

International Humanitarian Law I: History of International Humanitarian Law (From the Beginning to 1949)

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ABSTRACT

The paper traces the emergence and development of humanitarian law in relation to three legal concepts (*jus ad bellum*, *jus contra bellum*, *jus in bello*), from prehistory to 1949, when the adoption of the four Geneva Conventions led to the creation of a single normative text, which is still considered by the vast majority of states as a reference and framework. In doing so, we will touch upon the ancient written texts (the so-called legal codes and literary works), which can be regarded as the forerunners of humanitarian law, and which testify that, while war is a characteristic of the human race, human communities, from the very beginning of settled life at the latest, have consciously sought to limit violence and spare those affected by war, in the interest of the safety and survival of the community. The foundations of modern law were laid in antiquity, and the Enlightenment laid the foundations for modern humanitarian law. Modern regulation was triggered by the development of mass armies and military technology, and the first normative regulation, the Lieber Code of 1863, became the basis for the so-called Geneva and Hague Law. In several waves, following the major armed conflicts (e.g. World Wars I and II), this became a unified body of law by the middle of the 20th century – the course of this process and the content of the various conventions are described in detail in this study.

KEYWORDS

war, humanitarian law, diplomacy, Geneva law, Hague law, Red Cross

Conflicts are inherent to human coexistence, and their resolution is essentially possible through *consensus* or *violence*. The two methods can be used alternatively, complementarily or in combination. Diplomacy deals with consensual conflict management in developed societies, while the use of violence is one of the tasks of soldiers. Violence – despite the fact that it has many negative characteristics and consequences – has also had a positive impact on the development of the human race. Whatever the purpose of the use of violence – for example, individual or group dominance or the acquisition of resources – in addition to defeating the enemy, the protection of one's own fighters and one's own community has always been a priority goal.

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This way, violence – through technical development – turned into armed violence relatively quickly, since with the help of tools it became possible to achieve success (victory) faster and with less damage. Violence is therefore a necessary element of human history, which cannot be eliminated, only regulated. Or rather: one can strive to limit it by applying rules. In times of violence – as the ancient Romans already established – the laws are silent.¹ Which also means that the application of humanitarian law – one of the main purposes of which is to regulate the course of armed conflict – is always periodic and contingent. It is *periodic* because the conflict period is a temporary state compared to the usual order of things. And it is *contingent* because warlords are never primarily guided by philanthropic (“humane”) goals, but rather by tactical-military and economic or energy-saving considerations. The only real limit to violence is therefore not humanitarian law, but *reciprocity* based on experience in combat. Violence can only be stopped by an equivalent level of violence. “Cruelty against barbarism” – as it reads in the famous French writer, Victor Hugo’s novel.²

With this in mind, this chapter will introduce the basic definitions of international humanitarian law and the most important stages in the historical development of humanitarian law.

1. Conceptual Background

The three key legal concepts related to humanitarian law are:

- *jus ad bellum*,
- *jus contra bellum*,
- *jus in bello*.

Let us examine their characteristics!

First of all, we can see that two elements – *jus* (law) and *bellum* (war) – are identical in all three concepts, suggesting that the area between peace and war is always legally unstable. The difference lies in the adverbs³ between the two nouns.

The *jus ad bellum* is the right to go to war, which was in fact a sovereign right of states until the beginning of the modern era (1914). The brutality of the two World Wars, including trench warfare based on resource-consuming tactics, which involved the use of chemical weapons and the destruction of buildings and objects of cultural heritage, and caused suffering to a large numbers of civilians, marked the beginning of a new era based on the limitation of violence. However, the peace treaties that ended the First World War still had a long way to go before a general ban was enshrined in the United Nations Charter.

1 The original form of the well-known saying – ‘the muses are silent among weapons’ – was ‘For among arms, the laws are silent’, at least that is how the great orator Marcus Tullius Cicero (106–43 BC) put it in a speech (‘Silent enim leges inter arma’, Cicero: Pro Milone, IV, 11.).

2 Hugo, 1900, p. 164.

3 “Ad”, “contra” and “in”.

Jus contra bellum is generally understood as a related regulation, and more specifically as a general prohibition of violence, upon which the post-World War II world order was built. In the words of Professor János Bruhács, a prominent Hungarian international law scholar, ‘the prohibition of violence is the cornerstone of modern international law, one of the most important norms of international coexistence, indeed the “quintessence” of international law’.⁴

The third concept, *jus in bello*, refers to the set of rules applicable during a period of conflict (combat or war), which partly contain provisions on the treatment of soldiers towards each other and towards the civilian population. These rules are known collectively as humanitarian law.

We have seen that war was already considered by the great legal nation of antiquity, the Romans, to be a somewhat extra-legal (“*ex-lex*”) period – this was reflected in the maxim ‘among weapons the law is silent’, but it was also alluded to in the ‘Woe to the vanquished!’,⁵ which the great Roman historian *Titus Livius* (59 BC – 17 AD) preserved for posterity in his great work,⁶ as the legal order, which ensured the normal course of things, is replaced by measures taken by the warring parties in order to win.⁷ In view of this, we have stated above that the temporal and material scope of humanitarian law is limited. However, an important characteristic of this body of law is that although its fundamental elements are of customary law origin and as such, often date back to the early period of written history (see below, references to ancient “legal codes”), its development has tried to keep pace with the development of war technology, and its regulatory areas have adapted to the changing concept of war. In other words, the development of humanitarian law – compared to technological progress – has been intermittent and slow, and often uneven in order to keep pace with conceptual changes.

4 Bruhács et al., 2023. p. 280. See also: Kende et al., 2018; Kovács, 2025.

5 The famous Roman saying (“*Vae victis!*”) captures the experience of war that the rules of war and peace are always written by the victors, as they please. For the full story of the Gallic leader Brennus’ campaign against Rome; See: Livy, 2011.

6 Livy’s great work, titled *Ab Urbe Condita...*, (“From the Founding of the City”), covering the period from the earliest legends of Rome to Augustus’ reign, consisted of 142 books (however, we currently know only 35 books from these).

7 This characteristic of war was also recognised outside of Europe. It is sufficient to refer here to the book (*The Art of War*) attributed to the Chinese master Sun Tzu, written around the 4th-3rd century BC, according to which: ‘war always follows the path of deception’; Szun-ce, 1998.

Given that the end⁸ of World War II (1945)⁹ marks the most significant milestone in the development of humanitarian law, this chapter will review the relevant changes in legislation from the beginning to that date.

2. Prehistoric times¹⁰

Violence may have dominated the prehistoric world for thousands of years. The more powerful group or groups took what they needed from the other: a conveniently located campsite, food, and the able-bodied members of the group: women and older children. At that time there was only one rule: the law of survival, and the elderly, the weak (including the sick, but also babies and nursing women), anyone who could be a problem for the group's functioning were slaughtered or abandoned, which meant a death sentence, since the group, the horde, could only survive as a community.

Initially, the number of violent conflicts may have been relatively low, due to low population density. However, the development of settled lifestyles and weapons has tended to increase the number and impact of conflicts. As there were no written sources at the time, the memory of these conflicts is preserved in archaeological remains. The oldest known remains of violent conflict were found in Africa. A site near *Jebel Sahaba* on the northern border of Sudan dates back 14,000 years, while the *Nataruk* site in Kenya records a conflict that turned into a massacre around 12,000 years ago. It is worth noting that the occurrence of violent conflicts can be inferred even in the absence of direct evidence of violence, for example through the interpretation of cave paintings thousands or tens of thousands of years old, for which attempts have been made both in Europe and Australia.

Around 10 to 8 thousand BC, a process began which, over time, led to the emergence of agriculture in several continents (Asia, Africa, America), in a piecemeal fashion. This was accompanied by the division of labour and the consolidation of social roles, and led to the appearance of larger centres and cities. These were built at defensible locations and were surrounded by walls. The protection of the towns,

8 It is a big question whether World War II really ended on September 2, 1945, as Russia and Japan officially have an armistice until today (2024). The main obstacle to a peace treaty is the ongoing dispute over some of the southern members of the Kuril Islands. Negotiations to conclude a peace treaty resumed in the 2010s, but it is questionable whether they will lead to a result in a short time (since this is not a situation that arose in 1945 due to a specific event, but rather the settlement of a conflict that lasted about a century (1855–1945), and the islands are of particular importance from a geopolitical and mining perspective).

9 It is worth noting that the names World War I and World War II are concepts based on public consensus, as in that era many people already felt that the final conclusion of the conflict that began in 1914 (the so-called Paris Peace Treaties) was in fact only a long, generation-long ceasefire, cf.: ‘This is not peace, but a twenty-year truce!’), and that World War II can actually be considered a continuation of the first conflict. For this reason, I use the term “interwar period” in one of the titles of this chapter, as it is common in historical works.

10 For this period, see more: Gat, 2006; Kelly, 2000.

the population and the community's resources was provided by soldiers, who were members of the community specialised in this area.

3. Ancient Times

The beginnings of antiquity¹¹ are often associated with the advent of writing. However, this development necessitated a level of organisation within established communities that goes beyond mere cities, instead resulting in the formation of more complex entities known as city-states. Over time, city-states developed their own legal systems. These primarily governed social relations, but in many cases there were provisions on external relations and warfare, such as *the laws of Hamurabi* in Mesopotamia (circa 1750 BC) or the so-called *Manu laws* of India (circa 200 BC), which, among the responsibilities of the king, contain detailed provisions – anticipating modern legislation by about 1500 years ago – on the protection of the wounded and the prohibition of the use of poisoned arrows.

‘If an enemy threatens his country, [the king] shall confront him with courage... But he shall not be cruel in battle, nor use poisoned arrows or fire-tipped weapons; nor kill a defenceless, weak, fleeing enemy who begs for mercy, nor a sleeping man, a man who has lost his weapon, a man who is naked or just curious, nor a man whose weapon is broken or who is seriously wounded.’¹²

In addition to codes of law, literary works from early times are important sources of humanitarian law. The *Mahabharata* of India (4th century BC), the longest poem in human history,¹³ makes it the duty of the king to fight his enemies fairly.¹⁴

One of the most influential written sources of European culture, the Bible, also contains provisions of a humanitarian legal nature.¹⁵ For example, in the Old Testament, in Deuteronomy, there are specific provisions for the siege of cities, where we read:

‘When you draw near to a city to fight against it, offer terms of peace to it. And if it responds to you peaceably and it opens to you, then all the people who are

11 Or rather the beginnings of history, which could have started some time when the first permanent human settlements were founded.

12 The translation is based on the Hungarian version; Büchler, 1915, p. 93. The quoted passages are found in Book VII.

13 The epic consists of 200,000 lines of verse, roughly ten times as long as the combined text of the Iliad and the Odyssey, which originated in European culture.

14 Mahabharata, section 95.

15 First and foremost is the command ‘thou shalt not kill’ in the Bible, Ten Commandments (Exodus 20:13).

found in it shall do forced labour for you and shall serve you. But if it makes no peace with you, but makes war against you, then you shall besiege it. And when the Lord your God gives it into your hand, you shall put all its males to the sword, but the women and the little ones, the livestock, and everything else in the city, all its spoil, you shall take as plunder for yourselves. And you shall enjoy the spoil of your enemies, which the Lord your God has given you.’¹⁶

In other words, the text calls – in a very forward-looking way – for the avoidance of unnecessary bloodshed on the one hand, and the sparing of the lives of the civilian population, on the other. In another passage, however, we can also see how these humanitarian ideas were overridden by the interests of the warring parties even in ancient times! In the already quoted passage of the book of Deuteronomy, concerning the siege of cities, we read:

‘When you besiege a city for a long time, making war against it in order to take it, you shall not destroy its trees by wielding an axe against them. You may eat from them, but you shall not cut them down. Are the trees in the field human, that they should be besieged by you? Only the trees that you know are not trees for food you may destroy and cut down, that you may build siegeworks against the city that makes war with you, until it falls.’¹⁷

The text clearly encourages the sparing of fruit trees, which are important for feeding the army, but it also takes into account the long-term interests of the victor, beyond the strategic objectives, since the planting and cultivation of a single fruit tree or grove could take a long time, several decades, so the besiegers’ interest, if they wanted to enjoy it, was to spare these planted orchards.

It is important to point out that early humanitarian law prescriptions were usually embedded in religious prescriptions, primarily in order to enforce their application by divine intervention. Despite the fact that the state framework had already been consolidated in antiquity and that city-states could grow into empires under favourable conditions, religious coercion persisted throughout antiquity and for much of the Middle Ages. The realisation that states could impose, apply and enforce humanitarian rules of their own choosing only became apparent in the aftermath of the modern wars (see the Thirty Years’ War, 1618-1648) and only took firm shape thanks to the intellectual current of the Enlightenment (see below, Rousseau).

But going back to antiquity, the best-known city-state, which became one of the greatest empires in human history, was the tiny Latin city of Rome, traditionally founded in 753 BC on the Italian peninsula on the banks of the Tiber River. The founders were simple shepherds whose lives were governed by the cultivation

¹⁶ Bible, Deuteronomy 20:10–14.

¹⁷ Bible, Deuteronomy 20:19–20.

of the land, the military and religious rituals. Over the centuries, this society, built on strict and consistent rules, produced one of the greatest intellectual products of mankind, Roman law, whose influence can still be seen in the legal systems of many states. From the outset, it was of paramount importance to the Romans, with their scarce resources, that they should fight only just wars with other nations. The rules of war were enforced by a special clerical body, the *fetiales*. The idea of a just war was thus already a priority in antiquity, and the previously unrestricted right to start wars was placed under the control of the priestly body.¹⁸

Christianity, thanks to St Augustine (354-430), who knew Roman law well, embraced the idea of just war in antiquity, thus providing some control over the right to wage war.

4. Middle Ages

From the beginning, the Catholic Church has sought to influence and then regulate not only the spiritual life of individuals, but also the relations between European states. In the period of uncertainty and unrest that followed the fall of the Roman Empire (the early Middle Ages), the Church tried to control violence by various means, since peace, forgiveness and mercy were at the heart of its credo. As King St Stephen of Hungary,¹⁹ the common saint of the Roman Catholic and Orthodox Churches, noted in his beautifully moving *Admonitions* (“Intelmek”): God wants mercy, not sacrifice! The method of preventing and containing violence, which became common around the turn of the millennium (1000), was the *Pax Dei* (“Peace of God”) and the *Treuga Dei* (“Truce of God”),²⁰ which proclaimed a truce, especially in connection with church holidays. Although the initiative came from the Church, which was able to enforce the ordinance through excommunication, it was later applied by secular rulers. However, the papacy acted not only to promote peace but also to reduce cruelty. This is the reason for the provisions adopted by certain synods, for example, to reduce the use of crossbows or to treat prisoners of war more humanely.²¹ In addition to normative rules, prose literature also played a major role in the Middle Ages, setting out the duties of the ruler in the form of “mirror for princes”. Two of these are worth highlighting. Unique in the Central European region is the above-mentioned *Admonitions* of King St. Stephen, which dates from the early first half of the 11th century. In its 10th chapter, the king addresses his son:

18 For the *fetiales*, see more: Pecz, 1902, p. 760; Hamza, 1988, pp. 753–774.

19 Saint Stephen of the House of Árpád, prince and later king (r. 997–1038), first king of Hungary.

20 See more in the book by Hungarian historian Katus, 2001.

21 However, it is questionable to what extent these positive resolutions were actually enforced in practice, for example during the successive crusades. For a detailed account of the history of the Crusades; See: Runciman, 2002.

‘The king must be adorned with piety and mercy, but he must also be imbued with other virtues. For if a king is defiled by impiety and cruelty, he shall be called a tyrant, and shall claim the name of king in vain. For this reason, my beloved son, sweetness of my heart... be merciful... to all who come to you. For the practice of love leads to the highest happiness. Be merciful to all who suffer violence, always keeping in your heart the divine admonition, I want mercy, not sacrifice!’²²

The passage is clearly written to avoid war and unnecessary sacrifice and suffering.

The famous humanist Erasmus of Rotterdam’s *The Education of a Christian Prince* was written almost half a millennium later with a similar aim. Although Erasmus lived in Western Europe, this work was also used in the education of the future German-Roman Emperor (and King of Hungary and Bohemia), Ferdinand I, so it is worth quoting from it for its Central European relevance. Erasmus, in the chapter of his book entitled *The Art of Peace*, encourages the avoidance of war when he says:

‘Although the writers of antiquity divided the whole theory of state government into two sections, war and peace, the first and most important objective is the instruction of the prince in the matter of ruling wisely during times of peace, in which he should strive his utmost to preclude any future need for the science of war.’²³

Finally, it should also be mentioned that in the Middle Ages, the chivalric society in its heyday also had unwritten rules of customary law (*ius armorum*), including the protection of women and children and the humane treatment of prisoners of war. Breaking these, for example to the detriment of Richard I of England,²⁴ was considered a crime against the entire Christian community.²⁵

5. The Early Modern and Enlightenment Periods (16th–18th Centuries)

5.1. *Theoretical Underpinnings of Humanitarian Law*

Although in public discourse the dawn of the “new age” (as a historical period) is most often expected to be marked by the great discoveries, in military terms this period brought an era of great wars that spanned several continents, rather than local conflicts. Ever larger armies and ever more modern firearms caused increasing suffering

22 The translation was based on the Hungarian text Szent István király *Intelmei Imre herceghez* (*Libellus de institutione morum*).

23 Erasmus, 1963, p. 205.

24 Returning home from the Crusades, Richard, the Lionheart of England (reign: 1189–1199) was captured by Prince Leopold V of Austria in 1192. Richard was finally released only in 1194.

25 For example, Pope Celestine III excommunicated the Austrian prince for the imprisonment of the English monarch, who eventually died under banishment.

not only for soldiers but also for civilians. In the wake of prolonged, bloody wars, famine and epidemics decimated the population.

The first major war of the era, the so-called 30 Years' War (1618-1648), which was fought largely in central Europe, involved most of Europe's powers. Ostensibly encompassing a series of religious conflicts, the real aim of the war was to gain hegemony over Europe. The hostilities were renewed a few decades later (War of the Spanish Succession, 1701-1714), and now spread over several continents. The struggle for hegemony led to the strengthening of the role of the states and the creation of permanent state armies. The struggle of the states for hegemony ("primacy") led to the codification of the law of war and the regulation of peaceful coexistence and relations between states.²⁶ Two jurists, Alberico Gentili²⁷ and Hugo Grotius,²⁸ who largely continued his work, achieved lasting results in the codification of the law of war, although their work did not become known until well after their deaths, during the Enlightenment. One of the greatest figures of this intellectual movement was Jean-Jacques Rousseau (1712-1778), born in Geneva, Switzerland. In his treatise on the social contract, one of Rousseau's most important works, he argued – partly as a development of Grotius' fundamental work – that

'it is clear that this supposed right to kill the conquered is by no means deducible from the state of war. Men, from the mere fact that, while they are living in their primitive independence, they have no mutual relations stable enough to constitute either the state of peace or the state of war, cannot be naturally enemies. War is constituted by a relation between things, and not between persons; and, as the state of war cannot arise out of simple personal relations, but only out of real relations, private war, or war of man with man, can exist neither in the state of nature, where there is no constant property, nor in the social state, where everything is under the authority of the laws. [...] 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 as an enemy only other States, and not men; for between things disparate in nature there can be no real relation. Furthermore, this principle is in conformity with the established rules of all times and the

26 See more: Kissinger, 2014.

27 Alberico Gentili (1552–1608) was born and educated in Italy, but his legal work was performed in England, where he was a professor at Oxford University for over twenty years. His most important work is *De Jure Belli Libri Tres* [On the Law of War in Three Books], published in 1598, which is now recognised as one of the founding works of public international law theory. Gentili is also known as the father of international law, although his work was long overshadowed by Grotius.

28 The Dutch jurist Hugo Grotius (1583–1645) argued for the universal acceptance and application of natural laws binding on all nations in his major work, *De jure belli ac pacis libri tres* [On the Law of War and Peace in Three Books], published in 1625. Grotius is also often called the father of international law.

constant practice of all civilised peoples. Declarations of war are intimations less to powers than to their subjects. The foreigner, whether king, individual, or people, who robs, kills or detains the subjects, without declaring war on the prince, is not an enemy, but a brigand. Even in real war, a just prince, while laying hands, in the enemy's country, on all that belongs to the public, respects the lives and goods of individuals: he respects rights on which his own are founded. 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 cease to be enemies or instruments of the enemy, and become once more merely men, whose life no one has any right to take.²⁹

Rousseau's theory has been considered the modern foundation of humanitarian law, since he logically deduced the need to protect the unarmed enemy, following the work of Gentili and Grotius. However, the idea is not new, if we look back to the Laws of Manu, which predate Rousseau by almost two thousand years,³⁰ but it is well known and has drawn attention to the creation of generally recognised rules for wartime. Thanks to Rousseau, Geneva can therefore be considered the birthplace of humanitarian law, even though it was only a century and a half later, in the 19th century, that these ideas were put into practice.

6. On the Threshold of the Age of Mass Warfare: Attempts to Establish Universal Humanitarian Law (19th Century)

Historians usually speak of a long 19th century, which lasted from the outbreak of the French Revolution to the end of the First World War (1789-1918). This period began with a great war, known as the French Revolution and the Napoleonic Wars (1789-1815), and ended with an even greater conflict, World War I (1914-1918). The latter, as the famous French soldier, Marshal Foch, observed, did not bring peace, but only a long armistice. But apart from these two major conflicts, peace prevailed for most of the century, only in 1848 did revolts and revolutions sweep across Europe. Most of the European wars, however, remained local, even if they had a long-lasting impact on the fate of the other participants, such as the Crimean War (1853-1856), the Franco-Italian-Austrian War (1859), the Austro-German War (1866) or the Franco-German War (1870).

Although these wars were fought over a relatively small area and during a short period of time, they were fought by professional soldiers with modern weapons.

²⁹ Rousseau, 1920, Chapter IV.

³⁰ It is also worth noting that Gentili had already discussed the creation of general regulations for prisoners of war a century and a half earlier.

In the battles, tens of thousands of men were often killed or wounded, many of them dying from lack of supplies or infection.

The first steps to help the wounded were taken by private individuals. The efforts of Susan (Zsuzsanna) Kossuth of Hungary (1817-1854) were supported by the Hungarian State in 1848, while during the Crimean War the work of the British Florence Nightingale (1820-1910) and the Russian Grand Duchess Elena Pavlovna (1806-1873) were supported by the British government and the Russian Emperor, respectively.

6.1. First Attempts to Protect Victims of War: The So-Called Geneva Law

The Red Cross movement also grew out of private initiative. A Geneva merchant, Henri Dunant (1828-1910), happened to be at the site of the decisive battle of the Franco-Italian-Austrian War, the Battle of Solferino in 1859. Here he saw the suffering of the wounded at first hand and was involved in organising their care. On his return home, he wrote a book published at his own expense in 1862 (*A Memory of Solferino*), in which he proposed the drafting of international treaties guaranteeing the neutrality and protection of those wounded in battle, as well as of doctors and field hospitals, and called for the creation of national voluntary relief organisations to help care for wounded soldiers in the event of war, without discrimination.

Dunant's idea was discussed at the Geneva Society for Public Welfare in early 1863. The sub-committee then set up within the Society soon became autonomous and began to implement Dunant's ideas under the name of International Committee for Relief of Wounded in the event of War.

In the autumn of 1863, the Committee organised an international conference at which the Great Powers of the time – the British, Russians, Germans, Austrians, French and Italians – were represented. Among the decisions taken at the conference were the establishment of national relief societies, the declaration of neutrality for the wounded, the coordination of the recruitment of volunteer nurses and the introduction of a general symbol for nurses in the field: the white armband with a red cross, which later became the symbol of the whole organisation in 1876. Hence the organisation's new name: the International Committee of the Red Cross (ICRC).

In 1864, following the Committee's decisions, the Swiss government convened an international conference in Geneva, at which the great powers of the time were almost without exception represented. The Convention adopted at the end of the conference laid down for the first time legally binding rules to ensure the neutrality and protection of hospitals, medical staff and wounded soldiers.

The main provisions of the Geneva Convention of 1864³¹ are:

- a) military hospitals are considered neutral and must therefore be protected and spared by the belligerents as long as they are occupied by patients or wounded. When military hospitals are occupied by military forces, their neutral status ceases.

31 The full title of the Convention is: Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864; Geneva Convention, 1864.

- b) hospital staff and camp chaplains are entitled to the benefit of neutrality during their stay.
- c) hospital staff and camp chaplains have the right to continue their work even if the hospital is occupied by the army. If they wish to leave, the army occupying the hospital is obliged to escort them to the enemy.
- d) in all cases, hospitals keep their equipment, and staff can only take their personal belongings.
- e) residents of the country who provide aid to the sick will remain at large, exempt from troop deployment and part of the war tax that will be imposed.
- f) wounded or sick soldiers, regardless of their nationality, should be gathered and cared for. Those who, after recovery, are found to be unfit for service should be returned to their home country. Those who promise not to take up arms again until the end of the war may also be sent home after they have recovered. Patient transports and the persons responsible for driving them are protected by absolute neutrality.
- g) hospitals, patient transports and staff should have a distinctive sign, a red cross in a white field.

Although humanitarian legislation seemed to be on the way to rapid development after the 1864 conference, it actually stalled for decades and only gained new momentum towards the end of the 19th century, thanks to the Hague Conferences. Dunant, whose ideas have saved the lives of millions of people over the past century and a half, had a difficult fate himself: he was expelled from the leadership of the Committee in the 1860s and later removed from membership. He only received redress for his exclusion decades later, when he was awarded the first Nobel Peace Prize in 1901, shared with Frédéric Passy.³²

6.1.1. An Attempt to Limit the Violence of War, to Create a Framework for War (the So-Called Hague Law)

While Europe was at peace, on another continent, the future world power, the United States of America, was in the throes of Civil War between 1861 and 1865. More than a million people³³ were killed in the conflict between a group of Northern and Southern States. It was a modern war, with prison camps, partisans, and both sides engaged in a variety of acts of warfare and sabotage. The military regulations previously in effect (the so-called Articles of War) did not contain adequate provisions to conduct such battles. Consequently, at the end of 1862, Francis Lieber (1798–1872), a distinguished professor at the Columbia University of German origin, was commissioned to review the existing military regulations, specifically the 1806 American War Laws. Within a few months, Lieber compiled a new set of regulations, which was promulgated by

32 Frédéric Passy (1822–1912) was a French economist and pacifist who was a founding member of several peace societies and the Inter-Parliamentary Union (which was founded in 1889).

33 Including those who died in battles, diseases, prison camps, as well as civilian casualties.

President Lincoln³⁴ in April 1863. Order No. 100, which he authored, became widely known as the Lieber Code.³⁵ So what started in Europe through private initiative, in America – almost simultaneously – was raised at the request of the state.

In ten chapters, Lieber outlined the course of the war and the rules for each of the participants. Above all, he also dealt in detail with the wounded, prisoners of war and civilians, ensuring their protection and neutral treatment. The main merit of the Code, however, lies in its definition of war and its main characteristics. Lieber conceived war as an inherent part of the coexistence of peoples. He believed, like the ancient Romans, that in time of war all other rules were suspended, and that it was therefore necessary, in order to avoid unnecessary violence, to establish a special set of rules which could serve as a guide for the belligerents in this period. The code first defines, *inter alia*, the concept and purpose of war. 'Public war is a state of armed hostility between sovereign nations or governments,'³⁶ says Professor Lieber, a concept which also includes his specially emphasised position that the initiation of war is a sovereign right of nations.³⁷ The purpose of war is defined by the Code as '[t]he ultimate object of all modern war is a renewed state of peace'.³⁸ To this end, it not only prohibits cruelty, the use of poisoned weapons, robbery, pillage and self-destruction,³⁹ but also criminalises them, thereby effectively creating a category of war crimes. It specifically highlights the protection of works of art,⁴⁰ paving the way for international legislation to protect cultural heritage.

Although Lieber's objective was naturally limited to establishing regulations applicable only to the United States and its wars, the content and structure of the code soon attracted significant attention abroad, particularly in Europe. Its influence is already noticeable in the Saint Petersburg Declaration of 1868. The immediate impetus for issuing the declaration was the prohibition of a new type of explosive projectile invented in 1863; therefore, this document is often referred to as the first international arms prohibition agreement. The declaration also attempted to define certain concepts, specifying the purpose of war as weakening the enemy's military forces.⁴¹ According to the Declaration, the use of weapons that cause unnecessary suffering is contrary to the laws of nature.

In 1874, an international conference was convened in Brussels (the Brussels Conference of 1874) at the suggestion of the Russian Tsar Alexander II to establish rules for land warfare, but the draft⁴² submitted was not supported by the great powers.

34 Abraham Lincoln (1809–1865), lawyer and politician, the 16th president of the United States of America (1861–1865).

35 The official name of the text issued by Abraham Lincoln is: General Orders No. 100, Instructions for the Government of the Armies of the United States in the Field.

36 Lieber Code, Point 20.

37 Ibid., Point 67.

38 Ibid., Point 29.

39 Ibid., Point 16.

40 Ibid., Point 35.

41 St. Petersburg Declaration, 1868.

42 Brussels Declaration, 1874.

However, the Geneva-based International Law Institute, founded in 1873 under the leadership of Gustave Moynier (1826-1910), president of the Red Cross and a lawyer by training, took up the draft and in 1880 published a draft of the laws of war on land (Oxford Manual, 1880), compatible with the Geneva Convention of 1864.⁴³

In fact, the Oxford Manual anticipated the harmonisation of the two strands, the Geneva Law focusing on the wounded and the Hague Law focusing on the rules of war, which was not formally achieved until 1949 with the adoption of the four Geneva Conventions (see below).

6.1.2. The Hague Peace Conferences (1899 and 1907) and the Geneva Convention Supplement (1906)

After the Brussels Conference of 1874 had failed, mainly because of the opposition of the great powers, it became clear that further progress was only possible with the support of the great powers. The Oxford Manual itself was merely a proposal for further codification, but had no binding force. Moynier's 1872 proposal for the establishment of a permanent international arbitral court to punish violations of humanitarian law also failed because of opposition from the great powers.

Codification was finally restarted at the initiative of the Russian Emperor Nicholas II, at whose invitation the first Hague Conference was held in The Hague in 1899, on the Emperor's birthday. This resulted in the adoption of three conventions and three declarations.

The conventions are as follows:

1. Convention for the Pacific Settlement of International Disputes
2. Convention with respect to the Laws and Customs of War on Land
3. Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864

The declarations are as follows:

1. Declaration concerning the Prohibition of the Discharge of Projectiles and Explosives from Balloons or by Other New Analogous Methods
2. Declaration concerning the Prohibition of the Use of Projectiles with the Sole Object to Spread Asphyxiating Poisonous Gases
3. Declaration concerning the Prohibition of the Use of Bullets which can Easily Expand or Change their Form inside the Human Body such as Bullets with a Hard Covering which does not Completely Cover the Core, or containing Indentations.

After reading these instruments, it becomes clear that the Lieber Code has had a significant influence on their text. At the same time, the great powers have sought to summarise and reflect on the results of previous codification attempts. This can be illustrated by the decisions taken to apply the Geneva Convention of 1864 to naval

⁴³ Oxford Manual, 1880.

warfare (which had been an important objective of the Red Cross since 1864), to set up a Permanent Court of International Arbitration (which, as we have seen, the President of the Red Cross had already proposed in 1872) or to extend the scope of the St. Petersburg Declaration (Declaration No. 3). The proactive approach of the participants at the conference, who, recognising the rapid development of military technology, which could only be followed by codification in retrospect, made it possible to draw up rules that would apply to future military equipment (Declaration No 1), was a step forward. Although the legal scholar who drafted it, Friedrich Martens,⁴⁴ who represented Russia at the Hague Peace Conferences, is remembered in the history of international law, the *Martens clause*,⁴⁵ which is included in the preamble to Convention II, was also drafted under the influence of the Lieber Code.

The final document of the conference pointed to the need to review the 1864 Geneva Convention and to continue the work on the creation of a war regime in the framework of a new conference in The Hague.

Accordingly, the Geneva Conference of 1906, convened by the Swiss government, supplemented and revised the text of the Geneva Convention of 1864 on the basis of practical experience.⁴⁶ This treaty was replaced by the 1929 Geneva Convention, but remained in force until 1970.

The Second Hague Peace Conference was convened in 1907 at the initiative of US President Theodore Roosevelt.⁴⁷ Thirteen conventions and one declaration were adopted. The conventions are as follows:

1. Convention for the Pacific Settlement of International Disputes
2. Convention respecting the Limitation of the Employment of Force for Recovery of Contract Debts
3. Convention relative to the Opening of Hostilities

44 Friedrich Fromhold von Martens (1845 – 1909) was a diplomat in service of the Russian Empire who represented Russia at the Hague Peace Conferences.

45 There are two slightly different versions of the Martens Clause. The text as drafted at the 1899 peace conference is as follows: ‘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, preamble. The text of the 1907 peace conference is as follows: ‘Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.’ Hague Convention IV, 1907, preamble.

46 The 1864 Geneva Convention consists of 10 articles, the 1906 Geneva Convention consists of 33 articles. The 1906 Geneva Convention focused on the creation of detailed rules for the sick, wounded, prisoners of war, and medical personnel. It is worth highlighting that the signatories appointed the Permanent Court of Arbitration at The Hague, established by the decision of the 1899 Hague Conference, to interpret the treaty (Geneva Convention, Final Declaration).

47 Theodore Roosevelt (1858 – 1919) was a politician and writer, the 26th president of the United States of America (1901-1909).

4. Convention respecting the Laws and Customs of War on Land
5. Convention relative to the Rights and Duties of Neutral Powers and Persons in case of War on Land
6. Convention relative to the Legal Position of Enemy Merchant Ships at the Outbreak of Hostilities
7. Convention relative to the Conversion of Merchant Ships into War-ships
8. Convention relative to the Laying of Automatic Submarine Contact Mines
9. Convention concerning Bombardment by Naval Forces in Time of War
10. Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention
11. Convention relative to Certain Restrictions with regard to the Exercise of the Right of Capture in Naval War
12. Convention relative to the Establishment of an International Prize Court
13. Convention concerning the Rights and Duties of Neutral Powers in Naval War.

6.1.3. *Declaration Prohibiting the Discharge of Projectiles and Explosives From Balloons*

As can be seen from the above, although the Second Hague Conference produced a significant amount of agreements, most of it focused on the further development of earlier legislation, such as the acquis of the 1906 Geneva Convention.⁴⁸ The Conference's work to develop maritime law is also significant.⁴⁹ The only convention of the Conference that has not entered into force also relates to the law of war at sea, namely the establishment of the International Prize Court (Convention No. 12.). This forum was envisaged to settle conflicting claims relating to ships captured during the war. Preparatory work on the rules of court and the creation of a maritime law of war code continued after the Second Hague Conference.⁵⁰ The Third Hague Conference was scheduled to reconvene in 1914, with the extension of the 1899 Declaration, but the outbreak of World War I prevented this from taking place. The development of the legislation already adopted and in preparation (such as the 1913 Oxford Manual on the Rules of Naval Warfare) continued in the light of the experience of the war.

7. The Two World Wars and Their Impact on the Development of Humanitarian Law (First Half of the 20th Century)

7.1. *Attempts to Eliminate War*

The war, which started as a local conflict in 1914, soon escalated into a global confrontation. The enormous human and material cost of the war both confirmed the need to legislate at the Geneva and Hague Conferences and confirmed the old truths about

48 See for example, Convention No. 10., which deals with the implementation of the results of the 1906 Geneva Convention into the rules of naval warfare.

49 See: Conventions, No. 6–12.

50 See: London Declaration, 1909; Additional Protocol to the London Declaration, 1910.

the nature of war, in particular that “among weapons the law is silent”. The belligerent parties repeatedly violated the rules they had previously accepted, and here it is enough to refer to the use of poison gases (on the Western Front, 1915, 1917)⁵¹ or the sinking of the steamer *Lusitania* (1915). In the wake of the standing wars, all cultural monuments in the immediate vicinity of the front were often destroyed (as in many towns in *Flanders*, Belgium), which was a great incentive for later codifications aimed at protecting cultural heritage.⁵² We have seen that the great powers were aware of the rapid development of military technology, but during the war, completely new (for example, tanks and aircrafts)⁵³ or modernised (for example, submarines)⁵⁴ equipment appeared, the regulation of which also required rapid actions.

But the most important lesson of the World War was the realisation that war is unlimited. That is why the great powers realised that it was not enough to create rules applicable during the war, but that war as such should be eliminated as a form of dispute settlement. Although international law literature cites a number of treaties as precursors to this idea,⁵⁵ this recognition was essentially fuelled by the desire for peace in societies exhausted by the victims of World Wars,⁵⁶ which also had a significant impact on international politics between the two World Wars (*pacifism*). The first concrete expression of the prohibition of violence (*ius ad bellum*) – which later became the basis of the 20th-century-world-order – is found in the Treaty of Versailles of 1919. The relevant parts of this treaty are found in two places: a) the Preamble (declarative part) and b) Articles 10-17 (normative part), but these can be considered as declarations of intent rather than as binding provisions. Overall, although the new system conditioned the right to wage war, it did not exclude its possibility. The contracting parties sought to limit the right to go to war by introducing various dispute settlement forums (arbitration, other courts, the Council of the League of Nations). They undertook not to wage war until the dispute settlement forum had made a decision. However, under the treaty, the renunciation of the right to wage war was only conditional, as the parties only fully renounced the right to wage war if the condemned party accepted the decision and fully complied with it. What the treaty

51 An attempt was made to ban these at the Hague Conference, but it was not until 1925 that the so-called Geneva Protocol (on the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare) was created.

52 This issue was only resolved in a satisfactory manner with the 1954 Hague Convention and its additional protocols adopted within the framework of the UN.

53 It is worth noting that although aircraft as a war weapon really made its debut in World War I, airborne reconnaissance had a tradition going back to the French Revolution.

54 The modern use of submarines for wartime purposes dates back to the American Civil War, when the Confederate Army's submarine *Huntley* successfully sank an enemy ship.

55 One of the agreements worth highlighting is the so-called Porter Convention concluded in 1907, according to which the use of force for the recovery of claims could only be used as a last resort (i.e. if the debtor state was unwilling to submit to arbitration or rejected all agreements or did not implement the decision).

56 Cf: the famous poem of the great Hungarian poet, Mihály Babits (1883–1941), in which he exclaimed at the beginning of the third year of the World War I: ‘Oh peace! Peace! / May peace be at last! / May it be over!’ (Húsvét előtt, [Before Easter] 1916, The author’s translation).

specifically contained was a prohibition of external aggression⁵⁷ ‘directed against the territorial integrity and political independence of the Member States’.⁵⁸ The rules of the treaty, which formed the basis of the new world order,⁵⁹ were therefore from the outset “complex and self-contradictory”,⁶⁰ and some of the great powers had opted out or withdrawn from it.⁶¹

In 1925, the European powers attempted to resolve the growing climate of distrust by concluding the Locarno Treaties. The treaties aimed to guarantee Germany’s western borders (maintaining the *status quo*). The three powers involved – Belgium, France and Germany – renounced war among themselves, but this undertaking ‘did not apply to East-Central Europe, marking a new battlefield’.⁶² So, once again, the efforts to avoid war had only limited results. However, the treaties did lead to a brief period of détente in European politics (usually referred to as the “*spirit of Locarno*”), which led to the Kellogg-Briand Pact of 1928. This treaty was the first to declare a general prohibition of war and, despite the fact that it remained a declaration of principle from the outset,⁶³ due to the many reservations attached to it, had a significant influence on many subsequent international documents, including the United Nations Charter. Originally a bilateral treaty between France and the United States, it was soon joined by the vast majority of the world’s countries, and its rules became a general reference – even though they failed to prevent the increasingly serious conflicts of the 1930s. The main points of the Kellogg-Briand Pact are as follows:

‘art. 1. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.

art. 2. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.’⁶⁴

57 Treaty of Versailles, 1919, art. 10.

58 Bruhács, Kis Kelemen and Mohay, 2023, p. 279.

59 It is also worth noting why we can say that the Treaty of Versailles formed the basis of a new world order. This peace treaty not only included territorial provisions but also the charter of an international organisation, the League of Nations, whose task was to maintain international cooperation. See more: Covenant of the League of Nations, Peace Treaty, Part 1, arts. 1–26.

60 Bruhács, Kis Kelemen and Mohay, 2023, p. 278.

61 The United States did not ratify the treaty, despite President Wilson’s key role in establishing the League of Nations. Germany, which had only been admitted in 1926, withdrew in 1933. Founding member Italy withdrew in 1937. Japan, a major power in Asia, withdrew in 1933. The Soviet Union, which had only been admitted in 1934, was expelled in 1939 for attacking Finland.

62 Bruhács, Kis Kelemen and Mohay, 2023, p. 278.

63 That is why the eminent expert on international conflicts, Henry Kissinger (1923–2023), stated that the Briand-Kellogg Pact prohibited war in all cases, except for foreseeable occasions.

64 For full text, see: Covenant of the League of Nations, 1919, Vol. 94, p. 59, No. 2137; See also: Faluhelyi, 1929.

In fact, the spirit of Locarno had already faded before Hitler came to power in the early 1930s. In the three main theatres of war of the later World War II (1939-1945) – Europe, Asia and Africa – major conflicts were about to erupt, years before the war.

Pre-war conflicts in the later World War II's theatres of war		
Asia	Africa	Europe
1931–1932 Manchurian War (1931 Mukden incident)	1935–1936 Ethiopian campaign (1934 Val Val incidents)	1936 Invasion of the Rhineland
1932–1937 Invasion of northern China		1936–1939 Spanish Civil War
1937–1945 Second Japanese-Chinese War		1939 Invasion of Albania

Table 1. Pre-war conflicts in the later World War II's theatres of war.⁶⁵

In Asia, following the 1931 Mukden incident, Japan – which had in fact been seeking hegemony in the Pacific since the end of the 19th century – occupied the Chinese part of Manchuria. This event was perhaps the first in a series of events that eventually led to the outbreak of World War II in 1939. But the Mukden incident is also noteworthy because, although the great powers ultimately pursued a policy of reconciliation until the autumn of 1939 and refrained from applying the more severe sanctions provided for in the Covenant,⁶⁶ they already strongly condemned Japan's intervention. The League of Nations refused to recognise the invasion of Manchuria, citing the Kellogg-Briand Treaty among other things.⁶⁷ Shortly afterwards, the United States adopted a similar position, declaring that it would not recognise any change resulting from the use of armed force (Stimson Doctrine). These formulas became the reference point in subsequent conflicts and were incorporated as self-evident principles in the UN Charter in 1945 – in the Preamble⁶⁸ and in its normative part,⁶⁹ as well.

It can be seen from the above that the international efforts to improve the legal framework that supports the elimination of wars have finally been successful after a quarter of a century (and two World Wars). The idea of the elimination of violence

65 Author's own table.

66 The Covenant of the League of Nations which was part of the Treaty of Versailles of 1919. Cf. fn. 59.

67 Cf.: League of Nations resolution of March 11, 1932; United States Department of State, 1931–1941, Doc. 158.

68 As the UN Charter Preamble says '... For these ends to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims...'

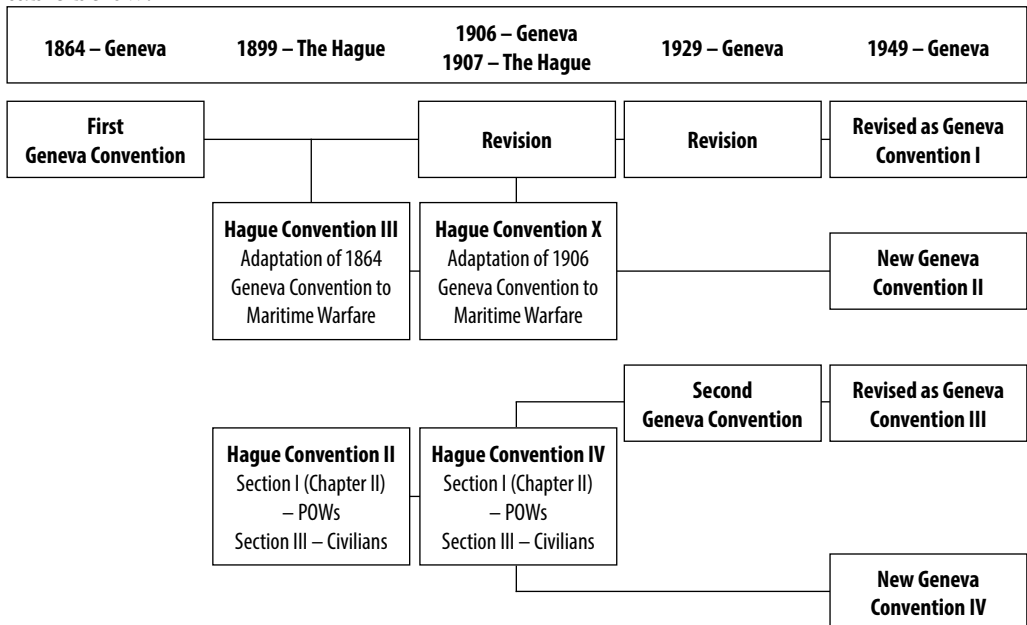
69 Later, the UN Charter also establishes the prohibition of violence as a norm (art. 2 (4) of the UN Charter): 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.

and force became a normative rule and, with its inclusion in the UN Charter, a fundamental principle, and thus one of the most important rules of modern international law.⁷⁰ But it is still questionable whether these international efforts have been able to eliminate wars and violence in practice.

7.1.1. *The development of humanitarian law in the Interwar period*

The experience of the First World War confirmed the theoretical assumption of the Hague Peace Conferences that the development of military technology is always one step ahead of normative regulation. However, technical progress not only influenced the conduct of hostilities but also facilitated, for example, the rescue of the sick and wounded. The regulation of air medical teams movement was necessary, similar to how hospital ships were regulated earlier at the Hague Conference.

On the other hand, the World War also confirmed the assumption – already evident from Dunant’s book – that the humanitarian and the warfare law (i.e. Geneva and Hague law) are so closely intertwined that they can only be developed simultaneously. This joint treatment also follows from the Lieber Code, which is the basic body of rules of humanitarian law, containing a mixture of provisions on belligerents and the conduct of war. The development of the Geneva and Hague law is illustrated in the table below:



70 It is also worth noting that ‘the primary responsibility for the maintenance of international peace and security’ currently lies with the UN Security Council; UN Charter, Chapter V, arts. 24–25.

Table 2. When Geneva and Hague law converge (Source: Wikipedia)

The most important date in the development of humanitarian law during this period was 1929, when another Geneva Conference decided on the development of the Geneva acquis (Geneva Conference 1929).

Two conventions were adopted here:

1. The Convention on the Wounded and Sick⁷¹ is the third version of the Geneva Conventions of 1864 and 1906, improved in the light of the experience of the First World War. An important innovation was the drafting of regulations on the protection of medical aircraft and the use of the distinctive emblem in peacetime. It also recognised the use of other emblems in addition to the Red Cross.⁷² Finally, it is worth mentioning that the provisions of the Convention concerning the repatriation of seriously wounded and seriously ill prisoners were transferred to a separate convention (the Convention on Prisoners of War).
2. The Convention relative to the Treatment of Prisoners of War is an improved version of the 1899 and 1907 Hague Conventions in the light of the experience of the First World War,⁷³ but it does not replace, only complements, the earlier Conventions. As early as 1921, the need arose for a separate convention dealing only with the treatment of prisoners of war. Among the more important innovations of the convention were the codification of the prohibition of reprisals and collective punishment, the formation of provisions on the organisation of prisoners' work and the appointment of their representatives.

However, experience between the two World Wars has shown that the warring parties also regularly violate agreements on the conduct of the war and on prisoners of war, the wounded and the civilian population. Suffice it to mention the use of poison gases in Ethiopia or atrocities against civilians in the Spanish Civil War.⁷⁴ World War II surpassed all previous conflicts in size and brutality.⁷⁵

All of this led to the recodification of the Geneva Conventions after the end of World War II. The four conventions adopted at the Geneva Conference in 1949 with the amendments adopted in 1977 transformed humanitarian law from a theoretical

71 The full title is: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.

72 These include the Red crescent, the Red lion and the sun, which were already in use at that time. The Red crystal was added to the emblems in 2005.

73 The two conventions concerned are The Hague No. 2., 1899; and The Hague No. 4., 1907.

74 The brutality of the Spanish Civil War was captured in one of the novels by the famous American writer Ernest Hemingway (For Whom the Bell Tolls).

75 This also proves one of Henry Dunant's statements: 'the terrible weapons of destruction that peoples now possess will shorten wars, but it is also certain that they will only make battles more murderous'. (The English translation was made from the Hungarian edition of Dunant's book; Dunant, 1978, p. 44.

model and *soft law* into a set of normative standards ratified by the vast majority of countries over the course of a century.

The 1949 Geneva Conventions are as follows:

1. The Convention on the Wounded and Sick in Armed Forces in the Field, which replaced the 1929 Geneva Convention.
2. The Convention Relating to Wounded, Sick and Shipwrecked Members of Armed Forces in Naval Warfare,⁷⁶ which is a development of the Hague Conventions (The Hague No. 3. (1899) and The Hague No. 10. (1907))
3. The Convention relative to the Treatment of Prisoners of War, which replaced the 1929 Geneva Convention.
4. The Convention relative to the Protection of Civilian Persons in Time of War, which is a development of the Hague Conventions (The Hague No. 2. (1899) and The Hague No. 4. (1907)).

The 1949 Geneva Conventions will be discussed in detail in the next chapter.

8. Summary

In this chapter, we have sought to describe the development of humanitarian law from its beginnings until 1949, when the adoption of the four Geneva Conventions created a single normative text that is still considered by the vast majority of states as a reference and framework. Throughout our long journey through time, we have observed that wars have accompanied human history from the beginning. However, conflicts arising from human nature were recognised by human communities relatively early on, even in prehistoric times. This is due, among other things, to the development of diplomacy as a conflict management mechanism, but already in ancient times, written rules appeared in several cultures that aimed to limit the outbreak of armed violence, the course of war, and the protection of the innocent and the wounded. (see for example: Bible, Laws of Manu). For a long time, these norms were dressed up in religious cloaks and, until the modern era, when sovereign states emerged after the Peace of Westphalia in 1648, they were enforced primarily through religious sanctions (see, for example, the concept of just war, the peace of God, the knightly code of honour). The emergence of sovereign states led to the impersonalisation of armed conflicts. From then on, armies of states fought each other, and the wounded soldier fell out of the war machine and became a fellow human being in need of protection. It was also during this period that the first general rules of the law of war and peace were drawn up (the works of Gentili and Grotius), which would only become common knowledge in the Age of Enlightenment.

76 Its full title is: Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

This theoretical background made it possible to create the world's first code of war law, which simultaneously contained provisions for the conduct of war and its participants, as well as for the wounded, sick and prisoners of war. The American Lieber Code of 1863 can be considered the ancestor of all modern legislation and from the outset had a major influence on European legislators, who began to draft various international rules at the various conferences held in Geneva and The Hague in the second half of the 19th century. Although the initiative was taken by a private individual, Henry Dunant of Switzerland, there had already been attempts to organise the care of the wounded (see in particular the work of Florence Nightingale in the Crimean War). After the Battle of Solferino, fought with modern weapons and mass armies, Dunant sensed that 'the terrible weapons of destruction that peoples now possess will shorten wars, but it is also certain that they will only make battles more murderous'.

This suspicion was confirmed by the tens of millions of military and civilian casualties of the First and Second World Wars. The participants at the Geneva and Hague Conferences had already realised in the second half of the 19th century that the rapid development of military technology meant that normative regulation was always one step behind technology. The wars of the first half of the 20th century, including the various conflicts between the two world wars, confirmed this assumption. So did the ancient Chinese wisdom that 'war always follows the path of deception', since the warring parties were willing to set aside existing rules without any problem if their interests so required. Thus, for example, poisonous gases were used in spite of the ban in World War I and later in the campaign in Ethiopia. And the lofty words of the *St Petersburg Declaration*, which were subsequently reaffirmed on several occasions, did not prevent the use of expanding bullets in Ethiopia, for example.

The unprecedented devastation caused by the First World War strengthened society's desire for peace. This led to attempts to eliminate war as a means of conflict resolution. Although this aspiration was ostensibly realised in 1929 with the Kellogg-Briand Pact, it was not until after the Second World War that this rule was made a fundamental principle of the new world order, with its inclusion in the *UN Charter*. But even so, war itself was not eliminated, only limited. The rules adopted for the protection of the wounded, prisoners of war and civilians underwent a major development in the aftermath of the First World War, leading to the Geneva Conventions of 1929. However, in World War II, more people than ever before were wounded, taken prisoners of war or suffered the horrors of war as civilians. This enormous suffering provided the final impetus to complete the codification of humanitarian law. This was done in 1949 with the foundation of the four Geneva Conventions, which were subsequently supplemented several times (see Geneva Additional Protocols).

Finally, it is also worth noting that the clarification of the situation of refugees fleeing the horrors of World War II is a new area of Geneva law, refugee law,⁷⁷ but the relevant legislation was already enacted under the auspices of the UN.

77 See: Convention relating to the Status of Refugees, 1951, and its 1967 Protocol.

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