

**DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD**

**P.G. DIPLOMA IN INTERNATIONAL HUMANITARIAN LAW
2019 – 2020**

Take Home - Annual Exams (August, 2020)

PAPER I – INTRODUCTION TO IHL

Total marks: 100

INSTRUCTIONS TO CANDIDATES

1. All question carry equal marks (25 marks each).
 2. Clearly indicate the question numbers while answering them.
 3. Each answer should be of a minimum of 1000 words.
 4. Only Handwritten answer scripts should be uploaded.
 5. Use only **Black ball pen** to write the answers.
 6. Handwriting if not legible, paper will not be examined.
 7. Please mention your name, ID No. and Subject name on the Answer Script.
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ANSWER ALL QUESTIONS:

1. Distinguish between *jus ad bellum* and *jus in bello*, while reflecting upon the following passage, which reads:

If the wars of civilized people are less cruel and destructive than those of savages, the difference arising from the social condition both of states in themselves and in their relations to each other But these things do not belong to War itself; they are only given conditions; and to introduce into the philosophy of War itself a principle of moderation would be an absurdity.
Karl von Clausewitz (1780-1831).

In the light of this enigmatic statement, examine to what extent negation of the 'principle of moderation' in warfare would actually be misleading in terms of contemporary international humanitarian law. Illustrate your answer, referring to some of the fundamental objectives of IHL in relation to traditional concept of armed conflicts.

2. Custom has always played a very crucial role in the development of law, yet in one of the judgments not long ago, it was stated by an International Tribunal that:

[a] word of caution on the law-making process in the law of armed conflict is necessary. When attempting to ascertain State practice with a view to

establishing the existence of a customary rule or a general principle, it is difficult, if not impossible, to pinpoint the actual behavior of the troops in the field for the purpose of establishing whether they in fact comply with, or disregard, certain standards of behaviors. This examination is rendered extremely difficult by the fact that not only is access to the theatre of military operations normally refused to independent observers (often even to the ICRC) but information on the actual conduct of hostilities is withheld by the parties to the conflict; what is worse, often recourse is had to misinformation with a view to misleading the enemy as well as the public opinion and foreign Governments. *The Prosecutor v. Duško Tadić* (International Tribunal for Former Yugoslavia, 1995).

In the light of the above remarks, which seem axiomatic, can a counter argument be made, gleaned through the historical declarations and instruments concerning Laws and Customs of War, which not only provide evidence of State practice and *Opinio Juris* founded on custom and usages, but also significantly reveal their contributed towards progressive development and codification of international humanitarian law.

3. What is the distinguishing criterion to identify an armed conflict not of an international character under the international humanitarian law? Which provisions of the said law can be referred to or invoked. Can guerrilla warfare and cross-border firing be included within the ambit of the concept? What would be your opinion in respect of the recent deaths of the Indian soldiers at Galwan Valley, resulting from an attack caused over border tensions between India and China?
4. Discuss and analyze the conceptual similarities and differences between international humanitarian law and international human rights law – with special reference to their underlying philosophical assumptions and approaches that operate at different levels. Do these rights converge at any particular point or they simply run parallel on different lines. Identify such rights on both sides of the stream, explaining the circumstances under which they can be suspended. Support your answer with some examples drawn from actual situations.