



INNOVATIVE: Journal Of Social Science Research

Volume 4 Nomor 1 Tahun 2024 Page 5170-5182

E-ISSN 2807-4238 and P-ISSN 2807-4246

Website: <https://j-innovative.org/index.php/Innovative>

Law of Armed Conflict and Humanitarian Law (Case Study: U.S. War in Vietnam)

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Abstrak

Laporan ini menyelidiki kompleksitas dan kontroversi seputar kepatuhan terhadap prinsip-prinsip HHI di tengah konflik yang berkepanjangan dan kontroversial. Pasal ini menyoroti tujuan inti dari Undang-Undang Konflik Bersenjata (LOAC), yang menekankan pada perlindungan kehidupan dan martabat manusia, pembatasan sarana dan metode peperangan, pembedaan antara kombatan dan non-kombatan, perlindungan terhadap yang terluka, sakit, dan tidak berperang. dan menangkap individu, serta pelestarian kekayaan budaya dan lingkungan. Metodologi penelitiannya menggunakan pendekatan kuasi-kualitatif, yang diambil dari berbagai sumber, termasuk wawancara media, buku, artikel ilmiah, dan dokumenter. Artikel ini mengkaji akar dan pelajaran dari Perang Vietnam dan menyajikan dugaan pelanggaran HHI selama konflik, seperti penargetan yang tidak pandang bulu, penggunaan senjata terlarang, penganiayaan terhadap tahanan, dan penargetan infrastruktur yang melanggar hukum. Buku ini juga mengeksplorasi Teori Perang yang Adil sebagai kerangka penilaian aspek etika perang, dengan fokus pada proporsionalitas. Artikel ini secara kritis mengevaluasi keterlibatan AS dalam Perang Vietnam, menyoroti perdebatan tentang penerapan HHI dalam perang saudara yang diinternasionalisasi. Bab ini menyajikan berbagai perspektif tentang bagaimana HHI harus diterapkan dalam konflik-konflik tersebut dan mengatasi tantangan-tantangan hukum dan etika yang muncul. Artikel ini menyimpulkan dengan menekankan relevansi prinsip-prinsip HHI dalam konflik bersenjata kontemporer, menekankan perlunya penerapan prinsip-prinsip tersebut secara ketat untuk mencegah penderitaan manusia yang tidak perlu dan melindungi hak asasi manusia. Hal ini menunjukkan bahwa kesadaran dan pendidikan mengenai HHI harus ditingkatkan, dan penelitian lebih lanjut mengenai konflik bersenjata yang terjadi baru-baru ini harus dilakukan untuk memperluas pemahaman tentang penerapan hukum humaniter internasional.

Kata Kunci: *Hukum Humaniter Internasional, Hukum Internasional, Hukum Konflik Bersenjata, Prinsip LOAC, Perang Vietnam*

Abstract

This article probes into the complexities and controversies surrounding the adherence to IHL principles in the midst of a protracted and contentious conflict. The article highlights the core objectives of the Law of Armed Conflict (LOAC), emphasizing the protection of human life and dignity, the limitation of means and methods of warfare, the distinction between combatants and non-combatants, the safeguarding of wounded, sick, and captured individuals, and the preservation of cultural property and the environment. The research methodology involves a quasi-qualitative approach, drawing from various sources, including media interviews, books, scholarly articles, and documentaries. The article examines the roots and lessons of the Vietnam War and presents allegations of IHL violations during the conflict, such as indiscriminate targeting, the use of prohibited weapons, mistreatment of detainees, and unlawful targeting of infrastructure. It also explores the Just War Theory as a framework for assessing the ethical aspects of the war, with a focus on proportionality. The article critically evaluates the U.S. involvement in the Vietnam War, highlighting debates about the application of IHL in internationalized civil wars. It presents various perspectives on how IHL should apply in such conflicts and addresses the legal and ethical challenges that emerged. The article concludes by emphasizing the relevance of IHL principles in contemporary armed conflicts, stressing the need for their stringent implementation to prevent unnecessary human suffering and protect human rights. It suggests that awareness and education about IHL should be enhanced, and further research into recent armed conflicts should be conducted to broaden the understanding of the application of international humanitarian law.

Keywords: International Humanitarian Law, International Law, Law of Armed Conflict, LOAC Principles, Vietnam War

INTRODUCTION

International humanitarian law (IHL), often mentioned as “the law of armed conflict or the law of war”, serves as a crucial framework for regulating the conduct of armed conflicts and safeguarding the well-being of individuals who are not actively engaged in hostilities. During the American War in Vietnam, which took place from 1955 to 1975, the principles and provisions of IHL were put to the test amidst a protracted and highly contentious conflict. This chapter in history witnessed the application and, at times, the violation of these legal norms as various actors sought to navigate the complexities of warfare within the bounds of international law.

At its core, this law aims to lessen the suffering and protect the rights of civilians, POWs, along with non-combatants caught in the midst of armed conflicts. It establishes limitations on the approaches and instruments of warfare, emphasizing the importance of distinguishing between combatants and civilians and establishing rules for the humane

treatment of individuals in custody. By imposing legal obligations on belligerents, IHL seeks to strike an equilibrium between military inevitability and the fundamental principles of humanity, ensuring that the conduct of armed conflicts does not devolve into unrestricted brutality. This delicate balance became a matter of intense scrutiny during the American War in Vietnam, as both the United States and various opposing forces wrestled with the complex realities and moral dilemmas inherent in armed conflict.

Pertaining to the American War in Vietnam, the application of IHL took center stage, drawing attention to issues such as employing chemical weapons, targeting civilian infrastructure, and the treatment of prisoners. The conflict witnessed significant debates and controversies surrounding the interpretation and adherence to these legal standards, with allegations of violations by multiple parties involved. The complex and challenging nature of guerrilla warfare, combined with the prolonged duration of the conflict, posed significant obstacles to the full implementation of IHL. Resultantly, the case of the American War in Vietnam serves as a compelling example of the intricate interplay between the exigencies of war and the imperative to sustain the principles of international law.

This article intends to briefly explain the objectives and sources of the Law of Armed Conflict (LOAC) and the values of the LOAC. Furthermore, it aims to look at the U.S. War in Vietnam from the standpoint of LOAC.

Literature Review

Initially started as a domestic conflict, The Vietnam War, was exuberantly intensified with the involvement of regional and international players. It revolved around determining the future of a newly independent nation after colonization, as different factions of Vietnamese nationalists strived for power and advocated for varying governmental ideologies. The key factions included North based communist party, "the Viet Minh, and their Southern allies, the National Liberation Front, and the U.S.-supported non-communist Republic of Vietnam, governing South". The purpose of this text is to examine the resident circumstances of the Vietnam War and assess the effect of French as well as American strategies on the Vietnamese' efforts for freedom and political unification (Chapman, 2004).

Related to the reasons, roots, and finally the lessons of the Vietnam War, the briefings in the Committee on Foreign Relations of the U.S. Senate in 1972, stated a few lessons related to this war. One very pertinent lesson regarding bombing and mining in North Vietnam was that "more bombing and mining will bring neither victory nor peace" (US Congress, 1973).

Contrary to the typically stated narrations of the Vietnam War that discuss diplomatic

approaches, military maneuvers, and the serious debates of political leaders, "Kill Anything That Moves; The Real American War in Vietnam" by Nick Turse, displays how American mayhems in Vietnam happened. Firstly, the drill instructors exposed staff to shock and shame, deprivation, and pressure turning them into programmed killers who considered the Vietnamese as sub-humans. Secondly, allegedly the U.S. military pronounced a few areas in Vietnam as "free-fire zones". It is said to be the leading cause of 300,000 civilian casualties during the war by 1968. Thirdly, the U.S. officers and their under-command soldiers were encouraged to kill more persons with incentives like medals, additional food and beer, and extra vacations. Fourthly, with a few exclusions, the unfamiliarity of American soldiers to the Vietnamese language with six tones, varying in pitch and length. Finally, anyone from inside the U.S. forces who to raise the concerns was either ignored or hated and attacked. This resulted in many injuries and even deaths of such individuals (Zaidi, 2015).

Vietnam experienced severe ecological devastation due to the use of chemical weapons. According to Turse, the U.S. military deliberately destroyed extensive forested areas in Vietnam through burning and bulldozing, and spraying herbicides in millions of liters, including Agent Orange, to eradicate plantation. Presently, a significant portion of the dioxin contained in those herbicides, around a quarter, can still be detected in the soil and animal tissue. The impact of chemical defoliants, such as Agent Orange, continues to afflict approximately three million Vietnamese people, leading to health issues like cancer and birth defects (Cohn & Mirer, 2013).

RESEARCH METHOD

A quasi-qualitative research methodology was implemented for analyzing the U.S. War in Vietnam in relation to the humanitarian aspect of law. Documented media Interviews, related Books and scholarly articles, documentaries, concerning news, and isolated internet sources were explored to collect data leading to pertinent interpretations (Creswell, 2009: 4-5).

RESULT AND DISCUSSION

Basic Objectives of the Law of Armed Conflict

IHL instruments relating to International Armed Conflicts lies in article 2 of the provision are concerned with the four Geneva Convention of 1949. The basic objectives of LOAC are to avoid unnecessary human suffering, ensuring human rights and prevention of violence. To be more specific, let us discuss it under various headings as follows:

- Protection of Human Life and Dignity. The primary objective of LOAC is to minimize

human suffering and protect the lives and dignity of individuals affected by armed conflict. It establishes rules and principles to ensure that combatants and non-combatants are treated with humanity and respect.

- **Limitation of Means and Methods of Warfare.** LOAC aims to restrict the means and methods of warfare to prevent unnecessary suffering and excessive damage. It forbids the use of weapons and means that cause indiscriminate harm, such as weapons of mass destruction (WMD), and establishes rules for the proportionate use of force.
- **Difference between Combatants and Non-Combatants.** LOAC seeks to differentiate between combatants (those directly participating in hostilities) and non-combatants (civilians, medical personnel, and aid workers). It provides protections for civilians and ensures that they are not targeted indiscriminately.
- **Protection of Wounded, Sick, and Captured.** LOAC includes provisions for the protection and care of wounded or sick individuals, as well as captured combatants. It establishes rules for the compassionate handling of prisoners of war (POWs) and safeguards their rights.
- **Safeguarding Cultural Property and the Environment.** LOAC recognizes the importance of preserving cultural property, such as historical monuments, and seeks to protect them from unnecessary destruction or damage during armed conflicts. It also promotes environmental stewardship by minimizing harm to the natural environment.

Main Sources of LOAC

The sources of the LOAC are derived from a combination of “international treaties, customary international law, and general principles of law”. The customary international law and treaties like Hague Convention of 1907 the 4th Geneva Conventions of 1949 are the main sources of IHL.

- **The Geneva Convention 1949.** The Geneva Convention includes 4 treaties and 3 additional protocols providing basics in International Law regarding humanitarian handling of war victims. The term Geneva convention refers to the 1949 agreement which were the result of negotiations that took place after WW-II. This agreement took the form of renewing the provision of the three existing agreement and adopting a fourth agreement. The formulation of the fourth 1949 agreement was extensive, containing articles which establish basic rights of people. Conflict article which establishes protection for injured victims and article addressing the protection of civilian who were in and around the war zone.

- Hague Conference (1899 & 1907). This includes two international agreements as a result of negotiations conducted at International Peace Conference in Hague, Netherlands. First Hague Convention 1899 and the second in 1907. Together with the Geneva Convention, the Hague Convention were some of the formal statements on “the law of war and war crime” within the body of International Law, which was just developing at that time. A third international conference was planned in 1914. However, the convention never took place due to the outbreak of WW-I.

Principles of LOAC

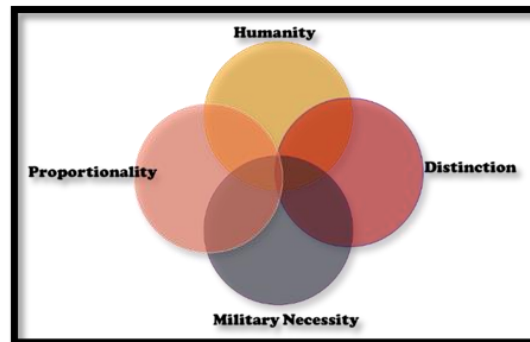


Figure 1. Principles of LOAC

The LOAC is guided by several key principles. These principles provide a framework for the behavior of parties engaged in armed conflicts and aim to minimize suffering and safeguard the basic rights of people affected by war. The principles of LOAC include:

- Principle of Humanity. The principle of humanity requires parties to treat all individuals humanely and to minimize suffering during armed conflicts. It prohibits the use of cruel or inhumane treatment and requires the availability of necessary medical care and assistance to the wounded and sick. This applies to injured soldiers and POWs and also emphasizes on the protection of civilians.
- Principle of Military Necessity. This code permits the use of force and means of warfare that are necessary to achieve a legitimate military objective. It requires parties to refrain from causing unnecessary harm and to use no more force than is essential to achieve their lawful military aims.
- Principle of Distinction. The basic requirement of this principle is discrimination of combatants and non-combatants, and civilian objects and military objects. It emphasizes the need to direct attacks only against legitimate military targets while taking precautions to avoid or minimize damage to civilians and their objects.
- Principle of Proportionality. According to this principle, the anticipated military advantage gained from an attack must be proportionate to the expected harm to

civilians and civilian objects. It prohibits attacks that would cause excessive harm compared to the expected military benefit. Actors in a conflict must not carry out attacks at explicit military objective or that would cause harm to civilians or their objects in a disproportionate or indiscriminate manner. Indiscriminate attacks are prohibited under LOAC.

The Just War Theory

Wars despite all their negativities are sometimes considered essential, and it is not always the worst thing. Sometimes conditions are such that own survival or the survival of innocent people necessitates war. The Just War Theory (Latin: *jus belli justum*) is a doctrine, also referred to as "a tradition, of military ethics, which is studied by military leaders, ethicists, and policymakers". The doctrine lays down the principles to ensure that "a war is morally justifiable through a series of criteria, all of which must be met for a war to be considered just". The principles are divided into two groups: "right to go to war" (*jus ad bellum*) and "right conduct in war" (*jus in bello*). Just War Theory sets out principles for a war to be ethical.

The U.S. War in Vietnam

As the Vietnam War in the 1960s unfolded, there were two contrasting viewpoints about the application of IHL in "internationalized civil wars". One perspective argued that foreign powers military intervention in a civil war automatically transformed into an armed conflict at international level. As a result, IHL would apply in its wholeness to all players involved in the armed conflict, including the governing body of the country facing the civil war and the involved insurgents. In June 1965, the International Committee of the Red Cross (ICRC) advocated for this approach by urging involved parties in the U.S.-Vietnam conflict to adhere to the Geneva Conventions of 1949. Supporting this notion, Meyrowitz, a writer, asserted that the entirety of humanitarian law was valid to the U.S.-Vietnam War. On the other hand, the opposing viewpoint suggested that such a civil war including international players should be analyzed and divided into varying international as well as non-international parts.

The dealings in internationalized domestic armed conflicts can be categorized into four distinct types. Firstly, the dealing between two foreign states involved on behalf of opposing players in a civil war falls under international armed conflict. IHL, including relevant treaties and customary rules, applies between these states. Secondly, the association between a foreign state assisting insurgents and the established government involving two subjects of international law come under the umbrella of international armed

conflicts. However, specific issues arise regarding the transfer of prisoners of war and enemy civilians in such situations.

The third association is between “the recognized state government and the opposing insurgents, constituting a non-international armed conflict”. Under this relationship, exclusively Article 3 of the Geneva Conventions and Protocol II (if applicable) are to be implemented. Nevertheless, there are various options to extend the applicability of IHL in its totality between these parties. These include special agreements, unilateral declarations, or recognition of insurgents as belligerents by the established government. However, such recognition has become less prevalent in recent times.

The fourth association, “between insurgents and a state assisting the established government, is also considered non-international in nature”. Insurgents do not have a recognized standing in international law. Similar possibilities exist to apply IHL in its totality, such as agreements or recognition of insurgents as a confrontation movement related to the supporting state.

Regarding the relationship between the assisting state and the related insurgents, it should be noted that any other state, if applying humanitarian law in its entirety, would adhere to the essence of the said Conventions and related Protocol I. This relationship is considered more international in nature than the relations between the recognized government and the alleged insurgents. During Vietnam War, the U.S. and Southern Vietnam uttered the willingness to exercise the Conventions partially if not fully, to the Vietcong (Schindler, 1982).

The U.S. failed to exhaust international remedies before resorting to unilateral military power. There was a prolonged duration when efforts at negotiated accord could be achieved. The referral of the dispute to the UN came late and in a perfunctory manner. The U.S. did not fulfil with the alleged international law code governing the actions of North Vietnam, nor did it initially consider the Geneva machinery or the consultative framework of SEATO. Instead, unilateral policies of force were adopted without regard for procedural devices created to make collective pronouncements regarding the use of force. The control of ferocity in global matters rest on the development of restrictive procedural directions, values and principles.

By expanding the scale of ferocity outside South Vietnam's territory, the U.S. has set an unworthy example in international affairs. When international institutions flop to deliver distinct guidance on permissible actions, national/domestic actions generate quasi-legislative instances. Given the background of the Vietnam conflict and the anticipation that South Vietnam might be integrated into a united Vietnam under Hanoi's government, the

American choice to bomb North Vietnam establishes a reckless precedent. If North Vietnam and its partners possessed the resolve and ability for employment of befitting military strength, this instance could even justify their right to bomb the U.S. land in retaliation.

The extensive domestic unpredictability in the Afro-Asian world highlights the necessity to insulate domestic wars from interference by major powers. Few actions like "Early deployment of peace observation forces, border control measures, restrictions on foreign military personnel, and mediation efforts could be beneficial". Before resorting to unilateral defensive force, accusations of "aggression" should be confirmed, especially when there is sufficient time. Verifying claims of covert aggression with certainty and speed can marshal help and support for collective security activities.

Ultimately, powerful international players have a duty to employ defensive force to counter violence when international mechanisms are incapacitated. However, the Vietnam War does not exemplify the proper execution of this responsibility. The conditions in South Vietnam were varying with standards of welfare, growth, and liberty, making it hard to argue that society would benefit from a Saigon victory. The huge American existence has had detrimental effects, intensified the war and teared apart Vietnamese social order, with limited potential to significantly alter the political consequence. The balance of forces favors the Vietcong, suggesting that they will likely achieve political control in the long run. The U.S. took a political obligation for South Vietnam's defense that has evolved into a pledge and a trial of devoutness to joint self-defense. This responsibility conflicts with the requirements of global order when it is subjected to unilateral entitlement to use military power. The U.S. national interest would be promoted either acting in conjunction with others or withdrawing in a form of cosmopolitan isolationism. Being the most influential and powerful country in history does not make the U.S. the world's policemen. The futile efforts in Vietnam demonstrate the ineffectiveness and hindrance of overcommitment politics. The U.S. could not act alone in the world while containing communism. If the U.S. could not find supportive foundations for action, should the U.S. squander their moral and material resources in a series of conflicts similar to Vietnam. The tragedy of Vietnam should prompt the U.S. to reassess the complex issues surrounding the use of military might in global matters and examine the increasingly imperial role played by the U.S. in the international community. It may be essential to recognize the relevance of international law not only in justifying foreign policy but also in its planning and execution. The capacities of legal advisors of the State Department's Legal Adviser would be better utilized if they were involved in the decision-making process rather than serving as a mere officially designated apologist called after the President has already made a sincere national pledge.

During the Vietnam War, there have been allegations and controversies surrounding the U.S. adherence to the LOAC. Some examples of alleged violations include:

- a. Indiscriminate targeting and civilian casualties:
 - Operation Rolling Thunder. The U.S. bombing campaign in North Vietnam, carried out from 1965 to 1968, has been criticized for the alleged indiscriminate targeting of civilian areas, including cities and villages, resulting in civilian casualties (Operation Rolling Thunder - Wikipedia, n.d.).
 - My Lai Massacre. My Lai Massacre was one of the most notorious events of the war. It happened in 1968, where allegedly the U.S. forces killed a large number of unarmed civilian women, children and old people were killed. (My Lai Massacre: Vietnam War & Colin Powell - HISTORY, n.d.).
- b. Use of Prohibited Weapons:
 - Agent Orange. The U.S. employed chemical defoliants, including Agent Orange, with the purpose to destroy vegetation. This was aimed to deny cover by this vegetation to the enemy. These chemicals had severe health and environmental consequences, causing long-lasting harm to both civilians and military personnel.
- c. Treatment of Detainees and Prisoners of War:
 - Phoenix Program. The Phoenix Program, a counterinsurgency program implemented by the U.S., aimed to neutralize the Viet Cong infrastructure. It has been alleged that the program involved torture, extrajudicial killings, and other human rights abuses against suspected Viet Cong members and sympathizers (Phoenix Program - Wikipedia, n.d.).
 - Treatment of Prisoners. There have been reports of abuse and mistreatment of prisoners, including North Vietnamese soldiers and Viet Cong fighters, held in U.S. custody during the war.
- d. Unlawful Targeting of Infrastructure:
 - Bombing of Civilian Infrastructure. There have been allegations that the U.S. targeted and destroyed civilian infrastructure, such as bridges, power plants, and dams, in an effort to undermine the enemy's logistical capabilities. These actions are seen as potential violations of LOAC regarding the protection of civilian objects (Vietnam War - U.S. Bombing Campaign in the Vietnam War | Britannica, n.d.).
- e. Use of Excessive Force and Disproportionate Attacks:
 - Operation Menu. Operation Menu involved secret bombings conducted by the U.S. in Cambodia between 1969 and 1970. The bombings targeted suspected Viet Cong sanctuaries but have been criticized for the alleged excessive and disproportionate

use of force, resulting in civilian casualties (Operation Menu - Wikipedia, n.d.).

The following paragraph is about the ethical concepts of war and proportionality. Reference is taken from Robert McNamara's documentary – The Fog of War (2003).

Robert McNamara in his documentary starts off by saying,

“Any military commander who is honest with himself, will admit that he has made mistakes in the application of military power and killed people unnecessarily – his own troops or other troops through mistakes or errors of judgment...”.

According to the Red Cross, during Vietnam war, the use of chemicals led to the physical disabilities and health related issues to more than 1 Mil people. It also badly affected the forestation over a large area of land (approximately over 31,000 km² of forest). There were so many accounts of miscalculations by the U.S. in the Vietnam War like misjudgment of friend or foe, the judgment of what is in another country's best interest, and that the U.S. does not have the God-given right to shape every nation in their own image or choice.

Limitations of Research

This research article presents a comprehensive examination of a critical period in history. However, it is essential to acknowledge several limitations that should be considered when interpreting the findings and recommendations.

One of the limitations of this research lies in the historical context. The Vietnam War took place several decades ago, and the availability of primary sources and eyewitness accounts may be limited or subject to bias. This could affect the comprehensiveness of the information presented in the article.

The scope of analysis of this article primarily focuses on the U.S. War in Vietnam as a case study. While this is a significant conflict, the research might not provide a complete view of the entire spectrum of armed conflicts and their adherence to the LOAC and Humanitarian Law. Armed conflicts are multifaceted and often characterized by rapidly changing dynamics. The article may not fully capture the intricacies of armed conflicts, which can make it challenging to draw universal conclusions.

The research focuses on specific historical events, but it may not fully address the evolution of international humanitarian law over time. Legal frameworks and interpretations have evolved, and this research might not capture very latest developments.

Recommendations

Considering the limitations of the research, the following recommendations can help enhance the value and applicability of the findings:

- To overcome the limitation of the research's scope, it is recommended to conduct additional case studies of more recent armed conflicts. This will provide a broader perspective on the application of the LOAC and Humanitarian Law.
- Conducting a comparative analysis of multiple armed conflicts can help identify patterns and variations in the application of international humanitarian law. This approach can provide more comprehensive insights.
- As part of the broader recommendations, efforts should be made to enhance public awareness and education about the principles and importance of international humanitarian law. This can contribute to its better implementation in the future.

CONCLUSION

The principles of Just War are now more than ever, still relevant in today's global war and conflict, because human history has witnessed the unthinkable. Especially when we dissect and critically see the events of these wars (WW-II and Vietnam War), one result comes to the immediate forefront, "Human beings must stop killing other human beings". How much evil must we do in order to do good? Woodrow Wilson said after WW-I, "we won the war to end all wars." (Piehler, 2008: 8). Now standing in the 21st century with the recent Russo-Ukraine war, one can only say how wrong that statement by Wilson was. Another lesson that McNamara infers is that "You can't change human nature – war is so complex it is beyond the ability of the human mind to comprehend all the variables, our judgment, and our understanding, are not adequate and we kill people unnecessarily".

The respect for the LOAC and IHL must be ensured. It is not just a moral or ethical consideration of respecting a law, but in terms of the respect for the precious lives of human beings, in the most rudimentary sense. The world's growing interdependence of different states upon each other shifts the realist mindset towards liberalism or constructivism, which could avert violence and direct conflicts, however, the realist mind shall always be present as it is human nature. But it can be followed even while respecting the Law of Armed Conflict.

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