UNIT 10 WHY ARE CERTAIN RULES MORE IMPORTANT IN IHL?

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10.1 INTRODUCTION

The notion of legal constraint upon the waging of war is as old as the earliest extant history of the conduct of war. From Sun Tzu’s *The Art of War*, written in 5th Century BC (China), throughout every subsequent stage of human history and in every major human civilization, warriors were subject to specified limitations on the means and methods of warfare and, in many cases, were subject to legal sanction for violations of those limitations. Restrictions on the means and methods of warfare have consistently included prohibitions on, or regulation of, the use of particular weapons. For example, the use of poison and poisoned weapons was prohibited in ancient Hindu law and by the Greeks and Romans, and the use of the arbalest (crossbow) was prohibited by the Lateran Council in the middle Ages. It is hardly surprising then, that from the early development of the international law of war in the
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mid-Nineteenth Century, efforts to reach multilateral agreement to regulate the conduct of war would include attempts to prohibit or restrict the use of particular weapons. To this extent, there is a clear correlation between international humanitarian law and arms control. International humanitarian law is concerned with the legal regulation of the conduct of armed conflict and is limited in its application to the existence of an armed conflict. Consequently, the primary focus in relation to weapons of war has been on their use in armed conflict and the regulation has not extended to the use of weapons in circumstances short of armed conflict let alone to their development, possession or transfer in circumstances other than armed conflict. Humanitarian concerns for victims of armed conflict in relation to the deployment of weapons has either involved prohibitions on the use of certain specific weapons or restrictions upon the manner of deployment of other weapons types. These two aspects of the approach of international humanitarian law to specific categories of weapons is captured in the title of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects and Protocols I-III which was opened for signature 10 October 1980 and entered into force 2 December 1983. By contrast, the negotiations of arms control and disarmament treaty regimes have been motivated primarily by national and international security concerns and not necessarily by humanitarian concerns. The focus of arms control regimes has ranged from: limiting the stockpiles of a certain weapon type; through reductions in stockpiles to the comprehensive prohibition of weapons types, including prohibitions on the development, production, stockpiling, testing and transfer, as well as the destruction of existing stockpiles, of weapons. Often arms control regimes also include one or more of a range of associated verification or compliance monitoring activities. The scope of application of arms control regimes is, thus, much broader than that for international humanitarian law.

After the events of September 11, 2001 and the much publicized “war against terrorism”, Principles of IHL as well as their application has become the subject of intense scrutiny and international debate. These events have (i) highlighted the continuing importance of IHL in today’s world; (ii) exposed certain weaknesses, including gaps in coverage and areas of IHL that urgently require further definition and development. The international attention and debate that has been focused on IHL during the last few years will ultimately result in an increased awareness of the rules of international humanitarian law that apply in all armed conflicts. This attention will act as a catalyst for the positive development of international humanitarian law, where required.

Many of the fundamental principles and rules of IHL are customary in nature. Most of them are applicable to both international armed conflicts and non-international armed conflicts. Importantly, these rules include those concerning the conduct of hostilities, such as: (i) Principle of Distinction; (ii) Principle of Proportionality; (iii) Notion of Military Objective; (iv) Protection of the Civilian Population; and, (v) Precautions in the attack. These rules are binding on both sides to a conflict namely government forces or rebel/insurgent groups. Of the 161 rules determined to be customary, 147 are applicable in non-international as well as international armed conflicts. This is indeed reason for optimism, particularly given the lack of IHL treaty-based rules that are applicable to non-international armed conflicts.

It is necessary to bear in mind that IHL distinguishes the traditional idea of ‘war’ from ‘armed conflict.’ With the adoption of the four Geneva Conventions in 1949, the word ‘war’ was replaced by the term ‘armed conflict.’ The rationale for this deliberate substitution was to widen the humanitarian protection to situations other than those
strictly defined, in a legal sense, as ‘war.’ This substitution makes it much more difficult for a State to deny the applicability of IHL to any hostile act it might commit by claiming that it did not amount to an act of war but was only, say, an act of self-defence or a police action. The term ‘armed conflict’ covers the use of armed force in any dispute between two States or between the armed forces of a State and an armed group or between armed groups within a State; and that makes implicit the applicability of IHL in all those circumstances, even if one of the parties to such a conflict were to claim that it was not ‘at war.’

10.2 OBJECTIVES

After studying this unit, you should be able to:

- discuss the essential rules of International Humanitarian Law;
- discuss the importance of International Humanitarian Law in mitigating the sufferings of civilians and soldiers; and
- explain the principles of inviolability and non-discrimination.

10.3 ESSENTIAL RULES OF INTERNATIONAL HUMANITARIAN LAW

1) Persons who do not or can no longer take part in the hostilities are entitled to respect for their life and for their physical and mental integrity. Such persons must in all circumstances be protected and treated with humanity, without any unfavorable distinction whatever.

2) It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting.

3) The wounded and sick must be collected and cared for by the party to the conflict which has them in its power.

4) Medical personnel and medical establishments, transports and equipment must be spared.

5) The Red Cross or Red Crescent on a white background is the sign protecting such persons and objects and must be respected.

6) Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their life, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid.

7) Everyone must enjoy basic judicial guarantees and no one may be held responsible for an act he has not committed. No one may be subjected to physical or mental torture or to cruel or degrading corporal punishment or other treatment.

8) Neither the parties to the conflict nor members of their armed forces have an unlimited rights to choose methods and means of warfare. It is forbidden to
use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.

9) The parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Neither the civilian population as whole nor individual civilians may be attacked. Attacks may be made solely against military objectives.

10) Individuals, who do not take direct part in hostilities as well as individuals, can’t take part in these actions due illness, wound, captivity or other reasons, are entitled to be respected and protected against conflicting sides’ military operations’ consequences without any unfavorable distinction whatever.

11) Additional protocols extend action field, concerning it to any individual, involved in a military conflict. Moreover, these protocols oblige warring sides and combatants not to attack civilians and civil objects as well oblige to guarantee the providing of military operations in compliance with the generally accepted humanitarian law.

10.4 WHY ARE THESE RULES ARE BASIC AND IMPORTANT?

Like any other discipline, International Humanitarian Law has certain basic principles, from which others are derived, making no claim that it can put an end to the scourge of war, IHL aims to avoid the unnecessary harshness of war. The reciprocal interests of the parties to the war also require them to observe certain rules of the game in the conduct of hostilities. Very interestingly, the modern times have been marked by the rise of political ideologies which are prepared to subordinate everything else to promote their aims, even if this means the need of force. At the same time subversive movements which seek by the use of violence to overthrow existing regimes have also been on constant increase. Hence, it came to be recognized that international law must cover and envisaged both the law of armed conflicts and the law of human rights so as to ensure a set of basic principles of IHL referring to a minimum set of safeguards and of humanity to all in times of peace as well as war alike.

These principles are vital and important in humanitarian law as they are in all other legal domains’ for more than reason. They (i) serve as the bone structure in a living body; (ii) provide guidelines in unforeseen cases; and, (iii) constitute a complete summary of the whole; (iv). Facilitate easy understanding and are therefore indispensable for the purposes of dissemination. These principles are considered as minimum core since they are being considered to be valid at all times, in all places and under all circumstances, applying even to States which may not be parties to the Geneva Conventions. On another note, their fundamental relevance is because they express the usage of peoples, and hence give them a universal character to the said principles. However, of the above referred principles that are considered to be of fundamental relevance, certain principles are being treated as of fundamental in nature, from which others are derived. In this sense, they are the sources of others.

10.5 COMMON PRINCIPLES

Fundamental or basic principles, as they are often referred to, are the sources of all other principles which are common in times of peace and conflict.
10.5.1 Principle of Inviolability

Every individual has a right to the respect of his life, integrity, both physical and moral, and of the attributes inseparable from his personality. This indisputable postulate may be best explained by the following corollary principles.

a) **A man who has fallen in combat is inviolable. An enemy surrendering shall have the life spared:** This principle concerns only to the requirements of combatants. However, it is the cornerstone of the Geneva Conventions. This principle, if it is to be explained in simple terms, may be put as ‘One may kill only a soldier who is himself in a position to kill’. Additional Protocol I 1977 to the Four Geneva Conventions 1949 has not only confirmed this principle but also developed this protection to an enemy who ‘clearly expresses an intention to surrender’ or who has been ‘rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable or defending oneself’. (Art.40, 41 and 42 AP I, 1977)

b) **Torture, degrading or inhuman punishment is forbidden:** Amongst the practices that were condemned, torture to extract information is the most reprehensible and dangerous practice. For the individual, it is the cause of unspeakable suffering. It is also a serious affront to the dignity of man, forcing him to perform acts and make statements against one’s will, obliging oneself to betray the comrades and even family, degrading oneself to the level of a slave in the barbaric ages, or one might say to that of a human beast, a subhuman. Furthermore, it degrades all those responsible for torture—the torturers and those who order or permit it—even more than it does the victims. Since the end of the 18th century, when States started abolishing torture, it was earnestly hoped that there would be an end to such a practice, universally condemned by civilized peoples.

Very ironically, it failed to disappear and rather it took a rebirth, more as a clandestine and a wide dissemination of the despicable practice. While torture is being used on a large scale in many countries, with scientifically perfected methods, State’s practices often leave no evidence of the crime. Torture is not only forbidden by law, in the laws of many countries but also under various international human rights conventions. Similarly, the Geneva conventions, 1949 and Article 75, Protocol I, 1977 to the Four Geneva Conventions, 1949 forbids: ‘torture of all kinds, whether physical or mental or corporal punishment or mutilation or outrages upon personal dignity, and any form of indecent assault.

c) **Everyone is entitled to recognition as a person before law:** It is necessary to protection man’s physical and moral integrity. The legal status should also be respected and be guaranteed the full exercise of civic rights.

d) **Everyone has the right to respect for his honor, his family rights, his convictions and customs:** Men are sensitive to infringements upon their honor and self respect, and many have valued this above their own lives. The importance of family ties needs no emphasis, but its’ very strength provides unscrupulous scoundrels with another opportunity to compel others to violate their convictions. To attack the moral fibre of a man by treating what he holds closest to the heart is perhaps the most coward and contemptible of acts. Philosophical, political and religious convictions are elementary aspects of the human individual. If a man is deprived of them he/she ceases, in some degree to be a whole person. This may also be said of the customs. The most glaring example, in this regard is the so called primitive peoples upon whom a stereotyped civilization has been forcibly
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imposed, who have been cut off from the ancestral roots from which their creative energy was drawn, and who then rapidly declined. The above referred Article 75 of the Additional Protocol I, 1977 to the Four Geneva Conventions, 1949 specifies that the States ‘shall respect the person, honor, convictions and religious practices’ of all persons.

e) **Anyone who is suffering shall be sheltered and given the care which his condition requires:** Geneva Convention 1864 sets forth this duty and this is even imperative in today’s scenario. Conceived for the military in time of war, this principle is all the more valid for civilians and in time of peace. In the later case, it takes on a more positive aspect, that of the maintenance of health and the prevention of sickness.

f) **Everyone has the right to exchange news with his family and receive relief:** Nothing is more destructive to a person’s morale than anxiety about those dear to oneself. When circumstances, especially armed conflicts separate the members of a family is very important for them to be able to exchange messages. This was and is why the Central Tracing Agency was established by the International Committee of Red Cross (ICRC) in Geneva, pursuant to the Four Geneva Conventions, 1949. Protocol I recognizes ‘the right of families to know the fate of their relatives’ and specifies a number of measures which should be taken to search for missing and dead persons. (Art. 32-34). It further provides for the organization of international relief activities in case of need and for the shipment and delivery of relief consignments and specifies that relief personnel must be respected. (Art.69-71). Similarly, Additional Protocol II, 1977 also specifies that detained persons must be allowed to correspond with their families. (Art. 5)

g) **No one may be arbitrarily deprived of one’s own property:** It is not attaching an exaggerated value to material goods to observe that in the present state of society, but property is inseparable from life.

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<td>1) Explain the scope of ‘Principle of Inviolability’.</td>
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10.5.2 **Principle of Non-discrimination**

This states that ‘All persons shall be treated without any distinction based on race, sex, nationality, language, social standing, wealth, political, philosophical or religious opinions or on any other similar criteria’. (See also Preamble to the Additional Protocol II, 1977; Articles 10 and 75, Additional Protocol I, 1977) It is important to bear in mind that this principle cannot be construed in absolute terms, the reason being, there are such things as favorable distinctions while are proper and sometimes necessary even to make. In International Humanitarian Law terms, such distinctions are based on degrees of suffering, distress or natural weakness and hence are often considered to be legitimate. For example, women must be treated with the consideration due to their sex. The protocols have a number of provisions for
special protection of women and children. With respect to the protection and care of the wounded and sick, it is stated that 'there shall be no distinction among them founded on any grounds other than medical ones. It is therefore appropriate to supplement the principle of non discrimination with a principle of application namely 'differences in treatment should, however, be made for the benefit of individuals in order to counter inequalities resulting from their personal situation, their needs or their distress.

10.5.3 Principle of Security

Everyone has the right to security of person. Hence, the following two corollaries are important to be examined namely (i) no one shall be held responsible for an act which he has not committed; and (ii) reprisals, collective punishments, taking of hostages and deportations shall be prohibited. While the Geneva Conventions 1949 prohibit the reprisals against protected persons, they are still permitted in the conduct of hostilities, since some States consider that they were the only means to compel an unwilling enemy to respect one’s obligations. Reprisals however are contrary to the general principle in law that an innocent person must not be punished for the offence of a guilty person. Furthermore, they cause great suffering and fail to achieve their purpose.

In this regard, one must specifically make a mention to Additional Protocol I, 1977 to the Four Geneva Conventions which made a great step of forbidding reprisals against civilians even by way of aerial bombardments. Two other corollaries of this principle are that every one shall benefit from customary legal guarantees and, no one may renounce or give up the rights accorded to or conferred up on him by the humanitarian conventions. The purpose of the second corollary is in order to protect and safeguard the victims of conflicts against themselves. This is because the persons in the power of an enemy are not in a situation of independence and objectivity which would enable them to judge their real interests with full knowledge of the facts. More so, this provision was incorporated to provide apparently beneficial status to protected persons, which in fact, deprived them of their rights under the Conventions.

Self Assessment Question

2) Explain the meaning of the ‘Principle of Security’.

10.6 PRINCIPLES PROPER TO THE VICTIMS OF CONFLICTS

10.6.1 Principle of Neutrality

The Geneva Convention 1864 enunciated a great concept, which went beyond the protection fo the wounded, by specifying that assistance given even to the enemy is legal and is never a hostile act in violation of neutrality. This is even otherwise, implied, in provisions which place medical personnel above the conflict. There are now express provisions on neutral assistance; (Art. 27 (3) First Geneva Convention 1949); protection to civil defence organizations of neutral States; (Art 64 (1) Additional
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Protocol I, 1977); relief actions for the civilian population of belligerent nations (Art. 70 Additional Protocol I, 1977). Corollaries of this principle in the sense of application are as follows.

a) **In exchange for the immunity granted to it, medical personnel must abstain from any hostile act:** The immunity provided upon both military and Red Cross medical establishments and personnel implies that the members of such personnel must refrain absolutely from any direct or indirect interference in the hostilities, as a counterpart to the general principle of neutrality. By way an innovative intervention, civilian medical personnel were added into the framework of protection on the same basis as military medical personnel. While the Geneva Conventions 1949 stipulated immunity only to the personnel of civilian hospitals, the Additional Protocols 1977 extended the scope of protection to the members of civil defence organizations who carried out many activities to protect the population, especially against the dangers of aerial bombardments, under certain conditions.

b) **Protection to Medical Personnel:** The underlying reason for the protection provided to the doctors and nurses is on account of the care required on their part to be extended to the victims, who are the real beneficiaries. Hence, the protection extended to them is a great tribute for the role of healers they would play. Additional Protocols, 1977 developed and expanded the scope of protection of medical mission by placing specific obligations on the Occupying Powers. (Art. 15 (1) and Art. 16 (2) Additional Protocol I, 1977).

One of the important corollaries to the above referred principles is that ‘no one shall be compelled to give any information concerning the wounded and sick who are or have been under his care if such information would in his opinion prove harmful to them or their families’. While Protocol II also contained a similar provision, the Diplomatic Conference subjected the application of this general principle to national legislation. While many consider that the general principle has its own weightage, some view that the reservation has deprived the originality of this principle.

c) **No one shall be molested or convicted for having given treatment to the wounded or sick:** By recognizing this principle, Art. 18 of the First Geneva Convention, 1949 provided an answer to countless painful situations that arose during and immediately after the World War II in many countries. Many were killed, imprisoned or persecuted for giving care to wounded partisans or parachutists or even for having worked for the official medical services or the Red Cross Society of an occupying country. All such measures were contrary to the spirit of the Geneva Conventions and to the Principle of Neutrality. It is for this reason the Additional Protocols 1977 not only provided an express confirmation but also expanded the scope of Neutrality to the instances of prosecution, conviction or punishment. (Arts. 16 (1) and 17 (1)).

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**Self Assessment Question**

3) Explain the scope of Principle of ‘Neutrality’.

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10.6.2. Principle of Normality

a) **Protected persons must be able to lead as normal a life as possible:** This idea arises from the general concept of the need for a reasonable compromise between humanitarian aspirations and the necessities of war. Therefore, it is stated that wartime captivity is not a punishment, but only a means of keeping an adversary from being in a position to do harm. Any measure going beyond that purpose will not only be useless but is also reprehensible. Prisoners of war are not slaves. Captivity is not shameful and implies no loss of status. Therefore, prisoners must be released and repatriated or returned to their home state as soon as the reasons for such captivity and the active hostilities came to an end.

10.6.3 Principle of Protection

This may be stated as The State must ensure the protection, both national and international, of persons fallen into its power. The corollaries of this principle are (i) the prisoner is not in the power of the troops who have captured him, but of the State on which these depend; (ii) the enemy state is responsible for the condition and upkeep of persons of whom it has the guard and, in occupied territory, for the maintenance of public order and services; (iii) the victims of conflicts shall be provided with an international protection once they no longer have a natural protector. The natural protector is considered to be the person’s state of origin and the international protector is the Protecting Power or the ICRC which undertake the neutral monitoring of the application of the Geneva Conventions. Prisoners of War and Civilian internees have the right to address complaints to such supervisory bodies, whose delegates are authorized to visit camps and interview the detainees without witness.

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10.7 PRINCIPLES PROPER TO THE LAW OF WAR

10.7.1 Principle of Limitation

Three dimensions of the principle of Limitation are important and they are as follows.

10.7.1.1 Ratione Personae

This means and refers to the notion that the Civilian Population and individual civilians shall enjoy general protection against dangers arising from military operations. Law of Armed Conflict rests upon the fundamental distinction between combatants and non-combatants. While the combatants are by their very nature the objects of attack, the latter are not involved in the hostilities and indeed do not have the right to participate in them. Such a general immunity of the civilian population developed from customary law and general principles. While for a given period of time it had
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not been expressly stated in the positive law, Art. 51 (1) of the Additional Protocol I, 1977 recognized formally this principle. Some of the important principles of application that arise in this regard are as follows.

a) **Parties to the conflict shall at all times distinguish between the civilian population and combatants, so as to spare the population and civilian objects:** This basic rule which assures effective legal protection for civilian population, especially against air attacks is based on the distinction between combatants and non-combatants and constitutes the crux of Art 48 of the Protocol. Civilian Population as such, as well as individual civilians, shall not be the object of attack even by way of reprisals (Art. 51 (2) (6). This ban extends in absolute terms on reprisals against civilians, even by means of air attacks.

b) **Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.** (Art. 51 (2)): The Parties to the conflict shall take all possible precautions to spare the civilian population or, at least, to cause the least possible incidental injuries and damage. (Art. 57 and 58) However, it is important to remember that civilians in the immediate vicinity of the theatres of operation and military objectives necessarily run certain risks. However, if innocent are the victims, it must only be accidental and they must never of killed by deliberate actions.

c) **Only Members of the armed forces have the right to attack the enemy and resist him:** This is the corollary to the general rule that it is States which wage war for their political ends, not private citizens. If non-combatants are spared, it is because they remain apart from the conflict.

10.7.1.2 **Rationae Loci**

This means and refers to the notion that the attacks must be limited strictly to military objectives. There are six principles of application in this regard.

a) **It is prohibited to attack localities which are undefended:** When localities offer no resistance to the enemy and the enemy may occupy the same without firing a shot or resorting to any use of force, it is necessary for the enemy state to spare the localities from danger and destruction. For a long period of time, it is a recognized customary practice under the Hague Regulations (Art 25 of 1907) to declare towns without any military character to be open cities. This Hague rule is recognized under the Protocol I through Article 59 (1) with the addition of a series of provision on the protection of undefended localities and demilitarized zones.

b) **It is forbidden to commit any acts of hostility against buildings dedicated to science or charity and against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples:** This prohibition is derived again from the customary practices codified under the Hague regulations (Art. 27 of 1907); the Hague Convention on Protection of cultural Property; and, Art. 53, Additional Protocol I, 1977

c) **It is forbidden to attack works and installations which may release forces dangerous to the civilian population:** This prohibition essentially refers to and extends up to dams, dykes, and nuclear power points. The Additional Protocols, 1977 have not only recognized the need for adaptation to the discoveries of science but also provides detailed regulations and specifies the restrictions on protection if the said works are used for military purposes. The Population shall
not be used to shield military objectives from attacks: This protection addresses not only to the enemy but also to the government of the population concerned. The enemy respects the civilians and the belligerent must not abuse this protection for fraudulent purposes and must not expose its own population. This is a step taken in the interests of civilians and hence is fully justified. This reflects the modern trend of recognizing and respecting the individual rights of the people even as against their own government.

d) **Civilian Objects shall not be the object of attack or of reprisals. It is forbidden to destroy or remove objects indispensable to the survival of the population:** While this protection in its preliminary form is limited to civilians, it is expanded to civilian objects, which may be explained for a better understanding as ‘all objects which are not military objectives’. While banning of reprisals is an important aspect for one’s general appreciation, its linkage with the survival of population is noteworthy. Similarly, it is important to note that an armed conflict always imposes more or less extensive sacrifices upon the population, but these sacrifices must not go beyond and so far as to comprise their survival in itself.

e) **Prohibition on Pillage:** This principle not only finds its existence in the customary form in the Hague Regulations (Art. 28 and 47), but also in the Geneva Conventions (Art. 33 (2) of IV) as well under the Protocol.

10.7.1.3 **Ratione Conditionis**

This may stated as ‘it is prohibited to employ against anyone weapons and methods of warfare of a nature to cause superfluous injury or unnecessary suffering: This is a principle of distinct nature by itself since it addresses not merely to the sparing of persons who do not take part in the hostilities but it also aims at the avoidance of losses and sufferings to the combatants, that are necessary to render them non-participative. This idea of causing no more suffering than necessary roots back to the Hague Regulations 1899 and 1907. (Art. 23 (e)). However issues of difficulty that remain for consideration are (i) what is the limit; (ii) what losses are unnecessary; (iii) what injury is superfluous; and, (iv) what suffering is excessive? For every weapon, it is necessary to balance military advantage on one side of the scale against the humanitarian considerations on the other. If we can put a soldier out of action by capturing him, we should not wound him. If we can obtain the same result by wounding him, we must not kill him. If there are two means to achieve the same military advantage, we must choose the one which causes the lesser evil. On the whole, the effort must be in order to condemn the weapons and methods which cause suffering beyond a tolerable limit. While the ban on the use of specific weapons regarded as cruel, may be traced out to The Hague Conventions and the 1868 Declaration of St. Petersburg which had banned specific weapons such as barbed or poisoned projectiles and explosive or ‘dumdum’ bullets which expand in the body, over a period of time various international conventions and protocols adopted in this regard have expanded the scope of weapons that were brought into the fold of prohibitive use. Consequently, following are the important principles of application of this general principle.

a) **Indiscriminate attacks are prohibited:** This ban addresses to the detailed definitions of attacks which are thus forbidden. The purpose is to exclude the use of methods and weapons which do not have sufficient precision to make the fundamental distinction between military objectives and civilian populations and objects, and also those whose effects cannot be limited in time or space. Some of these weapons
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had already been dealt with in The Hague Conventions, 1899 and 1907; and, the Geneva Protocol of 1925, for example floating mines; asphyxiating gases; and, bacterial agents.

b) **Attacks are forbidden which may be expected to cause loss and injury to civilians and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated:** This principle, emphasizes up on the idea of proportionality. (Art. 57 (2) (a) iii, Additional Protocol I, 1977). The 1980 Convention on Conventional Weapons banning or restricting the use of certain conventional weapons contains a corresponding provision by prohibiting the use of such weapons which may cause incidental loses of life among the civilian population or damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated. This reference is mainly concerned with the landmines planted outside the military zones.

c) **Care shall be taken in warfare to protect the natural environment:** It is not enough to condemn indiscriminate weapons. Conventional weapons too may be used in a way which just as dangerous to the population. Nor is it enough simply to forbid specifically the use of weapons considered to be particularly cruel. It is also essential to prohibit the methods of total war and accordingly, a modern conception of natural environment protection is contemplated wherein care shall be taken to warfare to protect the natural environment against widespread, long term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. (Art. 55) Interestingly example, in this regard is the 1980 conventional weapons Convention which prohibits the use of incendiary weapons against forests or other kinds of plant cover.

d) **Starvation of civilians as a method of warfare is prohibited:** This new and important idea which is characterized as one of the principle of application is embodied in the Additional Protocol, 1977. In view of the recent wars this constitutes a triumph for humanity. Further the additional protocol also provides for the protection of agricultural areas for the production of food, and livestock etc.,

e) **Acts of War based on perfidy are prohibited:** Ever since the age of chivalry, the law of war has demanded honor of the combatants. Hence the ban is extended up to and the protection is conceived as against the ruses of war and the acts of perfidy are prohibited. While Art 37, Additional Protocol I, 1977 provides a number of useful definitions in relation to the subject of perfidy, the 1980 Convention on Conventional Weapons specifically condemns the use of booby traps in the form of apparently inoffensive objects.

**Self Assessment Question**

5) Explain the meaning of the ‘Principle of Limitation’.

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10.8 CONCLUSION

In conclusion, it is apt to say that International Humanitarian Law that applies during the situations of armed conflicts comprises of certain principles that must be regarded by all States Parties to the Conflict, regardless of other considerations. This absolute demand of compliance is due to the nature and importance of the humanitarian requirements that must be safeguarded at all costs. While, these principles may be structured, due to their importance in to a chronological order, that by no means refer to their gradation of importance. Whether it is being considered to be the basic principle or a derivative each of these principles contribute to the welfare and well being of humanity.

10.9 SUMMARY

- In this unit, we discussed the very object and purpose of International Humanitarian Law and the certain principles that are considered to be necessary and fundamental in its application. We also saw the scope of each of these principles and how they are considered to be relevant fundamentally since they provide the basis for all of other principles.

- We further discussed the scope of each of these principles and the sub-sets of each of these principles by looking into how they are of applicable and operate in specific circumstances.

- Further, we saw how these principles have the relationship and linkage with notions of human rights in peace times as well as conflict situations.

10.10 TERMINAL QUESTIONS

1) What is the Importance of International Humanitarian Law? How the terminology of Law of Armed-Conflict has as against Laws of War has influenced the development of International Humanitarian Law?

2) Explain the principle proper to the victims of conflicts.

10.11 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Sub-section 10.5.1

2) Refer to Sub-section 10.5.3

3) Refer to Sub-section 10.6.1

4) Refer to Sub-section 10.6.2 and 10.6.3

5) Refer to Sub-section 10.7.1

Terminal Questions

1) Refer to Section 10.3 and 10.4

2) Refer to Section 10.6
10.12 GLOSSORY

International Humanitarian Law: Law that comprises of various principles and obligations that are to be complied with by States Parties.

Military Objective: Purpose that is considered to be very superior and in the interests of the Military obligations.

Proportionality: Conduct that is to be exhibited keeping in mind and after taking account, due consideration of expected losses and gains in taking an action.

Civilian Population: People who are considered to be the subject matter of protection during the time of conflict situation between two States Parties.

10.13 REFERENCES AND SUGGESTED READINGS
