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CONFLICT

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# **PRINCIPLE OF DISTINCTION BETWEEN CIVILIANS AND COMBATANTS IN INTERNATIONAL HUMANITARIAN LAW AND ITS APPLICATION IN THE RECENT IRAQI CONFLICT:**

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The international humanitarian law is certainly one of the most interesting topic of international law. International humanitarian law (IHL) which can briefly be defined as the set of rules applicable in armed conflict, has been longtime criticised as bearing contradictions in itself.<sup>1</sup> It was argued that in a legal system where the recourse to use of force is forbidden, it was contradictory to make rules aiming at regulating this use of force. But taking into account the terrible impact of armed conflict especially on civilians, it becomes meaningless to question this contradiction.

The International Committee of the Red Cross (ICRC), as the guardian of IHL, works for the dissemination of the rules concerning the conduct of armed conflict, namely the Hague and Geneva Law. It would not be wrong to say that none of its efforts were as effective as the appearances of the American prisoners of war in TV screen. The declaration of Rumsfeld "Iraq is violating the Geneva Convention" suddenly made the Geneva Convention popular. Especially in our country where international humanitarian law do not even take part of the curriculum in most of the universities, Geneva conventions became the centre of attraction.

The aim of this study is to analyse the fundamental principles of distinction between civilians and combatants in IHL and to observe its application in the recent Iraqi conflict. It should be kept in mind that this is a study of IHL, thus the reasons behind the armed conflict as well as the legitimacy of the recourse to use of force against Iraq by coalition forces do

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<sup>1</sup> Marco Sassòli, Antoine Bouvier, How Does Law Protect in War?, International Committee of the Red Cross, 1999, p.68

not fall within the scope of this work. The IHL applies to all forms of armed conflict irrespective of the legitimacy of the latter.

### **1.The Laws of War and the International Humanitarian Law:**

The law of war in lato sensu consists of two main branches: Firstly, the *ius ad bellum* which regulates the recourse to use of force. Today, according to the article 51 and chapter VII of the United Nations Charter, the use of force is only allowed in cases of individual and collective self-defence and within the enforcement measures taken by the Security Council. Second, the *ius in bello* which regulates the conduct of hostilities. The *ius in bello* comprises the provisions related to the limitations or prohibitions of specific methods and means of warfare, called the Hague Law and the rules aiming at the protection of the victims of war (non-combatants and those who are hors-de-combat), called the Geneva Law.

The fundamental principles of IHL can be summarized as follows: the distinction between civilians and combatants, the prohibition to cause unnecessary suffering, the principle of necessity and proportionality.

Let us now move on to the analysis of the principle of distinction between civilians and combatants.

### **2.The Distinction Between Civilians and Combatants:**

The efforts of regulating the conduct of war are in fact not very new. Since the early ages of history, different cultures had developed different customs which affected the behaviours of their soldiers in the battlefield. Scholars too were not indifferent to the idea of regulation of wars. Grotius is probably the most well-known scholar in this field with his book entitled “*de iure belli ac pacis*”.

On the other hand, Jean Jacques Rousseau, one of the founders of the French Revolution and one of the most prominent philosopher of Enlightenment Period, deeply influenced the development of IHL. In his famous work, “*Le Contrat Social*”, he states: “War is not a relation between man and man, but between State and State, and individuals are enemies only accidentally, not as men nor even as citizens, but as soldiers; not as members of their country, but as its defenders...The objects of the war being the destruction of the hostile State, the other side has a right to kill its defenders while they are bearing arms, but as soon as they lay them down and surrender they cease to be enemies or instruments of the enemy, and they become once more merely men, whose lives no one has any right to take”<sup>2</sup>.

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<sup>2</sup> Jan Jacques Rousseau, *Le Contrat Social ou Principes du Droit Politique*, Librairie Garnier Frères, p.240

This statement which constitutes a turning point for the law of war buried the arguments of just war v. unjust war and developed a much more significant distinction; the distinction between civilians and combatants.<sup>3</sup>

### **2.1.The Status of Combatant:**

The views of Rousseau found their expressions in different IHL instruments. Article 1 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Hague Convention IV, article 3 of the Geneva Convention III and finally article 44 of the Additional Protocol I to the Geneva conventions give detailed definition of combatant<sup>4</sup>. Broadly, combatants are the members of armed forces who do have the right to take direct part in hostilities, who may not be punished for their mere participation in hostilities and who are protected when they do no longer participate in hostilities because either they have fallen into the power of the enemy, or they are wounded, sick or shipwrecked or they parachuted out of an aircraft in distress. They are also protected against some methods and means of warfare even while fighting.<sup>5</sup> "Armed forces" must be understood in lato sensu comprising the armed forces of a party to an international armed conflict, member of another armed group fulfilling certain conditions such as being under responsible command, wearing a fixed distinctive sign, carrying arms openly, respecting IHL and in exceptional cases members of armed group carrying arms openly during each military engagement and as long as they are visible to the enemy while engaged in a military deployment preceding the launching of an attack in which they are to participate<sup>6</sup>. In cases of the levée en masse foreseen in article 4(6) of Geneva Convention III, the participants are considered as combatants too.

Geneva Convention I protects the wounded and sick in land warfare whereas Geneva Convention II sets out guarantees for the wounded, sick and shipwrecked in naval warfare.

The most important consequence of the combatant status is that it guarantees the combatant the entitlement to the status of prisoner of war upon capture. Geneva Convention III provides important guarantees for the treatment of prisoners of war. With the recent Iraqi conflict the treatment of prisoners of war became one of the most debatable issue.

### **2.2.Treatment of Prisoners of War (POW):**

Geneva Convention III is a very detailed instrument regarding the protection of POWs. It sets out rules regulating the status of POW from the beginning of captivity until his repatriation which usually takes place at the end of hostilities. POWs are in the hands of the enemy Power, but not of the individual or military

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<sup>3</sup> Jean Pictet, *Development and Principles of International Humanitarian Law*, Martinus Nijhoff Publishers, 1985, p.23

<sup>4</sup> For the texts of IHL instruments see, Adam Roberts and Richard Guelff, *Documents on the Laws of War*, Clarendon Press, 1989

<sup>5</sup> Sassòli, op.cit., p.118-119

<sup>6</sup> Ibid., p.122-123.

units who have captured them (art. 12). POWs shall be evacuated as soon as possible to camps situated in an area far enough from the combat zone (art.19), POWs shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area (art.25). The Detaining Power shall provide sufficient food for POWs taking into account their habitual diet (art.26) and clothing, underwear and footwear (art. 27). It is also one of the primary duty of the Detaining Power to ensure the cleanliness and healthfulness of camps and to prevent epidemics (art.29).POWs shall enjoy complete latitude in the exercise of their religious duty (art. 34). POWs may be forced to work except from officers (art.49). They shall be allowed to write to heir family immediately upon capture (art.70). Judicial proceedings are also regulated in detailed in articles 99-108 in order to protect the POW from arbitrary sanctions.

Article 13 of the Geneva Convention III sets out the principles concerning the treatment of POWs as follows: "POW must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a POW in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no POW may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. Likewise, POW must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against POWs are prohibited".

In the recent Iraqi conflict the display of the images of American POWs gave rise to profound discussions. Under the Geneva Convention III, is it prohibited to display the images of POW?

The first case concerning the exposure of POWs in public curiosity is Maelzer case. Maelzer, the commander of the German garrison in Rome in 1944, was ordered by the commander-in-chief of German forces in Italy to hold a parade of allied POWs through the streets of Rome.<sup>7</sup> During the parade, the population threw sticks and stones at the POWs and several photographs had been taken which were later published in newspapers under the heading "Anglo-American enter Rome after all....flanked by German Bayonets". Maelzer was convicted to three years of imprisonment.

As Rowe points out, the reasoning behind the finding of guilt is not clear. Therefore we do not know exactly whether Maelzer was convicted for

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<sup>7</sup> Gordon Risius, Michael A. Meyer, *The Protection of Prisoners of War Against Insults and Public Curiosity*, in *International Review of the Red Cross*, 1993, p.228

the sole fact of having held the parade or because the POWs were exposed to violence from the population.<sup>8</sup>

The same question has been raised during the Gulf war when Iraqi authorities recorded on video the statements made by the coalition aircrew POWs which were later broadcasted on television and published in newspapers. Two arguments were advanced to prove the Iraqi infringement of article 13: the use of these pictures by Iraqi authorities as a propaganda tool and the involuntary nature of the statements.<sup>9</sup>

It is argued that no explicit provision prohibiting the display of POWs' images on television could possibly take place in article 13 since television did not exist in 1949.<sup>10</sup> But, television did exist in 1977. Therefore, Additional Protocol I which was prepared in order to fill the gaps of Geneva Conventions could easily include in its articles concerning the POWs such a ban. Moreover, article 13 does not refer to any other type of media either. If a ban on the publication of the photos of POWs in newspapers did exist in article 13, it could probably be easier to make a broad interpretation of this ban today.<sup>11</sup>

Thus, the crucial criteria of exposure remains to be the respect for the dignity of the POW.

Another point that has been raised by the ICRC is that account should be taken of the impact of these images could have on the families of POWs.<sup>12</sup> Again, the issue which must be determined is whether such appearances on television violate the dignity of POWs and therefore cause suffering to their families. One can reasonably argue that seeing their relatives alive on television help to comfort families since after that it would be extremely difficult for the captor to deny all knowledge of them.<sup>13</sup> Thus, the mere fact of displaying the images of POWs on television does not violate article 13.

On the other hand the display of Iraqi POWs, especially in early days of conflict, can be considered as contradicting article 13. The images of Iraqi soldiers on their knees and handcuffed, can be evaluated as degrading,

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<sup>8</sup> Peter Rowe, *Prisoners of War in Gulf Area*, in *The Gulf War 1990-91 in International and English Law*, Routledge, p.194

<sup>9</sup> *Ibid.*, p.195

<sup>10</sup> Risius, *op.cit.* p.298

<sup>11</sup> In this context, the draft resolution prepared by the 26th International Conference of the Red Cross and Red Crescent on the "Protection of Prisoners of War Against Insults and Public Curiosity" deserves special attention.

<sup>12</sup> [www.icrc.org](http://www.icrc.org), Iraq: latest news from ICRC staff in the field, 24 March 2003

<sup>13</sup> Risius, *op.cit.*, p.293

therefore violating article 13. Nevertheless, it is argued that the elements in these images must go beyond the mere fact of capture. The photographs of the Royal Marines captured by the Argentineans at Port Stanley in the early part of the Falklands war showing them lying face down while being searched for weapons would not, it is suggested, breach article 13.<sup>14</sup>

Going back to the arguments that these kind of images should not be published in whatsoever way because it constitutes propaganda for the captor, we can say that it is no more a defensible argument in today's conflicts. Considering the characteristics of today's armed conflicts it would be wrong to prohibit the publication of such pictures or the transmission of such images just because they serve to propaganda purposes of belligerent parties. Especially in the recent Iraqi conflict the media has been widely used for propaganda purposes by the coalition forces. The new kind of journalism referred to as "embedded correspondence" played a crucial role in the forming of public opinion. Embedded correspondents are not neutral, independent journalists as they are bound by the rules of the armed forces they are attached to.

Lastly, some remarks can be made as regards to the questions which were asked to American POWs during their interrogations displayed on television. Article 17 of the Geneva Convention III clearly indicates the kind of information a POW is bound to give: his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information. But there is no limitation regarding the kind of questions which can be asked to a POW. Therefore, the captors can ask any kind of question including the military ones, as long as these questions do not constitute an insult to his personality and as long as no physical or mental torture, nor any other form of coercion, is inflicted on him.

### **3. Protection of civilians from the effects of armed conflict:**

We have seen that one of the fundamental principles of IHL was the distinction between civilians and combatant. Increasingly civilians have become the overwhelming majority of the victims of armed conflict. In the First World War, the loss of civilians was 50 000, whereas in the Second World War, this number is increased to 24 000 000.<sup>15</sup> This is not because of the lack of necessary provisions in IHL treaties but because belligerent parties are not always very keen on complying strictly with these rules. The question of legitimate target is crucial for the protection of civilians in armed conflicts.

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<sup>14</sup> Rowe, *op. cit.*, p.195

<sup>15</sup> Sassòli, *op.cit.*, p.145

### **3.1. Legitimate Target:**

The first relevant provision concerning legitimate target is article 25 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Hague Convention IV. According to this article "the attack or bombardment, by whatever means, of towns, dwellings, or buildings which are undefended are prohibited". But it is the Additional Protocol I which formulates in its article 48 the extensive protection of civilians: "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives".

Chapter III of the Additional Protocol I provides a general protection of civilian objects in its article 52, paragraph 1 and 2. Paragraph 1 states that civilian objects shall not be object of attacks or of reprisals while paragraph 2 clearly states that attacks shall be limited strictly to military objectives. It does not give an exhaustive list of the military objectives, which would probably be very long and unnecessary, but it does set the standards for an objective to be considered as military. An object should satisfy two criteria in order to be a military objective: it must make an effective contribution to military action by its nature, location, purpose or use and its total or partial destruction, capture and neutralization, in the circumstances ruling at the time, must offer a definite military advantage.

The concept of military target is used to indicate a target which is legitimate to attack. Thus, what is not such a target is a civilian objective and hence immune from the attack.<sup>16</sup> Therefore civilians and those who are hors-de-combat cannot be legitimate targets. In this context, the prohibition of indiscriminate attacks becomes important. The prohibition goes back to 1923 Hague Rules of Aerial Warfare. Article 22 of the Hague Rules, which have never entered into force, prohibit the aerial bombardment for the purpose of terrorizing the civilian population, of destroying or damaging private property not of a military character. The ban extends to the injuring of non-combatants. Article 24 legitimises the aerial bombardment only when directed at a military objective, that is to say, an object which the destruction or injury would constitute a distinct military advantage to the belligerent.

Article 51 of the Additional Protocol I gives a detailed definition of indiscriminate attack. These attacks are: those which are not directed at a specific military objective, those which employ a methods or means of

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<sup>16</sup> Ingrid Detter, *The Law of War*, Cambridge University Press, 2000, p.280



combat which cannot be directed at a specific military objective or those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol. Thus, the weapons utilized must be capable of being directed at the specific military objective and means used must be in proportion to the military necessity.<sup>17</sup>

When we look at the early days of the Iraqi conflict, we see that coalition forces infringed the basic principle of distinction. On March 28, following the bombardment of a market bazaar in Baghdad 62 civilians died. Taking into account the highly technological weapons of the coalition forces, commonly referred as “intelligent weapons”, the casualties can hardly be considered as acceptable collateral damage<sup>18</sup>. The Cruise and Tomahawk missiles which are designed to hit punctual targets cannot possibly miss their targets and hit a civilian area. Therefore, either these weapons are not as intelligent as it is claimed to be or those who used them did not aim at military objective. In both ways, coalition forces did not comply with the fundamental principle of distinction.

The attacks on journalists is another example of the infringement of the distinction rule. As “independent” journalists are essential to the spreading of knowledge of inhuman practices to the world, they have become increasingly vulnerable as it becomes important to some authorities to silence negative information.<sup>19</sup> Especially the attack on the Palestine Hotel where is mostly resided by journalists caused protests in the international community.<sup>20</sup>

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<sup>17</sup> Sassòli, *op.cit.*, p.164

<sup>18</sup> One of the early instrument of humanitarian law, the Lieber Code states in its article 15 that “military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the Army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God”.

<sup>19</sup> Detter, *op.cit.*, p.323

<sup>20</sup> For an interesting comment on the attacks on journalists, Robert Fisk, does *The US Military Want to Kill Journalists*, *The Independent*, 9 April 2003

### **3.2.The Protection of Cultural Objects and Places of Worship:**

Although there are several provisions in IHL protecting cultural property, the common heritage of mankind is often exposed to the destructive effects of the armed conflicts. Just like the civilians, the cultural and historical places are immune from attacks. Article 27 of Hague Regulations states that all necessary steps must be taken in order to spare, as far as possible, building dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected. In order to enjoy this protection, these places should not be used for military purposes. It is also the duty of the besieged to indicate the presence of such building or places by distinctive and visible signs, which shall be notified to the enemy beforehand. The most important instruments on this subject is certainly the 1954 Hague Convention for the Protection of Cultural Property in the event of armed Conflict.

Article 3 imposes on the State Parties the obligation of preparing in time of peace for the safeguarding of their cultural property against the foreseeable effects of an armed conflict. On the other hand, article 4 requires the State Parties to respect the cultural property within the territory of other contracting Party in the event of armed conflict. A very important provision regarding the Iraqi conflict is to be found in paragraph 3 of article 4 where it is clearly stated that Contracting Party should undertake to prohibit, prevent and if necessary put to stop to any form of theft, pillage or misappropriation of, and any acts of vandalism. One of the tragic aspects of Iraqi conflict is obviously the pillage of Baghdad Archaeological Museum which contained numerous valuable historical objects belonging to different cultures, mainly Mesopotamian.

Considering that act of looting are very common in times of chaos reigning the early days of post-conflict, the Coalition Forces should have been prepared for this pillage. If only they had the same sensibility as General Eisenhower towards the protection of the cultural heritage of mankind, the pillage of Baghdad Archaeological Museum could be avoided. General Eisenhower, as Supreme Allied Commander in Europe preparing to invade Europe, reminded his armed forces to comply with the article 27 of Hague Convention IV in a memorandum. In this memorandum dated on 26 May 1944, he states: "...in the path of our advance will be found historical monuments and cultural centres which symbolise to the world all that we are

fighting to preserve. It is the responsibility of every commander to protect and respect these symbols whenever possible.”<sup>21</sup>

Although the UNESCO Director-General Koïchiro Matsuura has contacted the American and British authorities and asked them to take immediate measures of protection and surveillance of Iraqi archaeological sites and cultural institutions just after the acts of pillage, it was already too late. In a letter of 11 April 2003 addressed to the American authorities, the Director-General emphasized the urgent need to preserve collections and a heritage considered to be one of the richest in the world. He particularly insisted on the necessity of assuring military protection for the Archaeological Museum of Baghdad and the Mosul Museum. The same request was formulated to the British authorities concerning in particular the Basra region.<sup>22</sup>

### **3.3. Protection of Environment in Armed Conflicts:**

Another aspect of damage of the war which affects deeply the present and future life of the mankind is environmental. Certain methods and means of warfare have serious consequences on the environment. In order to minimise the negative effects of the war on environment, the drafters of the Additional Protocol 1 introduced a special protection in the paragraph 3 of article 35 which set the basic rule for the methods and means of warfare. According to this article, it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. As it is inevitable that the use of all kind of methods and means, including for example the use of the most conventional weapons, cause environmental damage, the drafters had to set some criteria for the prohibition: the possibility of causing widespread, long-term and severe damage to the natural environment.

Article 55 of the same Protocol guarantees the protection of the natural environment in following terms: “Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods of means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health and survival of the population”. Although these two articles look quite similar, they do not

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<sup>21</sup> US Navy, Annotated Supplement to the Commander’s Handbook on the law of Naval Operations, NWP9 (Rev. A)/FMFM 1-10, Chapter 8 The Law of Naval Targeting, 1989

<sup>22</sup> [www.unesco.org](http://www.unesco.org)

create a double use: Article 35 regulates the methods of warfare whereas article 55 is concerned with the survival of the population<sup>23</sup>.

The provisions regarding the protection of environment in armed conflict are not to be found only in IHL instruments. For example, the 1992 Declaration of Rio de Janeiro on Environment and Development provides important rules in its principles 24 and 25:

"Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and co-operate in its further development, as necessary." "Peace, development and environmental protection are interdependent and inseparable."

During the Gulf War, it is reported that between 7 and 9 millions of barrels of oil were set free in the Gulf by Iraqis. 590 oil wells heads were damaged or destroyed. 508 were set on fire and 82 were damaged so that oil was flowing freely from them<sup>24</sup>.

As a result, United Nations General Assembly Resolution 687 reaffirmed that Iraq was liable under international law to compensate any environmental damage and depletion of natural resources.<sup>25</sup>

During the recent Iraqi conflict, similar actions were taken by Iraqi forces. Many oil wells were set on fire in order to impair Coalition Forces' ability to conduct aerial bombardment by obscuring visual sensing devices. This extensive fire has undoubtedly cause damage to the environment but did this damage amount to the level foreseen in article 35? The same question was raised during the Gulf War where the Iraqi actions affecting the environment were even more serious. It was said that during the Protocol's negotiation, there was general agreement that one of its criteria for determining whether a violation had taken place was measured in decades.<sup>26</sup> On the other hand, it can be claimed that these debates are somewhat purely academic since Iraq is not a Party to the Protocol. But it should be kept in mind that many of the provisions of Additional Protocol I has already become customary rules. So, the question which must be answered is whether the protection of environment is one of these provisions.

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<sup>23</sup> Commentaire des Protocoles Additionnels du 8 Juin 1977 aux Conventions de Genève du 12 Août 1949, Comité International de la Croix-Rouge, Martinus Nijhoff Publishers, 1986, p.681

<sup>24</sup> Conduct of the Persian Gulf, Final Report to Congress, April 1992, Appendix O, p.0-26

<sup>25</sup> loc.cit.

<sup>26</sup> Ibid., p.0-27

#### **4.Obligations of the Occupying Power to Protect Civilians:**

Considering the civilian tragedies which took place under the occupied territories in Second World War, the Contracting Parties felt the necessity of introducing special provisions concerning the duty of the occupying powers in occupied territories. 1907 Hague Regulations contained certain provisions on this subject, however they are not as detailed as those of Geneva Convention IV. Section 3 of the Geneva Convention IV entitles "occupied territories" and has 32 articles regulating the duty and responsibilities of the occupying power.<sup>27</sup>

The civilians of the occupied territories have no obligation towards the occupying power other than the obligation inherent in their civilian status: not to participate in hostilities. Thus, they cannot be compelled to swear allegiance to the occupying power. On the other hand, the occupying power has numerous obligations towards the inhabitants of the occupied territories. The major duty of the occupying power and the basic principle governing the laws on the occupied territories is to ensure that life in the occupied territories continue as normal as possible. Individual or mass forcible transfers and deportations are strictly forbidden under article 49 as a reaction to horrible memories of Second World War. Evacuations of some areas can be permitted if the security of the population or imperative military reasons require so. In cases of evacuation, every possible measures shall be taken in order to protect the civilians and family members shall in no case be separated. The occupying power cannot transfer its own national to the occupied territories. According to article 56 of the Geneva Convention IV, the occupying power has the duty of ensuring and maintaining the medical and hospital establishments and services, public health and hygiene. It shall also take all necessary measures in order to prevent and combat the spread of contagious diseases and epidemics. Other principles concerning the occupied territories can be summarized as follows: local laws remain in force, local courts remain competent, protection of private property.

Unfortunately, until now, the coalition forces which became the occupying Powers in Iraq did not comply with their obligations under these basics principles of IHL. People watched with horror in televisions the pillage scenes taking place right in front of the coalition forces in the streets

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<sup>27</sup> It should be kept in mind that the occupation which is only a provisional situation, does not end the quality of the state of the occupied power nor its sovereignty. It does only suspend the exercise of its rights. *Commentaire, IV La Convention de Genève Relative à la Protection des Personnes Civiles en Temps de Guerre, Comité International de la Croix-Rouge, 1956, p.296*

of Baghdad. People will not be able to forget for longtime the conditions of the hospitals including those reserved to mentally ill patients and handicapped children, the hopeless expressions on the face of medical personnel and the miserable situation of patients. The words of Kellenberg, the President of ICRC, gives an objective portrait of the situation: "Hospitals in Baghdad are closed because of the combat damage, looting or fear of looting. Hardly any medical or support staff are still reporting to work. Patients have either fled the hospitals or have been left without care. The medical system in Baghdad has virtually collapsed. The dead are left unattended, and the increasing summer heat and deteriorating water and electricity supplies create a high risk of epidemic disease".<sup>28</sup>

### **CONCLUSION**

The famous dictum of Cicero "silent enim leges inter arma" does not apply to modern armed conflicts. The world community, at the leadership of the ICRC, provided necessary rules for the conduct of hostilities. There is no significant lack of rules concerning the *ius in bello*. However there is a very significant lack of will to comply with these rules.

As to the *ius ad bellum*, the recourse to use of force by the coalition forces without having first sought the decision of the Security Council has weakened the position of the United Nations and undermined its credibility. As to the *ius in bello*, its effectiveness lies in its enforcement. Will the parties be liable for the crimes they have committed before and during the Iraqi conflict? The answer may be positive for those who lost but it is likely to be negative for the winners. Therefore, it is the responsibility of the World Community to impose the laws of war on both sides. This is definitely a challenge which must be taken since the future of civilians depends on it.

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<sup>28</sup> [www.icrc.org](http://www.icrc.org) 11.04.2003 Press Release 03/28

