

Source Document on International Humanitarian Law Terminology

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Abbreviations

ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia
IDP	Internally displaced person
IHL	International Humanitarian Law
IKKL	Instituti për Krimet e Kryera gjatë Luftës në Kosovë (Institute of Kosovo War Crimes)
KFOR	Kosovo Force
MNSA	Military non-state actor
NATO	North Atlantic Treaty Organization
POW	Prisoner of war
R2P	Responsibility to Protect
UN	United Nations
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment
UNMIK	United Nations Mission in Kosovo

1. Introduction

This document is a guide designed as a research tool for IKKL personnel and to clarify for researchers and activists in civil society and academia, who engage with the Institute's research and publications, the terms and concepts used by IKKL.

It provides an overview of key international humanitarian law (IHL) terms, including basic definitions and discussions of relevant academic literature for selected concepts. While most of the terms included in the document are defined in IHL, there are also terms like "martyr" or "massacre" that lack formal IHL definitions. They have been added due to their relevance for the Institute's work. Where applicable, relevant provisions from the Penal Code of the Republic of Kosovo are also referenced.

The document is divided in two main parts. The first part includes the definitions of relevant IHL terms and their corresponding definitions in the Penal Code, when applicable. Additionally, it includes a discussion of the terms that fall the scope of IHL based on a literature review on their sociohistorical and sociopolitical use. The second part provides a more detailed literature review of eight umbrella terms—for example genocide, *jus in bello*, and crimes against humanity—which include other related concepts. The main reason for conducting a literature review based only on eight on umbrella terms, rather than on each of the terms, is to provide a more comprehensive and clear examination of the literature whilst avoiding duplications of research efforts due to the overlapping and interrelated nature of the terms and the body of literature. These umbrella terms were selected for their particular relevance to crimes committed in Kosovo War and the country's post-conflict legal framework.

The main purpose of this document is to establish a common knowledge base for IKKL researchers regardless of their professional background by providing essential definitions and literature insights that can serve as a starting point for their research. Additionally, it seeks to clarify for external stakeholders – particularly researchers in academia and civil society organisations – the way that the Institute interprets and applies in its work IHL terminology and other relevant terms that have not been defined in IHL but are nevertheless widely used in the scholarly literature and in public discourse.

2. Terms

2.1. Terms defined in international humanitarian law

1. Genocide

Genocide is one of the gravest crimes recognized by international law. It involves actions carried out with the intent to destroy – in whole or in part – a national, ethnic, racial, or religious group. This term is defined in the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)¹ and the Rome Statute of the International Criminal Court (ICC) (herein after ‘ICC Statute’).² Acts constituting genocide include killing, causing serious bodily or mental harm, inflicting conditions of life intended to be physically destroyed, imposing measures intended to prevent births within a group, and forcibly transferring children from one group to another.³

Article 142 of the Penal Code of the Republic of Kosovo defines genocide in accordance with the Genocide Convention – namely, “as any act aimed at the destruction of a national, ethnic, racial, or religious group.”⁴ The Penal Code punishes the crime of genocide by at least 15 years in prison to life imprisonment.⁵

2. Crimes against humanity

As defined in Article 7 of the ICC Statute, crimes against humanity include a range of criminal acts such as murder, torture, slavery, deportation, persecution of any identifiable group of individuals, rape and sexual violence, enforced disappearance, apartheid, and other inhumane acts, when committed as part of a widespread or systematic attack against a civilian population with

¹ Convention on the Prevention and Punishment of the Crime of Genocide. Accessed October 17, 2024. https://www.un.org/en/genocideprevention/documents/atrocity%20crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

² Rome Statute of the International Criminal Court. Accessed October 17, 2024. <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

³ See pages 7-8 in the International Committee of the Red Cross Database - Glossary EHL. Accessed October 17, 2024. <https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>.

⁴ Article 142 (2). Penal Code of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>.

⁵ Article 142 (1). Penal Code of the Republic of Kosovo.

knowledge of the attack. These crimes are considered prohibited under international law, regardless of whether they occur during times of peace or war.⁶ Additionally, crimes against humanity fall under “grave breaches” of the Geneva Conventions and its Additional Protocols, which include several provisions that prohibit among others torture, inhumane treatment, unlawful imprisonment, and deportation of protected persons.⁷

Article 143(1) of the Penal Code of the Republic of Kosovo defines crimes against humanity in accordance with international law, and such crimes are punishable by imprisonment of at least 15 years and up to life imprisonment.⁸

3. Torture

Torture is a crime against humanity (see ‘2. Crimes against humanity’). Additionally, Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining information, punishment, intimidation, or discrimination when inflicted by or with the consent of a public official.”⁹

Article 196 of the Penal Code of the Republic of Kosovo includes a provision on the definition of torture, which is in accordance with international law, and provisions for its punishment, which ranges from 1 to 15 years in prison.¹⁰

4. Terrorism

There are several provisions in IHL and customary IHL that prohibit acts or threats of violence that are intended to spread terror among civilian populations. They include Article 51(2) of

⁶ International Criminal Court. *Rome Statute of the International Criminal Court*. May 2024. <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>; See page 6 of *Glossary of International Humanitarian* <https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>.

⁷ International Committee of the Red Cross, “Annex 1: Grave breaches specified in the four Geneva Conventions of 1949 and in Additional Protocol of 1977,” <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/2012/att-grave-breaches-gc-and-ap-annex-1-icrc.pdf>.

⁸ Article 143(1). Penal Code of the Republic of Kosovo.

⁹ United Nations. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

¹⁰ Penal Code of the Republic of Kosovo.

Additional Protocol I, Article 13(2) and Article 4(2)(d) of Additional Protocol II, and Article 33 of the Fourth Geneva Convention, as well as several military manuals, state legislations, and statutes of international criminal tribunals.¹¹

The Penal Code of the Republic of Kosovo defines terrorism as acts committed "with an intent to seriously intimidate a population, to unduly compel a public entity, government or international organization to do or abstain from doing any act, or to seriously destabilize or destroy the fundamental political, constitutional, economic or social structures."¹² The punishment of acts of terrorism varies according to their severity, but they range from 5 years in prison to life imprisonment.¹³

5. Forced displacement

Forced displacement entails the transfer, expulsion, or deportation of individuals or groups of people under coercion. Defined as a crime against humanity under Article 7(2)(d) of the Rome Statute, deportation or forcible transfer of population entails the "*forced displacement* of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."¹⁴ Individual or mass forcible transfers are prohibited also under Article 49 of the Fourth Geneva Convention,¹⁵ unless such transfers seek to minimize harm by an occupying force. In such cases, "The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated."¹⁶

¹¹ International Committee of the Red Cross, "Rule 2. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited," *International Humanitarian Law Database*, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule2#Fn_40E5B09C_00010.

¹² Article 128. Penal Code of the Republic of Kosovo.

¹³ Article 129. Penal Code of the Republic of Kosovo.

¹⁴ International Criminal Court. (2011). Rome Statute of the International Criminal Court. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

¹⁵ International Committee of the Red Cross, "Article 49 – Deportations, transfers, evacuations," *International Humanitarian Law Database*, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49>.

¹⁶ Article 49, paragraph 3, Fourth Geneva Convention, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49?activeTab=1949GCs-APs-and-commentaries>.

Article 143(2)(2.4) of the Penal Code of the Republic of Kosovo defines deportation and forced displacement in accordance with the definition in the Rome Statute.¹⁷

6. Forcefully displaced people

Forcefully displaced people include civilians and other protected persons who have been displaced from their lawful places of dwelling without grounds permitted under international law (see above) either within the territory of a state or across from state boundaries. When civilians and protected persons are displaced within the internationally recognized boundaries of a state, they are considered internally displaced persons.

7. Internally displaced persons (IDPs)

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or leave their homes of habitual residences, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.¹⁸

In this context, the Penal Code of the Republic of Kosovo protects internally displaced persons from prosecution for crossing the border at unauthorized points if they are fleeing from a territory where their life, body, or fundamental freedoms and rights are endangered.¹⁹

8. Refugee

A refugee is anyone who is forced to leave their home country due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, political opinion, or because of war or widespread violence, and who is outside their country of nationality or habitual residence.²⁰ This term is defined by the 1951 United Nations Convention on the Status of Refugees and its Protocol of 1967.²¹ The principle of non-refoulement prohibits repatriating

¹⁷ Penal Code of the Republic of Kosovo. <https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf>

¹⁸ United Nations Guiding Principles on Internal Displacement, p. 1, <https://www.unhcr.org/media/guiding-principles-internal-displacement>.

¹⁹ Article 140 (6). Penal Code of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>.

²⁰ International Committee of the Red Cross Database - Glossary EHL. Accessed October 21, 2024. <https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>.

²¹ UNHCR. *Convention and Protocol Relating to the Status of Refugees*. Communications and Public Information Service. Geneva, Switzerland: UNHCR. <https://www.unhcr.org>.

individuals to dangerous states, while the UNHCR monitors the refugee situation and provides protection and support during their return or resettlement.²²

The Penal Code of the Republic of Kosovo protects refugees from prosecution for crossing the border at unauthorized points if they are fleeing from a territory where their life, body, or fundamental freedoms and rights are endangered.²³

9. Enforced disappearance

Enforced disappearance of persons is included in the list of crimes classified as crimes against humanity in the ICC Statute.²⁴ Article 7(2)(i) of the ICC Statute defines enforced disappearance of persons as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

Similarly, Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (2010) considers enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”²⁵

Article 143(1) of the Penal Code of the Republic of Kosovo includes the enforced disappearances of persons as a crime against humanity. Such crimes are punishable by at least 15 years in prison and up to life imprisonment.

²² ABC of International Humanitarian Law. Accessed October 21, 2024. <https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/06/ABC-of-IHL.pdf>; for more information about refugee protections and rights, see International Committee of the Red Cross. *How does law protect in war? - Online casebook*. Accessed 21 Oct. 2024. <https://www.icrc.org/en/law-and-policy>; Sassòli, M. (2019). *International humanitarian law: Rules, controversies, and solutions to problems arising in warfare*.

²³ Article 140 (6). Penal Code of the Republic of Kosovo.

²⁴ See Article 7 (1) (i) of the ICC Statute.

²⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>.

10. Collective punishment

Collective punishment refers not only to criminal punishment but also to other forms of sanctions, harassment, or administrative action taken against a group in retaliation for an act committed by an individual or individuals perceived to belong to that group.²⁶ Collective punishment for individual acts, as well as corporal punishments, imprisonment in premises without daylight, and any form of torture or cruelty, is forbidden. International humanitarian law stipulates that no person may be punished for acts they did not commit, and it explicitly prohibits the collective punishment of a group for crimes committed by an individual, whether the group consists of prisoners of war or any other persons.²⁷ This is one of the fundamental guarantees established by the 1949 Geneva Conventions and their Additional Protocols, and it applies to all individuals, regardless of their status or category under the Geneva Conventions.²⁸

Article 145 (2)(2.30) and Article 147 (2)(2.23) of the Penal Code of the Republic of Kosovo includes collective punishment is a serious war crime and is punishable by at least 5 years in prison and up to life imprisonment.²⁹

11. Cultural property

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) defines cultural property as “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; cultural property, including

²⁶ International Humanitarian Law Database. Collective Punishments - *Online casebook*. Accessed 21 Oct. 2024. https://casebook.icrc.org/a_to_z/glossary/collective-punishments.

²⁷ Geneva Convention (III) on Prisoners of War, 1949 - Article 87. Accessed 21 Oct. 2024. <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-87>; IHL Treaties - Article 75/2. Accessed 21 Oct. 2024. <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75>.

²⁸ The Practical Guide to Humanitarian Law. Accessed 21 Oct. 2024. <https://guide-humanitarian-law.org/content/article/3/collective-punishment/#:~:text=Collective%20punishment%20is%20prohibited%2C%20based,guarantees%20that%20protect%20judicial%20procedures>.

²⁹ See Article 145. Penal Code of the Republic of Kosovo.

sites of archaeological, historical, cultural, artistic, and scientific interest.³⁰ In addition to the comprehensive provisions of the 1954 Hague Convention for the protection of cultural property, the ICC Statute and the Additional Protocols of the Geneva Conventions also include provisions for the protection of cultural property. Articles 8 (2)(b)(ix) and 8 (2)(e)(iv) of the ICC Statute criminalize intentional attacks against buildings dedicated to religion, education, art, science, or charitable purposes, and historic monuments, provided they are not military objectives; whereas Article 53 of Additional Protocol I³¹ and Article 16 of Additional Protocol II³² prohibit any acts of hostility towards cultural property or use them in support of a military objective.

Article 147 (2) (2.4) of the Penal Code of the Republic of Kosovo criminalizes attacks on religious sites, historical monuments, as well as educational or charitable institutions, or facilities dedicated to science, art, education, or humanitarian purposes.

12. Mass grave

A mass grave is a burial site containing the remains of multiple individuals, often victims of violence, armed conflict, or genocide, who have been buried without proper identification or individual graves often with the intent of concealing the evidence of a war crime or crime against humanity. Their discovery thus provides evidence for such crimes.

The disposal of the remains of the dead in mass and unmarked graves, without the proper respect, is in contravention of IHL. Article 17(3) of the First Geneva Conventions obligates parties to an armed conflict “to ensure that the dead are honorably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according

³⁰ Article 1. Convention for the Protection of Cultural Property in the Event of Armed Conflict. <https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention>. For sources that have documented the scale of the destruction of cultural property in Kosovo and the post-war complexities of protecting cultural heritage see Herscher, A. (2010). *Violence taking place: The architecture of the Kosovo conflict*. Stanford University Press. Also Hisari, L., & Fouseki, K. (2020). *Post-War Cultural Heritage Preservation in Kosovo: Rethinking the Implementation of Ahtisaari Plan Annex V*. *Heritage*, 3(1), 98–115. <https://doi.org/10.3390/heritage3010006>.

³¹ <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-53?activeTab=1949GCs-APs-and-commentaries>.

³² <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-16?activeTab=1949GCs-APs-and-commentaries>.

to the nationality of the deceased, properly maintained and marked so that they may always be found.”³³

There are no specific provisions in the Penal Code of the Republic of Kosovo that may relate to the prohibition of disposing of dead – civilians and combatants – during armed conflicts.

13. War crimes

War crimes are serious violations of international laws and conventions pertaining to armed conflict. Article 8 of the ICC Statute defines war crimes as grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international and non-international armed conflicts. These acts include willful killing, torture, unlawful deportation, taking of hostages, intentionally directing attacks against civilians, and extensive destruction of property not justified by military necessity.³⁴

Article 144(2) of the Penal Code of the Republic of Kosovo defines and provides a list of war crimes in accordance with the provisions of Article 8(2) of the ICC Statute.

14. Jus ad bellum

Jus ad bellum (“law on resort to war”) refers to the set of legal norms that determine the conditions under which a state may lawfully resort to the use of force.³⁵ It addresses the justifications for entering into armed conflict and focuses on the legality of initiating a war. The primary sources of *jus ad bellum* are found in international law, particularly the Charter of the United Nations (1945), which allows the use of force only in cases of self-defense or when explicitly authorized by the United Nations Security Council.³⁶ According to Article 2 (4) of the UN Charter, states “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” Nevertheless, Article 51 of the UN Charter provides for

³³ <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-17/commentary/2016>. See also Article 8 of Additional Protocol II, <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-8?activeTab=1949GCs-APs-and-commentaries>.

³⁴ See Article 8 (2). ICC Statute.

³⁵ Humanitarian Law Glossary. <https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>

³⁶ Charter of the United Nations. <https://www.un.org/en/about-us/un-charter/full-text>

the inherent right of self-defense of any state if they come under attack, and obliges the Security Council to take the necessary measures to restore international peace and security.³⁷

The Penal Code of the Republic of Kosovo includes a provision for punishing incitement to participate in an armed conflict,³⁸ which is punishable by 1 to 5 years in prison, but does not include provisions for punishing the planning and execution of an aggressive war.

15. Reprisals

Reprisals in international humanitarian law and customary law include measures taken by a belligerent state in response to a violation of international law. Although otherwise unlawful – that is, if the actions are taken for motives other than ensuring the preservation of international law – reprisals may be considered lawful if they meet certain criteria:

1. Reprisals may be taken in response to a serious violation of international humanitarian law.
2. They may be taken as a measure of last resort, if legal measures have been exhausted.
3. Reprisals must be proportional. The Geneva Conventions and their Additional Protocol I prohibit reprisals against the wounded, sick, personnel, buildings, or equipment protected by the Convention (I); shipwrecked persons, the vessels or equipment protected by the Convention (II); prisoners of war; persons and property protected by the Convention (IV).
4. The decision must be taken at the highest level of government.
5. The action must stop as soon as the adversary complies with the law.³⁹

Despite the above criteria, reprisals against protected persons and objects under the provisions of Additional Protocol I are prohibited.⁴⁰

³⁷ Article 51. Charter of the United Nations.

³⁸ Article 156. Penal Code of the Republic of Kosovo.

³⁹ See GC (I), art. 46; GC (II), art. 47; GC (III), art. 13; GC (IV), art. 33; Additional Protocol I, art. 20. See “Reprisals,” *International Committee of the Red Cross*, accessed 21 October 2024, https://casebook.icrc.org/a_to_z/glossary/reprisals; “Rule 145. Reprisals,” *International Humanitarian Law Databases*. Accessed October 21, 2024. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule145>; “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,” *International Humanitarian Law Databases*. Accessed October 21, 2024. <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-20/commentary/1987?activeTab=>.

⁴⁰ Article 20. Additional Protocol II.

The Penal Code of the Republic of Kosovo does not include any specific provisions that address reprisals, but it does include provisions that refer to the prohibition of crimes against humanity and war crimes under Chapter XV.

16. Jus in Bello

Jus in bello (“law in war”) governs the conduct of parties engaged in an armed conflict. It aims to limit the effects of armed conflict by protecting persons who are not, or are no longer, participating in hostilities and by restricting the means and methods of warfare. The Geneva Conventions of 1949 and their Additional Protocols are key instruments of *jus in bello*, establishing rules for the humane treatment of combatants and civilians alike.⁴¹

The core principles of *jus in bello* include distinction, proportionality, and necessity. The principle of distinction requires parties to a conflict to distinguish between combatants and civilians, ensuring that only legitimate military targets are attacked.⁴² The principle of proportionality prohibits attacks that may cause excessive civilian harm about the anticipated military advantage, while the principle of necessity allows only those actions that are necessary to achieve a legitimate military objective.⁴³

The Penal Code of the Republic of Kosovo reflects the principles of *jus in bello* by requiring that military operations are conducted in accordance with IHL standards, ensuring that civilians and civilian objects are protected from unnecessary harm during armed conflicts.⁴⁴

17. Protected persons

Individuals who, during an armed conflict or occupation, are afforded special protections under international law. This category includes civilians, prisoners of war, medical and religious personnel, and others who are not actively participating in hostilities. The Geneva Conventions

⁴¹ Geneva Conventions (1949) and Additional Protocols: <https://ihl-databases.icrc.org/>

⁴² Additional Protocol I, Article 48: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>.

⁴³ Crawford E. & Pert A. (2020). International humanitarian law. Cambridge University Press. p. 35.

⁴⁴ See Chapter XV. Penal Code of the Republic of Kosovo.

and their Additional Protocols provide the legal framework for the protection of these persons, ensuring their humane treatment and safeguarding their rights during times of armed conflict.⁴⁵

The protection of civilians is a core principle of IHL, prohibiting violence to life and person, including murder, torture, and cruel treatment. Prisoners of war are also considered protected persons and are entitled to humane treatment, protection from violence, and respect for their dignity.⁴⁶ Medical and religious personnel, while serving in their capacity, are granted specific protections, such as the right to perform their duties without interference and to receive necessary support from all parties to the conflict.⁴⁷

Chapter XV of the Penal Code of the Republic of Kosovo includes relevant provisions for the prevention of harm to protected persons during armed conflicts.⁴⁸

18. Military non-state actors (MNSAs)

Military non-state actors are organized armed groups that operate independently of a state's formal military and governmental structures. These groups can include militias, insurgent forces, paramilitary organizations, and other entities that participate in armed conflicts without the direct authorization or oversight of a recognized state authority. While MNSAs are not formal state militaries, they are still subject to IHL when involved in armed conflicts.⁴⁹ Articles 1-3 of Additional Protocol II to the Geneva Conventions provide specific obligations for MNSAs, requiring them to adhere to international standards of conduct during hostilities.⁵⁰ The Geneva Conventions and their Additional Protocols extend protections to civilians and combatants alike, ensuring that military non-state actors respect the rights and safety of all individuals during hostilities.⁵¹

⁴⁵ Common Article 3 of Geneva Conventions (1949); Articles 27-34. Fourth Geneva Convention.

⁴⁶ Articles 13-16. Third Geneva Convention.

⁴⁷ International Committee of the Red Cross (ICRC). "The Geneva Conventions and Their Additional Protocols": <https://www.icrc.org/en/document/geneva-conventions-and-their-additional-protocols>.

⁴⁸ See particularly Articles 144-147.

⁴⁹ International Committee of the Red Cross (ICRC) Glossary: <https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>

⁵⁰ Articles 1-3. Additional Protocol II. <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977>.

⁵¹ Crawford & Pert (2020), p. 55.

The Penal Code of the Republic of Kosovo does not define specifically MNSAs, but Chapter XV of the Code includes provisions that do not distinguish between perpetrators of war crimes and crimes against humanity who may be part of a military and those may be part of irregular forces,

19. Perfidy

Perfidy refers to acts intended to deceive the enemy in armed conflict by falsely convincing them that they are entitled to protection under the laws of war, to betray their confidence. Perfidy is prohibited under international humanitarian law because it undermines the trust necessary for the protections afforded to non-combatants and combatants who are *hors de combat* (or out of combat). Examples of perfidious acts include feigning surrender, feigning injury or sickness, or misusing protective emblems such as the Red Cross or the white flag.⁵²

According to Article 37 of Additional Protocol I to the Geneva Conventions, perfidy involves acts that invite the confidence of an adversary to believe that they are obliged to grant protection under the rules of international law applicable in armed conflict, and then betraying that confidence by attacking the adversary.⁵³ These actions are distinct from ruses of war, which are permissible forms of deception that do not involve a breach of the law or violate any guarantees of protection.⁵⁴

Article 145 (2) (2.7) of the Penal Code of the Republic of Kosovo specifically criminalizes acts considered perfidious under international law, such as feigning surrender or misusing protective emblems to deceive the enemy, which are punished from 10 years in prison to life imprisonment.

20. Armed conflict

Armed conflicts are belligerencies between two parties that involve the use of armed forces. They are categorized into international armed conflicts and non-international armed conflicts. International armed conflicts entail armed confrontations between two or more States. Non-

⁵² International Committee of the Red Cross (ICRC) Glossary:

<https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>

⁵³ Article 37. Additional Protocol I. <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>.

⁵⁴ Crawford & Pert (2020), p. 62.

international armed conflicts entail armed confrontations between a State and one or more non-state groups or between non-state groups.⁵⁵

Article 2 of the Third Geneva Convention refers to international armed conflicts – i.e. interstate conflict – whereas Article 3 broadens the scope of the application of the Convention by including non-state groups engaged in hostilities against a state or with another non-state group. Article 1 of Additional Protocol II further restricts the definition of ‘armed conflict’ by excluding “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.”⁵⁶ Cases of international armed conflicts are considered as such even when the action of a High Contracting Party is not resisted and leads to a partial or complete occupation of the territory of another State. Cases of non-international armed conflicts are considered as such when a minimum level of hostility has been reached – by Article 1 of Additional Protocol II – and the non-governmental groups are considered a party to the conflict as they operate “under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.”⁵⁷

21. Insurgencies

Insurgencies – that is, armed rebellions against state power – could constitute an armed conflict if the dissenting armed forces or non-governmental groups are consistently and in a sustainable manner conducting military operations and the State is responding not only through law enforcement mechanisms but also through their armed forces. If, however, an insurgency consists of sporadic and uncoordinated armed resistance, the conflict between the State and insurgents may not be considered an armed conflict and may be classified as internal disturbance, tensions, or hostilities. It is important to note here that States have a vested interest in not considering

⁵⁵ See International Committee of the Red Cross. (2008). How is the term ‘armed conflict’ used in international humanitarian law?. <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/opinion-paper-armed-conflict.pdf>.

⁵⁶ Article 1(2). Additional Protocol II. <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-1?activeTab=>.

⁵⁷ Article 1. Additional Protocol II. See also International Committee of the Red Cross. (2008). How is the term ‘armed conflict’ used in international humanitarian law?

insurgents as subject to the protections of IHL, even when the level of hostilities may approach the threshold outlined in Article 1 of Additional Protocol II.⁵⁸

22. Civil wars

Civil wars are armed conflicts within a state and fall within the category of non-international armed conflicts.

Although the Penal Code of the Republic of Kosovo defines specifically neither of the terms above (armed conflict, insurgencies, civil wars), Chapter XV of the Penal Code does include provisions for the punishment of war crimes committed in international conflicts and non-international conflicts, which are based on provisions found in the Geneva Conventions and its Additional Protocols.⁵⁹

23. Direct participation in hostilities

It consists of specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict. Direct participation in hostilities requires an act that is likely to harm a party to an armed conflict's military operations or capacity, or cause death, injury, or destruction to protected persons or objects; has a direct causal link to resulting harm; and is specifically intended to support one party to the conflict and harm another.⁶⁰ Only combatants are allowed to engage in direct military activities.

Civilians who participate in hostilities lose their protection from attack. The line between civilian and military roles is blurring, leading to discussions about how to define these terms.⁶¹ In non-international armed conflicts, members of armed forces and armed groups are considered

⁵⁸ For a more thorough analysis, see Daboné, Z. (2011). International Law: Armed Groups in a State-Centric System. *International Review of the Red Cross* 93 (882). <https://international-review.icrc.org/sites/default/files/irrc-882-dabone.pdf>.

⁵⁹ Articles 145 and 148 refer specifically to international conflicts, whereas Articles 146, 147, and 148 refer to non-international conflicts. The rest of the provisions in Chapter XV refer to both conflicts of international and non-international character.

⁶⁰ Article 43. Additional Protocol I. <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-43>; International Humanitarian Law Database. Direct Participation in Hostilities - *Online casebook*. Accessed 22 Oct. 2024. https://casebook.icrc.org/a_to_z/glossary/direct-participation-hostilities.

⁶¹ ABC of International Humanitarian Law. Accessed October 22, 2024. <https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/06/ABC-of-IHL.pdf>.

legitimate targets until they surrender or become incapable of fighting, while civilians are only targetable when and for as long as they are directly participating in hostilities.⁶²

Within the framework of the Penal Code of the Republic of Kosovo, violations of the rules of war as defined by international laws and the Geneva Conventions are strictly prohibited and are classified as war crimes under Articles 144, 145, 146, and 147 of the Code.

24. Targeted Killing

Targeted killing is defined as the intentional use of lethal force, attributable to a subject of international law (typically a state), directed at individually selected persons who are not in the physical custody of those targeting them. Such actions involve deliberate intent, premeditation, and a clear aim to kill, distinguishing them from other forms of deprivation of life. The individuals targeted are chosen based on specific selection criteria, and these operations exclude any judicial custody procedures.⁶³ In IHL, targeted killings raise concerns as they often occur far from active hostilities, and those targeted may not be directly participating in hostilities at the time of the attack. The legality of targeted killings hinges on whether the targeted individual is deemed a combatant or a person directly participating in hostilities, in which case, targeting is lawful. However, controversy surrounds the criteria States use to determine whether an individual has participated in direct hostilities, since some criteria they use – such as classifying all military-age males in a strike zone as lawful targets – have drawn criticism.⁶⁴

There are no provisions in the Penal Code of the Republic of Kosovo concerning targeted killing.

⁶² Sassòli, M. (2019). *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*. Edward Elgar Publishing Limited.

⁶³ International Humanitarian Law Database. Targeted Killings. Accessed October 26, 2024. https://casebook.icrc.org/a_to_z/glossary/targeted-killings; Nils, M. (2008). *Targeted Killing in International Law*. Oxford University Press. pp.3-8.

⁶⁴ For more on the term "targeted killing" and associated concerns within international humanitarian law, see Sassòli (2019); Krieger et al. (Eds.) (2021). *Yearbook of International Humanitarian Law*. Vol. 24, *Cultures of International Humanitarian Law*. Asser Press-Springer; Melzer (2008).

25. Military necessity*

It is a fundamental and contentious principle in international humanitarian law that simultaneously enables and curtails the use of violence in armed conflicts. Together with the principle of humanity – that is, ensuring that an armed conflict inflicts only minimal damage to the civilian population and infrastructure – they have produced key principles that have been codified in international humanitarian law, such as military objective, proportionality, and distinction.⁶⁵

26. Military objectives

Article 52 (2) of Additional Protocol II defines military objectives as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”⁶⁶ In other words, the employment of force in armed conflicts by armed forces ought to be driven by the principle of military necessity, whilst armed forces may target objects whose destruction or neutralization is militarily advantageous.

Despite the military advantage that an armed attack may bring, it needs to be proportional and to distinguish between civilians and combatants.

27. Distinction

The principle of distinction is one of the fundamental principles of international humanitarian law. It obligates parties to a conflict to confine their attacks to military objectives and refrain from targeting civilians and civilian infrastructure.⁶⁷ Relevant provisions in Additional Protocol I and Additional Protocol II include schools, cultural and religious objects⁶⁸, and the infrastructure that is essential for the survival of the civilian population – such as “foodstuffs, agricultural areas for

* For following terms – military necessity, military objectives, collateral damage, distinction, and proportionality – the relevant provisions in the Penal Code of the Republic of Kosovo are discussed as part of the term ‘proportionality’.

⁶⁵ Schmitt, M. N. (2010). Military necessity and humanity in international humanitarian law: Preserving the delicate balance. *Virginia Journal of International Law*, 50(4), 795-830. <https://www.onlinelibrary.ihl.org/wp-content/uploads/2021/07/Military-Necessity-Humanity-Balance.pdf>; International Committee of the Red Cross. (n.d.). The principles of humanity and necessity. https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02_humanity_and_necessity-0.pdf; Article 8. Rome Statute of the International Criminal Court.

⁶⁶ Article 52. Additional Protocol I. <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-52?activeTab=1949GCs-APs-and-commentaries>

⁶⁷ The principle of distinction is outlined in Articles 48-58 of Additional Protocol I and Articles 13-16 of Additional Protocol II of Geneva Conventions.

⁶⁸ See Article 53. Additional Protocol I; Article 16. Additional Protocol II.

the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”⁶⁹ – as well as dams, dykes, and nuclear electrical generating stations, whose attack may cause severe damage to the livelihood of the civilian population.

Protection of civilian objects and infrastructure may, however, be forfeited if they are being used for military purposes.⁷⁰

28. Collateral Damage

Collateral Damage refers to incidental loss of civilian life, injury to civilians, or damage to civilian objects in the course of an attack against a legitimate military target despite the taking of all necessary precautions to prevent or to minimize such damage, loss, or injury.⁷¹ Under IHL, such damage becomes a crime when it is deemed "excessive" in relation to the direct military advantage anticipated from the attack. This concept is governed by the principle of proportionality, which mandates that the harm to civilians must not outweigh the expected military gain. Violations of this principle, particularly when the incidental harm is excessive, are considered serious breaches of IHL. These violations are criminalized under Protocol I of the Geneva Conventions as grave breaches and are also punishable under the ICC Statute when they occur in international armed conflicts. The crime underscores the legal obligation of military forces to avoid excessive harm to civilians, even when targeting legitimate military objectives.⁷²

29. Proportionality

The principle of proportionality refers to the need of parties to a conflict to refrain from attacks that use excessive force and cause excessive damage to civilians and civilian objects and infrastructure beyond the destruction or neutralization of a military objective. Specific provisions on the prohibition of indiscriminate attacks include Article 51(4) and Article 51(5) of Additional

⁶⁹ See Article 54 (2). Additional Protocol I; Article 14. Additional Protocol II. Article 54 (5) allows the derogation of the Article 54 (2) provision if a Party to the conflict considers actions that violate the provision as militarily necessary to prevent or respond to an invasion of the territory under its control.

⁷⁰ See for example Article 54 (3) (5) and Article 56 (2) of Additional Protocol II. See also Médecins Sans Frontières. Military Objectives. *The Practical Guide to Humanitarian Law*. Accessed October 25, 2024. <https://guide-humanitarian-law.org/content/article/3/military-objectives/>.

⁷¹ International Committee of the Red Cross Database - Glossary EHL. Accessed October 23, 2024. [ehl-english-glossary.pdf](https://ihl-databases.icrc.org/en/customary-ihl/v2/rule14).

⁷² Article 51(5)(b) and Article 57(2)(a)(iii). Additional Protocol I; Sassòli (2019); International Humanitarian Law Database. "Practice Relating to Rule 14. Proportionality in Attack." *IHL Databases*. Accessed October 23, 2024. <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule14>.

Protocol I. The first provision requires that methods and means of combat be directed to a specific military objective and that methods and means of combat not be used if their effects cannot be limited. The second provision further provides cases in which attacks are considered indiscriminate, for example, if scattered military objectives are treated as a single one and are targeted through bombardment or any other methods that produce excessive damage to the expected military advantage.

Concerning the principles that ought to regulate military operations (military necessity, military objective, distinction, proportionality) the Penal Code of the Republic of Kosovo does not include specific provisions that define or explain them. Although terms such as “military necessity” or “military objective” are mentioned as part of the relevant provisions within Chapter XV, they are not defined.⁷³

30. Combatant

A combatant is an individual who directly participates in hostilities during an armed conflict. Combatants are members of the armed forces of a party to the conflict, excluding medical and religious personnel. They are entitled to prisoner-of-war status if captured and have the right to engage in hostilities under international humanitarian law. Combatants must distinguish themselves from the civilian population while preparing or engaging in an attack to maintain their lawful combatant status.⁷⁴ According to the Geneva Conventions, combatants are obliged to conduct military operations in accordance with the laws of war, ensuring respect for IHL at all times.⁷⁵

Article 145 of the Penal Code of the Republic of Kosovo addresses the protection of combatants, ensuring that they are treated according to international standards and that any violations involving combatants are properly penalized. Article 147 further extends these protections and obligations

⁷³ Paragraph 2 of Article 143 on Crimes against Humanity includes a few definitions. It defines ‘attack directed against civilian populations’ as the totality of crimes under Paragraph 1 (i.e. murder, mass murder, enslavement, forceful displacement, imprisonment, sexual violence or enslavement, collective persecution, forceful disappearance, apartheid, and other similar actions of inhumane nature that cause serious bodily or psychological harm) against a civilian population with the intent to target such population or in support of the implementation of a state policy.

⁷⁴ International Committee of the Red Cross (ICRC) Glossary:
<https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>

⁷⁵ Article 43. Geneva Conventions (1949); Article 8(2)(b)(i). Rome Statute of the International Criminal.

to non-international armed conflicts, emphasizing the prohibition of serious violations, including acts such as attacking protected personnel and facilities. Violations of these provisions are punishable by at least 5 years and up to life imprisonment.

31. Civilian

A civilian is any person who is not a member of the armed forces or other organized armed groups involved in an armed conflict. Civilians are protected under international law from direct attack, provided they do not take a direct part in hostilities. The Geneva Conventions and their Additional Protocols establish protections for civilians during both international and non-international armed conflicts.⁷⁶

Chapter XV of the Penal Code of the Republic of Kosovo includes relevant provisions that criminalize war crimes and crimes against humanity that affect civilians.

32. Armed forces

Article 43(1) of Additional Protocol I defines armed forces as “all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.” Militias, paramilitary forces, and law enforcement units may also be considered part of the armed forces of a Party to the conflict, if they are subordinate to a command authority, have internal discipline, and distinctive emblems, carry weapons openly, and conduct their operations by the laws and customs of war.⁷⁷

The Penal Code of the Republic of Kosovo does not include provisions that define the term ‘armed forces’. Article 155 states that the military commander or the person acting as military commander is criminally responsible for the crimes foreseen under Articles 142-150 of the Code, when committed by the forces under their effective command and control or the authority and control – either because of prior knowledge and operational directives given by the commander or the person acting as such, or because of a lack of measures taken to prevent the crimes from being committed.

⁷⁶ Article 50. Additional Protocol I.

⁷⁷ International Humanitarian Law Databases. Rule 4 of Customary International Humanitarian Law: Definition of Armed Forces. Accessed October 25, 2024. https://ihl-databases.icrc.org/en/customary-ihl/v1/rule4#Fn_A48EF233_00001.

33. Prisoner of war

A prisoner of war (POW) is a combatant or person with equivalent legal status captured by an enemy during an international armed conflict, including members of armed forces, militias, or volunteer corps under responsible command and abiding by the law of armed conflict.⁷⁸ POWs may also include civilians authorized to accompany the armed forces, such as war correspondents and supply contractors, as well as crews of merchant marines or civilian aircraft involved in the conflict. Additionally, members of a *levée en masse* (civilians who spontaneously resist invasion) and the wounded, sick, or shipwrecked combatants are eligible for POW protections under IHL. If there is any doubt about a captured person's status, they are presumed to be POWs, entitled to protections primarily outlined in the Third Geneva Convention.⁷⁹

Under IHL, POWs must be treated humanely, shielded from violence, given adequate food and medical care, permitted to communicate with family, and not subjected to forced labor. They are also protected from prosecution for lawful acts of war. However, individuals like mercenaries and spies do not qualify for POW status, and medical or religious personnel aiding POWs, while entitled to similar protections, are not considered POWs.⁸⁰ Violations of POW protections and rules of war, as per the Geneva Conventions, are recognized as war crimes under the Penal Code of the Republic of Kosovo (Articles 144-147).⁸¹

⁷⁸ Geneva Convention (III) Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Article 4; ABC of International Humanitarian Law. Accessed October 22, 2024. <https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/06/ABC-of-IHL.pdf>.

⁷⁹ Geneva Convention (III) Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Article 4; International Committee of the Red Cross. Prisoners of War - *Online casebook*. Accessed 22 Oct. 2024. https://casebook.icrc.org/a_to_z/glossary/direct-participation-hostilities; International Committee of the Red Cross Database - Glossary EHL. Accessed October 22, 2024.

⁸⁰ Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Accessed October 22, 2024. <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949>; ABC of International Humanitarian Law. Accessed October 22, 2024. <https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/06/ABC-of-IHL.pdf>; International Committee of the Red Cross Database - Glossary EHL. Accessed October 22, 2024. <https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>; International Humanitarian Law Database. Prisoners of War - *Online casebook*. Accessed 22 Oct. 2024. https://casebook.icrc.org/a_to_z/glossary/direct-participation-hostilities; Rome Statute of the International Criminal Court. War Crimes, Article 8/2 V and VI. Accessed October 22, 2024. <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

⁸¹ Penal Code of the Republic of Kosovo.

34. Spy

A person is considered a spy when acting clandestinely or under false pretenses to obtain or endeavor to obtain military information in enemy-controlled territory, and communicate it to the hostile party.⁸² Article 46 of Additional Protocol I includes several provisions regarding the status of combatants and the nature of espionage. The first important distinction to note, which is outlined through the first and second paragraphs of this article, is that while a member of the armed forces of a Party to the conflict loses his/her POW status when engaged in espionage – that is, when they are seeking to obtain information clandestinely or otherwise under false pretenses – he/she does not lose his/her POW status if when gathering information, they are wearing their uniform. Under these conditions, they cannot be considered as engaging in espionage. The third and fourth paragraph of Article 46 provide additional protection of POW status to members of the armed forces of a Party to the conflict who is or is not a resident in a territory occupied by an adverse Party. In such cases, they should not lose their POW status merely because they are caught gathering information of military values, unless they are engaged in espionage.

Article 124 of the Penal Code of the Republic of Kosovo includes provisions that sanction acts of espionage. It stipulates that when acts of espionage are conducted during an armed conflict, they are punishable by at least 10 years in prison and up to life imprisonment.⁸³

35. Mercenary

A mercenary is an individual who participates in armed conflicts without being part of the armed forces or sharing the nationality of any Party to the conflict. Mercenaries are neither residents of the conflict zones nor sent by any state for official duties. They are specifically recruited to fight in exchange for material compensation, often substantially more than what is offered to regular soldiers of the same rank. Driven primarily by personal gain, mercenaries are denied both combatant and prisoner of war status.⁸⁴

⁸² Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Regulations: Art. 29; International Humanitarian Law Database. Spies - *Online casebook*. Accessed 22 Oct. 2024. [Spies | How does law protect in war? - Online casebook](#); ABC of International Humanitarian Law. Accessed October 22, 2024. <https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/06/ABC-of-IHL.pdf>; Crawford & Pert (2020).

⁸³ Article 124 (6). Penal Code of the Republic of Kosovo.

⁸⁴ See Article 47, Additional Protocol I. International Humanitarian Law Database. Mercenaries - *Online casebook*. Accessed 23 Oct. 2024. https://casebook.icrc.org/a_to_z/glossary/direct-participation-hostilities; ABC of

There are no provisions in the Penal Code of the Republic of Kosovo referring to mercenaries.

36. Occupied territory

Occupied territory is an area under the authority and effective control of a foreign military force without the consent of the sovereign state. Occupation occurs when foreign forces establish their presence and exert authority over the local population, government, and resources. The law of occupation, as outlined in the Fourth Geneva Convention of 1949, imposes obligations on the occupying power to protect the rights of civilians and maintain public order and safety.⁸⁵

International humanitarian law requires occupying powers to respect the fundamental human rights of the population in occupied territories, and they are prohibited from forcibly transferring or deporting protected persons, confiscating private property, or making changes to the legal system, except where necessary for maintaining order or ensuring the welfare of the local population.⁸⁶ The occupying power must also ensure that the basic needs of the population—such as food, medical care, and shelter—are met during the period of occupation.⁸⁷

Chapter XV of the Penal Code of the Republic of Kosovo includes relevant provisions that address the obligations of occupying forces and criminalizes war crimes and crimes against humanity committed during military occupation.

37. Peacekeeping operations

Peacekeeping operations are missions conducted by the United Nations or other international organizations to help maintain or restore peace and security in conflict-affected areas. These operations often involve military, police, and civilian personnel working together to monitor ceasefires, protect civilians, disarm former combatants, and support the organization of elections or the rebuilding of government institutions.⁸⁸

The legal basis for peacekeeping operations is derived from the Charter of the United Nations, particularly Chapters VI and VII, which outline the powers of the Security Council in maintaining

International Humanitarian Law. Accessed October 23, 2024. <https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/06/ABC-of-IHL.pdf>.

⁸⁵ Article 42. Fourth Geneva Convention.

⁸⁶ Sassòli (2019). p. 112.

⁸⁷ Articles 55-56. Fourth Geneva Convention.

⁸⁸ <https://peacekeeping.un.org/en/what-is-peacekeeping>

international peace and security. Peacekeepers must adhere to the principles of impartiality, consent of the parties, and the non-use of force except in self-defense or the defense of the mandate.⁸⁹ Peacekeeping forces are also bound by international humanitarian law and must respect the rights of civilians and ensure their protection during operations.⁹⁰

In Kosovo, the United Nations Mission in Kosovo (UNMIK) played a crucial role in maintaining peace and stability following the war. The presence of peacekeeping forces, authorized under United Nations Security Council Resolution 1244, contributed to the rebuilding of governance structures and the protection of human rights. The Penal Code of the Republic of Kosovo, particularly Articles 145(2)(2.3) and 147(2)(2.3) criminalize attacks against peacekeeping personnel by the Charter of the United Nations, which are punishable by at least 10 years in prison to life imprisonment.⁹¹

38. Multinational forces

Multinational forces refer to military forces composed of units from multiple countries, operating under a unified command, typically authorized by international or regional organizations, e.g. the UN or the North Atlantic Treaty Organization (NATO). These forces can be deployed for peacekeeping, humanitarian interventions, or enforcing international law in conflict zones. Under international law, multinational forces must adhere to the same rules of armed conflict that apply to state militaries, ensuring that their operations are conducted in compliance with IHL.⁹²

According to the Geneva Conventions, multinational forces are bound by principles of distinction, proportionality, and necessity in their military operations, and they must ensure that civilians are protected from harm during their missions. These rules are crucial to maintain compliance with international obligations and to prevent violations of human rights during their operations.⁹³

⁸⁹ Chapters VI and VII of Charter of the United Nations,: <https://www.un.org/en/about-us/un-charter/full-text>

⁹⁰ Geneva Conventions (1949) and Additional Protocols: <https://ihl-databases.icrc.org/>

⁹¹ Article 145 and 147, Penal Code of the Republic of Kosovo,: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

⁹² International Committee of the Red Cross (ICRC) Glossary:
<https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>

⁹³ Geneva Conventions (1949) and Additional Protocols.

In the context of Kosovo, the Kosovo Force (KFOR), is a NATO-led international security assistance force operating through a UN mandate that derives from the UN Security Council Resolution 1244.⁹⁴

39. Self-determination

Self-determination is a core principle in international law as it is enshrined in the Charter of the United Nations.⁹⁵ Although it is not specifically defined in the Charter, the International Covenant of Economic, Social and Cultural Rights considers that through the right of self-determination, peoples “freely determine their political status and freely pursue their economic, social and cultural development.”⁹⁶ The principle of self-determination is further defined in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States by the Charter of the United Nations (hereinafter “Declaration on Principles of International Law”) as “the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State must respect this right by the provisions of the Charter.”⁹⁷ In this document, the principle of self-determination has been defined in the context of ending colonialism and repudiating the subjugation of peoples to alien regimes. Additional Protocol I applies the principle of self-determination to wars of national liberation. According to Article 1 (4), the Protocol applies to “armed conflicts in which peoples are fighting against colonial domination and alien occupation and racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States by the Charter of the United Nations.”

⁹⁴ https://unmik.unmissions.org/sites/default/files/old_dnn/Res1244ENG.pdf.

⁹⁵ See Article 1 (2) of the Charter of the United Nations, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

⁹⁶ Article 1 (1), International Covenant of Economic Social and Cultural Rights (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

⁹⁷ Declaration on Principles of International Law concerning Friendly Relations and Cooperation (1970), <https://www.refworld.org/legal/resolution/unga/1970/en/19494>.

40. Sexual Violence

Sexual violence constitutes any act of violence of a sexual nature (physical or psychological) that is committed against one or more persons under coercive circumstances in times of peace and war alike.⁹⁸ It encompasses acts such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual abuse.⁹⁹

Articles 7 and 8 of the ICC Statute include provisions that classify crimes of a sexual nature as crimes against humanity and war crimes.¹⁰⁰ Additionally, Common Article 3(1)(c) of the Geneva Conventions, Article 27 of the Fourth Geneva Convention, Article 76(1) and Article 77(1) of Additional Protocol I, and Article 4(2)(e) of Additional Protocol II include additional provisions protecting particularly women and children from crimes of a sexual nature during wartime.

Articles 143, 145, and 147 of the Penal Code of the Republic of Kosovo include provisions for the protection from crimes of sexual nature and for criminalizing such crimes, whose punishments may range from at least 10 years in prison to life imprisonment.

41. Environmental crimes

No part of the environment can be attacked or damaged except when it is part of a military objective. A military attack expected to cause excessive environmental damage is prohibited. Combat methods and military operations will have to be determined taking into account the environmental damage they can cause. The destruction of the natural environment should not be used for war purposes, i.e. as a weapon to inflict damage on the opponent. These principles are partially codified through Article 35(3) and Article 55(1) of Additional Protocol I and partially

⁹⁸ International Committee of the Red Cross (ICRC), *Humanitarian Law Glossary*: <https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>.

⁹⁹ Articles 7(1)(g) and 8(2)(b)(xxii). Rome Statute of the International Criminal Court. For studies that refer to sexual violence perpetrated during the war in Kosovo and the challenges associated with breaking the silence, adjudication and reparations, see Gopalan, P. (2019). "Conflict-Related Sexual Violence in Kosovo: Gendering Justice Through Transformative Reparations." In *Gender and War: International and Transitional Justice Perspectives*, edited by Solange Mouthaan and Olga Jurasz, 285–310. Intersentia. <https://www.cambridge.org/core/books/abs/gender-and-war/conflictrelated-sexual-violence-in-kosovo-gendering-justice-through-transformative-reparations/BA6E3C8B6EF52BC930CA7AA724362BA0>. See also Di Lellio, A. (2016). Seeking Justice for Wartime Sexual Violence in Kosovo: Voices and Silence of Women. *East European Politics and Societies*, 30(3), 621-643. <https://doi.org/10.1177/0888325416630959>.

¹⁰⁰ Articles 7(1)(g) and 8(2)(b)(xxii). Rome Statute of the International Criminal Court.

included in state practices, official statements, international guidelines, and decisions of international courts. Also, Article 8(2)(b)(iv) of the Statute of the International Criminal Court includes the prohibition of attacks or operations that cause major environmental damage and do not fulfill a military purpose.

The Penal Code does not specifically define “environmental crimes”, but Chapter XV includes several articles that refer to targeted attacks that may cause long-term destruction to the natural environment, undermine the sustenance of the civilian population, and widespread destruction of cities and villages. Relevant provisions are included under Article 145 for international conflicts¹⁰¹ and Article 147 for non-international conflicts¹⁰².

2.2. Terms not defined in international humanitarian law

1. Cultural genocide (culturicide)

Cultural genocide is a term with a rather complex history. It was originally part of Raphael Lemkin’s outline of the techniques of genocide based on the Nazi laws in Germany and the occupied territories during the Second World War. In his analysis of those laws in his book *Axis Rule in Occupied Europe*, Lemkin listed eight techniques of genocide: political, social, cultural, economic, physical, religious, and moral. In the Draft Convention on the Crime of Genocide, “cultural” genocide was defined alongside “physical” and “biological” genocide. Cultural genocide referred to the destruction of a group’s distinctive cultural features. More specifically, it included the forced transfer of children belonging to one group onto another, the prohibition of the use of the national language, the systematic destruction of books printed in the national

¹⁰¹ See Points 2.4 and 2.25.

¹⁰² See Points 2.15, 2.18, and 2.25.

language or religious books, and the systematic destruction of national and religious monuments.¹⁰³

Although the term was not included in the Convention on the Crime of Genocide (Genocide Convention), there is a strong debate on the inclusion of the cultural dimension of genocide to fully capture the crime and prevent it. The side of the debate that argues for the inclusion of the cultural dimension start from the premise that genocide is not just an event but a process in which physical destruction cannot be understood as separate from a destruction of the cultural features of a group.¹⁰⁴ This approach has been employed by scholars who have sought to understand and address the legal implications of acts that have not led necessarily to the physical destruction of a group of people, but have nevertheless significantly altered the values, way of life, traditions of such as group with the intent to eliminate its traits through assimilation. Such cases include the Chinese reeducation camps for their Uighur minority in Xinjiang or the separation of aboriginal children in Canada from their families and their transfer to settler families or residential schools.¹⁰⁵ According to the Truth and Reconciliation Commission established in Canada to investigate this process, which had lasted since the end of the nineteenth century until the end of the twentieth century, defined cultural genocide as “the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group.”¹⁰⁶

2. Ethnic Cleansing

While not recognized as an independent crime under international law, it is generally defined as the systematic forced removal of ethnic, racial, or religious groups from a given area with the intent

¹⁰³ United Nations. Draft Convention on the Crime of Genocide. <https://digitallibrary.un.org/record/611058?v=pdf>.

¹⁰⁴ Novic, E. (2016). *The concept of cultural genocide: A historical–legal perspective*. In *The concept of cultural genocide: An international law perspective* (online edn). Oxford Academic. p.

19. <https://doi.org/10.1093/acprof:oso/9780198787167.003.0002>.

¹⁰⁵ Novic (2016), pp. 39-41. See also Akhavan, P. (2016). Cultural genocide: Legal label or mourning metaphor? *McGill Law Journal*, 62(1), 243-270. <https://lawjournal.mcgill.ca/article/cultural-genocide-legal-label-or-mourning-metaphor/>.

¹⁰⁶ Cited in Novic (2016), p. 42.

of creating ethnic homogeneity.¹⁰⁷ It encompasses a range of methods including deportation, population transfer, and various forms of coercion designed to compel victims to flee.¹⁰⁸ The United Nations Commission of Experts defined it as "rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area."¹⁰⁹ While not explicitly mentioned in the Kosovo Penal Code, acts constituting ethnic cleansing could be prosecuted under various provisions related to war crimes and crimes against humanity.¹¹⁰ The International Criminal Court considers ethnic cleansing as potentially constituting genocide, crimes against humanity, or war crimes, depending on the specific acts and context.¹¹¹

3. Massacre

Massacre refers to the intentional, large-scale/mass killing of civilians not actively participating in hostilities, or individuals rendered *hors de combat*, carried out by organized armed forces or groups in a single incident in violation of international human rights or humanitarian law. It is characterized by premeditated targeting, systematic execution, and coordination, with the aim of causing severe harm, terrorizing, or eliminating a specific group, often identified by ethnic, religious, or political factors.¹¹² While not a standalone legal term under international law, massacre encompasses acts that typically violate international human rights and humanitarian law and may constitute war crimes, crimes against humanity, or genocide. Key elements include scale and severity, clear intent, and an organized or methodical approach that distinguishes it from random or isolated violence.¹¹³

¹⁰⁷ International Criminal Court. (2011). Elements of Crimes. <https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf>

¹⁰⁸ Bell-Fialkoff, A. (1993). A Brief History of Ethnic Cleansing. *Foreign Affairs*, 72(3), 110-121. <http://www.jstor.org/stable/20045626?origin=JSTOR-pdf>

¹⁰⁹ United Nations Security Council. (1994). Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992). S/1994/674. https://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf

¹¹⁰ Republic of Kosovo. (2019). Criminal Code of the Republic of Kosovo. <https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf>

¹¹¹ International Criminal Court. (2002). Rome Statute of the International Criminal Court. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹¹² United Nations Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/22/59 (2013), para. 42; ICTY Trial Chamber, *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment, August 2, 2001. <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>.

¹¹³ ICTY Trial Chamber, *Prosecutor v. Krstić*, Case No. IT-98-33-T; ICTR Trial Chamber, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T; Geneva Conventions of 12 August 1949 and Additional Protocols, "International Committee of the Red Cross, Geneva, 1949; Convention on the Prevention and Punishment of the Crime of Genocide," United Nations, December 9, 1948; Rome Statute of the International Criminal Court, "United Nations,

4. Victim

Civilians as individuals or groups who have suffered harm—including physical or mental injury, emotional suffering, economic loss, or substantial impairment of fundamental rights—due to acts or omissions that constitute gross violations of international human rights law, serious violations of international humanitarian law, or other recognized international norms. This definition also extends, where appropriate and by domestic law, to immediate family or dependents of direct victims, as well as to those harmed while assisting victims or attempting to prevent victimization. Established in the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985) and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (2005), this definition is fundamental for categorizing individuals affected by war crimes, encompassing a broad scope of physical, psychological, and economic impacts.¹¹⁴

5. Martyr

International humanitarian law does not deal with the concept of martyr, which is open to interpretation based on the identity of the person, community, and sociohistorical context. Martyrdom is related to the idea of sacrifice for an ideal, which can be religious or political. The word ‘martyr’ originates from the ancient Greek word *martus* and it means ‘witness’. Martyrdom has been a core concept in Judaism and Christianity.¹¹⁵ Whether it is one’s faith being tested by God or through the demands of the Romans to swear allegiance to state gods, martyrdom – that is, the willingness to die for one’s faith and beliefs – has been crucial for the narratives of sacrifice

July 17, 1998; Cassese, Antonio. *International Criminal Law*. Oxford University Press, 2013; Schabas, William A. *An Introduction to the International Criminal Court*. Cambridge University Press, 2008.

¹¹⁴ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Resolution 40/34, 29 November 1985. <https://www.ohchr.org/sites/default/files/victims.pdf>; Annex: United Nations General Assembly, *Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted on 16 December 2005, A/RES/60/147. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

¹¹⁵ Boyarin, D. (1998). Martyrdom and the making of Christianity and Judaism. *Journal of Early Christian Studies*, 6(4), 577-627. <https://dx.doi.org/10.1353/earl.1998.0053>.

and truth.¹¹⁶ Just as it has been part of religious narratology and symbolism, martyrdom has been a central feature of national movements.

The self-immolation of Feng Xiawei in early twentieth-century China led to his canonization as the ‘boycott martyr’. Feng became an inspirational figure in the anti-American boycott movement in China in 1905 and served as a symbol for the Chinese national movement.¹¹⁷ In the case of the Irish national movement, martyrdom was enveloped in religious and political motifs. Those who sacrificed themselves through hunger strikes or resistance against the British military, knowingly that they were going to be slaughtered, were compared to Jesus Christ and served as symbols for the narrative of the national cause.¹¹⁸

Martyrdom, however, has not been only a feature of national movements but also of movements against domestic oppressive regimes. The Arab Spring represents an important case study in the popularization of martyrdom – that is, the production of narratives and symbolism by the citizens instead of the state or a national movement. Instead of becoming symbols of a national struggle against a foreign enemy – e.g. the United States or Israel – martyrdom is redefined as being in opposition to oppressive domestic regimes. The meaning of their actions, therefore, are not seen as being done – whether voluntary or involuntary – on behalf of a national or religious community, but for universal human rights and dignity.¹¹⁹

The sacralization of martyrs and the politics of death provide important insights into the complex nature of martyrdom and its politicization. Although the concepts of martyrdom and self-sacrifice are interrelated to each other, the meaning of sacrifice for the community often determines who is a martyr, what constitutes martyrdom, and how the community interprets martyrdom.

¹¹⁶ See Hassett, M. (1910). Martyr. In *The Catholic Encyclopedia* (Vol. 9). Robert Appleton Company. <http://www.newadvent.org/cathen/09736b.htm>; Heullant-Donat, I. (2012). Martyrdom and identity in the Franciscan order (Thirteenth and fourteenth centuries). *Franciscan Studies*, 70, 429–453. <http://www.jstor.org/stable/43489708>; Kolb, R. (1995). God’s gift of martyrdom: The early Reformation understanding of dying for the faith. *Church History*, 64(3), 399–411. <https://doi.org/10.2307/3168947>.

¹¹⁷ Wong, S.-K. (2001). Die for the boycott and nation: Martyrdom and the 1905 Anti-American movement in China. *Modern Asian Studies*, 35(3), 565–588. <http://www.jstor.org/stable/313181>.

¹¹⁸ Sweeney, G. (1993). Irish hunger strikes and the cult of self-sacrifice. *Journal of Contemporary History*, 28(3), 421–437. <http://www.jstor.org/stable/260640>.

¹¹⁹ Buckner, E., & Khatib, L. (2014). The martyrs’ revolutions: The role of martyrs in the Arab Spring. *British Journal of Middle Eastern Studies*, 41(4), 368–384. <http://www.jstor.org/stable/43917075>.

3. Relevant discussion in the literature

1. Genocide

The origins of the term *genocide* can be traced to the Nuremberg trials and the actions of Axis leaders in occupied Europe during the Second World War. The concept of genocide was developed to prevent such acts both in times of war and peace, with the United Nations General Assembly Resolution of 1946 declaring genocide a crime under international law. In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted.¹²⁰

The definition of genocide as outlined in the 1948 Genocide Convention has been criticized widely criticized in the literature for its inherent limitations and exclusions, particularly its failure to protect groups beyond national, ethnic, racial, or religious lines. These omissions reflect political compromises made during the convention's drafting, driven by the concerns of member states about sovereignty and international interference. For example, political and social groups were excluded despite their vulnerability, creating a hierarchy of protection that contradicts the principle of equality before the law. Scholars advocate for a broader, more inclusive definition that recognizes the systematic destruction of all human groups as genocide, not just those with specific affiliations. They argue that the law should evolve to incorporate customary international law and the principle of equal protection to prevent legal frameworks from perpetuating biases or allowing impunity for crimes targeting unprotected groups. Without such changes, the legal definition risks undermining its intended purpose by failing to account for the complexity and variety of genocidal practices throughout history.¹²¹

Historically, the definition of genocide in international law has been closely associated with the Holocaust, which has, at times, restricted the recognition of other forms of mass violence as genocide. This narrow focus, combined with the international community's historical inaction, left

¹²⁰ Bieńczyk-Missala, A. (2020). Raphael Lemkin's legacy in international law. In M. Odello & P. Łubiński (Eds.), *The concept of genocide in international criminal law: Developments after Lemkin* (pp. 1-20). Routledge.

¹²¹ Feierstein, D. (2014). *Genocide as social practice: Reorganizing society under the Nazis and Argentina's military juntas* (pp. 11-38). Rutgers University Press.

a gap in effective prevention mechanisms. While the Responsibility to Protect (R2P) doctrine emerged in the early 2000s as a response to this void, its application has faced significant challenges, such as inconsistent enforcement and political resistance.¹²² A notable evolution in genocide law has been the emphasis on complicity as a distinct crime, broadening accountability to include political actors and states that enable or facilitate genocidal acts. This development aligns with the objectives of the Genocide Convention, signaling progress toward a more comprehensive framework for justice and prevention.¹²³

The Genocide Convention's effectiveness was significantly enhanced by the establishment of international criminal tribunals, such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), which prosecuted genocidal acts and expanded the interpretation of "intent to destroy." For instance, in the ICTR case *Akayesu*, the tribunal highlighted that genocide requires "special intent," where individuals are targeted specifically for their group identity. Courts have also examined whether ethnic cleansing constitutes genocide, with some cases, like the ICTY's *Karadžić* and *Mladić* rulings, indicating it may be genocidal, while others, such as *Jelisić*, found it does not meet the threshold without clear intent to destroy the group. Over time, genocide law has become embedded in customary international law, creating *erga omnes* obligations, meaning all states have an interest and obligations in preventing and punishing genocide. The jurisprudence of the ICTR and ICTY, notably in the *Krstić* and *Akayesu* cases, has refined the understanding of genocide, showing that the "intent to destroy" can sometimes be inferred from actions targeting a substantial part of a group within a specific region, as seen in Srebrenica.¹²⁴

Forced expulsion of persons belonging to a particular ethnic, racial, or religious group is not consistently classified as genocide under international law. Some courts have excluded such acts from the definition of genocide, while others have argued that, under certain circumstances, forced

¹²² Karazsia, Z. A. (2018). An unfulfilled promise. *Journal of Strategic Security*, 11(4), 20-31. University of South Florida Board of Trustees.

¹²³ Greenfield, D. M. (2008). The crime of complicity in genocide: How the international criminal tribunals for Rwanda and Yugoslavia got it wrong, and why it matters. *The Journal of Criminal Law and Criminology*, 98(3), 921-952.

¹²⁴ Cassese, A. (2008). *International criminal law* (2nd ed., pp. 96-98). Oxford University Press.

expulsion could amount to genocide.¹²⁵ This inconsistency highlights the complexity and variation in interpreting the legal parameters of genocide. Specifically, the drafter rejected *Syrian Proposal on Genocide Convention* to include acts such as "imposing measures intended to oblige members of a group to abandon their homes in order to escape the threat of subsequent ill-treatment" as a distinct category of genocide. This shows that forced displacement alone is not universally recognized as genocide unless accompanied by specific intent to destroy the group in whole or in part.¹²⁶

2. Ethnic cleansing

The term "ethnic cleansing" gained prominence during the Yugoslav wars of the 1990s, and it has been the subject of extensive scholarly analysis and debates since then. Notwithstanding the vast range of the literature on ethnic cleansing, the main themes examined include the discussion of the term and of the crime in public international law, the examination of the causes and the nature of the atrocities, and the response of the international community to crimes of such magnitude.¹²⁷ A common thread running through all these themes is the debate on the use of the term – that is, whether "ethnic cleansing" is actually a suitable term to describe and punish large scale atrocities and how the use of the term may influence the actions taken by the international community.¹²⁸

The works of Naimark and Mann provide a conceptual approach through which to understand large scale atrocities. While they distinguish between ethnic cleansing – as a process that seeks to *displace or remove* members of an ethnic, religious, or national group – and genocide – as a

¹²⁵ International Criminal Tribunal for the Former Yugoslavia (ICTY), *The Prosecutor v. Karadžić and Mladić*, Confirmation of Indictment (IT-95-18-I), 16 November 1995; *Rule 61 Decision*, 11 July 1996, para. 94; and *Nikolić Rule 61 Decision*, 20 October 1995, para. 34; see also German Constitutional Court, *Jorgić v. Germany*, para. 24, and ICTY, *Prosecutor v. Krstić*, Trial Judgment, IT-98-33, para. 589–98.

¹²⁶ Cassese (2008), pp.96–98; See also UN Security Council, *Report of the Secretary-General Pursuant to Para. 2 of Security Council Resolution 808 (1993)*, UN Doc S/25704, para. 45; UN General Assembly, *Syrian Proposal on Genocide Convention*, UN Doc A/C6/234.

¹²⁷ See for example, Naimark, N. M. (2001). *Fires of hatred: Ethnic cleansing in twentieth-century Europe*. Harvard University Press; Mann, M. (2004). *The dark side of democracy: Explaining ethnic cleansing*. Cambridge University Press; Pegorier, C. (2013). *Ethnic cleansing: A legal qualification*. Routledge. Kreb, C. (2006). The Crime of Genocide under International Law. *International Criminal Law Review*, 6(4), 461–502. <https://doi.org/10.1163/157181206778992287>; Kirby-McLemore, J. (2022). Settling the genocide v. ethnic cleansing debate: ending misuse of the euphemism ethnic cleansing. *Denver Journal of International Law and Policy*, 50(2), 109–138.

¹²⁸ A key study on this is Rony Blum et al. (2008). 'Ethnic cleansing' bleaches the atrocities of genocide. *European Journal of Public Health* 18 (2), 204–209. <https://doi.org/10.1093/eurpub/ckm011>.

process with the intent to exterminate members of such groups – they nevertheless argue that ethnic cleansing in essence is a genocidal act. In a rather contradictory approach, despite the conceptual bounds the authors set to distinguish between ethnic cleansing and genocide, they forego these limits and essentially extend the use of the term “genocide” to a plethora of cases that differ significantly from one another in nature, scale, and historical context. They include such different cases as the population exchanges between Turkey and Greece after the 1923 Treaty of Lausanne, the Armenian Genocide, the Nazi Holocaust, class-based or politically-based purges in Maoist China and the Soviet Union, the Rwanda Genocide, and the atrocities perpetrated during the Yugoslav wars of the 1990s.¹²⁹

Intertwined with these conceptual challenges is the legal challenge presented by the term. Despite – and also because of – its wide use in political speech, media, and academia in relation to mass atrocities, several studies have examined the use of the terms genocide and ethnic cleansing to assess how preference for the use of one or the other term impacts how specific states and the broader international community react to mass atrocities. Blum et al, who have conducted a quantitative analysis of these relations, and Pegorier, who has examined the use of the term within the legal lexicon, argue that ethnic cleansing is used to prevent international action to stop mass atrocities that could constitute genocide. The term “genocide” is thus avoided and replaced with the euphemistic term “ethnic cleansing” to prevent the application of the Genocide Convention, which would force the states party to the Convention and the international community to intervene to stop it.¹³⁰

3. Crimes against humanity and war crimes

While both war crimes and crimes against humanity constitute grave violations of international law, they differ fundamentally in scope, context, and legal frameworks. War crimes are strictly confined to armed conflict and involve violations of the laws of war (*jus in bello*), which regulate the conduct of hostilities and seek to protect non-combatants, prisoners of war, and civilian property. These crimes are defined as such in international treaties, most notably the Hague and Geneva Conventions, which establish clear legal prohibitions on acts such as intentionally

¹²⁹ For a similar conceptual approach to Naimark and Mann, see also Bell-Fialkoff, A. (1993). A brief history of ethnic cleansing. *Foreign Affairs* 72 (3), 110-121. <https://www.jstor.org/stable/20045626>.

¹³⁰ Blum et al. (2008).

targeting civilians, taking hostages, and using prohibited weapons.¹³¹ In contrast, crimes against humanity are broader in scope and are not limited to situations of armed conflict, but they can occur also in the absence of an armed conflict. They involve widespread or systematic attacks against civilian populations, including acts such as extermination, enslavement, forced deportation, and persecution.¹³² Unlike war crimes, which are defined by their violation of specific legal instruments governing warfare, crimes against humanity are recognized as offenses that shock the conscience of humanity and violate fundamental human dignity, regardless of whether they occur in times of war or peace. These crimes reflect not only legal violations but also profound moral transgressions, emphasizing the need for accountability beyond the confines of armed conflict.¹³³

A clear example of an act that can be classified as both a war crime and a crime against humanity is the massacre of civilians during an armed conflict. If a military force deliberately targets and executes civilians in a war zone, this constitutes a war crime, as it directly violates the Geneva Conventions' prohibition on targeting non-combatants. However, if the massacre is part of a broader, systematic campaign to eliminate a specific population group, it can also be classified as a crime against humanity. For instance, the Srebrenica massacre during the Bosnian War in July 1995, where over 8,000 Bosniak men and boys were systematically killed by Bosnian Serb forces, was prosecuted as both a war crime and a crime against humanity by the International Criminal Tribunal for the former Yugoslavia (ICTY).¹³⁴ This dual classification underscores how the same act may fall under different legal categories depending on its broader intent and context.

The Srebrenica massacre was also classified as genocide by the International Criminal Tribunal for the former Yugoslavia (ICTY) and later confirmed by the International Court of Justice (ICJ). The ICTY, in cases such as *Prosecutor v. Krstić*, ruled that the mass execution of over 8,000 Bosniak men and boys in Srebrenica in July 1995 constituted genocide because it was carried out with the intent to destroy, in whole or in part, a specific national, ethnic, racial, or religious group—

¹³¹ Danner, A. M. (2001). Constructing a hierarchy of crimes in international criminal law sentencing. *Virginia Law Review*, 87(3), 454–456.

¹³² Bufacchi, V. (2023). War crimes in Ukraine: Is Putin responsible? *Journal of Political Power*, 16(1), 3–5

¹³³ Danner (2001), p. 472.

¹³⁴ Case No: IT-98-33-A, *Prosecutor vs Radislav Krstic*, <https://www.icty.org/x/cases/krstic/acjug/en/>; see also Srebrenica genocide Bosnian history [1995], <https://www.britannica.com/event/Srebrenica-genocide/Identifying-the-victims>.

in this case, the Bosniak population. Thus, while the Srebrenica massacre was prosecuted as both a war crime and a crime against humanity, it was also legally recognized as genocide under the Genocide Convention (1948). This makes it one of the most significant cases in modern international law where the same atrocity was classified under all three categories: war crimes, crimes against humanity, and genocide.¹³⁵

The concept of crimes against humanity developed after the Nuremberg and Tokyo Tribunals to address mass crimes against civilians and has been integrated into the international legal framework, including the tribunals for the former Yugoslavia and Rwanda. However, the lack of a comprehensive international convention for the prevention and punishment of crimes against humanity has limited the prosecution of these crimes, while systematic human rights violations continue to occur in many regions of the world.¹³⁶ Because crimes against humanity can be committed in non-armed conflict situations, international humanitarian law, which governs the laws of war, does not adequately proscribe potential crimes against humanity.¹³⁷ Numerous academic contributions, such as those by Canefe,¹³⁸ Jessberger and Geneuss,¹³⁹ and Hafetz,¹⁴⁰ highlight international law's conflicts and limitations in the context of crimes against humanity, emphasizing the tension between the application/enforcement of international jurisdiction and the respect for sovereignty. This has created challenges for international courts in exercising their authority.¹⁴¹ As a result, the literature emphasizes the need to harmonize international laws with

¹³⁵ ICJ *Bosnia and Herzegovina v. Serbia and Montenegro*, <https://www.icj-cij.org/case/91/judgments>, <https://www.icj-cij.org/sites/default/files/case-related/91/091-19960711-JUD-01-00-EN.pdf>; Case No: IT-98-33-A, *Prosecutor vs Radislav Krstic*.

¹³⁶ Sadat, L. N. (2013). Crimes Against Humanity in the Modern Age. *The American Journal of International Law* 107 (2), 334–377. Cambridge University Press.

¹³⁷ Human Rights Watch. (2024, October 9). Toward a crimes against humanity treaty. <https://www.hrw.org/news/2024/10/09/toward-crimes-against-humanity-treaty#:~:text=While%20crimes%20against%20humanity%20have,and%20punish%20these%20egregious%20offenses>.

¹³⁸ Canefe, N. (2021). *Crimes against humanity: The limits of universal jurisdiction in the global South*. University of Wales Press.

¹³⁹ Jessberger, F., & Geneuss, J. (Eds.). (2020). *Why punish perpetrators of mass atrocities? Purposes of punishment in international criminal law*. Cambridge University Press.

¹⁴⁰ Hafetz, J. (2018). *Punishing atrocities through a fair trial: International criminal law from Nuremberg to the age of global terrorism*. Cambridge University Press.

¹⁴¹ Hybrid tribunals, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, operate through agreements between international bodies like the United Nations and host nations. These tribunals represent a consensual model of justice that contrasts with purely international courts, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), which were more coercive in nature. By incorporating elements of both international and domestic legal systems, hybrid tribunals embody a compromise,

local legal systems through hybrid courts, whereby these courts address challenges related to international law and create a new model of justice that incorporates the local context while maintaining global legitimacy.¹⁴²

War crimes are serious breaches of international humanitarian law committed during armed conflicts, targeting protected individuals or property. Historically rooted in the Hague and Geneva Conventions, war crimes encompass acts such as intentional attacks on civilians, taking hostages, and extensive destruction of civilian property without military necessity.¹⁴³ The Rome Statute of the International Criminal Court further defines these crimes under Article 8, highlighting their focus on conduct during war. Galand explores the ICC Statute's dual nature, noting that while it aims for universal applicability, its implementation is constrained by the requirement of state consent, as seen in its reliance on mechanisms like Security Council referrals or *ad hoc* declarations to extend jurisdiction beyond member states.¹⁴⁴ War crimes often arise from a combination of situational pressures, such as battlefield stress, and systemic failures, including dehumanization of the enemy and inadequate oversight of military operations.¹⁴⁵ The prosecution of war crimes remains complex due to challenges in attributing individual responsibility and addressing the interplay between personal culpability and systemic factors.¹⁴⁶

Numerous academic contributions, such as those by Bufacchi and Wolfendale, provide critical insights into the nature and prosecution of war crimes. Bufacchi¹⁴⁷ highlights that war crimes are defined by their grave breaches of international humanitarian law, rooted in legal frameworks like the Hague and Geneva Conventions, which aim to regulate the conduct of armed conflicts and protect civilians. Wolfendale¹⁴⁸ further explores the challenges of prosecuting these crimes, emphasizing the interplay between individual culpability and systemic factors such as battlefield stress and institutional failures, which complicates efforts to hold perpetrators accountable.

respecting national legal sovereignty while applying international law to address crimes against humanity. For more on this topic, see Hafetz (2018). pp. 142–159, 121–124.

¹⁴² Hafetz (2018); Canefe (2021); Jessberger & Geneuss (2020).

¹⁴³ Bufacchi, V. (2023). War crimes in Ukraine: Is Putin responsible? *Journal of Political Power*, 16(1), 3–5.

¹⁴⁴ Galand, A. S. (2019). The nature of the Rome Statute of the International Criminal Court (and its amended jurisdictional scheme). *Journal of International Criminal Justice*, 17(5), 933–956.

¹⁴⁵ Wolfendale, J. (2023). The causes of war crimes. *Journal of Military Ethics*, 22(3–4), 277–278.

¹⁴⁶ Wolfendale (2023), p. 286.

¹⁴⁷ Bufacchi (2023).

¹⁴⁸ Wolfendale (2023).

4. Jus ad bellum

Jus ad bellum refers to the set of criteria that must be satisfied to justify going to war or using armed force against another state. It is one of the key components of just war theory, alongside *jus in bello* (conduct during war) and *jus post bellum* (justice after war). The principle of *jus ad bellum* has philosophical and conceptual roots and legal and political implications. Consequently, the literature that deals with this term is also part of the broader literature on just war theory and on international law and politics.

The conceptual and philosophical roots of just war theory date back to the writings of St. Augustine of Hippo and Thomas Aquinas. The *Thomistic* criteria for just war – or the justness of waging war – which include the need for proper or *legitimate authority*, *just cause*, and *right intent*, are discussed frequently in the context of modern warfare, particularly interstate warfare and humanitarian interventions.¹⁴⁹ Drawing on the Christian tradition of just war theory – what he calls traditional just war theory – Boyle provides a comprehensive critique of humanitarian interventions. He examines each of the three *Thomistic* criteria, and underscores some of the key issues concerning the justification of humanitarian interventions through them. He argues that despite the international authority conferred to the United Nations system, neither the treaties and customs nor the technology that can bind people together have not created a sort of a “superpolity that might allow worldwide officials to care for the welfare of each polity.”¹⁵⁰

Similarly, he argues that even in idealistic conditions, whereby a state or the international community agree on the necessity for intervention to stop mass atrocities, important shortcomings make justifications for humanitarian interventions rather tenuous. Citing historical examples such as the reaction of the international community, the United States, and NATO to atrocities in Rwanda, Somalia, Bosnia-Herzegovina, and Kosovo, Boyle underlines that states are reluctant to put their own troops in harm’s way, whereas dilemmas on the just and ethical manner to approach the post-intervention situation – that is, whether to engage in rebuilding the society that has suffered intercommunal violence – present significant challenges that can potentially cause harm

¹⁴⁹ See for example, Moussa, J. (2008). Can jus ad bellum override jus in bello? Reaffirming the separation of the two bodies of law. *International Review of the Red Cross*, 90(872), 963–990. doi:10.1017/S181638310900023X; Elstain, J. B. (2001). Just war and humanitarian intervention. *Proceedings of the Annual Meeting (American Society of International Law)*, 95, 1–12. <http://www.jstor.org/stable/25659440>; Boyle, J. (2006). Traditional just war theory and humanitarian intervention. *Nomos*, 47, 31–57. <http://www.jstor.org/stable/24220031>.

¹⁵⁰ Boyle (2006), pp. 36-37.

as former victims turn into perpetrators of violence under the protection of external actors who have ostensibly intervened to stop mass atrocities.¹⁵¹

A similar critique is outlined also by Elshtain in relation to the Clinton Doctrine and the 1991 Gulf war in which the US intervened to prevent Iraq, under Saddam Hussein, from controlling Kuwait. While he also does contend that there are rather clear cases of violations of the UN Charter in cases of aggression and mass atrocities, he nevertheless cautions that even in clear cases for the need to intervene to restore a state's sovereignty it is unclear what the ultimate intent and outcome of the intervention will be in terms of regional and global security. Whereas in the case of humanitarian interventions, he cautions on the abuse of such cases to justify interventions whose ultimate intent is not necessarily to prevent mass atrocities, but rather to advance the particular interest of a state or alliance.¹⁵²

A seminal and comprehensive work on just war theory is Michael Walzer's *Just and Unjust Wars: A Moral Argument with Historical Illustrations*.¹⁵³ Walzer's work discusses both *jus ad bellum* and *jus in bello*, with specific topics ranging from guerilla warfare to nuclear deterrence, but his discussion on pre-emptive and preventive warfare and the concept of supreme emergency are particularly relevant here. Although Walzer does not consider preventive wars to be just, he argues that waging war in cases of perceived existential threats to the state's independence and territorial integrity is legitimate. He notes that "The line between legitimate and illegitimate first strikes is not going to be drawn at the point of imminent attack but at the point of sufficient threat."¹⁵⁴

It is important to note, however, that Walzer's approach and pre-emptive strikes are unlawful under international law. Under Article 39 of the UN Charter, it is the duty of the UN Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression and [it] shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."¹⁵⁵ The work of Moussa is particularly relevant in this context because she criticizes Walzer's state-centric use of the concept of "supreme emergency" to justify waging war for the sake of the state survival, without

¹⁵¹ Ibid, pp. 36-53.

¹⁵² Elshtain (2001), pp. 5-12.

¹⁵³ Walzer, M. (2015). *Just and unjust wars: A moral argument with historical illustrations*. Basic Books.

¹⁵⁴ Walzer (2015), p. 81.

¹⁵⁵ <https://www.un.org/en/about-us/un-charter/chapter-7>.

taking into account harm done to civilian populations. Moussa further criticizes the 1996 ICJ's *Advisory Opinion on the Threat or Use of Nuclear Weapons*. The Court concluded that "In view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake."¹⁵⁶

According to Moussa, the issue here is between the right to self-defense of states, which the Advisory Opinion implicitly renders limitless, and international humanitarian law. Thus, the misuse of the "supreme" rights of states to exist that may legally justify disproportionate military action. In this context, Moussa notes the dangers of the conflation between *jus ad bellum* and *jus in bello*, through which an expansive conceptualization of the right to self-defense can translate in justifying disproportionate military action based on the military necessity to preserve the state at any cost.¹⁵⁷

5. Jus in Bello

The principle of *jus in bello* (the just conduct of war) is tightly linked to several other concepts that ought to guide military operations in warfare – namely, military necessity, proportionality, and distinction. *Jus in Bello*, like *jus ad bellum* (just cause for war), is part of the just war theory. This principle and its interrelated concepts are widely debated in the scholarship on just war theory and international humanitarian law. The literature on the just conduct of war spans a wide spectrum of scholarship – from ethics and philosophy to international law and politics.

The literature on this topic is thus as rich as it is varied. Despite its breadth and scope, questions related to military necessity, proportionality, and distinction remain elusive and subject to debate. The challenge of discussing military necessity, proportionality, and distinction is related to the complexity of each of these concepts and their interactions, which leads scholars to artificially deal with one and not the other.

The concept of military necessity is a particularly problematic one because it can be used to justify disproportionate force and targeting of non-combatants under the guise of military necessity. Necessity, therefore, can be used as a principle of exception in warfare in the context of a "supreme

¹⁵⁶ Cited in Moussa (2008), p. 969.

¹⁵⁷ Ibid, pp. 987 – 990.

emergency” under which military action leading to war and military action within a state of warfare – that would otherwise be in contravention to the laws of war – can be justified.¹⁵⁸ “Supreme emergency,” however, is a rather loaded concept, which assumes several moral claims that tend to be contradictory. The most fundamental claim is that it is morally justified to use excessive force against an enemy that represents a fundamental threat to civilized society, comparable to the Nazi threat in WWII.¹⁵⁹ The key contradiction here is related to the claim that to preserve civilized life, one is justified in foregoing legal or moral constraints.

Despite the complexity of military necessity and the associated concepts of proportionality and distinction, there are sound arguments that have been made that consider the principle of necessity as enabling the minimum amount of force to achieve a military objective with minimal collateral damage, not the maximum amount of force for any duration and intensity.¹⁶⁰ The debate continues, however, in situations where states are fighting non-state actors. Not only does international law tend to favor states in such cases, but also the academic literature. According to this view, states, in certain cases, may reinterpret the principles of distinction and proportionality and in certain cases they may be justified not to submit to the laws and customs of war because distinction and proportionality become exceedingly difficult when fighting terrorists or irregular forces.¹⁶¹

6. Armed conflict

The application of international humanitarian law on armed conflict is complex and thus has produced a large body of commentary on the Geneva Conventions and the Additional Protocols that deal with both international and non-international armed conflict.¹⁶² This commentary deals

¹⁵⁸ See Walzer (2015); Shue, H. (2016). Supreme moral emergency: Shrinking the Walzerian exception. In *Fighting hurt: Rule and exception in torture and war* (online edn, pp. 1-20). Oxford Academic. <https://doi.org/10.1093/acprof:oso/9780198767626.003.0013>. See also Blanchard, A., & Taddeo, M. (2022). Jus in bello necessity, the requirement of minimal force, and autonomous weapons systems. *Journal of Military Ethics*, 21(3–4), 286–303. <https://doi.org/10.1080/15027570.2022.2157952>.

¹⁵⁹ See Shue (2016).

¹⁶⁰ Blanchard & Taddeo (2022). See also Patterson, E., & LiVecche, M. (Eds.). (2023). *Military necessity and just war statecraft: The principle of national security stewardship*. Routledge. <https://doi.org/10.4324/9781003390398>; Ohlin, J. D., & May, L. (2016). Necessity and discrimination in just war theory. In *Necessity in international law* (online edn). Oxford Academic. <https://doi.org/10.1093/acprof:oso/9780190622930.003.0004>.

¹⁶¹ For a critical assessment of this argument, see Ohlin & May (2016). For a favorable proponent of this argument, see Taylor, I. (2017). Just war theory and the military response to terrorism. *Social Theory and Practice*, 43(4), 717–740. <http://www.jstor.org/stable/26405304>.

¹⁶² See for example, Clapham, A., Gaeta, P., & Sassòli, M. (Eds.). (2015). *The 1949 Geneva Conventions: A commentary*. Oxford Commentaries on International Law. Oxford Academic. <https://doi.org/10.1093/law/9780199675449.001.0001>; Fleck, D. (Ed.). (2013). *The handbook of*

with various issues concerning the application of IHL, and – among others – with issues related to the moment when IHL begins to be applied to an international armed conflict or a non-international armed conflict.

In the case of non-international armed conflicts, which is more pertinent for Kosovo, the discussion in the literature deals with the threshold to determine whether there is indeed a non-international armed conflict taking place and whether the full scope of IHL can be applied in such cases.¹⁶³ Relevant topics in IHL commentary and literature deal with the necessity to clarify and further specify the situations that can fall under non-international armed conflict – and thus be subject to IHL – and with understanding the political challenges in the application of IHL. These two topics are closely interrelated as the threshold for the application of IHL particularly in non-international armed conflicts have the potential to undermine state sovereignty. Consequently, it is in the interest of State parties to prevent the application of IHL in such conflicts and to furthermore delegitimize the struggle of oppressed peoples.

A particularly relevant debate unfolded during the decolonization period of the 1950s and 1960s leading to the approval of the Additional Protocol II in 1977. European imperial powers did not recognize the armed struggles of colonized people for independence as legitimate. They considered them as rebellions against their legitimate authority, and therefore illegitimate and undeserving of treatment equal to the armed forces of a State.¹⁶⁴ Consequently, the national liberation struggle was not considered just and lawful. Through the provision of Article 1(4) of Additional Protocol II, however, the rights of peoples subjugated to oppressive and racist regimes to national liberation became firmly codified in international humanitarian law. In the debate leading to the approval of the Additional Protocols, wars of national liberation were framed as ‘defensive’ wars by their

international humanitarian law (3rd ed.). Oxford Academic. <https://doi.org/10.1093/law/9780199658800.001.0001>.

¹⁶³ Gill, T. D. (2022). Some reflections on the threshold for international armed conflict and on the application of the law of armed conflict in any armed conflict. *International Law Studies*, 99, 698-730. <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=3027&context=ils>; Dinstein, Y. (2021). *Non-international armed conflicts in international law*. Cambridge University Press. <https://doi.org/10.1017/9781108864091>.

¹⁶⁴ von Bernstorff, J. (2019). The battle for the recognition of wars of national liberation. In J. von Bernstorff & P. Dann (Eds.), *The battle for international law: South-North perspectives on the decolonization era* (pp. 54). Oxford Academic. <https://doi.org/10.1093/oso/9780198849636.003.0003>; Whyte, J. (2018). The ‘dangerous concept of the just war’: Decolonization, wars of national liberation, and the additional protocols to the Geneva Conventions. *Humanity*, 9(3), 313-341. <https://www.proquest.com/scholarly-journals/dangerous-concept-just-war-decolonization-wars/docview/2630356466/se-2>.

proponents in the Third World whilst imperialism was legally framed as aggression, thereby placing the armed forces of national liberation movements and those of State parties on equal footing as two belligerent parties.¹⁶⁵

7. Occupied territory

Occupied territory is defined in international law as a territory under the authority and control of a hostile power.¹⁶⁶ The legal framework for occupation is primarily provided by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, which outline the obligations of the occupying power, such as maintaining public order, ensuring civilian welfare, and respecting property rights.¹⁶⁷ Under these conventions, occupying powers must act as temporary administrators rather than sovereign rulers, with a mandate to protect civilian rights and avoid exploitation of local resources.¹⁶⁸ However, complexities arise in cases where sovereignty is unclear or contested, as in situations where a state lacks effective governance or is under external domination, such as the Palestinian territories.¹⁶⁹

The principle of occupation as temporary administration developed significantly following World War II, with scholars like Benvenisti arguing that the post-war occupation of Germany and Japan established precedents in international law, emphasizing that occupying powers have humanitarian obligations that must be upheld regardless of military objectives.¹⁷⁰ This principle has been expanded by the International Court of Justice (ICJ), which, in its advisory opinion on the Palestinian territories, highlighted the need to protect self-determination in occupied regions.¹⁷¹ The ICJ emphasized that the occupying power must refrain from altering the social or legal

¹⁶⁵ von Bernstorff, "The Battle for the Recognition of Wars of National Liberation."

¹⁶⁶ Article 42. Hague Regulations of 1907. <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/regulations-art-42?activeTab=>.

¹⁶⁷ Article 47. Fourth Geneva Convention of 1949.

¹⁶⁸ Article 43 of Hague Regulations of 1907; Article 55. Fourth Geneva Convention.

¹⁶⁹ International Court of Justice, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004), para. 78.

¹⁷⁰ Benvenisti, E. (2004). *The International Law of Occupation*. Oxford University Press. pp. 25–30.

¹⁷¹ International Court of Justice, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004), para. 155.

structures of the occupied territory unless essential for security or the well-being of the local population.¹⁷²

Recent conflicts have further highlighted the complexities of enforcing occupier duties. Dinstein's analysis of the U.S. occupations in Iraq and Afghanistan reveals the difficulties in balancing military goals with civilian protections, especially regarding property confiscation and displacement.¹⁷³ Similarly, ongoing occupation issues in Western Sahara raise concerns over resource exploitation, as occupying powers often utilize resources for economic gain, potentially in violation of international humanitarian law.¹⁷⁴ These cases underscore the importance of ensuring that occupation is not used as a pretext for economic or political dominance, as illustrated in discussions of Kosovo's right to self-determination under international law.¹⁷⁵

Current scholarship critiques the limitations of international law in preventing abuses by occupying forces. Sassòli argues that while the Geneva Conventions set strict obligations, enforcement mechanisms remain inadequate, as seen in prolonged occupations where occupying forces may prioritize political and economic interests over civilian welfare.¹⁷⁶ Roberts highlights the historical development of transformative occupation, noting the complexities in balancing military objectives with obligations under international law.¹⁷⁷ Gross builds upon this by examining the modern implications of transformative occupation, particularly in contexts like Iraq, where the intersection of occupation law and human rights law creates new challenges.¹⁷⁸ He emphasizes the need for clearer frameworks to prevent abuses and ensure compliance, particularly in prolonged or disputed occupations.¹⁷⁹ The intersection of self-determination and occupation remains particularly relevant in the context of Kosovo, where foreign domination historically suppressed self-determination and bore characteristics akin to occupation.

¹⁷² International Court of Justice, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004), para. 87.

¹⁷³ Dinstein, Y. (2019). *The International Law of Belligerent Occupation*. Cambridge University Press. pp. 189–195.

¹⁷⁴ ICJ, Advisory Opinion on Western Sahara (1975), para. 54.

¹⁷⁵ Sassòli (2019), pp. 111–113; Borgen, C. J. (2008). Is Kosovo a precedent? Secession, self-determination and conflict resolution. *International Legal Materials*, 47(ILM 461), 350.

¹⁷⁶ Sassòli (2019), p. 125.

¹⁷⁷ Roberts, A. (1984). "Transformative Occupation: Reflections on the History and Law of Occupation." *American Journal of International Law*, 78 (3), 589–618.

¹⁷⁸ Gross, A. M. (2006). "Transformative Military Occupation: Applying the Laws of War and Human Rights." *American Journal of International Law*, 100 (1), 59–95.

¹⁷⁹ Gross (2006), pp. 75–78.

8. Multinational forces and peacekeeping operations

Multinational peacekeeping operations play a critical role in maintaining international security and addressing humanitarian crises. These operations, often authorized by the UN Security Council, may involve military, police, and civilian components with distinct mandates.¹⁸⁰ An illustrative case is Kosovo, where the UN-led UNMIK mission was tasked with administrative and policing responsibilities, while the NATO-led KFOR assumed military functions to ensure security and stability.¹⁸¹ This division of labor highlights how peacekeeping efforts adapt to complex operational demands, balancing civilian governance with military protection.¹⁸²

Bellamy and Williams document the evolution of peacekeeping operations from passive observer roles to complex missions with mandates for peace enforcement and civilian protection.¹⁸³ The 1990s saw a doctrinal shift in peacekeeping, exemplified by missions in Bosnia and Rwanda.¹⁸⁴ However, these missions also revealed critical weaknesses. In Rwanda, despite warnings of impending genocide, the UN mission (UNAMIR) faced severe resource and mandate restrictions, exacerbated by the U.S.-led push to reduce its scope in the Security Council.¹⁸⁵ Similarly, in Bosnia, Dutch peacekeepers stationed in Srebrenica failed to protect civilians during the 1995 massacre, underscoring the operational and political challenges of ensuring civilian protection in active conflict zones.¹⁸⁶ In Somalia, the UN's mission (UNOSOM II) struggled with insufficient resources, unclear mandates, and a volatile security environment, ultimately withdrawing without achieving its objectives.¹⁸⁷

¹⁸⁰ Article 42. Charter of the United Nations. <https://www.un.org/en/about-us/un-charter/chapter-7>.

¹⁸¹ UNMIK Mandate: United Nations Interim Administration Mission in Kosovo (UNMIK), Security Council Resolution 1244 (1999); NATO KFOR Mission Overview, NATO Archives.

¹⁸² Chesterman, S. (2005). *You, the People: The United Nations, Transitional Administration, and State-Building*. Oxford University Press. p. 45.

¹⁸³ Bellamy, A. J., & Williams, P. D. (2010). *Understanding Peacekeeping*. Polity Press. pp. 145–147.

¹⁸⁴ United Nations, Report of the Secretary-General on the Fall of Srebrenica (1999), A/54/549; UNAMIR Reports, UN Security Council, 1994.

¹⁸⁵ Dallaire, R. (2003). *Shake Hands with the Devil: The Failure of Humanity in Rwanda*. Random House Canada. pp. 232–245.

¹⁸⁶ Honig, J. W., & Both, N. (1996). *Srebrenica: Record of a War Crime*. Penguin Books, pp. 34–41; United Nations Report on Srebrenica (1999), A/54/549.

¹⁸⁷ Kreps, S. (2023). "Redefining Multinational Peacekeeping Mandates in the 21st Century." *International Affairs*, 99 (3), 215–230.

While challenges abound, there have also been notable successes in peacekeeping. In Namibia, the United Nations Transition Assistance Group (UNTAG) oversaw the country's peaceful transition to independence in 1990.¹⁸⁸ Similarly, in Mozambique, the UN Operation in Mozambique (ONUMOZ) played a pivotal role in implementing the General Peace Agreement, facilitating successful elections and fostering lasting peace.¹⁸⁹ These cases demonstrate the potential of well-designed peacekeeping missions to achieve stability and long-term conflict resolution.¹⁹⁰

Fortna's research underscores the importance of peacekeeping in shaping post-conflict environments, noting that robust mandates and consistent international support significantly improve outcomes.¹⁹¹ Kreps argues for redefining peacekeeping mandates to address contemporary challenges such as asymmetrical warfare and civilian protection in increasingly complex conflicts.¹⁹² Chesterman highlights the legal and moral considerations of peacekeeping, emphasizing the balance between sovereignty and the international responsibility to protect.¹⁹³ These perspectives reflect the evolving nature of peacekeeping and its adaptation to modern challenges.

These cases and scholarly analyses illustrate both the potential and limitations of multinational peacekeeping efforts. While the evolution toward more proactive mandates reflects a growing international expectation to address humanitarian crises, the failures such as in Rwanda, Bosnia, and Somalia demonstrate the consequences of insufficient resources, political will, and strategic clarity.¹⁹⁴ Moving forward, lessons from these missions continue to inform the design and implementation of peacekeeping operations to ensure greater effectiveness and accountability.¹⁹⁵

¹⁸⁸ Fortna, V. P. (2008). *Does Peacekeeping Work? Shaping Belligerent's Choices After Civil War*. Princeton University Press. pp. 55–75.

¹⁸⁹ Chesterman, S. (2021). *Just War or Just Peace? Humanitarian Intervention and International Law*. Oxford University Press. pp. 112–115.

¹⁹⁰ Fortna, V. P. (2023). "Peacekeeping and Civilian Protection in the Age of Asymmetrical Warfare." *Journal of Peace Research*, 60 (1), 12–18.

¹⁹¹ Fortna, V. P. (2008). *Does Peacekeeping Work? Shaping Belligerent's Choices After Civil War*. Princeton University Press. pp. 98–120.

¹⁹² Kreps (2023).

¹⁹³ Chesterman (2021), pp. 145–150.

¹⁹⁴ Tharoor, S. (1995). "Should UN Peacekeeping Go Back to Basics?" *Foreign Affairs*, 74 (1), 22–24.

¹⁹⁵ Bellamy & Williams (2010), pp. 198–210.

Annex A

Glossary

1. Genocide

Actions committed with intent to destroy, wholly or partially, a national, ethnic, racial, or religious group. These include killing, causing serious harm, creating destructive living conditions, preventing births, or forcibly transferring children. One of the gravest crimes under international law.

2. Crimes against humanity

Serious offenses including murder, torture, slavery, deportation, persecution, sexual violence, and other inhumane acts committed as part of widespread or systematic attacks against civilian populations. These crimes are prohibited under international law during both peace and wartime and constitute grave breaches of humanitarian conventions.

3. Torture

Intentional infliction of severe physical or mental pain or suffering, typically to extract information, punish, intimidate, or discriminate when performed by or with consent of public officials. Torture constitutes a crime against humanity under international law and is explicitly prohibited by the UN Convention against Torture.

4. Terrorism

Acts committed with intent to seriously intimidate populations, coerce governments or international organizations, or destabilize fundamental political, constitutional, economic, or social structures. International humanitarian law prohibits violence aimed at spreading terror among civilians through various conventions and protocols.

5. Forced displacement

The coerced transfer, expulsion, or deportation of individuals or groups from areas where they lawfully reside, without grounds permitted under international law. Prohibited as a crime against humanity under the Rome Statute and the Fourth Geneva Convention, except when necessary for civilian protection with proper accommodations maintained.

6. Forcefully displaced people

Civilians and protected persons who have been coercively removed from their lawful residences without legal grounds under international law. This includes people displaced within a state's boundaries (internally displaced persons) and those forced across international borders, both requiring protection under humanitarian law.

7. Internally displaced persons (IDPs)

People forced to flee their homes due to armed conflict, violence, human rights violations, or disasters, but who remain within their country's internationally recognized borders. Unlike refugees, IDPs haven't crossed national boundaries but still require protection and assistance under humanitarian principles.

8. Refugee

A person forced to flee their home country due to well-founded fear of persecution based on race, religion, nationality, social group membership, political opinion, or widespread violence. Protected by the 1951 UN Convention on Refugees, refugees cannot be forced to return to dangerous situations (non-refoulement principle).

9. Enforced disappearance

The arrest, detention, or abduction of persons by state agents or with state authorization, followed by refusal to acknowledge the detention or provide information about the victims' fate. This places victims outside legal protection and constitutes a crime against humanity under international law.

10. Collective punishment

Collective punishment is when a group of people is punished for actions committed by one or a few individuals from that group. This is strictly prohibited under international humanitarian law, which states that no one should be punished for a crime they didn't commit. It is considered a serious war crime.

11. Cultural property

Cultural property encompasses all movable and immovable property – among others, monuments, artefacts, objects of artistic value, book collections – of every people.

12. Mass grave

A mass grave is a burial site containing the remains of several people, often victims of war, genocide, or violence. These graves usually lack proper identification and are sometimes used to hide evidence of crimes. International law requires the respectful and identifiable burial of the dead during conflicts.

13. War crimes

War crimes are serious violations of international laws during armed conflict, such as killing civilians, torture, taking hostages, or destroying property without military need. These acts break the Geneva Conventions and other war rules. Both international law and Kosovo's Penal Code recognize and punish war crimes.

14. Jus ad bellum

Jus ad bellum refers to the set of legal norms that determine the conditions under which a state may lawfully resort to the use of force.

15. Reprisals

Reprisals are actions taken by one side in a conflict in response to serious violations of international law by the other side. They are only allowed in rare cases, must be a last resort, and must be proportional. However, reprisals against protected persons and objects are strictly prohibited under international humanitarian law.

16. Jus in bello

Jus in bello governs the conduct of parties engaged in an armed conflict.

17. Protected persons

Protected persons are individuals who are not taking part in fighting during armed conflict, such as civilians, prisoners of war, and medical or religious staff. International humanitarian law ensures their safety, dignity, and humane treatment. They must not be harmed, and their rights must be respected at all times.

18. Military non-state actors (MNSAs)

MNSAs are armed groups like militias or insurgents that are not part of a country's official military. Even though they are not state forces, they must still follow international humanitarian law during conflicts. They are held accountable for war crimes and must respect the rights of civilians and combatants.

19. Perfidy

Perfidy refers to acts intended to deceive the enemy in armed conflict by falsely convincing them that they are entitled to protection under the laws of war, to betray their confidence.

20. Armed conflict

Armed conflicts are belligerencies between two parties that involve the use of armed forces. They are categorized into international armed conflicts and non-international armed conflicts.

21. Insurgencies

Insurgencies are armed rebellions against state power. They could constitute an armed conflict if the dissenting armed forces or non-governmental groups are consistently and in a sustainable manner conducting military operations and the State is responding not only through law enforcement mechanisms but also through their armed forces.

22. Civil wars

Civil wars are armed conflicts within a state and fall within the category of non-international armed conflicts.

23. Direct participation in hostilities

It includes specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict.

24. Targeted killing

Targeted killing is the deliberate use of lethal force against a specific person who is not in custody, usually by a state. It is often used outside active battle zones and raises legal concerns under international humanitarian law, especially when it's unclear if the person targeted is directly involved in fighting.

25. Military necessity

It is a fundamental and contentious principle in international humanitarian law. One can litigate in favor of a specific military action that could cause the loss of civilian life or the destruction of civilian infrastructure by arguing that it is justified due the level of military threat that needed to be neutralized. On the other hand, one can litigate against such an action by arguing that the destruction of civilian life and infrastructure caused by the military action did not meet any military goal.

26. Military objectives

Objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

27. Distinction

It is a fundamental principle of IHL that obligates parties to a conflict to confine their attacks to military objectives and refrain from targeting civilians and civilian infrastructure.

28. Collateral damage

Collateral Damage refers to incidental loss of civilian life, injury to civilians, or damage to civilian objects in the course of an attack against a legitimate military target despite the taking of all necessary precautions to prevent or to minimize such damage, loss, or injury.

29. Proportionality

The principle of proportionality refers to the need of parties to a conflict to refrain from attacks that use excessive force and cause excessive damage to civilians and civilian objects and infrastructure beyond the destruction or neutralization of a military objective

30. Combatant

A combatant is someone who lawfully takes part in fighting during armed conflict, usually as a member of the armed forces. They have the right to engage in hostilities and must follow the laws of war. If captured, they are protected as prisoners of war under international humanitarian law.

31. Civilian

A civilian is anyone not taking part in fighting or not part of armed forces during a conflict. Civilians are protected under international humanitarian law and must not be targeted, unless they directly participate in hostilities. These protections apply in all types of armed conflicts.

32. Armed forces

All organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.

33. Prisoner of war

A POW is a combatant or certain civilians captured during an international armed conflict. They must be treated humanely, given food, medical care, and allowed to contact family. The Geneva Conventions protect POWs; if their status is unclear, they are presumed POWs. Violating these protections is a war crime.

34. Spy

A spy is someone who, acting in secret or under false pretenses, tries to gather military information in enemy-controlled territory and pass it to the opposing side. Spies do not have prisoner-of-war (POW) status if caught; they must be tried before punishment. Uniformed military collecting information are not considered spies.

35. Mercenary

A mercenary is a person specially recruited to fight in an armed conflict, motivated mainly by private gain and not linked to any party involved. They are neither combatants nor prisoners of war, and do not have the legal protections of regular soldiers, but must still be treated humanely.

36. Occupied territory

Occupied territory is an area under the authority and effective control of a foreign military force without the consent of the sovereign state.

37. Peacekeeping operations

Peacekeeping operations are missions conducted by the United Nations or other international organizations to help maintain or restore peace and security in conflict-affected areas.

38. Multinational forces

Multinational forces refer to military forces composed of units from multiple countries, operating under a unified command, typically authorized by international or regional organizations (e.g. UN, NATO).

39. Self-determination

Self-determination is a core principle in international law. It is the right of peoples to determine freely, without interference, their political organization and development.

40. Sexual violence

Sexual violence constitutes any act of violence of a sexual nature (physical or psychological) that is committed against one or more persons under coercive circumstances in times of peace and war alike.

41. Environmental crimes

The destruction of the natural environment for war purposes, i.e. as a weapon to inflict damage on the opponent.

42. Cultural genocide (culturicide)

Cultural genocide refers to the destruction of a group's distinctive cultural features. It may include the forced transfer of children belonging to one group onto another, the prohibition of

the use of the national language, the systematic destruction of books printed in the national language or religious books, and the systematic destruction of national and religious monuments

43. Ethnic cleansing

While not recognized as an independent crime under international law, it is generally defined as the systematic forced removal of ethnic, racial, or religious groups from a given area with the intent of creating ethnic homogeneity.

44. Massacre

A massacre is the deliberate, large-scale killing of civilians or individuals not taking part in hostilities, carried out in a planned and organized way. Such acts are serious violations of international law and may constitute war crimes, crimes against humanity, or genocide, depending on intent and context.

45. Victim

A victim is a civilian or group who suffers physical, mental, emotional, or economic harm due to serious violations of international human rights or humanitarian law. The term may also include family members or others harmed while helping victims or trying to prevent violations.

46. Martyr

Martyrdom is related to the idea of sacrifice for an ideal, which can be religious or political. The word ‘martyr’ originates from the ancient Greek word *martus* and it means ‘witness.’ Martyrdom has been a core concept in Judaism and Christianity.

Annex B

Useful sources

Diakonia International
Humanitarian Law Center

<https://www.diakonia.se/>

ICRC Casebook

<https://casebook.icrc.org/>

ICRC Humanitarian Law
Glossary

<https://www.icrc.org/sites/default/files/external/files/ehl/ehl-english-glossary.pdf>

International Court of Justice

<https://www.icj-cij.org/home>

<https://ihl-databases.icrc.org/en>

International Humanitarian Law
Databases

Kosovo Specialist Chambers

<https://www.scp-ks.org/en>

Penal Code of the Republic of
Kosovo

[https://gzk.rks-
gov.net/ActDocumentDetail.aspx?ActID=18413](https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413)

Rome Statute of the
International Criminal Court

[https://www.icc-cpi.int/sites/default/files/2024-05/Rome-
Statute-eng.pdf](https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf)

The Kosova Rehabilitation
Center for Torture Victims:

<https://krct.org/>

UN Charter

<https://www.un.org/en/about-us/un-charter>

United Nations Human Rights
Office

https://www.ohchr.org/en/ohchr_homepage