." Armed groups often try to recruit children because they "cost less." The investments needed to recruit, train, and prepare children for conflict are cheaper than adults. Moreover, children are now generally recruited in contexts of civil war, which are long-lasting

and result in large numbers of casualties. As a result, children replace adults who die in combat” (Humanium, 2016).

Approximately 250,000 to 300,000 children are estimated to be in armed forces. It is estimated that 40% of this statistics are girls and are commonly being used as sex slaves or "wives" of male fighters. Many times these children volunteered and joined a particular armed group, or their parents give them away. However, international organizations strongly believe that the problem of children's willingness to be part of armed groups lies in the lack of education.

Indeed, it is considered that if a child does not attend or has not attended school there is a great risk this child will end up recruited by armed forces. Unfortunately, Africa is the continent that has 40% of the total child soldiers in the world. Therefore, international and non-governmental organizations are dedicated to promote education in children so that they are not victims of recruitment into the armed forces.

One of the most popular examples of child soldiers is the case of Uganda, where the armed group is called Lord's Resistance Army or known as the LRA. This group of rebels kidnap children and make them part of their army. They are one of the most feared armed groups in Africa, because they not only focus on terrorizing the people of their own country. In fact, the LRA goes towards Border of Sudan, the Democratic Republic of Congo and also recruit children from these countries. This armed group took power from the mid-90's where they had about 12,000 children, most of them kidnapped and now actively involved as soldiers. From 2012 to the present day, it is estimated that about 30,000 children were kidnapped to be part of this rebel group in Uganda (The Guardian , 2013).

In 2012, one of the strongest campaigns of these times was launched in favor of the Ugandan child soldiers. In this campaign all the atrocities committed to children were revealed and it had as objective bring down the leader of the LRA. The campaign was called Kony 2012, and was created by an American who met a child soldier named Jacob. He tells in the video that became viral on YouTube that he was kidnapped with his brother to belong to LRA group. Jacob expressed in the video with tears as he saw his brother was killed by other militants of the same group. This

campaign aimed to bring Joseph Kony to trial for his acts committed in Uganda by recruiting child soldiers.

The case of Jacob is not the only reality of children as soldiers. For instance in the case of girls, they are used as sex slaves and carry unwanted children. Also, there is a high HIV rate among these armed groups. Generally, when children are part of this type of group, the group is responsible for the child to feel part and fervently believe that this is their place, they even call themselves a family. Hence, there are many children who convince other children to become child soldiers, this lamentable reality is created by the lack of family structure, poverty and education.

#### **Illustration 14: Child Soldier in Uganda**



**Source:** The Guardian: Kony 2012: the reaction. Available at:

<http://www.theguardian.com/politics/reality-check-with-polly-curtis/2012/mar/13/reality-check-kony-2012-reaction>

Nowadays, there are several non-governmental organizations that help ex child soldiers to have a different future. These organizations help with education and psychological care. In these types of initiatives they have children who were soldiers telling their stories of what they have gone through as a child soldier, many of them take an active part in mitigating this disastrous violations of war. As an example of a former child soldier, there is the testimony of Michel Chikwanine, who was abducted

by an armed group from the Democratic Republic of Congo when he was only 5 years old while playing with his friends on his school's soccer field.

Michel tells that his most painful experience as a child soldier was when this group of rebels forced him to kill his best friend as a process of initiation within the group. Michel remembered that he was drugged and blindfolded and was only told to shoot, when his eyes were uncovered, he saw his best friend on the floor (The World Post, 2015). Fortunately Michel was able to escape from this armed group and had the opportunity to join a group of refugees from Northern Uganda with his mother and sisters. Now Michel lives as a refugee in Canada where he shares his story and is part of lectures given by humanitarian agencies.

**Illustration 15: Child Soldier from DRC**



**Source:** The World Post: A Former Child Soldier Shares His Story In New Graphic Novel. Available at: [http://www.huffingtonpost.com/entry/child-soldierbook\\_us\\_561d55dfe4b050c6c4a313d8](http://www.huffingtonpost.com/entry/child-soldierbook_us_561d55dfe4b050c6c4a313d8)

Another area that was greatly affected by using children in the armed forces was the conflict of El Salvador. In this conflict, the two groups that had confrontations were the government group against a group that claimed to be the national liberation group. This National Liberation group was founded by the left-wing party. Although

this conflict is not cataloged as part of the post cold-war season of conflicts, this conflict had a great impact in Latin America. About 90% of the population lived in poverty in El Salvador, and only a small group within the country controlled about 45% of the national production, which led to economic and ideological powers. This conflict in El Salvador was characterized by having child soldiers in its fronts both in militant forces of the Government and in the opposing forces. Schools, football camps, suburbs and impoverished rural areas were the main targets for the military groups to recruit children. It is estimated that at least 60% of the children recruited were by forced (Diario Público, 2007).

**Illustration 16: Child Soldiers in El Salvador**



**Source:** Giovanni Palazzo: Infancia bajo fuego. Publicado el 17 de noviembre de 2014. Available at: <http://www.elfaro.net/es/201411/fotos/16232/Infancia-bajo-fuego.htm>

## 2.3 Expert Criteria

In this part of chapter two, the objective is to relate actual experiences of people who have witnessed direct armed conflict. Additionally, the opinion of the experts in this subject is sought in order to see how they viewed the International Humanitarian Law and its application in the conflicts that they have witnessed. Four people who have volunteered in an armed conflict have been interviewed. Three of the four people interviewed witnessed the Israeli-Palestinian Conflict, and the last interviewee volunteered in many armed conflicts around the world, however the report by this volunteered was made on the conflict in the Democratic Republic of Congo .

The first testimony is by Maria Isabel Fiallo, better known as Mamela, she was the first Ecuadorian woman to go with the program of Ecumenical Companions in Palestine and Israel (PEAPI) in 2012. Mamela says that what impressed her most during her three months as an observer of Human Rights and accompanying Palestinians, was the demolition of houses, also known in terms of humanitarian violation and Human Rights by forced evictions. Mamela tells this story:

"I met Yusif and Mariam, Joseph and Mary, two brothers whose house was demolished while they were sleeping. They had to leave the house barefoot, and the only place where they could be without debris that could physically hurt them was the excrement of the goats. Next to them was their cousin Ahiya. Their mothers were behind a carriage taking advantage of the shade. That day the sun was very intense and when they lost their house they lost the roof that covered them."

The situation of the demolitions for the Palestinian people is very serious, because Israeli soldiers arrive without warning to Palestinian homes. After, the soldiers forcibly evict the people from their homes, and in front of their eyes at any hour of the day they see their work that has taken years to be built their house collapsing and coming down to debris, without any justification. Entire families are left homeless, without a roof where they can sleep. Mamela says that it is worse when they show resistance to the facts, because soldiers can even take them as prisoners.

**Illustration 17: Palestinian Children after their house was demolished by Israeli Soldiers**



**Source:** Picture taken by Mamela Fiallo in 2012.

As another testimony and volunteered is Isabel Maldonado Jauregui, who was also part of the Program of Ecumenical Accompaniment in Palestine and Israel. Isabel reports that she worked as an international human rights observer in this program. This program is organized and coordinated by the World Council of Churches, which is based in Geneva and brings different people from the world to be ecumenical companions for three months in the West Bank. Their job is to provide a protective presence in vulnerable communities living under Israeli military occupation. Isabel comments that her main tasks as an escort were to monitor checkpoints and schools, report demolitions, arrests, and settler attacks. Isabel says that she worked with UNICEF in a program called "Access to Education", in which her group provided a protective presence in schools, since it is common for children and young people to be constantly threatened, arrested and intimidated by the Israeli army as they walk to school.

Isabel Maldonado tells about a boys' school called As-Sawiya that has presented a problematic situation because its location is used as a way to commute by the Israeli settlers and Israeli military. This school has approximately 481 mostly male students, but there are also 31 girls studying high school. All students at this school are vulnerable to having incidents with settlers and the Israeli army on their way to school. In previous years in 2010 the school was on fire. EAPPI groups have to be constantly in school since there have been incidents that Israeli army groups have entered the facility to threaten the students. In addition, in 2012 Sati Mefleh a 15 year old was arrested for throwing a stone at a car on his way to school, and was taken to prison for a year without evidence that Sati was the author of the incident.

**Illustration 18: EAPPI volunteers in a Palestinian school**



**Source:** Picture taken by Isabel Maldonado in 2013.

In addition, Isabel Maldonado said: "My team witnessed an incident that I remember was very shocking. It was an incident at the Jalud school where Israeli settlers set fire to the surroundings of the school and threw stones at several classrooms including classrooms with very young children. The settlers were not arrested and did not face charges despite the fact that Israeli military arrived in the area and witnessed the events. The day after the incident, few children went to school for fear that settlers would return to attack them. The children suffered a great trauma as did their teachers. All these abuses constitute a violation of international humanitarian law,

which applies to international armed conflicts including situations of occupation and non-international conflicts. "

**Illustration 19: Attack at a Palestinian school**



**Source:** Picture taken by Isabel Maldonado in 2013.

The third testimony was given by Cristina Maldonado, likewise she was part of the Program of Ecumenical Accompaniment in Palestine and Israel. Cristina tells that one of her tasks in the three months of mission was to accompany and observe the checkpoints where children have to cross daily to go to school. These checkpoints are located between the West Bank and Israel, where there is a wall that separates these two places. The wall is approximately 8-9 meters high, where snipers guard and permanently monitor the wall. Boys and girls have to cross this checkpoint every day in order to attend classes. Cristina also comments:

"The International Court of Justice in its 2004 legal opinion on the consequences of the construction of the wall in the Occupied Territories in Palestine argues that the wall interferes with the land where Palestinians exercise their right to self-determination. It violates the principle of international law that prohibits the acquisition of territory through the use of force, but most importantly, the Court concludes that the construction and maintenance of it undermines a number of principles of international humanitarian law and human rights. Therefore, the right to work, a decent life, education, health, and among others are severely restricted because of the wall. "

For Cristina as an observer of Human Rights, that area of the wall is very shocking, especially for children. Children at a young age are exposed to intimidation and abuse such as: daily backpack checks by Israeli soldiers, body checks. Girls are afraid of soldiers' weapons because they manipulate in a way to only scare them. One of the causes of the lack access to education is caused by soldiers leaving children waiting for a long period of time to arrive late to class. Cristina says that when the soldiers saw the presence of her group the soldiers would allow them to circulate without obstacles and without reviewing them. However, Cristina also adds that the education of children is subject to the will of the soldiers. Cristina says:

"Education is a universal right and it should not be undermined. The violation of education right has caused children to drop out of school, have psychological problems, develop attention disorders and poor grades. The director of one of the schools told us that this is a problem that mainly presented in the girls, since they feel harassed and intimidated by the male soldiers and that for their religion means an act of dishonor and that forces them to leave the school."

**Illustration 20: Nazlat'Isa children waiting to cross the checkpoint in Palestine**



**Source:** Picture taken by Cristina Maldonado in 2013.

The last interview was to Doctor Fernando Mora who was part of Doctors without borders NGO for 15 years. Fernando told that he has been in conflicts such as: Congo, Salvador, Nicaragua, Afghanistan, Morocco, Brazil, Peru, Uganda, Palestine,

Tanzania, Rwanda and Ecuador. However, he said that the most striking conflicts he was in were the Democratic Republic of Congo and Afghanistan.

Fernando comments that the Congo Conflict is the deadliest conflict and is still happening in nowadays. Dr. Mora was in this conflict in 1997, and reported that this war is difficult to express as it conveys many complex problems. One of the factors is the ethnic groups. Dr. Mora says that in the Congo's genocide, children are massacred, civilians are maimed, women are raped and cut off their breasts, it is a much worse conflict than anyone can imagine and it goes beyond what the press and International Organizations have reported.

Since Dr. Mora has been in many armed conflicts, he was asked if armed conflicts share same patterns as far of reasons to start a conflict. Fernando answered that in each region is different, for instance, in Latin America the conflicts have started due to ideological difference such as marxism and Leninism, also narcotraffic is a big problem in this region. As far as the middle east region conflicts are based on religion also known as holy wars. Finally, in the African region conflicts are due to ethnic clashes and fights over natural resources.

Fernando Mora is a doctor specialized in France, one of his specialties is to attend emergencies. Mora tells that in order to deal with conflicts as a doctor, you need to have specialized kits, however, there have been times that he had to deal with no medical supplies during war. Fernando says that no one can be prepared to see what actually lies in an armed conflict. It requires a lot of inner strength to be able to cope with the situations that lie ahead, in fact there have been many prepared humanitarian volunteers who were in the conflicts and could not articulate any action by the impact of images and reality. Fernando Mora is currently finishing a book, in which he tells the events lived in the wars. Fernando shared a paragraph of his book, this is about the Congo conflict and says the following:

"In Ndosho ,located in the eastern city of Goma in the DRC, we try to respect the Security Council Resolution to allow in a safe and timely manner the humanitarian access of refugees according to the international law including the International Humanitarian Law and Guiding principles of humanitarian assistance. This war that Congo bears for more than 20 years is the most deadly known.

When we entered, the situation was frightening, apocalyptic, everyone walked like zombies, in a row in complete silence, they walked with all languor, their legs ulcerated, their arms mutilated, emaciated mothers carried the children, all is in a spectral environment, women's breasts flaccid with no milk to breastfeed their children. Children die of AIDS, Cholera and Malaria.

It comes to my mind, a black child, sitting with his eyes wide open, flies lie on his face, I try to slide a nutritious beverage in his mouth, he does not respond, the beverage is coming down of the corner of his mouth, he has no strength, not even to try to eat. At that moment I was back in Africa, I was there again, the black child does not move, he slowly starts to enter into a malaria crisis, he is trembling, he goes into convulsions, then he is still. I try to give him a cardiac massage one, two, three! come on, react! Then a shudder, he is dead, his eyes are still open, always open and it looks like he is looking at us without looking at us, a single large tear drops from one of his eyes, a tear that protest against humanity.

My throat closes, my heart stops. I was completely drenched in sweat as I spoke. Not even a butterfly, only flies on his face. Then the common grave and lime on his body. Not even a flower to know that he was buried there. The corpses of the children are piled up all day. Once again the grave, I see all the children's corpses fall into the common grave, and spread their arms to each other, as if they are trying to embrace to hide their fear even after death. I wonder so far, in these days why did I specialized in emergencies if I cannot stop death? Why was I an emergency response doctor!?! So much preparation for all this, that immense despair invades me "(Fernando Mora).

With these stories and testimonies it is easier to grasp the situation of armed conflicts, because one can realized is latent problem and worse than what is broadcast in the media. These two conflicts described above remain to this day and have been for many years affecting civilians. The International Humanitarian Law is only a Protocol to follow and a good in theory. However, in practice, as Fernando Mora commented in his interview everything revolves around the political interest. In the case of the Palencia-Israel conflict, María Isabel Fiallo, Cristina and Isabel Maldonado Jauregui witnessed many violations of IHL and human rights, all of these violations were perpetrated by Israel a contracting party of the Geneva Conventions.

The experiences of humanitarian volunteers have not been easy, it is full of helplessness and despair. However, the fact of helping and disseminating the seriousness of the situation is a way of showing people the importance of knowing about the reality of armed conflicts and the great work of the volunteers who are going to the action field contributing to a great cause.

#### **2.4 Children's Rights during armed conflicts in the context of the Ecuadorian legislation**

In order to address the specific issue of children's right in armed conflicts within the Ecuadorian legislation, it is first necessary to talk about Ecuador and its involvement in the international humanitarian law. Ecuador is a fortunate country, since it has not presented a civil war within its history. However, Ecuador has had tensions in the border with Peru and Colombia, and its most recent military confrontation was in 1994-1995 where Ecuadorians and Peruvians clashed in the Cenepa war.

Ecuador and Peru have had their border problems since the dissolution of Greater Colombia. It is estimated that in the Cenepa war the number of deaths in the conflict was around 33 Ecuadorian soldiers and 60 men of Peruvian forces (El Universo, 2005). Therefore, the conflict was only between combatants, and fortunately the civilian population was not a victim of the confrontations. It could be considered this armed conflict as a "peaceful one" due to low impact of the hostilities. In 1998 Ecuador and Peru after many year of territory frictions signed the a Peace agreement.

Ecuador is an active party of the international humanitarian law, it has signed and ratified the respective norms: Geneva Conventions I, II, III, IV of 1949, Additional Protocols I and II of 1977, Conventions for the Protection of Cultural Property 1954, Rome Statute of the International Criminal Court 1998. Also, Ecuador has ratified a very relevant protocol which is the Optional Protocol to the Convention on the involvement of children in armed conflict in 2000. The only instrument that Ecuador has not ratified is the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Humanity of 1968. In the Ecuadorian Constitution in art. 417 states the following:

"The international treaties ratified by Ecuador shall be subjected to the provisions of the Constitution. In the case of treaties and other international human rights

instruments, the principles of pro human rights, of non-restriction of rights will have direct applicability and open clause established in the Constitution shall be applied.” (Constitution of the Republic of Ecuador, 2008).

According to the hierarchical legal order in Ecuador, the Constitution prevails as the fundamental norm of the country, nevertheless treaties and international agreements are placed in the second place of importance according to art. 425 of the Constitution of Ecuador. Many of the norms of Human Rights and International Humanitarian Law are imperative norms. Consequently, the similarities between human rights and IHL, can be classified as principles of pro human rights, which will make both the IHL and human rights have a direct application in the Constitution.

A very great advance on behalf of the Ecuadorian government was to ratify the Rome Statute and to be part of the International Criminal Court (ICC). One of the strongest criticisms against IHL is the fact that this law body does not have judicial attributes to punish those responsible for violations of this law. However, since the International Criminal Court was created, it has been used as the judicial tool by IHL. Following by this, another great initiative was carried out by the Red Cross and Red Crescent with the OAS was in 2004, where they urged OAS member states to establish national commissions to disseminate, promote and apply International Humanitarian Law.

In Ecuador in 2006 by Executive Decree No. 1741, and published in the Official Record No. 344 of the same year, the National Commission for the Application of International Humanitarian Law of Ecuador was formally formed in Ecuador. However, this great initiative was vanished, because the Commission passed to be managed through the Ministry of Foreign Affairs and Human Mobility where only sessions are created to discuss issues of International Humanitarian Law. However there is very little diffusion and promotion on this issue within the population, educational institutions and at governmental level.

The Republic of Ecuador should not be pointed out as not keeping the rules of International Humanitarian Law, on the contrary, Ecuador has ratified the most important agreements among others in this discipline. Actually Ecuador even approved the creation of a Commission that promotes IHL within Ecuador. However,

what Ecuador lacks is good execution on what is been agreed through the treaties. A fundamental part of the implementation of IHL from the contracting parties is the integration of these laws and norms into its internal regulations. As Ramiro Ávila and José Valencia (2006) in their book "Ecuador and International Humanitarian Law" cite Sassóli and Bouvier who commented that:

“Without an effective national classification of violations of humanitarian law, this is a like a dead letter, since national legislation is the cornerstone of the application of IHL. Due to the impunity that this lack of typification may cause and because IHL mandates the adequacy of the domestic law of the States, the lack of domestic legislation equals to a violation of IHL” (p.82).

In the current Criminal Integral Law of Ecuador, also known as COIP, the specification and classification of the IHL has been added. The previous Penal Law of Ecuador was lacking this type of international norms, therefore, the previous law was object of criticism for its lack of adaptation to the domestic norm. Nonetheless, this great step of stipulating violations of the IHL within the COIP empowers Ecuador to follow fully the international agreements made, plus these norms also favor and protect the civilian population.

In the Criminal law of Ecuador in Title IV, section one, it deals with grave violations of Human Rights and Crimes against International Humanitarian Law such as: Genocide, ethnocide, extermination, slavery, deportation or forced transfer of population, enforced disappearance, extrajudicial execution, persecution, apartheid, aggression, crimes against humanity, punishment for legal entity. In the same way in Section 4 of the same Title deals with crimes against people and protected assets by the international humanitarian law and it states: people protected by the IHL, assets protected by the IHL, weapons prohibited by IHL, application of the law provisions of an International or non-international armed conflicts, homicide of protected people, sexual attacks against protected people, physical harm, mutilation or experiments, torture and cruelty, inhuman and degrading treatment, collective punishment, use of prohibited methods of war, use of prohibited weapons, obstruction of health and humanitarian work, deprivation of liberty, recruitment of children and adolescents, hostage-taking, and other important issues of the IHL.

“Ecuador and International Humanitarian Law” published in 2006, the authors strongly commented that the lack of adequacy of domestic legislation constitutes an omission by the Ecuadorian State of its obligations to update national laws in order to keep Harmony with the IHL, which it contracted by subscribing to the Geneva Conventions of 1949 and its Additional Protocols of 1977 (Avila and Valencia, 2006, 84). Fortunately, with this new part in the COIP, Ecuador adapts and manages to harmonize its domestic regulations with the international norms of the IHL.

Regarding to the protection of children in a context of armed conflicts within the Ecuadorian legislation in the Constitution of the Republic of Ecuador in art. 46 number 6 states that: "The State will adopt, among others, the following measures to ensure children and adolescents... Priority attention in the event of disasters, armed conflicts and all types of emergencies" (Constitution of Ecuador 2008). Therefore, as stipulated in the Constitution in case there is an armed conflict children and adolescents will have priority attention. This same protection is typified within the Childhood and Adolescence Law of Ecuador in art. 12 indicates that it is of absolute priority:

“In the formulation and execution of public policies and in the provision of resources, absolute priority should be given to children and adolescents, who will also ensure preferential access to public services and any kind of care they require. Special attention will be given to the care of children under the age of six. In case of conflict, the rights of children and adolescents will prevail over the rights of others”. (Children and Adolescents Law 2002, article 12)

In addition to this special protection for children and adolescents found in the Constitution and on the Children and Adolescents Law, it is also specified in art. 57 of the same norm the right to special protection in cases of disasters and armed conflicts, which are the most extreme situations within a country. This article stipulates the following:

“Children and adolescents have the right to special protection in cases of natural disasters and domestic or international armed conflicts. This protection will be expressed, among other measures, in the priority provision of means of evacuation of the affected areas, accommodation, food, medical care and medicines.” (Children

and Adolescents Law 2002, article 57).

In the same organic domestic norm it states: “it is prohibited to recruit or allow the direct participation of children and adolescents in internal and international armed hostilities. “(Children and Adolescents Law 2002, art. 57).

In the article above does not specify ages for the forced recruitment ban. However, it is understood that children and adolescents under the age of 15 years can not be recruited into any armed force or armed group, according to the Rome Statute and the Additional Protocols to the 1977 Geneva Conventions, and in the Universal Convention on the Rights of Children in 1989. Within the Children and Adolescents law in art. 58 protects also children with refugee status, who are entitled to protection and humanitarian assistance.

In the specific case of Ecuador there has not been an armed conflict. However, Colombia, had over than 30 years of domestic conflict, and this situation has affected Ecuador directly, not only in the north of the country where there has been disputes for violation sovereignty. Ecuador is actually the main place to accept refugees in Latin America. Ecuador has 98% of the total refugees from Colombia. About 23 per cent of Ecuador's refugees are children. Therefore, even though Ecuador does not have armed conflicts, it offers refugee and humanitarian aid, especially to refugee children.

It is important to note that Ecuador has ratified the 1989 Universal Convention on Children's Rights, in which it does not only contemplate all the basic rights of children, it is also about children in armed conflict. Therefore, Ecuador by been part of these conventions immediately generates application within its domestic law.

## **2.5 Conclusion**

Armed conflicts whether international or domestic conflicts are part of human history. To deny this fact that has shaped us would be to be indifferent to past events. However, we must learn from past lessons regarding to how to lead the conflict so that in the present when hostilities arise, more protection and dignity will be provided to protected people under the IHL, especially to children.

It is important to make a recount of the reality of children in armed conflicts from the post cold-war era, which was a very important fact for the world scene, where a new world order began. This post cold-war era had some successful events such as the fall of the Berlin Wall (1989), however, there is also a dark side of this new stage that keeps making history and these are armed conflicts. The first mistake made by this world order was to assume that after the cold war, tension between countries was going to diminish, in which it has a certain truth in one part. However, it was not thought that in this new period a great wave of domestic armed conflicts was going rise. As mentioned, these conflicts were caused in the case of the African continent by economic issues, ideological crashes between the US and the former Soviet Union, natural resources and ethnic problems. In Latin America, conflicts were the result of Marxist-Leninist ideologies, drug trafficking, and economic problems. In the Middle East, on the other hand, the conflicts have been caused by the famous Arabian springs, which have gained strength in recent years.

There is no doubt that these "modern" wars, as Machel commented, have become more systematic than ever since their main objective is to terrorize the civilian population, especially children, who are victims of hostilities and are subject to protection by the IHL and Human Rights. However, in analyzing the magnitude of the reality these children live in very poor conditions during conflict and are prone to armed groups carrying out terrible acts against their physical integrity. This chapter is practically a guide that tells the diagnosis of the reality that these children live in countries that are in hostilities. The reality is heartbreaking, however it is necessary to know these circumstances so that the necessary mitigation and the most accurate answers regarding this situation will be provided.

The Interviews done to humanitarian volunteers added truthfulness to the harsh

reality of what children are living in, and how hard it is to be in the field of action because of the political interest of each country. In addition, this chapter added the reality of Ecuador in regards to this issue. Although Ecuador has not presented a serious armed conflict, Ecuador has added in its legislation the laws of the IHL, which is a great step towards the protection of combatants, non-combatants and civilians in case of armed conflicts. Children are also protected, but the only thing that is expected not only by Ecuador but by all countries is to include the IHL into their domestic legislation and all countries to respect and make these laws be respected and applied.

## **CHAPTER 3: GUIDELINES TO A MORE USEFUL APPLICATION OF THE INSTRUMENTS OF PROTECTION OF THE INTERNATIONAL HUMANITARIAN LAW**

### **3.1 Introduction**

In order to be able to approach related proposals for a more useful application of the international humanitarian law in the reality of children in armed conflicts, one must first analyze from the point of view of International Relations through theories and explanations given by outstanding organizations the relations between States, and their conduct and how throughout history each State has acted in a certain way.

Indeed, the international system is very complex, and in order to make proposals that show improvements in the world scene, we must analyze the motives to why States start armed conflict. Therefore, it is initially necessary and opportune to explain the notion of the international system and how relations between States are handled. Likewise, it is also considered important to detail the motives and behavior of countries in this current international order.

Therefore, the direction that this analysis has prior to the proposals of guidelines on the subject of armed conflicts consists in the following: First this chapter will examine and discuss the theories that have imposed a current world order in the subject related among States. Although there are several theories nowadays, only the traditional theories that are the basis of the new theories will be applied. As already mentioned above, these theories of international relations are the foundation of this subject, in which the most outstanding ones considered as the root of international relations are the realist theory and liberal theory. In addition, in the second aspect of this chapter is to analyze the most important International Organization in the world scene, the United Nations, and in the analysis it points out the Security Council and its influence on international relations and theories of armed conflict. Finally, as a third point, after analyzing the international order, the guidelines that are considered most important for a useful application of IHL in armed conflicts and in the reality of children in conflict will be detailed and addressed.

### 3.2 Realist and Liberal Theories

These two branches or orientations of International Relations are considered as the two traditional ways of defining international relations from a Nation-State view. These two orientations try to explain the conduct and the nature of States. The most prominent exponents of the realist branch are Thomas Hobbes and Machiavelli and within the Liberal Branch Immanuel Kant, who could be considered as the father of liberalism in the context of relations between States.

For the realism branch, the main actors in the world stage are the States, which are concerned about their own security. Also States act in their own national interests and maintain a constant struggle for power. For Hobbes and Machiavelli, fathers of ancient realism, conceive human beings as selfish, competitive beings who are only interested in accumulating power. For instance, Hobbes in his work *Leviathan* points out that a human being is an individual who possesses a perpetual and relentless desire for power after power, which only ceases in death (Stanford Philosophy Encyclopedia, 2013). Another assumption within the realism branch is that the international system lacks international authority and jurisdiction, which is called international anarchy. In this international anarchism the sovereignty of each state is the most relevant thing and there is no supreme power over the power of each country over its own jurisdiction. Consequently, for realism States conceive that human nature can be trained by a hierarchical political order, and for international relations, international anarchy only allows and motivates the worst aspect of human nature. (Donnelly 2000, p.10).

Additionally, for realism, security is the core problem, therefore to obtain and achieve security within a State, it will have as its main action to demonstrate the prevalence of power. The realist branch are very skeptical about international morality, in fact there are debates about what is moral? and what is the right political behavior way? For realists each state has its own morality, therefore the definition of moral is considered very ambiguous for each state. By this connotation of morality, each country is justified by the conduct of each State. The main exponent of this thought of morality not fitting into internationally politics is Machiavelli. In his doctrine exposed about morality, he defends and justifies the means either moral or immoral to reach a certain goal. Furthermore, within realism a very important

principle according to Rourke and Boyer (2008) is *realpolitik*, this principle means that a State has to worry about its own interests and then worry about the welfare of others. This principle is given by the assumption that an “X country” will not help “Y country” unless it is “X country” interest to help “Y country” (p.21). Finally, what is most important is the concept of power, this part of the theory of realism and international relations is made known by Hans Morgenthau, the greatest exponent of this branch in the twentieth century. For Morgenthau in the field of international relations everything is handled in terms of power, which is the engine that creates any alliance or tie between states. Power is the line of measurement, together with political interest and internal security, all these factors are the key to the relationship between countries within the international stage.

On the other hand, there is another traditional theory that opposes realism and provides new ideas about the relation between countries and this is liberalism. The main exponent is Immanuel Kant and its doctrine is based on peace, and not on power. An approach given by the Liberal branch is that human beings and countries are able to achieve more cooperation, and less conflict through government structures or new models of government. Liberalism displayed new trends such as democracy, human rights, improvements in the global economy, among other. The reasons why liberals emphasized this aspects is to spread their new ideas to other countries. One of the most deeply rooted ideas of the liberal branch is that humans have learned to form cooperative societies without renouncing to their individualism. The liberal branch believes fervently that states have learned to cooperate without having to give up to their independence (Rourke and Boyer 2008, p.22). Therefore liberals conceive international relations in terms of democracy and cooperation while realists conceive international relations in terms of power and competition.

Unlike the realists, liberals do not believe in strengthening their security through military power. However, this does not mean that liberals do not put in use their military power or economic sanctions to intervene in an international conflict. Indeed, many liberals would intervene militarily to prevent genocides or other serious violations of human rights. Intervention is an approach to international politics for liberals, especially in armed conflicts as it is believed that cooperation between State forces and international organizations can bring peace to a conflict

situation. The liberal view of international relations on the world stage is very optimistic, based on the fact that liberals do not believe that human beings are selfish and only seek power. Liberals are inclined to the fact of strengthening laws so that there is a better morality of conduct in the international system.

Consequently, taking into account all aspects of each theory of international relations and applying in the case of armed conflicts and International Humanitarian Law, it could be analyzed that the international system is effectively an anarchic system, which lacks international authority. This anarchism grants freedom and sovereignty to each state. Similarly, it could be pointed out that until the World war II countries were undoubtedly managed around the branch of realism, where sovereignty and power were seen as the most important aspect in a Nation-State. However, after the war many international organizations were formed to promote peace and cooperation. All these organizations are based on liberal principles of international relations, where the world is seen in terms of peace and expects countries to cooperate in order to achieve international harmony. Therefore, the liberal branch begins to flourish and it becomes popular on the world stage. Nevertheless realism has never left the approach of the States even though liberalism has grown in the political discourse. In the cold war two powers emerged creating an international bipolarity, the prevalence of power and political interest together with liberal principles of democracy and interventionism created a very transcendental tension in the world.

Nowadays, it is very difficult to classify states in either the realist branch or the liberal branch since each state presents their own political interests and conveniences. For instance, the United States has both liberal and realist approaches, liberal tendencies when it comes to missionary principles such as to bring its politics of democracy and respect for Human Rights to the world, and realistic when it comes to the prevalence and relations between countries in terms of power. The USA strongly believes in the strength of its military group to demonstrate power. In addition, the United States does not only accumulate power as an end to its own benefit, in fact it accumulates power in order to enable security for its own citizens, therefore, they also have a strong domestic security principle (Katrina Lee-koo 2015, p. .66).

Both realistic and liberal branches are contexts given in the Western orientation, and as time passes by these theories have impacted every country in the world. However, it can not be denied that Western ideas and are best manifested in developed countries than in countries with a lower global incidence. The end of the cold war led the world to a new world order classified as a post-Cold War, during this time the liberal branch took power and resumed has incorporated humanitarian actions and the protection of civilians on the global agenda. As for example, the NATO (North Atlantic Treaty Organization) intervened in the Yugoslavian war, which motives were clearly liberal. Also, countries like the USA and UK intervened in the war of Iraq and Kuwait, and in the present time France the US and Russia are involved in the Syrian war with interventionist principles.

Therefore, to conclude it is important to notice that strong and developed countries that had had a solid realistic political constitution in the past now act in accordance with the liberal principles that believe they must be universal, such as human rights and international humanitarian law. However, on the other hand, developing countries that have problems with domestic armed conflicts have taken refuge in the realism branch and their sovereignty to not allow large countries to intervene. For instance, in the case of some African countries that defend themselves in realistic terms, by using their sovereignty and their jurisdiction over their own territory and people.

The International Humanitarian Law was created as a norm under universal principles part of the liberal branch, but this law is very difficult to apply in times of hostilities when countries which are the main actors take refuge in their power and sovereignty. The struggle between these two branches and in the way the countries execute such theories are an obstacle for the IHL to be fully applied in armed conflicts, because even though there are rules of the implementation of this law, countries on the other hand, determine their own conveniences when establishing their relations with each other whether in times of peace or war.

### **3.3 The UN Security Council**

As it has been mentioned throughout this paper, the United Nations (UN) was created after War World II and it constitutes the internationally body whose function

is to promote peace and defend human rights. Almost all of the countries in the world are part of the UN, and it is the most important international organization and with more international incidence in the world by having exactly 193 members. The UN consists of six basic bodies: the General Assembly, the Security Council, the UN Secretary, the International Court of Justice, the Economic and Social Council and the Trusteeship Council (United Nations).

Both the General Assembly and the Security Council are keys for the functioning of the UN. However, the Security Council is a very complex and influential body, which shapes international relations. The Security Council is responsible for maintaining international peace and security, and is composed of 15 members, of whom five are permanent members and the other 10 are non-permanent members. The role of the Security Council is to identify threats to the international peace and identify acts of aggression. The main objective for this agency is to focus on international security problems, which authorizes the use of force with the justification that is to maintain collective security (Barkin, 2006). The focal point in this part is the five permanent members of the Security Council, which are the five world war II winners: The US, Russia, France, The UK and China. These countries besides that they are the winning alliance they also constitute the most powerful and influential countries on the world stage. The five permanent members are granted the veto power best explained by the UN:

“The creators of the Charter of the United Nations were certain that these five countries would continue to play an important role in the maintenance of international peace and security. That is why the great five were given a special voting power, known as the "veto power." It was agreed that if one of the great five would exercise its veto power within the Security Council, the resolution or decision would not be approved “(United Nations Security Council).

This veto power is extremely complex and it is a great responsibility for the permanent members who often hold constant sessions on relevant topics. However, the Security Council is criticized by many scholars and countries, who call for a reform to the UN, for the fact that all international decision-making is done by these five powers. When the UN was created, this took place in a very different circumstance from the one that is being handled today. Nowadays, countries,

politics, economy and other aspects have evolved, the UN has a duty to fit into these changes, starting with Security Council. This body has all the political power and decision-making about fundamental issues that threatens the peace and the international security. However, this group of countries do not necessarily look after the common or collective interest of all members of the UN, but their own motives, and also they are often guided by political interest and prevalence of power.

The power of the Security Council and its influence in all international aspects constitutes one of the great failures of the international system, since everything revolves around the decision-making and negotiation of the security council. An example of the actual situation of the permanent members of the UN is the case of Syria. This country has been in civil war since 2011, and several grave violations have been reported perpetrated against civilians by the Syrian Government and the Islamic State, which constitute a violation of IHL and Human Rights. In addition to confirming that they are using chemical weapons, which constitutes a violation of the Hague Conventions and accepted methods of warfare.

The Security Council has held sessions on the Syrian issue, and the UN together with the United States, France and the United Kingdom agreed with the UN's intervention primarily to stop violations of international law in general. At the 2012 sessions, the UN was aiming to launch a resolution on crimes against humanity by the Syrian Government, but both China and Russia objected and vetoed the resolution. Therefore in this very serious conflict, Russia and China were completely obstacles to UN principles and functions to be carried out for internal reasons and conveniences (Adams, 2015). Syria's reality has worsened and its death rate continues to rise. However, the Russian Government supports the Syrian Government, while the United States, France and the United Kingdom are intervening in this conflict, but the most important and neglected situation is that civilians are targeted and remain without humanitarian protection.

The Syrian case is one of the many current conflicts that have occurred in recent times, but the main focus is to keep in mind that the Security Council is an obstacle to freely apply the International Humanitarian Law and Human Rights in depth and by the virtue of the principles that founded them. The IHL's main objective is to provide a minimum of dignity in inhumane moments. However, the prevalence of

power, a realistic feature is very dominant in countries with great worldwide incidence, these reasons forge the course of international relations and conflict theories.

### **3.4 Guidelines proposal for a useful application of the International Humanitarian law in armed conflicts**

Once addressed the most notorious inconveniences of the international system and its handling in matters of politics and interest surrounding armed conflicts. It can be understood that traditional theories in international relations persist in the world today and their influence is evident in the conduct of States. This has greatly affected the way to carry out a war and its consequences. In addition, the application of IHL has been affected by the factors of international relations theory and the UN Security Council system. It has been possible to analyze that these factors have a transcendental interference and much power of decision making that influences the course of the international conflicts and how these affects the civilian population.

However, in addition to analyzing the impediments to the proper implementation of IHL, it has been possible to conclude some proposals for action that can be carried out and taken into account despite the obstacles of the present international system. These proposals aim to improve the care of child victims of armed conflict and to apply international humanitarian law in an useful manner related to internal and international hostilities.

The first proposal on this issue of children in armed conflict is about strengthening peace building. This strategy is generally used by the UN as part of its advocacy and intervention in armed conflicts. However, the UN has focused more on peacekeeping than on peacebuilding. First, one must understand and recognize that peace is a social construction, therefore, each community has built its concept and perception of peace ontologically. In the Liberal branch, it is often tended to encompass the whole international system in one, and universalizes principles of peace that for the West is perceived as correct and propagates this concept around the world. Similarly, the peacebuilding strategy can not be applied with the same procedure in each country that has had an armed conflict. One must analyze the right and culturally correct way to reach from a domestic perspective ways to sow concepts of peace and

education so that a country in the future is not involved in armed conflicts. The definition of peacebuilding is as follows:

"Peacebuilding is a process that involves identifying the root causes of conflicts and supporting the capacities of local actors to build lasting cultures and structures of peace" (Galtung 1996, p.271).

Therefore, a profound approach to international peacebuilding is driven by a facilitating ethic of inclusiveness and involvement of communities affected by the conflict. Through cooperation and assistance what is sought through this theory is to build a system within the local communities to design and implement a specific peace to the inclusive context. Consequently, peacebuilding is nothing more than a balance between theories of international relations with the needs and values of communities involved in armed conflict. What it needs to be fostered is a balance and not incur into liberal ends of intervention and overprotection of children, in which they are cataloged as victims and are used to receive assistance and help, on the other hand as well it can not be assumed that Children and youth are a threat to peace as the realists contend (Lee-Koo, 2015).

On the contrary, what is proposed is the construction of peace from a local point of view, but including children and young people as agents of change. The lack of involvement of children in countries that have experienced an armed conflict has been a great mistake, since statistically the countries that have counted and consist of armed conflict constitute in their population structure mainly with children and young people. According to 2008-2012 data from the World Bank Afghanistan, Angola, Central African Republic, DRC, Cote d'Ivoire, Eritrea, Ethiopia, Iraq, Liberia, Mali, Mozambique, Rwanda, Sierra Leone, Solomon Islands, Somalia, Uganda and the Gaza are considered fragile countries where armed conflicts existed and exist, in which children under 14 make up 40% of the total population of these countries (World Bank).

Therefore, by having in these countries a high incidence of children and young people within their population, it is of greatest importance to apply these peacebuilding strategies in a local way, allowing children and young people to take control and be promoters of a culture of peace within their cultural, religious and

gender contexts. This proposal is intended, since children and young people within the liberal branch have been excluded from the debate of armed conflicts because they are taken as defenseless agents. Nevertheless, the objective of this proposal is to encourage the Change from within the communities, taking the children and young people as the protagonists of this change with a view to build peace.

The second proposal focuses on the education not only on countries that have presented and present armed conflicts, but also in all countries in the world. Education is key whether in peace and conflict times, as it is the basis of how our current history has been formed. However, education, even if it is not given in a specialized way in countries undergoing an armed conflict, is crucial in the post-conflict and peacebuilding. The method of education has to be implemented as a tool that is capable of creating peace for future generations.

The education mentioned here extends not only to the right to a decent education for children, but also to educate about Human Rights, International Humanitarian Law and even first aid. Incorporating these extremely important matters that not only generate knowledge about the issue of rights, it also opens a huge gap of compression and reaction to situations of armed conflict. Education could be argued as the most powerful weapon that influences the world towards change. Therefore, it is necessary to train teachers to be able to give an education that harmonizes the rights of children with general school material.

Education on Human Rights and International Humanitarian Law are not only critical for countries in armed conflict, but should be a requirement in the education system at a global level. Although the subject of Human Rights has a greater diffusion and emphasis in the education and of the domestic laws one can not leave aside the International Humanitarian Law. Although not all countries have armed conflicts, this is not a justification to not offer education in this matter. The IHL also displays a number of principles and universal norms that every citizen of the world must know as much as their human rights. In this way common knowledge in this laws could reduce the lack of fulfillment of the law.

As a third proposal, it has been considered important to add the issue regarding children in armed conflict in the international agenda, not only by the UN, also in

each member country of the UN. This problem does not only belong to countries in armed conflicts, there is an international co-responsibility to be part of international organizations and been part of treaties such as the IHL, which has the principle of erga omnes, which means to respect the norm and to make the norm be respected. Therefore, all countries could pressure in General Assembly meetings to prioritize issues of children in armed conflict, which is a reality that has been present for many years, and it requires a necessary attention and intervention.

By having children in armed conflict within the international agenda, it will make it a focal point for all people who are interested in news and current issues. The world is driven by media impact and current trends, for instance, currently the international trend is gender equity and feminism. However with the same force and public interest children and civilians in armed conflicts should be placed in the international agenda.

The international community is currently facing a very controversial issue on the Middle East's armed conflicts and the consequences that these conflicts are having around the world, especially in Europe. One of the direct consequences of the conflicts is the forced displacement of the population. Thousands of people have migrated to Europe and it is becoming a critical issue within the international political stability. If the global agenda is not prioritized with these types of issues that are the result of armed conflicts, solutions or the minimization of impact on civilians will not be possible to address.

As a final proposal, the purpose is to cover the necessary guidelines to improve the application of the International Humanitarian Law, together with the participation of International Organizations and countries in this important and current issue. Therefore the following suggestions and recommendations of guidelines which are:

- To strengthen the rules of IHL and human rights so that they have a greater impact in countries suffering from armed conflicts.
- To foster a culture of education about fundamental rights such as human rights and IHL.
- To promote courses within the educational system such as universities on IHL and Human Rights.

- To demand the presence of international organizations in areas of armed conflict.
- To dialogue with countries in armed conflicts in order to allow humanitarian help such as food, medical supplies, schools, shelters among others.
- To require international agencies to provide reliable reports on the situation of armed conflicts around the world.
- To promote rights of children in armed conflicts as a focal point in international organizations agendas.
- To integrate strategies such as conflict prevention, peacekeeping and peacebuilding in countries that have presented and present an armed conflict.
- To recruit new volunteers to international organizations or NGOs to protect civilians in armed conflicts.

### **3.5 Conclusion**

It could be concluded that the analysis of the international system and the relations between States are fundamental when it comes to armed conflicts, since it has been an element that has existed throughout mankind and continues to be present nowadays. Power and political interest are two strong weapons that Nation-States continue to hold and even if they may be seen as obstacles to stop hostilities between countries, it is fair to say that there actions that exist and can help to a better application of the IHL. These proposals aim to be realistic and have a great impact on the civilian population that are most affected in the armed confrontations.

Therefore, it can be summarized that the actions to improve the application of IHL are first to establish peacebuilding post-conflict that integrates children and young people as protagonists of change for their own communities. Also it was proposed the promotion of education of the norms to protect human beings in times of peace and conflict, in which young people will be able to build a different mentality with no wars involved. In addition, as a third point, the importance of this topic should be prioritized within the agendas of international organizations. Finally, to follow the usual protocol, it was thought to list necessary actions and improvements regarding the subject of International Humanitarian Law and children in armed conflicts.

## CONCLUSION

*"The primary purpose of the international humanitarian law is to try to make the reason voice be heard in situations where weapons silence the conscience of men, and to remind that any human being, that even an enemy, remains a person worthy of respect and compassion" (Swinarski, 1984).*

Analyzing each chapter and every point made throughout this paper, it can be concluded that the world is equipped with standards for each area. In the case of armed conflicts, there is international humanitarian law. The creation of this norm was a very great advance in society, since throughout history there was not a conventional law to set a conduct when making war, and the IHL is conventional norm that codifies the principles and the conduct within an environment of armed conflict, as in the case of the IV books of the Geneva Conventions of 1949 with their Additional Protocols of 1977. Almost all the States around the world are part of the Geneva Conventions of 1949, where they were granted obligations and responsibilities, with the primary objective of complying and enforcing the law.

However, not all theory is the same when put into practice and unfortunately the International Humanitarian Law is not an exception. Although this legislation may have its shortcomings, it is a very complete norm with a worthy purpose. However, the reality of the conflicts are very different, in which several violations against IHL are committed flagrantly. There are international organizations that exert pressure, but countries are not complying with their obligations when they were part of the Geneva Conventions of 1949, and the norm is being violated.

The new way of creating conflicts in the post cold- war era from 1990 to the present, wars have been carried out internally, and have been caused by ideological, ethnic, religious, natural resources and drug trafficking issues. In addition, a way of bringing violence to civilians has been added as never before, with children being the main victims.

In these new "wars", children are used as either victims or participants in the conflict. This paper outlined the six most serious violations committed against children, including killing and maiming, sexual abuse, kidnapping, attacks on schools and hospitals, denial of humanitarian assistance and the ultimate conversion of children

into soldiers. All these atrocities describe the reality that children in different parts of the world live and have lived. Therefore, addressing a topic of great importance today and analyzing the scope that IHL and International Organizations have in the global system is a great responsibility. Therefore it can be concluded that although IHL and human rights are normative that aim to protect the dignity of human beings, they are minimized by the power that large countries exercise in the current system.

Within this analysis, the lack of application of the International Law was presented in the third chapter where it was appropriate to talk about the theory of international relations and how it influences the relation of Nation-States and conflict. The realist and liberal branch was exposed. The realist branch is characterized by defining everything in terms of power, interest and security. On the other hand, the liberal branch proposes cooperation and international security. However, countries have applied both theories and have molded these theories by their actions and interests. The issue of the UN Security Council was also analyzed as a very influential body that overlaps with the common interest and international security of the world community.

Hence, with these two drawbacks of the present international system, what was proposed for a more useful application of the IHL is to promote peace-building within communities that have suffered armed conflicts and to equip children and young people as autonomous agents in favor of change. Therefore, the objective is to initiate an internal change with domestic initiatives taking the same children and young people as protagonists. It was also proposed to promote the education of IHL and human rights standards throughout the world, both for countries in conflict and without conflict. This part aims to make education and knowledge as the engine that generates change through understanding and awareness of the reality and the impact that armed conflict has on societies. As a third point it was proposed to prioritize this issue within the agendas of international organizations so that more attention is given to these circumstances and this problem can be dealt with properly and real reports. Finally, the necessary guidelines were listed to improve different aspects within the global scheme, especially having more respect for the norms of international humanitarian law.

This work did not seek to provide a total solution to the problems of armed conflict, but the main objective was to address a topic of great importance and that is often forgotten by the people of this world. It also seeks to put more emphasis on the education of the IHL. Finally, it is important to emphasize that the proposals in this paper are not many, nevertheless it was tried to give realistic options that could be put into action.

## BIBLIOGRAPHIC REFERENCES

- Adams, S. ( March 5th, 2015). *Failure To Protect: Syria and the UN Security Council*. Recovered Junio 23rd, 2016, of [http://www.globalr2p.org/media/files/syriapaper\\_final.pdf](http://www.globalr2p.org/media/files/syriapaper_final.pdf)
- Barkin, S. (2006). *International Organization: Theories and Institutions*. New York: PALGRAVE MACMILLAN.
- Caso Prosecutor vs Tadic, IT-94-1-T (Corte Europea May 7th, 1997).
- Caso Prosecutor vs Musema, ICTR-96-13-A (Corte Europea January 27th, 2000).
- Comité Internacional de la Cruz Roja. (2002). *Servicio de Asesoramiento en Derecho Internacional Humanitario*. Obtained from [https://www.icrc.org/spa/assets/files/other/rapp2002\\_esp.pdf](https://www.icrc.org/spa/assets/files/other/rapp2002_esp.pdf)
- Comité Internacional de la Cruz Roja. (2009). El CICR su misión y acción. 01/05/2016, del Comité Internacional de la Cruz Roja Sitio web: [https://www.icrc.org/spa/assets/files/other/icrc\\_003\\_0963.pdf](https://www.icrc.org/spa/assets/files/other/icrc_003_0963.pdf)
- Convención Interamericana de Derechos Humanos. ( September 24th, 1982). *Opinión Consultiva OC-2/82*. Obtained from [http://www.corteidh.or.cr/docs/opiniones/seriea\\_02\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_02_esp.pdf)
- Corte Internacional de Justicia. (May 28th, 1951). *Reporte de las Reservas del Convenio sobre el Crimen de Genocidio*. Obtained from Opinión Consultiva 1951: <http://www.icj-cij.org/docket/files/12/4283.pdf>
- Corte Penal Internacional. (s.f.). *Preguntas y Respuestas de la Corte Penal Internacional*. Obtained from [http://www.iccnw.org/documents/CICC\\_PreguntasyRespuestas\\_CPI\\_jul2012\\_SP.pdf](http://www.iccnw.org/documents/CICC_PreguntasyRespuestas_CPI_jul2012_SP.pdf)
- Diario El País. (July 24th, 2013). *En 54 años, 220 mil personas han muerto por el conflicto armado en Colombia*. Recovered on June 20th, 2016, from <http://www.elpais.com.co/elpais/judicial/noticias/54-anos-220-mil-personas-han-muerto-por-conflicto-armado-colombia>

- Diario La Tercera. (July 31st, 2014). *ONU acusa a Israel de crímenes de guerra por destruir colegios y hospitales*. Recovered on June 1st, 2016, <http://www.latercera.com/noticia/mundo/2014/07/678-589185-9-onu-acusa-a-israel-de-crimenes-de-guerra-por-destruir-colegios-y-hospitales.shtml>
- Diario Público. (October 3rd, 2007). *Las voces de los niños soldado*. Recovered June 20th, 2016, from <http://www.publico.es/culturas/voces-ninos-soldado.html>
- Díaz, P. L. (2009). Principios Fundamentales del Derecho Internacional Humanitario. *Revismar*, 233.
- Dunant, H. (1986). *Una Memoria de Solferino*. Ginebra: ICRC.
- El Universo. (January 26th, 2005). *En el Cenepa quedan huellas de la guerra*. Recovered June 2016, from <http://www.eluniverso.com/2005/01/26/0001/12/3C51DA01C94E4F3B87FA3B3ADEEF2E94.html>
- El Ventano. (July 22nd, 2014). *Israel bombardea escuelas y hospitales en Gaza*. Obtained from, <https://elventano.es/2014/07/israel-bombardea-escuelas-y-hospitales.html>
- Henckaerts, J. M. (2005). Estudio sobre el Derecho Internacional Humanitario Consuetudinario. Una contribución a la comprensión y al respeto del Derecho de los Conflictos Armados. En C. I. Roja.
- Hernández, M. (n.d.). *Derecho Internacional Humanitario manual para estudiantes de derecho*. Medellín: Universidad de Antioquia.
- Humanium. (June 6th, 2016). *Niños Soldados*. Obtained from <http://www.humanium.org/es/ninos-soldado/>
- Instituto Interamericano del niño. (2002). *Niños, niñas y adolescentes involucrados en conflictos armados*. Montevideo: OEA.
- La Agencia de la ONU para los Refugiados. (s.f.). *ACNUR*. Obtained from <http://www.acnur.org/t3/a-quien-ayuda/ninos/>

- Lee-Koo, K. (2015). Children and Peace Building: propagating peace. En B. D.-K. Kim Huynh, *Children and Global Conflict* (págs. 192-196). Cambridge: Cambridge University Press.
- Machel, G. (1996). *The impact of war on children*. London: UNICEF.
- Naciones Unidas Consejo de Seguridad. (n.d.). *Sistema de votación y registros*. Recovered on June 22nd, 2016, from <http://www.un.org/es/sc/meetings/voting.shtml>
- Naciones Unidas. (n.d.). *Órganos Principales*. Recovered on June 23rd, 2016, from <http://www.un.org/es/sections/about-un/main-organs/>
- Peace Operations Training Institute. (2010). The evolving role of United Nations peacekeeping operations. Principles and Guidelines for UN Peacekeeping Operations (40). USA: Peace Operations Training Institute.
- Peytrignet, G. (n.d.). Derecho Internacional Humanitario: Evolución histórica, Principios Esenciales, y mecanismos de aplicación. *Instituto Interamericano de Derechos Humanos*, 143.
- Pictet, J. (n.d.). *Comité Internacional de la Cruz Roja* . Obtained from <https://www.icrc.org/spa/resources/documents/misc/5tdl7w.htm>
- Principios de la Ciudad del Cabo. (1997). Recovered on June 6th, 2016, from [http://www.observatorioddrr.unal.edu.co/ambitojuridico/archivosnormatividad/1997/Internacional/principios\\_ciudaddelcabo.pdf](http://www.observatorioddrr.unal.edu.co/ambitojuridico/archivosnormatividad/1997/Internacional/principios_ciudaddelcabo.pdf)
- Salmón, E. (2004). *Introducción al Derecho Internacional Humanitario*. Perú: Instituto de Democracia y Derechos Humanos.
- Sandoz, Yves. (1998). El Comité Internacional de la Cruz Roja: Guardián del Derecho Internacional Humanitario. 01/05/2016, del Comité Internacional de la Cruz Roja Sitio web: <https://www.icrc.org/spa/resources/documents/misc/about-the-icrc-311298.htm>
- Savegnago, V. (n.d.). *Revista de Relaciones Internacionales No 5*. Obtained from El

Derecho Internacional Humanitario y los Conflictos Armados  
Internacionales: <http://www.revistas.unlp.edu.ar/RRII-IRI/article/viewFile/1982/1922>

Stanford Encyclopedia of Philosophy. (April 2nd, 2013). *Political Realism in International Relations*. Recovered on June 21st, 2016, from <http://plato.stanford.edu/entries/realism-intl-relations/#HobAnaStaNat>

Stanford Encyclopedia of Philosophy. (February 25th, 2014). *Hobbes Moral and Political Philosophy*. Obtained from <http://plato.stanford.edu/entries/hobbes-moral/>

SURF survivors Fund. (2011). *Survivors of the Rwandan Genocide*. Obtained from Statistics: <http://survivors-fund.org.uk/resources/rwandan-history/statistics/>

Swinarski, C. (1984). *Introducción al Derecho Internacional Humanitario*. Ginebra: Comité Internacional de la Cruz Roja.

Swinarski, C. (1984). *Introducción al Derecho Internacional Humanitario*. San José, Costa Rica - Ginebra: Comité Internacional de la Cruz Roja.

Swinarski, C. (1984). *Introducción al Derecho Internacional Humanitario*. San José de Costa Rica: Comité Internacional de la Cruz Roja.

Swinarski, C. (June 1st, 1991). *Comité Internacional de la Cruz Roja*. Obtained from Principales nociones e institutos del Derecho Internacional Humanitario como sistema de protección de la persona humana: <https://www.icrc.org/spa/resources/documents/misc/swinarsky.htm>

Telesur. (July 31st, 2014). *ONU denuncia ataque a escuelas y hospitales en Gaza como crimen de guerra*. Recovered on May 30th, 2016, from <http://www.telesurtv.net/news/ONU-ataques-en-Gaza-son-un-crimen-de-guerra-20140731-0022.html>

The Guardian. (23 de Julio de 2013). *Joseph Kony child soldier returns to terrorised boyhood village*. Recovered on June 8th, 2016, from <https://www.theguardian.com/world/2013/jul/23/joseph-kony-child-soldier-return-uganda-lra>

- The World Post. (15 de Octubre de 2015). *A Former Child Soldier Shares His Story In New Graphic Novel*. Recovered on June, 2016, from [http://www.huffingtonpost.com/entry/child-soldier-book\\_us\\_561d55dfe4b050c6c4a313d8](http://www.huffingtonpost.com/entry/child-soldier-book_us_561d55dfe4b050c6c4a313d8)
- UN Children in Armed Conflicts. (November 2013). *The six grave violations against Children during armed conflict: The legal Foundation*. New York: United Nations.
- UNICEF. (October 12th, 2010). *Niños y niñas en situaciones de emergencia y de conflicto armado*. Obtained from [http://www.unicef.org/spanish/protection/index\\_armedconflict.html](http://www.unicef.org/spanish/protection/index_armedconflict.html)
- UNICEF. (2012). *Rwanda*. Obtained from [http://www.unicef.org/infobycountry/rwanda\\_genocide.html](http://www.unicef.org/infobycountry/rwanda_genocide.html)
- Vinuesa, R. E. (30 de Julio de 1998). *Comité Internacional de la Cruz Roja*. <https://www.icrc.org/spa/resources/documents/misc/5tdlp2.htm>
- War Child. (2014). *The conflict in the Congo*. Recovered May 28th, 2016, from <https://www.warchild.org.uk/issues/conflict-in-democratic-republic-of-congo>
- World Bank. (n.d.). *Data*. Recovered June 25th, 2016, from Population, ages 0-14 (% of total): <http://data.worldbank.org/indicator/SP.POP.0014.TO.ZS>
- Zwanenburg, Marten. (2013). *United Nations and International Humanitarian Law*. 05/05/2016, de Oxford Public International Law Sitio web: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1675>