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## **Part I Regulating Non-International Armed Conflicts, 4 The Sources of the Law of Non-International Armed Conflict**

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# **(p. 101) 4 The Sources of the Law of Non-International Armed Conflict**

## **1. Introduction**

The law of non-international armed conflict is part of public international law. Accordingly, the sources of the law of non-international armed conflict are the same as those of general public international law. They comprise treaties, custom, and general principles, and as a subsidiary means for determining the law, judicial decisions and the writings of publicists.<sup>1</sup> In addition to these well-accepted sources and subsidiary means of law-determination, a whole host of other materials also influences the behaviour of parties to non-international armed conflicts. These materials are equally as important as the well-accepted sources of general international law. This chapter considers the traditional sources and subsidiary means of law-determination. As they are less well-known, the chapter pays particular attention to the other materials of states and non-state armed groups that influence their behaviour, namely their ad hoc commitments. Ad hoc commitments of states and armed groups include agreements concluded between the warring parties, unilateral declarations, and instructions or regulations that are internal to a party. The role, normative status, and potential utility of these ad hoc commitments will be explored.

## **2. The traditional sources**

### **2.1 Treaties**

At the conventional level, the international humanitarian law of non-international armed conflict includes common Article 3, Additional Protocol II, the Hague Convention on Cultural Property, and its Second Protocol. It also includes various weapons treaties, notably the Chemical Weapons Convention, the Biological Weapons Convention, the Convention on Certain Conventional Weapons (as amended) and the various Protocols thereto, the Ottawa Convention on Anti-Personnel Mines, and the Cluster Munitions Convention. Instruments belonging to other areas of international law also have a role to play in non-international armed conflict, principally the Convention on the Rights of the Child and the Optional Protocol thereto on children and armed conflict, the Guiding Principles on Internal Displacement, and the Rome Statute of the International Criminal Court. At the regional level, additional instruments regulate non-international armed conflict, including the African Union Convention on Internal Displacement and the Cairo Declaration on Human Rights in Islam.<sup>2</sup> The idea that there are but a few treaty norms applicable to non-international armed conflicts is thus entirely mistaken.

### **2.2 Custom**

An even more substantial body of law applicable in non-international armed conflict exists at the customary level.

#### **2.2.1 Methodology**

The methodology by which the customary law of non-international armed conflict is created is largely the same as that in which custom in general international law is created.<sup>3</sup> It is largely the same as, rather than identical to, the determination of general customary international law given that, in highly normative areas such as the law of armed conflict, greater regard is had for *opinio juris* and for what ought to be the law than is otherwise the case.<sup>4</sup> The focus tends also to be on verbal rather than physical acts. This is evident from the *Tadić* Decision on Interlocutory Appeal on Jurisdiction, which observed that, 'on account of the inherent nature of this subject-matter, reliance must primarily be placed on such elements as official pronouncements of States, military manuals and judicial decisions', as

well as from the Customary International Humanitarian Law study, which also focused on military manuals and the like, albeit indicating that the approach it was taking was a 'classic one'.<sup>5</sup>

Situations of armed conflict are also atypical in that reactions of states that are not involved in the conflict to violations of the law tend to be more forthcoming than in other situations. These reactions are important as they demonstrate the views of the outside state on the law. For example, following the conclusion of the armed conflict in Sri Lanka in 2009, the United States assessed the conduct of the parties to that conflict. In so doing, it set out its own view of the customary international law status of certain rules relating to the conduct of hostilities. It observed:

The customary laws of war also require all parties to a conflict to comply with the principles of distinction and proportionality in the conduct of hostilities. The principle of distinction holds that civilians and civilian objects (such as hospitals and schools) are generally immune from direct attack, though civilians lose this immunity if they take direct part in hostilities. The principle of proportionality prohibits attacks that may cause incidental loss of life, injury or damage to civilians that would be excessive in relation to the concrete and direct military advantage anticipated. The civilian population must not be used to shield military objectives or operations from attack, and parties must take all practicable precautions, taking into account military and humanitarian considerations, to minimize incidental death, injury and damage to civilians.<sup>6</sup>

(p. 103) Likewise, one party to the conflict may allege that the other side has violated the law of non-international armed conflict by committing certain actions. These allegations demonstrate the belief of the accusing party as to the existence of the particular rules. For example, during the final stages of the conflict in Sri Lanka in 2009, a Sri Lankan Government Minister stated before the UN Human Rights Council:

Hostage taking in a conflict situation is, as you know, a clear violation of international humanitarian law ... It is our fervent appeal, through you Mr President, to the members and observers of this Council and to the world at large, to bring any influence you might have to bear on the LTTE [Liberation Tigers of Tamil Eelam], to apply whatever pressure you can to permit these civilians—these innocent hostages—to move to safety.<sup>7</sup>

Parties also tend to make statements on their own conduct during the conflict more frequently than they do in other areas. For example, in relation to the fight against Al-Qaeda, which branches of the US Government have considered to be a non-international armed conflict,<sup>8</sup> the Legal Advisor of the Department of State indicated that:

this Administration has carefully reviewed the rules governing targeting operations to ensure that these operations are conducted consistently with law of war principles, including:

- First, the principle of *distinction*, which requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack; and
- Second, the principle of *proportionality*, which prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage

to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated.

In U.S. operations against al-Qaeda and its associated forces—including lethal operations conducted with the use of unmanned aerial vehicles—great care is taken to adhere to these principles in both planning and execution, to ensure that only legitimate objectives are targeted and that collateral damage is kept to a minimum.<sup>9</sup>

Given that many of the relevant rules are not to be found in conventional instruments applicable in non-international armed conflict, statements such as these are important for demonstrating the views of parties to conflicts on the substance of customary international law.

Just as important are the denials of parties that they undertook particular acts that violate a customary rule. Alternatively, a party may justify the acts through the existence of an exception to the customary rule. In both situations, the denial serves to confirm the existence of the rule rather than to put its customary status into question.<sup>10</sup> Thus, when the parties to the Spanish civil war denied that they had attacked the civilian population, claiming instead that they had attacked military objectives,<sup>11</sup> this served to (p. 104) support the claim that there was a rule of customary international law that prohibited the targeting of civilians.

Determining the existence of customary international law is notoriously difficult. In practice, the existence of a customary rule tends to be posited by a court, tribunal, or other influential body, and later accepted or rejected by states. For example, the holding by the International Criminal Tribunal for the former Yugoslavia (ICTY) in *Tadić* that the customary law of non-international armed conflict was a good deal more developed than had generally been thought and violation of that law gave rise to individual criminal responsibility was largely accepted by states at the Rome Conference.<sup>12</sup> By contrast, the view of the ICTY in *Kupreškić* that the use of belligerent reprisals against civilians was prohibited in customary international law was not accepted by certain states.<sup>13</sup> Thus, it has been remarked that '[t]he combination of a string of decisions ... coupled with the implicit acceptance or acquiescence of all the international subjects concerned, clearly indicates the existence of the practice and *opinio juris* necessary for holding that a customary rule of international law has evolved'.<sup>14</sup> This is a good description of what happens in practice, even if it differs from the orthodox accounts of how customary international law is created.

It also explains why the Customary International Humanitarian Law study concluded under the auspices of the International Committee of the Red Cross (ICRC) and the jurisprudence of the ICTY are so important. Both the study and the jurisprudence indicate that very many norms of customary international humanitarian law regulate non-international armed conflict.<sup>15</sup> This has met with some scepticism on the part of certain states and commentators,<sup>16</sup> with the possibility of a backlash reducing the progress that has been made in the area. However, the Customary International Humanitarian Law study has been cited with approval by a number of courts and the jurisprudence of the ICTY has been followed in other arenas. Indeed, it may well be that, in practice, albeit not in law, the findings of the study will reverse the presumption as to the existence of a customary norm. Traditionally, the burden of proof lies on the entity that argues that a customary rule exists. The fact that the study identifies the existence of a particular customary norm may serve to satisfy this burden, albeit only for practical purposes. It will then be incumbent on the party that argues that no such customary norm exists to prove its case.<sup>17</sup>

To the extent that it can be demonstrated that certain norms suggested by the study or the jurisprudence of the ICTY do not in fact have customary status, it does not follow that only a few norms of customary international humanitarian law govern non-international armed conflicts. Very many norms have been determined to be of customary status irrespective of the Customary International Humanitarian Law study and the jurisprudence of the ICTY.

### **(p. 105) 2.2.2 Customary rules**

The norms contained in common Article 3 have been accepted as having passed into customary international law at least since the International Court of Justice (ICJ)'s 1986 judgment in *Nicaragua*.<sup>18</sup> Criticisms of its finding in this regard did not relate to the conclusion so much as its lack of citation of state practice and *opinio juris*,<sup>19</sup> and its holding has since been reiterated on numerous occasions. At least the 'core' of Additional Protocol II has similarly been accepted as having passed into customary international law.<sup>20</sup> So too certain rules for the protection of cultural property.<sup>21</sup> Thus, the obligations of humane treatment, care for the wounded and sick, and respect for cultural property, as well as the prohibitions of murder, torture, and cruel treatment, rape, humiliating and degrading treatment, the taking of hostages, summary execution, collective punishments, acts of terrorism, slavery, and pillage are all of customary status.

The customary international humanitarian law of non-international armed conflict is by no means limited to norms relating to humane treatment. A number of rules regulating the conduct of hostilities are likewise accepted as having customary status. The principles contained in General Assembly Resolution 2444 (XXIII) were considered to reflect customary international law by influential states at the time of the Resolution's adoption.<sup>22</sup> Various international and regional bodies have held likewise.<sup>23</sup> Thus, the rule that the right of the parties to adopt means of injury is not unlimited, the prohibition of attacks against civilians, and the principle of distinction are all of customary status. The same has been suggested of General Assembly Resolution 2675 (XXV), which elaborates on Resolution 2444.<sup>24</sup> Thus, the principle of distinction, the prohibition on attacks against civilians and civilian objects, the requirement to take precautions, the prohibition on forcible transfer of civilians, and the provision of humanitarian relief, all have the status of norms of customary international law.<sup>25</sup>

The 1990 Declaration of the International Institute of Humanitarian Law on the Rules of International Humanitarian Law governing the Conduct of Hostilities in (p. 106) Non-International Armed Conflicts has also been considered to reflect customary international law, and has been described as 'the most authoritative expression of international legal opinion in this field'.<sup>26</sup> As this was the holding of the Colombian Constitutional Court, it amounts to the practice of at least one state. Furthermore, during the conflict in El Salvador, in 1991, the United Nations Observer Mission in El Salvador (ONUSAL) judged the conduct of the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) against the norms contained in the Declaration.<sup>27</sup> Thus, although the Preamble to the Declaration provides that the 'principles and norms' contained therein are 'crystallized or ... emergent rules of international law', the rules that were emergent when the Declaration was being drafted must have been considered to have crystallized by the time they were utilized by the relevant bodies. On this basis, the prohibitions and restrictions on the use of certain weapons also have customary status, as do certain rules relating to targeting.

The list of war crimes contained in the Rome Statute also reflects customary international law, albeit in some instances framed in a narrower manner than the relevant rules of international humanitarian law.<sup>28</sup> The drafters of the Rome Statute intended that the Statute would contain only customary international law crimes.<sup>29</sup> Thus the war crimes contained therein necessarily have customary status. In this regard, a distinction has to be drawn between evidencing the customary nature of particular rules from their inclusion in a

treaty and the prior decision of states to include only customary norms in a treaty. The Rome Statute is an example of the latter situation and is thus free from difficulties relating to the Baxter paradox.<sup>30</sup> In order that the war crime is of customary status, the underlying prohibition must also have been of customary status. Accordingly, any norms that did not have customary status before the Rome Conference can be considered to have crystallized during the Conference.<sup>31</sup> Thus, the prohibitions on attacks against the civilian population, attacks on objects and personnel bearing the protected emblem, attacks on humanitarian assistance or peacekeeping personnel and objects, and attacks on religious, educational, and certain other objects, are all of customary status. So too are the prohibitions on pillage; sexual violence; mutilation; conscripting, enlisting, or using children to participate actively in hostilities; ordering displacement; killing or wounding treacherously; declaring that no quarter shall be given; and wanton destruction.<sup>32</sup> Following the amendment to the Rome Statute, the prohibitions on the use of poison and poisoned weapons, expanding bullets, and certain gases can also be added to this list.<sup>33</sup>

These conclusions are supported by the list of rules found to reflect customary international humanitarian law applicable in non-international armed conflict in other (p. 107) important documents.<sup>34</sup> Thus, even leaving aside the important contributions of the ICTY and the Customary International Humanitarian Law study, there exists a substantial body of customary international humanitarian law that is applicable to non-international armed conflict, and which has been recognized by states. This body includes rules on humane treatment and the protection of civilians and persons *hors de combat*, as well as prohibitions on the use of certain means and methods of warfare.

The customary status of particular rules is considered on a rule-by-rule basis in Chapters 8 and 9.

### **3. The less traditional ‘sources’**

States and non-state armed groups frequently recognize the applicability of international humanitarian law, international human rights law, or other rules of international law to the conflict in which they are involved. Recognition takes place in a number of ways, principally through the issuance of an ad hoc commitment. Although there is not always a clear division between the various forms of commitment, they can usefully be grouped along the following lines. Ad hoc commitments can be sub-divided into unilateral declarations; bilateral agreements between the parties or between one of the parties and a UN entity or non-governmental organization, or trilateral agreements between the parties and an outside entity; codes of conduct, instructions, or regulations that are internal to the group; and legislation. These ad hoc commitments do not feature in the traditional list of the sources of international law. However, in light of their normative character and potential importance, they are considered here under the rubric of ‘less traditional “sources”’.

The existence of these less traditional ‘sources’, especially those of non-state armed groups, tends to be overlooked. This is not a conscious decision on the part of the international community. Rather, they are forgotten because, oftentimes, they do not have a counterpart in international armed conflict. The modelling approach considered in Chapter 3 affects not only the substantive rules but also the methodology by which those rules are determined. As the model is that of the international armed conflict, only materials associated with international armed conflicts are considered; materials associated with non-state armed groups go unnoticed. There are, of course, exceptions. The 22 May 1992 Agreement concluded between the warring factions in the conflict in Bosnia has been utilized to varying degrees as the basis for criminal prosecution by the ICTY.<sup>35</sup> The 1995 *Tadić* Decision on Interlocutory Appeal on Jurisdiction also considered the commitments of non-state armed groups. However, these are the exceptions that prove the rule. The materials of non-state armed groups have not, by and large, been taken into account in the development of the law of non-international armed conflict. The developments that have taken place, at

both the conventional and customary levels, have been largely statist in character and there has been little participation by non-state armed groups in the development of the law. As a consequence, at least one half of the actors involved in non-international armed conflicts did not (p. 108) participate in the formation of the relevant rules. This is particularly unfortunate given that overlooking these materials has led to the emergence of certain assumptions,<sup>36</sup> and certain understandings of the law have been skewed. Re-working the methodology by which the law is created is discussed further in Chapter 12.

### **3.1 Nature of the commitments**

#### **3.1.1 Propaganda?**

Two points immediately arise in respect of ad hoc commitments, particularly those of armed groups. First, are they merely propaganda or do they deserve to be taken seriously? Second, if they are to be taken seriously, what is their normative status? As to the first point, it is difficult, if not impossible, to declare in advance whether or not a commitment is issued for propaganda purposes or because the party intends to follow it, nor are the two possibilities mutually exclusive. Much will depend on whether or not the commitment is actually followed in practice. Regardless, the same uncertainty arises in respect of states; and it applies with respect to ratification of treaties as much as it does issuance of ad hoc commitments. Furthermore, a number of distinct situations can be identified: the commitment is followed; it is followed to an extent; it is not followed; and it is unclear whether or not the commitment is followed. It is submitted that, in the first two situations, the commitment needs to be taken seriously. In the last situation, the commitment should be taken seriously, subject to further investigation. This comports with the idea of good faith. Only when the commitment is not followed should the presumption be that it was issued for propaganda purposes. Even in this situation, as in the three others, the commitment can still be used in different ways. It can be used by outside observers to engage with the party that issued the commitment. For example, the United Nations Assistance Mission in Afghanistan (UNAMA) has engaged with the Taliban of Afghanistan, in part, using the Taliban's statements on the protection of civilians and its Code of Conduct.<sup>37</sup> It can also be used by local populations to complain to the issuing party. For example, the frontline manual of the National Transitional Council of Libya, which was issued in 2011 during the conflict, set out a procedure for persons seeking to complain about breaches of the rules on detention also contained in the manual.<sup>38</sup> It may even constitute part of an ongoing dialogue on the law. For example, the 2011 Eid message of the Taliban on the taking of precautions is considered by some to be part of an ongoing, albeit indirect, dialogue between the Taliban and UNAMA.<sup>39</sup> There is little question that certain commitments are issued by parties without any intention to comply with them; however, this cannot be used to tarnish all commitments by all parties. Ad hoc commitments should not be automatically dismissed out of hand because they are ad hoc in character or because they emanate from armed groups. In many cases, they deserve to be taken seriously.

#### **(p. 109) 3.1.2 Normative status**

The normative status of ad hoc commitments, in particular those of armed groups, is unsettled.<sup>40</sup> The legal status of bilateral agreements is uncertain. In some instances, international courts have considered them binding on the parties and akin to treaties. For example, the ICTY has relied upon the 22 May 1992 agreement in different ways, primarily as a means by which to bring into force certain other treaty provisions which could then form the basis of prosecution.<sup>41</sup> Similarly, the International Commission of Inquiry on Darfur noted that the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) 'possess under customary international law the power to enter into binding international agreements (*jus contrahendi*), and have entered into various internationally binding agreements with the Government' on issues pertaining to international humanitarian law.<sup>42</sup> For its part, the Security Council has demanded that

armed groups comply with obligations contained in bilateral agreements concluded between those groups and the state.<sup>43</sup> However, other courts have taken the view that only states can create international obligations and that, therefore, agreements involving armed groups do not amount to treaties and are not binding under international law. Along these lines, the Colombian Constitutional Court held that common Article 3 agreements 'are not, strictly speaking, treaties, as they are not established between entities subject to public international law but between the parties to an internal conflict, which are subject to international humanitarian law'.<sup>44</sup> Similarly, the Special Court for Sierra Leone held that the Lomé Agreement between the Government of Sierra Leone and the Revolutionary United Front (RUF) was not a treaty because it was signed by the government and an armed group.<sup>45</sup>

As with bilateral agreements, the legal status of unilateral declarations of armed groups is unsettled. On occasion, international courts have referred favourably to undertakings by armed groups.<sup>46</sup> For example, in the *Akayesu* Trial Judgment, the International Criminal Tribunal for Rwanda (ICTR) noted that the Rwandese Patriotic Front had 'stated to the International Committee of the Red Cross that it was bound by the rules of international humanitarian law'.<sup>47</sup> UN entities also have treated unilateral declarations of armed groups as binding upon the groups and have called upon the international community to monitor and enforce them.<sup>48</sup> However, considerable (p. 110) uncertainty surrounds the normative status of unilateral declarations of states.<sup>49</sup> Accordingly, it is to be expected that even more uncertainty exists in relation to unilateral declarations of non-state armed groups.

The legal status of the various materials listed, other than bilateral agreements and unilateral declarations, is also unsettled. In the *Tadić* Decision on Interlocutory Appeal on Jurisdiction, the ICTY Appeals Chamber took into account the commitments of armed groups in holding that customary international humanitarian law rules regulated non-international armed conflicts.<sup>50</sup> However, since *Tadić*, the ICTY has not resorted to the practice of armed groups aside from the 22 May 1992 Agreement. The Customary International Humanitarian Law study concluded under the auspices of the ICRC collected and listed practice of armed groups,<sup>51</sup> but under the heading of 'other practice', and did not use this practice in the determination of the existence of customary rules. This was explained by the lack of clarity surrounding the legal significance of the practice of armed groups.<sup>52</sup> Elsewhere, however, one of the authors of the study has advocated the inclusion of the practice of non-state armed groups in the determination of customary rules.<sup>53</sup>

The normative status of the various commitments is thus unsettled. However, as will be discussed below, there is good reason to treat ad hoc commitments of armed groups as well as those of states as binding under international law. A more general role for armed groups in the development of international law is discussed further in Chapter 12.

### **3.1.3 An interpretational tool**

Leaving aside the normative status of the commitments of non-state armed groups, their existence must be acknowledged and used to inform interpretations of the law. They are useful for providing a sense of what has proven acceptable and in which areas there is contestation.<sup>54</sup> It would become apparent, for example, that a prohibition on the use of anti-personnel mines is acceptable to a great many armed groups, with 41 armed non-state actors signing Geneva Call's Deed of Commitment and numerous others prohibiting the use of mines through internal regulations and the like.<sup>55</sup> It would also become clear that particular disagreement surrounds the individuals who may be lawfully targeted.<sup>56</sup> Having regard to the practice and materials of armed groups and states would provide a far better

sense of the state of the law and the likelihood for (p. 111) compliance with particular norms. It would also challenge traditional conceptions in a number of areas.

First, ad hoc commitments on the part of states that are actually involved in non-international armed conflicts to apply international humanitarian law are far more numerous than is imagined. The traditional assumption that states do not recognize the existence of non-international armed conflicts on their territory, or that they will not agree to apply international humanitarian law, is thus mistaken.<sup>57</sup> The same is true of the assumption that non-state armed groups do not commit to respect the law.<sup>58</sup>

Second, these commitments date back a century. They are not a construct of the post-*Tadić* period, or even the post-1949 Geneva Conventions period. Thus, the *Tadić* 'revolution' is supported by numerous other instances of state application of international humanitarian law in non-international armed conflicts.

Third and most importantly, the commitments do not relate to common Article 3 and Additional Protocol II alone. Prior to 1949 and 1977, commitments necessarily had to be made to the law of international armed conflict, and states and non-state armed groups proved willing to so commit. In the period after 1949 and 1977, states remained willing to commit to apply the Geneva Conventions as a whole or international humanitarian law as a whole, or the principles thereof, despite being under no obligation to do so. States and non-state armed groups thus not infrequently commit to applying more than is actually required of them by the law in force at the relevant point in time. This has included commitments to apply the law relating to the means and methods of warfare. Again, this has an impact on the normative content of the law of non-international armed conflict, even if not as a matter of customary international law. The commitments provide an indication of what states and non-state armed groups are willing to accept in conflicts in which they are involved.

Fourth, at a certain point in time during the conflict, states may consider the non-state armed group bound by human rights law. Usually, this comes at a time in which the armed group exercises control over territory and the conflict has been ongoing for a certain duration. Armed groups themselves tend to commit to abide by international human rights law at an earlier point in time, sometimes in the very early stages of a conflict. This is important in light of the uncertainty that surrounds whether, and if so, when, armed groups are bound by human rights obligations.<sup>59</sup>

Finally, it should be noted that states may, and do, change their mind. For example, the Russian Government spoke out against Red Cross involvement in civil wars in 1912; by 1949, the USSR was in favour of detailed regulation of non-international armed conflict; more recently, Russia seems to have reverted to its earlier position.<sup>60</sup> The Government of Colombia has accepted and denied the existence of an armed conflict at various points in time.<sup>61</sup> The United States has accepted certain rules of international humanitarian law as norms of customary international law but has also retreated from that position. For example, in 1986, the Deputy Legal Advisor at the Department of State set out the position of the United States on the Additional Protocols,<sup>62</sup> and this was relied upon in a 2005 US (p. 112) military manual.<sup>63</sup> However, an errata sheet was later published, indicating that '[t]his information was taken from an article written by Michael Matheson in 1986. It takes an overly broad view of the US position and as a result may cause some confusion as to US policy'.<sup>64</sup> Yet, in 1912, it was the US delegation that was the leading advocate of Red Cross involvement in times of non-international armed conflict.<sup>65</sup> By 2011, the United States would seem to have reverted to a slightly broader position.<sup>66</sup> Despite the change in position of states at various points in time, regard may still be had for the acceptance of the norm on the part of the relevant state, particularly if that norm became a norm of a customary

international law in the interim. Later rejection of the customary norm will not have an effect on the status of that rule even in respect of the now-objecting state.

Ad hoc commitments are thus of an uncertain normative status. Nonetheless, they remain useful in providing a sense of which rules are readily accepted and which are less well-accepted and for informing the interpretation of particular rules. Accordingly, in Part II, ad hoc commitments are used to illustrate acceptance or violation of a particular rule, but not to determine whether or not the rule is one of customary international law. Furthermore, as indicated above, the weight to be given to a particular commitment will depend on the extent to which it is followed.<sup>67</sup>

### **3.1.4 Commitments and compliance**

Committing to respect international humanitarian law, international human rights law, or particular rules thereof should not be confused with compliance with the law. In a number of the armed conflicts in which commitments were made, violations were rife. During the Spanish civil war, for example, the Junta declared it would observe and respect the Geneva Conventions on the wounded and sick, and on prisoners of war. However, that commitment has been considered 'more an attempt to obtain some form of international status than a serious intention to abide by any legal commitments'.<sup>68</sup> During the armed conflicts in the former Yugoslavia, ICRC delegates would prove to have reservations about the utility of concluding bilateral agreements between the warring parties due to 'the treachery encountered in the field in spite of all the firm promises made on both sides'.<sup>69</sup> Indeed, one ICRC delegate described the position as '[t]hey bombard each other, they sign, they bombard each other again and sign again, and so on'.<sup>70</sup> As indicated above, certain commitments may be issued for purely political reasons or for propaganda purposes with the armed group having no intention whatsoever to follow them. However, the same is true of states and, ultimately, an individual commitment by an individual state or armed group will have to be assessed on its own terms. However, in general, while issuing a commitment does not equal (p. 113) compliance, it can be a first step towards compliance, and issuing commitments and concluding agreements has led to an increased compliance in certain instances.<sup>71</sup>

In order to illustrate the various points set out above, in light of the oft-expressed view that they are not often concluded,<sup>72</sup> and given that many of them are difficult to locate, the section that follows contains excerpts from a variety of ad hoc commitments of states and non-state armed groups.

## **3.2 The commitments**

### **3.2.1 Unilateral declarations**

States and non-state armed groups frequently issue unilateral declarations to indicate their agreement to abide by international humanitarian law obligations. For example, several states and armed groups have provided commitments to UN entities on the disarmament, demobilization, and reintegration of child soldiers pursuant to Security Council instruction and which contain commitments to international humanitarian law norms.<sup>73</sup> Geneva Call has created a Deed of Commitment that can be signed by 'armed non-state actors'.<sup>74</sup> At the time of writing, the Deed on Anti-Personnel Mines, which *inter alia* prohibits the use of anti-personnel mines and requires co-operation in, and undertaking of, mine action, had attracted some 41 signatures. Geneva Call has also drawn up a second deed, on children and armed non-state actors, and at the time of writing was in the process of adopting a third, on sexual and gender-based violence. Unilateral declarations of adherence to

Additional Protocol I, purportedly pursuant to Article 96(3) of that Protocol, have also been issued.<sup>75</sup> Unilateral declarations are issued even more frequently on an ad hoc basis.

#### Declarations of states

From time to time, states issue unilateral declarations on matters of international humanitarian law during non-international armed conflicts. For example, in 1964, during the post-independence armed conflicts that were raging in the Democratic Republic of the Congo (DRC), the Prime Minister of the DRC declared that:

[f]or humanitarian reasons, and with a view to reassuring, in so far as necessary, the civilian population which might fear that it is in danger, the Congolese Government wishes to state that the Congolese Air Force will limit its action to military objectives.

In this matter, the Congolese Government desires not only to protect human lives but also to respect the Geneva Convention. It also expects the rebels and makes an urgent appeal to them to that effect to act in the same manner.

As a practical measure, the Congolese Government suggests that International Red Cross observers come to check on the extent to which the Geneva Convention is being respected, particularly in the matter of the treatment of prisoners and the ban against taking hostages.

Independently of the pacification campaign it has launched and which will be vigorously continued since its repeated appeals for conciliation have not been heeded, the Congolese Government is also determined to prevent false reports from being used to threaten the innocent (p. 114) civilian population with reprisals. It hopes that this unequivocal communiqué will ensure respect for international conventions.<sup>76</sup>

Numerous other ad hoc commitments have been provided to the ICRC. For example, following the revolution in Guatemala in 1954, the government that came to power gave an assurance to the ICRC delegate that he would be able to visit persons interned and detained as a result of the conflict.<sup>77</sup> The visits were conducted pursuant to the 1949 Geneva Conventions.<sup>78</sup> Prior to taking power, the Government, as the then armed group, had sent a telegram to the ICRC which read:

Invoking humanitarian principles and international treaties we shall be grateful for aid in personnel equipment medicine plasma etc immediate attention for wounded on both sides in revolution against arbenz government ... provisional government places at disposal of worthy institution the airports at chiquimula and esquipulas in republic of guatemala.<sup>79</sup>

At around the same time, the incumbent government had also called for ICRC intervention.<sup>80</sup> During the conflict in Afghanistan during the Cold War (1979-89), the President 'assured the ICRC that he would respect the principles of the Geneva Conventions under all circumstances and that all armed forces on Afghan territory would comply with their obligations under the Conventions'.<sup>81</sup>

In certain situations, unilateral declarations of states are considered binding upon them. Whether or not they are viewed in this manner depends on the intention of the author of the declaration and how the declaration is understood by other actors.<sup>82</sup> Although, in general, binding unilateral declarations are restrictively conceived,<sup>83</sup> in situations of non-international armed conflict, when a state issues a declaration on humanitarian norms

indicating that it will or will not act in a particular manner, such declarations should be viewed as binding.

#### Parallel declarations

Unilateral commitments are sometimes issued by the opposing parties along identical, or largely similar, lines. These parallel commitments tend to be issued when the parties are unwilling or unable to conclude a bilateral agreement on the subject. There is a long history of parallel unilateral declarations being issued. For example, during the conflict in the plebiscite of Upper Silesia in 1921, both parties agreed to an ICRC proposal to respect persons wearing an armband bearing the insignia of the ICRC and stamped by the relevant military authority.<sup>84</sup> The proposal was based on the 1906 Geneva (p. 115) Convention.<sup>85</sup> Both parties also expressed their willingness to assist the ICRC in its work. M Korfanty, of the Polish side, stated:

I the undersigned hereby declare myself prepared to allow the delegates of the International Committee of the Red Cross to visit without restriction all prison camps and to work according to the principles of the Red Cross.

They will also be allowed to help children, women and the elderly by giving them the aid and supplies necessary for their existence, under the responsibility of the International Committee.<sup>86</sup>

General Hoefler, of the German side, also issued a commitment:

On behalf of all the commands of the Selbstschutz of Upper Silesia, which are under my command, I am willing to facilitate in any way the implementation of the work of the members of the International Committee of the Red Cross ...

I will immediately give to all my subordinate commands the order to give the fullest assistance to all the people who will be incontestably recognised as representatives of the International Committee of the Red Cross.<sup>87</sup>

Some 15 years later, at the outset of the Spanish civil war, in 1936, the Spanish Government issued a statement which provided that:

[t]he Spanish Government, having received and heard Mr. Marcel Junod representing the International Red Cross, agrees to receive two delegations of the International Committee, delegations one of which will operate in Madrid and Barcelona, and the other in Burgos and Seville. Their mission will be to protect and create respect for the sign of the Red Cross by both parties and facilitate the humanitarian work of this institution.

The government looks favorably upon the creation of an information section for prisoners of war and civilians under the responsibility of the said delegations, and accepts the possibility of an exchange of some non-combatants amongst them, especially women and children.<sup>88</sup>

(p. 116) For its part, the Burgos National Defence Junta issued a statement which provided *inter alia* that:

[i]t stands ready to observe and respect, as it always has and as it still will at every moment, the Geneva Convention regarding the wounded, the sick and the prisoners of war.

Before considering the question of hostages and their exchange, it would like to state that it did not have recourse to this process that has not been applied to the military or civilian population, or to women and children, but on the other hand it had to deplore the loss of the most prominent and the most distinguished personalities of national and global life who were shot or murdered. However, inspired by the loftiest sentiments of humanity, it agrees that women, children and young people not liable to military service who express the desire can leave the area placed under its dependence to go abroad or the area of the government of Madrid, provided that the same permission is granted in the other camp for women, children and young people who in the same circumstances wish to go abroad or to the area of the government of Burgos.<sup>89</sup>

The content of other parallel commitments has been largely identical. For example, during the conflict in the Dominican Republic in 1965, both sides gave the ICRC delegate in the Dominican Republic an oral commitment to respect the Geneva Conventions.<sup>90</sup> Likewise, during the conflict in Lebanon in 1958, both parties committed to the ICRC to apply and respect common Article 3.<sup>91</sup> Along similar lines, during the conflict in the Yemen in the 1960s, both the Royalist side and the Republican side made a commitment to the ICRC delegates. Following a visit from the ICRC delegates, Mohamed El-Badr, freshly deposed and fighting against the Government that had taken power, wrote to the President of the ICRC indicating that:

[w]e take this opportunity to assure you that we greatly appreciate ... the humanitarian efforts of the International Red Cross organization and we also assure you that the principles of this organisation are the object of our esteem and respect. Accordingly, we have ordered our armed forces to respect these principles and everything related to them, leaving aside political issues.<sup>92</sup>

(p. 117) The principles in question apparently related to 'the essential humanitarian principles of the Geneva Conventions, concerning the treatment of the wounded and prisoners'.<sup>93</sup> The commitment was also broadcast by the Imam over the radio.<sup>94</sup> Following a separate meeting with different ICRC delegates, the new Government headed by Al-Moushir Abdullah El-Sallal indicated that:

[o]n behalf of the government of the Yemen Arab Republic, we declare: to respect the humanitarian principles enshrined in the Geneva Convention of 1949 regarding the Red Cross and the Red Crescent and we promise to respect their applications.<sup>95</sup>

More recently, in 1991, during the conflict in Croatia, the various parties stated that they:

undertake to respect and ensure respect of International Humanitarian Law and remind all Fighting Units of their obligation to apply the following fundamental principles:

- wounded and ill persons must be helped and protected in all circumstances,
- all arrested persons, and notably combatants who have surrendered, must be treated with humanity,
- all detaining authorities must ensure the protection of the prisoners,
- the civilian population and civilian property must not be attacked,

- the Red Cross emblem must be respected. It may be used only to designate sanitary troops or buildings as well as persons and vehicles belonging to this service,
- all Red Cross personnel and medical personnel assisting civilian populations and persons hors de combat must be granted the necessary freedom of movement to achieve their tasks,
- unconditional support for the action of the ICRC in favour of the victims

support unreservedly the humanitarian action of the Red Cross and in particular of the International Committee of the Red Cross (ICRC).<sup>96</sup>

During the conflict in Bosnia (1992–5), the parties likewise signed unilateral commitments that mirrored one another and which provided that:

all parties to the conflict are bound to comply with their obligations under International Humanitarian Law and in particular the Geneva Conventions of 1949 and the Additional Protocols thereto, and that persons who commit or order the commission of grave breaches are individually responsible.<sup>97</sup>

(p. 118) If, as indicated above, unilateral declarations issued by states on international humanitarian law during a non-international armed conflict are treated as binding,<sup>98</sup> so too must unilateral declarations of non-state armed groups be considered binding. The alternative is that the state would be bound but not the armed group; yet the state may well have issued its declaration on the condition that the non-state armed group would also do so. This may be done for reasons of equality of obligation and not wishing to place constraints on itself to which the opposing party would not also be subject. This is particularly important where the parties are agreeing to be bound by obligations to which they are not already bound, for example to the law of *international* armed conflict.

#### Declarations of national liberation movements

In the late 1970s and early 1980s, various national liberation movements committed to abiding by international humanitarian law. In 1981, the South West Africa People's Organization (SWAPO) declared that 'it intends to respect and be guided by the rules of the four Geneva Conventions of 12 August 1949 for the protection of the victims of armed conflicts and the 1977 additional Protocol relating to the protection of victims of international armed conflicts (Protocol I)'.<sup>99</sup> One year earlier, and along similar lines, the União Nacional para a Independência Total de Angola (UNITA) committed 'to the Geneva Conventions and ... to the fundamental rules of international law applicable in armed conflicts'.<sup>100</sup> The African National Council—Zimbabwe African People's Union (ANC-ZAPU) also undertook to apply the Geneva Conventions and Additional Protocol I,<sup>101</sup> while the Polisario Front of Western Sahara committed to respect the Geneva Conventions.<sup>102</sup> In 1989, the Palestine Liberation Organization (PLO) submitted a declaration to the depositary, which provided that 'the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto'. This purported accession was not accepted by the depositary. However, it noted that the PLO's 'unilateral declaration of application of the four Geneva Conventions and of the additional Protocol I made on 7 June 1982 ... remains valid'.<sup>103</sup>

#### Declarations of non-state armed groups

The vast majority of unilateral declarations that are issued in times of non-international armed conflict emanate from non-state armed groups. This is unsurprising given that states have the opportunity to demonstrate their consent to be bound by particular rules through ratification of treaties. Non-state armed groups cannot ratify treaties and thus, their acceptance of particular rules necessarily takes place in an ad hoc manner.

### ***Purported accession***

The strongest form of a unilateral declaration of an armed group is an attempt to accede to the Geneva Conventions or a related conventional instrument. On one occasion, a (p. 119) purported accession has succeeded, with the 1960 attempt of the Provisional Government of the Algerian Republic to the Geneva Conventions to accede being accepted by a number of states.<sup>104</sup> However, that was an exceptional instance and attempted accessions by non-state entities will usually be rejected. Prior to its accession, the Provisional Government and the Front de Libération Nationale (FLN) made a number of commitments to respect common Article 3 and the Geneva Conventions as a whole. For example, on 16 February 1956, a representative of the FLN in Paris assured the ICRC delegate that 'leaders of the [FLN] are doing whatever is in their power to respect and ensure respect for the fundamental rules of humanity'.<sup>105</sup> One week later, the FLN wrote to the ICRC indicating:

With reference to Article 2, paragraph 3 of the Geneva Convention, we are prepared to implement the provisions of this Convention to all French prisoners of war taken by the National Liberation Army, subject to reciprocity on the part of the government of the French Republic.<sup>106</sup>

The Provisional Government also set out a White Paper on the application of the Geneva Conventions to the armed conflict.<sup>107</sup>

### ***Declarations to the ICRC***

Of greater frequency than attempted accessions are commitments that are made to the ICRC. Numerous examples exist of non-state armed groups issuing unilateral declarations that accept international humanitarian law generally or the Geneva Conventions in particular. For example, during the Greek civil war, in 1945, the National Liberation Front (EAM) and Greek People's National Liberation Army (ELAS) committed to apply the 1929 Geneva Conventions.<sup>108</sup> During the conflict in Hungary in 1956, President Szigethy of the Gyor Committee gave a commitment to the ICRC delegate to apply the Geneva Conventions during the civil war. He also promised to issue an order to his troops in this regard.<sup>109</sup> However, the National Liberation Committee of Sopron refused to issue a similar commitment.<sup>110</sup> Decades later, the Hungarian Supreme Court would affirm the applicability of common Article 3 to the events of (p. 120) 1956.<sup>111</sup> In 1958, Fidel Castro, then Commander in Chief of an armed group fighting against the forces of Cuban President Batista, wrote to the ICRC indicating:

Let me be clear that ... all Laws of War are respected here and injured enemies treated with the greatest degree of humanity possible in the current battle conditions ...<sup>112</sup>

Castro reiterated his intention to apply the Geneva Conventions to captured fighters upon his victory.<sup>113</sup> Immediately prior to the attempted secession of Biafra from Nigeria (1967-70), the Biafran authorities assured the ICRC that it 'proposed to apply the Geneva Conventions in the event of a conflict'.<sup>114</sup> More recently, in 1994, the Rwandese Patriotic Front (RPF) committed to the ICRC to respect international humanitarian law.<sup>115</sup> The FMLN of El Salvador did likewise in 1985.<sup>116</sup>

Commitments to the ICRC are usually made orally to visiting delegates or in writing to ICRC Headquarters in Geneva. As such, it is unlikely that these commitments are made for propaganda purposes. This is not to suggest that they will inevitably be followed, given that they may be made for reputational reasons or as a result of political pressure. However, their sometimes private and confidential nature suggests that they are not issued in order to influence the international community, as demonstrated by the fact that many of the commitments are not well known and some of them are buried in the ICRC archives.

### **General declarations**

Commitments are not always addressed to the ICRC. They are sometimes addressed to UN bodies or to the Depositary of the Geneva Conventions. For example, in 1988, the LTTE of Sri Lanka committed to abide by the Geneva Conventions and Additional Protocols in a letter to the members of the forty-fourth session of the UN Commission on Human Rights. In the letter, the LTTE stated:

On this date we have transmitted our notice of acceptance of the Geneva Conventions I-IV of 1949 and the Protocols I and II to the Geneva Conventions to United Nations Headquarters and to the International Committee of the Red Cross.<sup>117</sup>

Just a few years later, in 1991, the National Democratic Front of the Philippines (NDFP):(p. 121)

formally declare[d] its adherence to international humanitarian law, especially Article 3 common to the Geneva Conventions as well as Protocol II additional to said conventions, in the conduct of the armed conflict in the Philippines.<sup>118</sup>

In 1996, it also committed to the Geneva Conventions and Additional Protocol I.<sup>119</sup> The commitments were made to the Swiss Government as depositary of the Geneva Conventions and Additional Protocols, as well as to the ICRC. They were also publicized relatively widely. For its part, in 1995, the Kurdistan Workers' Party (PKK) of Turkey made a commitment to the UN, in which it stated that:

[i]n its conflict with the Turkish state forces, the PKK undertakes to respect the Geneva Conventions of 1949 and the First Protocol of 1977 regarding the conduct of hostilities and the protection of the victims of war and to treat those obligations as having the force of law within its own forces and the areas within its control.<sup>120</sup>

Commitments may also be made to the public at large. For example, in 1995, and again in 2004, the Ejército de Liberación Nacional (ELN) of Colombia declared its respect for international humanitarian law, indicating that its conduct 'is inspired by the clear understanding that the rules of International Humanitarian Law are absolutely and universally applicable and binding'.<sup>121</sup> The Coordinadora Nacional Guerrillera, Simón Bolívar, issued a resolution in 1987 providing that:

[t]he struggle for the right to life. As guerrilla organisations we commit ourselves to respecting the *Ius Gentium*, the Geneva agreements and to making the military confrontation which today takes place in the country humane, and we ask the government and its army to equally respect the rules of international humanitarian law.

We reject the practices of torture, disappearances and undertake to offer treatment to captured enemies and to respect the civilian population and its property in military conflict.

We reject assassinations and threats against members of the UP, other political and social movements and important democratic figures who are directly responsible for State security agencies and the State's paramilitary machine, and believe that in order to stop this slaughter a mass public response must be fostered and perpetrators must be punished.<sup>122</sup>

(p. 122) In the conflicts in the former Yugoslavia in the late 1990s and early 2000s, the National Liberation Army (NLA) of the Former Yugoslav Republic of Macedonia stated that '[t]he General Staff and the entire UÇK respect and will always respect the Geneva Convention during their operations'.<sup>123</sup> The Kosovo Liberation Army (KLA) indicated that it 'has stated before and repeats that we have respected and continue to respect all international conventions of war and peace',<sup>124</sup> and that it 'recognizes and respects the international acts of the United Nations and the Conventions on war'.<sup>125</sup> In 1994, the Ejército Zapatista de Liberación Nacional (EZLN) of Mexico declared 'now and forever that we are subject to that which is stipulated by the Laws of War of the Geneva Conventions'.<sup>126</sup> A decade later, in 2004, the Communist Party of Nepal-Maoist (CPN-M) stated that '[o]ur Party has been committed to the fundamental norms of human right[s] and Geneva Convention [sic] since the historic initiation of the People's War'.<sup>127</sup> The Movimiento Revolucionario Tupac Amaru (MRTA) likewise indicated in 1996 that it 'has respected and will respect the Geneva Convention on internal conflicts'.<sup>128</sup>

Declarations of this sort have to be treated with a degree of caution. Some may be made for political and propaganda purposes. For example, the commitment of the LTTE was not followed on the ground. However, others may be made for genuine reasons. For example, the MRTA indicated that it issued its commitment in order to distinguish itself from the Sendero Luminoso, which was also involved in the conflict in Peru at the relevant time and which committed numerous atrocities.<sup>129</sup> Thus, as discussed above, each declaration needs to be treated on its own terms.

### ***Declarations on particular rules***

As an alternative, or in addition, to commitments to international humanitarian law generally, commitments are also made in respect of particular rules. For example, in 2008, JEM and the Sudan Liberation Movement-Unity (SLM-Unity), both of Darfur, committed to particular norms of international humanitarian law. They stated:

We will do our utmost to guarantee the protection of civilian populations in accordance with the principles of human rights and international humanitarian law. In collaboration with (p. 123) UNICEF, we will adopt measures ensuring protection of children in Darfur. We also affirm the principles of freedom of movement.

We reaffirm our commitment to refrain from targeting or forcibly displacing civilian populations, destroying civilian infrastructure, recruiting children for military operations, and to hold to account perpetrators of acts of rape and other forms of gender based violence. We recognize that placing military assets and personnel in close proximity to civilian areas increases the risk that civilians will be caught up in hostilities or even targeted. We will therefore continue our policy of maintaining a proper physical separation between our armed forces and the civilian population. We also continue to commit to curtailing the militarization of IDP/refugee camps.

We reaffirm our commitment to clearly instructing our personnel on the ground regarding their obligations under human rights and international humanitarian law.<sup>130</sup>

A year later, in 2009, the Houthi of Yemen stated:

[W]e would like to confirm again that ... in this imposed war we commit to the humanitarian international laws with regard to protecting civilians and dealing with the hostages and the neutral associations and entities like the international and aid organizations and media.<sup>131</sup>

Commitments of this sort are partial in nature given that they are made in respect of specific rules alone. However, the advantage of such commitments is that they are focused on particular issues arising during the conflict in question. Furthermore, commitments to international humanitarian law generally have the downside that the group in question may not fully appreciate all the obligations to which it has committed. The group may also not have the ability to comply with the various obligations that it is now required to follow. Thus, although more holistic commitments are perhaps of greater appeal to the international community, commitments to abide by particular rules may have a greater influence in practice.<sup>132</sup>

#### ***Declarations on human rights law***

Unilateral declarations of non-state armed groups may also contain commitments to respect human rights law. For example, the Ogaden National Liberation Front (ONLF) of Ethiopia stated that it 'confirms that we shall adhere to all relevant international agreements on human rights including the Universal Declaration on Human Rights'.<sup>133</sup> As part of its 2004 commitment on international humanitarian law, the CPN-M of Nepal also indicated that '[o]ur Party has been expressing its commitment not only on the Geneva Convention in relation to the war but also on the international declarations in relation to the human rights. And at the present concrete condition, we want to clarify that if there is a concrete proposal for us through the international human right convention, our approach will be positive on that'.<sup>134</sup> For its part, during the conflict in Sierra Leone, the RUF indicated that '[w]e affirm and uphold the principle of a responsible press freedom, in particular, and of Human Rights and fundamental freedoms for all without distinction as to race, sex, language, (p. 124) or religion, in general'.<sup>135</sup> As indicated above, the JEM and SLM-Unity of Sudan also provided that '[w]e will do our utmost to guarantee the protection of civilian populations in accordance with the principles of human rights and international humanitarian law'.<sup>136</sup>

Action plans concluded between armed groups and UN entities on the disarmament, demobilization, and reintegration of child soldiers are also important for the commitments they contain to abide by human rights law. For example, the 2009 Action Plan between the Moro Islamic Liberation Front (MILF) and the UN in the Philippines contains a clause:

Stressing acceptance and commitment of the Moro Islamic Liberation Front (MILF), to the obligations under International Humanitarian Law, International Human Rights Law, specifically the Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict, and relevant UN Security Council Resolutions ... to promote and protect the rights of the child and other relevant policies and agreements.<sup>137</sup>

Commitments to abide by human rights law are important given the uncertainty as to whether or not, and if so, to what degree, armed groups have human rights obligations.<sup>138</sup> If a group commits to be bound by international human rights law, that commitment may vest human rights obligations in the group in the same way as a commitment to abide by

international humanitarian law is treated as binding on the group.<sup>139</sup> However, the drawbacks of uncertainty of knowledge and capacity also arise.

In sum, unilateral declarations of both states and non-state armed groups may prove important. Although some declarations may be issued for propaganda purposes and with no intention of being followed, others may not be issued for such purposes, rather being issued with every intention of being followed. Sweeping generalizations cannot be made; each commitment will have to be assessed on its own terms. Many such declarations should also be considered binding as a matter of law.

### **3.2.2 Agreements**

Unilateral declarations are by no means the only form of ad hoc commitment that is issued in times of non-international armed conflict. Agreements are not infrequently concluded between states, non-state armed groups, and international organizations on issues of international humanitarian law. This should not come as a surprise given the existence of similar agreements dating back to at least 1820.<sup>140</sup> Common Article 3 also exhorts parties to conflicts to conclude agreements through which humanitarian law (p. 125) norms other than those contained in the Article are brought into force. This notion of a special agreement is thus a broad one and encompasses any agreement which brings into force additional humanitarian law norms. It includes agreements specifically designated as special agreements as well as more general agreements on human rights and humanitarian law. Peace agreements between states and armed groups also increasingly contain humanitarian law commitments.<sup>141</sup>

Agreements on international humanitarian law

The most well-known ad hoc international humanitarian law agreements are those concluded between the parties to the armed conflicts in Bosnia (1992-5) and Croatia (1991-5). The Memorandum of Understanding of 27 November 1991 relating to the conflict in Croatia provided that:

#### **(1) Wounded and sick**

All wounded and sick on land shall be treated in accordance with the provisions of the First Geneva Convention of 12 August 1949.

#### **(2) Wounded, sick and shipwrecked at sea**

All wounded, sick and shipwrecked at sea shall be treated in accordance with the provisions of the Second Geneva Convention of 12 August 1949.

#### **(3) Captured combatants**

Captured combatants shall enjoy the treatment provided for by the Third Geneva Convention of 12 August 1949.

#### **(4) Civilians in the power of the adverse party**

Civilians who are in the power of the adverse party and who are deprived of their liberty for reasons related to the armed conflict shall benefit from the rules relating to the treatment of internees laid down in the Fourth Geneva Convention of 12 August 1949 (Articles 79 to 149).

All civilians shall be treated in accordance with Articles 72 to 79 of Additional Protocol I.

## **(5) Protection of the civilian population against certain consequences of hostilities**

The civilian population is protected by Articles 13 to 26 of the Fourth Geneva Convention of 12 August 1949.

## **(6) Conduct of hostilities**

Hostilities shall be conducted in accordance with Article 35 to 42 and Articles 48 to 58 of Additional Protocol I, and the Protocol on Prohibition or Restrictions on the Use of Mines, Booby Traps and Other Devices annexed to the 1980 Weapons Convention.

## **(7) Establishment of protected zones**

The parties agree that for the establishment of protected zones, the annexed standard draft agreement shall be used as a basis for negotiations.

## **(8) Tracing of missing persons**

The parties agree to set up a Joint Commission to trace missing persons; the Joint Commission will be made up of representatives of the parties concerned, all Red Cross organizations concerned and in particular the Yugoslav Red Cross, the Croatian Red Cross and the Serbian Red Cross with ICRC participation.

## **(9) Assistance to the civilian population**

The parties shall allow the free passage of all consignments of medicines and medical supplies, essential foodstuffs and clothing which are destined exclusively for the other (p. 126) party's civilian population, it being understood that both parties are entitled to verify that the consignments are not diverted from their destination.

They shall consent to and cooperate with operations to provide the civilian population with exclusively humanitarian, impartial and nondiscriminatory assistance. All facilities will be given in particular to the ICRC.

## **(10) Red Cross emblem**

The parties undertake to comply with the rules relating to the use of the Red Cross emblem. In particular, they shall ensure that these rules are observed by all persons under their authority.

The parties shall repress any misuse of the emblem and any attack on persons or property under its protection.<sup>142</sup>

The Agreement of 22 May 1992 relating to the conflict in Bosnia contained similar provisions. It provided that '[t]he parties commit themselves to respect and to ensure respect for the Article 3 of the four Geneva Conventions of 12 August 1949'. It also noted specifically the common Article 3 clause pursuant to which 'the Parties agree to bring into force the following provisions':

## **2.1. Wounded, sick and shipwrecked**

The treatment provided to the wounded, sick and shipwrecked shall be in accordance with the provisions of the First and Second Geneva Conventions of 12 August 1949, in particular:

- All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.
- In all circumstances, they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

## **2.2. Protection of hospitals and other medical units**

Hospitals and other medical units, including medical transportation may in no circumstances be attacked, they shall at all times be respected and protected. They may not be used to shield combatants, military objectives or operations from attacks.

The protection shall not cease unless they are used to commit military acts. However, the protection may only cease after due warning and a reasonable time limit to cease military activities.

## **2.3. Civilian population**

The civilians and the civilian population are protected by Articles 13 to 34 of the Fourth Geneva Convention of 12 August 1949. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. They shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

All civilians shall be treated in accordance with Articles 72 to 79 of Additional Protocol I. Civilians who are in the power of an adverse party and who are deprived of their liberty for reasons related to the armed conflict shall benefit from the rules relating to the treatment of internees laid down in the Fourth Geneva Convention of 12 August 1949.

In the treatment of the civilian population there shall be no adverse distinction founded on race, religion or faith, or any other similar criteria.

(p. 127) The displacement of the civilian population shall not be ordered unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

The International Committee of the Red Cross (ICRC) shall have free access to civilians in all places, particularly in places of internment or detention, in order to fulfil its humanitarian mandate according to the Fourth Geneva Convention of 12 August 1949.

## **2.4. Captured combatants**

Captured combatants shall enjoy the treatment provided for by the Third Geneva Convention.

The International Committee of the Red Cross (ICRC) shall have free access to all captured combatants in order to fulfil its humanitarian mandate according to the Third Geneva Convention of 12 August 1949.

## **2.5. Conduct of hostilities**

Hostilities shall be conducted in the respect of the laws of armed conflict, particularly in accordance with Articles 35 to 42 and Articles 48 to 58 of Additional Protocol I, and the Protocol on the prohibition or Restriction on the Use of Mines, Booby Traps and other Devices annexed to the 1980 Weapons Convention. In order to promote the protection of the civilian population, combatants are obliged to distinguish themselves from the civilian population.

## **2.6. Assistance to the civilian population**

The Parties shall allow the free passage of all consignments of medicines and medical supplies, essential foodstuffs and clothing which are destined exclusively to the civilian population.

They shall consent to and cooperate with operations to provide the civilian population with exclusively humanitarian, impartial and non-discriminatory assistance. All facilities will be given in particular to the ICRC.

## **3. Red Cross Emblem**

The Red Cross emblem shall be respected. The Parties undertake to use the emblem only to identify medical units and personnel and to comply with the other rules of international humanitarian law relating to the use of the Red Cross emblem and shall repress any misuse of the emblem or attacks on persons or property under its protection.<sup>143</sup>

Another agreement was concluded the following day, relating to the exchange of lists of prisoners with a view to their release and the evacuation of certain persons.<sup>144</sup> A third agreement was concluded some weeks later and related to the activities of the ICRC in delivering humanitarian assistance to vulnerable groups, providing medical assistance, and accessing prisoners. It also contained the parties' agreement to provide security guarantees to the ICRC in order to enable it to carry out its work.<sup>145</sup>

Numerous other ad hoc agreements exist, including those concluded between the Government of Colombia and the Fuerzas Armadas Revolucionarias de Colombia (FARC) in 2001,<sup>146</sup> the Government of the Philippines and the MILF in 2002,<sup>147</sup> the Government of Uganda and the Lord's Resistance Army/Movement (LRA/M) in 2006,<sup>148</sup> the Government of Liberia and the National Patriotic Front of Liberia (p. 128) (NPFL) in 1993,<sup>149</sup> the Government of Sudan and the Eastern Sudan Front in 2006,<sup>150</sup> and the Government of Sudan, JEM, and SLM in 2004.<sup>151</sup> Thus, far from infrequently, states that are actually involved in non-international armed conflicts accept the applicability of a wide range of humanitarian law norms to the conflict in question. Two agreements, in particular, stand out. The 2002 Agreement on the Protection of Civilians and Civilian Facilities, concluded between the Government of Sudan and the Sudan People's Liberation Movement (SPLM), provides that:

[t]he Government of the Republic of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) (hereafter referred to as the 'Parties') reconfirm their obligations under international law, including common Article 3 of the 1949 Geneva Conventions, to take constant care to protect the civilian population, civilians and civilian objects against the dangers arising from military operations. In this context, the Parties specifically commit themselves:

- a) to refrain from targeting or intentionally attacking non-combatant civilians;
- b) to refrain from targeting or intentionally attacking civilian objects or facilities, such as schools, hospitals, religious premises, health and food distribution centers, or relief operations, or objects or facilities indispensable to the survival of the civilian population and of a civilian nature;
- c) to refrain from endangering the safety of civilians by intentionally using them as 'human shields' or by using civilian facilities such as hospitals or schools to shield otherwise lawful military targets; and
- d) to take all precautions feasible to avoid incidental loss of civilian life, injury to civilians, and danger to civilian objects.

Military operations include, but are not limited to, air attacks, artillery attacks, ground attacks, ambushes and intentional military activity or other uses of force that could result in the killing or injury of persons or damage or destruction of property.<sup>152</sup>

Along largely similar lines, the 2009 Agreement on the Civilian Protection Component of the International Monitoring Team, between the Government of the Philippines and the MILF provides that:

[t]he Parties reconfirm their obligations under humanitarian law and human rights law to take constant care to protect the civilian population and civilian properties against the dangers arising in armed conflict situations. In this context, the Parties commit themselves to:

- a) Refrain from intentionally targeting or attacking non-combatants, prevent suffering of the civilian population and avoid acts that would cause collateral damage to civilians;
- b) Refrain from targeting or intentionally attacking civilian properties or facilities such as schools, hospitals, religious premises, health and food distribution centers, or relief operations, or objects or facilities indispensable to the survival of the civilian population and of a civilian nature;
- (p. 129) c) Take all necessary actions to facilitate the provision of relief supplies to affected communities;
- d) Take all precautions feasible to avoid incidental loss of civilian life, injury to civilians, and danger to civilian objects;
- e) Ensure that all protective and relief actions shall be undertaken in a purely nondiscriminatory basis covering all affected communities.<sup>153</sup>

The similarities between the two agreements are evident.

## Agreements on international humanitarian law and human rights law

In addition to agreements on international humanitarian law, other agreements contain a mix of international humanitarian law and human rights law norms. For example, the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the Government of the Philippines and the NDFP contains a lengthy list of human rights and humanitarian law guarantees. Insofar as international humanitarian law is concerned, the Agreement provides that the following acts are prohibited:

### **Article 3**

1. violence to life and person, particularly killing or causing injury, being subjected to physical or mental torture, mutilation, corporal punishment, cruel or degrading treatment and all acts of violence and reprisals, including hostage-taking, and acts against the physical well-being, dignity, political convictions and other human rights;
2. holding anyone responsible for an act that she/he has not committed and punishing anyone without complying with all the requisites of due process;
3. ...
4. desecration of the remains of those who have died in the course of the armed conflict or while under detention, and breach of duty to tender immediately such remains to their families or to give them decent burial;
5. ...
6. ...
7. practices that cause or allow the forcible evacuations or forcible reconcentration of civilians, unless the security of the civilians involved or imperative military reasons so demand; the emergence and increase of internally displaced families and communities, and the destruction of the lives and property of the civilian population;

### **Article 4**

1. Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives, dignity, human rights, political convictions and their moral and physical integrity and shall be protected in all circumstances and treated humanely without any adverse distinction founded on race, color, faith, sex, birth, social standing or any other similar criteria.
  2. The wounded and the sick shall be collected and cared for by the party to the armed conflict which has them in its custody or responsibility.
- (p. 130) 3. Neutral persons or entities and medical personnel, including persons of humanitarian and/or medical organizations like the International Committee of the Red Cross (ICRC), shall be protected and respected. The establishments, facilities, transport and equipments of these persons, entities and organizations; objects bearing the emblem of the red cross and the flag of peaceful intention; and historic monuments, cultural objects and places of worship shall likewise be protected.

4. Civilian population and civilians shall be treated as such and shall be distinguished from combatants and, together with their property, shall not be the object of attack. They shall likewise be protected against indiscriminate aerial bombardment, strafing, artillery fire, mortar fire, arson, bulldozing and other similar forms of destroying lives and property, from the use of explosives as well as the stockpiling near or in their midst, and the use of chemical and biological weapons.
5. Civilians shall have the right to demand appropriate disciplinary actions against abuses arising from the failure of the Parties to the armed conflict to observe the principles and standards of international humanitarian law.
6. All persons deprived of their liberty for reasons related to the armed conflict shall be treated humanely, provided with adequate food and drinking water, and be afforded safeguards as regards to health and hygiene, and be confined in a secure place. Sufficient information shall be made available concerning persons who have been deprived of their liberty. On humanitarian or other reasonable grounds, such persons deprived of liberty shall be considered for safe release.
7. The ICRC and other humanitarian and/or medical entities shall be granted facilitation and assistance to enable them to care for the sick and the wounded and to undertake their humanitarian missions and activities.
8. Personnel and facilities of schools, the medical profession, religious institutions and places of worship, voluntary evacuation centers, programs and projects of relief and development shall not be the target of any attack. The persons of said entities shall be guaranteed their safety.
9. Every possible measure shall be taken, without delay, to search for and collect the wounded, sick and missing persons and to protect them from any harm and ill treatment, to ensure their adequate care and to search for the dead, prevent despoliation and mutilation and to dispose of them with respect.

...

## **Article 9**

Internally displaced families and communities shall have the right to return to their places of abode and livelihood, to demand all possible assistance necessary to restore them to their normal lives and to be indemnified for damages suffered due to injuries and loss of lives.

## **Article 10**

The Parties shall provide special attention to women and children to ensure their physical and moral integrity. Children shall not be allowed to take part in hostilities.

## **Article 11**

Medical, religious and other humanitarian organizations and their personnel shall not carry out other tasks inimical to any of the Parties. Neither shall they be compelled to carry out tasks which are not compatible with their humanitarian tasks. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of whoever is benefitting from such medical activities.

## **(p. 131) Article 12**

Civilian population shall have the right to be protected against the risks and dangers posed by the presence of military camps in urban centers and other protected areas.<sup>154</sup>

The 1990 Agreement on Human Rights between the Government of El Salvador and the FMLN, although containing human rights law norms alone, provides in its Preamble that:

for the purposes of the present political agreement, 'human rights' shall mean those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights *and humanitarian law* adopted by the United Nations and the Organization of American States.<sup>155</sup>

Likewise, the 1994 Comprehensive Agreement on Human Rights between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), although principally a human rights agreement, contains the provision that:

[u]ntil such time as the firm and lasting peace agreement is signed, both Parties recognize the need to put a stop to suffering of the civilian population and to respect the human rights of those wounded, captured and those who have remained out of combat.<sup>156</sup>

For its part, the 2002 Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF [Government of Philippines-Moro Islamic Liberation Front] Tripoli Agreement on Peace of 2001 contains a general commitment to international humanitarian law and international human rights law as well as commitments to specific norms.<sup>157</sup>

### Agreements on human rights law

Other agreements are of a broader sort but include commitments to respect human rights. These agreements are more numerous than the previous category and include agreements between the Government of Liberia, Liberians United for Reconciliation and Democracy (LURD), and Movement for Democracy in Liberia (MODEL) in 2003;<sup>158</sup> the Government of Nepal and the CPN-M in 2005;<sup>159</sup> the Government of Papua New Guinea and the relevant parties in 1997 and 1998;<sup>160</sup> and the Government of the Philippines and the MILF in 2009.<sup>161</sup> The language used in these agreements is of particular interest. The parties 'reiterate', 'reconfirm', and 'reaffirm' their obligations, all of which suggest that the relevant human rights obligations are not being created by the agreement but existed even prior to the conclusion of the agreement.

(p. 132) Still other agreements do not contain concrete commitments on the part of the relevant parties but recall human rights in their preambular provisions or condemn violations of human rights.<sup>162</sup> Nonetheless, some of these preambular references are considered by the parties to represent concrete commitments. For example, the Preamble to the 1996 Abidjan Peace Agreement between the Government of Sierra Leone and the RUF provided that the parties are '[c]ommitted to promoting ... full respect for human rights and humanitarian laws'.<sup>163</sup> The RUF later indicated that, in its view, this meant that both the Government and the RUF 'had committed themselves to the promotion of popular participation in government and full respect for human rights and humanitarian laws'.<sup>164</sup>

Commitments bringing into force international humanitarian law or international human rights law are also to be found in ceasefire or peace agreements. Such agreements include those concluded between the Government of Nepal and the CPN-M in 2006,<sup>165</sup> the Government of Burundi and the Palipehutu-FNL also in 2006,<sup>166</sup> the Government of Liberia

and LURD in 2003,<sup>167</sup> the Government of Uganda and the National Resistance Movement (NRM) in 1985,<sup>168</sup> the Government of Sri Lanka and the LTTE in 2002,<sup>169</sup> the Government of Sudan and the Eastern Sudan Front in 2006;<sup>170</sup> and the Government of Sudan, the SLM, and the JEM also in 2006.<sup>171</sup>

#### Other agreements

Agreements are also concluded between non-state armed groups and UN entities, or between non-state armed groups and non-governmental organizations that contain the group's commitment to international humanitarian law or international human rights law. For example, in the Agreement on Ground Rules relating to Operation Lifeline Sudan, the SPLM, the SPLM-Unity, and the South Sudan Independence Movement each:

express[ed] our support for the following international humanitarian conventions and their principles, namely: (i) Convention on the Rights of the Child 1989; (ii) Geneva Conventions of 1949 and the 1977 Protocols additional to the Geneva Conventions.<sup>172</sup>

In some cases, tripartite agreements are entered into by states, armed groups, and UN entities, such as the 2002 Memorandum of Understanding between the Government (p. 133) of Sudan, the SPLM, and the United Nations regarding UN Mine Action Support to Sudan.<sup>173</sup>

Agreements between armed groups may also prove instructive. For example, in the Acte d'Engagement concluded between various armed groups fighting in the DRC, a commitment is made to 'strict observation of the rules of international humanitarian law and human rights law'.<sup>174</sup>

Bilateral agreements concluded between the warring parties are particularly important given the equality of obligation that arises through the agreement. As with unilateral declarations, agreements can be broad and all-encompassing or concluded to address specific problems arising out of the conflict. They may also be used to bring into force rules that would otherwise be inapplicable to the conflict. The mere existence of an agreement will not suffice, as is evident from the numerous atrocities committed during the conflicts in the former Yugoslavia despite the existence of the Memorandum of Understanding of 27 November 1991 and the 22 May 1992 Agreement. However, at other times, the existence of an agreement will prove important. For example, the NDFP frequently refers to the CARHRIHL in the context of its activities.<sup>175</sup> Ultimately, as with unilateral declarations, the importance of an agreement or lack thereof has to be judged on an individual basis.

### **3.2.3 Instructions, codes of conduct, and internal regulations**

In addition to unilateral declarations and bilateral or trilateral agreements, during times of non-international armed conflict, states may issue ad hoc instructions or regulations to its armed forces on matters of international humanitarian law. For example, in 1967, during the attempted secession of Biafra, the Federal Government of Nigeria issued an Operational Code of Conduct, which provided in relevant part:

I direct all officers and men to observe strictly the following rules during operations (These instructions must be read in conjunction with the Geneva Convention):

- a. Under no circumstances should pregnant women be illtreated or killed.
- b. Children must not be molested or killed. They will be protected and cared for.

- c. Youths and school children may not be attacked unless they are engaged in open hostility against Federal Government Forces. They should be given all protection and care.
  - d. Hospitals, hospital staff and patients should not be tampered with or molested.
  - e. Soldiers who surrender will not be killed. They are to be disarmed and treated as prisoners of war. They are entitled in all circumstances to humane treatment and respect for their person and their honour.
  - f. No property, building, etc, will be destroyed maliciously.
  - g. Churches and Mosques must not be desecrated.
  - h. No looting of any kind. (A good soldier will never loot).
  - i. Women will be protected against any attack on their person, honour and in particular against rape or any form of indecent assault.
  - j. Male civilians who are hostile to the Federal Forces are to be dealt with firmly but fairly. They must be humanely treated.
  - k. All military and civilians wounded will be given necessary medical attention and care. They must be respected and protected in all circumstances.
- (p. 134) l. Foreign nationals on legitimate business will not be molested, but mercenaries will not be spared: they are the worst of enemies. <sup>176</sup>

The Federal Government had previously assured the ICRC that it 'proposed to apply the Geneva Conventions in the event of a conflict'.<sup>177</sup>

Non-state armed groups also issue instructions, codes of conduct, and regulations to their members. These materials regulate the behaviour of members of the group in their relations with other members and with persons external to the group. They do not relate solely to issues of international humanitarian law; indeed, some codes and regulations do not relate to the law of armed conflict at all.<sup>178</sup> Others do so implicitly, containing rules that have an equivalent in the law of armed conflict.

Perhaps the classic codes of conduct are those of the Chinese People's Liberation Army (CPLA), with its 'Three Main Rules of Discipline' and 'Eight Points of Attention', reissued in 1947.<sup>179</sup> The Three Main Rules of Discipline provided:

- (1) Obey orders in all your actions
- (2) Do not take a single needle or piece of thread from the masses
- (3) Turn in everything captured.

The Eight Points for Attention provided:

- (1) Speak politely
- (2) Pay fairly for what you buy
- (3) Return everything you borrow
- (4) Pay for anything you damage
- (5) Do not hit or swear at people

- (6) Do not damage crops
- (7) Do not take liberties with women
- (8) Do not ill-treat captives.

These codes have since been adopted by a variety of groups, including the RUF of Sierra Leone;<sup>180</sup> the New People's Army (NPA), the armed wing of the NDFP;<sup>181</sup> and the National Resistance Army (NRA) of Uganda.<sup>182</sup>

A variety of other groups have or had codes of conduct or internal regulations with a humanitarian component. For example, the 'Ten Commandments' of 1954 of the (Algerian) Armée de Libération Nationale, which fought for independence from France, included the rule: 'to comply with the principles of Islam and international law in the destruction of enemy forces.'<sup>183</sup> The Sendero Luminoso had a code of (p. 135) conduct which included the instructions: 'Do not steal', 'Return what you borrow', 'Do not mistreat prisoners', and 'respect the property of farmers.'<sup>184</sup> The Military Code of Conduct of the Mouvement pour la Libération du Congo (MLC) of the Central African Republic reportedly provided for 'the protection of civilians and respect for human rights and international humanitarian law in all circumstances'.<sup>185</sup> The KLA indicated in 1998 that:

[f]rom the start, we had our own internal rules for our operation. These clearly lay down that the UCK recognizes the Geneva Convention and the conventions governing the conduct of war, even though it has not been offered the chance of signing them, as it would have done.<sup>186</sup>

For its part, JEM of Darfur's Army Penal Code provides that 'international Human Rights and Geneva Conventions and its Protocols have supremacy over JEM laws'.<sup>187</sup> The SPLM committed internally to respecting the Convention on Certain Conventional Weapons,<sup>188</sup> while its 1984 Penal and Disciplinary Rules provided that '[t]he SPLA as an organised and disciplined Army, shall observe and be bound by internationally recognized humanitarian standards for the conduct of warfare'.<sup>189</sup> The Chin National Front (CNF) of Burma has a lengthy code of conduct, which is based on the Geneva Conventions.<sup>190</sup>

In 1996, the ELN of Colombia set out certain rules to be followed by its fighters:

1. In times of war, [the ELN] will work to reduce to the maximum unnecessary human sacrifice and suffering by the enemy; this is because combatants will limit their actions to complete only the mission they have been entrusted with; and at all times, they will respect the combatant's ethical code, specifically the rules of behavior of the International Committee of the Red Cross.
2. [The ELN] will give humanitarian treatment to enemies who have surrendered or been wounded in combat and will respect their dignity and provide them with the aid necessary for their condition.
3. Within our ranks, we will not permit or tolerate abuses against the population; they are our reason for being and our relationship with them should be above reproach.
4. Our revolutionary ethic obligates us to be rigorous in avoiding military actions that can harm civilians and our people. This is the essence of our ethics and behavior.

5. It is important to underscore that during armed conflict there are unforeseen circumstances and critical situations that can overcome the best intentions. But we, the ELN, are willing to discuss attitudes that, after appropriate analysis, may be punishable if (p. 136) they merit such action, in accordance with our rules of conduct and internal regulations. <sup>191</sup>

The 1995 Código de Guerra of the ELN contains norms of greater specificity:

#### Respect for the civilian population

- During combat civilians shall not be taken as human shields, that is to say no hostages shall be taken.
- Where the enemy carries civilians as hostages in its movements, efforts shall be made not to harm these in our attacks on enemy forces.
- Military operations shall be carried out selectively on enemy targets, avoiding indiscriminate range of its impact.
- Damage related to civilian property and facilities is to be avoided and reparations offered where possible.
- The civilian population shall be informed of mined areas.
- No actions shall be carried out for the sole purpose of intimidating the population.
- The civilian population shall not be forcibly displaced from combat zones.
- Nobody under the age of 15 shall be incorporated into the permanent military forces; they may join other revolutionary ranks not involved in active hostilities.
- Those who participate in paramilitary groups and their property shall no longer be considered civilians or civilian property.
- The organisation makes political arrests in order to raise awareness of its political proposals ensuring that detainees are treated with respect and informing their next of kin of their situation.

#### Limits to the methods and means of warfare

- When carrying out acts of sabotage, no facilities which are of greater use to the community than to the enemy shall be hit.
- In acts of sabotage every effort shall be made to minimise damage to the environment.
- No religious facilities, cultural heritage or infrastructure containing dangerous forces such as water dams or nuclear material shall be attacked.
- No toxic gases shall be used nor water poisoned.
- In combat zones vehicles and facilities marked with the Red Cross symbol shall be respected. The use of this symbol by our troops to mislead the enemy is prohibited.
- The force's commanding officers shall prevent plundering and pillage. Once enemy positions have surrendered they shall arrange recovery of any goods that the force may require.

### Treating prisoners with dignity

- Killing or injuring an adversary who has surrendered or is out of action is prohibited.
- Prisoners of war shall be treated humanely and receive medical care. Their possessions shall be seized temporarily.
- The number and names of the captured shall be published.
- The handover of prisoners to the Red Cross shall be sought after a short period of captivity.
- Mercenaries and spies shall not benefit from the entitlements guaranteed to prisoners of war.<sup>192</sup>

(p. 137)

For its part, the FARC has explicitly noted that, while it does not use 'technical terms of International Humanitarian Law ... some of its documents establish rules which seek to protect the civilian population from the conflict, establishing criteria which mirror the basic principles of Humanitarian Law, such as the distinction between combatant and non-combatant and the immunity of the civilian population'.<sup>193</sup> One such document is its 'Normas de comportamiento con las masas', which provides:

1. Our everyday behaviour and the plans we pursue must be derived from the interests of the people.
  2. We must respect the ideas and political, philosophical and religious attitudes of the population and particularly the culture and autonomy of indigenous communities and other ethnic minorities.
  3. We must not prevent the exercise of the [right to] vote, nor force people to vote.
  4. In planning and implementing politico-military work and in our everyday movements the security of working people, of their homes and their property must be taken into consideration.
- (p. 138)
5. We must respect the various steps which our supporters take to keep secret their relationship with us.
  6. Internal discipline and work with the masses must prioritise care for innocent and/or friendly people in order that our wrongdoing or omissions do not play into the hands of terrorism and the official army and its paramilitaries' hatred.
  7. Wherever and whenever the masses are attacked by the official army or by paramilitaries, with bombardments or destruction of their property, we must proactively denounce and fight these terrorist activities, so that the people feel supported by us.
  8. Any kind of abuse or killing proven to have been committed against the population will be considered a criminal offence.
  9. We must not impose things on the masses. We must ensure that they regard our arms as theirs.

10. Complaints from the community about aggressions by combatants or other persons must be investigated exhaustively, relying on the judgment of the community.
  11. Chiefs and combatants must study and follow the Rules of International Humanitarian Law where appropriate for the conditions of our revolutionary war.
  12. Should it be necessary to detain any member or supporter of a sister organisation for an alleged or proven breach, the case and where possible the individual must be handed over to that organisation.
  13. In any event our most basic principle is respect for the right to life.
  14. Chiefs and combatants should remember that executions may only be carried out for very serious offences by the enemies of the people and only with express authorisation for each individual case from the appropriate higher levels of command of each organisation. In all cases the evidence has to be reviewed and decisions have to be taken collectively. Senior officers must make a record detailing the evidence.
  15. Alcoholism, drug addiction, theft and dishonesty are counter-revolutionary vices which damage public confidence in us.
  16. We must avoid abusing people's confidence and generosity, and not demand goods for personal use. <sup>194</sup>
- (p. 139)

The internal regulations of the MRTA also contained humanitarian norms, including: '[e]very combatant must duly hand over to his command any enemy taken prisoner without subjecting them to mistreatment or allowing them to be abused by other guerrilla fighters' and '[c]ombatants are not to establish unauthorized contact with the population. Much less must they use, steal or damage their property, nor attack the population's traditions, customs, morals or way of life.'<sup>195</sup> Another set of examples are the various Codes of Conduct of the Taliban of Afghanistan, the most recent version of which was issued in 2010, and which contained norms that also violate international humanitarian law.<sup>196</sup>

Internal codes and regulations are particularly important as they are intended primarily for internal consumption. Although they may become publicly available, the primary audience is the members of the group themselves. Some groups also publicize certain regulations to local communities in order to encourage reporting of breaches, thus strengthening the superior's control over lower-ranking individuals.<sup>197</sup> Given that codes and regulations are intended to be internal to the group, they may well amount to group policy rather than law. Despite this, they remain important given that even policy can bolster or be contrary to international law. Accordingly, internal measures can illustrate the extent to which certain norms are accepted by the group in question. Insofar as codes and regulations of states are concerned, they have also been used as examples of state practice to determine the existence of customary rules.

### **3.2.4 Legislation**

During times of non-international armed conflict, states may issue domestic legislation on matters of international humanitarian law. For example, in 1918, following the Russian revolution and during the civil war, the Council of People's Commissars issued (p. 140) a decree on the applicability of the 1864 Geneva Convention.<sup>198</sup> During the Hungarian revolution of 1919, the People's Commissar issued a decree, which provided that '[e]verything must be done to enable the International Red Cross to perform its humanitarian duties without let or hindrance in the territory of the Hungarian Soviet

Republic, for only thus will it be able to afford assistance to the wounded, sick and prisoners of war'.<sup>199</sup> A second decree proclaimed the 'absolute equality of treatment of the wounded of all nationalities and ... the duty of doctors sent to the theatre of war, to treat enemy soldiers as nationals',<sup>200</sup> while a third decree provided that:

[a]nyone, but especially the military and political authorities, must grant to the Society of the Hungarian Red Cross, to all its institutions, bodies, and staff, treatment in accordance with its neutrality, ensure its effective protection due to its neutrality and support its work.<sup>201</sup>

Together, the various decrees reflected elements of the 1864 Geneva Convention and the Recommendations adopted at the 1863 Conference.

Just as states enact legislation, so too do non-state armed groups. The state in which the conflict is taking place will likely challenge the characterization of the materials as 'legislation' and will contest its binding nature. Nonetheless, for the armed group and for individuals living in territory under armed group control, the legislation will prove important. Legislation is enacted particularly by armed groups that exercise control over territory or which constitute *de facto* states.<sup>202</sup> Such groups tend to have detailed penal codes that apply to the territory under their control.<sup>203</sup> Other groups enact constitutions or issue other sorts of legislation.<sup>204</sup> As with codes of conduct, much of this material fails to refer to the law of armed conflict by name, but they relate to concepts that are the subject of that law. Other legislation does refer to matters of the law of armed conflict by name or concerns human rights issues or the protection of displaced persons.<sup>205</sup> Legislation differs from codes of conduct and internal regulations in that it is enacted in order to regulate the conduct of persons residing in the area in question, rather than governing the behaviour of members of the armed group alone.

As with internal codes and regulations, legislation of states and armed groups amounts to practice of the state and the group. Thus, it, too, demonstrates the extent to which particular humanitarian norms are accepted.

### **(p. 141) 3.2.5 Other important materials**

Three further categories of materials are important, even though they do not always consist of commitments in the legal sense of the term. These materials give an indication of the views of armed groups on the law and may set out the group's position on a particular point. Accordingly, they may prove useful.

#### Responses to reports of fact-finding missions

States and non-state armed groups sometimes respond to reports of UN special rapporteurs or reports of human rights organizations, challenging particular facts or interpretations of the law.<sup>206</sup> Given that states are encouraged to engage in such dialogue,<sup>207</sup> non-state armed groups should also be encouraged to enter into a conversation with the relevant body, particularly where the response does not take the form of an outright and unreasoned denial.

#### Press releases and other ad hoc statements

Non-state armed groups have also entered the information age, maintaining websites and even twitter accounts. Websites of armed groups often contain press releases and other statements setting out the group's position on various international humanitarian law issues. Statements may also be issued through other organizations.<sup>208</sup> Some statements are of considerable detail and rather lengthy.<sup>209</sup>

Some statements describe the practice of the relevant party and come very close to, if not actually constituting, a formal commitment. For example, during the violence in Ireland in 1922, the Irish Republican Government stated that the Irish Republican Army (IRA) ‘grants to the enemy, as the army of the Britannic Kingdom, the benefit of the customs and laws of war’.<sup>210</sup> During the civil war in Greece (1946–9), the Provisional Democratic Government sent a lengthy letter to the ICRC indicating the humanitarian measures it had taken. It is worth quoting from the letter in part:

During this war, the duty of each belligerent side is to respect certain principles of humanity ...

We will quote some examples which show the dedication of the Democratic Army to the institutions of justice and humanity. The soldiers of the traitorous army of Athens, taken prisoner by the Democratic Army, are released. Thus far thousands of combatants have been released and (p. 142) even officers of the monarcho-fascist military units. Their wounded find in our care such treatment and aid that we sometimes cannot give to our wounded because of lack of resources ...<sup>211</sup>

More recently, in 2011, during the violence in Libya, the Interim Transitional National Council declared that it ‘would like to reiterate that its policies strictly adhere to the “Geneva Convention relative to the treatment of Prisoners of War”’,<sup>212</sup> which may perhaps be taken to reflect an actual commitment to abide by the Third Geneva Convention.<sup>213</sup> Along similar lines, in 1988, the FMLN of El Salvador stated that it ‘endeavors to assure that its methods of struggle comply with the stipulations of Article 3 Common of [sic] the Geneva Conventions and Additional Protocol II’.<sup>214</sup> This too may perhaps be taken to reflect an actual commitment to abide by common Article 3 and Additional Protocol II.

Similar considerations arise in respect of statements on human rights law. For example, a 1999 communiqué of the General Staff of the KLA provided that, ‘[i]t is a duty and an obligation for all the KLA effective to respect the human rights and the international conventions that regulate them even in peace time’.<sup>215</sup> The SPLM stated that ‘[t]he Movement stands in support and respect of international Conventions on human rights and similar international protocols on human rights’ and ‘[t]he Movement shall adhere to and respect internationally accepted norms and standards of human rights and shall protect and respect the rights and civil liberties of all persons resident in the New Sudan without prejudice based on race, tribe, religion or gender’.<sup>216</sup> A 2000 declaration of the Revolutionary Workers’ Party of the Philippines/Revolutionary Proletarian Army-Alex Boncayao Brigade (RPM-P/RPA-ABB) read, ‘[w]e believe that while we are fighting to achieve full human development and social progress, we must respect the lives of the people and of nature—uphold and promote human rights, and protect the environment’.<sup>217</sup>

#### Expressions of motivations for taking up arms

Upon the outbreak of violence, the putative armed group frequently sets out the reasons why it has taken up arms. These explanations may also prove useful as giving an insight into the group, assuming that such statements are not issued for purely (p. 143) political reasons.<sup>218</sup> Not infrequently, among the reasons that are given are that human rights violations are taking place in the state in question as is ongoing discrimination, as was the case with a 1990 statement of Charles Taylor’s NPFL.<sup>219</sup> Accordingly, following on from these explanations, it is not at all unusual for armed groups to state that the future state will respect human rights and international law. For example, during the 2011 violence in Libya, the National Transitional Council (NTC) issued a statement in which it provided that:

[t]he interim national council will be guided by the following in our continuing march to freedom, through espousing the principles of political democracy. We recognise without reservation our obligation to:

...

8. Build a democratic Libya whose international and regional relationships will be based upon:

a. ...

b. A state which will uphold the values of international justice, citizenship, the respect of international humanitarian law and human rights declarations, as well as condemning authoritarian and despotic regimes. The interests and rights of foreign nationals and companies will be protected. Immigration, residency and citizenship will be managed by government institutions, respecting the principles and rights of political asylum and public liberties.<sup>220</sup>

The NTC also requested from an expatriate group of Libyan lawyers advice on the applicable law of armed conflict as it did not want to 'act like Qadhafi and his forces'.<sup>221</sup>

More recently, the 1999 Statute of the MLC provided that '[t]he MLC is a political-military movement aimed at the overthrow of the dictatorial regime in order to establish a democratic state based on free and fair elections in accordance with human rights and individual freedoms'.<sup>222</sup>

These expressions of motivations constitute important 'hooks' on which to engage the armed group. For example, if an armed group commits violations of the law, it could usefully be reminded of the reason why it is fighting, namely to stand up against violations in the first place. Furthermore, a declaration on point on the part of the NTC of Libya was used by the UN International Commission of Inquiry to support its conclusion that in certain situations the Council was bound by international human rights law.<sup>223</sup>

### 3.3 Non-exhaustive list of commitments

Table 4.1 illustrates the very many armed conflicts in which the applicability of the law of non-international armed conflict has been recognized, either by the state, the non-state armed group, or both parties to the conflict.<sup>224</sup>

**Table 4.1 List of commitments**

Conflict	Party	Form of commitment	Substance of commitment
Afghanistan (1979-89)	USSR-backed Government	Parallel commitments	Agreement on the transfer and Internment in a neutral country of Soviet soldiers detained by Afghan opposition movements
		Commitment to ICRC	Geneva Conventions
	Mujahadeen	Parallel commitments	Agreement on the transfer and internment in a neutral country of

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
Afghanistan (post-2001)	Government		Soviet soldiers detained by Afghan opposition movements
	Taliban	Code of conduct	Equivalent to certain norms. Also contrary to certain norms
Algerian war of independence, 1954-62 (France)	France	Communiqué	Common Article 3
	FLN/Provisional Government	Unilateral declaration	Geneva Conventions
		Accession to Geneva Conventions	Geneva Conventions
Angola (war of independence, 1961-75)	Government		Equivalent to certain norms
	UNITA	Unilateral declaration	Geneva Conventions; fundamental rules of international law applicable in armed conflicts
Bosnia (1992-5)	Various parties	Ad hoc agreements	Geneva Conventions and listed rules; prisoner exchange; humanitarian assistance
		Parallel unilateral declarations	International humanitarian law
Burundi (1993-2005)	Government	Ceasefire agreement	Specific norms
	FNL	Ceasefire agreement	Specific norms
China (1946-9)	Government		
	CPLA	Internal regulations	Equivalent to certain norms
Colombia (war of independence, 1820)	Briceño Méndez forces	Bilateral agreement	Specific norms
	Bolívar forces	Proclamation to troops	Law of war
Colombia (1860-1)	Confederación Granadina	Bilateral agreements	Specific norms
	Forces of Cipriano de Mosquera	Bilateral agreements	Specific norms

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
Colombia (1964–ongoing)	Government	Court judgment	Additional Protocol II
		Government recognition	Common Article 3; Additional Protocol II
		Bilateral agreement with FARC	Humanitarian exchange
	ELN	Unilateral declaration	International humanitarian law
		Internal regulations	Specific norms
	FARC	Internal regulations	Specific norms
Bilateral agreement with Government		Humanitarian exchange	
Croatia (1991–5)	Various parties	Unilateral declaration	International humanitarian law
		Memorandum of Understanding	Geneva Conventions and listed rules
		Instructions to troops	International humanitarian law
		Bilateral agreements	Protected zones; prisoner exchanges
Cuba (1958–9)	Government		
	Rebels (led by Castro)	Commitment to ICRC	Laws of war
		Request to ICRC	Collection of wounded
		Declaration by Castro to Government forces	Surrender; humane treatment; protection
Dominican Republic (1965)	Junta	Parallel oral commitments to ICRC	Geneva Conventions
	Forces of General Imbert	Truce	Collection of wounded and dead
DRC (Katanga, 1960–2)	Government	Letter to Depositary	Confirmation of party status to Geneva Conventions

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
DRC (1964)	Katangan authorities		
	Government	Letter to ICRC Public statement	Geneva Conventions Geneva Conventions
DRC (2000s)	Armed group		
	Government		
	MLC	Internal regulations	International humanitarian law; International human rights law
El Salvador (1980-91)	Various groups	Ad hoc agreement	International humanitarian law; International human rights law
	Government	Bilateral agreement	Human rights and international humanitarian law
	FMLN	Unilateral declaration	Common Article 3; Additional Protocol II
		Unilateral declaration	Specific norms
Ethiopia (1994-ongoing)		Bilateral agreement	Human rights and international humanitarian law
	Government		
	ONLF	Statement	International agreements on human rights
Former Yugoslav Republic of Macedonia (2001)	Government		
	NLA	Unilateral declaration	Geneva Convention
Greece (1946-9)		Internal regulations	Geneva Convention
	Government		
Guatemala (1954)	ELM/ELAS	Oral assurance to ICRC	Geneva Conventions
	Government	Request to ICRC	ICRC intervention
Guatemala (1982-95)	Armed group	Commitment to ICRC	Request for assistance
	Government	Bilateral agreement	International human rights law

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
	URNG	Bilateral agreement	International human rights law
Hungary (1919)	People's Commissar	Decrees	ICRC to carry out its mandate; neutrality of Hungarian Red Cross; respect for wounded
Hungary (1956)	Government	Agreement with ICRC and Hungarian Red Cross	Distribution of relief; recognition of traditional ICRC activities
	Gyor Committee	Oral commitment to ICRC	Geneva Conventions
Indonesia (1975-2006)	Government	Memorandum of Understanding	Human rights
	GAM	Memorandum of Understanding	Human rights
Ireland (1922-3)	Government		
	IRA	Statement to ICRC	Apply laws of war to enemy forces
Lebanon (1958)	Government	Commitment to ICRC	Respect for common Article 3
	Armed group	Commitment to ICRC	Respect for common Article 3
Liberia (2002-3)	Government	Ceasefire agreement	Human rights
	LURD	Peace agreement	International humanitarian law
Liberia (1989-96)	Government	Peace agreement	Specific norms
	NPFL	Peace agreement	Specific norms
Libya (2011)	Government		
	Interim Transitional National Council	Unilateral declarations	Geneva Convention relative to Treatment of Prisoners of War; prohibition on anti-personnel mines
Mexico (1994)	Government		
	EZLN	Unilateral declaration	Laws of war
		Internal regulations	Women's rights
Myanmar/Burma (2000s)	Government		

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
	KNPP/KNA	Unilateral declarations	Child soldiers Anti-personnel mines
	KNU/KNLA	Unilateral declarations	Child soldiers Anti-personnel mines
	CNF	Code of conduct	Specific norms
Namibia (1966-88)	Government of South Africa		
	SWAPO	Unilateral declaration	Geneva Conventions and Additional Protocol I
Nepal (1996-2006)	Government	Ceasefire agreement	Specific norms
		Action plan with UN	Child soldiers
	CPN-M	Ceasefire agreement	Specific norms
		Unilateral declaration	Human rights; Geneva Conventions
		Action plan with UN	Child soldiers
Nicaragua (1979-90)	Government		
	Contras	Commitment to ICRC	Observe and apply international humanitarian law
Nigeria (1967-70)	Government	Instructions for armed forces	Geneva Conventions and listed norms
		Commitment to ICRC	Geneva Conventions
	Biafra	Commitment to ICRC	Geneva Conventions
Peru (1980-99)	Government		
	Sendero Luminoso	Internal regulations	Equivalent to certain norms
Peru (1984-96)	Government		
	MRTA	Unilateral declarations	Geneva Convention on internal conflicts

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
Philippines (1969-96)	Government		
	MNLF	Unilateral declaration	
Philippines (1973-ongoing)	Government	Acceptance of applicability	Additional Protocol II
		Bilateral agreement	International humanitarian law and international human rights law
	NDFP	Unilateral declaration	International humanitarian law 'especially Article 3 common to the Geneva Conventions as well as Protocol II additional to said conventions'
		Unilateral declaration	Geneva Conventions and Additional Protocol I
		Bilateral agreement	International humanitarian law and international human rights law
Philippines (1976-ongoing)		Internal regulations	Equivalent to certain norms
	Government	Bilateral agreements	International humanitarian law and international human rights law; listed norms
	MILF	Bilateral agreements	International humanitarian law and international human rights law; listed norms
		Action plan with UN	Child soldiers
Poland (1863-4)	Government		
	Armed group	Instructions	Treatment of wounded and sick
Russian revolution and civil war (1917-20)	Council of People's Commissars	Commitment to ICRC	Geneva Convention
		Decree	Geneva Convention
		Orders	Treatment of prisoners
Russia (first Chechen conflict, 1994-6)	Government	Court judgment	Additional Protocol II
	Chechen groups		
Rwanda (1990-4)	Government		
	RPF	Commitment to ICRC	International humanitarian law

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
Rwanda/DRC (1994-ongoing)	Government		
	FDLR		
Serbia (Kosovo 1998-9)	Serbia		
	KLA	Unilateral declaration	International humanitarian law
		Internal regulations	International humanitarian law and international human rights law
Sierra Leone (1991-2002)	Government	Peace agreement	International humanitarian law
	RUF	Peace agreement	International humanitarian law
		Statement	International humanitarian law (through peace agreement)
		Statement	International human rights law
		Code of conduct	Equivalent to certain norms
Somalia (1979)	Government		
	ABBO Liberation Front	Commitment to ICRC	Humanitarian principles of Geneva Conventions
Spain (1936-9)	Government	Unilateral declaration	Respect for the emblem, creation of prisoner information bureau
	Franco forces	Unilateral declaration	Application of 1929 Geneva Conventions
Sri Lanka (1983-2009)	Government	Ceasefire agreement	Specific norms
Sri Lanka (1983-2009)		LTTE	Specific norms
		Unilateral declarations	Geneva Conventions and Additional Protocols
		Child Protection Act	Child soldiers
Sudan (1983-2005)	Government	Bilateral agreement	Specific norms
	SPLM/A	Bilateral agreement	Specific norms

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
		Trilateral agreement (Government, SPLM, UN)	Mine action
		Ground Rules (Operation Lifeline Sudan)	Convention on the Rights of the Child; Geneva Conventions; Additional Protocols
		Internal regulations	International humanitarian law; Convention on Certain Conventional Weapons; human rights
		Action plan with UN	Child soldiers
Sudan (2005-6)	Government	Bilateral agreement	Specific norms
	ESF	Bilateral agreement	Specific norms
Sudan (2003-ongoing)	Government	Bilateral agreements	Specific norms
	JEM	Bilateral agreements	Specific norms
		Memorandum of Understanding with UNICEF	Child soldiers
		Unilateral declaration	Specific norms
		Army Penal Code	Human rights; Geneva Conventions
	SLM/A	Various bilateral agreements	Specific norms
		Unilateral declaration	Specific norms
Switzerland (1847)	Government	Instructions to troops	Specific norms
	Sonderbund		
Tajikistan (1992-7)	Government	Instructions to troops	International humanitarian law
Turkey (1984-ongoing)	Government		
	PKK	Unilateral declaration	Geneva Conventions; Additional Protocol I
Uganda (1981-6)	Government	Peace agreement	Common Article 3

<b>Conflict</b>	<b>Party</b>	<b>Form of commitment</b>	<b>Substance of commitment</b>
	NRM	Peace agreement	Common Article 3
		Internal regulations	Equivalent to certain norms
Uganda (1988-ongoing)	Government	Cessation of hostilities agreement	Specific norms
	LRA		
United States (1776)	Great Britain	Exchange of letters	Laws of war
	United States	Exchange of letters	Laws of war
United States civil war (1861-5)	Union forces	Internal regulation (Lieber Code)	Specific norms
	Confederates		
Upper Silesia (1921)	Polish armed groups (in territory of Upper Silesia)	Commitment to ICRC	ICRC to carry out its work; respect persons wearing Red Cross armband
	German armed groups (in territory of Upper Silesia)	Commitment to ICRC	ICRC to carry out its work; respect persons wearing Red Cross armband
Yemen (1962-7)	Government	Commitment to ICRC	Geneva Conventions
	Royalists	Commitment to ICRC	Humanitarian principles of Geneva Conventions concerning the treatment of wounded and prisoners
Yemen (2004-ongoing)	Government		
	Houthi	Letter to Human Rights Watch	International humanitarian law
			Guiding Principles on Internal Displacement
Western Sahara (1975-89)	Polisario	Unilateral declaration	Geneva Conventions

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## **(p. 152) 4. Conclusion**

There is a substantial body of international humanitarian law, conventional and customary in nature, that regulates non-international armed conflicts. These rules have largely been accepted by states and non-state armed groups alike. Although dispute continues to exist at the level of particular rules, the fact that there exists a substantial body of law is no longer disputed. Importantly, this body includes norms relating, to humane treatment, the

protection of civilians and persons *hors de combat*, targeting, and the prohibition on the use of certain means and methods of combat.

The applicability of international rules to non-international armed conflicts is supported by the practice of states and non-state armed groups that are actually involved in non-international armed conflicts. For example, states involved in non-international armed conflicts have issued instructions to their forces to abide by particular rules. They have concluded bilateral agreements with the non-state armed group against which they are fighting and in which both parties recommit to abide by international humanitarian law or particular norms contained therein. Likewise, non-state armed groups have committed to comply with international humanitarian law, particular listed norms, and international human rights law.

These ad hoc commitments are often hidden and overlooked. Thus, it is often thought that non-state armed groups do not and will not commit to abide by the law of non-international armed conflict, that special agreements envisaged in common Article 3 are not concluded, and that states do not accept the increased normative content of the law of non-international armed conflict. Accordingly, the picture is presented as if it were 1977 and Additional Protocol II had just been concluded with its relatively limited substantive content. As this chapter has demonstrated, the situation is altogether different.

Ad hoc commitments on the part of parties to the conflict are crucial as they provide an indication of which norms are accepted, and which are more disputed. They ought to be studied more carefully than they are at present and taken into account in the creation of the law. Ultimately, it is only by considering the views of all parties to a non-international armed conflict that the body of law applicable therein can become truly fit for purpose.

In Part II, the substantive law of non-international armed conflict will be considered. The customary status of particular rules will be noted primarily along the lines set out above, and as a secondary basis, by reference to the Customary International Humanitarian Law study and the jurisprudence of the ICTY. The commitments and practice of armed groups will be used to illustrate compliance with or violation of, and to demonstrate acceptance of or departure from, particular rules. They will not be used to argue that a particular norm has customary international law status.

## Footnotes:

<sup>1</sup> Statute of the International Court of Justice, Article 38. See R Cryer, 'Of Custom, Treaties, Scholars and the Gavel: The Influence of the International Criminal Tribunals on the ICRC Customary Law Study' (2006) 11 *JCSL* 239.

<sup>2</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (not yet in force); Cairo Declaration on Human Rights in Islam, Article 3.

<sup>3</sup> See the methodology used in J-M Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge University Press, 2005) xxxi-xlv.

<sup>4</sup> See AE Roberts, 'Traditional and Modern Approaches to Customary International Law: A Reconciliation' (2001) 95 *AJIL* 757; *Customary International Humanitarian Law, Volume I: Rules*, above note 3, xlii.

<sup>5</sup> *Prosecutor v Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 99; *Customary International Humanitarian Law, Volume I: Rules*, above note 3, xxxii.

- 6** US Department of State, Report to Congress on Incidents During the Recent Conflict in Sri Lanka (2009) 7.
- 7** Statement to the UN Human Rights Council by Minister Mahinda Samarasinghe, 2 March 2009.
- 8** see below, 232.
- 9** HH Koh, 'The Obama Administration and International Law', Speech at the Annual Meeting of the American Society of International Law, 25 March 2010. See also HH Koh, 'The Lawfulness of the US Operation against Osama bin Laden', *Opinio Juris Blog*, 19 May 2011.
- 10** *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Rep 14, para 186.
- 11** See the various statements quoted in A Cassese, 'The Spanish Civil War and the Development of Customary Law Concerning Internal Armed Conflicts', in A Cassese (ed), *The Human Dimension of International Law: Selected Papers* (Oxford University Press, 2008) 128, 139-40.
- 12** C Kress, 'War Crimes Committed in Non-International Armed Conflict and the Emerging System of International Criminal Justice' (2000) 30 *IYHR* 104, 107.
- 13** See UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford University Press, 2004) 43 fn 62.
- 14** Special Tribunal for Lebanon, CH/AC/2010/02, Decision on Appeal of Pre-Trial Judge's Order regarding Jurisdiction and Standing, 10 November 2010, para 47.
- 15** *Customary International Humanitarian Law*, above note 3.
- 16** See eg JB Bellinger III and WJ Haynes II, 'A US Government Response to the International Committee of the Red Cross Study *Customary International Humanitarian Law*' (2007) 89 *IRRC* 443.
- 17** See eg the approach taken in the Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para 183.
- 18** *Nicaragua*, above note 10, 114 para 218.
- 19** See above, 55.
- 20** Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, para 14; 'The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions: Remarks of Michael J Matheson' (1987) 2 *American University Journal of International Law and Policy* 419.
- 21** Rome Statute, Article 8(2)(e)(iv); Constitutional Court of Colombia, Decision C-291/07, para 6.1, reproduced and translated in M Sassòli, AA Bouvier, and A Quintin, *How Does Law Protect in War? Volume III* (ICRC, 2011) 2255.
- 22** United States, in Third Committee, General Assembly, 23rd Session, 1634th Meeting, 10 December 1968 (1968) UNGA Official Records (Third Committee) 2. See also the letter from the US Department of Defence, excerpted in (1973) 67 *AJIL* 122.
- 23** Inter-American Commission on Human Rights, Third Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II.102, Doc.9 rev.1, 26 February 1999, Chapter IV, para 39; *Colombia v Jose Alexis Fuentes Guerrero et al*, Case 11.519, Report No 61/99, OEA/Ser.L/V/II.95, Doc.7 rev.446, 13 April 1999, paras 37-8; *Ignacio Ellacuria et al v El Salvador*,

Case 10.488, Report No 136/99, 22 December 1999, paras 158–9. See also *Tadić* Decision on Interlocutory Appeal on Jurisdiction, above note 5, paras 111–12.

<sup>24</sup> Denmark, in Third Committee, General Assembly, 25th Session, 1785th Meeting, 11 November 1970, (1970) UNGA Official Records (Third Committee) 281; *Fuentes Guerrero*, above note 23, paras 37–8; *Ignacio Ellacuria et al v El Salvador*, above note 23, paras 158–9. See also *Tadić* Decision on Interlocutory Appeal on Jurisdiction, above note 5, paras 111–12.

<sup>25</sup> There is more dispute surrounding the customary status of a prohibition on belligerent reprisals against the civilian population. see below, 452.

<sup>26</sup> *Constitutional Conformity of Protocol II*, C-225/95, para 23, reproduced and translated in M Sassòli and AA Bouvier, *How Does Law Protect in War? Volume II* (ICRC, 2006) 2240.

<sup>27</sup> Third Report of the United Nations Observer Mission in El Salvador, A/46/876-S/23580, 19 February 1992, para 131.

<sup>28</sup> See above, 78–81.

<sup>29</sup> H von Hebel and D Robinson. ‘Crimes within the Jurisdiction of the Court’, in RS Lee (ed), *The International Criminal Court: The Making of the Rome Statute, Issues, Negotiations, Results* (Kluwer, 1999) 79, 104.

<sup>30</sup> On which, see RR Baxter, ‘Multilateral Treaties as Evidence of Customary International Law’ (1965–6) 41 *BYIL* 275.

<sup>31</sup> See, on the child soldiers provision, R Cryer, *Prosecuting International Crimes* (Cambridge University Press, 2005) 283.

<sup>32</sup> Rome Statute, Article 8(2)(e).

<sup>33</sup> Amendment to the Rome Statute, RC/Res.5.

<sup>34</sup> See eg Report of the International Commission of Inquiry on Darfur to the Secretary-General, S/2005/60, 1 February 2005, para 166.

<sup>35</sup> Agreement of 22 May 1992, reproduced in M Sassòli, AA Bouvier, and A Qunitin, *How Does Law Protect in War? Volume II* (ICRC, 2011) 1717. For the varying use by the ICTY, see L Vierucci, ‘“Special Agreements” between Conflicting Parties in the Case-law of the ICTY’, in B Swart, A Zahar, and G Sluiter (eds), *The Legacy of the International Criminal Tribunal for the former Yugoslavia* (Oxford University Press, 2011) 401.

<sup>36</sup> See above, 5.

<sup>37</sup> See eg UNAMA, Afghanistan: Midyear Report 2011 Protection of Civilians in Armed Conflict (July 2011) 11–13.

<sup>38</sup> National Transitional Council Manual, 19 May 2011. See I Scobbie, ‘Operationalising the Law of Armed Conflict for Dissident Forces in Libya’, *EJIL:Talk! Blog*, 31 August 2011.

<sup>39</sup> K Clark, ‘Two Eid Messages from the Warring Leaders’, Afghanistan Analysts Network, 6 November 2011.

<sup>40</sup> See generally A Roberts and S Sivakumaran, ‘Lawmaking by Non-State Actors: Engaging Armed Groups in the Creation of International Humanitarian Law’ (2012) 37 *Yale Journal of International Law* 107. On the normative status of peace agreements, see C Bell, ‘Peace Agreements: Their Nature and Legal Status’ (2006) 100 *AJIL* 373; C Bell, *On the Law of Peace* (Oxford University Press, 2008).

<sup>41</sup> See above, 107.

<sup>42</sup> Darfur Commission Report, above note 34, para 174.

- 43** See eg SC Res 1127 (1997) on UNITA and the Lusaka Protocol.
- 44** *Constitutional Conformity of Protocol II*, above note 26, 2240, para 17.
- 45** *Prosecutor v Kallon and Kamara*, SCSL-2004-15-AR72(E) and SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 13 March 2004, paras 45–50. For criticism, see A Cassese, ‘The Special Court and International Law: The Decision Concerning the Lomé Agreement Amnesty’ (2004) 2 *JICJ* 1130, 1134–5; Bell, *Peace Agreements*, above note 40, 387.
- 46** See eg on the PLO declaration, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] ICJ Rep 136, 173, para 91.
- 47** *Prosecutor v Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para 627.
- 48** See eg Additional Report of the Special Representative of the Secretary-General for Children and Armed Conflict, E/CN.4/2000/71, 9 February 2000, para 20; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mission to Sri Lanka, E/CN.4/2006/53/Add.5, 27 March 2006, para 30.
- 49** Cf *Nuclear Tests (Australia v France)* [1974] ICJ Rep 253, paras 43–6; *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)* [1986] ICJ Rep 554, paras 39–40; *Nicaragua*, above note 10, para 261; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* [2007] ICJ Rep 43, paras 377–8.
- 50** *Tadić* Decision on Interlocutory Appeal on Jurisdiction, above note 5, paras 102, 103, and 107.
- 51** See, for a selection of this practice, *Customary International Humanitarian Law, Volume II: Practice*, above note 3, 64, 77, 115, 126, 356, 412, 778, 870, 2882, and 3610.
- 52** *Ibid*, Volume I, xxxvi.
- 53** J-M Henckaerts, ‘Binding Armed Opposition Groups through Humanitarian Treaty Law and Customary Law’ (2003) 27 *Collegium* 123, 128.
- 54** See S Sivakumaran, ‘Lessons for the Law of Armed Conflict from Commitments of Armed Groups: Identification of Legitimate Targets and Prisoners of War’ (2011) 93 *IRRC* 463.
- 55** Geneva Call is a Geneva-based organization dedicated to engaging ‘armed non-state actors’ in respecting and adhering to humanitarian norms, See the practice available at (<http://www.genevacall.org/resources/nsas-statements/nsas-statements-2.htm>). For more on Geneva Call, see below, 538–42.
- 56** see below, 368–70.
- 57** See generally below, 200–4.
- 58** see below, 241–2.
- 59** See above, 95–97.
- 60** See above, 32, 42, and below, 546.
- 61** See eg below, 202 and 205.
- 62** ‘The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions: Remarks of Michael J Matheson’ (1987) 2 *American University Journal of International Law and Policy* 419.
- 63** International and Operational Law Department, *Operational Law Handbook* (2005).

- 64** Quoted in C Garraway, 'The Use and Abuse of Military Manuals' (2004) 7 *YIHL* 425, 437.
- 65** See above, 32-3.
- 66** See the statements of the State Department Legal Advisor, above note 9. See also US Report on Sri Lanka, above note 6, 51.
- 67** See above, 108.
- 68** F Bugnion, *The International Committee of the Red Cross and the Protection of War Victims* (ICRC, 2003) 270. See also J Siotis, *Le Droit de la Guerre et les Conflits Armés d'un Caractère Non-International* (Librairie Général de Droit et de Jurisprudence, 1958) 156.
- 69** Quoted in M Mercier, *Crimes without Punishment: Humanitarian Action in Former Yugoslavia* (Pluto Press, 1995) 35.
- 70** *Ibid*, 37.
- 71** See Chapter 12.
- 72** See above, 5.
- 73** See the list of action plans concluded by states and state-sponsored militias in Children and Armed Conflict: Report of the Secretary General, A/63/785-S/2009/158, 26 March 2009, para 148.
- 74** See Chapter 12.
- 75** For example, the NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, addressed to the Swiss Federal Council, 5 July 1996; NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, addressed to the ICRC, 5 July 1996.
- 76** Public Statement of the Prime Minister, Dr Moise Tshombe, 21 October 1964, ICRC Archives B AG 202 229-006, reproduced at (1965) 59 *AJIL* 616 (emphases omitted). See also Letter from the Prime Minister, Dr Moise Tshombe to the President of the ICRC, 22 October 1964, *ibid*.
- 77** Letter from ICRC Delegate Jequier to the ICRC in Geneva, 15 July 1954, ICRC Archives B AG 200 086.
- 78** Letter from ICRC Delegate Jequier to SE Monsieur George Adán Serrano, Ministre de l'Intérieur et de la Justice, 23 July 1954, ICRC Archives, *ibid*.
- 79** Telegram from Carlos Salazar, Secretario de relaciones exteriores and Luis Valladares y Aycinena, Secretario de gobernacion to ICRC, 26 June 1954, ICRC Archives, *ibid*. The English translation is taken from a similar telegram sent to the American Red Cross, in *ibid*. The latter omits reference to 'international treaties'.
- 80** Letter from the Consul Général Représentant Permanent de Guatemala auprès de l'Office Européen des Nations Unies to M. Gallopin, Directeur du CICR, 25 June 1954, ICRC Archives, *ibid*.
- 81** ICRC, Annual Report 1980 (ICRC, 1981) 44.
- 82** *Nuclear Tests* [1974] ICJ Rep 253, paras 43-6.
- 83** *Ibid*, para 44.
- 84** For the proposal, see Letter from Lucien Cramer to Général [Hoefler] and Letter from Lucien Cramer to M Korfanty, 20 June 1921, reproduced in (1921) 3 *RICR* 691, Annexes 14 and 14*bis*. For the commitments, see Letter from Korfanty to the ICRC in Oppeln, 27 June 1921, and the oral commitment of General Hoefler reported in the Telegram of the ICRC

Delegate in Oppeln to the ICRC in Geneva, 30 June 1921, ICRC Archives CR 22-5/111/85, and/128ter, reproduced respectively in (1921) 3 *RICR* 691, Annexes 16, 17 and 17bis.

**85** Letter from President of the ICRC to ICRC Delegate in Upper Silesia, 24 June 1921, ICRC Archives CR 22-8/48; (1921) 3 *RICR* 691, Annex 15.

**86** Letter from M Korfanty, 2 June 1921, reproduced in (1921) 3 *RICR* 691, Annex I. The original reads:

Je soussigné me déclare prêt à autoriser les délégués du Comité international de la Croix-Rouge à visiter sans restriction tous les camps de prisonniers et à y travailler suivant les principes de la Croix-Rouge.

Ils seront autorisés, également, à secourir les enfants, les femmes et les vieillards en leur distribuant sous la responsabilité du Comité international, les secours et approvisionnements qui sont nécessaires à leur existence.

**87** Letter from General Hoefler, Chef du Selbstschutz de la Haute-Silésie, 1 June 1921, reproduced in (1921) 3 *RICR* 691, Annex II. The original reads:

Au nom de tous les commandements du Selbstschutz de la Haute Silésie, qui se trouvent sous mes ordres, je me déclare prêt à faciliter par tous les moyens la mise en oeuvre de l'activité des membres du Comité international de la Croix-Rouge ...

Je donnerai immédiatement à tous les commandements qui me sont soumis l'ordre de prêter leur assistance la plus large à toutes les personnes qui seront incontestablement reconnues comme représentants du Comité international de la Croix-Rouge.

**88** Accord de José Giral, Le Président du Conseil des Ministres, 3 September 1936, reproduced in (1936) 18 *RICR* 749, Annex II. The original reads:

Le Gouvernement espagnol, après avoir reçu et entendu M. Marcel Junod, en représentation de la Croix-Rouge internationale, accepte l'envoi d'une double délégation du Comité international, délégations qui exerceront leur activité à Madrid et à Barcelone d'une part et à Burgos et Séville d'autre part. Leur mission sera celle de protéger et de faire respecter le signe de la croix-rouge par les deux parties et de faciliter le travail humanitaire de cette institution.

Le Gouvernement voit avec sympathie la création d'une section d'informations à la charge desdites délégations auprès des prisonniers de guerre ou civils et il admet la possibilité d'un échange de quelques-uns d'entre eux non combattants, spécialement de femmes et d'enfants.

**89** Miguel Cabanellas, Junte de Défense Nationale d'Espagne, 15 September 1936, reproduced in (1936) 18 *RICR* 749, Annex IV. The original reads:

Elle se déclare prête à observer et à respecter, comme elle l'a toujours fait et comme elle le fait encore à chaque instant, la Convention de Genève concernant les blessés de guerre, les malades et les prisonniers.

Avant de considérer la question des otages et de leur échange, elle tient à déclarer qu'elle n'a pas eu recours à ce procédé qui n'a été appliqué ni à la population militaire ou civile, ni aux femmes et aux enfants, mais par contre qu'elle a eu à déplorer la perte des personnalités les plus en vue et les plus distinguées de la vie nationale et mondiale, qui ont été fusillées ou assassinées. Cependant, s'inspirant des sentiments les plus élevés d'humanité, elle accepte que les femmes, les enfants et les jeunes gens non astreints au service militaire qui en exprimeraient le désir puissent abandonner la zone placée sous sa dépendance pour gagner l'étranger ou

la zone du gouvernement de Madrid, pour autant que la même autorisation soit accordée dans l'autre camp aux femmes, enfants et jeunes gens qui, dans les mêmes circonstances, désireraient gagner l'étranger ou la zone du Gouvernement de Burgos.

**90** Telegram from ICRC Delegate Jequier to the ICRC in Geneva, 19 May 1965, ICRC Archives B AG 251 170. See also ICRC, Annual Report 1965 (ICRC, 1966) 37.

**91** Note of ICRC Delegate de Traz to ICRC, 16 June 1958; Note, 20 June 1958, ICRC Archives B AG 200 115-001. See also CICR, 'L'Action de Secours du CICR au Liban et l'Art 3 des Conventions de Genève de 1949'.

**92** Letter from El-Badr to the President of the ICRC, 2 January 1963. Arabic original and French translation in ICRC Archives B AG 200 226. The original reads:

Nous profitons de cette occasion pour vous assurer que nous estimons grandement et depuis fort longtemps les efforts humanitaires déployés par l'organisation de la Croix-Rouge internationale et nous vous assurons également que les principes de cette organisation sont l'objet de toute notre estime et respect. En conséquence, nous avons donné l'ordre à nos armées de respecter ces principes et tout ce qui s'y attache, en laissant de côté les questions politiques.

**93** Letter from the President of the ICRC to the Ambassador of the Yemen in Jeddah, 28 January 1963, ICRC Archives B AG 200 226, referring to the Letter from El-Badr.

**94** Archive Note, 2 April 1963, ICRC Archives B AG 200 226.

**95** Written Statement from Président de la République arabe yéménite, Al-Mousir Abdullah El-Sallal, 28 January 1963. Arabic original and French translation in ICRC Archives B AG 200 226. The original reads:

Au nom du Gouvernement de la République arabe yéménite, nous déclarons: estimer les principes humanitaires, inscrits dans la Convention de Genève de 1949 concernant la Croix-Rouge et le Croissant-Rouge et nous promettons de respecter ses applications.

**96** The Hague Statement on Respect of Humanitarian Principles, 5 November 1991, reproduced in J-F Berger, *The Humanitarian Diplomacy of the ICRC and the Conflict in Croatia (1991-1992)* (ICRC, 1995) Annex 4.

**97** The London International Conference: Programme of Action on Humanitarian Issues Agreed between the Co-Chairmen to the Conference and the Parties to the Conflict, 27 August 1992, para 3(i).

**98** See above, 114.

**99** South West Africa People's Organisation, Declaration to the International Committee of the Red Cross, 15 July 1981.

**100** Declaration by UNITA, 25 July 1980 [to ICRC], (1980) 20 *IRRC* 320.

**101** ICRC, Annual Report 1977 (ICRC, 1978) 16.

**102** ICRC, Annual Report 1975 (ICRC, 1976) 8.

**103** Note of Information [of the Depositary], 13 September 1989.

**104** Instruments of Accession of the Algerian Republic to the Geneva Conventions of August 12, 1949 (registered at Berne, 20 June 1960). This is reproduced in M Bedjaoui, *Law and the Algerian Revolution* (International Association of Democratic Lawyers, 1961) 199.

**105** Note de Dossier, 16 February 1956, ICRC Archives 225 008-002. The original reads: 'les dirigeants du front de libération nationale font de qui est en leur pouvoir pour respecter ou faire respecter les règles essentielles d'humanité.'

**106** Lettre de la Délégation Algérienne, représentant le Front de Libération Nationale et l'Armée de Libération Nationale à Monsieur David de Traz, Représentant Spécial du Comité International de la Croix-Rouge, 23 February 1956, ICRC Archives B AG 202 008-001. The original reads:

Nous référant à l'article 2, troisième paragraphe de la Convention de Genève, nous sommes prêts à appliquer les dispositions de ladite Convention à tous les prisonniers de guerre français pris par l'Armée de Libération Nationale, sous réserve de réciprocité de la part du Gouvernement de la République Française.

**107** *White Paper on the Application of the Geneva Conventions of 1949 to the French-Algerian Conflict* (Algerian Office, New York, 1960).

**108** Telegram of ICRC delegate to ICRC, 29 January 1945, ICRC Archives G44/53c-236.

**109** Rapport de M Beckh sur sa Mission a Vienne, a Budapest et en Hongrie Occidentale, 15 November 1956, ICRC Archives B AG 251 094-004.

**110** Procès Verbal de Telephone de M Beckh et M Borsinger, 2 November 1956, ICRC Archives, *ibid*.

**111** See (2000) 3 *YIHL* 518-9.

**112** Letter from Fidel Castro, 24 July 1958, ICRC Archives B AG 200 060. The original reads:

Debo hacer constar que, ... aquí se respetan todas las leyes de la Guerra y se trata a los heridos enemigos con el máximo de humanidad posible en las condiciones actuales de la lucha ...

**113** Oral Commitment of Fidel Castro to the ICRC Delegate in Cuba, 10 January 1959, in Rapport No 3 de P Jequier à CICR, 14 January 1959, ICRC Archives B AG 200 060.

**114** ICRC, Annual Report 1967 (ICRC, 1968) 36.

**115** Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, Mission to Rwanda, E/CN.4/1994/7/Add.1, 11 August 1993, para 26.

**116** ICRC, Annual Report 1985 (ICRC, 1986) 36.

**117** Letter from Vellupillai Prabhakaran, Leader, Liberation Tigers of Tamil Eelam, to Members and Observers, United Nations Commission on Human Rights, Forty-fourth session, 24 February 1988. See also Press Release, International Secretariat, Liberation Tigers of Tamil Eelam, 18 February 1992; Letter from Velumylum Manoharan, Representative, LTTE International Secretariat, to Honourable Judges of the US Court of Appeal District of Colombia Circuit, undated, published in *Sunday Times* (Sri Lanka), 16 November 1997.

**118** NDFP Declaration of Adherence to International Humanitarian Law, 15 August 1991, reproduced in NDFP, *Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977* (NDFP Human Rights Monitoring Committee Booklet No 6) 98.

**119** NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, 5 July 1996, in *ibid*, 9.

**120** PKK Statement to the United Nations, 24 January 1995.

**121** Comando Central, Ejército de Liberación Nacional, Foro Internacional: Minas antipersonales y Acuerdos Humanitarios, 4 June 2004. See also the radio address on the Declaration on International Humanitarian Law, 15 July 1995.

**122** Resolución Política de la Cumbre Constitutiva de la Coordinadora Nacional Guerrillera Simón Bolívar, October 1987, reproduced in Oficina del Alto Comisionado para la Paz et al (eds), *Derecho Internacional Humanitario Aplicado: Casos de Colombia, El Salvador, Guatemala, Yugoslavia y Ruanda* (CICR, 1998) 273. The original reads:

La lucha por el derecho a la vida. Como organizaciones guerrilleras nos comprometemos a respetar el Derecho de Gentes, los acuerdos de Ginebra y a humanizar la confrontación bélica que hoy se da en el país y exigimos que el goberno y su ejército también respeten las normas del derecho internacional humanitario.

Rechazamos las prácticas de las torturas, las desapariciones, y nos comprometemos a dar un trato a los enemigos capturados y a respetar la población civil y sus bienes en la contienda militar.

Rechazamos los asesinatos y las amenazas contra los miembros de la UP, los demás movimientos políticos y sociales y las personalidades democráticas, cuyos responsables directos son los organismos de seguridad del Estado y sus aparatos paramilitares, y consideramos que para frenar esta matazón es necesario impulsar la más amplia movilización de las masa y castigar a los culpables.

**123** Ali Ahmeti, Political Representative, UÇK General Staff, Untitled Document, 8 May 2001, Exhibit P00507.E in ICTY *Boškoski* trial. See also Ali Ahmeti, National Liberation Army Commander, Ideas for Conducting the Operation, Exhibit P00487 in ICTY *Boškoski* trial.

**124** Political Statement No 11 of the Kosova Liberation Army, 5 October 1998, reproduced as 'UCK Confirms Respect for International Conventions', *Pristina Koha Ditore*, 6 October 1998, Exhibit P48 in ICTY *Limaj* trial (ICTY translation). See also, Memorandum of the General Staff of the Kosova Liberation Army Sent to the Relevant Institutions of the International Community, undated, reproduced in UCK Sends 'Memorandum' to International Community, *Pristina Bujku*, 17 October 1998, *ibid* (ICTY translation).

**125** Political Statement of the KLA, 27 April 1998, Exhibit P328, Annex 12, in ICTY *Haradinaj* trial.

**126** Declaration of War of the Zapatista National Liberation Army (EZLN), Communiqué of 2 January 1994, reproduced and translated in B Clarke and C Ross (eds), *Voice of Fire: Communiqués and Interviews from the Zapatista National Liberation Army* (Freedom Voices, 2000) 31, 32. See also EZLN General Command, Declaración de la Selva Lacandona, 1993.

**127** Appeal of the Communist Party of Nepal (Maoist), 16 March 2004.

**128** Communiqué No 4, December 1996. See also Letter from the National Directorate of the MRTA to Cardinal Juan Lanázari Ricketts, 26 March 1989.

**129** See MRTA, *Con las Masas y las Armas, Conquistando el Porvenir: Notas sobre la Historia del MRTA* (MRTA, 1990).

- 130** Statement by the Opposition Movements [JEM and SLM-Unity], undated (published on 11 July 2008).
- 131** Letter from Abdulmalik al Houthi to Dr Mohammed Al-Mikhlaifi [Head of the Yemeni Observatory for Human Rights], undated (published on 4 September 2009). See also Letter from Abd al-Malik Badr al-Din Al-houthi to Human Rights Watch, 29/Jumada II/1430.
- 132** See also M Sassòli, 'The Implementation of International Humanitarian Law: Current and Inherent Challenges' (2007) 10 *YIHL* 45, 64.
- 133** Political Programme of the Ogaden National Liberation Front (ONLF), undated.
- 134** Appeal of the Communist Party of Nepal (Maoist), 16 March 2004.
- 135** 'Lasting Peace in Sierra Leone: The Revolutionary United Front Sierra Leone (RUF/SL) Perspective and Vision', undated.
- 136** Statement by the Opposition Movements, above note 130.
- 137** Action Plan between the Moro Islamic Liberation Front (MILF) and the United Nations in the Philippines regarding the Issue of Recruitment and Use of Child Soldiers in the Armed Conflict in Mindanao, 1 August 2009. See also Action Plan between the Sudan People's Liberation Army and the United Nations regarding Children Associated with the SPLA in Southern Sudan, 20 November 2009.
- 138** See above, 95-7.
- 139** See above, 118.
- 140** Tratado de Regularización de la Guerra, 26 November 1820, reproduced in (1820-1) 71 *Consolidated Treaty Series* 291.
- 141** See generally C Bell, *Peace Agreements and Human Rights* (Oxford University Press, 2000).
- 142** Memorandum of Understanding, 27 November 1991, reproduced in M Sassòli, AA Bouvier, and A Quintin, *How Does Law Protect in War? Volume III* (ICRC, Geneva, 2011) 1713.
- 143** Reproduced in M Sassòli, AA Bouvier, and A Quintin, *How Does Law Protect in War? Volume III* (ICRC, 2011) 1717. On which, see B Jakovljević, 'The Agreement of May 22, 1992, on the Implementation of International Humanitarian Law in the Armed Conflict in Bosnia-Herzegovina' [1992] *Jugoslovenska Revija Za Međunarodno Pravo* 212.
- 144** Agreement of 23 May 1992.
- 145** Agreement of 6 June 1992.
- 146** Government-FARC Humanitarian Exchange Accord, 2 June 2001.
- 147** Implementing Guidelines on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001, 7 May 2002.
- 148** Cessation of Hostilities Agreement, Addendum I, 1 November 2006; Agreement on a Permanent Ceasefire, 23 February 2008.
- 149** Cotonou Accord between Interim Government of National Unity (IGNU) of Liberia, National Patriotic Front of Liberia (NPFL) and the United Movement of Liberia for Democracy (ULIMO), 25 July 1993.
- 150** Agreement to Create a Conducive Atmosphere for Peace, 19 June 2006.

- 151** Agreement on Humanitarian Ceasefire on the Conflict in Darfur, 8 April 2004; Protocol between the Government of Sudan (GoS), the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) on the Improvement of the Humanitarian Situation in Darfur, 9 November 2004; Protocol between the Government of Sudan (GoS), the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) on the Enhancement of the Security Situation in Darfur in Accordance with the N'Djamena Agreement, 9 November 2004.
- 152** Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement to Protect Non-Combatant Civilians and Civilian Facilities from Military Attack, 10 March 2002.
- 153** Agreement on the Civilian Protection Component of the International Monitoring Team, 27 October 2009.
- 154** 16 March 1998.
- 155** Agreement on Human Rights, 26 July 1990, A/44/971-S/21541, Annex, 16 August 1990 (emphasis added).
- 156** Agreement of 29 March 1994, Article IX(1).
- 157** 7 May 2002, Article 4.
- 158** Peace Agreement between the Government of Liberia (GOL), The Liberians United for Reconciliation and Democracy (LURD), The Movement for Democracy in Liberia (MODEL) and the Political Parties, 18 August 2003, Article XII.
- 159** 12-Point Understanding reached between the Seven Political Parties and Nepal Communist Party (Maoists), 22 November 2005, Point 8.
- 160** Burnham Truce, 10 October 1997; Lincoln Agreement on Peace, Security and Development on Bougainville, 23 January 1998, Article 1.
- 161** GRP/MILF, Agreement on the Civilian Protection Component of the International Monitoring Team, 27 October 2009.
- 162** Abidjan Peace Agreement, 30 November 1996; Protocol between the Government of Sudan (GoS), the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) on the Improvement of the Humanitarian Situation in Darfur, 9 November 2004.
- 163** Abidjan Peace Agreement, 30 November 1996.
- 164** 'Lasting Peace in Sierra Leone: The Revolutionary United Front Sierra Leone (RUF/SL) Perspective and Vision', undated.
- 165** Ceasefire Code of Conduct, 25 May 2006, Preamble and Article 7.
- 166** Comprehensive Ceasefire Agreement, 7 September 2006, Article II.
- 167** Agreement on Ceasefire and Cessation of Hostilities between the Government of the Republic of Liberia and Liberians United for Reconciliation and Democracy and the Movement for Democracy in Liberia, 17 June 2003, Points 5 and 9; Comprehensive Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia, and the Political Parties, 18 August 2003, Article XV.
- 168** Nairobi Peace Agreement, 17 December 1985, Article 1(i).
- 169** Ceasefire Agreement, 2002, Articles 1.2, 2.1, 2.2.
- 170** Eastern Sudan Peace Agreement, 14 October 2006, Article 6.

- 171** Darfur Peace Agreement, 5 May 2006, Articles 1(7) and 3.
- 172** SPLM-United/Operation Lifeline Sudan, Agreement on Ground Rules, May 1996; SPLM/Operation Lifeline Sudan, Agreement on Ground Rules, 3 July 1995; South Sudan Independence Movement Operation/Lifeline Sudan, Agreement on Ground Rules, 5 August 1995.
- 173** Memorandum of Understanding, 19 September 2002.
- 174** Article III ('Observation stricte des règles du droit international humanitaire et des droits de l'Homme').
- 175** See eg the statement of a New People's Army spokesperson, 'NPA did not violate CARHRIHL in using Landmine in Cagayan Ambush', 28 January 2011.
- 176** Operational Code of Conduct for the Nigerian Army, reprinted in AHM Kirk-Greene, *Crisis and Conflict in Nigeria* (Oxford University Press, 1971) 455, 456.
- 177** ICRC, Annual Report 1967 (ICRC, 1968) 36.
- 178** See eg Kosovo Liberation Army, *Interim Regulations on the Organization of Internal Affairs in the Army*, Prishtina, 1998.
- 179** Three Main Rules of Discipline (1927; reissued 1947); Six Points for Attention (1928; reissued in 1947 as the Eight Points for Attention). See also the Four Policies for the Lenient Treatment of Captives (1928).
- 180** RUF, Eight Codes of Conduct, reproduced in *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T, Judgment, 2 March 2009, para 705. see below, 442.
- 181** Basic Rules of the New People's Army, 29 March 1969, NDFP, *Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977* (NDFP Human Rights Monitoring Committee Booklet No 6) 85.
- 182** National Resistance Army Code of Conduct, reprinted in OO Amaza, *Museveni's Long March from Guerrilla to Statesman* (Fountain, 1998) 246.
- 183** Les Dix Commandements (1954) 1 *El Moudjahadid*. The original reads: '[s]e conformer aux principes de l'Islam et aux lois internationales dans la destruction des forces ennemies.'
- 184** Reproduced in JM Weinstein, *Inside Rebellion* (Cambridge University Press, 2007) 152.
- 185** Referred to in *Prosecutor v Bemba Gombo*, ICC-01/05-01/08, Conclusions de la Defense en Reponse a l'Acte d'Accusation Amende du 30 Mars 2009, para 239 fn 161.
- 186** Krasniqi Explains UCK's Origins, Structure, Pristina *Koha Ditore*, 12 July 1998, Exhibit P48 in ICTY *Limaj* trial (ICTY translation).
- 187** Report of the Panel of Experts established pursuant to Resolution 1591 (2005) concerning the Sudan Issues 29 October 2009: A Response from JEM, 18 November 2009.
- 188** Formation of New Sudan Authority on Landmines, 9 May 2004, referring to Doc.CM/1884(LX11) Annex II.
- 189** SPLM/A, Penal and Disciplinary Rules, 4 July 1984, Section 30(2), quoted in *Customary International Humanitarian Law, Volume II: Practice*, above note 3, 2632 fn 367.
- 190** Chin National Front, Code, undated (attributed to 1998).
- 191** Comando Central del ELN, Manuel Pérez Martínez, Nicolás Rodríguez Bautista, Antonio García, 'Nuestra Ética En La Doctrina Militar' (1996), reproduced and translated in Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law* (1998) Chapter V.

#### Respeto a la Población Civil

- Durante el combate no se tomará a civiles como escudo de protección.
- Cuando el enemigo lleve civiles como rehenes en sus desplazamientos, se procurará no hacerles daño con nuestros ataques a la fuerza enemiga.
- Las operaciones militares se desarrollarán en forma selectiva sobre objetivos enemigos, evitando el alcance indiscriminado de sus efectos.
- Se buscará evitar daños conexos a los bienes e instalaciones civiles y se procura hacer las reparaciones posibles.
- Se informará a la población civil de las áreas minadas.
- No se realizarán acciones con el único fin de atemorizar a la población.
- No se forzará el desplazamiento de población civil de las zonas de combate.
- No se incorporarán menores de 15 años a la fuerza militar permanente. Se podrán integrar a otras actividades revolucionarias diferentes a la participación en hostilidades.
- Las personas participantes en los grupos paramilitares y sus bienes dejarán de ser considerados como población y bienes civiles.
- La Organización hace detenciones políticas con el fin de hacer conocer sus planteamientos, garantizando a los detenidos un trato respetuoso e informando a sus familiares de la situación en que se hallan.

#### Limitación a los Medios y Métodos de Guerra

- Al desarrollar acciones de sabotaje no se afectarán instalaciones que le sirvan más a la comunidad que al enemigo.
- Los sabotajes se realizarán evitando al máximo el daño sobre el medio ambiente.
- No se atacarán instalaciones religiosas, bienes culturales ni obras de infraestructura que contengan fuerzas peligrosas, como aguas represadas o material nuclear.
- No se usarán gases venenosos ni se envenenarán las aguas.
- En zonas de combate se respetarán los vehículos y las instalaciones que contengan el símbolo de la Cruz Roja. Está prohibido a nuestras fuerzas utilizar este símbolo para engañar al enemigo.
- Los comandantes de la fuerza evitarán el saqueo y el pillaje; una vez rendida la posición enemiga, organizarán la recuperación de los bienes que requiera la fuerza.

#### Trato Digno a los Prisioneros

- Está prohibido matar o herir a un adversario que se rinda o que está fuera de combate.
- Los prisioneros de guerra tendrán un trato humanitario, asistencia sanitaria y se les requisarán sus pertenencias temporalmente.

- Se informará públicamente sobre el número y nombre de los capturados, se buscará entregar los prisioneros a la Cruz Roja y que sea un cautiverio breve.
- Ni a los mercenarios, ni a los espías se les darán las garantías propias de los prisioneros de guerra; se les brindará trato humanitario.

**193** A La Poblacion Civil, in FARC-EP Comisión Internacional, *Beligerencia: Suplemento*, 10.

**194** Normas de comportamiento con las masas (released in 1998). The Spanish original provides:

1. Nuestro comportamiento diarios y los planes que nos rigen deben partir de los intereses del pueblo.
2. Debemos respetar las ideas y actitudes políticas, filosóficas y religiosas de la población y particularmente la cultura y la autonomía de las comunidades indígenas y de otras minorías étnicas.
3. No debemos impedir el ejercicio del voto, ni obligar al pueblo a votar.
4. En los planes de trabajo político-militar, en su desarrollo y en los desplazamientos diarios, se deben tener en cuenta la seguridad de las gentes trabajadoras, de sus hogares y sus bienes.
5. Debemos respetar las diferentes medidas que tomen los colaboradores para mantener el secreto de su relación con nosotros.
6. La disciplina interna y el trabajo de masas deben privilegiar el cuidado con la gente inocente y/o amiga, para que por nuestra mala acción u omisión, no quede a merced del terrorismo y del odio del ejército oficial y sus paramilitares.
7. En todo lugar y momento en que las masas sean agredidas por el ejército oficial y los paramilitares, con bombardeos y destrucción de sus bienes, debemos ser activos en la denuncia y el combate a estas actividades terroristas, para que el pueblo se sienta respaldado por nosotros.
8. Se considera un delito el asesinato y toda clase de atropellos que se comprueben, cometidos contra la población.
9. De nuestra parte no debe haber imposiciones a las masas. Debemos procurar que vean nuestras armas como suyas.
10. Los reclamos de la comunidad sobre agresiones de combatientes u otras personas, deben ser investigados exhaustivamente contando con el criterio de la comunidad.
11. Los mandos y combatientes deben estudiar y practicar las Normas del Derecho Internacional Humanitario acordes a las condiciones de nuestra guerra revolucionaria.
12. En caso de que sea necesario retener a cualquier persona por presunta o comprobada falta, siendo este militante o simpatizante de una organización hermana, se debe entregar a esta última el caso y en lo posible la persona.
13. En cualquier caso nuestro principio fundamental es el respeto por el derecho a la vida.

14. Los mandos y combatientes deben tener en cuenta que los ajusticiamientos sólo se pueden hacer por delitos muy graves de los enemigos del pueblo y con autorización expresa para cada caso, por parte de las instancias superiores de dirección de cada organización. En todos los casos hay que confrontar pruebas y las decisiones deben ser asumidas colectivamente, los jefes deben dejar actas con constancias de las pruebas.

15. El alcoholismo, la drogadicción, el robo, la deshonestidad, son vicios contrarrevolucionarios que lesionan la confianza de nuestro pueblo.

16. Debemos evitar los abusos de la confianza y la generosidad de la gente; no exigiendo bienes para beneficio personal.

**195** Movimiento Revolucionario Tupac Amaru, Reglamento, Articles 62 and 70. See also Article 74. Article 62 reads: 'Todo combatiente debe entregar oportunamente a su mando, al enemigo hecho prisionero sin hacerlo victim de maltratos, ni propiciar sean injuriados por los demás guerrilleros.' Article 70 provides: 'Los combatientes no pueden establecer contacto con la población sin autorización. Menos aún pueden hacer uso, robar o dañar los bienes de ésta, ni atentar contra las tradiciones, costumbres, moral y forma de vida de la población.'

**196** Taliban Code of Conduct (2006, 2009, 2010).

**197** O Bangerter, *'Do As You Are Told': On Codes of Conduct of Insurgents and Other Measures to Enforce Behaviour* (Small Arms Survey, Geneva, forthcoming 2012).

**198** Ordonnance of 2 June 1918, ICRC Archives Mis 1/5 (Frick).

**199** Ordonnance du Commissariat du peuple pour les Affaires Étrangères No 2086 concernant la Situation juridique de la Croix Rouge International de Genève dans la République des Conseils de Hongrie, 10 April 1919, ICRC Archives Mis.4 5/67, reproduced in (1919) 1 *RICR* 604. English translation taken from A Durand, *From Sarajevo to Hiroshima: History of the International Committee of the Red Cross* (Henry Dunant Institute, 1984) 128-9.

**200** Degree of 26 April 1919, cited in CICR, *Rapport Général du Comité International de la Croix-Rouge sur son activité de 1912 à 1920* (Genève, 1921) 195. The original reads: 'l'égalité absolue de traitement des blessés de toute nationalité et reconnaît l'obligation pour les médecins envoyés sur le théâtre de la guerre, de soigner les soldats ennemis comme les nationaux.'

**201** Decree No 62 du Commissariat du Peuple pour le Bien Public et les Affaires Sanitaires, 9 July 1919, ICRC Archives Mis.4 5/134. The original reads:

Quiconque, mais surtout les autorités militaires et politiques, doit accorder à la Société de la Croix Rouge Hongroise, à toutes ses institutions, ses organes, ainsi, qu'à son personnel un traitement conforme à son caractère de neutralité, lui assurer une protection efficace, due à sa neutralité et appuyer son activité.

**202** See E Guevara, *Guerrilla Warfare* (Penguin, 1969) 82 and 95.

**203** See eg Communist Party of Nepal-Maoist, Public Legal Code 2060 (2003/2004).

**204** See eg Liberation Tigers of Tamil Eelam, Tamil Eelam Child Protection Act (Act No 3 of 2006).

**205** See eg Ejército Zapatista de Liberación Nacional, Revolutionary Women's Law.

- 206** For example: Letter from Insurgent Comandante Marcos [of the EZLN] to 'Asma Jahangir, Special Correspondent [sic] of the UN for Extrajudicial, Summary or Arbitrary Executions', 19 July 1999, reproduced in B Clarke and C Ross (eds), *Voice of Fire: Communiqués and Interviews from the Zapatista National Liberation Army* (Freedom Voices, 2000) 116; KNU Press Statement on Report of UNSG, 27 April 2009; Report of the Panel of Experts established pursuant to Resolution 1591 (2005) concerning the Sudan Issued 2 October 2009: A Response from JEM, 16 November 2009; NDFP Letter to UN Secretary-General Ban Ki Moon, 24 November 2008.
- 207** P Alston, J Morgan-Foster, and W Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the "War on Terror"' (2008) 19 *EJIL* 183, 185–90.
- 208** For example: Statement of the Opposition Movements, above note 130.
- 209** For example, FMLN, *The Legitimacy of Our Methods of Struggle* (Inkworks Press, 1988) (a 24-page booklet); the *White Paper on the Application of the Geneva Conventions of 1949 to the French-Algerian Conflict* (Algerian Office, New York, 1960) (an 85-page booklet).
- 210** Mémoire du Gouvernement de la République Irlandaise au Comité International de la Croix-Rouge, 13 March 1923, 5, ICRC Archives CR 22 (84)/1. The original reads: 'accorde à l'ennemi, comme Armée du Roi Britannique, le bénéfice des usages et lois de guerre.'
- 211** Letter from the President of the Provisional Democratic Government, Markos, to the ICRC, 23 December 1947, ICRC Archives G 44/53c-237. The original reads:
- Au cours de cette guerre, le devoir de chaque côté belligérant est de respecter certains principes d'humanité ...
- Nous citerons quelques exemples qui montrent le dévouement de l'Armée démocratique aux institutions de la justice et de l'humanité. Les soldats de l'armée-traitre d'Athènes, faits prisonniers par l'Armée démocratique sont libérés. C'est ainsi que jusqu'à présent des milliers de combattants ont été libérés et même des officiers des unités militaires monarchofascistes. Leurs blessés trouvent chez nous de tels soins et une telle aide que nous ne pouvons parfois donner à nos blessés, faute du manque de moyens ...
- 212** The Treatment of Detainees and Prisoners, 25 March 2011.
- 213** See also the statements of the Council: A Vision of a Democratic Libya (undated); untitled statement, 22 March 2011.
- 214** FMLN, *The Legitimacy of Our Methods of Struggle*, above note 209, 7.
- 215** Communique of the KLA General Staff, reproduced as 'Text of Ceku Communique Urging Serbs to Remain', 18 August 1999, Exhibit P48 in ICTY *Limaj* trial (ICTY translation).
- 216** Fifteen Point Programme of the SPLM, Point 13.
- 217** Declaration of the RPM-P/RPA-ABB against the use and production of landmines, 21 March 2000.
- 218** On which see above, 108.
- 219** First Policy Statement of Mr Charles Ghankay Taylor, Leader of the National Patriotic Front of Liberia, 1 January 1990.
- 220** See eg National Transitional Council, *A vision of a democratic Libya*, 29 March 2011.

**221** Quoted in Scobbie, above note 38.

**222** Statuts du Mouvement de Libération du Congo, 30 Juin 1999, Article 3. The original reads: 'Le MLC est un mouvement politico-militaire qui vise le renversement du régime dictatorial en vue d'instaurer un Etat Démocratique sur base des élections libres et transparentes dans le respect des droits de l'homme et des libertés individuelles.'

**223** Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, A/HRC/17/44, 1 June 2011, para 72.

**224** All dates are approximate and are included only to convey a sense of the time period in question. They are taken from various sources, principally reports of the ICRC and the Uppsala Armed Conflict Dataset.