

UNDERSTANDING INTERNATIONAL HUMANITARIAN LAW

A Primer on IHL and Pakistan's Domestic Law

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We would also like to thank the RSIL team for their contributions to this endeavor. In particular, we would like to thank Mr. Ahmer Bilal Soofi for his continued support of our work and for allowing us the opportunity to further the work he began with his Study on National Measures for Implementation of IHL in Pakistan.

FOREWORD

There remains little awareness of international humanitarian law (IHL), a framework of law that seeks to limit the effects of armed conflict and protect vulnerable persons and those not participating in hostilities. IHL as a body of law is also frequently confused with the parallel international human rights law (IHRL) framework. Though principally there is significant overlap between IHL and IHRL, they for all intensive purposes are distinct bodies of law.

I have participated in numerous capacity building initiatives as a lecturer at institutions including the Civil Services Academy and the Staff College. In most of the lectures I have given over the course of my career, the confusion regarding IHL and IHRL was palpable. This is primarily why both in my personal capacity and through the Research Society of International Law (RSIL) continue to provide and promote the understanding of IHL. To this end, I provided extensive evidence of Pakistan's state practice to the International Committee of the Red Cross (ICRC) for their customary IHL study over two decades ago. This was one of the first Pakistan-specific IHL document in existence, which we then had the opportunity to distribute to domestic stakeholders.

These same issues persist today. The events of the last decade have perpetuated confusion with relation to the application of IHL, an awareness of which is still lacking. The Federal Government is in great need of specialization in this area of law, particularly with regards to the drafting of legislation that employs both IHRL-based and IHL-based mechanisms. As the appetite for operations against anti-state and extremist actors increases, so does the demand for capacity building on IHL.

It is in this environment I helped evolve this concept of domestic humanitarian law (DHL), in which the principles of IHL are derived primarily from existing domestic legislation. There is a de facto and de jure state of conflict between Pakistan and militant non-state actors and the appropriate legal framework for assessing these circumstances is Pakistan's domestic law addressing conflict or DHL and the common law of war. DHL provides an objective jurisdictional and admissibility criteria for bringing cases before the relevant courts that maintains the right balance between fundamental rights and international commitments to counterterrorism.

Whether, however, the term is DHL or IHL, the end goal is the same, to recognize that the law of armed conflict as a legitimate and useful source of law. I continue to promote this concept at every opportunity and the following document I believe is an important development in the promotion of this understanding. The Understanding IHL Handbook is the first indigenous effort to collectively package seminal concepts of IHL with corresponding provisions in Pakistan's domestic law. Though not exhaustive, the list of topics covered is exceedingly representative of many of the current legal challenges faced during conflict with militant non-state actors. Thus, this Handbook is an important tool that may be used for capacity building with regards to both IHL and DHL.



Ahmer Bilal Soofi
President
RSIL Pakistan

INTRODUCTION

The following document on international humanitarian law (IHL) is a selective examination of the law of armed conflict in a context most relevant to Pakistan. IHL is a subsidiary body of public international law that governs armed conflicts, which may be either international or internal. International armed conflicts are those between two or more opposing states and non-international armed conflicts are those between states and non-state armed groups or between two such armed groups (A more detailed examination of these and other introductory concepts is provided in Chapter I).

During an armed conflict, Pakistan is bound by customary rules of IHL as well as the four Geneva Conventions of 1949 to which it is a party. In addition, Pakistan is a signatory to Additional Protocols I and II. Human rights law is also applicable, in many cases, during an armed conflict, particularly non-international armed conflicts. To that end, Pakistan is a party to several core human rights instruments, including the International Covenant on Civil and Political Rights.

In light of the above, several questions on the relevance of IHL arise, its application in Pakistan's context and on the role of this primer. The following questions seek to clarify the existing domestic perceptions regarding IHL:

Why is it important to understand IHL?

IHL is a set of rules that, for humanitarian reasons, seek to limit the effects of armed conflict. It is a body of law that protects persons not engaged or no longer engaged in hostilities and places limitations on the methods and means of warfare¹. Thus, for the protection of those persons most vulnerable during hostilities, IHL exists as a set of rules limiting what is permitted in warfare. It is of interest to all parties to a conflict to observe and incorporate IHL, as it is

¹International Committee of the Red Cross, What is International Humanitarian Law, ADVISORY SERVICE ON INT'L HUMANITARIAN LAW, available at: https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.

applicable to all parties in a conflict, to provide protection to all persons engaged in and affected by the hostilities.

Why is IHL relevant to Pakistan?

Pakistan's security concerns are diverse and persistent. In certain areas, the Armed Forces are engaged in frequent skirmishes with violent non-state actors and in others the Civil Armed Forces and law enforcement are working to contain anti-state movements and political violence. In many major cities, violent acts of terrorism in schools and other areas frequented by vulnerable persons have become the norm.

Within this climate of ongoing unrest, it is important to understand when and to what extent IHL applies. This is as opposed to the exclusive application of human rights law, which may be considered the ongoing law of peacetime. Where hostilities rise to threshold of an armed conflict, it is imperative for a state to know the manner and level of deadly force that is permitted. Thus in Pakistan's case, where internal disturbances may eventually develop into non-international armed conflicts, the importance of IHL increases when determining how to combat the violence.

From the perspective of a domestic stakeholder, however, such distinctions may seem unimportant. This is because the domestic law implementing IHL in Pakistan is limited. At present, there is little differentiation in how to address situations that amount to armed conflict and those that do not. It would be inherently beneficial to thus incorporate IHL and to generally improve Pakistan's compliance with international legal obligations.

How is this document helpful?

This document was created to assist domestic stakeholders (i.e. policymakers, members of the judiciary, members of the Armed Forces, law enforcement, academics, etc.) to develop both an understanding and appreciation of IHL. The intent is to promote Pakistan's compliance with its obligations under IHL and to provide clearer guidelines for the Armed Forces and Civil Armed Forces engaged in military and law enforcement operations.

The manner in which the following chapters are organized reflects not the entirety of applicable IHL, but rather a limited selection of relevant legal principles and customary rules. As a whole, this document is intended to be a user-friendly introduction meant to build the capacity of a domestic audience. With this in mind, certain related provisions of domestic law were incorporated to ease apprehensions regarding the compatibility of domestic law with IHL principles.

This document is not a definitive legal interpretation of the relevant law, but rather a practical tool meant to introduce concepts of IHL into the domestic context. It should therefore prompt further exploration of IHL, its application within Pakistan and the improvement of domestic compliance with its provisions.

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**INTRODUCTION TO
INTERNATIONAL
HUMANITARIAN LAW**

I. Introduction to IHL and its Relationship with IHRL

International humanitarian law (IHL) and International Human Rights Law (IHRL) are two complementary bodies of public international law - which governs relations between subjects "capable of possessing international rights and duties."¹ IHL applies in situations of armed conflict and has been specifically conceived to regulate such situations. IHRL generally applies at all times, including during armed conflict, but was conceived mainly for situations of peacetime.

International Humanitarian Law

Known as the law of armed conflict, IHL is a set of rules designed to limit the effects of armed conflict. It protects persons who are not or are no longer participating in hostilities and restricts means and methods of warfare.

International Human Rights Law

Human rights are rights inherent to all human beings. IHRL lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.²

IHL and international human rights law are complementary bodies of international law that share some of the same aims. Both IHL and human rights law strive to protect the lives, the health and the dignity of individuals, albeit from different angles, which is why, while very different in formulation, the essence of some of the rules is similar.³

International Court of Justice

(Legal Consequences of the Construction of Wall in the Occupied Palestinian Territory)

As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order

to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law²

IHRL applies continuously, but certain rules may be derogated from in situations of public emergency threatening the life of the nation

IHL only applies during an armed conflict and does not allow for derogations

IHRL applies to state parties

IHL binds all parties to a conflict, including non-state parties

IHL and IHRL both strive to protect the lives, health and dignity of individuals. Though the circumstances under which these frameworks apply may be different, many of their core principles are similar.

INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS

Universal declaration of human rights (1948)

Convention on the prevention and punishment of the crime of genocide (1948)

Convention on the elimination of all forms of racial discrimination (1965)

International covenant on civil and political rights (1966)

International covenant on economic, social and cultural rights (1966)
Convention on the elimination of all forms of discrimination against women (1979)

Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984)

Convention on the rights of the child (1989)

International convention on the protection of the rights of all migrant workers and members of their families (1999)

International convention for the protection of all persons from enforced disappearance (2006)

Convention on the rights of persons with disabilities (2006)

II. International Humanitarian Law

International humanitarian law is a set of rules, which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare.

International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force, this is governed by an important, but distinct, part of international law set out in the United Nations Charter.

International humanitarian law applies only to armed conflict; it does not cover internal tensions or disturbances such as isolated acts of violence. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting⁴.



International humanitarian law

Instruments

Those instruments to which Pakistan is a party are highlighted in **GREEN**
Those instruments to which Pakistan is a signatory are highlighted in **BLUE**

- Geneva Convention for the Condition of the Wounded in Armies in the Field (1864)
- St. Petersburg Declaration (prohibiting the use of certain projectiles in wartime)(1868)
- The Hague Conventions respecting the Laws and Customs of War on Land, and the adaptation to maritime warfare of the principles of the Geneva Convention (1899)
- Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1906)
- Convention (X) for the Adaptation to the Maritime Warfare of the principles of the Geneva Convention (1907)
- Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925)
- Convention relevant to the Treatment of Prisoners of War (1929)
- Convention on the Rights of the Child (Article 38) (1989)
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1993)
- Protocol (IV) on Blinding Laser Weapons (added to the CCW of 1980) (1995)
- Revised Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II [revised] to the CCW of 1980) (1996)
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997)
- Rome Statute of the International Criminal Court (1998)
- Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of

Armed Conflict (1999)

- The Four Geneva Conventions (1949)
- The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their destruction (1972)
- Convention on the Prohibition of Military or Any other Hostile Use of Environmental Modification Techniques (1976)
- Two Protocols Additional to the four 1949 Geneva Conventions
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects (1980)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)
- Amendment to Article I of the CCW of 1980 (2004)
- Protocol (V) on Explosive Remnants of War (added to the CCW of 1980) (2003)
- Protocol additional to the Geneva Conventions, and relating to the Adoption of an Additional Distinctive Emblem (Additional Protocol III) (2005)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)
- Convention on Cluster Munitions (2008)
- Arms Trade Treaty (2013)

CUSTOMARY INTERNATIONAL LAW

Customary law is formed when State practice is sufficiently dense (widespread, representative, frequent and uniform) and accompanied by a belief among States that they are legally bound to act – or prohibited from acting – in certain ways. Custom is binding on all States except those that have persistently objected, since its inception, to the practice or rule in question. It is also binding on non-State armed groups.

In 1995, the ICRC embarked on a detailed study of the customary rules of IHL and the study represents a comprehensive collection of accepted norms of customary international law

When does International Humanitarian Law apply?

IHL applies only in situations of armed conflict. A number of factors must be taken into account before characterizing a situation of armed conflict, then subject to the rules of IHL. An armed conflict may either be "international" (between two or more states) or 'non-international' (between government authorities and organized armed groups or between such groups within a State). There can be instances of international and non-international armed conflicts simultaneously applying in a situation.

To what persons does IHL apply?

All parties to an armed conflict – whether States or organized non-State armed groups – are bound by the rules of IHL. Rules of customary IHL apply at all times to all parties, irrespective of their ratification of IHL treaties.

Obligations of States:

Only States may become parties to international treaties such as the Geneva Conventions and their Additional Protocols. All 196 States are party to the Geneva Conventions. The fact that the Conventions are universally ratified testifies to their importance. 174 States were party to Additional Protocol I, 168 to Additional Protocol II and 72 to Additional Protocol III.

Depending on the type of conflict they are involved in (IAC or NIAC), States are bound by the relevant rules of IHL.

Obligations of organized non-state armed groups:

Organized non-State armed groups are bound – as parties to NIACs – by common Article 3 and Additional Protocol II provided that the State to which they belong is party and in the case of the Protocol, that the higher threshold for its application is met. In any case, they are also bound by customary IHL rules pertaining to NIACs.

In some circumstances, organized armed groups may also be parties to an IAC between States and therefore bound by the rules of IHL applicable in IAC.

Jus Ad Bellum Vs. Jus in Bello⁵

JUS AD BELLUM refers to the conditions under which States may resort to war or to the use of armed force in general. The prohibition against the use of force amongst States and the exceptions to it (self-defense and UN authorization for the use of force), set out in the United Nations Charter of 1945, are the core ingredients of *jus ad bellum*

JUS IN BELLO regulates the conduct of parties engaged in an armed conflict. IHL is synonymous with *jus in bello*; it seeks to minimize suffering in armed conflicts, notably by protecting and assisting all victims of armed conflict to the greatest extent possible.

Basic Principles of International Humanitarian Law

MILITARY NECESSITY

The principle of military necessity permits only that degree and kind of force required to achieve the legitimate purpose of a conflict, (i.e. the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources). It does not, however, permit the taking of measures that would otherwise be prohibited under IHL.⁶

Similarly, the *Lieber Code of 1863*, one of the first modern military manuals, made it clear that the fundamental principle of military necessity justifies only "those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war."⁷

HUMANITY

The principle of humanity forbids the infliction of all suffering, injury or destruction not necessary for achieving the legitimate purpose of a conflict.⁸

DISTINCTION

The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.⁹

The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.¹⁰

Military Objectives

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.¹¹

Civilian Objects

Civilian objects are all objects that are not military objectives.¹²

The basic rule of distinction requires that the parties to an armed conflict distinguish at all times between civilian persons and civilian objects on the one hand, and combatants and military objectives on the other. A party to an armed conflict may direct an attack only against combatants or military objectives. Neither the civilian population nor individual civilians may be attacked unless and for such time as they directly participate in hostilities.¹³

When civilian objects are used for military purposes (e.g. a civilian train that is used to transport weapons and combatants) they may become military objectives if they fulfill the abovementioned definition.¹⁴

There is a prohibition on indiscriminate attacks.¹⁵

PROPORTIONALITY

Launching an attack, which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.¹⁶

In other words, a military objective may be attacked only after an assessment leading to the conclusion that civilian losses are not expected to outweigh the military advantage foreseen.¹⁷

PRECAUTION

In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.¹⁸

A party to an armed conflict must take constant care to spare civilians or civilian objects when carrying out military operations. The party conducting an attack must do everything feasible to verify that the targets are military objectives. It must choose means and methods of attack that avoid, or at least keep to a minimum, the incidental harm to civilians and civilian property. It must refrain from launching an attack if the expected incidental civilian losses or damage caused would be excessive in relation to the concrete and direct military advantage anticipated. Effective warning must be given of attacks that may affect the civilian population, unless circumstances do not permit. Precautions must also be taken against the effects of attacks.

III. International and Non-International Armed Conflicts

International Armed Conflicts

Under IHL, an international armed conflict (IAC) exists whenever there is recourse to armed force between two or more States. The threshold for determining the existence of an IAC is therefore fairly low, and factors such as duration and intensity are generally not considered to enter the equation. For instance, the mere capture of a soldier or minor skirmishes between the armed forces of two or more States may spark off an international armed conflict and lead to the applicability of IHL, insofar as such acts may be taken as evidence of genuine belligerent intent. In this context, it is important to bear in mind that an armed conflict can arise where a State uses unilateral force against another State even if the latter does not or cannot respond with military means. The attacking State's resort to force need not actually be directed against the armed forces of another State. IACs are fought between States. The government is only one of the constitutive elements of a State, while the territory and the population are others. It is the resort to force against the territory, infrastructure or persons in the State that determines the existence of an IAC and therefore triggers the applicability of IHL.²⁰

Non-International Armed Conflicts

A NIAC is an armed conflict in which hostilities are taking place between the armed forces of a State and organized non-State armed groups, or between such groups. For hostilities to be considered an NIAC, they must reach a certain level of intensity and the groups involved must be sufficiently organized.

In some cases, an IAC and a NIAC can exist in parallel, for example: when a State intervenes militarily in an existing NIAC between a State and an organized armed group in support of the group or when a State, engaged in a NIAC against an organized non-state armed group, carries out hostile actions against that group on the territory of another State without the latter's consent.

The Beginning and End of IHL applicability

The applicability of IHL is triggered by the existence of an armed

conflict, the determination of which depends solely on an assessment of the facts on the ground. Whether an armed conflict exists, and whether by extension IHL is applicable, is assessed based on the fulfillment of the criteria for armed conflict found in the relevant provisions of IHL, notably Articles 2 and 3 common to the 1949 Geneva Conventions.²¹

COMMON ARTICLE 2

(TO GENEVA CONVENTIONS I-IV)

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

COMMON ARTICLE 3

(TO GENEVA CONVENTIONS I-IV)

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-

mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Main Rules Applicable to IAC and NIAC	
IAC	NIAC
GC I-IV	Common Article
AP I	3AP II
Customary IHL	Customary IHL

End Notes

- ¹ Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. 180 (Apr. 11). Whereas States possess the totality of international rights and duties recognized by international law, the nature and extent of the international legal personality of other subjects of international law is more restricted, including that of international organizations, such as the UN, or individuals.
- ² "WHAT ARE HUMAN RIGHTS?" OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, available at: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.
- ³ International Humanitarian Law: Answers to Your Questions, INTERNATIONAL COMMITTEE OF THE RED CROSS, 38 (2014) available at: <https://www.icrc.org/eng/assets/files/other/icrc-002-0703.pdf> [hereinafter IHL: Answer to your Questions].
- ⁴ International Committee of the Red Cross, What is International Humanitarian Law, ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, available at: https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.
- ⁵ WHAT ARE JUS AD BELLUM AND JUS IN BELLO? INTERNATIONAL COMMITTEE OF THE RED CROSS, available at: <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0>.
- ⁶ Id. at 6.
- ⁷ Instructions for the Government of Armies of the United States in the Field (Lieber Code). 24th April 1863, Art. 14.
- ⁸ IHL: Answers to your Questions, supra note 3, at 6.
- ⁹ RULE 1, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule1.
- ¹⁰ RULE 7, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule7.
- ¹¹ RULE 8, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule8.
- ¹² RULE 9, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule9.
- ¹³ IHL: Answers to your Questions, supra note 3, at 47.
- ¹⁴ Id.
- ¹⁵ RULE 11, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule11.
- ¹⁶ RULE 14, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule14.
- ¹⁷ IHL: Answers to your Questions, supra note 3, at 47.
- ¹⁸ RULE 15, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule15.
- ¹⁹ IHL: Answers to your Questions, supra note 3, at 48.
- ²⁰ International Committee of the Red Cross, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, 8 (2015), available at: <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>.
- ²¹ Id. at 7.

**SCOPE OF APPLICATION OF
INTERNATIONAL
HUMANITARIAN LAW**

I. Geographical Scope of a Conflict

[T]he temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities

Prosecuter v. Tadić,

International Criminal Tribunal for the former Yugoslavia⁴

Geographical Scope of an Armed Conflict

Neither the Geneva nor the Hague Conventions specify how far the geographical scope of an armed conflict extends, except as regards occupation.² Under the Tadić decision, it is made clear that the law of armed conflict applies to the entire territory of a state.

NIACs are treated in a similar fashion:

Although the Geneva Conventions are silent as to the geographical scope of international “armed conflicts,” the provisions suggest that at least some of the provisions of the Conventions apply to the entire territory of the Parties to the conflict, not just to the vicinity of the actual hostilities.³

As regards IAC, it is generally accepted that IHL applies to the entire territories of the States involved in such a conflict, as well as to the high seas and the exclusive economic zones (the “area” or “region” of war). A State's territory includes not only its land surface but also rivers and landlocked lakes, the territorial sea, and the national airspace above this territory. There is no indication either in the 1949 Geneva Conventions and their Additional Protocols, or in doctrine and jurisprudence, that IHL applicability is limited to the “battlefield,” “zone of active hostilities” or “zone of combat,” which are generic terms used to denote the space in which hostilities are taking place. In addition, it is widely agreed that military operations cannot be carried out beyond the area or region of war as defined above, meaning that they may not be extended to the territory of neutral States.⁴

NIACs are treated in a similar fashion:

*The geographical [...] frame of reference for internal armed conflicts is similarly broad. [...] [T]he rules contained in Article 3 also apply outside the narrow geographical context of the actual theatre of combat operations.*⁵

De Jure Applicability & De Facto Application of IHL

IHL applies to the entire territory of a Party to the conflict, as a matter of law, whether or not actual combat is taking place there [*de jure applicability*].⁶ This means that in an IAC, for example, the entire physical territory of States A and B, both parties to the conflict, are covered by the application of IHL.

Because active hostilities do not take place in the entire territories of parties to a conflict, the actual application of IHL rules will depend on the facts of the case [*de facto* application].⁷ Thus, a case-by-case determination is required to assess whether the event has a substantial relationship with the armed conflict, in which case IHL rules apply or if it has no nexus, the law that applies in the absence of an armed conflict, human rights law, applies.⁸

Scope of a Conflict in Domestic Law

ARTICLE 245, CONSTITUTION OF PAKISTAN: FUNCTIONS OF THE ARMED FORCES⁹

- (1) The Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so.
- (3) A High Court shall not exercise any jurisdiction under Article 199 *in relation to any area* in which the Armed Forces of Pakistan are, for the time being, acting in aid of civil power in pursuance of Article 245
- (4) Any proceeding *in relation to an area referred to in clause (3)* instituted on or after the day the Armed Forces start acting in aid of civil power and pending in any High Court shall remain suspended for the period during which the Armed Forces are so acting.

Pursuant to the Constitution of Pakistan, the Federal Government issues a notification calling the Armed Forces to act in aid of civil power. Presumably, the notification specifies the geographical area to which the Armed Forces are called, along with the time during which that action is intended to begin. The same, or a separate notification may indicate when such action comes to an end. Assuming the aggression for which the Armed Forces are engaged amount to an IAC or NIAC, Article 245 of the Constitution may in some ways, domestically implement international law aspects of the scope related to an armed conflict.

II. Temporal Scope of a Conflict

Temporal Scope of an International Armed Conflict

For both IACs and NIACs, determining the existence of an armed conflict requires an assessment of the facts at hand, rather than reliance upon a political statement.¹⁰

Beginning of an IAC...

[An] international armed conflict (IAC) exists whenever there is recourse to armed force between two or more States

The threshold for determining the existence of an IAC is fairly low and factors such as duration and intensity are generally not relevant. The mere capture of a soldier or minor skirmishes between the armed forces of two or more States, for example, may spark an international armed conflict and lead to the applicability of IHL.

An international armed conflict may also arise where a State uses unilateral force against another State even if the latter does not or cannot respond with military means.

The attacking State's resort to force need not actually be directed against the armed forces of another State. It is the resort to force against the territory, infrastructure or persons in the State that determines the existence of an IAC and therefore triggers the applicability of IHL.¹¹

End of an IAC...

International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached¹²

Scholars interpret the "general conclusion of peace" to mean that IHL applies until military operations generally come to an end.¹³ As long as there is actual fighting taking place, IHL continues to apply.

However, the “cessation of active hostilities” is not enough of an indicator that the armed conflict has come to an end.¹⁴ The hostilities must have ended with a degree of stability and permanence, such that they can be said to have ended in a general, definitive and effective way. The ongoing mobilization of troops along the common border may indicate that the IAC has not yet ended.

Temporal Scope of a Non-International Armed Conflict

Beginning of a NIAC...

Despite the absence of a clear definition of NIAC in Article 3 common to the Geneva Conventions, two conditions must be fulfilled before it can be said that such a conflict exists and IHL applies:

- (1) the fighting must occur between governmental armed forces and the forces of one or more non-State armed groups having a certain level of organization, or between such armed groups; and
- (2) the armed confrontation must have reached a certain threshold of intensity.¹⁵

METHODS OF DETERMINING REQUIRED LEVEL OF INTENSITY OF VIOLENCE¹⁶

Intensity of the conflict may be assessed through the following indicators:

- the number and seriousness of attacks and if there was an increase in armed clashes
- their spread over territory and over a period of time
- the number of fighters/units deployed on both sides and an increase in the number of government forces
- the type of government forces deployed (e.g. police or armed forces)
- the mobilization and the distribution of weapons among both parties to the conflict
- the types of weapons used
- the number of military and civilian victims and extent of damage caused to objects
- the effects of the violence on the civilian population (e.g. displacement)
- whether the conflict has attracted the attention of the United

Nations Security Council and, if so, whether any resolutions on the matter were passed.

LEVEL OF ORGANIZATION¹⁷

Similarly, though none of the following factors alone determine whether the required level of organization exists, they may be used as indicators to assess the level of organization of an armed group:

the force or group's internal hierarchy

- the command structure and rules
- the extent to which military equipment, including firearms, are available
- the force or group's ability to plan military operations and put them into effect
- the extent, seriousness, and intensity of any military involvement.

End of a NIAC...

A NIAC may end in two ways. First, one of the parties may simply cease to exist. This may be, for example, due to a complete military defeat or other dissolution of the party to the conflict even if remnants of it continue to carry out isolated or sporadic acts of violence.

Second, there may be a peaceful settlement that brings the end of an armed conflict.¹⁸

*International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until [...] in the case of internal conflicts, a peaceful settlement is achieved.*¹⁹

Nonetheless, a peace agreement or a ceasefire are not, by themselves, enough to establish the end of a NIAC.²⁰ As established in the *Tadić* case:

*Notwithstanding various temporary cease-fire agreements, no general conclusion of peace has brought military operations in the region to a close. These hostilities exceed the intensity requirements applicable to both international and internal armed conflicts.*²¹

A peaceful settlement requires a lasting absence of armed confrontations (even if minor isolated skirmishes continue) without real risk of resumption. A temporary lull in the hostilities or variations in the level of their intensity, are therefore not sufficient to conclude that a conflict has come to an end. It is also not possible to conclude that a NIAC has ended just because the armed confrontations have fallen below the intensity required for a conflict to exist in the first place.

The moment upon which the conditions for NIAC are no longer applicable can be difficult to determine. Especially in internal conflicts when the violence reaches sometimes the threshold at some occasions but does not continue at the same level during the whole conflict.²²

Ultimately, the end of the application of IHL in a NIAC is determined on a case-by-case assessment of the relevant facts.²³ IHL ceases to apply when the circumstances requiring the continued application of IHL cease to exist. For instance, even if the armed violence has ended, persons detained in relation to that conflict continue to benefit from the relevant provisions of IHL until their final release.

End Notes

- ¹ Prosecutor v. Tadić, Case No. IT-94-1-T, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 67 (Oct. 2, 1995) [hereinafter Tadić].
- ² Lydwien Toonstra, The 'Complexity' of the Geographical Scope of International Humanitarian Law, AMSTERDAM LAW SCHOOL, 26, (Dec. 9 2013) available at: <http://dare.uva.nl/cgi/arno/show.cgi?fid=509008>.
- ³ Tadić, supra note 1, at ¶ 69.
- ⁴ International Committee of the Red Cross, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, 13 (2015) [hereinafter Challenges Report 2015], available at: <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>.
- ⁵ Tadić, supra note 1, at ¶ 69.
- ⁶ Toonstra, supra note 2, at 26.
- ⁷ Id. at 27.
- ⁸ Id.
- ⁹ Pakistan Const. (1973) (emphasis added).
- ¹⁰ Rogier Bartels, Temporal Scope of Application of IHL: When do Non-International Armed Conflicts End?, OPINIO JURIS (Feb. 18, 2014) <http://opiniojuris.org/2014/02/18/guest-post-bartels-temporal-scope-application-ihl-non-international-armed-conflicts-end-part-1/>.
- ¹¹ Challenges Report 2015, supra note 4, at 8.
- ¹² Tadić, supra note 1, at ¶ 70.
- ¹³ Toonstra, supra note 2, at 56-57.
- ¹⁴ Id. at 57.
- ¹⁵ Challenges Report 2015, supra note 4, at 8.
- ¹⁶ Prosecutor v. Thomas Lubanga, Case No. ICC-01/04-01/06, Judgment, ¶ 538 (Mar. 14, 2012) available at: <https://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf>.
- ¹⁷ Id. at ¶ 537.
- ¹⁸ Toonstra, supra note 2, at 57.
- ¹⁹ Tadić, supra note 1, at ¶ 70.
- ²⁰ Toonstra, supra note 2, at 58.
- ²¹ Tadić, supra note 1, at ¶ 70.
- ²² Id.
- ²³ Id. at 58.

USE OF FORCE

I. Conduct of Hostilities vs. Law Enforcement

The use of force may be governed under two different legal frameworks: the conduct of hostilities paradigm under IHL and the law enforcement paradigm under IHRL.¹ In situations of armed conflict, particularly in NIACs, it is not always clear which paradigm applies.² For example, the same armed forces may be required to operate under a conduct of hostilities framework during one aspect of the conflict and under a law enforcement framework during another.³

It is sometimes difficult to draw the line between situations governed by the conduct of hostilities and the law enforcement paradigms, which is why resort to force must be proportionate.⁴

In a NIAC, when a State is using force against fighters, it may be considered as simultaneously conducting hostilities and maintaining law and order, since fighters are also frequently criminals under domestic law

Situations of civilian unrest may arise while combat operations against the adversary are taking place.

Sometimes the two situations of violence may even intermingle, for instance when fighters are hiding among rioting civilians or demonstrators.

It may be difficult to distinguish fighters from rioting civilians and to identify the relevant applicable paradigm.

Why is it necessary to distinguish between the two paradigms?

Under the conduct of hostilities paradigm...

LAWFUL TARGETS MAY BE KILLED⁵ AND THERE IS HIGHER TOLERANCE FOR INCIDENTAL LOSS OF LIFE⁶

Under the law enforcement paradigm...

PERSONS POSING A THREAT MUST BE CAPTURED RATHER THAN KILLED WHENEVER FEASIBLE AND RESORT TO FORCE MUST ALWAYS REMAIN PROPORTIONATE⁷

There is a practical difference in the amount of lethal force that may be lawfully used as a first resort in both regimes.⁸ That difference must be recognized and appreciated by a state considering which paradigm applies to the matter at hand.

Humanitarian law will only apply when the use of force takes place in an armed conflict and has a nexus with that armed conflict.⁹ IHL will apply both during an armed conflict and during peacetime.¹⁰ The tenants of IHL bind all parties to a conflict, while human rights law binds states parties only.¹¹

PRIMARY DIFFERENCES BETWEEN THE CONDUCT OF HOSTILITIES PARADIGM AND LAW ENFORCEMENT PARADIGM		
	Conduct of Hostilities	Law Enforcement
Necessity ¹²	The military necessity to use force against lawful targets under IHL is presumed. Combatants or fighters may be attacked with lawful means of warfare, while civilians are protected against direct attack, unless and for such time as they take direct part in hostilities.	The principle of "absolute necessity" implies that the use of force must be a last resort and may only be undertaken to pursue a legitimate aim, such as self-defense, disrupting a lawful arrest, preventing the escape of a person lawfully detained or preventing a riot. Force must be absolutely necessary in order to maintain public security, law and order. Whenever the lawful use of force is unavoidable, the smallest amount of force necessary must be used and an escalation of force procedure must be applied whenever possible (e.g. verbal warning, show force, "less-than-lethal" force, lethal force).

<p>Proportionality¹³</p>	<p>IHL prohibits an attack against a legitimate target if this attack “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” The lawful target of an attack (combatant, fighter or civilian directly participating in hostilities) is not covered by the principle of proportionality under IHL.</p>	<p>Under a human rights framework, that the degree of force used and the potential harm it can cause must be strictly proportionate to the seriousness of the offence and the legitimate objective to be achieved.¹⁴</p> <p>The balance should be maintained between the risks posed by the individual versus the potential harm to this individual as well as to bystanders. If the individual does not pose an imminent threat of death or serious injury, the use of lethal or potentially lethal force would not be considered proportionate. The use of force must avoid as far as possible, death or injuries of bystanders.</p>
<p>Precaution¹⁵</p>	<p>In the conduct of military operations, parties to a conflict must take constant care to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects</p>	<p>Law enforcement operations have to be carefully planned in order to avoid, as much as possible, the use of force and to minimize the risk to bystanders). State officials shall endeavour, to the greatest extent possible, to limit damage and injury, and respect and preserve human life. Training, weapons and equipment must be given accordingly.¹⁶</p>

Practical differences in application

Take for example the following case study...

In the context of a NIAC between a government and an organized non-State armed group, a fighter belonging to that group is sleeping at home with his family in a part of the territory controlled by the government. The government's armed forces locate the fighter and decide to launch an operation against him.¹⁷

The situation is not clear with regard to the use of force against isolated individuals who are lawful targets under IHL, but are located in regions under a State's firm control, where no hostilities are taking place and it is not reasonably foreseeable that the

*adversary could readily receive reinforcement.*¹⁸

What potential factors determine whether or not this situation is handled under the conduct of hostilities vs. the law enforcement paradigm?¹⁹

1. The location of the potential target, whether he or she is inside or outside the conflict zone
2. The intensity of violence and degree of control
3. The status or function of the target(s)
4. The *lex specialis* in those circumstances²⁰
5. The side effects of such actions on the surrounding population or in the public eye²²

The following positions may be taken on the matter...²¹

1. IHL rules on the conduct of hostilities govern the situation, without restraints, except for those derived from specific IHL rules (i.e. military necessity and humanity)
2. In addition to the restraints imposed by IHL on specific means and methods of warfare, and without prejudice to further restrictions that may arise under other applicable branches of international law the kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.²²
3. The use of force would remain governed by the rules on law enforcement

The following related case study may be demonstrative of the considerations and positions addressed above...

If a civilian demonstration against the authorities in a situation of armed conflict were to turn violent, a resort to force in response to this would be governed by law enforcement rules. If enemy fighters were located in the crowd of rioting civilians, they could be directly targeted under IHL rules on the conduct of hostilities. However, their mere presence, or the fact that the fighters launched attacks from the crowd, would not turn the rioting civilians into direct participants in the hostilities. Thus, all precautions provided for under IHL would need to be taken to spare the civilians in case of attacks against the fighters. If it were to prove too difficult to distinguish the rioting civilians from the fighters, it might be appropriate to deal with the entire situation under law enforcement, and apply an escalation of force procedure with respect to all persons posing a threat.²³

Evidence of these Paradigms in Domestic Law

Though these paradigms are not addressed in explicit terms in Pakistan's domestic law, there are several provisions of law that reflect the application of both the conduct of hostilities and law enforcement paradigm.

The Actions (in Aid of Civil Power) Regulations, 2011 (AACPR) allow for the deployment of the Armed Forces to FATA or PATA.²⁴ The Armed Forces may perform both military actions in aid of civil power or law and order duties.

The Federal Government may requisition the Armed Forces in respect of any defined area to carry out actions in aid of civil power.²⁵

The Armed Forces may also be requisitioned in aid of civil power, for law and order duties, to conduct law enforcement-operations, to combat natural calamities and for rehabilitation.²⁶

The Regulations contain both preventive and reactionary provisions as regards the use of force. Section 4 of AACPR suggests the following precautions prior to the use of force:

- Warn civilians to vacate the area
- Send out a warning to residents to withdraw support for miscreants (i.e. terrorist, non-state actor)
- Take special measures with regards to life and safety of children, women and the elderly
- Take feasible precautions in the choice of means and methods of attack with a view to avoiding and minimizing collateral loss of civilian life and objects.²⁷

The AACPR also requires that the members of the Armed Forces be instructed to adhere to principles of proportionality and necessity, with a view to minimizing unnecessary loss to life and property.

*The Commander of Armed Forces shall issue instructions to troops under their control that the Armed Forces shall adhere to the principles of proportionality and necessity and shall ensure that the collateral damage to life and property shall be minimum.*²⁸

Section 5 of the AACPR provides that the abuse or misuse of force during an action in aid of civil power is to be investigated by the Armed Forces.²⁹ The result of such an investigation will lead to appropriate steps as per the applicable law, including the trial of an offence through the existing criminal procedures of the Armed Forces.³⁰

The AACPR is applicable in situations of emergency in the Federally Administered Tribal Areas (FATA). The Anti-Terrorism Act, 1997, the Protection of Pakistan Act, 2014 and the Code of Criminal Procedure, 1898 are continuously in operation in all of Pakistan (except for FATA)³¹ to address the use of force while combating terrorism and disturbances of the peace through law enforcement measures. Invoking Article 245 of the Constitution of Pakistan would prompt the deployment of the Armed Forces in aid of civil power, though beyond FATA their actions would not be governed by the AACPR. They would operate under the Constitution, the Anti-Terrorism Act, 1997, Protection of Pakistan Act, 2014, etc.

The Anti-Terrorism Act, 1997 establishes parameters for the use of force in anti-terrorism operations.

Any police officer, or member of the armed forces, or civil armed forces, who is present or deployed in any area may, after giving sufficient warning, use the necessary force to prevent the commission of terrorist acts or scheduled offences, and, in so doing shall, in the case of an officer of the armed forces or civil armed forces, exercise all the powers of a police officer under the Code.

Anti-Terrorism Act, Section 5(1)

This section permits the use of "necessary force" to prevent acts of terrorism. It also shifts the scope of action of the Armed Forces and Civil Armed Forces from the conduct of hostilities framework to a law enforcement framework by providing them the powers of a police officer.

AN OFFICER OF THE POLICE, ARMED FORCES AND CIVIL ARMED FORCES MAY:

After giving prior warning **use such force as may be deemed necessary or appropriate**, bearing in mind all the facts and circumstances of the situation, against any person who is committing, a terrorist act or a scheduled offence, it shall be lawful for any such officer, or any senior officer, **after forming reasonable apprehension that death or grievous hurt may be caused by such act or offence to fire, or order the firing upon any person** or persons against whom he is authorized to use force in terms hereof [...]

Provided further that the decision to fire or order firing shall be taken only by way of last resort, and **shall in no case extend to the inflicting of more harm than is necessary** to prevent the terrorist act or scheduled offence which has given rise to the reasonable apprehension of death or grievous hurt

Anti-Terrorism Act, Section 5(2)(i)

Consistent with the law enforcement paradigm, upon suspicion of a serious threat, the use of lethal force is permitted under the Anti-Terrorism Act, 1997. These requirements are for all officers operating pursuant to the Act, including, again, members of the Armed Forces.

The principles of necessity and proportionality are also incorporated into the evaluation of the use of force in the Anti-Terrorism Act through a law enforcement paradigm. The Act is not restricted in application to either peacetime or times of armed conflict (it may remain prevailing law even after a notification under Article 245 is issued in response to an emergency) and thus it was drafted broadly enough to accommodate both paradigms as they become relevant. Nevertheless, the law primarily provides for the use of force in peacetime.

The Code of Criminal Procedure, 1898 specifies procedures regarding unlawful assemblies and the maintenance of public peace and security. An unlawful assembly is considered to be a disturbance of the public peace and if it becomes violent, it is considered a riot.³² If a riot is perpetrated with the intent to wage war

against Pakistan, it is then classified as insurrection or rebellion.³³ This classification allows for the potential application of Article 245 and consequently the deployment of the federally-controlled Armed Forces or Civil Armed Forces rather than the use of law enforcement agencies operated by the provincial governments.

USE OF CIVIL FORCE TO DISPERSE: If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any investigating officer, Executive Magistrate or officer in charge of a police-station, **may proceed to disperse such assembly by force...**

Code of Civil Procedure, Section 128

USE OF MILITARY FORCE: If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present **may cause it to be dispersed by military force.**

Code of Civil Procedure, Section 129

When the public security is manifestly endangered by such assembly, and when no Executive Magistrate can be communicated with, **any commissioned officer of the Pakistan Army may disperse such assembly by military force,** and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law

Code of Civil Procedure, Section 131

If the [...] Government is satisfied that, for the public security, protection of life and property, public peace and the maintenance of law and order, it is necessary to secure the assistance of the armed forces, the [...] Government may require [...] any officer of the armed forces to render such assistance with the help of the armed forces under his command

Code of Civil Procedure, Section 131-A(1)

These provisions of the Code operate much like the ATA, in that they are not meant to operate solely under the law enforcement paradigm, though that is the primary framework they address. This is evident in the variation between the use of "civil force" and "military force," the latter of which may occur in conjunction with the application of the conduct of hostilities paradigm.

The Manual of Pakistan Military Law reiterates that an officer addressing an unlawful assembly, riot and the like must preserve the public order and may do so through a call for military assistance.³⁴ However, consistent with the law enforcement paradigm, it explains that such actions must be limited to dispersing the assembly by using "as little force as is consistent with these objects."³⁵ Officers operating without superiors present are also required to exercise further care to use "no more force than is absolutely necessary."³⁶ When the Armed Forces are called in to address these situations, the amount of force that may be used must be assessed on a case-by-case basis.³⁷ Nevertheless, the degree of force used "must always be strictly limited by the necessity of the case and proportioned to the end to be attained"³⁸

If the use of force through firing on an assembly is required, officers shall first convey to the assembly the seriousness of the actions to be taken if they do not disperse.³⁹ Even then, if firing upon the crowd is deemed necessary, the evaluation to use force upon the few rather than the many is required.⁴⁰ The Army Regulations (Instr.) 579 specify that firing must be carried out with steadiness and be stopped the moment it becomes unnecessary.⁴¹

These restrictions on the use of force support the conclusion that the dispersal of riots is dealt with under the law enforcement paradigm, even if the armed forces may be called to assist the police. However, the ability of the military to use "military force" in certain circumstances may create ambiguity, and warrants clarification as to which paradigm is then intended to apply, and to whom.

End Notes

- ¹ International Committee of the Red Cross, *The Use of Force in Armed Conflicts: Interplay Between the Conduct of Hostilities and Law Enforcement Paradigms*, 1 (2013) [hereinafter *CoH v. Law Enforcement*], available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf>
- ² *Id.*
- ³ *Id.*
- ⁴ *Id.*
- ⁵ *Id.*
- ⁶ *Id.* at 2.
- ⁷ *Id.* at 1-2.
- ⁸ *Id.* at 2. See also International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 34 (2015) [hereinafter *Challenges Report 2015*], available at: <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>.
- ⁹ *CoH v. Law Enforcement*, supra note 1, at 5.
- ¹⁰ *Id.*
- ¹¹ *Id.*
- ¹² *Id.* at 8.
- ¹³ *Id.* at 8-9.
- ¹⁴ International Committee of the Red Cross, *The Use of Force in Law Enforcement Operations, ADVISORY SERVICE ON INT'L HUMANITARIAN LAW*, available at: <https://www.icrc.org/en/document/use-force-law-enforcement-operations>.
- ¹⁵ *CoH v. Law Enforcement*, supra note 1, at 9.
- ¹⁶ *The Use of Force in Law Enforcement Operations*, supra note 14.
- ¹⁷ *CoH v. Law Enforcement*, supra note 1, at 13.
- ¹⁸ *Challenges Report 2015*, supra note 8, at 35.
- ¹⁹ *CoH v. Law Enforcement*, supra note 1, at 13-23. *Challenges Report 2015*, supra note 8, at 35. In both IAC and NIAC the degree of control over a specific area or circumstances, and the intensity of the hostilities at the time and place of a particular operation, constitute relevant factors, among others, to assess what is “feasible” in terms of the application of the IHL rules on precautions in attack. These factors are also relevant for determining whether – by operation of the IHL principles of military necessity and humanity – lethal force may be used as a first resort against a lawful target or whether Recommendation IX (referenced in footnote 22) should come into play.
- ²⁰ *Challenges Report 2015*, supra note 8, at 34. IHL constitutes the *lex specialis* governing the assessment of the lawfulness of the use of force against lawful targets in an IAC. The interplay of IHL rules and human rights law on the use of force is less clear in a NIAC and a fact-specific assessment is required to determine the prevailing legal framework.
- ²¹ *Id.* at 35.
- ²² INTERNATIONAL COMMITTEE OF THE RED CROSS, “Recommendation IX,” *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, available at: <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>.
- ²³ *Challenges Report 2015*, supra note 8, at 36.
- ²⁴ *Actions (in Aid of Civil Power) Regulations (2014) S.R.O. 11(6)P/L/2014*, §3 [hereinafter *AACPR*].
- ²⁵ *Id.* at § 3(1).
- ²⁶ *Id.* at § 3(4).
- ²⁷ *Id.* at § 4(1).
- ²⁸ *Id.* at § 4(2).
- ²⁹ *Id.* at § 5(1).

³⁰ Id. at § 5(2)-(3).

³¹ The AACPR has applied continuously from the time of its promulgation in 2011.

³² Ministry of Defence, MANUAL OF MILITARY LAW, 105 (1958).

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id. at 106.

³⁸ Id.

³⁹ Id. at 107.

⁴⁰ Id.

⁴¹ Id.

**PERSONS AND OBJECTS
PROTECTED IN A CONFLICT**

I. Protected under IHL

International humanitarian law protects a wide range of people and objects during armed conflict. The Geneva Conventions and their Additional Protocols protect the sick, wounded and shipwrecked not taking part in hostilities, prisoners of war and other detained persons, as well as civilians and civilian objects.¹

SPECIFICALLY PROTECTED PERSONS AND OBJECTS INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING:

- Medical and Religious Personnel and Objects
- Humanitarian Relief Personnel and Objects
- Personnel and Objects Involved in a Peacekeeping Mission
- Journalists
- Protected Zones
- Cultural Property
- Works and Installations Containing Dangerous Forces
- The Natural Environment

International Armed Conflict

- CIVILIANS
- COMBATANTS *HORS DE COMBAT*

Non-International Armed Conflict

IHL does not recognize any specific categories of person in non-international armed conflicts. That is because States do not want to give members of organized non-State armed groups the status of 'combatants,' which entails the right to take a direct part in hostilities. Therefore, common Article 3 and Additional Protocol II simply provide that everyone not actively involved in hostilities, or no longer taking part in them, is entitled to protection. This enables IHL to protect civilians and those who are no longer taking a direct part in hostilities. Because there is no 'combatant' status in non-international armed conflicts, there is no prisoner-of-war status either.

In the following sections, only select categories of protected persons shall be discussed from the various categories of persons protected under IHL as provided above.

II. Civilians

What is a Civilian?

Civilians are persons who are not members of the State armed forces nor, in a NIAC, members of organized armed groups. The civilian population comprises all persons who are civilians.²

- Rule 5, ICRC Study on Customary IHL

Civilians are entitled to protection in IACs in two different situations:³

- 1) They enjoy general protection against dangers arising from hostilities. Civilians, defined as all persons who are not combatants, must not be the object of attacks. The only exceptions to this rule are civilians who directly participate in hostilities. In such instances, they may be targeted for attack, but only so long as they directly participate in hostilities.
- 2) Second, civilians are 'protected persons' under IHL when in the hands of a party to the conflict, provided that:
 - a. they are not nationals of this enemy State
 - b. they are not nationals of an ally of this enemy State (unless these two States do not enjoy normal diplomatic relations)
 - c. they are not nationals of a neutral State, i.e. a non-belligerent State (unless these two States do not enjoy normal diplomatic relations). In occupied territories, however, nationals of a neutral State are always protected persons.

The **geneva convention relative to the protection of civilian persons in time of war** provides protection for civilians in IAC in two ways:

The whole civilian population of a country in conflict, without discrimination

Fourth Convention, Part II

Individual "protected persons" specifically defined in the Fourth Convention

Fourth Convention, Part III

A civilian who may not qualify for protection as a “protected person” due to their nationality may still qualify for protection as a member of the “whole civilian population.” As Article 4 of the Fourth Convention states, the protections afforded to the civilian population as a whole are “wider in application.”⁴

How are civilians protected in IHL in both IACs and NIACs?

Civilians and the civilian population are generally protected against dangers arising from military operations in accordance with the following rules under Articles 48 and 51 of Additional Protocol I and Article 13 of Additional Protocol II:

1. Civilians and the civilian population may not be made the object of attack⁵
2. Acts or threats of violence intended to spread terror are prohibited⁶
3. Indiscriminate attacks are prohibited⁷
4. Reprisals against civilians or the civilian population are prohibited⁸

Civilians are protected unless and for such time as they take a direct part in hostilities⁹

The movement of civilians in or around an area of armed conflict may not be used so as to render civilians or the civilian population as a human shield for military objectives¹⁰

What are “Indiscriminate Attacks”?¹¹

- Attacks which are not directed at a specific military objective
- Attacks which employ a method or means of combat that cannot be directed at a specific military objective
- Attacks which employ a method or means of combat the effects of which cannot be limited as required by IHL

AND in each case are of a nature to strike military objectives and civilians or civilian objects without distinction

For example:

- Attacks that treat as a single military objective a number of clearly separated and distinct military objectives in an area

- containing a concentrations of civilians or civilian objects
- Attacks that may be expected to cause the loss of civilian life, injury or damage to civilian objects that is excessive in comparison with the direct and concrete military advantage anticipated

How are civilians identified in domestic law?

Pakistan's domestic law does NOT expressly define the term "civilian." If however, the definition provided under IHL is adopted, a civilian in domestic law will be identified as someone who is not a member of the Armed Forces or Civil Armed Forces or a member of a non-state armed group.

"Armed Forces" means the Pakistan Army, the Pakistan Navy and the Pakistan Air Force and the reserves thereof

- Pakistan Army Act, Section 2(a)

"Members of the Armed Forces" does not include persons who are not subject to any law relating to the members of the Armed forces

- Constitution of Pakistan, Article 260(1)

"Armed Forces" means the Pakistan Army, Pakistan Air Force and Pakistan Navy and includes civil armed forces

- Actions (in Aid of Civil Power) Regulations, 2011, Section 2(a)

"Civil Armed Forces" means the Pakistan Rangers, Frontier Corps, Frontier Constabulary, Baluchistan Constabulary, Pakistan Coast Guards or any other force as the Federal Government may notify

- Code of Criminal Procedure, 1898, Section 132-A(aa)

The following provisions criminalizing and abolishing private and proscribed organizations provide a basis in domestic law from which to further define non-state armed groups and by association define "civilian."

The Constitution of Pakistan, Article 256 states:

"No private organization capable of functioning as a military organization shall be formed, and any such organization shall be illegal"

The Anti-Terrorism Act, 1997 states:

The Federal Government may, by order published in the official Gazette, list an organization as a proscribed organization in the First Schedule on an ex parte basis if there are reasonable grounds to believe that it is:

- (a) concerned in terrorism
- (b) owned or controlled, directly or indirectly by any individual or organization proscribed under this Act; or
- (c) acting on behalf of, or at the direction of, any individual or organization proscribed under this Act.¹²

As Common Article 3 and Additional Protocol II indicate, **civilians, State armed forces, and organized armed groups** of the parties to the conflict **are mutually exclusive categories** in non-international armed conflicts.¹³

In Pakistan, through law and practice, distinguishing between the members of organized armed groups and civilians is something of a contemporary challenge. The implications of this challenge reflect both in the complexities of targeting during a conflict and in selecting a venue for their prosecution. As it stands, the prosecution of civilians, in criminal and anti-terrorism courts, is separated from the prosecution of members of certain terrorist groups, tried under the Pakistan Army Act, 1952.

F.B. Ali v. The State¹⁴

The Pakistan Army Act legitimately permits the trial of civilians by military courts, even in times of peace.

Sh. Liaquat Hussain v. Federation of Pakistan¹⁵

Civilians that are subject to the Army Act may be tried by military courts provided that they are charged with an offence that has a nexus with the Armed Forces or the defense of Pakistan.

Pakistan army act, 1957 (Article 2(d)(iii)-(iv)

Persons not otherwise subject to this Act, who are claiming or who are known to belong to any terrorist group or organization using the name of religion or a sect and committing any one of the following acts:

- Raise arms or wage war against Pakistan, or attack the Armed Forces of Pakistan or law enforcement agencies, or attack any civil or military installations in Pakistan

- Abduct any person for ransom, or cause death of any person or injury Possess, store, fabricate or transport the explosive, fire-arms, instruments, articles, suicide jackets
- Use or design vehicles for terrorist attacks
- Provide or receive funding from any foreign or local source for the illegal activities under law
- Act to over-awe the state or any section of the public or sect or religious minority
- Create terror or insecurity in Pakistan or attempt to commit any of the said acts within or outside Pakistan

Persons claiming or who are known to belong to any terrorist group or organization using the name of religion or a sect and raise arm or wage war against Pakistan that commit certain offences under the Protection of Pakistan Act, 2014

This differentiation in prosecution, viewed more broadly, is evidence of an attempt to create a distinction between the two categories, civilian and member of organized armed group. It indicates a willingness to define and distinguish civilian and organized armed group within Pakistan's legal framework.

How are civilians protected under domestic law?

PAKISTAN STRONGLY CONDEMNS ALL ATTACKS AGAINST CIVILIANS IN SITUATIONS OF ARMED CONFLICT...

Masood Khan

Permanent Representative of Pakistan To the U.N. Security Council,

*Thematic Debate on Protection of Civilians in Armed Conflict
19 August 2013*

To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan [...] No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Constitution of Pakistan, Article 4

This seminal principle of Pakistan's law is the cornerstone of domestic protection for civilians from the dangers that arise out of military operations. Laws that include the Pakistan Penal Code, 1860,¹⁶ the Anti-Terrorism Act, 1997¹⁷ and the Protection of Pakistan Act, 2014¹⁸ criminalize acts by non-state actors that may harm civilians and the civilian population. Those subject to the Army Act may be court martialed and imprisoned for "violation of good order and discipline"¹⁹ and "unbecoming behavior,"²⁰ but there is no specific punishment provided for harms against civilians.

The protection that civilians are entitled to under IHL was also recalled by the Peshawar High Court in *Foundation for Fundamental Rights v. Federation of Pakistan*:²¹

According to Article 3 and Article 52 (1) & (2) of the Additional Protocol, targeted killing is only lawful when the target is a "combatant" or "fighter" or, in the case of a civilian, only for such time as the person "directly participates in hostilities". Additionally, per Geneva Conventions Common Article 3 & [Article 51] of Additional Protocol I, the killing must be militarily

necessary, the use of force must be proportionate so that any anticipated military advantage is considered in light of the expected harm to civilians in the vicinity, and everything feasible must be done to prevent mistakes and minimize harm to civilians.²²

III. Hors de Combat & Prisoners of War

What is required to be hors de combat?

In both IACs and NIACs, a person *hors de combat* is:

- A person in the power of an adverse party
- A person rendered defenseless because of unconsciousness, shipwreck, wounds or sickness
- A person that clearly expresses an intention to surrender

Provided that person does not engage in any hostile act or attempt to escape²³

Respect for and protection of persons who are in the power of an adverse party is a cornerstone of IHL as reflected in several provisions of the Geneva Conventions and Additional Protocols. Practice, therefore, focuses on the treatment to be given to such persons²⁴

Treatment of persons hors de combat²⁵

The following is a non-exhaustive list of the prohibitions on the treatment of and protections offered to those classified as hors de combat derived from customary international law

Prohibitions

- Civilians and persons hors de combat must be treated humanely. (Rule 87)
- Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited. (Rule 88)
- Murder is prohibited (Rule 89)
- Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited. (Rule 90)
- Corporal punishment is prohibited. (Rule 91)
- Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited. (Rule 92)

- Rape and other forms of sexual violence are prohibited. (Rule 93)
- Slavery and the slave trade in all their forms are prohibited. (Rule 94)
- Uncompensated or abusive forced labour is prohibited. (Rule 95)
- Enforced disappearance is prohibited. (Rule 98)
- Arbitrary deprivation of liberty is prohibited. (Rule 99)

PROTECTIONS

- No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees. (Rule 100)
- The convictions and religious practices of civilians and persons hors de combat must be respected. (Rule 104)
- Family life must be respected as far as possible. (Rule 105)

What is a prisoner of war?

Applicable only in an IAC situation, a prisoner of war is a person in the power of the enemy that falls into the following categories:²⁶

- Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps that become part of such armed forces
- Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict, provided they fulfill the following conditions:
 - They are commanded by a person responsible for his subordinates;
 - They have a fixed distinctive sign recognizable at a distance;
 - They carry arms openly;
 - They conduct their operations in accordance with the laws and customs of war
- Members of forces who profess allegiance to a government or an authority not recognized by the Detaining Power
- Persons who accompany the armed forces without actually being active members, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units, etc.
- Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict
- Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.²⁷

In an international armed conflict, any combatant who falls into the hands of an adverse party shall be considered a prisoner of war²⁸

Protection of Hors de Combat and Prisoners of War under IHL

Hors de combat	
International Armed Conflict	Non-International Armed Conflict
<p>A person who is recognized or who, in the circumstances, should be recognized to be hors de combat shall not be made the object of attack</p> <p>Article 41(1) Additional Protocol I</p>	<p>Attacking persons who are recognized as hors de combat is prohibited.</p> <p>-Rule 47 CIHL Study</p> <p>Persons [...] including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria</p> <p>-Common Article 3(1)</p> <p>*See also Article 4 of Additional Protocol II</p>

Prisoners of war
International Armed Conflict
<p>A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third (Geneva) Convention</p> <p>- Article 45 Additional Protocol II</p>

The Loss of Prisoner of War Status

In an IAC, a combatant is required to distinguish themselves from the civilian population while engaged in military operations or while in preparation for such operations. If a combatant cannot fulfill this requirement, he shall retain combatant status if he carries arms openly:

- (1) during each military operation
- AND
- (2) during the time he is visible to the adverse party while engaged in a military operation before the commencement of an attack²⁹

*A combatant that does NOT fulfill the above requirements forfeits his right to be a prisoner of war, but he retains protections equivalent to those given to prisoners of war would then still be entitled to the protection of the Fourth Convention if he satisfies the nationality criteria.*³⁰

Any person who has taken part in hostilities, who is not entitled to prisoner of war status and who does not benefit from more favorable treatment under the Fourth Geneva Convention shall still benefit from the protection of Article 75 of Additional Protocol I³¹ and customary international law.

In an IAC, any combatant that falls into the hands of an adverse party while not engaged in a military operation or preparation for such operations shall nevertheless be considered a prisoner of war³²

Hors de Combat and Prisoners of War in Domestic Law

STATUS AND TREATMENT OF PRISONERS OF WAR IN PAKISTAN	
Pakistan Penal Code, 1860	<p>“State prisoner or prisoner-of-war”</p> <p style="text-align: right;">Section 128</p> <p>The “or” may indicate that the terms are interchangeable, such that the laws addressing the internment and treatment of state prisoners would apply to prisoners of war as well</p>
	<p>The expression “state prisoner” would seem to indicate a foreigner kept in confinement on political grounds or for political reasons and not in due course of law on conviction and sentence by a Court of law for an offence against the law of the land</p> <p style="text-align: right;">(1870) 6 Beng. LR 456</p>

<p>Regulation III of 1818 – A Regulation for the Confinement</p>	<p>[W]hereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination</p>
<p>of State Prisoners</p>	<p>should from time to time come under revision [...] and whereas the ends of justice also require that due attention be paid to the health of every State prisoner confined under this Regulation</p> <p style="text-align: right;">Preamble</p>
<p>Prison Rules, 1978</p>	<p>A prisoner confined in prison may be: A state prisoner detained under Regulation III of 1818, or a person ordered to be detained in prison without trial under any law relating to the detention of such person</p> <p style="text-align: right;">Rule 224(iii)</p> <hr/> <p>Every state prisoner, shall, subject to the provisions of the Regulation for the confinement of State Prisoners, be treated in such a manner as the warrant or order committing him to prison may direct</p> <p style="text-align: right;">Rule 422</p> <hr/> <p>The Inspector General shall issue such orders as he may consider necessary and as are not inconsistent with the instructions of Government for the health and comfort of every state prisoner</p> <p style="text-align: right;">Rule 426</p> <hr/> <p>Every Superintendent of a prison in whose custody any state prisoner is confined shall in 1st of January and 1st of July each year submit [...] a report on the conduct, health and comfort of such prisoner</p> <p style="text-align: right;">Rule 427(i)</p> <hr/> <p>Every officer in whose custody any state prisoner is placed shall take care that allowances fixed for the support of such state prisoner is used for that purpose</p> <p style="text-align: right;">Rule 429</p> <hr/> <p>Every state prisoner who is not permitted to maintain himself shall be subjected to prison diet [...] unless directed otherwise</p> <p style="text-align: right;">Rule 430</p> <hr/> <p>When any state prisoner is not permitted to maintain himself he shall be provided with such clothing, bedding and other necessaries as the Superintendent [...] may, from time to time, prescribe</p> <p style="text-align: right;">Rule 431</p>

The Pakistan Army Act, 1952 does not address conduct in relation to the capture or treatment of prisoners of war of an adverse party. The Army Act does, however, address conduct in relation to Pakistan's prisoners of war held by an adverse party as the following examples demonstrate:

“Any person subject to this Act who commits any of the following offences, that is to say, having been made a prisoner of war, voluntarily serves with or aids the enemy”³³

“In the case of a person subject to this Act, it shall be lawful, for proper provision to be made by the prescribed authority for any dependents of any such person who is a prisoner of war or missing out of his pay and allowances.”³⁴

“Where the conduct of any person subject to this Act, when being taken prisoner by or whilst in the hands of the enemy, is to be inquired into under this Act or any other law for the time being in force, the Commander-in-Chief or any officer empowered by him in this behalf may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.”³⁵



An ICRC delegate talks with an Indian prisoner of war, in a military hospital at Rawalpindi, Pakistan.

As evidence of Pakistan's compliance through state practice, in 1972, the International Committee of the Red Cross (ICRC) reported that 635 Indian prisoners of war were kept in two camps at Lyallpur and Rawalpindi and the ICRC delegates were able to visit them several times.³⁶ As per the Third Geneva Convention, Pakistan cooperated with the ICRC, which sent correspondence between prisoners of war and their families. Lists of prisoners and capture cards were exchanged, along with mail from the prisoners and relief parcels.³⁷

IV. Medical Personnel

What is the Status of Medical Personnel in a conflict?

Medical personnel that are exclusively assigned to medical duties have a special protected status under IHL and must be respected and protected in all circumstances. They, however, lose their protection if they commit, beyond their humanitarian function, acts harmful to the enemy.³⁸ Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.³⁹

Under the First, Second and Fourth Geneva Conventions, the term "medical personnel" includes those persons:⁴⁰

- Exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick
- Working towards the prevention of disease
- Operating as staff exclusively engaged in the administration of medical units and establishments
- Performing functions exclusively as hospital orderlies, nurses and medical transports

Additional Protocol I defines "medical personnel" as follows:⁴¹

"medical personnel" means those persons assigned, by a Party to the conflict, exclusively to the search for, collection, transportation, diagnosis or treatment of persons in a conflict or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:

1. medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defense organizations;
2. medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict;
3. medical personnel of medical units or medical transports described in Article 9, paragraph 2

"Medical units" includes hospitals and other similar facilities, blood transfusion centers, preventive medicine centers, medical depots

and medical and pharmaceutical stores. They may be fixed or mobile, permanent or temporary.⁴²

“Medical transports” includes any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation, i.e. the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by IHL and under the control of a competent authority of a party to the conflict.⁴³

Medical personnel must be assigned to their duties by Parties to the Conflict

The essence of the definition is that medical personnel have to be exclusively assigned to medical duties in order to enjoy the specific protection to which they are entitled. If the medical assignment is permanent, respect and protection are due at all times. If the medical assignment is only temporary, respect and protection are due only during the time of that assignment. Only medical personnel assigned to medical duties by a party to the conflict enjoy protected status. Other persons performing medical duties enjoy protection against attack as civilians, as long as they do not take a direct part in hostilities. Such persons are not medical personnel and as a result they have no right to display the distinctive emblems.

In a NIAC...

Common Article 3 requires that the “wounded and sick shall be collected and cared for,” which implies associated protection for the medical personnel providing the care. Additional Protocol II also requires that medical personnel are respected, protected and provided assistance to carry out their duties.⁴⁴

How does International Law Protect Medical Personnel?

The Geneva Conventions require respect for and protection of those persons engaged exclusively as medical personnel in a conflict.

Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the

administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

- Article 24, First Geneva Convention

Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.

- Article 25, First Geneva Convention

The religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected; they may not be captured during the time they are in the service of the hospital ship, whether or not there are wounded and sick on board.

- Article 36, Second Geneva Convention

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

- Article 20, Fourth Geneva Convention

PROTECTION OF MEDICAL PERSONNEL IN A NON-INTERNATIONAL ARMED CONFLICT	
Common Article 3	Additional Protocol II
<p>"The wounded and sick shall be collected and cared for"</p> <p>This provision contains an implied protection for those persons that are engaged in activities related to the collection and care of the wounded and sick</p>	<p>"Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties."</p> <p>- Article 9(1)</p>

How does Domestic Law Protect Medical Personnel?

Domestic law in Pakistan protects medical personnel assigned by the government of Pakistan but not medical personnel associated with organized armed groups

**MEDICAL PERSONNEL RECEIVE PROTECTION AS
"PUBLIC SERVANTS" OF THE GOVERNMENT OF PAKISTAN**

Pakistan Penal Code, 1860

Section 21

"Public Servant" defined as:
Every Commissioned Officer in the Military, Naval or Air Forces of Pakistan while serving under the Federal Government or any Provincial Government

Every officer of the Government whose duty it is, as such officer [...] to protect the public health, safety or convenience

**MEDICAL PERSONNEL RECEIVE PROTECTION AS
"PUBLIC SERVANTS" OF THE GOVERNMENT OF PAKISTAN**

What is an officer under the definition of "Public Servant?"

An officer fulfills the following criteria:

- (1) They are in the service or pay of the Government; and
- (2) They are entrusted with the performance of a public duty

PLD 1957 S.C. (Ind.) 170

Persons not employed as a private servant by the government department, but assigned certain duty as a government servant on the assumption that his appointment is valid. Those duties are in fact, identical with the duties of other government officials duly appointed [...] Such person [...] therefore, be a public servant

PLD 1954 Lah 37

**IT IS A CRIMINAL OFFENCE TO USE ASSAULT OR CRIMINAL FORCE
TO DETER A PUBLIC SERVANT FROM THE DISCHARGE OF THEIR DUTY**

Pakistan Penal Code, 1860

Section 353

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

UNDER THE LAW, INJURED PERSONS MUST BE TREATED ON A PRIORITY BASIS. IT IS IMPLICIT WITHIN THIS PROVISION OF LAW THAT MEDICAL PERSONNEL MUST BE RESPECTED AND PROTECTED IN THE DISCHARGE OF THEIR DUTIES

<p>Injured Persons (Medical Aid) Act, 2004</p> <p>Section 3</p>	<p>Where an injured person is brought to a hospital, he shall be provided medical aid without delay on priority basis over all other medico-legal formalities</p>
<p>Public Health (Emergency Provisions) Ordinance, 1944</p> <p>Section 3(1)</p>	<p>The appropriate Government may by order in writing require any local authority to take within such period as may be specified in the order such measures as may be so specified, being measures which are in the opinion of that Government necessary for any purpose of this Ordinance; and thereupon it shall be the duty of the local authority to comply with the order within the specified period.</p>

CIVIL OFFENCES, INCLUDING THOSE UNDER THE PAKISTAN PENAL CODE, 1860 ARE ALSO PUNISHABLE UNDER THE PAKISTAN ARMY ACT, 1952

<p>Pakistan Army Act, 1952</p> <p>Section 59</p>	<p>[A]ny person, <u>subject to this Act</u>, who at any place in or beyond Pakistan commits any civil offence shall be deemed to be guilty of an offence against this Act and [...] shall be liable [...] on conviction, to be punished as follows:</p> <p>[H]e shall be liable to suffer any punishment assigned for the offence [...] or rigorous imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.</p>
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V. Civilian Objects & Cultural Property

What Qualifies as a Civilian Object or Cultural Property?

CIVILIAN OBJECTS

Are all objects, which are not military objectives

Rule 9, CIHL

Are protected against attack, unless and for such time as they are military objectives

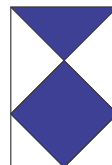
Rule 10, CIHL

CULTURAL PROPERTY is:

1. 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
2. Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property [...] such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property
3. Centers containing a large amount of cultural property

Article 1, Convention for the Protection of Cultural Property in the Event of Armed Conflict

Cultural property should be identified with the emblem defined in the 1954 Convention⁴⁵



How are Civilian Objects and Cultural Property Protected in International Law?

The parties to the conflict must at all times distinguish between CIVILIAN OBJECTS and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.

Rule 7, CIHL

Each party to the conflict must respect **CULTURAL PROPERTY**:

- a. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.
- b. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.

Rule 38, CIHL

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of CULTURAL PROPERTY situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

Article 3, Convention for the Protection of Cultural Property in the Event of Armed Conflict

States Parties must respect all **CULTURAL PROPERTY** by:

- (1) not using cultural property for any purpose likely to expose it to destruction or damage in the event of armed conflict;
- (2) not directing any act of hostility against cultural property;
- (3) prohibiting, preventing and, if necessary, putting a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property; and,
- (4) refraining from requisitioning movable cultural property situated in the territory of another State Party.⁴⁶

The exceptions regarding the protection of CULTURAL PROPERTY are as follows:

The obligation to respect all cultural property, described above, may be waived on the basis of imperative military necessity and this waiver may be invoked:

- (1) to use cultural property for purposes likely to endanger it, only if there is no feasible alternative available to obtain a similar military advantage
- (2) to attack cultural property, only when that property has, by its function, been made into a military objective and there is no feasible alternative available to obtain a similar military advantage. Effective advance warning must be given, circumstances permitting.⁴⁷

How are Civilian Objects and Cultural Property Protected in Domestic Law?

Civilian Objects and Cultural Property are protected under Pakistan's federal and provincial laws as follows:

UNDER CRIMINAL LAW...

Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief"

Section 425, Pakistan Penal Code, 1860

Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Section 431, Pakistan Penal Code, 1860

Whoever commits mischief by destroying or moving any landmark fixed by the authority of a public servant, or by any act which renders such landmark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with-both.

Section 434, Pakistan Penal Code, 1860

UNDER CULTURAL HERITAGE LAW...

"Antiquity" means:

1. Any ancient product of human activity, movable or immovable illustrative of art, architecture, crafts, custom, literature, morals, politician religion, warfare or science or of any aspect of civilization or culture

2. Any ancient object or site of historical, ethnographical, anthropological, military or scientific interest
3. Any national monument
4. An other object or class of such objects declared by the Federal Government, by notification in the official Gazette, to be an antiquity for the purposes, of this Act

Section 2(c), Antiquities Act, 1975

No person shall, except for carrying out the purposes of this Act, destroy, break, damage, alter, injure, deface or mutilate or scribble, write or engage any inscription or sign on, any antiquity or take manure from any protected antiquity.

Section 19(1), Antiquities Act, 1975

UNDER ANTI-TERRORISM LAW...

"Explosives" means any bomb, grenade, dynamite, or explosive substance capable of causing an injury to any person or damage to any property and includes any explosive substance as defined in the Explosives Act, 1884

Section 2, Anti-Terrorism Act, 1997

"Weapon" means any item which can be used to injure or cause bodily harm, and includes any type of fire-arm, explosive, sword, dagger, knuckle-duster, stun gun, bomb, grenade, rocket launcher, mortar or any chemical, biological weapon or any other thing which can be used for causing injury, hurt, harm or destruction of person or property, and includes 'illicit arms' as defined in the Surrender of Illicit Arms Act, 1994

Section 2, Anti-Terrorism Act, 1997

[Terrorism is defined as] the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies

Section 6, Anti-Terrorism Act, 1997

[A]n action shall be deemed to [be terrorism] if it involves grievous damage to property, including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any other means

Section 6, Anti-Terrorism Act, 1997

[W]hoever commits an act of terrorism under Section 6, whereby: grievous damage to property is caused, shall be punishable on conviction, with imprisonment, of either description for a term not less than ten years but may extend to imprisonment for life, and shall also be liable to a fine

Section 7, Anti-Terrorism Act, 1997

UNDER PROVINCIAL LAW...

"Special Premises" means any premises of historical, cultural or architectural value declared as such by the Government by notification and includes the external lands and the outer walls thereof

Section 2, Punjab Special Premises (Preservation) Ordinance, 1985

No person shall, except for carrying out the purposes of this Ordinance destroy, break, damage, injure, deface or mutilate or scribble, write or engrave any inscription or sign on such portion of a Special [Premises] as is mentioned in Section 5.

Section 7, Punjab Special Premises (Preservation) Ordinance, 1985

Where any person including the owner destroys, removes, injures, alters, defaces a protected heritage maintained by Government under this Act or in respect of which an agreement has been executed under section 8, shall be punishable with fine which may extend to one lakh rupees, or with imprisonment which may extend to three years, or with both.

Section 18, Sindh Cultural Heritage (Preservation) Act, 1994

VI. The Natural Environment

Protection of the Natural Environment during Armed Conflict

The natural environment is generally recognized as a civilian object and protected as such under IHL. The applicability of the rules on the conduct of hostilities, which according to customary IHL are relevant in situations of both IAC and NIAC to the natural environment, is widely recognized.

The general principles on the conduct of hostilities apply to the natural environment including, distinction, proportionality, and precaution.⁴⁸

The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon.⁴⁹

Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions.⁵⁰

In addition to the rules on the conduct of hostilities, IHL also contains a number of other rules that seek to prevent or limit damage to the environment, including the prohibition against pillage,⁵¹ the rules protecting objects indispensable to the survival of the civilian population⁵² and works and installations containing dangerous forces,⁵³ as well as the rules limiting or prohibiting certain means and methods of warfare.⁵⁴

The Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques (ENMOD) also provides certain prohibitions in regards to the natural environment:

Each State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long lasting or severe effects as the means of destruction, damage or injury to any other State Party.⁵⁵

As used in article I, the term "environmental modification techniques" refers to any technique for changing - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space.⁵⁶

Protection of the Natural Environment during Armed Conflict in Domestic Law

Though Pakistan has legislated extensively on environmental protection, laws that specifically relate to the protection of the natural environment during armed conflict are not expressly codified. Related provisions, however, are provided as follows:

Under the Pakistan Environmental Protection Act, 1997:

Hazardous substance is defined as:

- a. a substance or mixture of substances, other than a pesticide as defined in the Agricultural Pesticides Ordinance, 1971, which, by reason of its chemical activity or toxic, explosive, flammable, corrosive, radioactive or other characteristics, causes or is likely to cause directly or in combination with other matters an adverse environmental effect
- b. any substance which may be prescribed as a hazardous substance⁵⁷

Subject to the provisions of this Act, no person shall generate, collect, consign, transport, treat, dispose of, store, handle or import any hazardous substance, except: In accordance with the provisions of any other law for the time being in force, or of any international treaty, convention, protocol, code, standard, agreement or other instrument to which Pakistan is a party.⁵⁸

Under the Protection of Pakistan Act, 2014:

The following acts, if committed with the purpose of waging war or insurrection against Pakistan or threatening the security of Pakistan shall be the scheduled offences and includes other offences relating to:

use of arson, fire-bombs, suicide bombs, biological weapons, chemical weapons, nuclear arms, plastic explosives and other materials capable of exploding or creating bombs employed to kill or cause hurt to persons or destroy property⁵⁹

End Notes

- ¹ Persons protected under IHL, International Committee of the Red Cross, available at: <https://www.icrc.org/eng/war-and-law/protected-persons/overview-protected-persons.htm>.
- ² RULE 5, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule5; INTERNATIONAL COMMITTEE OF THE RED CROSS, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, pg 27-28, available at: <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>.
- ³ International Humanitarian Law: Answers to Your Questions, INTERNATIONAL COMMITTEE OF THE RED CROSS, 26-27 (2014) available at: <https://www.icrc.org/eng/assets/files/other/icrc-002-0703.pdf> [hereinafter IHL: Answer to your Questions].
- ⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 4, 13, 12 August 1949, 75 UNTS 287 [hereinafter Geneva Convention IV].
- ⁵ RULE 1, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule1; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, art. 51(2), 8 June 1977, 1125 UNTS 3. [hereinafter Protocol I]; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, art. 13(2), 8 June 1977, 1125 UNTS 609. [hereinafter Protocol II].
- ⁶ RULE 2, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule2; Protocol I, supra note 5, at Art. 51(2); Protocol II, supra note 5, at Art. 13(2).
- ⁷ RULE 14, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule14; Protocol I, supra note 5, at Art. 51(4).
- ⁸ RULE 146, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule146; Protocol I, supra note 5, at Art. 51(6); Protocol II, supra note 5, at Art. 3(7).
- ⁹ RULE 6, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule6; Protocol I, supra note 5, at Art. 51(3); Protocol II, supra note 5, at Art. 13(3).
- ¹⁰ Protocol I, supra note 5, at Art. 51(7).
- ¹¹ RULE 12, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule12.
- ¹² Anti-Terrorism Act, 1997 (Act No. XXVII of 1997), § 41(b).
- ¹³ Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, supra note 2, at 27.
- ¹⁴ Brig. (Retd) F.B. Ali and another v. The State, (1975) PLD (SC) 506.
- ¹⁵ Sh. Liaquat Hussain and others v. Federation of Pakistan, (1999) PLD (SC) 504.
- ¹⁶ See generally, Pakistan Penal Code, 1860 (Act No. XLV of 1860).
- ¹⁷ See generally, Anti-Terrorism Act, supra note 12.
- ¹⁸ See generally, Protection of Pakistan Act, 2014 (Act No. X of 2014).
- ¹⁹ Pakistan Army Act, 1952 (Act No. XXXIX of 1952) § 55.
- ²⁰ Id. at § 52.
- ²¹ Foundation for Fundamental Rights v. Federation of Pakistan (2013) PLD (Pesh.) 94.
- ²² Foundation for Fundamental Rights v. Federation of Pakistan (2013) PLD (Pesh.) 94, ¶ 11.
- ²³ RULE 47, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule47; Protocol I, supra note 5, at Art. 44(2).
- ²⁴ Id. at FN. 3.
- ²⁵ Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul.
- ²⁶ See Protocol I, supra note 5, at Art. 44.
- ²⁷ Geneva Convention Relative to the Treatment of Prisoners of War, art. 4(A), 12 August 1949, 75 UNTS 135 [hereinafter Geneva Convention III].
- ²⁸ Protocol I, supra note 5, at art. 44(1).
- ²⁹ Id. at art. 44(3).

- ³⁰ Id. at art. 44(4).
- ³¹ Id. at art. 45(3).
- ³² Id. at art. 44(5).
- ³³ Pakistan Army Act, *supra* note 19, at § 24(4).
- ³⁴ Id. at § 71.
- ³⁵ Id. at § 68.
- ³⁶ INTERNATIONAL COMMITTEE OF THE RED CROSS, The International Review of the Red Cross, no. 134, 286 (1972) available at: http://www.loc.gov/rr/frd/Military_Law/pdf/RC_May-1972.pdf.
- ³⁷ Id. at 286-87.
- ³⁸ RULE 25, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule25.
- ³⁹ RULE 25, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule25; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 21, 12 August 1949, 75 UNTS 31 [hereinafter Geneva Convention I], Geneva Convention IV, *supra* note 4, at art. 19.
- ⁴⁰ International Committee of the Red Cross, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 24-26, 12 August 1949, 75 UNTS 31; International Committee of the Red Cross, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 36, 12 August 1949, 75 UNTS 85; Geneva Convention IV, *supra* note 2, art. 20.
- ⁴¹ Protocol I, *supra* note 5, at art. 8(c).
- ⁴² RULE 28, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule28.
- ⁴³ RULE 29, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule29.
- ⁴⁴ RULE 25, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule25; Protocol II, *supra* note, 5, at art. 9.
- ⁴⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 16-17, Aug. 7, 1956, 249 U.N.T.S. 240.
- ⁴⁶ International Committee of the Red Cross, 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Protocols, ADVISORY SERVICE ON INTL HUMANITARIAN LAW, available at: <https://www.icrc.org/en/download/file/.../cultural-property-factsheet.pdf>.
- ⁴⁷ Id.
- ⁴⁸ RULE 43, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule43.
- ⁴⁹ RULE 45, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule45.
- ⁵⁰ RULE 44, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule44.
- ⁵¹ RULE 52, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule52.
- ⁵² RULE 54, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule54.
- ⁵³ RULE 42, Customary International Humanitarian Law, Volume I: Rules, (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule42.
- ⁵⁴ Customary International Humanitarian Law, Volume I: Rules, *supra* note 25.
- ⁵⁵ Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques, art. 1(1), 10 Dec. 1976.
- ⁵⁶ Id. at art. 2.
- ⁵⁷ Pakistan Environment Protection Act, 1997 (Act No. XXXIV of 1997), § 2(xviii).
- ⁵⁸ Id. at § 44(b).
- ⁵⁹ Protection of Pakistan Act, *supra* note 8, at sch. 1(ii).

**LOSS OF
PROTECTION
AS A CIVILIAN**

I. Introduction to Loss of Protection as a Civilian

IN AN ARMED CONFLICT, CIVILIANS LOSE PROTECTION FROM ATTACK

- TEMPORARILY THROUGH DIRECT PARTICIPATION IN HOSTILITIES OR
- WHEN THEY CEASE TO BE CLASSIFIED AS CIVILIANS (WHEN THEY BECOME MEMBERS OF THE STATE ARMED FORCES OR ORGANIZED ARMED GROUPS BELONGING TO A PARTY TO AN ARMED CONFLICT)¹

CIVILIANS, STATE ARMED FORCES and ORGANIZED ARMED GROUPS of the parties to the conflict are mutually exclusive categories in both IACs and NIACs.²

<p>Civilians, as discussed in the previous chapter, may not be directly targeted. In both international and non-international armed conflict, the loss of this protection for civilians while directly participating in hostilities or becoming a member of an organized armed group does not mean they lose all protection under IHL.</p>	
INTERNATIONAL ARMED CONFLICT	NON-INTERNATIONAL ARMED CONFLICT
<p>Any person who has taken part in hostilities, who is not entitled to prisoner of war status and who does not benefit from more favorable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of [Protocol I].</p> <p style="text-align: center;">Article 45(3), Additional Protocol I</p>	<p>Under Additional Protocol II, protections similar to those incorporated in Additional Protocol I are provided as a minimum guarantee to:</p> <p style="text-align: center;">"All persons who do not take a direct part or who have ceased to take part in hostilities"</p> <p style="text-align: center;">Article 4(1), Additional Protocol II</p>

Under IHL, civilian participation in hostilities is neither prohibited, nor criminalized. (It would not, for example, be a war crime for a civilian directly participating in hostilities on behalf of an armed group to attack a military facility). In a NIAC, however, civilians that do participate in hostilities are neither entitled to combatant privilege nor POW status.

This IHL position does not, however, translate expressly into domestic law, which may criminalize direct participation in hostilities or membership of organized armed groups.³ At the end of hostilities, States are nevertheless encouraged under IHL to grant the broadest possible amnesty to those who have participated in a NIAC.

II. Direct Participation in Hostilities

International Law Related to Direct Participation in Hostilities

In both international and non-international armed conflicts, civilians are protected against attack, unless and for such time as they take a direct part in hostilities.

Civilians are protected against attack, unless and for such time as they take a direct part in hostilities.

Rule 6, CIHL

Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.

Article 51(3), Additional Protocol I

Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Article 13(3), Additional Protocol II

In a NIAC, Common Article 3 provides protection to those persons "taking NO active part in the hostilities." Under the law, "ACTIVE" and "DIRECT" are identical terms and thus Common Article 3 implies the loss of protection for those persons that directly participate in hostilities.⁴

How is the concept of "Direct Participation in Hostilities" defined?

Direct participation in hostilities is NOT expressly defined. There is also no clear interpretation of the concept that can be identified through state practice or international jurisprudence.⁵

The notion of direct participation in hostilities must be interpreted in good faith in accordance with the ordinary meaning to be given to its constituent terms in their context and in light of the object and *purpose*⁶

The concept of direct participation in hostilities cannot refer to conduct occurring outside situations of armed conflict, such as

during internal disturbances and tensions, including riots, isolated and sporadic acts of violence and other acts of a similar nature. It must be kept in mind that even during armed conflict, not all conduct constitutes "part of the hostilities."⁷ Civilian participation can occur in various forms and degrees of intensity under a wide variety of geographical, cultural, political and military contexts.⁸ Therefore, due consideration must be given to the circumstances prevailing at the relevant time and place. The concept must be interpreted in a theoretically sound and coherent manner reflecting the fundamental principles of IHL.⁹

The Elements of Direct Participation in Hostilities

WHAT DOES "DIRECT" MEAN?

Direct participation means acts of war, which by their nature or purpose are likely to cause actual harm to the personnel and equipment of enemy armed forces. It is only during such participation that a civilian loses his immunity and becomes a legitimate target. Once he ceases to participate, the civilian regains his right to protection against the effects of hostilities, and he may no longer be attacked. However, there is nothing to prevent the authorities, capturing him in the act or arresting him at a later stage, from taking repressive or punitive security measures after the fact.¹⁰

KEEP IN MIND...

There should be a clear distinction between direct participation in hostilities and participation in the war effort. The latter is often required from the population as a whole to various degrees. In fact, in modern conflicts, many activities of the nation contribute to the conduct of hostilities, directly or indirectly; even the morale of the population plays a role in this context.

Depending on the quality and degree of such involvement, individual participation in hostilities may be described as "direct" or "indirect"

INDIRECT PARTICIPATION IN HOSTILITIES¹²

Indirect participation in hostilities contributes to the general war effort of a party, but does not directly cause harm and, therefore,

does not lead to a loss of protection against direct attack.

The difference between “direct” and “indirect” participation can be difficult to establish but is vital.

For example, the delivery by a civilian truck driver of ammunition to a shooting position at the front line would almost certainly have to be regarded as an integral part of ongoing combat operations and would therefore constitute direct participation in hostilities. However, transporting ammunition from a factory to a port far from a conflict zone is too incidental to the use of that ammunition in specific military operations to be considered as “directly” causing harm.

Not all violent acts occurring in an armed conflict amount to direct participation in hostilities. In order to constitute direct participation, a violent act must not only be objectively likely to directly cause harm, but it must also be specifically designed to do so in support of one party to an armed conflict and to the detriment of another.

A violent political demonstrations, a bank robbery unrelated to the war, or an incident where large numbers of fleeing civilians block a road, not to help one party to an armed conflict but to try to protect themselves from the hostilities, are examples of acts that do not amount to direct participation in hostilities.

While the concept of “hostilities” refers to the (collective) resort by the parties to the conflict to means and methods of injuring the enemy, “participation” in hostilities refers to the (individual) involvement of a person in these hostilities.

In order to qualify as direct participation in hostilities, a specific act must meet the following cumulative criteria:

1. The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and
2. There must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military

operation of which that act constitutes an integral part (direct causation), and

3. The act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus)¹²

The concept of direct participation in hostilities must also be interpreted as restricted to specific hostile acts, not a person's status, function or affiliation.¹⁴

Domestic Law Related to Direct Participation in Hostilities

Though Pakistan's domestic law has no direct provisions in relation to the concept of direct participation in hostilities, recent case law has applied, as a domestic law principle, the distinction between those persons in a conflict who may be targeted and those who may not, as follows:

According to Article 3 and Article 52(1) and (2) of Additional Protocol, targeted killing is only lawful when the target is a "combatant" or "fighter" or, in the case of a civilian, only for such time as the person "directly participates in hostilities". Additionally, per Geneva Conventions Common Article 3 and [Article 51] of the Additional Protocol I, the killing must be military necessary, the use of force must be proportionate so that any anticipated military advantage is considered in light of the expected harm to civilians in the vicinity, and everything feasible must be done to prevent mistakes and minimize harm to civilians.

Foundation for Fundamental Rights Vs. Federation of Pakistan, Peshawar High Court¹⁵

III. Membership in an Organized Armed Group

Identifying Organized Armed Groups

The term organized armed group refers exclusively to the armed or military wing of a non-state party to an armed conflict: its armed forces in a functional sense rather than its political and humanitarian wings.¹⁶

Organized armed groups recruit their members primarily from the civilian population but develop a sufficient degree of military organization to conduct hostilities on behalf of a party to the conflict, albeit not always with the same means, intensity and level of sophistication as State armed forces.¹⁷

IHL Related to Organized Armed Groups

An organized armed group should have...

- a structure, a chain of command and a set of rules, along with an outward symbol of authority and adhere to some principal authority within the group itself, instead of individuals acting on their own.¹⁸
- some degree of organization, but not the same level of organization as the armed forces of a State¹⁹
- enough means and organization to confront another party to the conflict with military means²⁰

Additional non-exhaustive factors for further assessing the organizational level of an armed group²¹

Presence of a Command Structure

Establishment of a general staff or high command, which appoints and gives directions to commanders; disseminates internal regulations; organizes the weapons supply; authorizes military action; assigns tasks to individuals in the organization; issues political statements and communiqués; and informed by the operational units of all developments within the unit's area of responsibility

Additional factors include the existence of internal regulations setting out the organization and structure of the armed group;

the assignment of an official spokesperson; the communication through communiqués reporting military actions and operations undertaken by the armed group; the existence of headquarters; internal regulations establishing ranks of servicemen and defining duties of commanders and deputy commanders of a unit, company, platoon or squad, creating a chain of military hierarchy between the various levels of commanders; and the dissemination of internal regulations to the soldiers and operational units.

Ability to Carry Out Organized Operations

Group's ability to determine a unified military strategy and to conduct large scale military operations; the capacity to control territory; whether there is territorial division into zones of responsibility in which the respective commanders are responsible for the establishment of brigades and other units and appoint commanding officers for such units; the capacity of operational units to coordinate their actions; and the effective dissemination of written and oral orders and decisions

Level of Logistics

Ability to recruit new members; the providing of military training; the organized supply of military weapons; the supply and use of uniforms; and the existence of communications equipment for linking headquarters with units or between units.

Level of Discipline and Ability to Implement Common Article 3

Establishment of disciplinary rules and mechanisms; proper training; the existence of internal regulations; and whether these are effectively disseminated to members

Ability to Speak Collectively

Capacity to act on behalf of its members in political negotiations with representatives of international organizations and foreign countries; and its ability to negotiate and conclude agreements such as cease fire or peace accords.

A higher threshold of organization is required for the specific provisions of Additional Protocol II to apply, namely the existence of a responsible command and the exercise of such control over a territory as to enable the group to carry out sustained military operations.²² Even if the level of organization does not meet this

higher threshold, the applicable rules of customary IHL apply, which are largely synonymous with the protections provided under AP II.

What Does it Mean to have membership in an Organized Armed Group?

Membership in an Organized Armed Group:

- cannot depend on abstract affiliation, family ties, or other criteria prone to error, arbitrariness or abuse.²³
- must depend on whether the individual assumes a continuous combat function for the group²⁴
- is rarely formalized through an act of integration other than taking up a certain function for the group; and it is not consistently expressed through uniforms, fixed distinctive signs, or identification cards.²⁵

The decisive criterion for individual membership in an organized armed group is whether a person assumes a CONTINUOUS function for the group through his or her direct participation in hostilities²⁶

“Continuous Combat Function”

- Continuous combat function requires lasting integration into an organized armed group acting as the armed forces of a non-state party to an armed conflict²⁷
- It distinguishes members of the organized fighting forces of a non-state party from civilians who directly participate in hostilities on a merely spontaneous, sporadic, or unorganized basis, or who assume exclusively political, administrative or other non-combat functions²⁸
- Individuals whose continuous function involves the preparation, execution, or command of acts or operations amounting to direct participation in hostilities are assuming a continuous combat function.²⁹
- Individuals, who continuously accompany or support an organized armed group, but whose function does not involve direct participation in hostilities, are not members of that group within the meaning of IHL. Instead, they remain civilians assuming support functions, similar to private contractors and civilian employees accompanying state armed forces³⁰

Domestic Law Related to Organized Armed Groups

The following list provides for which activities of anti-state organized armed groups (also covers civilians directly participating in hostilities) are considered criminal under Pakistan's domestic law. The law is silent on the loss protection of protection of members of organized armed groups or persons directly participating in hostilities during an armed conflict, governed under IHL.

Criminalization of individual and collective acts Perpetrated by non-state actors in A non-international armed conflict	
Constitution of Pakistan Article 256	No private organization capable of functioning as a military organization shall be formed, and any such organization shall be illegal
Private Military Organizations (Abolition and Prohibition) Act, 1974 Section 3	Whoever forms, organizes, trains or equips a private organization capable of functioning as a military organization or is a member or adherent, or takes part in the activities, of any such organization; or is a member or adherent, or takes part in the activities, of any organization in respect of which a notification was issued, shall be punishable with imprisonment for a term which may extend to five years and with fine.

<p>Pakistan Penal Code, 1860</p>	<p>Whoever wages war against Pakistan, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.</p> <p style="text-align: right;">Section 121</p> <p>Whoever within or without Pakistan conspires to commit any of the offences punishable by Section 121, or to deprive Pakistan of the sovereignty of her territories or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Federal Government or any Provincial Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.</p> <p style="text-align: right;">Section 121-A</p> <p>Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against Pakistan, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.</p> <p style="text-align: right;">Section 122</p> <p>Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against Pakistan, intending by such concealment to facilitate or knowing it to be likely that such concealment will facilitate the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p> <p style="text-align: right;">Section 123</p>
<p>Security of Pakistan Act, 1952</p> <p style="text-align: center;">Section 10</p>	<p>[W]here the Federal Government is satisfied with respect to any association that there is danger that the association may act in a manner or be used for purposes prejudicial to the defense or external affairs or the security of Pakistan or of any part thereof, it may, by written or notified order, direct the association to suspend its activities for such period not exceeding three months as may be specified in the order.</p>

<p>Pakistan Army Act, 1952</p> <p>Section 2(d)</p>	<p>Persons not otherwise subject to this Act, who are accused of:</p> <p>claiming or are known to belong to any terrorist group or organization using the name of a religion or sect; and</p> <ol style="list-style-type: none"> a. raise arms or wage war against Pakistan, or attack the Armed Forces of Pakistan or law enforcement agencies, or attack any civil or military installations in Pakistan; or b. abduct any person for ransom, or cause the death of any person or injury; or c. possess, store, fabricate or transport the explosive, firearms, instruments, articles suicide jackets; or d. use or design vehicles for terrorist acts; e. provide or receive funding from any foreign or local source for the illegal activities under this clause; f. act to overawe the State or any section of the public or sect or religious minority; g. create terror or insecurity in Pakistan or attempt to commit any of the said acts within or outside Pakistan, shall be punished under this act <p>claiming or are known to belong to any terrorist group or organization using the name of a religion or sect and raise arms or wage war against Pakistan, commit an offence [...] under the schedule of the Protection of Pakistan Act, 2014</p>
<p>Anti-Terrorism Act, 1997</p>	<p>In this Act, terrorism includes any act done for the benefit of a proscribed organization</p> <p style="text-align: right;">Section 6(5)</p> <p>The Federal Government may [...] list an organization as a proscribed organization [...] if there are reasonable grounds to believe that it is:</p> <ol style="list-style-type: none"> (a) concerned in terrorism; or (b) owned or controlled, directly or indirectly, by any individual or organization proscribed under this Act; or (c) acting on behalf of, or at the direction of, any individual or organization proscribed under this Act <p style="text-align: right;">Section 11B</p> <p>The Federal Government may [...] list a person as a proscribed person [...] if there are reasonable grounds to believe that such person is:</p>

Anti-Terrorism Act, 1997

- (a) concerned in terrorism;
- (b) an activist, office bearer or an associate of an organization kept under observation [...] or proscribed under section 14B; and
- (c) in any concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism or acting on behalf of, or at the direction of any person or organization proscribed under this Act.

Section 14EE

A person is guilty of an offence if he belongs or professes to belong to a proscribed organization. [Under this section,] a person commits an offence if he:

- (a) solicits or invites support for a proscribed organization, and the support is not necessarily linked to provisions of money or other property; or
- (b) arranges, manages or assists in managing, or addressing a meeting which he knows is:
 - i. to support a proscribed organization
 - ii. to further the activities of a proscribed organization; or
 - iii. to be addressed by a person who belongs or professes to belong to a proscribed organization

A person commits an offence if he addresses a meeting, or delivers a sermon to a religious gather, by any means whether verbal, written, electronic, digital or otherwise, and the purpose of his address or sermon, is to encourage support for a proscribed organization or to further its activities.

A person commits an offence if he solicits, collects or raises money or other property for a proscribed organization

Section 14F

A person commits an offence if he wears, carries or displays any article, symbol, or any flag or banner connected with or associated with any proscribed organization or carries, wears or displays any uniform, item of clothing or dress in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organization

Section 14G

<p>Protection of Pakistan Act, 2014</p>	<p>“Enemy Alien” means a militant whose identity is unascertainable as a Pakistani in the locality where he has been arrested or in the locality where he claims to be residing, whether by documentary or oral evidence</p> <p style="text-align: right;">Section 2(d)</p> <p>“Militant” means any person who: wages war or insurrection against Pakistan; or raises arms against Pakistan, its citizens, the armed forces or civil armed forces; or takes up, advocates, encourages or aids or abets the raising of arms or waging of war or a violent struggle against Pakistan; or threatens or acts or attempts to act in a manner prejudicial to the security, integrity or defense of Pakistan; or commits or threatens to commit an scheduled offence; and includes:</p> <p>(i) a person who commits any act outside the territory of Pakistan for which he has used the soil of Pakistan for preparing to commit such act that constitutes a scheduled offence under this Act and the laws of the State where such offence was committed, including an act of aiding or abetting such offence; or</p> <p>(ii) any person against whom there are reasonable grounds that he acts under the directions or in concert or conspiracy with or in furtherance of the designs of an enemy alien</p> <p style="text-align: right;">Section 2(f)</p>
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The criminalization of acts committed by non-state actors under domestic law documented above, however, does not distinguish between lawful and unlawful attacks under IHL. The collective criminalization of these acts may diminish respect for IHL in a domestic context and weaken the principle of distinction.

End Notes

- ¹ INTERNATIONAL COMMITTEE OF THE RED CROSS, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, pg 27-28, available at: <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf> [hereinafter Interpretive Guidance on DPH].
- ² Id. at 43-44.
- ³ Id. at 28.
- ⁴ Id. at 83-84.
- ⁵ Id. at 41.
- ⁶ Id.
- ⁷ Id.
- ⁸ Id. at 42.
- ⁹ Id.
- ¹⁰ Commentary on the Protection of the Civilian Population, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed C o n f l i c t s (1 9 8 7) a v a i l a b l e a t : <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434744>
- ¹¹ Id.
- ¹² Direct Participation in Hostilities: Questions & Answers, International Committee of the Red Cross, available at: <https://www.icrc.org/eng/resources/documents/faq/direct-participation-ihl-faq-020609.htm>.
- ¹³ Interpretive Guidance on DPH, supra note 1, at 46.
- ¹⁴ Id. at 44-45.
- ¹⁵ Foundation for Fundamental Rights Vs. Federation of Pakistan (2013) PLD (Pesh.) 94.
- ¹⁶ Interpretive Guidance on DPH, supra note 1, at 32.
- ¹⁷ Id. at 32.
- ¹⁸ Prosecutor v. Boskoski, Case No. IT-04-82-T, Judgment, ¶ 195 (July 10, 2008).
- ¹⁹ Id. at ¶ 197.
- ²⁰ Id. at ¶ 198.
- ²¹ Id. at ¶ 199-203.
- ²² Id. at ¶ 194-197; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, art. 1, 8 June 1977, 1125 UNTS 609.
- ²³ Interpretive Guidance on DPH, supra note 1, at 33.
- ²⁴ Id.
- ²⁵ Id. at 32-33.
- ²⁶ Id.
- ²⁷ Id. at 34.
- ²⁸ Id.
- ²⁹ Id.
- ³⁰ Id.

THE USE OF WEAPONS

I. Introduction to the Use of Weapons

The Use of Weapons In IHL

The use of means and methods of warfare, which are of a nature to cause superfluous injury or unnecessary suffering, is prohibited.

Rule 70, CIHL

The use of weapons, which are by nature indiscriminate, is prohibited.

Rule 71, CIHL

In an IAC, Additional Protocol I, Article 35 also provides:

1. The right of the Parties to the conflict to choose methods or means of warfare is NOT unlimited.
2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
3. It is prohibited to employ methods or means of warfare, which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Additional Protocol II also provides that civilians enjoy protection from dangers arising out of military operations and shall not be made the object of attack.¹ Thus, the indiscriminate use of weapons, or the use of weapons that are indiscriminate, is prohibited by IHL.²

Beyond the Geneva Conventions of 1949 and their Additional Protocols, there are several treaties that relate specifically to weapons and their use during a conflict. Section II of the Introduction to International Law chapter provides a comprehensive list of such instruments. The following weapons treaties are those to which Pakistan is a party:

- Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons

- and on their Destruction
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
 - Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW)
 - Protocol on Non-Detectable Fragments (CCW Protocol I)
 - Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (CCW Protocol II)
 - Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (CCW Protocol III)
 - Protocol on Blinding Laser Weapons (CCW Protocol IV)
 - Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (CCW Amended Protocol II)
 - Protocol on Explosive Remnants of War (CCW Protocol V)

The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (known as Protocol II to the CCW) also provides guidelines regarding the use of certain weapons applicable to non-international armed conflicts.³

Article 3 of Protocol II of the Convention on Certain Conventional Weapons provides:

It is prohibited in all circumstances to use any mine, booby-trap or other device, which is designed or of a nature to cause superfluous injury or unnecessary suffering.⁴

The following bilateral agreement is evidence of an early effort by the State of Pakistan to impose restrictions on the use of chemical weapons:

INDIA – PAKISTAN AGREEMENT ON CHEMICAL WEAPONS

Signed in New Delhi, August 19, 1992

The Government of the Islamic Republic of Pakistan and the Government of the Republic of India, reaffirming their commitment

to durable peace and the development of friendly and harmonious relations; conscious of the role of confidence building measures in promoting such bilateral relations based on mutual trust and goodwill; recognizing that disarmament agreements constitute an important confidence building measure; reaffirming their respective unilateral declarations of non-possession of chemical weapons; convinced that a complete and effective prohibition of chemical weapons will contribute to the security of all States; reaffirming their respective commitment to the Protocol for Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed in Geneva on 17 June 1925 and recalling the relevant resolutions of the General Assembly upholding the validity of the 1925 Geneva Protocol; reiterating the need for the early conclusion within the framework of the Conference on Disarmament of a global convention for the complete and effective prohibition of the development, production, stockpiling and use of chemical weapons and their destruction.

HEREBY DECLARE that:

1. They undertake never under any circumstances:
 - a) to develop, produce or otherwise acquire chemical weapons;
 - b) to use chemical weapons;
 - c) to assist, encourage or induce, in any way, anyone to engage in development, production, acquisition, stockpiling or use of chemical weapons.
2. They would cooperate with each other, in finalization and adoption of a comprehensive Chemical Weapons Convention, which ensures the security of all states and encourages the full utilization of achievements in the field of chemistry for peaceful purposes, especially for economic development of the developing countries.
3. They reiterate their resolve to become original States party to the proposed Convention currently being drafted in the Conference on Disarmament.
4. They would exercise their right to develop their chemical industry and related applications and products only for peaceful purposes and for the welfare of their peoples.

The Use of Weapons In Domestic Law

The use of weapons in Pakistan is governed both under numerous federal and provincial laws. Domestic law addresses, in great detail, the commercial trade of arms and ammunition and it criminalizes

the unsanctioned distribution of deadly weapons. However, the prohibitions on use of certain weapons in IHL are only evident in the domestic laws relating to chemical and biological weapons.

Notwithstanding the mass destruction potential of nuclear weapons maintained primarily for deterrence purposes, it is the widespread use of conventional weapons that fuel conflicts, destabilize states and societies bringing innumerable pain and suffering to humanity. [...] The illicit trade in small arms and light weapons has caused havoc all around the world, abetting crime, terrorist activities, narcotics trafficking and sadly, deaths disabilities of civilians including women and children. The easy availability of these arms is being facilitated inter alia by lack of or weak regulatory controls, excessive production, transfers and sale motivated by profits and politics and above all, misuse. [...] Unresolved disputes, growth in terrorist activities, the rise in illicit narcotic and organized crimes are the driving force behind the demand for illegal small arms trade. Pakistan has developed the necessary legislative, regulatory, enforcement and institutional mechanisms to address the range of issues relating to small arms and light weapons. An Inter-Ministerial Group addresses these issues in an integrated manner. Policy guidelines on the export of conventional arms are in place as also a national evaluation mechanism to regulate trade in these arms. We plan to take additional measures to strengthen the enforcement regime, which covers imports and licensing. [...] The delicate balance of these instruments – to minimize human suffering without sacrificing the legitimate security interests of states – must be maintained. The human suffering resulting from the indiscriminate use of landmines can be minimized if maximum number of states commit themselves to the successful implementation of CCW's Amended Protocol-II. Similarly, the CCW provides an ideal platform to deal with the subject of cluster munitions since it harmonizes the genuine humanitarian concerns with the security imperatives of states. [...] Development of new technologies has the potential to protect civilians against indiscriminate effects of mines. Such technologies can be of immense benefit in preventing the injurious, indiscriminate and lethal effects of mines. Sharing of know-how with other states particularly by those states in possession of such technologies will go a long way in minimizing the humanitarian impact of mines, booby-traps and other devices. Indeed the transfer and sharing of technology and experience,

within the framework of this Protocol, is an important step towards achieving our common objectives and goals.

Statement by Ambassador Zamir Akram, Pakistan's Permanent Representative to the United Nations, Geneva at the First Committee Thematic Debate On Conventional Weapons⁵
22 October 2013

The Pakistan Penal Code, 1860 generally criminalizes the use of weapons to commit offences against the State:

Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against Pakistan, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine⁶

Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly/shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both⁷

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both⁸

The Protection of Pakistan Act, 2014 prohibits:

[The] use of arson, fire-bombs, suicide bombs, biological weapons, chemical weapons, nuclear arms, plastic explosives and other materials capable of exploding or creating bombs employed to kill or cause hurt to persons or destroy property⁹

The Anti-Terrorism Act, 1997 also prohibits both the giving and receiving of weapons training not approved by the competent authorities:

“Weapon” means any item which can be used to injure or cause bodily harm, and includes any type of fire-arm, explosive, sword, dagger, knuckle-duster, stun gun, bomb, grenade, rocket launcher, mortar or any chemical, biological thing which can be used for causing injury, hurt, harm or destruction of person or property, and includes “illicit arms”¹⁰

A person commits an offence if he provides, without valid authorization from the competent authority, any (a) Fire-arms; (b) Explosives; or (c) Chemical, biological and other weapons.¹⁴

A person commits an offence if he receives instruction or training from anyone, without valid authorization from the competent authority, to give such instruction or training or invites another, specifically or generally, to receive such unauthorized instruction or training in the making or use of. (a) Fire-arms; (b) Explosives; or (c) Chemical, biological, and other weapons¹²

The statutes included in the following table specifically define various weapons for the purposes of regulating their sale or distribution. The commercial trade and possession of these weapons is heavily regulated under Pakistan's federal and provincial laws.

ARMS ORDINANCE, 1965	SURRENDER OF ILLICIT ARMS ACT, 1991
<p style="text-align: center;">Ammunition¹³</p>	<p style="text-align: center;">Illicit Arms¹⁴</p>
<ul style="list-style-type: none"> • all types of grenades, bombs, rockets, mines and fuels for flame throwers • all types of explosives, fulminating material and propellants, including all articles specially designed for torpedo operation and charges 	<ul style="list-style-type: none"> • “cannon” as defined in the Pakistan Arms Ordinance, 1965 • fire-arms comprising automatic weapons (other than machine guns) including sub-machine guns, automatic rifles and machine pistols; and • rifles, carbines muskets, shortguns, revolvers, pistols and appliances the object of which is the silencing of fire-arms and all other fire-arms not included in sub-clause (iv).
<p style="text-align: center;">Arms¹⁵</p>	
<ul style="list-style-type: none"> • cannon 	
<p style="text-align: center;">Cannon¹⁶</p>	
<ul style="list-style-type: none"> • nuclear weapons of all types • projectors, guided missiles, and dischargers for grenades, rockets, bombs and gas or smoke containers 	

Unlicensed Sale or Possession	Surrender of Illicit Arms
<p>No person shall sell or keep, offer or expose for sale, an arms, ammunition, or military stores, or undertake the repairs of any arms, except under a license and in the manner and to the extent permitted thereby.¹⁷</p>	<p>All persons in possession or control of any illicit arms shall surrender such arms¹⁸</p>
<p>No person shall have in his possession or under his control any arms, or any ammunition or military stores, except under a license and in a manner and to the extent permitted thereby¹⁹</p>	
Penalties	Surrender of Illicit Arms
<p>Whoever sells, or keeps, offers or exposes for sale a cannon, grenade, bomb, rocket or a light or heavy automatic or semi-automatic weapon, such as Kalashnikov, a G-III rifle or any other type of assault rifle, or ammunition which can be fired from such weapon, in contravention of the provisions of Section 4, shall be punishable with imprisonment for a term which may extend to fourteen years and shall not be less than seven years, fine and forfeiture of property.²⁰</p>	<p>(a) in respect of illicit arms [...] be punished with imprisonment for life and forfeiture of property</p> <p>(b) in respect of illicit arms defined in sub-clauses (iv) of clause (a) of section 2, be punished with imprisonment for life or with imprisonment for a term which shall not be less than ten years having regard to the antecedents of the accused; and</p> <p>(c) in respect of illicit arms defined in sub-clause (v) of clause (a) of section 2, be punished with imprisonment for a term which may extend to fourteen years but shall not be less than three years, having regard to the antecedents of the accused.²¹</p>
<p>Whoever goes armed with a cannon, grenade, bomb, rocket or a light or heavy automatic weapon, such as a Kalashnikov, a G-III rifle or any other type of assault rifle, in contravention of the provisions of Section 8; or (b) has in his possession or under his control any of the arms or weapons referred to in clause (a), or ammunition which can be fired from such weapon, in contravention of Section 9; shall be punishable with imprisonment for a term which may extend to ten years and shall not be less than three years and fine.²²</p>	

To effectively uphold its obligations under the Chemical Weapons Convention and the Biological Weapons Convention, Pakistan developed several laws that both criminalize unauthorized use of chemical and biological agents and establish mechanisms to monitor continued implementation of these regimes.

Under the Chemical Weapons Convention Implementation Ordinance, 2000:

No person shall -

- a) develop, produce, otherwise acquire, stockpile or retain a chemical weapon, or
- b) transfer, directly or indirectly, a chemical weapon to anyone;
- c) use a chemical weapon;
- d) engage in any military preparations to use a chemical weapon;
- e) assist, encourage or induce, in any way, any other person to engage in any
- f) activity prohibited to a under the Convention; or
- g) use a riot control agent as a method of warfare.²³

The Secretary, Ministry of Foreign Affairs, Government of Pakistan, shall be the National Authority for the purposes of this Ordinance.

In particular and without prejudice to the generality of functions under this Ordinance, the functions of the Authority shall be to –

- a) ensure effective operation of this Ordinance;
- b) carry out, on behalf of Pakistan, such obligations which Pakistan has under the
Convention;
- c) facilitate inspections of premises in Pakistan, in case compliance of Pakistan with the
Convention is challenged; and
- d) do anything incidental or conducive to the performance of the aforesaid functions.

The Ordinance is further supplemented by the Chemical Weapons Convention (Implementation) Rules, 2010²⁴

Under the Export Control on Goods, Technologies, Material and

Equipment Related to Nuclear and Biological Weapons and their Delivery Systems Act, 2004:

"biological weapon" means any weapon designed to kill or harm or infect people, animals or plants on a large -scale through effects of the infectious or toxic properties of a biological warfare agent²⁵

The Federal Government shall control export, re-export, transshipment, transit of goods, technologies, material and equipment, subject to the provisions of this Act, which may contribute to the designing, development, production, stockpiling, maintenance or use of nuclear and biological weapons and their delivery systems²⁶

Under Section 4 of this Act, the Government of Pakistan periodically releases a Control List of Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems.²⁷ The Strategic Export Control Division of the Ministry of Foreign Affairs maintains this list.

II. Explosive Weapons in Populated

Defining Explosive Weapons

Although “explosive weapons” are not expressly defined in international law, a relative understanding of the term is provided as follows:

EXPLOSIVE WEAPONS ARE:

Weapons activated by the detonation of a high explosive substance creating a blast and fragmentation effect.²⁸

Explosive weapons, weapons that injure or damage by means of explosive force, may have a “wide impact area” or “wide-area effects” when used in populated areas due to:

- the large destructive radius of the individual munition used, i.e. its large blast and fragmentation range or effect (such as large bombs, large-calibre mortars and rockets, large guided missiles, and heavy artillery projectiles);
- the lack of accuracy of the delivery system (typically indirect fire weapons, such as mortars, rockets, and artillery (especially when using unguided munitions) and unguided air-delivered bombs); or
- the weapon system being designed to deliver multiple munitions over a wide area (such as multiple rocket-launcher systems).²⁹

In this respect, the issue of explosive weapons in populated areas concerns not one single weapon, but a range of different conventional weapon systems, along with consideration of the circumstances of their use, including the typical vulnerabilities of civilians living in populated areas.³⁰

Defining Populated Areas

“Populated Areas” means any concentration of civilians, be it a city, a town, a village; be it permanent or temporary, such as camps for internally displaced persons (IDPs)³¹

The effects of explosive weapons in populated areas and the relative definitions of both terms do not only take into account the immediate effects of the use of explosive weapons, but also the long term effects on the infrastructure that may be damaged or destroyed as a consequence of their use.

The use of explosive weapons in populated areas also affects the ability of health-care facilities and services to operate, to cope with the influx of numerous wounded people and the particular injuries they present, and to provide adequate care. The foregoing effects are accentuated in contexts where the use of explosive weapons is protracted, with the consequent decline of essential services over time and serious risks for public health.³²

Use of Explosive Weapons In IHL

The use of explosive weapons in populated areas is not prohibited by IHL as such. The permissibility of reliance on them must therefore be determined on a case-by-case basis, taking into account IHL rules prohibiting indiscriminate and disproportionate attacks, and imposing obligations to take feasible precautions in attack.³³

Launching an attack, which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

Rule 14, CIHL

In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Rule 15, CIHL

Use of Explosive Weapons In Domestic Law

Explosives weapons in Pakistan's domestic legal framework are defined as follows:

Explosives Act, 1884:

“Explosives” means gunpowder, nitroglycerine, nitroglycol, gun cotton, dinitrotoluence, trinitro toluene, picric acid, dinitro-phenol, trinitro resorcinol (styphnic acid), cyclo trimethylence trinitramine, penta erythritol tetranitrate, tetryl, nitroguanidine, lead azide, lead styphynate, fulminate of mercury or any other metal, diazo dinitro phenol, colored fires or any other substances whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and

And includes:

- i. chemical compounds, compositions or mixture of which will produce, upon release of its potential energy, a sudden outburst of gases, thereby exerting high pressures on its surroundings. Explosives may be solid, liquid or gas, nitro compound or in the form of water gel or slurry;
- ii. fog signals, firework, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosives as defined in this clause; and
- iii. such other substance as the Federal Government may, by notification in the official Gazette, specify for the purposes of this sub-section.³⁴

Explosive Substances Act, 1908:

“explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or any explosive substance; also any part of any such apparatus, machine or implement³⁵

Anti-Terrorism Act, 1997:

“explosives” means any bomb, grenade, dynamite, or explosive, substance capable of causing any injury to any person or damage to any property an includes any explosive substance as defined in the Explosives Act, 1884³⁶

Khyber Pakhtunkhwa Explosive Substances Act, 2013:

“explosive substance” means and includes any material for making any explosive substance, also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or any explosive substance, also any part of any such apparatus, machine or implement³⁷

The use of explosives and explosive substances are criminalized through the following statutes:

[It is punishable under this Act to] use of arson and bombs on public places, government premises, sites of worship, historical places, business concerns, or other places, and risking or causing death or hurt to any person therein

Schedule, Section 1(iii), Protection of Pakistan Act, 2014

Additional Federal Laws Regulating the Use of Explosives	
Pakistan Penal Code, 1860 Section 286	Whoever does, with any explosive substance any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both.
Explosive Substances Act, 1908	Any person who unlawfully and maliciously causes by any explosive substance and explosion of nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death or imprisonment for life Section 3 Any person who unlawfully and maliciously; (a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in [Pakistan] of nature likely to endanger life or to cause serious injury to property;

	<p>or (b) makes or has in his possession or under his control any explosive substance with intent by means thereof the endanger life, or cause serious injury to property in Pakistan; shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with imprisonment for life or any shorter term which shall not be less than seven years.</p> <p>Section 4</p> <p>Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to fourteen years.</p> <p>Section 5</p>
<p>Anti-Terrorism Act, 1997</p>	<p>An "action" [includes]:</p> <ul style="list-style-type: none"> • involves the doing of anything that causes death • involves grievous violence against a person or grievous bodily injury or harm to a person • involves use of explosives by any device including bomb blasts [or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosives] <p>Section 6(2)</p> <p>The use or threat or use of any action falling within sub-section (2) which involves the use of fire-arms, explosives or any other weapon, is terrorism</p> <p>Section 6(3)</p>

The domestic law on explosives, particularly the excerpt from the Protection of Pakistan Act, 2014, indicates indirect recognition of the harms associated with the use of explosive weapons in populated areas. Domestic application of the IHL principles related to the use of explosive weapons in populated areas would nonetheless require the inclusion of customary law principles regarding precaution and proportionality, along with prohibitions on indiscriminate attacks within domestic law, military manuals, etc.

II. The Use of Drones

What is a “Drone”?

*Powered aerial vehicle that does not carry a human operator ... can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry a lethal or nonlethal payload*³⁸

An armed remotely piloted aircraft or remotely operated weapon system – i.e., a weapon platform that is at all times under human command and control in the process of identification and attacking of targets, meaning that there is a human in control. Other functions of drones, such as take off, navigation and landing, are often automated, which indicates that these platforms are actually not entirely “remotely piloted.” The term unmanned combat aerial vehicle is also in common use.³⁹

For the purposes of this section, the term drones shall be used to refer to these armed unmanned aerial vehicles, deployed for the purposes of targeting in a conflict.

Is the Use of Drones Lawful?

Under IHL drones are not expressly prohibited nor are they considered to be inherently indiscriminate or perfidious. However though drones are not unlawful in themselves their use is subject to international law.⁴⁰

The use of any weapon system, including armed drones, in armed conflict situations is clearly subject to the rules of IHL.⁴¹ This means:

- parties to a conflict must always distinguish between combatants and civilians and between military objectives and civilian objects
- They must take all feasible precautions in order to spare the civilian population and infrastructure, and
- they must suspend or cancel an attack if the expected incidental harm or damage to civilians or civilian objects would be excessive in relation to the concrete and direct military advantage anticipated.
- Drones may in no way be used to carry prohibited weapons such as chemical or biological agents.⁴²

THE RIGHT TO RESORT TO THE USE OF DRONES MUST BE FOUND IN THE *JUS AD BELLUM*, LAWS GOVERNING THE RESORT TO FORCE

THE WAY DRONES ARE USED MUST BE BASED ON THE *JUS IN BELLO* (HUMANITARIAN LAW) AND THE LAW OF HUMAN RIGHTS.⁴³

Not all applications of violence by States against non-State actors meet the threshold requirements of an armed conflict. If there is no armed conflict, IHL does not apply to such use of force.⁴⁴

If and when drones are used in situations where there is NO armed conflict, it is the relevant national law, and international human rights law with its standards on law enforcement, that apply, not international humanitarian law. Human rights law generally dictates that the deprivation of life must be non-arbitrary. This principle continues to apply during an armed conflict, though what exactly constitutes "arbitrary" may change. The law enforcement paradigm also requires that the use of force be necessary and proportionate, lethal force is restricted to instances where the threat to life is imminent.⁴⁷

IHRL prohibits a government from using disproportionate force against an armed group waging war against a state.⁴⁸ Where the law enforcement paradigm applies, the use of force is limited and it is limited for all actors involved in the situation.⁴⁹ Thus, if the government consents to the assistance of another state, that state is also required to operate under the same paradigm and use an identical amount of force.⁵⁰

This is contrary to the positions previously advocated by states that have previously used extraterritorial armed drone technology.⁵¹ A state consenting to the presence of another state's drones may not authorize the use of military force absent the existence of an armed conflict allowing the use of force under the conduct of hostilities paradigm.⁵² IHL will only apply if there is an armed conflict otherwise the law enforcement paradigm prevails.⁵³

The Use of Drones under Domestic Law

Pakistan has neither passed a law regulating the use of armed drones nor addressing the use of force in any violent situation by

such technology. Laws governing the use of weapons and the use of force permitted may be referenced in the introduction to the use of weapons above.

Statement by Ambassador Zamir Akram,
Pakistan's Permanent Representative to the United Nations,
Geneva at the First Committee Thematic Debate On Conventional
Weapons⁵⁴
22 October 2013

Mr. Chairman,

Another Disturbing trend is the development of new types of weapons, such as Lethal Autonomous Weapon Systems (LAWS). LAWS are rightly being described as the next revolution in military affairs, which are going to pose numerous new challenges. LAWS are by nature unethical, because there is no longer a human in the loop and the power to make life and death decisions are delegated to machines, which inherently lack compassion and intuition.

LAWS will lower the threshold of going to war resulting in armed conflict no longer being a measure of last resort.

LAWS will also create an accountability vacuum and provide impunity to the user due to the inability to attribute responsibility for the harm that they cause.

The states that are currently developing and using LAWS cannot afford to be complacent that such capabilities will not proliferate over time and hence they too shall become vulnerable.

The introduction of LAWS would be illegal, unethical, inhumane and unaccountable as well as destabilizing for international peace and security with grave consequences. Therefore, their further development and use must be pre-emptively banned, and the states currently developing such weapons should place an immediate moratorium on their production and use.

Armed drones are another new type of weapons. The use of armed drones against civilians constitutes a violation of International Law, the UN Charter, International Humanitarian Law and International

Human Rights Law. Their use contravenes State sovereignty as well as the UN Charter restrictions on the legitimate use of force for self-defense in the absence of any imminent danger and without express permission from States in whose territory the armed drones are used.

The use of armed drones is characterized by a lack of transparency, proportionality, responsibility and accountability. Civilians have been targeted and killed through signature strikes. In the absence of credible information against the targeted individuals warranting use of drones, their use is tantamount to extrajudicial killings since no due process of law is followed.

The proliferation of drone technology over time would make it more dangerous. Even more challenging would be the task of preventing and deterring non-state actors and terrorists from developing, deploying and using drones.

The issue has assumed added urgency in the wake of reports regarding the development of fully autonomous armed drones.

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[T]he killing must be militarily necessary, the use of force must be proportionate so that any anticipated military advantage is considered in light of the expected harm to civilians in the vicinity, and everything feasible must be done to prevent mistakes and minimise harm to civilians.⁵⁵

End Notes

- ¹ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, art. 13, 8 June 1977, 1125 UNTS 609. [hereinafter Protocol II].
- ² RULE 71, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule71; RULE 11, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule11.
- ³ Pakistan is not a party to the Amendment of Article 1 of the Convention on Certain Conventional Weapons.
- ⁴ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996, art. 3(3), 3 May 1996; See also, Customary International Humanitarian Law, Volume I: Rules, Rules 70-86 (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul.
- ⁵ Zamir Akram, Statement in Geneva at the First Committee Thematic Debate on Conventional Weapons (22 Oct. 2013) available at: http://www.pakun.org/statements/First_Committee/2014/10222014-01.php.
- ⁶ Pakistan Penal Code, 1860 (Act No. XLV of 1860), § 122.
- ⁷ Id. at § 144.
- ⁸ Id. at § 148.
- ⁹ Protection of Pakistan Act, 2014 (Act No. X of 2014), Sch. 1(ii).
- ¹⁰ Anti-Terrorism Act, 1997 (Act No. XXVII of 1997), § 2(bb).
- ¹¹ Id. at § 21C(1).
- ¹² Id. at § 21C(3).
- ¹³ Pakistan Arms Ordinance (Act No. XX of 1965), § 3(a).
- ¹⁴ Surrender of Illicit Arms Act (Act No. XXI of 1991), § 2(1)(a).
- ¹⁵ Pakistan Arms Ordinance, supra note 13, at § 3(b).
- ¹⁶ Id. at § 3(c).
- ¹⁷ Id. at § 4(1).
- ¹⁸ Surrender of Illicit Arms Act, supra note 14, § 4.
- ¹⁹ Pakistan Arms Ordinance, supra note 13, at § 9.
- ²⁰ Id. at § 13-A.
- ²¹ Surrender of Illicit Arms Act, supra note 14, § 7.
- ²² Pakistan Arms Ordinance, supra note 13, at § 13-B.
- ²³ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, § 3(1), 20 April 1997, 1974 UNTS 45.
- ²⁴ Chemical Weapons Convention (Implementation) Rules (2010) S.R.O., MINISTRY OF FOREIGN AFFAIRS (19 Mar. 2010).
- ²⁵ Export Control on Goods, Technologies, Material and Equipment Related to Nuclear and Biological Weapons and their Delivery Systems Act, 2004 (Act No. V of 2004), § 2(b).
- ²⁶ Id. at § 4(4).
- ²⁷ Control Lists of Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems (2015) S.R.O. MINISTRY OF FOREIGN AFFAIRS (28 Mar. 2015).
- ²⁸ Explosive Weapons in Populated Areas: Humanitarian, Legal, Technical and Military Aspects, International Committee of the Red Cross, 9 (2015) available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4244.pdf> [hereinafter Explosive Weapons Report].
- ²⁹ International Committee of the Red Cross, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, 49 (2015) [hereinafter Challenges Report 2015], available at: <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>.
- ³⁰ Id.
- ³¹ Explosive Weapons Report, supra note 28, at 9.
- ³² Challenges Report 2015, supra note 29, at 48.
- ³³ International Committee of the Red Cross, International Humanitarian Law and the Challenges

- of Contemporary Armed Conflicts, 41 (2011), available at: <https://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf>.
- ³⁴ Explosives Act, 1884 (Act No. IV of 1884), § 4(1).
- ³⁵ Id. at § 2.
- ³⁶ Anti-Terrorism Act, supra note 10, § 2(f).
- ³⁷ Id. at § 2(a).
- ³⁸ Mary Ellen O'Connell, Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009, Notre Dame Law School, Legal Studies Research Paper No. 09-43 (2010).
- ³⁹ Jelena Pejic, Extraterritorial Targeting by Means of Armed Drones: Some Legal Implications, International Review of the Red Cross, 2 (2015).
- ⁴⁰ Interview with Peter Maurer, President of ICRC, The use of armed drones must comply with laws, (May 10, 2013) available at: <https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>.
- ⁴¹ Id.
- ⁴² Id.
- ⁴³ O'Connell, supra note 38, at 13.
- ⁴⁴ United Nations General Assembly, Extrajudicial, Summary or Arbitrary Executions, 13 Sept. 2013, A/68/382 (2013) ¶ 53, available at: <https://www.justsecurity.org/wp-content/uploads/2013/10/UN-Special-Rapporteur-Extrajudicial-Christof-Heyns-Report-Drones.pdf>.
- ⁴⁵ Interview with Peter Maurer, supra note 40.
- ⁴⁶ Id. at ¶ 32.
- ⁴⁷ Id. at ¶ 33.
- ⁴⁸ O'Connell, supra note 38, at 16.
- ⁴⁹ Id.
- ⁵⁰ Id.
- ⁵¹ Id. at 16-17.
- ⁵² Id. at 17.
- ⁵³ Id.
- ⁵⁴ Zamir Akram, Statement in Geneva at the First Committee Thematic Debate on Conventional Weapons (22 Oct. 2013) available at: http://www.pakun.org/statements/First_Committee/2014/10222014-01.php.
- ⁵⁵ Foundation for Fundamental Rights v. Federation of Pakistan (2013) PLD (Pesh.) 94, ¶ 11.

PREVENTIVE DETENTION

I. What is Preventive Detention?

Defining Preventive Detention

Preventive detention is DETENTION WITHOUT CRIMINAL CHARGES

Deprivation of liberty is an action that may extend beyond what will be considered preventive detention for the purposes of this section. International law also does not adhere to a singular definition of this type of deprivation of liberty in either the humanitarian or human rights law regime. Preventive detention/administrative detention/internment, terms that may be used interchangeably, shall be the focus of this chapter, again, defined as detention without criminal charges.

This form of detention aims essentially to prevent serious future harm, based on a person's activity, rather than on the express commission of a crime. Leaving aside the internment of POWs in an IAC, preventive detention may be understood as the:

deprivation of liberty ordered by the executive authorities when no specific criminal charge is made against the individual concerned¹

and as an:

exceptional measure of control that may be ordered for security reasons in armed conflict, or for the purpose of protecting State security or public order in non-conflict situations, provided that in both contexts, the requisite criteria have been met.²

Preventive Detention in IHL

Preventive detention is not prohibited under either humanitarian or human rights law. Nevertheless, the circumstances relating to the act of detention make a substantial difference when evaluating the lawfulness under international law.

Understanding the preventive detention regime in international law requires another examination of the following judgment of the International Court of Justice, also referenced in the chapter

introducing international law.³ The relevant portion of the judgment is as follows:

*As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law⁴*

Thus, in those matters governed under both humanitarian and human rights law, as preventive detention is, IHL is *lex specialis* in IAC. In NIAC, both IHL and human rights law will need to be considered, when evaluating the lawfulness of a person's detention under international law. Human rights law provides a set of stringent norms for detention, higher standards than what humanitarian law provides.⁵ Internment in IAC is regulated by the Third and Fourth Geneva Conventions. Article 75 of Additional Protocol I of the Geneva Conventions establishes minimum requirements for preventive detention in an IAC. It is also considered to be customary IHL.⁶ Nevertheless, Additional Protocol I does not bar the application of greater protections from human rights law for detainees where they may apply.⁷ For NIACs, IHL through Common Article 3 and Additional Protocol II both of which contain provisions requiring humane treatment.⁸ Neither Common Article 3 nor Additional Protocol II, however, provide grounds or procedures governing detention in a NIAC.⁹ Common Article 3 and Additional Protocol II acknowledge that detention/internment will occur during the conflict, but without establishing a concrete legal basis.¹⁰

Detention in a NIAC

There are far fewer provisions governing NIACs that relate to preventive detention, meaning a relative absence of IHL *lex specialis*. Therefore, the norms of domestic law, as informed by human rights law, govern the grounds and procedures for detention in this type of armed conflict.¹¹

The preamble of Additional Protocol II¹² also acknowledges the role of

human rights law:

[I]nternational instruments relating to human rights offer a basic protection to the human person

Internment is, however, clearly a measure that can be taken in a NIAC, as evidenced by the language of Additional Protocol II, which specifically mentions internment in Articles 5 and 6 respectively.¹⁴

That IHL contemplates, but does not explicitly provide a legal basis for preventive detention, means that it must be established in a state's domestic law.¹⁴

Preventive Detention in International Human Rights Law

Under the International Covenant on Civil and Political Rights (ICCPR):

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.¹⁵

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.¹⁶

Detention may be considered arbitrary if it is unlawful or unjust.¹⁷ General Comment 35 under the ICCPR adds that an initially lawful detention may otherwise become unlawful if a periodic reevaluation of the grounds for detention is not completed.¹⁸ Additionally, the reasons for detention must be established by law, but must not be overly broad so as to be arbitrary.¹⁹

Preventive Detention in Domestic Law

The preventive detention apparatus in Pakistan may be divided into two parallel regimes. One that operates under the declaration of an emergency within FATA through the Actions (in Aid of Civil Power) Regulations, 2011 (AACPR). The other operates as a permanent feature of anti-terrorism legislation, both during and in the absence of an emergency, stemming from Article 10 of the Constitution of Pakistan. This Article 10 regime is further operationalized through the Maintenance of Public Order Ordinance, 1960, Anti-Terrorism Act, 1997 and the Protection of Pakistan Act, 2014.

II. Grounds for Detention

Grounds for Detention in IHL

In international law, arbitrary deprivation of liberty is prohibited.²⁰ The grounds under which a detention would be non-arbitrary must then be evaluated on a case-by-case basis. The Geneva Conventions, as they relate to IACs, regulate internment, as well as detention on suspicion of a crime:

The THIRD GENEVA CONVENTION relates to prisoners of war

The FOURTH GENEVA CONVENTION relates to civilians²¹

Focusing on the Fourth Convention in particular, it allows for the preventive detention of civilians during an IAC for "imperative reasons of security"²² and "only if the security of the Detaining Power makes it absolutely necessary,"²³ or, in situations of occupation where it is "necessary" for imperative reasons of "security."²⁴ The Fourth Convention also emphasizes that preventive detention is the most severe measure of control that may be used against protected persons.²⁵

For a NIAC, neither Common Article 3 nor Additional Protocol II provide specific grounds for which persons may be interned, although the deprivation of liberty is regulated to some extent.

IHRL, again, prohibits arbitrary detention. It is only specified that preventive detention take place on grounds and according to procedures provided by law.

Grounds for Detention in Domestic Law

Under the Actions (in Aid of Civil Power) Regulations, 2011 regime, the following grounds for preventive detention are provided:

Any person who-

- may obstruct actions in aid of civil power in any manner whatsoever
- if not restrained or incapacitated through internment shall strengthen the miscreants' ability to resist the Armed Forces or any law enforcement agency
- by any action or attempt may cause a threat to the solidarity,

- integrity or security of Pakistan
- has committed or is likely to commit any offence under this Regulation so that the said person shall not be able to commit or plan to commit any offence, during the actions in aid of civil power

Under the Constitution's Article 10 regime, several national security-based laws provide grounds upon which persons may be detained:

Article 10 of the Constitution of Pakistan provides:

No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defense of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services²⁶

The Protection of Pakistan Act, 2014 allows for the detention of persons:

acting in a manner prejudicial to the integrity, security, defense of Pakistan or any part thereof or external affairs of Pakistan or public order or maintenance of supplies and services²⁷

AND any enemy alien

Enemy Aliens:

- militants whose identity is unascertainable as a Pakistani, in the locality where he was arrested or in the locality where he claims to be residing, whether by documentary or oral evidence
- a militant who was deprived of his citizenship, under the Pakistan Citizenship Act, 1951, acquired by naturalization²⁸

MILITIANTS mean any person who:²⁹

Wages war or insurrection against Pakistan Raises arms against Pakistan
--

its citizens, the armed forces or civil armed forces
Takes up, advocates, encourages or aids or abets the raising of arms or waging of war or a violent struggle against Pakistan
Threatens or acts or attempts to act in a manner prejudicial to the security, integrity or defense of Pakistan
Commits or threatens to commit any scheduled offence, including:
<ul style="list-style-type: none"> • a person who commits any act outside the territory of Pakistan for which he has used the soil of Pakistan for preparing to commit such act that constitutes scheduled offence under this Act and the laws of the State where such offence has been committed, including an act of aiding or abetting such offence; or • any person against whom there are reasonable grounds that he acts under the directions or in concert or conspiracy with or in furtherance of the designs of an enemy alien

The Anti-Terrorism Act, 1997 allows for the detention of persons:

- concerned in terrorism
- an activist, office bearer or an associate of an organization kept under observation, or
- in any way concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism or acting on behalf of, or at the direction of, any person or organization proscribed under this Act³⁰

AND

any person who has been concerned in any offence under this Act relating to the security or defense of Pakistan or any part thereof, or public order relating to target killing, kidnapping for ransom, and extortion/bhatta, or the maintenance of supplies or services, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, for purpose of inquiry³¹

The Maintenance of Public Order Ordinance, 1960 permits the detention of persons:

Acting in any manner prejudicial to public safety or to the maintenance of public order

AND

Whoever is or was a member of an association [...], which association is or was declared to be unlawful under any law for the time being in force in the province

OTHER LAWS THAT PROVIDE A PREVENTIVE DETENTION MECHANISM	
Security of Pakistan Act, 1952 Section 3(b)	Any person: Acting in any manner prejudicial to the defense or the external affairs or the security of Pakistan, or any part thereof it is necessary so to do, may make an order [...] directing that he be detained
Foreigners Act, 1946 Section 3(2)(g)	Any person may be detained or confined: In the interest of the security of Pakistan

III. Procedures for Detention

Procedures for Preventive Detention in IHL

In an IAC, the Third Geneva Convention provides the legal basis for and regulates the internment of POWs. The Fourth Geneva Convention provides the legal basis for and establishes the internment review process for civilians. Additional Protocol I provides the minimum standards for the protection of any person that may not be covered by either the Third or Fourth Convention.³²

In a NIAC, Common Article 3 and Additional Protocol II provide no detail regarding procedures during detention/internment.

Article 3 common to the Geneva Conventions, applicable as a minimum standard to all NIACs, contains no provisions of a procedural nature regulating internment, i.e. administrative detention for security reasons. It does, however, emphasize the requirement of humane treatment in all circumstances.³³

It bears repeating that both humanitarian and human rights law are relevant for the protection of persons detained during any type of armed conflict. IHRL³⁴ primarily specifies that preventive detention take place according to procedures provided by law. Nevertheless, there are several key principles of IHRL that may not under any circumstances be violated.³⁵ These include an inherent right to life that a person may not be deprived of arbitrarily,³⁶ as well as the right to not be subjected to torture, cruel, inhuman or degrading treatment or punishment.³⁷

BASIC PROCEDURAL PRINCIPLES OF (NON-POW) PREVENTIVE DETENTION	
<i>The following principles were identified as part of a study on procedures and safeguards associated with preventive detention of non-POWs during an armed conflict³⁸</i>	
Common Article 3	Additional Protocol II
PREVENTIVE DETENTION IS AN EXCEPTIONAL MEASURE ³⁹	Detention may only be ordered if "absolutely necessary" GC IV, Article 42
	Internment may only be used "for imperative reasons of security" GC IV, Article 78

<p>PREVENTIVE DETENTION IS NOT AN ALTERNATIVE TO CRIMINAL PROCEEDINGS⁴⁰</p>	<p>Preventive detention and criminal detention are two different types of deprivation of liberty. The commentary to the Fourth Geneva Convention states "Internment is a preventive administrative measure and cannot be considered a penal sanction."⁴¹</p>
<p>PREVENTIVE DETENTION MUST BE ASSIGNED ON AN INDIVIDUAL BASIS⁴²</p>	<p>"[T]here can be no question of taking collective measures; each case must be decided separately"⁴³ GC IV, Article 78 Commentary A Detaining Power may deprive a large number of persons of liberty, but the initial decision to detain and any reevaluation of that decision must be made on a case-by-case basis.⁴⁴</p>
<p>PREVENTIVE DETENTION MUST END AS SOON AS THE REASONS FOR IT NO LONGER EXIST</p>	<p>Each detained person must be released "as soon as the reasons which necessitated his internment no longer exist" GC IV, Article 132</p>
<p>PREVENTIVE DETENTION MUST END AS SOON AS THE REASONS FOR IT NO LONGER EXIST⁴⁵</p>	<p>Each detained person must be released "as soon as the reasons which necessitated his internment no longer exist" GC IV, Article 132 Any person that is detained in an armed conflict must be released, with minimal delay, and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist. AP I, Article, 75(3)</p>
<p>PROCEDURAL SAFEGUARDS DURING PREVENTIVE DETENTION</p>	
<p><i>The following safeguards are primarily reflective of rules applicable to non-POWs in an IAC. They are indicative of minimum rules that could be applicable in a NIAC, though neither Common Article 3, nor Additional Protocol II incorporate such safeguards.</i></p>	
<p>RIGHT TO INFORMATION ON THE REASONS FOR DETENTION⁴⁶</p>	<p>A detained person "shall be informed promptly, in a language he understands, of the reasons why these measures have been taken" AP I, Article 75(3)</p>

<p>RIGHT TO BE REGISTERED AND HELD IN A RECOGNIZED PLACE OF DETENTION⁴⁷</p>	<p>Internees must be housed separately from prisoners of war and from persons deprived of liberty for any other reasons GC IV, Article 84</p>
<p>RIGHT TO CHALLENGE THE LAWFULNESS OF DETENTION⁴⁸</p>	<p>Any person detained during an armed conflict has the right to review by an appropriate court or administrative board GC IV, Article 43 There is a right of appeal for the parties concerned in an armed conflict GC IV, Article 78 Under human rights law, detainees have the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention⁴⁹ ICCPR General Comment 29, States of Emergency</p>
<p>REVIEW OF DETENTION BY AN INDEPENDENT IMPARTIAL BODY⁵⁰</p>	<p>Administrative decisions regarding detention may not be made by one official, but by a body that possesses the “necessary guarantees of independence and impartiality”⁵¹ GC IV, Article 43 Commentary</p>
<p>RIGHT TO PERIODIC REVIEW OF CONTINUED DETENTION⁵²</p>	<p>Continued detention requires periodic review and the reviewing body should do so at least twice yearly GC IV, Article 43 Detention shall be subject to periodical review GC IV, Article 78</p>
<p>RIGHT TO FAMILY CONTACT</p>	<p>Internees shall be allowed to send and receive letters and cards GC IV, Article 107 Every detainee must be allowed to regularly receive visitors, especially close relatives GC IV, Article 116</p>
<p>RIGHT TO MEDICAL CARE AND ATTENTION⁵³</p>	<p>Detaining Powers must provide medical attention required by the health needs of internees GC IV, Article 81 Every place of internment must have an adequate infirmary GC IV, Article 91</p>

<p>RIGHT TO SAFE AND HYGIENIC LIVING CONDITIONS</p>	<p>Detaining Powers must house detainees free of charge</p> <p style="text-align: right;">GC IV, Article 81</p> <p>The Detaining Power shall not set up places of internment in areas exposed to the dangers of war</p> <p style="text-align: right;">GC IV, Article 83</p> <p>The Detaining Power is bound to take all necessary and possible measures to ensure that internees are housed in a manner that affords every possible safeguard as regards hygiene and health</p> <p style="text-align: right;">GC IV, Article 85</p> <p>Under no circumstances should disciplinary measures be inhuman, brutal or dangerous for the health of internees.</p> <p style="text-align: right;">GC IV, Article 119</p>
<p>RIGHT TO SAFE AND HYGIENIC LIVING CONDITIONS</p>	<p>Detaining Powers must house detainees free of charge</p> <p style="text-align: right;">GC IV, Article 81</p> <p>The Detaining Power shall not set up places of internment in areas exposed to the dangers of war</p> <p style="text-align: right;">GC IV, Article 83</p> <p>The Detaining Power is bound to take all necessary and possible measures to ensure that internees are housed in a manner that affords every possible safeguard as regards hygiene and health</p> <p style="text-align: right;">GC IV, Article 85</p> <p>Under no circumstances should disciplinary measures be inhuman, brutal or dangerous for the health of internees.</p> <p style="text-align: right;">GC IV, Article 119</p>
<p>SUGGESTED SAFEGUARDS</p>	
<p>ACCESS TO LEGAL ASSISTANCE⁵⁴</p>	<p>International law does not expressly provide a right of legal assistance to internees in an IAC. However, the rights provided to internees are considered a "minimum." Commentary to the Fourth Geneva Convention also suggests that it is an "advantage" to provide further safeguards.⁵⁵</p>
<p>RIGHT TO ATTEND PROCEEDINGS IN PERSON⁵⁶</p>	<p>A detainee, along with their legal representative, should be allowed to be present at the initial review of the lawfulness of the detention, as well as during periodic reviews.⁵⁷</p>

CONDITIONS OF DETENTION	
RELIGIOUS PRACTICE	<p>The Detaining Power shall provide to detainees premises suitable for the holding of their religious services</p> <p style="text-align: right;">GC IV, Article 86</p> <p>Internees shall enjoy freedom in the exercise of their religious duties</p> <p style="text-align: right;">GC IV, Article 93</p> <p>Persons deprived of their liberty during a NIAC shall be allowed to practice their religion</p> <p style="text-align: right;">AP II, Article 5(4)(d)</p>
FOOD	<p>Daily food rations for internees shall be sufficient to keep internees in a good state of health</p> <p style="text-align: right;">GC IV, Article 89</p> <p>Persons deprived of liberty during a NIAC shall be provided with food and drinking water, along with being afforded safeguards for health and hygiene</p> <p style="text-align: right;">AP II, Article 5(4)(b)</p>
CLOTHING	<p>Detainees shall be provided or given the opportunity to provide themselves with the necessary clothing</p> <p style="text-align: right;">GC IV, Article 90</p>
FEMALE DETAINEES	<p>Women detained during an armed conflict shall be held in quarters separated from men's quarters.</p> <p style="text-align: right;">AP I, Article 75(5)</p> <p>Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault</p> <p style="text-align: right;">AP I, Article 76(4)</p>

Procedures for Preventive Detention in Domestic Law

PROCEDURAL SAFEGUARDS DURING PREVENTIVE DETENTION	
AUTHORITY TO DETAIN	<div style="text-align: center; background-color: #444; color: white; padding: 5px;">Article 10 Regime</div> <p>Protection of Pakistan Act, 2014</p> <ul style="list-style-type: none"> • Federal Government⁵⁸ • Armed Forces & Civil Armed Forces called under Article 245 of the Constitution through the procedure of the Anti-Terrorism Act⁵⁹ <p>Anti-Terrorism Act, 1997</p> <ul style="list-style-type: none"> • Federal Government⁶⁰ • Armed Forces⁶¹ • Civil Armed Forces⁶² <p>Maintenance of Public Order Ordinances, 1960</p> <ul style="list-style-type: none"> • Federal Government⁶³ • Provincial Government⁶⁴ <div style="text-align: center; background-color: #444; color: white; padding: 5px;">AACPR Regime</div> <ul style="list-style-type: none"> • Governor of Khyber Pakhtunkhwa⁶⁵ • Authorized Officer⁶⁶
TIME LIMIT ON DETENTION	<div style="text-align: center; background-color: #444; color: white; padding: 5px;">Article 10 Regime</div> <p>Constitution of Pakistan, Article 10</p> <ul style="list-style-type: none"> • 3 months⁶⁷ • May not exceed 8 or 12 months as prescribed⁶⁸ <p>Protection of Pakistan Act, 2014</p> <ul style="list-style-type: none"> • 90 days⁶⁹ • Enemy Alien detained for a period of time as determined in accordance with the Constitution⁷⁰ <p>Anti-Terrorism Act, 1997</p> <ul style="list-style-type: none"> • Initial period of 3 months⁷¹ • May not exceed 12 months⁷² <p>Maintenance of Public Order Ordinance, 1960</p> <ul style="list-style-type: none"> • 6 months in Sindh and Khyber Pakhtunkhwa⁷³ • 3 months in Punjab and Balochistan⁷⁴ <div style="text-align: center; background-color: #444; color: white; padding: 5px;">AACPR Regime</div> <ul style="list-style-type: none"> • The power to intern shall be valid from the date the order of internment is issued until the continuation of actions in aid of civil power.⁷⁵ • Review must take place within 120 days⁷⁶

RIGHT TO
CHALLENGE THE
LAWFULNESS OF
DETENTION

Article 10 Regime

Constitution of Pakistan, Article 10

- Every 3 months⁷⁷
- Detainee must be present for review to establish sufficient cause⁷⁸

Constitution of Pakistan, Article 199

- Any person may file an application directing that a person within the Court's jurisdiction be produced⁷⁹

Protection of Pakistan Act, 2014

- In accordance with Article 10⁸⁰

Anti-Terrorism Act, 1997

- Produce detainee in camera before judicial authority within 24 hours⁸¹
- Judicial authority means a presiding officer of the court, or District and Sessions Judge or Magistrate⁸²

Maintenance of Public Order Ordinance, 1960

- In accordance with Article 10⁸³

AACPR Regime

- The Interning Authority has the power to either accept a request for withdrawing an order of internment or may do so on its own⁸⁴
- The Interning Authority, after thorough review, may:
- turn down the request for the time being, or direct that the person is an offender and after the conclusion of the actions in aid of civil power he shall be handed over to the law enforcement agencies for formal prosecution; or accept the request and may also take an undertaking or guarantee from the family or the jirga or the community.⁸⁵

<p>REVIEW OF DETENTION BY AN INDEPENDENT IMPARTIAL BODY</p>	<p style="text-align: center;">Article 10 Regime</p> <p>Constitution of Pakistan Article 10</p> <ul style="list-style-type: none"> Review Board is appointed by the Chief Justice of Supreme Court and consists of a Chairman and two others, each current or former judges of the Supreme Court or a High Court⁸⁶ <p>Protection of Pakistan Act, 2014</p> <ul style="list-style-type: none"> Detention of persons shall be in line with Article 10⁸⁷ <p>Anti-Terrorism Act, 1997</p> <ul style="list-style-type: none"> Detention after 3 months is subject to the provisions of Article 10⁸⁸ <p>Article 199</p> <ul style="list-style-type: none"> On the application of any person, make an order directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner⁸⁹ <p style="text-align: center;">AACPR Regime</p> <p>Oversight Board for each internment center is comprised of two civilians and two military officers to review the case of each person interned within a period of time, not exceeding one hundred and twenty days, from the issuance of the Order of Internment⁹⁰</p>
<p>RIGHT TO PERIODIC REVIEW OF CONTINUED DETENTION</p>	<p style="text-align: center;">Article 10 Regime</p> <p>Constitution of Pakistan, Article 10</p> <ul style="list-style-type: none"> Every 3 months⁹¹ <p>Protection of Pakistan Act, 2014</p> <ul style="list-style-type: none"> Detention in accordance with Article 10⁹² <p>Anti-Terrorism Act, 1997</p> <ul style="list-style-type: none"> Further detention governed under Article 10⁹³ <p>Maintenance of Public Order Ordinance, 1960</p> <ul style="list-style-type: none"> Every 3 months⁹⁴

<p>RIGHT TO INFORMATION ON THE REASONS FOR DETENTION</p>	<p style="text-align: center;">Article 10 Regime</p> <p>Constitution of Pakistan, Article 10</p> <ul style="list-style-type: none"> • Disclose grounds within 15 days⁹⁵ <p>Protection of Pakistan Act, 2014</p> <p>The Detaining Authority may,</p> <ul style="list-style-type: none"> • in the interest of the security of its personnel • for the safety of the detainee • for any other reasonable cause <p>withhold the information except from a High Court or the Supreme Court regarding the location of the detainee or internment center established or information with respect to any detainee and his whereabouts⁹⁶</p> <p>The Government may choose NOT, in the interest of the security of Pakistan, to disclose the grounds for detention or divulge any information relating to a detainee who is an enemy alien or a militant.⁹⁷</p> <p>Maintenance of Public Order Ordinance, 1960</p> <p>Disclose grounds to detainee within 15 days⁹⁸</p>
<p>RIGHT TO BE REGISTERED AND HELD IN A RECOGNIZED PLACE OF INTERNMENT</p>	<p style="text-align: center;">Article 10 Regime</p> <p>Protection of Pakistan Act, 2014</p> <ul style="list-style-type: none"> • Detainee held in recognized place of detention as notified⁹⁹ • The Federal Government shall make Regulations to regulate the internment orders, internment camps, and appeal mechanisms against the internment orders.¹⁰⁰ <p>Anti-Terrorism Act, 1997</p> <ul style="list-style-type: none"> • Detainee kept in a detention center notified by Government¹⁰¹ and court officer has authority to inspect facilities¹⁰² <p>Maintenance of Public Order Ordinance, 1960</p> <ul style="list-style-type: none"> • Place of detention determined by Review Board¹⁰³ <p style="text-align: center;">AACPR Regime</p> <ul style="list-style-type: none"> • "internment center" means any compound, house, building, facility or any temporary or permanent structure that is notified by the Governor or any officer authorized by him to serve as a premises where persons are interned¹⁰⁴ • The Interning Authority shall issue an interning order in respect of each person who shall be kept in the internment center¹⁰⁵ • The Detaining Authority shall maintain a proper register of persons interned and also maintain their record¹⁰⁶

<p>ACCESS TO MEDICAL CARE</p>	<p style="text-align: center;">Article 10 Regime</p> <p>Anti-Terrorism Act, 1997</p> <ul style="list-style-type: none"> • Detainee shall be provided access to medical care¹⁰⁷ <p style="text-align: center;">AACPR Regime</p> <ul style="list-style-type: none"> • The Governor shall prescribe internment procedure¹⁰⁸ • "internment procedure" means procedures to be prescribed by the Governor in respect of the well being, food, health, treatment, religious freedom, visitation by family, counseling and psychological treatment etc., of the miscreants interned¹⁰⁹
<p>CONDITIONS OF DETENTION</p>	
<p>RELIGIOUS PRACTICE</p>	<p>Prison Rules, 1978 No undue interference with the religion of a prisoner is permitted</p> <p style="text-align: right;">Rule 684(i)</p> <p>Every prisoner is allowed to offer his devotions in a peaceful manner</p> <p style="text-align: right;">Rule 684(ii)</p> <p>AACPR, 2011</p> <ul style="list-style-type: none"> • Governor determines internment procedure¹¹⁰ • "internment procedure" means procedures to be prescribed by the Governor in respect of the well being, food, health, treatment, religious freedom, visitation by family, counseling and psychological treatment etc., of the miscreants interned¹¹¹
<p>FOOD</p>	<p>Prison Rules, 1978 State prisoners that are not allowed to fund a diet of their choice are provided the prison diet available for other convicted prisoners</p> <p style="text-align: right;">Rule 430</p> <p>AACPR, 2011</p> <ul style="list-style-type: none"> • Governor determines internment procedure¹¹² • "internment procedure" means procedures to be prescribed by the Governor in respect of the well being, food, health, treatment, religious freedom, visitation by family, counseling and psychological treatment etc., of the miscreants interned¹¹³

<p>CLOTHING</p>	<p>Prison Rules, 1978 State prisoners that are not maintaining themselves financially shall be provided with clothing, bedding and other necessaries as prescribed Rule 431</p>
<p>FEMALE DETAINEES</p>	<p>Prison Rules, 1978 The search of female prisoners shall be conducted by female staff Rule 21</p> <p>Women prisoners are to be kept separate from male prisoners, no matter the classification Rule 305</p> <p>Female prisoners, at all times, including outside the confines of the women's prison (i.e. during transfer) shall be accompanied by female prison staff Rule 311</p> <p>Women are provided with clothing and sanitary supplies as per their gender-specific needs Rule 518</p>

End Notes

- ¹ Commentary on the Protection of the Civilian Population, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, ¶ 3063 (1958) available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=D794403E436F0823C12563CD0042CF9A> [hereinafter 1958 Commentary].
- ² Jelena Pejic, Procedural Principles and Safeguards for Internment/ Administrative Detention in Armed Conflict and Other Situations of Violence, 87 ICRC REV. 375 (2005).
- ³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004.
- ⁴ Id.
- ⁵ Douglass Cassel, Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraints under International Law, 98 J. CRIM. L. & CRIMINOLOGY, 811, 820 (2008).
- ⁶ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, art. 75, 8 June 1977, 1125 UNTS 3. [hereinafter Protocol I].
- ⁷ Cassel, supra note 5, at 820.
- ⁸ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, art. 4, 8 June 1977, 1125 UNTS 609. [hereinafter Protocol II].
- ⁹ Cassel, supra note 5, at 820.
- ¹⁰ Id.
- ¹¹ Id.
- ¹² Protocol II, supra note 8, at Preamble.
- ¹³ Pejic, supra note 2, at 377.
- ¹⁴ Serdar Mohammed v. Ministry of Defence, [2014] EWHC 1369 (QB).
- ¹⁵ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art. 9(1) [hereinafter ICCPR].
- ¹⁶ Id. at art. 9(4).
- ¹⁷ CLAIRE MACKEN, Preventive Detention and the Right of Personal Liberty and Security under the International Covenant on Civil and Political Rights, 1966, 5.
- ¹⁸ UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, ¶ 12.
- ¹⁹ Id. ¶ 34.
- ²⁰ RULE 99, Customary International Humanitarian Law, Volume I: Rules, rule 99 (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule99.
- ²¹ Id.
- ²² Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 78, 12 August 1949, 75 UNTS 287 [hereinafter Geneva Convention IV].
- ²³ Id. at art. 42.
- ²⁴ Geneva Convention IV, supra note 22, at art. 78.
- ²⁵ Id. at art. 41.
- ²⁶ Pakistan Const. (1973) art. 10(4).
- ²⁷ Protection of Pakistan Act, 2014 (Act. No. X of 2014), § 6(1) [hereinafter PoPA].
- ²⁸ Id. at § 2(d).
- ²⁹ Id. at § 2(f).
- ³⁰ Anti-Terrorism Act, 1997 (Act. No. XXVII of 1997), at § 41EE(1) [hereinafter ATA].
- ³¹ Id. at § 41EEEE(1).
- ³² Id.
- ³³ Id.
- ³⁴ Id. at 377-78.
- ³⁵ ICCPR, supra note 15, at art. 4.
- ³⁶ Id. at art. 6(1).
- ³⁷ Id. at art. 7.
- ³⁸ Pejic, supra note 2.
- ³⁹ Id. at 380.
- ⁴⁰ Id. at 381.
- ⁴¹ Id. at FN 21.

- ⁴² Id. at 384-82.
- ⁴³ 1958 Commentary, supra note 1, at 367.
- ⁴⁴ Pejic, supra note 2, at 381.
- ⁴⁵ Id. at 382-83.
- ⁴⁶ Id. at 384.
- ⁴⁷ Id. at 384-85.
- ⁴⁸ Id. at 385-86.
- ⁴⁹ UN Human Rights Committee (HRC), General comment no. 29, Article 4 (States of Emergency), 31 August 2001, CCPR/C/21/Rev.1/Add.11, ¶ 16.
- ⁵⁰ Pejic, supra note 2, at 386-87.
- ⁵¹ 1958 Commentary, supra note 1, at 260.
- ⁵² Pejic, supra note 2, at 388-89.
- ⁵³ Id. at 390.
- ⁵⁴ Id. at 388.
- ⁵⁵ Id.
- ⁵⁶ Id. at 389.
- ⁵⁷ Id.
- ⁵⁸ PoPA, supra note 27, at § 6(1).
- ⁵⁹ Id. at § 6(2).
- ⁶⁰ ATA, supra note 30, at § 11EEEE.
- ⁶¹ Id. at § 11EEEE.
- ⁶² Id.
- ⁶³ West Pakistan Maintenance of Public Order Ordinance, 1960 (Act No. XXXI of 1960).
- ⁶⁴ Punjab Maintenance of Public Order Ordinance, 1960 (Act No. XXXI of 1960), § 3.
- ⁶⁵ Actions (in Aid of Civil Power) Regulations (2014) S.R.O. 11(6)F/L/2014, §8(1) [hereinafter AACPR].
- ⁶⁶ Id. at § 8(2).
- ⁶⁷ PAKISTAN CONST., supra note 26, at art. 10(4).
- ⁶⁸ Id. at art. 10(7).
- ⁶⁹ PoPA, supra note 27, at § 6(1).
- ⁷⁰ Id.
- ⁷¹ ATA, supra note 30, at § 11EEEE(1).
- ⁷² Id. at § 11EEEE(1).
- ⁷³ West Pakistan Maintenance of Public Order Ordinance, 1960, supra note 63 [with minor changes to provincial law].
- ⁷⁴ Punjab Maintenance of Public Order Ordinance, 1960, supra note 64 [identical to Balochistan's provincial law].
- ⁷⁵ AACPR, supra note 65, at § 11.
- ⁷⁶ Id. at 14(1).
- ⁷⁷ PAKISTAN CONST., supra note 26, at art. 10(4).
- ⁷⁸ Id.
- ⁷⁹ Id. at Art. 199(1)(b)(i).
- ⁸⁰ PoPA, supra note 27, at § 6(1).
- ⁸¹ ATA, supra note 30, at § 11EEEE(3).
- ⁸² Id.
- ⁸³ West Pakistan Maintenance of Public Order Ordinance, 1960, supra note 63.
- ⁸⁴ AACPR, supra note 65, at § 10(1).
- ⁸⁵ Id. at § 10.
- ⁸⁶ PAKISTAN CONST., supra note 26, at art. 10(4).
- ⁸⁷ PoPA, supra note 27, at § 6(1).
- ⁸⁸ ATA, supra note 30, at § 11EEEE(1).
- ⁸⁹ PAKISTAN CONST., supra note 26, at art. 199(1)(b)(i).
- ⁹⁰ AACPR, supra note 65, at § 14(1).
- ⁹¹ PAKISTAN CONST., supra note 26, at art. 10(4).
- ⁹² PoPA, supra note 27, at § 6(1).
- ⁹³ ATA, supra note 30, at § 11EEEE(1).
- ⁹⁴ Punjab Maintenance of Public Order Ordinance, 1960, supra note 64, at § 5-c.

- ⁹⁵ PAKISTAN CONST., *supra* note 26, at art. 10(5).
- ⁹⁶ PoPA, *supra* note 27, at § 9(2)(a).
- ⁹⁷ *Id.* at § 9(2)(b).
- ⁹⁸ West Pakistan Maintenance of Public Order Ordinance, 1960, *supra* note 63, at § 6.
- ⁹⁹ PoPA, *supra* note 27, at § 6(2).
- ¹⁰⁰ *Id.* at § 6(4).
- ¹⁰¹ ATA, *supra* note 30, at § 11EEEE(4).
- ¹⁰² *Id.*
- ¹⁰³ West Pakistan Maintenance of Public Order Ordinance, 1960, *supra* note 63.
- ¹⁰⁴ AACPR, *supra* note 65, at § 2(i).
- ¹⁰⁵ *Id.* at § 9(4).
- ¹⁰⁶ *Id.* at § 9(6).
- ¹⁰⁷ ATA, *supra* note 30, at § 11EEEE(5).
- ¹⁰⁸ AACPR, *supra* note 65, at § 9(7).
- ¹⁰⁹ *Id.* at § 2(i).
- ¹¹⁰ *Id.* at § 9(7).
- ¹¹¹ *Id.* at § 2(i).
- ¹¹² *Id.* at § 9(7).
- ¹¹³ *Id.* at § 2(i).

RESPONSIBILITY IN AN ARMED CONFLICT

I. Individual Responsibility

Individual Criminal Responsibility in IHL

INDIVIDUALS ARE CRIMINALLY RESPONSIBLE FOR WAR CRIMES THEY COMMIT¹

In IACs and NIACs, individuals may be held criminally liable for acts they commit that amount to war crimes. A person may also be held responsible for attempting, assisting, facilitating, aiding, abetting, planning and instigating the commission of war crimes under IHL.²

WHAT ARE WAR CRIMES?³

WAR CRIMES CONSTITUTE SERIOUS VIOLATIONS OF IHL WHEN COMMITTED AGAINST PROTECTED PERSONS OR OBJECTS

In IACs, the following list of grave breaches constitute war crimes:

- Willful killing
- Torture or inhuman treatment, including biological experiments
- Willfully causing great suffering or serious injury to body or health
- Extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly
- Compelling a prisoner of war or other protected person to serve in the forces of a hostile state
- Willfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial
- Unlawful deportation or transfer
- Unlawful confinement
- Taking of hostages

Other serious violations of IHL during an IAC include:

- committing outrages upon personal dignity, in particular, humiliating or degrading treatment and desecration of the dead
- enforced sterilization
- compelling the nationals of the adverse party to take part in military operations against their own party
- killing or wounding a combatant who has surrendered or is otherwise hors de combat; declaring that no quarter will be given
- making improper use of distinctive emblems indicating protected status, resulting in death or serious personal injury
- making improper use of the flag, the military insignia or uniform

- of the enemy resulting in death or serious personal injury
- killing or wounding an adversary by resort to perfidy
 - making medical or religious personnel, medical units or medical transports the object of attack
 - pillage or other taking of property contrary to international humanitarian law
 - destroying property not required by military necessity
 - making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack
 - launching an attack in the knowledge that such attack will cause incidental loss of civilian life, injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct military advantage anticipated
 - making non-defended localities and demilitarized zones the object of attack
 - subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - the transfer by the occupying power of parts of its own civilian population into the territory it occupies or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory
 - making buildings dedicated to religion, education, art, science or charitable purposes or historic monuments the object of attack, provided they are not military objectives.
 - making civilian objects, that is, objects that are not military objectives, the object of attack
 - using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by impeding relief supplies
 - making persons or objects involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations the object of attack, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law
 - launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the

- concrete and direct military advantage anticipated
- using prohibited weapons
- declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party
- using human shields
- conscripting or enlisting children under the age of 15 into armed forces, or using them to participate actively in hostilities
- committing sexual violence, in particular rape, sexual slavery, enforced prostitution and enforced pregnancy.
- slavery and deportation to slave labor
- collective punishments
- despoliation of the wounded, sick, shipwrecked or dead
- attacking or ill-treating a parlementaire or bearer of a flag of truce
- unjustifiable delay in the repatriation of prisoners of war or civilians
- the practice of apartheid or other inhuman or degrading practices involving outrages on personal dignity based on racial discrimination
- launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects
- launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive incidental loss of civilian life, injury to civilians or damage to civilian objects.

Serious violations of Common Article 3 include:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
- committing outrages upon personal dignity, in particular humiliating and degrading treatment
- taking of hostages
- the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Other serious violations of IHL during a NIAC:

- Making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack
- Pillage

- Committing sexual violence, in particular, rape, sexual slavery, enforced prostitution, enforced sterilization and enforced pregnancy
- Ordering the displacement of the civilian population for reasons related to the conflict and not required for the security of the civilians involved
- Subjecting persons in the power of the adversary to medical or scientific experiments of any kind not necessary for the health of the persons concerned and seriously endangering their health
- Declaring that no quarter will be given;
- Making medical or religious personnel or related objects the aim of attack
- Conscripting or enlisting children under the age of 15 into the armed forces or armed groups, or using them actively in hostilities
- Making religious or cultural objects the object of attack, provided that they are not military objectives
- Making civilian objects the object of attack
- Seizing property of the adverse party not required by military necessity
- Making persons or objects involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations the object of attack, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law
- Killing or wounding an adversary by resort to perfidy
- Using prohibited weapons
- Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage
- Making non-defended localities and demilitarized zones the object of attack
- Using human shields
- Slavery
- Collective punishments
- Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by impeding relief supplies.

What does “serious” imply?

1. Crimes that endanger protected persons or objects
The majority of war crimes involve death, injury, destruction or unlawful taking of property. However, not all acts necessarily have to result in actual damage to persons or objects in order to amount to war crimes..
2. Crimes that breach important values
Acts may amount to war crimes because they breach important values, even without physically endangering persons or objects directly. These include, for example, abusing dead bodies; subjecting persons to humiliating treatment; making persons undertake work that directly help the military operations of the enemy; violation of the right to fair trial; and recruiting children under 15 years of age into the armed forces

Regarding IACs, there is a well-established history of holding individuals responsible for war crimes. This is also a long-standing rule of customary IHL also captured in the Statute of the International Criminal Tribunal for the former Yugoslavia and the Statute of the International Criminal Court, for example.⁴

For NIACs, the concept of individual criminal responsibility was included in more recent treaties, including: Amended Protocol II to the Convention on Certain Conventional Weapons; the Statute of the International Criminal Court; and the Second Protocol to the Hague Convention for the Protection of Cultural Property. The accepted application of individual criminal responsibility for war crimes is explicit through the Statute for the International Criminal Tribunal for Rwanda, for the Special Court for Sierra Leone and in numerous domestic laws and military manuals.⁵

Disobedience of Manifestly Unlawful Orders

EVERY COMBATANT HAS A DUTY TO DISOBEY A MANIFESTLY UNLAWFUL ORDER.

Rule 154, CIHL

MANIFESTLY UNLAWFUL ORDERS...⁶

This rule flows from the duty to respect IHL and is connected to the rule that obeying a superior order is NOT a defense of a war crime, if the subordinate should have known that the act ordered was

unlawful because of its manifestly unlawful nature.

UNLAWFUL ORDERS...

With respect to the position of a combatant who disobeys an order that is unlawful, but not manifestly so, practice is unclear.

Individual Criminal Responsibility in Domestic Law

The Nüremberg principles, involving as they did the grave problems of war and peace, were of great importance and deep significance to international law. They proclaimed that ... those who violated the laws [and] customs of war or committed inhuman acts against civilian populations thereby rendered themselves guilty of international crimes and liable to judgment and punishment

Statement of Pakistan before the Sixth Committee of the UN General Assembly⁸

PAKISTAN ARMY ACT, 1952

Any person subject to this Act who, on active service, commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving shall, on conviction by Court Martial, be punished with rigorous imprisonment for a term which may extend to fourteen years, or with such less punishment as is in this Act mentioned.⁹

Any person subject to this Act who commits any of the following offences that is to say:

Is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind

shall, on conviction by Court Martial, be punished with rigorous imprisonment for a term, which may extend to ten years or with such less punishment as is in this Act mentioned.¹⁰

PAKISTAN PENAL CODE, 1860

Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within Pakistan¹¹

Any person liable, by any Pakistan Law, to be tried for an offence committed beyond Pakistan shall be dealt with according to the provisions of this Code for any act committed beyond Pakistan in the same manner as if such act had been committed within Pakistan.¹²

The provisions of this Code apply also to any offence committed by:

(1) any citizen of Pakistan or any person in the service of Pakistan in any place without and beyond Pakistan¹³

CODE OF CRIMINAL PROCEDURE, 1898

When a citizen of Pakistan commits an offence at any place without and beyond the limits of Pakistan, or when a servant of the State (whether a citizen of Pakistan or not commits an offence in [a tribal area,] when any person commits an offence on any ship or aircraft registered in Pakistan wherever it may be, he may be dealt with in respect of such offence as if it had been committed at any place within Pakistan at which he may be found¹⁴

POLICE ORDER, 2002

Any police officer who:

Is guilty of any willful breach or neglect of any provision of law or of any rule or regulation or any order, which he is bound to observe or obey shall, on conviction, for every such offence be punished with imprisonment for a term, which may extend to three years and with fine.¹⁵

Whoever, being a police officer:

Inflicts torture or violence to any person in his custody shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine.¹⁶

SUBE KHAN V. STATE
(PLD 1959 (W.P) Lahore 541)

To entitle a person to claim the benefit of Section 76 it is necessary to show the existence of a state of facts which would justify the belief in good faith, interpreting the later expression with reference to Section 52, that the person to whom the order was given was bound by law to obey it.

Thus, in the case of a soldier, the Penal Code does not recognize the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequences of his act. Difficult as the position may appear to be, the law requires that the soldier should exercise his own judgment, and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible like any other sane person for his act, although he may have committed it under the erroneous supposition that his superior was by law authorized to issue the order.

His mistake in short must be a mistake entertained in good faith on a question of act. Such a construction of the law may indeed subject the soldier to military penalties and in certain cases, place him in the serious dilemma of either refusing to obey an order which he believed to be unjustifiable in fact, thereby, rendering himself liable to military law, or, by obeying it, to subject himself to the general criminal law of the land. But on a balance of considerations the legislature has deemed it wise for the safety of the community that no special exemption should be allowed to a soldier who commits what would ordinarily be a penal offence from that enjoyed by any other person, who does the same act believing in good faith that he is bound by law to do it. A mistake of law in either case would afford no protection, though it might go in mitigation of punishment and thus military discipline, while it regulates the conduct of a soldier in military matters is made subject to a higher law in favor of public safety, when the act which the military discipline attempts to enforce or to justify is one which affects the person or property of another. In such a case the civil law looks to the surrounding circumstances to see whether they are of such a character as would lead a man of ordinary intelligence to entertain a reasonable belief that he is bound by law to obey the command of his superior.¹⁷

II. Command Responsibility

Command Responsibility in IHL

COMMAND RESPONSIBILITY FOR ORDERS TO COMMIT WAR CRIMES

Commanders and other superiors are criminally responsible for war crimes committed pursuant to their orders¹⁸

The commander can be held directly responsible for ordering his subordinates to carry out unlawful acts. In this context, subordinates who invoke the defense of superior orders may avoid liability depending on whether, in the circumstances, they should have obeyed or disobeyed the order of superiors.¹⁹

Some state practice indicates that this rule relates to orders issued specifically by commanders or superiors. However, there is other practice that suggests that orders generally issued by any person also qualify. Case law from international tribunals in Rwanda and the former Yugoslavia indicate that no formal superior-subordinate relationship is required, the giving and receiving of orders implies at least that this relationship exists de facto.²⁰

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention²¹

Grave breaches ...

[S]hall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.²²

This concept of command responsibility applies to both IACs and NIACs.²³ Like the concept of individual responsibility, command

responsibility is also captured extensively in domestic laws and military manuals.²⁴

COMMAND RESPONSIBILITY FOR FAILURE TO PREVENT, REPRESS OR REPORT WAR CRIMES

Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible²⁵

Command or superior responsibility arises where the commander may be held liable for a subordinate's unlawful conduct. This concept of command responsibility is a form of indirect responsibility and is based on the commander's failure to act.²⁶

In NIACs, the law and practice is less extensive. Nevertheless, the application of this rule during internal conflicts is uncontroversial. Statutes for the International Criminal Court and for the tribunals in the former Yugoslavia and Rwanda explicitly provide for such liability in NIACs.²⁷

LIABILITY FOR CIVILIAN COMMAND AUTHORITY

NOT ONLY MILITARY PERSONNEL BUT ALSO CIVILIANS CAN BE LIABLE FOR WAR CRIMES ON THE BASIS OF COMMAND RESPONSIBILITY.

The International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia have adopted this principle. It is also contained in the Statute of the International Criminal Court. The Statutes of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone refer in general terms to a "superior," as do many military manuals and national legislation²⁸

A commander must give priority, where they know or have reason to

know that their subordinates are about to commit crimes, to prevent these crimes from being committed and that the commander “cannot make up for the failure to act by punishing the subordinates afterwards.”²⁹ It may be the case that a commander may be able to “discharge his obligation to prevent or punish an offence by reporting the matter to the competent authorities.”³⁰

Command Responsibility in Domestic Law

It will be appreciated that the duties of a Commander vis-à-vis his army personnel and in respect of the enemy are a lot more extensive as compared to the duties of a Commander-in-Chief [...] He had not only to look into the material welfare and material well being of the personnel but also to their morals. He had to take steps to the implementation of the Sharia limits. He had also to see that his men do not commit any act in respect of the enemy, which is disapproved or prohibited in the instructions given by the Holy Prophet, his companions and later Caliphs and that every one was dealt with justly according to the principles of natural justice. He had to be careful that his troops do not commit breach of trust, treachery, not mutilate anybody or kill an old man, a minor or woman, do not destroy church or disturb churchmen or hermits, do not burn cultivation, destroy palm or fruit trees or even inundate them, do not take even straw for fodder without payment, do not stay in another person's house without willing permission of the owner.³¹

In re Pakistan Armed Forces Nursing Services Act, 1952

PAKISTAN ARMY ACT, 1952

Any person subject to [the Pakistan Army Act] who disobeys in such a manner as to show a willful defiance of authority, a lawful command given personally by his superior officer, knowing or having reason to believe him to be such, shall, on conviction by Court Martial, be punished...³²

The implication of this section is that there is not a duty to obey an unlawful command and through further assumption, that the giving of unlawful commands is not permitted. The use of the term “lawful,” therefore, binds both the superior and the subordinate to give and to obey a command that is lawful.

End Notes

- ¹ RULE 151, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule151.
- ² Id.
- ³ RULE 156, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule156.
- ⁴ Rule 151, supra note 1.
- ⁵ Id.
- ⁶ RULE 154, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule154.
- ⁷ Id.
- ⁸ Statement before the Sixth Committee of the U.N. General Assembly, UN Doc A/C.6/SR.236, § 38 (Nov. 9, 1950).
- ⁹ Pakistan Army Act, 1952 (Act No. XXXIX of 1952) § 27.
- ¹⁰ Id. at § 41.
- ¹¹ Pakistan Penal Code, 1860 (Act No. XLV of 1860), § 2.
- ¹² Id. at § 3.
- ¹³ Id. at § 4(1).
- ¹⁴ Code of Criminal Procedure, 1898 (Act No. V of 1898) § 188.
- ¹⁵ Police Order (2002) § 155.
- ¹⁶ Id. at § 156.
- ¹⁷ Sube Khan V the State, PLD 1959 (WP) Lahore 541.
- ¹⁸ RULE 152, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule152.
- ¹⁹ International Committee of the Red Cross, Command Responsibility and Failure to Act, Advisory Service on IHL, 1 (Apr. 2014) [hereinafter Command Responsibility and Failure to Act].
- ²⁰ Rule 152, supra note 18.
- ²¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 49, 12 August 1949, 75 UNTS 31 [hereinafter Geneva Convention I]; International Committee of the Red Cross, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 50, 12 August 1949, 75 UNTS 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 129, 12 August 1949, 75 UNTS 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 146, 12 August 1949, 75 UNTS 287.
- ²² Geneva Convention I, supra note 21, at art. 50.
- ²³ Rule 152, supra note 18.
- ²⁴ Id.
- ²⁵ RULE 153, Customary International Humanitarian Law, Volume I: Rules (2005) available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule153.
- ²⁶ Command Responsibility and Failure to Act, supra note 19, at 1.
- ²⁷ Rule 153, supra note 25.
- ²⁸ Id.
- ²⁹ Id.
- ³⁰ Id.
- ³¹ In re Pakistan Armed Forces Nursing Services Act, 1952, PLD 1985 FSC 365, ¶ 36.
- ³² Pakistan Army Act, supra note 9, at § 33.

CHART OF DOMESTIC LAW COMPLIANCE

The following charts indicate the degree of compliance that Pakistan has sustained with the four Geneva Conventions and their two Additional Protocols. Annex I is intended to provide a visual representation of those provisions of Geneva Conventions I-IV and Additional Protocols I and II that were implemented fully through law and practice (Green); those that were implemented partially through practice, but not through law (Yellow); and those provisions that are as of yet unimplemented (Red). Indications of Yellow or Red, however, do not imply that Pakistan's law or practice is inconsistent with or contrary to these instruments of humanitarian law.

Key

■ **DIRECT IMPLEMENTATION**

The Article is directly or clearly implemented through law and practice

■ **INDIRECT OR PARTIAL IMPLEMENTATION**

The Article is implemented indirectly through practice or partially through law

■ **NO IMPLEMENTATION**

Neither law nor practice exist regarding this Article

GENEVA CONVENTION I












Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

Article	Compliance	Applicable Domestic Law
Article 1	■	Geneva Convention Implementing Act, 1936
Article 2	■	Armed Forces Special Power Ordinance, 1942
Article 3	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Pakistan Penal Code 1860; Actions (in Aid of Civil Power) Regulation, 2011; Protection of Pakistan Act, 2014; Anti-Terrorism Act, 1997; Rangers Ordinance, 1959; Police Order, 2002
<p>Article 3 Notes: The obligation to oversee the implementation of Article 3 rests primarily with General Headquarters (GHQ) and Joint Services Headquarters of the Pakistan Army. The existence of a non-international armed conflict (NIAC) within Pakistan may be signaled by the application of Article 245 of the Constitution of Pakistan, 1973, the declaration of an emergency.</p>		
Article 4	■	Indicated through state practice
Article 6	■	Pakistan Army Act, 1952
Article 9	■	No provision provides automatic right of <i>access</i> . However, Pakistan has allowed certain access in the past.
Article 12	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952



Article 13	■	Indicated through state practice, but may be improved
Article 13 Notes: Amendments should be brought about in the Pakistan Army Act, 1952 to more fully comply with the Convention and protect the wounded and sick belonging to enemy armed forces in order to foster mutual protection of those wounded and sick from Pakistan detained elsewhere.		
Article 14	■	See Article 13 Notes
Article 15	■	Indicated through state practice, but may be improved
Article 16	■	Indicated through state practice, but may also be incorporated through a specific law
Article 17	■	Indicated through state practice, but may also be incorporated through a specific law
Article 18	■	No such practice exists to date
Article 18 Notes: The Enemy Agents Ordinance, 1943, may be amended to create an exception as per the provisions of Article 18.		
Article 19	■	Indicated through state practice, but may also be incorporated through an amendment
Article 19 Notes: The Cantonment Regulatory Authority has the power to establish and maintain within and outside of the cantonment area medical facilities in accordance with The Cantonments Act, 1924. However, the law neither specifies that these facilities be erected away from military objectives nor that there may be special procedures for medical establishments created in an area of armed conflict.		
Article 21	■	No such legal provisions exist in Pakistan's domestic law

Article 22	■	Indicated through state practice, but may also be incorporated through an amendment; See Article 19 Notes
Article 23	■	No such agreement exists to date
Article 24	■	Indicated through state practice, but may also be incorporated through an amendment
Article 24 Notes: The relevant provisions of the Red Crescent Society Act, 1920 may be amended to enable implementation of these articles. This will in effect afford protection to Red Cross employees and various categories of protected medical personnel.		
Article 25	■	See Article 24 Notes
Article 26	■	See Article 24 Notes
Article 27	■	See Article 24 Notes
Article 28	■	No such agreement exists to date
Article 29	■	No such legal provisions exist in Pakistan's domestic law
Article 30	■	Indicated through state practice, but may also be incorporated through a specific law
Article 31	■	No such agreement exists to date
Article 32	■	Indicated through state practice, but may also be incorporated through a specific law

Article 33	■	May be incorporated through an amendment to the Cantonment Act, 1924
Article 34	■	Indicated through state practice, but may also be incorporated through an amendment
<p>Article 34 Notes: The Red Crescent Society Act, 1920 should be amended to state that during conflict, property of the recognized societies shall be regarded as private property and therefore immune from the right of requisition. Under Article 176 of the Pakistan Army Act, 1952, a notification may be issued prohibiting its field commanders from requisitioning property belonging to recognized aid societies unless there is a pressing military need.</p>		
Article 35	■	No such legal provisions exist in Pakistan's domestic law
Article 36	■	Existing treaties may be amended to include medical aircrafts as an exception
<p>Article 36 Notes: For operational purposes, the Air Headquarters may be authorized to allow Article 36 permission to medical aircraft of enemy countries. Under the Pakistan Air Force Act, 1953 the central government was provided rule-making powers in this regard. The central government can issue a notification empowering the Air Headquarters to enter into mutual agreements, with regard to such permissions, during the times of hostilities with its counterpart in the enemy state. In addition, the Civil Aviation Rules, 1994, particularly Rules 367 and 368, may be expanded to include specific exceptions for medical aircraft.</p>		
Article 37	■	See Article 36 Notes
Article 38	■	Geneva Convention Implementing Act, 1936
<p>Article 38 Notes: The schedule of the Pakistan Names and Emblems (Prevention of Unauthorized Use) Act, 1957 may also</p>		

be amended to protect the emblem in accordance with Article 38.		
Article 39		Indicated through state practice, but may also be incorporated through further amendment to the Geneva Convention Implementing Act, 1936
Article 40		No such legal provisions exist in Pakistan's domestic law
Article 41		No such legal provisions exist in Pakistan's domestic law
Article 42		Indicated through state practice, but may also be incorporated through an amendment
Article 44		Geneva Convention Implementing Act, 1936
Article 45		Under the powers of the President of Pakistan
Article 46		Actions (in Aid of Civil Power) Regulations, 2011
Article 47		Partially indicated through state practice
Article 49		Pakistan Army Act, 1952; Pakistan Army Rules, 1954
Article 49 Notes: Article 49 is a substantive provision and must be implemented within specific legislation. The law implementing this Article will have to incorporate a provision, whereby, Pakistan will undertake not to absolve itself, its Armed Forces or any other party, of liabilities incurred in respect of grave breaches.		
Article 50		See Article 49 Notes
Article 52		Partially indicated through state practice










Article 52 Notes: Pakistan's domestic law, in spirit, upholds Article 52 by allowing individual inquiries in instances of wrongdoing by armed forced personnel. The Pakistan Army Act, 1952, for example, lays down a procedure for holding army personnel accountable. It is interesting to note that the Hamood-ur-Rehman Commission Report refers to several instances in which army personnel were court martialed for violations of the Geneva Conventions.

Article 53		See Article 38 Notes
Article 54		See Article 38 Notes

GENEVA CONVENTION II

Geneva Convention for the Amelioration of the Condition
of the Wounded, Sick and Shipwrecked Members of
Armed Forces at Sea

Article	Compliance	Applicable Domestic Law
Article 1	■	Geneva Convention Implementing Act, 1936
Article 2	■	Armed Forces Special Power Ordinance, 1942
Article 3	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Pakistan Penal Code 1860; Actions (in Aid of Civil Power) Regulation, 2011; Protection of Pakistan Act, 2014; Anti- Terrorism Act, 1997; Rangers Ordinance, 1959; Police Order, 2002
<p>Article 3 Notes: The obligation to oversee the implementation of Article 3 rests primarily with General Headquarters (GHQ) and Joint Services Headquarters of the Pakistan Army. The existence of a non-international armed conflict (NIAC) within Pakistan may be signaled by the application of Article 245 of the Constitution of Pakistan, 1973, the declaration of an emergency.</p>		
Article 4	■	No such legal provisions exist in Pakistan's domestic law
Article 5	■	May be incorporated through an amendment to the Pakistan Army Act, 1952
Article 6	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 7	■	No such legal provisions exist in Pakistan's domestic law

Article 9		No provision provides automatic right of access. However, Pakistan has allowed certain access in the past.
Article 10		No such agreement exists to date
Article 11		No such legal provisions exist in Pakistan's domestic law
Article 11 Notes: Since Pakistan, under its domestic law, has no legal basis to take on the functions of a Protecting Power as per the Convention, the significance of the Article is reduced. This could, however, change if a legal basis is provided to Pakistan under its own laws to act as a protecting power.		
Article 12		Constitution of Pakistan, 1973; Pakistan Penal Code, 1860; Pakistan Naval Ordinance, 1961
Article 13		No such legal provisions exist in Pakistan's domestic law
Article 13 Notes: The Pakistan Navy Ordinance, 1961 establishes the scope of its application within Section 2. Although, in part, those mentioned in Article 13 of the Convention are reflected within Section 2, the Ordinance may be expanded. Section 2, at present, falls short of recognizing and conferring a status of respect and protection on wounded, sick or shipwrecked persons belonging to Pakistan or the enemy.		
Article 14		No such legal provisions exist in Pakistan's domestic law
Article 15		No such legal provisions exist in Pakistan's domestic law
Article 16		May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 17		No such legal provisions exist in Pakistan's domestic law

Article 18	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
<p>Article 18 Notes: In the Navy Ordinance, 1961, no such competence exists for local arrangements for the removal of the wounded and sick by sea from a besieged or encircled area and for the passage of medical personnel to that area is provided. It is believed that operational instructions exist to commanding officers whereby they may allow such local arrangements on an ad hoc basis. However, such instructions have only a spontaneous character and operate more through functional necessity as opposed to a defined obligation under the Convention.</p>		
Article 19	■	No such legal provisions exist in Pakistan's domestic law
Article 20	■	No such legal provisions exist in Pakistan's domestic law
Article 21	■	May be done on an ad-hoc basis
Article 22	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 24	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
<p>Article 24 Notes: To incorporate the above provisions, several amendments to the Ordinance are required. It is highly recommended that the provisions of this Article be included as standard operating procedures. For example, commanding officers on board naval ships and naval vessels, as defined in the Ordinance, may issue specific instructions to ensure the protection of the wounded, sick and shipwrecked.</p>		
Article 25	■	See Article 24 Notes
Article 26	■	See Article 24 Notes

Article 27	■	See Article 24 Notes
Article 28	■	See Article 24 Notes
Article 29	■	See Article 24 Notes
Article 30	■	See Article 24 Notes
Article 31	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 32	■	No such legal provisions exist in Pakistan's domestic law
Article 33	■	No such legal provisions exist in Pakistan's domestic law
Article 34	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 34 Notes: The implementation of this Article is essential as it serves as a deterrent to the commanding officers of hospital ships thereby limiting the potential for violation of the limits prescribed by this Article.		
Article 35	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 36	■	May be incorporated through amendments to the Pakistan Navy Ordinance, 1961 and the Merchant Shipping Ordinance, 2001
Article 37	■	May be incorporated through amendments to the Pakistan Navy Ordinance, 1961 and the Merchant Shipping Ordinance, 2001

Article 38	■	No such agreement exists to date
Article 39	■	No such agreement exists to date
Article 40	■	No such agreement exists to date
Article 41	■	Indicated through state practice, but may also be incorporated through further amendment to the Geneva Convention Implementing Act, 1936
Article 42	■	No such legal provisions exist in Pakistan's domestic law
Article 43	■	May be incorporated through an amendment to the <i>Pakistan Navy Ordinance, 1961</i>
<p>Article 43 Notes: There is no specific provision within the Pakistan Navy Ordinance, 1961. However, from state practice, it is evident that at an operational level, instructions may be issued which facilitate the identification of hospital ships. These instructions are only provided as needed, thus their incorporation into the Navy Ordinance would fulfill the obligations of Article 43.</p>		
Article 44	■	Geneva Convention Implementing Act, 1936
Article 45	■	Geneva Convention Implementing Act, 1936
Article 53	■	No such agreement exists to date

GENEVA CONVENTION III













Geneva Convention Relative to the Treatment of Prisoners of War

Article	Compliance	Applicable Domestic Law
Article 1	■	Geneva Convention Implementing Act, 1936
Article 2	■	Armed Forces Special Power Ordinance, 1942
Article 3	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Pakistan Penal Code 1860; Actions (in Aid of Civil Power) Regulation, 2011; Protection of Pakistan Act, 2014; Anti-Terrorism Act, 1997; Rangers Ordinance, 1959; Police Order, 2002
<p>Article 3 Notes: The obligation to oversee the implementation of Article 3 rests primarily with General Headquarters (GHQ) and Joint Services Headquarters of the Pakistan Army. The existence of a non-international armed conflict (NIAC) within Pakistan may be signaled by the application of Article 245 of the Constitution of Pakistan, 1973, the declaration of an emergency.</p>		
Article 4	■	Regulation III of 1818; Prisons Act, 1894; Prisoners Act, 1900; Prisons Rules, 1978
<p>Article 4 Notes: No direct legislation codifying the protection or treatment of prisoners of war (POWs) exists to date within Pakistan. However, various laws including Regulation III of 1818, the Prisons Act, 1894, the Prisoners Act, 1900 and the Prisons Rules, 1978 may indirectly, but through no specific language, provide legal protection to POWs. The Prisons Rules, 1978, as affirmed by the Karachi High Court specifically cover "state prisoners" as illustrated in Regulation III of 1818. This</p>		











<p>Regulation extends the coverage of the Prisons Rules, 1978 to cover those against "whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adopted to the nature of the case, or may for other reasons be unadvisable or improper." However, this does not mean that the extensive categories of POWs within Article 4 are expressly covered in these laws. Thus, the relevant laws may be amended to further comply with Article 4 requirements.</p>		
Article 5	■	Indicated through state practice
Article 6	■	The Federal Government has the power to enact the provisions of Article 6; nonetheless, this power has not vested in any specific government agency or organ.
Article 7	■	No such legal provisions exist in Pakistan's domestic law
Article 9	■	No provision provides automatic right of access. However, Pakistan has allowed certain access in the past.
Article 12	■	May be incorporated through amendments to the Prisons Rules, 1978
<p>Article 12 Notes: The transfer of "state prisoners," under which POWs may be included, only prohibits the domestic transfer of these prisoners without special orders of the Government under Rule 428 of the Prisons Rules, 1978. There is no law that expressly incorporates the provisions of Article 12.</p>		
Article 13	■	May be further incorporated through amendments to the Prisons Rules, 1978
<p>Article 13 Notes: Though the Prisons Rules, 1978 substantially cover the treatment of prisoners, including state prisoners, the Federal Government is in the process of adopting the United</p>		
















<p>Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) into domestic law. The various laws related to the treatment of prisoners provide after-the-fact protection to those seeking contact with Medical Officers. Thus, the full adoption of a law banning torture and other such treatment will provide preemptive coverage to POWs and all classes of persons in custody.</p>		
Article 14	■	Constitution of Pakistan, 1973; Prisons Rules, 1978
Article 15	■	Regulation III of 1818; Prisons Rules, 1978
Article 16	■	Regulation III of 1818; Constitution of Pakistan, 1973
Article 17	■	Regulation III of 1818; Prisons Rules, 1978
<p>Article 17 Notes: Although the Prisons Rules, 1978 provide substantial detail on the procedure of identification of prisoners, there is no specific provision that details required identification that includes the particulars listed within Article 17, even for state prisoners. Further, the limits on questioning a POW and prohibitions on torture and other such treatment are not firmly codified.</p>		
Article 18	■	May be further incorporated through amendments to the Prisons Rules, 1978
<p>Article 18 Notes: Although the Prisons Rules, 1978, contain detailed provisions on the treatment of the property of prisoners, there is no specific exception for state prisoners, whereby they may retain possession of their property in most circumstances. Thus, the relevant laws may be amended to further provide this right as per Article 18.</p>		
Article 19	■	No such legal provisions exist in Pakistan's domestic law
Article 20	■	No such legal provisions exist in Pakistan's domestic law













Article 21	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 22	■	May be further incorporated through amendments to the Prisons Rules, 1978 and Regulation III of 1818
Article 23	■	No such legal provisions exist in Pakistan's domestic law
Article 24	■	No such legal provisions exist in Pakistan's domestic law
Article 25	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 26	■	May be further incorporated through amendments to the Prisons Rules, 1978 and Regulation III of 1818
Article 26 Notes: The Prisons Rules, 1978 specifically addresses minimum standards for the diet of prisoners and also state prisoners. However, further amendments may better incorporate the provisions of Article 26, regarding, for example, the maintenance of the health of POWs.		
Article 27	■	Regulation III of 1818; Prisons Rules, 1978
Article 28	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 28 Notes: Although state prisoners are permitted to maintain themselves if approved and if they so desire, there are no specific provisions for the establishment of canteens.		
Article 29	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 30	■	Prisons Rules, 1978

















<p>Article 30 Notes: Though the Prisons Rules, 1978 do not specify the requirement for infirmaries in prison camps, the definition of prison is sufficiently broad that a camp established for POWs will necessarily receive the benefit of coverage of these Rules and thus the extensive laws regarding medical care therein shall also apply.</p>		
Article 31		See Article 30 Notes
Article 32		No such legal provisions exist in Pakistan's domestic law
Article 33		No such legal provisions exist in Pakistan's domestic law
Article 34		Constitution of Pakistan, 1973; Prisons Rules, 1978
Article 35		No such legal provisions exist in Pakistan's domestic law
Article 36		No such legal provisions exist in Pakistan's domestic law
Article 37		May be further incorporated through amendments to the Prisons Rules, 1978
Article 38		May be further incorporated through amendments to the Prisons Rules, 1978
Article 39		No such legal provisions exist in Pakistan's domestic law
Article 40		No such legal provisions exist in Pakistan's domestic law
Article 41		May be further incorporated through amendments
<p>Article 41 Notes: The requirements specified in Article 41 are, in spirit, met by the Prisons Rules, 1978; they only require inclusion of the present Convention.</p>		
Article 42		Prisons Rules, 1978













Article 43	■	No such legal provisions exist in Pakistan's domestic law
Article 44	■	May be further incorporated through amendments to the Prisons Rules, 1978 and Regulation III of 1818
Article 45	■	May be further incorporated through amendments to the Prisons Rules, 1978 and Regulation III of 1818
Article 46	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 46 Notes: Rule 428 of the Prisons Rules, 1978 states, "No state prisoner shall be transferred from one prison to another, except under the special orders of the Government." Thus, further amendments are required to better adopt the Article's requirements to domestic law.		
Article 47	■	See Article 46 Notes
Article 48	■	See Article 46 Notes
Article 49	■	Prisons Rules, 1978
Article 49 Notes: The Prisons Rules, 1978 do not contain specific provisions regarding the labor of POWs. However, the Rules do specify that "simple imprisonment prisoners," for example, may choose not to labor. By analogy, therefore, it may also be the case that POWs would receive a similar option as they are of a similar status.		
Article 50	■	Prisons Rules, 1978
Article 50 Notes: The Prisons Rules provide that classes of prisoners that are subject to simple imprisonment are permitted to choose such work as may be available in the prison. Again, POWs as a class are not mentioned specifically,		

however, the framework for simple imprisonment prisoners may be employed by analogy.		
Article 51		May be further incorporated through amendments to the Prisons Rules, 1978 and Prisons Act, 1894
Article 52		May be further incorporated through amendments to the Prisons Rules, 1978
Article 53		May be further incorporated through amendments to the <i>Prisons Rules, 1978 and Prisons Act, 1894</i>
Article 54		May be further incorporated through amendments to the Prisons Rules, 1978 and Prisons Act, 1894
Article 55		Prisons Act, 1894
Article 56		No such legal provisions exist in Pakistan's domestic law
Article 57		May be further incorporated through amendments to the Prisons Rules, 1978
Article 57 Notes: At present, the Prisons Rules, 1978 ban private work or service for prisoners of all classes. It may be assumed that the same is true for state prisoners and POWs, but a specific exception may be created within the law as needed.		
Article 58		No such legal provisions exist in Pakistan's domestic law
Article 59		No such legal provisions exist in Pakistan's domestic law
Article 60		No such legal provisions exist in Pakistan's domestic law

Article 61		May be further incorporated through amendments to the Prisons Rules, 1978 and Prisons Act, 1894
Article 62		May be further incorporated through amendments to the Prisons Act, 1894
Article 63		May be further incorporated through amendments to the Prisons Act, 1894
Article 64		No such legal provisions exist in Pakistan's domestic law
Article 65		No such legal provisions exist in Pakistan's domestic law
Article 66		No such legal provisions exist in Pakistan's domestic law
Article 67		No such legal provisions exist in Pakistan's domestic law
Article 68		No such legal provisions exist in Pakistan's domestic law
Article 69		No such legal provisions exist in Pakistan's domestic law
Article 70		May be further incorporated through amendments to the Prisons Rules, 1978
Article 71		May be further incorporated through amendments to the Prisons Rules, 1978
Article 72		No such legal provisions exist in Pakistan's domestic law
Article 73		No such legal provisions exist in Pakistan's domestic law
Article 74		No such legal provisions exist in Pakistan's domestic law
Article 75		No such legal provisions exist in Pakistan's domestic law

Article 76		Prisons Rules, 1978
Article 77		No such legal provisions exist in Pakistan's domestic law
Article 78		May be further incorporated through amendments to the Prisons Rules, 1978
Article 78 Notes: The Prisons Rules, 1978 provide that every complaint made by a prisoner should be given due attention so that genuine grievances may be addressed and remedied. These provisions may be further adapted to make additional special arrangements for POWs.		
Article 79		No such legal provisions exist in Pakistan's domestic law
Article 80		No such legal provisions exist in Pakistan's domestic law
Article 81		No such legal provisions exist in Pakistan's domestic law
Article 82		May be further incorporated through amendments to the Pakistan Army Act, 1952
Article 83		No such legal provisions exist in Pakistan's domestic law
Article 84		Indicated through state practice, but may also be incorporated through a specific law
Article 85		No such legal provisions exist in Pakistan's domestic law
Article 86		Constitution of Pakistan 1973
Article 87		Indicated through state practice, but may also be incorporated through a specific law

Article 88		No such legal provisions exist in Pakistan's domestic law
Article 89		No such legal provisions exist in Pakistan's domestic law
Article 90		No such legal provisions exist in Pakistan's domestic law
Article 91		No such legal provisions exist in Pakistan's domestic law
Article 92		No such legal provisions exist in Pakistan's domestic law
Article 93		No such legal provisions exist in Pakistan's domestic law
Article 94		No such legal provisions exist in Pakistan's domestic law
Article 95		No such legal provisions exist in Pakistan's domestic law
Article 96		May be further incorporated through amendments to the Pakistan Army Act, 1952
Article 97		No such legal provisions exist in Pakistan's domestic law
Article 98		No such legal provisions exist in Pakistan's domestic law
Article 99		Constitution of Pakistan 1973
Article 100		No such legal provisions exist in Pakistan's domestic law
Article 101		No such legal provisions exist in Pakistan's domestic law
Article 102		May be further incorporated through amendments to the Pakistan Army Act, 1952
Article 103		May be further incorporated through amendments to the Pakistan Army Act, 1952

Article 104		No such legal provisions exist in Pakistan's domestic law
Article 105		Indicated through state practice, but may be further incorporated through an amendment to the Pakistan Army Act, 1952
Article 106		Indicated through state practice, but may be further incorporated through an amendment to the Pakistan Army Act, 1952
Article 107		No such legal provisions exist in Pakistan's domestic law
Article 108		Indicated, in part, through state practice, but may also be incorporated through a specific law
Article 109		Indicated through state practice, but may also be incorporated through a specific law
Article 110		Indicated through state practice, but may also be incorporated through a specific law
Article 111		No such legal provisions exist in Pakistan's domestic law
Article 112		No such legal provisions exist in Pakistan's domestic law
Article 113		No such legal provisions exist in Pakistan's domestic law
Article 114		No such legal provisions exist in Pakistan's domestic law
Article 115		No such legal provisions exist in Pakistan's domestic law










Article 116	■	No such legal provisions exist in Pakistan's domestic law
Article 117	■	No such legal provisions exist in Pakistan's domestic law
Article 118	■	Indicated through state practice, but may also be incorporated through a specific law
Article 118 Notes: In 1971, the repatriation of Pakistan and India's POWs was carried out on the basis of a mutual agreement.		
Article 119	■	No such legal provisions exist in Pakistan's domestic law
Article 120	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 120 Notes: Under the Prisons Rules, when a state prisoner dies, a special report with full details is issued to the Government and a certification of the prisoner's death is issued. Generally, upon the death of a prisoner, the next of kin is informed and the burial is performed in accordance with the religious preferences of the prisoner, also under the Prisons Rules. Further specifications regarding issues faced by POWs, however, are not incorporated in the law and therefore additional amendments may still be required to fully implement Article 120.		
Article 121	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 121 Notes: The Prisons Rules specify precautions to be taken to curtail accidents and suicides amongst prisoners. There are also requirements that a post-mortem be conducted for all deaths that occur without a reasonable cause. Sudden and violent deaths are to be investigated in a specific manner as well, under the Prisons Rules.		
Article 122	■	Indicated through state practice, but may also be











		incorporated through a specific law
<p>Article 122 Notes: All information relating to military operations, including any information regarding POWs, is disseminated through the media wing of Pakistan's Armed Forces, the Inter-Services Public Relations (ISPR). Through notification from the Federal Government, ISPR would be empowered to perform the tasks outlined in Article 122 during an armed conflict.</p>		
Article 125	■	No provision provides automatic right of access. However, Pakistan has allowed certain access in the past.
Article 126	■	No such legal provisions exist in Pakistan's domestic law









GENEVA CONVENTION IV

Geneva Convention Relative to the Protection of Civilian
Persons in Time of War of 12 August 1949












Article	Compliance	Applicable Domestic Law
Article 1	■	Geneva Convention Implementing Act, 1936
Article 2	■	Armed Forces Special Power Ordinance, 1942
Article 3	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Pakistan Penal Code 1860; Actions (in Aid of Civil Power) Regulation, 2011; Protection of Pakistan Act, 2014; Anti- Terrorism Act, 1997; Rangers Ordinance, 1959; Police Order, 2002
<p>Article 3 Notes: The obligation to oversee the implementation of Article 3 rests primarily with General Headquarters (GHQ) and Joint Services Headquarters of the Pakistan Army. The existence of a non-international armed conflict (NIAC) within Pakistan may be signaled by the application of Article 245 of the Constitution of Pakistan, 1973, the declaration of an emergency.</p>		
Article 4	■	No such legal provisions exist in Pakistan's domestic law
Article 5	■	Constitution of Pakistan 1973; Pakistan Penal Code, 1860; Enemy Agents Ordinance, 1943; Security of Pakistan Act, 1952; Protection of Pakistan Act, 2014
<p>Article 5 Notes: There are several laws that prescribe measures to be taken to neutralize protected persons that are firmly suspected of or are engaged in activities hostile to the</p>		

















<p>State. The relevant laws allow for internment and in some instances establish offences regarding acts or attempts against the security of the state, including within the Penal Code. The Constitution of Pakistan, 1973, however, provides for all persons, the right to a fair trial and due process.</p>		
Article 6		Constitution of Pakistan, 1973
<p>Article 6 Notes: Articles 232 and 245 of the Constitution of Pakistan provide a framework for the proclamation of an emergency, particularly in instances when the security of Pakistan is threatened. Article 245, specifically, allows the Armed Forces to operate in aid of civil power after the issuance of a notification to the emergency and, correspondingly, to cease operations upon further notification of the end of the emergency.</p>		
Article 7		No such legal provisions exist in Pakistan's domestic law
Article 8		No such legal provisions exist in Pakistan's domestic law
Article 10		No provision provides automatic right of access. However, Pakistan has allowed certain access in the past.
Article 13		Constitution of Pakistan, 1973
Article 14		No such agreement exists to date
Article 15		No such agreement exists to date
Article 16		May be further incorporated through amendments to the Constitution of Pakistan, 1973 and other relevant laws
Article 17		Indicated through state practice, but may also be incorporated through a specific law














Article 18		May be further incorporated through amendments to the Armed Forces (Emergency Duties) Act, 1947 and Public Health (Emergency Provision) Ordinance, 1944
Article 19		May be further incorporated through amendments to the Armed Forces (Emergency Duties) Act, 1947 and Public Health (Emergency Provision) Ordinance, 1944
Article 20		May be further incorporated through amendments to the Public Health (Emergency Provision) Ordinance, 1944
Article 21		No such legal provisions exist in Pakistan's domestic law
Article 22		No such legal provisions exist in Pakistan's domestic law
Article 23		Indicated through state practice, but may also be incorporated through a specific law
Article 24		Indicated through state practice, but may also be incorporated through amendments to laws regarding neglected or orphaned children
Article 25		No such legal provisions exist in Pakistan's domestic law
Article 26		No such legal provisions exist in Pakistan's domestic law
Article 27		Constitution of Pakistan, 1973















Article 28		Indicated through state practice, but may also be incorporated through a specific law
Article 29		No such legal provisions exist in Pakistan's domestic law
Article 30		No provision provides automatic right of access. However, Pakistan has allowed certain access in the past.
Article 31		Constitution of Pakistan, 1973; Police Order, 2002; Actions (in Aid of Civil Power) Regulations, 2011
Article 32		Constitution of Pakistan, 1973; Police Order, 2002; Actions (in Aid of Civil Power) Regulations, 2011
Article 32 Notes: The Federal Government is in the process of adopting the United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) into domestic law through the Torture and Custodial Death (Punishment) Bill, 2014. Furthermore, the Pakistan Army Act, 1952 may expand its provisions on offences against those in custody.		
Article 33		Constitution of Pakistan 1973; Pakistan Penal Code, 1860; Pakistan Army Act, 1952; Anti-Terrorism Act, 1997
Article 34		Pakistan Penal Code, 1860; Pakistan Army Act, 1952; Anti-Terrorism Act, 1997
Article 35		Constitution of Pakistan, 1973; Actions (in Aid of Civil Power) Regulations 2011; Protection of Pakistan Act, 2014

Article 36	■	May be further incorporated through amendments to the Foreigners Act, 1946
Article 37	■	See Article 32 Notes
Article 38	■	May be further incorporated through amendments to the Foreigners Act, 1946
Article 39	■	No such legal provisions exist in Pakistan's domestic law
Article 40	■	Is in part incorporated in the Constitution of Pakistan, 1973, but may be further incorporated through amendments to various labor laws
Article 41	■	No such legal provisions exist in Pakistan's domestic law
Article 42	■	Constitution of Pakistan, 1973; Actions (in Aid of Civil Power) Regulations 2011; Protection of Pakistan Act, 2014; Anti-Terrorism Act, 1997
<p>Article 42 Notes: Pakistan has numerous laws that provide a legal basis for internment during an emergency. The Constitution itself allows internment, but no law specifically addresses internment solely in an international armed conflict. There is also a substantial amount of jurisprudence that addresses the foundations upon which persons may be detained and under what guidelines and subject to which conditions.</p>		
Article 43	■	<i>See Article 42 Notes</i>
Article 44	■	<i>May be further improved through future Tripartite Agreements</i>
















Article 45		Governed by ongoing Tripartite Agreement
Article 46		No such legal provisions exist in Pakistan's domestic law
Article 47		May be further incorporated through amendments
Article 48		No such legal provisions exist in Pakistan's domestic law
Article 49		No such legal provisions exist in Pakistan's domestic law
Article 50		Constitution of Pakistan, 1973; Sindh Children Act, 1955; National Database and Registration Authority Ordinance, 2000; National Database and Registration Authority (National Identity Card) Rules, 2002; Punjab Destitute and Neglected Children Act, 2004; Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010; Sindh Child Protection Authority Act, 2014; Gilgit Baltistan Child Protection and Welfare Act, 2013
Article 51		May be further incorporated through amendments to the Pakistan Army Act, 1952
Article 52		No such legal provisions exist in Pakistan's domestic law
Article 53		Constitution of Pakistan, 1973; Pakistan Army Act, 1952
Article 54		Constitution of Pakistan, 1973; Rules of Business, 1973
Article 55		No such legal provisions exist in Pakistan's domestic law

Article 56		No such legal provisions exist in Pakistan's domestic law
Article 57		No such legal provisions exist in Pakistan's domestic law
Article 58		May be further incorporated through amendments
Article 59		No such legal provisions exist in Pakistan's domestic law
Article 60		No such legal provisions exist in Pakistan's domestic law
Article 61		No such legal provisions exist in Pakistan's domestic law
Article 62		No such legal provisions exist in Pakistan's domestic law
Article 63		May be further incorporated through amendments to the Pakistan Red Crescent Society Act, 1920
Article 64		No such legal provisions exist in Pakistan's domestic law
Article 65		Constitution of Pakistan, 1973
Article 66		No such legal provisions exist in Pakistan's domestic law
Article 67		May be further incorporated through amendments
Article 68		No such legal provisions exist in Pakistan's domestic law
Article 69		May be further incorporated through amendments
Article 70		No such legal provisions exist in Pakistan's domestic law
Article 71		May be further incorporated through amendments to the Pakistan Code of Criminal Procedure, 1898

Article 72		Constitution of Pakistan, 1973; Pakistan Army Act, 1952
Article 73		Constitution of Pakistan, 1973; Pakistan Army Act, 1952
Article 74		No such legal provisions exist in Pakistan's domestic law
Article 75		No such legal provisions exist in Pakistan's domestic law
Article 76		Prisons Rules, 1978
Article 77		No such legal provisions exist in Pakistan's domestic law
Article 78		May be further incorporated through amendments
Article 79		See Article 42 Notes
Article 80		No such legal provisions exist in Pakistan's domestic law
Article 81		May be further incorporated through amendments to the Prisons Rules, 1978
Article 82		May be further incorporated through amendments to the Prisons Rules, 1978
Article 83		Indicated through state practice, but may also be incorporated through further amendment to the Actions (in Aid of Civil Power) Regulations, 2011
Article 84		Indicated through state practice, but may also be incorporated through a specific law

Article 85		May be further incorporated through amendments to the Prisons Rules, 1978
Article 86		Prisons Rules, 1978
Article 87		No such legal provisions exist in Pakistan's domestic law
Article 88		No such legal provisions exist in Pakistan's domestic law
Article 89		May be further incorporated through amendments to the Prisons Rules, 1978
Article 90		Prisons Rules, 1978
Article 91		Prisons Rules, 1978
Article 92		May be further incorporated through amendments to the Prisons Rules, 1978
Article 93		Constitution of Pakistan, 1973; Prisons Rules, 1978
Article 94		May be further incorporated through amendments to the Prisons Rules, 1978
Article 95		May be further incorporated through amendments to the Prisons Rules, 1978 and Prisons Act, 1894
Article 96		No such legal provisions exist in Pakistan's domestic law
Article 97		May be further incorporated through amendments to the Prisons Rules, 1978
Article 98		No such legal provisions exist in Pakistan's domestic law

Article 99	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 100	■	Indicated through state practice, but may also be incorporated through further amendment to the Prisons Rules, 1978
Article 101	■	May be further incorporated through amendments to the Prisons Rules, 1978
Article 101 Notes: The Prisons Rules, 1978 provide that every complaint made by a prisoner should be given due attention so that genuine grievances may be addressed and remedied. These provisions may be further adapted to make additional special arrangements for internees.		
Article 102	■	No such legal provisions exist in Pakistan's domestic law
Article 103	■	No such legal provisions exist in Pakistan's domestic law
Article 104	■	No such legal provisions exist in Pakistan's domestic law
Article 115	■	No such legal provisions exist in Pakistan's domestic law
Article 116	■	No such legal provisions exist in Pakistan's domestic law
Article 117	■	Pakistan Penal Code, 1860; Pakistan Army Act, 1952; Actions (in Aid of Civil Power) Regulations, 2011
Article 118	■	Indicated through state practice, but may also be incorporated through a specific law
Article 119	■	May be further incorporated through amendments to the Prisons Rules, 1978

Article 120		No such legal provisions exist in Pakistan's domestic law
Article 121		No such legal provisions exist in Pakistan's domestic law
Article 122		No such legal provisions exist in Pakistan's domestic law
Article 123		No such legal provisions exist in Pakistan's domestic law
Article 124		No such legal provisions exist in Pakistan's domestic law
Article 125		May be further incorporated through amendments to the Prisons Rules, 1978
Article 126		May be further incorporated through amendments
Article 127		May be further incorporated through amendments to the Prisons Rules, 1978
Article 128		May be further incorporated through amendments to the Prisons Rules, 1978
Article 129		No such legal provisions exist in Pakistan's domestic law
Article 130		Prisons Rules, 1978
Article 131		May be further incorporated through amendments to the Prisons Rules, 1978
Article 132		No such legal provisions exist in Pakistan's domestic law
Article 133		Actions (in Aid of Civil Power) Regulations, 2011
Article 134		Indicated through state practice, but may also be incorporated through a specific law

Article 135	■	Indicated through state practice, but may also be incorporated through a specific <i>law</i>
Article 136	■	Indicated through state practice, but may also be incorporated through a specific law
Article 136 Notes: All information relating to military operations, including any information regarding internees is disseminated through the media wing of Pakistan's Armed Forces, the Inter-Services Public Relations (ISPR). Through notification from the Federal Government, ISPR would be empowered to perform the tasks outlined in Article 136 during an armed conflict.		
Article 137	■	No such legal provisions exist in Pakistan's domestic law
Article 138	■	No such legal provisions exist in Pakistan's domestic law
Article 139	■	No such legal provisions exist in Pakistan's domestic law
Article 140	■	No such legal provisions exist in Pakistan's domestic law

ADDITIONAL PROTOCOL I









To the Geneva Conventions of 12 August 1949 and
Relating to the Protection of Victims of International
Armed Conflicts

Pakistan has neither signed nor ratified Additional
Protocol I

Article	Compliance	Applicable Domestic Law
Article 1	■	Constitution of Pakistan, 1973
<p>Article 1 Notes: As Pakistan is not a party to this Protocol, the extent to which it is necessarily bound by this Article is limited to that which may be firmly considered customary international law. The level of compliance with such law on a domestic level is displayed in the tables on the four Geneva Conventions above.</p>		
Article 3	■	See Article 1 Notes
Article 4	■	See Article 1 Notes
Article 6	■	Red Crescent Society Act, 1920
Article 8	■	May be further incorporate <i>d</i> through amendments to the Red Crescent Society Act, 1920
Article 9	■	Constitution of Pakistan, 1973
Article 10	■	Indicated through state practice, but may also be incorporated through a specific law
Article 11	■	Pakistan Army Act, 1952; Prisons Act, 1894; Prisoners Act, 1900; Prisons Rules, 1978
Article 12	■	Indicated through state practice, but may also be

		incorporated through a specific law
<p>Article 12 Notes: The Cantonment Regulatory Authority has the power to establish and maintain within and outside of the cantonment area medical facilities in accordance with The Cantonments Act, 1924. However, the law neither specifies that these facilities be erected away from military objectives nor that there may be special procedures for medical establishments created in an area of armed conflict.</p>		
Article 13	■	Indicated through state practice, but may also be incorporated through a specific law
Article 14	■	Indicated through state practice, but may also be incorporated through a specific law
Article 15	■	May be further incorporated through amendments to the Pakistan Army Act, 1952 or the Armed Forces Special Power Ordinance, 1942
Article 16	■	Injured Persons (Medical Aid) Act, 2004
Article 17	■	May be further incorporated through amendments to the Red Crescent Society Act, 1920 and the Pakistan Army Act, 1952
Article 18	■	May be further incorporated through amendments to the Geneva Convention Implementing Act, 1936
<p>Article 18 Notes: The schedule of the Pakistan Names and Emblems (Prevention of Unauthorized Use) Act, 1957 may also be amended to protect the emblem in accordance with Article 18.</p>		

Article 19	■	See Article 1 Notes
Article 20	■	Pakistan Army Act, 1952
Article 21	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 22	■	May be incorporated through an amendment to the Pakistan Navy Ordinance, 1961
Article 23	■	See table for Geneva Convention II
Article 24	■	No such legal provisions exist in Pakistan's domestic law
<p>Article 24 Notes: The central government can issue a notification empowering the Air Headquarters to enter into mutual agreements, with regard to such permissions, during the times of hostilities with its counterpart in the enemy state. In addition, the Civil Aviation Rules, 1994, particularly Rules 367 and 368, may be expanded to include specific exceptions for medical aircraft.</p>		
Article 32	■	No such legal provisions exist in Pakistan's domestic law
Article 33	■	Indicated through state practice, but may also be incorporated through a specific law
Article 34	■	No such legal provisions exist in Pakistan's domestic law
Article 35	■	Protection of Pakistan Act, 2014; Chemical Weapons Convention Implementation Ordinance, 2000; Pakistan Nuclear Safety and Radiation Protection Ordinance, 1984; Explosive Substances Act, 1908

Article 36		See Article 1 Notes
Article 37		Indicated through state practice, but may also be incorporated through a specific law
Article 38		Geneva Convention Implementing Act, 1936; Pakistan Army Act, 1952
Article 38 Notes: The schedule of the Pakistan Names and Emblems (Prevention of Unauthorized Use) Act, 1957 may also be amended to protect the emblem in accordance with Article 38.		
Article 39		See Article 38 Notes
Article 40		Pakistan Army Act, 1952
Article 41		Pakistan Army Act, 1952; Regulation III of 1818; Prisons Act, 1894; Prisoners Act, 1900; Prisons Rules, 1978
<i>Article 41 Notes:</i> Someone considered hors de combat, is not defined with in Pakistan's domestic law. However, the Prisons Rules, 1978 substantially cover the treatment of persons that are in custody, including state prisoners. The Federal Government is in the process of adopting the United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) into domestic law.		
Article 42		No such legal provisions exist in Pakistan's domestic law
Article 43		Pakistan Territorial Force Act, 1950; Pakistan Army Act, 1952; Pakistan Air Force Act, 1953; Pakistan Rangers Ordinance, 1959; Frontier Corps Ordinance, 1959; Pakistan

		Navy Ordinance, 1961; National Guards Act, 1973; Pakistan Coast Guards Act, 1973
<p>Article 43 Notes: The term "combatant" was incorporated into Pakistan's domestic law most recently through the Protection of Pakistan Act, 2014. The term used in the law is "combatant enemy" and it is defined as follows:</p> <p>any person who raises arms against Pakistan, its citizens, the Armed Forces or Civil Armed Forces or aids or abets the raising of arms or waging of war against Pakistan or threatens the security and integrity of Pakistan or commits or threatens to commit any Schedule Offence and includes a person who commits any act outside the territory of Pakistan for which he has used the soil of Pakistan for preparing to commit an act that constitutes an offence under the laws of Pakistan and the laws of the state where such offence has been committed.</p>		
Article 44	■	May be incorporated through an amendment to the Protection of Pakistan Act, 2014
Article 45	■	Constitution of Pakistan, 1973; Regulation III of 1818; Prisons Act, 1894; Prisoners Act, 1900; Prisons Rules, 1978
<p>Article 45 Notes: There is no legislation that addresses the protections of those persons participating in hostilities, just as there is no direct legislation codifying the protection or treatment of prisoners of war (POWs). However, various laws including Regulation III of 1818, the Prisons Act, 1894, the Prisoners Act, 1900 and the Prisons Rules, 1978 may indirectly, but through no specific language, provide legal protection to POWs. Furthermore, the protections within Article 75 of this Protocol are also provided at great length within the Constitution of Pakistan, 1973 to all persons.</p>		

Article 46	■	Constitution of Pakistan, 1973; Pakistan Penal Code, 1860; Official Secrets Act, 1923; Pakistan Army Act, 1952; Protection of Pakistan Act, 2014
Article 47	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Private Military Organizations (Abolition and Prohibition) Act, 1974; Prevention of Anti- National Activities Act, 1974
Article 48	■	Indicated through state practice, but may also be incorporated through amendments to the Pakistan Army Act, 1952
Article 49	■	Pakistan Penal Code, 1860
Article 50	■	Indicated through state practice, but may also be incorporated through amendments to the Pakistan Army Act, 1952
Article 51	■	Constitution of Pakistan, 1973; Pakistan Penal Code, 1860; Explosive Substances Act, 1908; Anti-Terrorism Act, 1997; Pakistan Army Act, 1952; Actions (in Aid of Civil Power) Regulations, 2011; Protection of Pakistan Act, 2014
Article 52	■	Pakistan Army Act, 1952
Article 53	■	Pakistan Penal Code, 1860; Antiquities Act, 1975; Punjab Special Premises

		(Preservation) Ordinance, 1985; Sindh Cultural Heritage (Preservation) Act, 1994; Anti-Terrorism Act, 1997
Article 54	■	May be incorporated through an amendment to the Pakistan Army Act, 1952
Article 55	■	May be further incorporated through an amendment to the Pakistan Environmental Protection Act, 1997
Article 56	■	Explosive Substances Act, 1908
Article 57	■	May be further incorporated through an amendment to the Pakistan Army Act, 1952
Article 58	■	May be further incorporated through an amendment to the Pakistan Army Act, 1952
Article 59	■	May be incorporated through an amendment to the Cantonments Act, 1924 and Cantonments Ordinance, 2002
Article 60	■	No such legal provisions exist in Pakistan's domestic law
Article 61	■	Civil Defence Act, 1952; Pakistan Rangers Ordinance, 1959
Article 62	■	No such legal provisions exist in Pakistan's domestic law
Article 63	■	No such legal provisions exist in Pakistan's domestic law
Article 64	■	Civil Defence Act, 1952; Pakistan Rangers Ordinance, 1959; North-West Frontier Constabulary Act, 1915

Article 65	■	No such legal provisions exist in Pakistan's domestic law
Article 66	■	No such legal provisions exist in Pakistan's domestic law
Article 67	■	Civil Defence Act, 1952; Pakistan Rangers Ordinance, 1959
Article 68	■	No such legal provisions exist in Pakistan's domestic law
Article 69	■	No such legal provisions exist in Pakistan's domestic law
Article 70	■	No such legal provisions exist in Pakistan's domestic law
Article 71	■	May be further incorporated through an amendment to the Pakistan Army Act, 1952 and the Red Crescent Society Act, 1920
Article 72	■	No such legal provisions exist in Pakistan's domestic law
Article 73	■	Indicated through state practice, but may also be incorporated through amendments to the existing Tripartite Agreements
Article 74	■	No such legal provisions exist in Pakistan's domestic law
Article 75	■	Constitution of Pakistan, 1973; Pakistan Penal Code, 1860; Prisons Act, 1894; Code of Criminal Procedure, 1898; Prisoners Act, 1900; Pakistan Army Act, 1952; Security of Pakistan Act, 1952; Pakistan Army Rules, 1954; Prisons Rules, 1978; Anti-Terrorism Act, 1997; Actions (in Aid of

		Civil Power) Regulations, 2011; Protection of Pakistan Act, 2014
Article 76	■	Constitution of Pakistan, 1973; Pakistan Penal Code, 1860; Prisons Act, 1894; Code of Criminal Procedure, 1898; Prisoners Act, 1900; Prisons Rules, 1978; Offence of Zina (Enforcement of Hudood) Ordinance, 1979
Article 77	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Sindh Children Act, 1955; Juvenile Justice System Ordinance, 2000; Punjab Destitute and Neglected Children Act, 2004; Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010; Sindh Child Protection Authority Act, 2014; Gilgit Baltistan Child Protection and Welfare Act, 2013
Article 78	■	No such legal provisions exist in Pakistan's domestic law
Article 79	■	No such legal provisions <i>exist</i> in Pakistan's domestic law
Article 79 <i>Notes:</i> The National Assembly has before it a proposed bill regarding the protection of journalists, which in large part covers the provisions of Article 79.		
Article 81	■	No provision provides automatic right of access. However, Pakistan has allowed certain access in the past; Red Crescent Society Act, 1920

Article 82	■	May be further incorporated through an amendment to the Pakistan Army Act, 1952 and the Rules of Business, 1973
Article 86	■	Pakistan Penal Code, 1898; Pakistan Army Act, 1952
Article 87	■	Pakistan Army Act, 1952
Article 88	■	Extradition Act, 1972
Article 89	■	Indicated through state practice
Article 91	■	No such legal provisions exist in Pakistan's domestic law
ADDITIONAL PROTOCOL II		
To the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts		
Pakistan has neither signed nor ratified Additional Protocol II		
Article	Compliance	Applicable Domestic Law
Article 1	■	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Anti-Terrorism Act, 1997; Actions (in Aid of Civil Power) Regulations, 2011; Protection of Pakistan Act, 2014
Article 1 Notes: The scope of a non-international armed conflict is not expressly defined in Pakistan's domestic law. However, several laws penalize the anti-state actions of organized armed groups.		
Article 2	■	Constitution of Pakistan, 1973; Actions (in Aid of Civil Power) Regulations, 2011
Article 3	■	No such legal provisions exist in Pakistan's domestic law

Article 4	■	Constitution of Pakistan, 1973; Pakistan Penal Code, 1860; Prisons Act, 1894; Code of Criminal Procedure, 1898; Prisoners Act, 1900; Pakistan Army Act, 1952; Security of Pakistan Act, 1952; Pakistan Army Rules, 1954; Prisons Rules, 1978; Bonded Labour System (Abolition) Act, 1992; Anti-Terrorism Act, 1997; Actions (in Aid of Civil Power) Regulations, 2011; Protection of Pakistan Act, 2014
Article 5	■	Prisons Act, 1894; Prisoners Act, 1900; Prisons Rules, 1978; Actions (in Aid of Civil Power) Regulations, 2011
Article 6	■	Constitution of Pakistan, 1973; Code of Criminal Procedure, 1898; Juvenile Justice System Ordinance, 2000
Article 7	■	Injured Persons (Medical Aid) Act, 2004
Article 8	■	Indicated through state practice, but may also be incorporated through a specific law
Article 9	■	Indicated through state practice, but may also be incorporated through a specific law
Article 10	■	Injured Persons (Medical Aid) Act, 2004
Article 11	■	Indicated through state practice, but may also be

		incorporated through a specific law
<p><i>Article 11 Notes:</i> The Cantonment Regulatory Authority has the power to establish and maintain within and outside of the cantonment area medical facilities in accordance with The Cantonments Act, 1924. However, the law neither specifies that these facilities be erected away from military objectives nor that there may be special procedures for medical establishments created in an area of armed conflict.</p>		
Article 12	■	Geneva Convention Implementing Act, 1936
<p><i>Article 12 Notes:</i> The schedule of the Pakistan Names and Emblems (Prevention of Unauthorized Use) Act, 1957 may also be amended to protect the emblem in accordance with Article 12.</p>		
Article 13	■	Constitution of Pakistan, 1973; Anti-Terrorism Act, 1997; Protection of Pakistan Act, 2014
Article 14	■	May be incorporated through an amendment to the Pakistan Army Act, 1952
Article 15	■	Explosive Substances Act, 1908
Article 16	■	Pakistan Penal Code, 1860; Antiquities Act, 1975; Punjab Special Premises (Preservation) Ordinance, 1985; Sindh Cultural Heritage (Preservation) Act, 1994; Anti-Terrorism Act, 1997
Article 17	■	Constitution of Pakistan, 1973
Article 18	■	Red Crescent Society Act, 1920

