The development of IHL had been influenced by religious concepts and philosophical ideas. Customary rules of warfare are part of the first rules of international law altogether. In this process, the development from the first rules of customary law to the first written humanitarian principles for the conduct of war was also accompanied by setbacks. Some rules which imposed restrictions on the conduct of war, the means of warfare and their application can even be traced back to ancient times. The Sumerians regarded war as a state governed by the law, which was started with a declaration of war and was terminated by a peace treaty. War was subject to specific rules which inter alia, guaranteed immunity to enemy negotiators.

Hammurabi, king of Babylon, wrote the "Code of Hammurabi" for the protection of the week against...
oppression by the strong and ordered that hostages be released on payment of a ransom.

Furthermore, the law of Hittites also provided for a declaration of war and for peace to be concluded by treaty as well as for respect for the inhabitants of an enemy city which has capitulated. The war between Egypt and Hittites for instance was thus terminated by a peace treaty.

In the 7th Century B.C., Cyrus I, king of Persians, ordered the wounded Chaldeans to be treated like his own wounded soldiers.

To buttress the understanding of this development, the Indian epic Mahabharata and the Laws of Manu already contain provisions which prohibit the killing of an adversary who is no longer capable of fighting and surrenders, forbid the use of certain means of combat, such as poisoned or burning arrows, and provide for the protection of enemy property and prisoners of war.

The Greeks, in the wars between the Greek city-States which considered each other as having equal rights, but also in war led by Alexander the Great against the Persians, respected life and personal dignity of war victims as a prime principle. They spared temples, embassies, priests, and envoys of the opposite side and exchanged prisoners of war. For example, the poisoning of wells was proscribed in warfare.

The Romans also accorded to their prisoners of war the right to life. However, the Greeks and Romans distinguished between those peoples whom they regarded as their cultural equals and people whom they considered to be barbarians.

Islam also acknowledge essential requirements of humanity. In his Orders to his commanders, the first caliph, â€œAbu Bakrâ€ stipulated, for instance, the following:

â€œThe blood of women, children, and old people shall not stain your victory. Do not destroy a palm-tree, nor burn houses and cornfields with fire, and do not cut any fruitful tree. You must not slay any flock or herds, save for your substance.â€

In many cases, Islamic warfare was not less cruel than warfare by Christians. Under the reign of leaders like â€œSultan Saladinâ€ in the 12th Century, the laws of war were observed in an exemplary manner. Saladin ordered the wounded of both sides to be treated outside Jerusalem and allowed the members of the Order of St. John to discharge their hospital duties.

In the middle Ages, feud and war were governed by strict principles. The principle of protecting women, children and the aged from hostilities originated from church father Augustine.

The enforcement of respect for holy places (Truce of God) created a right of refuge, i.e. a right of asylum, in churches, the observance of which was carefully monitored by church. The knights fought against each other according to certain (unwritten) rules. The rules of arms were variously enforced by arbiters of tribunals of knights. They applied only to knights, but not to ordinary people. The enemy was frequently regarded as an equal combatant who was to be defeated in an honourable fight. It was deemed to be forbidden to start a war without prior notification.

The â€œBushi-Doâ€, the medieval code of honour of the warrior caste of Japan, included the rule that humanity must be exercised even in battle and towards prisoners of war (POW).

In the 17th Century, the military tactician Sorai wrote that whoever kills a POW shall be guilty of manslaughter no matter whether such a prisoner had surrendered or fought â€œto the last arrow.â€

As a result of the decline of the knighthood, the invention of firearms and above all, the creation of armies
consisting of mercenaries, the morals of war coarsened again towards the end of the middle ages. Considerations of chivalry were unknown to these armies.

Equally, they did not make any distinction between combatants and civilian population. Mercenaries regarded war as trade which they followed for the purpose of private gain.

At the beginning of modern times, the wars of religion, and particularly the Thirty Years War, once again entailed the most inhuman methods of warfare. The cruelties of this war essentially contributed to the fact that jurisprudence considered the jus in bello and established a number of dictates which were to be observed by the belligerents.

In his work “De jure belli ac pacis” which was published in 1625, Hugo Grotius, the father of modern international law, highlighted existing bounds to the conduct of war. A fundamental change in the attitude of states to the conduct of war did not come until the advent of the age of enlightenment in the 18th Century.

In 1772, Jean-Jacques Rousseau made the following statement in his work, “Le contrat social:

“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; the object of the war being the destruction of the hostile State, the other side has a right to kill its defenders, while they are bearing arms; but as soon as they lay them down and surrender, they become once more merely men, whose life no one has any right to take.”

From this doctrine, which was soon generally acknowledged, it follows that the acts of hostility may only be directed against the armed forces of the adversary, but not against the civilian population which does not take part in these hostilities. These ideas also found expression in some international treaties concluded at that time. For instance, the treaty of friendship and commerce concluded between Prussia and the United States in 1785, whose most important authors are deemed to be King Frederic the Great and Benjamin Franklin, contained some exemplary and trendsetting provisions for the treatment of POW.

In the 19th Century, after a few temporary setbacks, humanitarian ideas continued to gain ground. They led to remarkable initiatives of individual persons as well as to the conclusion of numerous international treaties. These treaties imposed restrictions on the means of warfare and the methods of their use.

Florence Nightingale, an English woman, calmed the sufferings of the sick and wounded through her efforts as a nurse in the Crimean War. Later, she made essential contributions towards the renovation of the civil and military nursing systems of her homeland.

In 1861, Francis Lieber, a German-American Professor of political science and jurisprudence at Columbia University; prepared on behalf of President Lincoln, a manual based on international law (Lieber Code), which in 1863, was put into force the first time for the Union Army of the United States in the Civil War.

The Genovese merchant, Henri Dunant, who in the Italian War of Unification, had witnessed the plight of 40,000 Austrian, French and Italian soldiers wounded on the battle field of Solferino, published his impression in his book, “A memory of Solferino” which he vividly depicted the horrors of the battle as follows:

“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
put out of their misery and writhed with faces distorted in the grip of death struggle.

In his book, Dunant not only described the battle, but tried to suggest and publicize possible measures to improve the fate of war victims. He presented three basic proposals designed to mitigate the suffering of the victims of war. To this end, he proposed the following:

1. That voluntary societies be established in every country which, in time of peace, would prepare them to serve auxiliaries to the military medical services.

2. That States adopt an international treaty guaranteeing legal protection to military hospitals and medical personnel.

3. That an international sign of identification and protection of medical personnel and medical facilities be adopted.

These three proposals were simple, but they have had deep and lasting consequences;

1. The whole system of National Red Cross or Red Crescent Societies (of which there are today 188 around the world stems from the first proposal;

2. The second proposal gave birth to the â€œFirst Geneva Conventionâ€

3. The third proposal led to the adoption of the protective emblem of the Red Cross or the Red Crescent.

Dunantâ€™s book enjoyed enormous success throughout Europe. Although it did not present entirely original ideas, the merit of the book is in large part due to the timeliness of its message. At that time, a private welfare association existed in Geneva, â€œthe Society for the Public Good.â€ Its President, Gustave Moynier, was impressed by Dunantâ€™s book and proposed to the members of the society that they try to carry out Dunantâ€™s proposals. This suggestions were accepted and five members of the Society, Mssrs, Dunant, Moynier, Dufour, Appia and Maunoir, created a special committee in 1863, the â€œInternational Standing Committee for Aid to Wounded Soldiers.â€ This committee later became the International Committee of the Red Cross (ICRC).

In 1863, the Committee convened military and medical experts at a conference in Geneva. The aim of that meeting was to examine the practicability and feasibility of the proposals made by Dunant. The results of the meeting were encouraging, and the members of the committee persuaded the Swiss Federal Council to convene a diplomatic conference, whose task would be to give a legal form to Dunantâ€™s proposals.

To this end, a diplomatic conference was held in 1864 in Geneva and 16 States represented finally adopted the â€œGeneva Convention of 22nd August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field.â€ Its results was an international treaty open to universal ratification (i.e an agreement not limited to a specific region or conflict, with binding effects on the States that would formally accept it) in which States agreed to voluntarily limit their own power in favour of the individual.

For the first time, armed conflict became regulated by written, general law. This original convention has been replaced by more modern and comprehensive treaties. However, it illustrates in a concise manner the central objectives of humanitarian law treaties.

The constant enlargement of the categories of war victims protected by humanitarian law (military wounded, sick and shipwrecked, POW, civilians in occupied territories; the entire civilian population), as well as the expansion of the situations in which victims are protected (international and non-international armed conflicts); regular updating and modernization of the treaties to account for the realities of recent conflicts.
For example, the rules protecting the wounded adopted in 1864 were revised in 1906, 1929, 1949, and 1977 respectively.

Two separate legal currents have up until 1977 contributed to this evolution and they are:

1. The Geneva Law, mainly concerned with the protection of the victims of armed conflicts i.e. the non-combatants and those who no longer take part in the hostilities and;

2. The Hague Law, whose provisions relate to limitations and prohibitions of specific means and methods of warfare.

These two legal currents were practically merged with the adoption of the two Additional Protocols of 1977. The Convention currently in force have replaced the older Geneva Conventions.

In 1980, another important Convention was adopted under the UN auspices, the “Convention on prohibition or restrictions on the use of conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.” This instrument limits or prohibits the use of mines booby traps, incendiary weapons, and non-detectable fragments.

In 1993, a comprehensive Convention prohibiting the development, production, stockpiling, and the use of chemical weapons was adopted. This treaty supplements the basic prohibition contained in the 1925 Geneva Protocol.

In 1995, a new Protocol, an appendage to the 1980 Convention was adopted. This new instrument prohibited the use of laser weapons designed to cause permanent blindness.

In 1997, a Convention prohibiting the use, stockpiling, production and transfer of antipersonnel mines was signed in Ottawa.

In 1998, the Statute of the International Criminal Court (ICC) was adopted in Rome. This accomplishment was the culmination of years of effort and showed the resolve of the international community to ensure that those who commit grave crimes do not go unpunished. The ICC has jurisdiction over serious international crimes (Genocide, Crimes against Humanity, War Crimes and Aggression) regardless of where they are committed.

In 1999, a new Protocol to the 1954 Convention on cultural property was adopted. Protocol II enables the States party to that convention to supplement and reinforce the protection system established in 1954. It clarifies the concepts of safeguarding and respect for cultural property; it lays down new precautions in attacks and against the effects of attacks; and institutes a system of enhanced protection for property of the greatest importance for humanity.

In 2000, an optional protocol to the 1989 Convention on the rights of child was adopted. This protocol raises the minimal age for compulsory recruitment from 15 to 18 and calls on States to raise the minimum age for voluntary recruitment above 15. It provides that armed groups should not use children under 18 in any circumstances and calls on States to criminalize such parties.

In 2003, the international community adopted a treaty to help reduce the human suffering caused by explosive remnants of war and bring rapid assistance to affected communities. Explosives remnants of war are unexploded weapons such as artillery shells, mortars, grenades, bombs, and rockets left behind after an armed conflict.

In 2005, a diplomatic conference held in Geneva adopted a Third Additional Protocol to the Geneva
Conventions, creating an additional emblem alongside the Red Cross and Red Crescent. The additional emblem known as the red crystal should provide a comprehensive and lasting solution to the emblem question. It will appear as a red frame in the shape of a square on a diagonal on a white background, and is free from any religious, political or other connotations.

In 2008, government negotiated and adopted the Convention on Cluster Munitions. This important international humanitarian law treaty prohibits the use, production, stockpiling and transfer of cluster munitions and requires States to take specific action to ensure that these weapons claim no future victims.

Conclusively, it is worth nothing the support lent by the international community to the Treaties of IHL. Since 194 States are parties to these texts, the four Geneva Conventions are now among the most universal instruments of international law. Additionally, 172 States are parties to the First Protocol and 166 States are parties to the Second Protocol regulating the coordination and cooperation between the members of the international community.

About Essay Sauce

EssaySauce.com is a completely free resource to help students research their academic work and learn from great essays!

View all posts by Essay Sauce

...(download the rest of the essay above)
Latest reviews:

- Law essays
  - Industry analysis: the fundamentals (notes)
  - Chinese culture

Search for student essays:

Search ...

About EssaySauce, the student essay site:

EssaySauce.com is a free resource for students, providing thousands of example essays to help them complete their college and university coursework. Students can use our free essays as examples to write their own.
Latest student essays:

Harnessing energy through knowledge – business development strategy of e-commerce companies
Minimizing of power losses for distribution system
Translating the Biggles Stories for Czech Readers: A Case of Moderate Transposition
Questioning is a Useful Form of AfL
Enhancing literacy
Cadburys
Advancements in Procurement Practices and Supply-Chain Management...
LITERARY REVIEW – fashion industry
Chlorpyrifos
Get out of my space – business idea

Student essay categories:

Accounting essays
Architecture essays
Business essays
Economics essays
Education essays
Engineering essays
English language essays
English literature essays
Environmental studies essays
Finance essays
Health essays
History essays
Information technology essays
International Relations
Law essays
Literature essays
Management essays
Marketing essays
Miscellaneous essays
Music Essays
Photography and arts essays
Politics essays
Project management
Psychology essays
Religious studies and Theology essays
Science essays
Sociology essays
Zoology essays

Average review:

Overall rating: 0 out of 5 based on 0 reviews.

Q: Is EssaySauce.com free?

Yes! EssaySauce.com is a completely free resource for students. You can view our terms of use here.

Why use Essay Sauce?

The brightest students know that the best way to learn is by example! EssaySauce.com has thousands of
great essay examples for students to use as inspiration when writing their own essays.

Is Essay Sauce completely free?

Yes! EssaySauce.com is a completely free resource for students. You can view our terms of use here.

Info:

About
Content policy
Essay removal request
Privacy
Terms of use