

## The contribution of Custom in confronting the new challenges of international humanitarian law

مساهمة العرف في مواجهة التحديات الجديدة للقانون الدولي الإنساني

Ladjadj Abdelkrim <sup>(1)</sup>

Dr. Chougui Samir <sup>(2)</sup>

(1) PhD student, university of Batna 1, (Algeria)

Abdelkrim121@yahoo.fr

(2) Senior lecturer, university of Setif 2, (Algeria)

Samir.chougui@gmail.com

**RECEIVED**  
23 - 04 - 2020

**ACCEPTED**  
08 - 09 - 2020

**PUBLISHED**  
30 - 09 - 2020

### Abstract:

This research deals with the role of custom in overcoming some of the problems raised by contemporary conflicts. The study aims to demonstrate the importance of custom as a source for facing challenges that reduce humanitarian protection and clarifying the cases in which this source is used to support the protection of victims of armed conflict.

The study found that customary rules allowed to overcome the problem of states' disbelief of ratification of the rules governing humanitarian law, as well as overcoming the law's inadequate regulation of non-international conflicts, or also restricting the use of some new weapons even if specific rules of written law did not agree to them.

**Key words:** custom, new weapons, convention rules, contemporary conflicts, non-international conflicts, lack of ratification.

### : الملخص

تتناول هذه الورقة البحثية دور العرف في تجاوز بعض الإشكاليات التي تثيرها النزاعات المعاصرة وتهدف الدراسة لبيان أهمية العرف كمصدر لمواجهة التحديات التي تقلل من الحماية الإنسانية وتهدف كذلك لتوضيح الحالات التي يستخدم فيها هذا المصدر لدعم حماية ضحايا النزاعات المسلحة. وقد توصلت الدراسة إلى أن القواعد العرفية تسمح بتجاوز مشكلة عدم تصديق الدول على القواعد الاتفاقية للقانون الإنساني، كما تسمح بتجاوز عدم تنظيم القانون للنزاعات غير الدولية بشكل كاف، أو أيضا تقييد استعمال بعض الأسلحة الجديدة حتى ولو لم تنطبق عليها قواعد محددة من القانون المكتوب.

**الكلمات المفتاحية:** العرف - الأسلحة الجديدة - القواعد الاتفاقية - النزاعات المعاصرة -

النزاعات غير الدولية - عدم التصديق.

(1) Corresponding author: Ladjadj Abdelkrim,

e-mail: abdelkrim121@yahoo.fr

### **Introduction:**

Customary international law is considered as one of the eldest source of the international law in addition to the law codified in international agreements. States do not set legal standards by expressing their will in convention law only, but also by international custom, knowing that written law is just a simple part of international law. Adopting a specific behavior that is acceptable and recognized as legitimate and beneficial in a consistent manner with the states, the custom law is given a mandatory power. Consequently, non-respecting those norms considered as a violation of law. According to the humanitarian law, the states are obliged to respect their duties whether these duties are from treaties in which they are parts or from a custom formed by their behavior. In fact, states do not set legal standards only in written treaties, but also through their behaviors, especially that customary law is earlier than the written one.<sup>1</sup>

Accordingly, we can say that custom law evolves by practice and it fills some gaps in the international conventional law, such as the presence of armed groups that are not form nations. These groups are part of the conflicts but they are not part in international agreements. It also shows that we can apply the same custom rule in the international armed conflicts and non-international ones. That is due to the fact that the victims in non-international conflicts have fewer guarantees.

The importance of the research:

- The customary rules agreed with different parts of conflicts from states wick cant argument because of those states which are not part of the written law or the one negotiated on.

- The customary rules agreed with deferent part in conflicts as well as the new ones which are not parts of written treaties.

- recognizing the customary rule of humanitarian law allows guaranties the same protection whether in international conflicts or in non-international armed conflicts and internationalized one that is based on weak written basis.

- Customary rules apply to various types of new weapons even if there are no written rules that restrict them.

Although there is an unparalleled acceptance of treaties, there are many challenges facing protecting humanity. In fact, the customary base can be considered as the best way to bridge the gaps and developments that the conventional law is unable to address. Given this, we should answer the

following problematic: What is the importance of international custom in confronting the new challenges of international humanitarian law?

This is what we will try to discuss according to the following plan:

- 1- the custom's contribution to bind all parties of conflict and new entities.
- 2- The custom's contribution to unify the rules of protection regardless of the type of conflict.
- 3- The contribution of human norms to restrict the use of all types of weapons.

### **Section I : The custom's contribution to bind all parties of conflict and entities.**

We touch on the following points:

#### **A- Confirmation of the international practice on the custom 5 in obliging everyone:**

It is agreed that customary rules of humanitarian law be due regardless of whether a country has ratified it or not,<sup>2</sup> or whether it has reserved the agreement or not. The customary law addresses cases and issues not specifically provided in treaty law, and sets solutions to the problems of the conflicting interpretation of written law. Customary law also plays an important role in the law of armed conflict and humanitarian action because it records interactions and confrontations between states on the one hand and non-state actors on the other hand.<sup>3</sup>

The international judiciary has previously mentioned the importance of international custom in placing obligations on all groups and entities in the conflict, whether they ratified the treaties or not. In the Corfu Strait case, the court referred to the customary nature of humanitarian law, when it found that the Eighth Hague Convention of 1907 contained a warning of the presence of mines in a country's territorial waters. However, Albania as a defendant in this famous conflict was not a part in that agreement. Thus, it traditionally means that there is no obligation. It discussed the custom nature and its consequent that needs to follow the previous warning. "This obligation is a non-treaty commitment. This is when Albania declared that these obligations are not necessarily based on the Eighth Hague Convention of 1907. This latter is applied in wartime on established general principles which are the primary considerations of humanity".<sup>4</sup>

Many jurisprudence experts believe that the established and recognized general principles mean the custom rules even if they have other meanings in this conflict.<sup>5</sup>

In the case of Nicaragua against USA, the court confirmed that “the behavior of USA can be judged according to the general principles of humanitarian law“, which are applied in “all circumstances” regardless of the existence of a reservation or not, and the existence of the ratification or not, especially after it has proved the customary nature of the Geneva Conventions. Some of its parts are considered "developed, while others do not represent more than expressing those principles".<sup>6</sup>

Ten years later, the same court confirmed this, when it declared its opinion on nuclear weapons. It said: "these fundamental rules should be followed by all countries, whether they have ratified those agreements of the basic principles or not because they form rules that cannot be violated in the International Customary law".<sup>7</sup>

From these examples, it is clear that the International Court of Justice confirms the customary nature of humanitarian law in some cases. Its purpose is to demonstrate the mandatory value of those rules to take it as a base in the international legitimacy field. In other words, international norms are the means to be obliged to act any behavior or not for all countries even though they ratify the conventions or not.

**The jus nature to the rules of international humanitarian law and its contribution to achieve the goals of humanitarian norms in ensuring protection:**

Humanitarian law norms have a commanding nature, in the sense of Article 53 of the Vienna Convention on the Law of Treaties of 1969, the four Geneva Conventions of 1949 in mainly have entrenched setting the humanitarian law rules in a higher order than others, because of the absolute nature of the obligations arising there from, which face of members of the international society, erga omnes obligation, many of the general and well-known principles of humanitarian law constitute absolute rules of humanity are applied in both peacetime and war. As a result, it indirectly indicates that there are obligations of a peremptory nature. Knowing that the most important criterion for determining the existence of a peremptory rule in international law is the extent to which there is a supreme interest over the self-interests of states, and that interest is first in considered in peacetime and war at the same time.

In the Barcelona Traction case, the International Court of Justice dealt with human rights issues in an appropriate ruling, Dictum -Obiter. In its discussion of international obligations, it considered that it is divided into two types: the first one is the state's obligations towards the international community as a whole (the second is those emerging obligations towards another country, And with regard to the nature of the duties of states vis-à-vis the international community, it means all states, and all states may be considered to have a legal interest in protecting these rights, they are obligations imposed on everyone - Erga omnes and these obligations are derived for example in international law Contemporary, from the prohibition of acts of aggression and genocide, as well as from the principles and rules relating to the fundamental rights of the human person including protection from racial servitude. Consequently, those obligations are absolute obligations, and all actions that violate them are void, and have no effect, and the basic rights of the human are among those absolute rules according to the court.

That humanitarian law agreements are not subject to the traditional principle of reciprocity, due to the violations that these agreements may be exposed to, and about rejecting the conditions of reciprocity, because of the absolute nature of the rules of the humanitarian law.

we note that it is recognized as a general rule, that the failure of implementing its obligations from one partner may lead in the end to the other partners dissolution of its obligations as well, which is permitted in the first, second and third paragraphs of Article 60 of the Vienna Convention on the Law of Treaties of 1969, but this does not go with humanitarian law agreements that remain in effect in all circumstances and are not subject to a Reciprocity condition.

The imposed protection by the first common article between the four Geneva Conventions on states and their obligations reveals the absolute nature of humanitarian law because the Article 01 does not stop at "respect" but rather than to ensure respect for humanitarian law in all situations, which means that all states bear the responsibility to monitor these agreements, regardless of whether or not that application affects them. Consequently, there is a collective responsibility regarding this application. It also means that it must be respected in all cases, not to invoke any reason as a justification for violating humanitarian obligations, whether this is the reason for legitimate self-defense, retribution or consent of the victims or a situation of necessity.

**B- Customary nature conditions for the humanitarian law rules:**

We have to know the conditions of the customary nature of the humanitarian law rules to know whether customary rules exist or not. These rules mean the existence of a legal rule that binds states. The Statute of the International Court of Justice describes customary international law as "international custom, as evidence of a general practice accepted as law".<sup>8</sup>

Therefore, the first condition is the material element of custom or a practice because the countries set legal standards through their behavior. Thus, the material and verbal actions of states and even the practice of international organizations contributes to create human norms. As an example, the material actions include behavior on the battlefield, the prohibition and the use of some weapons. As far as the verbal actions are concerned, for example, they include manuals, military actions, and military statements during the war.<sup>9</sup>

These actions, which form custom rules, were the subject of a study done by the International Court of Justice in its advisory opinion about the separation fence. In this study, the court took into consideration that there is a real action of Israeli on the earth. That is, the application of the Fourth Geneva Convention on the occupied territories which is ordered by the occupation authorities in 1967 under number 3. This practice is sufficient without considering Israel a part of it or not.<sup>10</sup>

Not just every action is sufficient to create a human custom. In fact, these actions must have specific conditions and controls which may add or remove the acceptance of practicing a specific rule. The actions must be truly systematic and representative so as to devote a human customary rule. The regularity, here, means that these actions have to have frequent verbal and physical evidence from international law. Also, in order to be representative, the actions might be done by a state that might be affected personally in case of emerging a new customary rule. In this case the state will accept the emergence of customary rule which is purely humanitarian. In reality, like any country that frequently used to give help, the countries that their inhabitants need humanitarian help are particularly affected by themselves in agreeing with the new customary rule.<sup>11</sup>

In the field of humanitarian action, the behavior the target states as well as the non target ones weakens or reinforces humanity norms. Here, humanitarian agencies have the responsibility of defending the humanity norms through their actions and condemning any failure to respect them.<sup>12</sup>

As far as the second condition is concerned, it is represented in the legal belief which is the moral element that indicates the confirming of feeling or belief

from the international law persons when they confirm any behavior that has an obligatory loyal value<sup>13</sup>. Although, sometimes, there might be a period of time before forming any humanity conventional law, there is no particular time for forming this behavior. In other words, in order to confirm this behavior, there must be a lot of regular and representative practice.

Today, we notice that the four Geneva Conventions of 1949, as well as most provisions of the two Additional Protocols of 1977 have acquired the status of customary international law. This means that even countries that did not ratify the conventions must follow their rules.<sup>14</sup>

## **Section II: The contribution of the custom to unify the rules of protecting despite the dispute kind.**

We will deal with the following:

### **A-Confirming the international practice for custom effectiveness in unifying the protection rules:**

Non-international conflicts are subject of smaller number of the rules that control the international conflicts. This situation negates the humanity purpose of the war law in most cases that occur nowadays. In many cases, violence is increasing in internal wars more than in wars between states. Thus, recognizing any custom rule paves the way for applying it on any kind of conflict despite the fact of any artificial criteria between conflicts.<sup>15</sup>

Therefore, recognizing the custom nature of the humanity law provisions allows applying these laws in all international and non-international armed conflicts as well as the conflicts of non-state ones. In this context, in Nicaragua issue, the Court of Justice stated that: «There is no doubt that these rules that is, the third common article, are the minimum standards in case there is an armed conflict. And there are more detailed rules which must be applied in international conflicts. These rules are mentioned in 1949 under the name of the primary considerations of humanity».<sup>16</sup>

Also, recognizing the custom nature of the first Additional Protocol of 1977 indicates that these rules are purposefully designed to control the international conflicts applied on internal ones<sup>17</sup>.

The court touched on the convergence of international and internal conflicts in the "Case of Applying the Convention to Prevent and Punish the Genocide crime» (Bosnia and Herzegovina vs. Yugoslavia). It stated that preventing punishing the genocide crime, which is a customary rule, has nothing to do with the type of conflict whether it is international or non-international one.

According to the court, in Article 01, from the Genocide Convention and its punishment in 1948, and when explaining the International Court of Justice: “The court sees nothing in this rule (Article 1 of the Genocide Convention) that would make applying the agreement conditioned with doing those actions in a specific type of conflict, whether international or internal” .The reasons given by the court as justification for this result are that the states considered the action of genocide as a crime separated from the circumstances of committing it; it said: “in that article, the opposing states have expressed their willingness to consider genocide as a crime under the international law .And they must work to prevent this crime and punish those who commit it without taking into considerations peace and war that might take place in these states”<sup>18</sup> .

We can notice that the third common article and some other customary rules can be applied at all times. And the rules provided are not more than to be minimum standards that have no government or opposing group that might be respected regardless of the conflict type<sup>19</sup>. The third common article said : “In case , there is an international armed conflict in the territory of one of the High Contracting Parts, each part of the conflict is obliged to apply the following provisions as a minimum application :

1- Persons who do not participate directly in hostilities including members of the armed forces who have laid down their arms, and persons who are unable to fight due to illness, injuries or detention, or for any other cause have to be treated humanely in all circumstances, without any harmful discrimination that is based on race, color, religion, belief, gender, birth, wealth, or any other similar standard.

-For this purpose the following actions are prohibited, in relation to the above-mentioned persons, and they are prohibited at all times and places:

a. Assaulting life and physical integrity, especially killing in all its, mutilation, cruel treatment, and torture.

b. Taking hostages.

c. Assaulting personal dignity, especially humiliating and degrading treatments.

d. Sentencing and implementing penalties without prior trial in front of a legally constituted court that ensures all the necessary judicial guarantees in as the civilized people think.

2- Collecting the injured and sick persons and taking care of them.

- An impartial humanitarian body can offer its service for the parts of conflict such as the International Committee of the Red Cross.

The parts of the conflict must implement all or some other provisions of this agreement through particular agreements.

There is nothing affecting the legal situation of the conflict parts when applying the advanced provisions.

**B-The custom confirming that it goes beyond the idea of the minimum level of protection in non-international conflicts:**

One of the most important efforts of jurisprudence that dealt with the importance of applying custom in non-international conflicts was in the case of 1986 in Nicaragua. This latter was a non-international conflict under the jurisdiction of Common Article 3. This is due to the fact that it exists between the Nicaragua government and the rebel forces backed by the United States. Nicaragua complained about many violations took place in its territory with the instigation and assistance of the United States.<sup>20</sup>

While dealing with these actions and behaviors and based on the third common article, the court announced: “following the basic general principles of the international humanitarian law, the U.S.A’s actions and the Geneva Conventions can be considered as only an expression of their development because the third Article of the four Geneva Conventions of 1949 contains some rules which should be applied in non-international armed conflicts. And undoubtedly, the application of these rules on the non-international conflicts is a minimum apart of applying other legal rules”. Digressively, the court notes the importance of the third common article and the basic standards it contained for the human treatment such as , “human dignity respect and the importance of treating all non-combatants individuals humanely, starting with prohibiting the attacks on their lives and ending with respecting honor , beliefs passed as well as preventing torture”.<sup>21</sup>

Accordingly, the third common article is an article that includes basic rules as well as the minimum levels for protecting victims. Thus, the Court of Justice describes this article as "one of the basic general principles of humanitarian law". The court also recognizes a higher position for this article compared to the position given to it by traditional rules. This is clear in the court’s decision for applying this article without taking into consideration the conflict type whether it is international or non-international. The combatants should apply this article in all circumstances.<sup>22</sup>

These guarantees are genuinely linked to the non-derivable guarantees in the international human rights law (the right of life, the right of no torture, punishment, inhuman treatments, and the right of not be enslaved).

Also, these guarantees, which are included in the third common article, are direct consecration to Martins' condition which is based on "principles of humanity" and the considerations of the public conscience. All these are customary rules which are applied regardless of the conflict type<sup>23</sup>, and which were previously included in The Hague rules of 1907 under the name the Martins' condition.<sup>24</sup> This is, also, what Professor Robert Kulb said: "The third common article, like the case with the Martins condition, does not include specific criteria for protecting victims, but rather it leaves those standards applied on the combatant and non-combatant persons to the humanitarian principles and the public conscience. Thus, this article, with its formulation that applied in all circumstances, is considered as the most important gain for humanitarian law since the Geneva Conventions of 1949."<sup>25</sup> If we consider the purpose of using this concept, the "human considerations" will seem as doctrinal basic and general guarantees for humanity which are applied in all circumstances, in *peacetime* as well as in wartime, without considering the conflict type. Thus, they will be suitable for conflicts that have non-state parts, especially in international or terrorist conflicts.<sup>26</sup>

Regarding the non-international armed conflicts, the First Instance of the International Criminal Tribunal for Rwanda in the Akayesu case (September 2, 1998) sees that the rules in Common Article 3 have acquired the customary law character because most states, by virtue of their domestic criminal laws, have criminalized acts committed during an internal armed conflict. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (Tadic case, 2 October 1995) saw that Additional Protocol II was not universally recognized as part of the customary law. However, some provisions of this protocol are part from the accepted customary law. This includes, particularly, prohibiting violence against persons who are not actively participating in hostilities, in imprisoning persons, in degrading treatment and in imposing punishments without any obligatory judicial procedures.<sup>27</sup>

Practice shows that parts of conflict are reluctant in using weapons in non-international armed conflicts which are prohibited in international armed conflicts. In the Tadic case, in 1995, the International Criminal Tribunal for the Former Yugoslavia mentioned that the primary considerations of humanity and common sense does not allow, in fact, the states to use the prohibited weapons in armed conflicts in order to eliminate disobedience of citizens and their national territories. This means that action is inhumane. Therefore, since it is prohibited in international wars it will be inhumane and will be prohibited in civil conflicts.<sup>28</sup>

### **Section III: The contribution of human norms to restrict the use of all weapons types**

Customary humanitarian law contains a set of general principles that prohibit the use of some types of weapons that cause excessive injury, or undue pain, or indiscriminate weapons, which are customary principles in any armed conflict.<sup>29</sup> And they are also applied on traditional and modern types of weapons. Therefore, even the weapons that are not prohibited directly can be under the same principles. The Martins condition, which we have already said is a customary rule, is always present in the minds of international jurisprudence and justice to confront the new types of weapons.<sup>30</sup> Therefore, the International Court of Justice considered it "a proven method to counteract the rapid development of military technology."<sup>31</sup>

In international humanitarian law, it is important to stress that cases that are not included in the conventions remain the persons who are protected under the international customary law. This principle is found in all four conventions and their first additional protocol. And in the "Martins Clause" which states that "the cases that are included in the Geneva Conventions or Additional Protocol I, or other international agreements, civilians and combatants remain covered by authority protection of international law principles which derived from the established norms, the humanitarian principles, and from the public conscience."<sup>32</sup>

Although the experts disagree with the premise of encouraging research in the general principles of humanitarian law and being afraid of reducing the four Geneva Conventions to only basic rules and guarantees, the definition of their content will be left to the conflict parts. But they can be considered as tools that work to develop the basic general principles. As far as those agreements are concerned, being in full detail, they remain as an addition to these principles.<sup>33</sup>

Accordingly, the use of the means and methods of combating is unanimously because they cause unnecessary injuries or pain due to its character within the customary rules. And there is no contradictory formal practice has been found. And no country has indicated that it can use the means or methods of combating that would cause unjustified pain in any type of armed conflict. These means of combating are prohibited due to the effects of the weapons on combatants. On the other hand, the states generally agree that suffering without any military purpose is a violation of this rule.<sup>34</sup>

In 2005, the ICRC published a detailed study of the rules of the customary international humanitarian law. This study shows a comprehensive list of 161

rules of customary humanitarian law. This work was carried out through an extensive review process on the practice of the states in this area. It allowed the accepted norms to be noted for the states in both international and non-international armed conflicts. This action creates greater legal security regarding the application of the humanitarian law in a specific context because the power and value of the 161 rules are above the process of signature or ratification by states. This allows restricting the use of some weapons which has not yet been restricted in writing because of their novelty.<sup>35</sup>

There are many valid customary principles for confronting new weapons, including the principle of distinction between civilians and military and civilian and military objects and it is the basis of the entire law of armed conflict. This is due to its function in protecting the civilian population and civilian casualties from attacks in the times of armed conflict. Therefore, it should never use weapons that are unable to distinguish between them. Also, the precautionary principle during the attack, it is intended to take all necessary measures and provide continuous care in the administration of military operations to avoid civilian casualties and to take all practical precautions to avoid accidental damage. Likewise, the principle of proportionality means the balance and approximate compatibility between losses in civilian casualties and the advantage of the military attack. Attacking is prohibited in case the expected collateral damage is excessive compared to the value of the military objective

### **Conclusion:**

Through our study of the custom's contribution to confront the new challenges of the international humanitarian law, the following conclusions can be reached:

- The humanitarian law is primarily composed of customary rules and written law as a confirmation for codified customary rules.
- The major human charters are advertising, and not constructed ones.
- States and other entities are bound by those rules on the basis of customary law, regardless of whether they are a part of it or not.
- The customary rules are applied during international as well as non-international armed conflicts because the human values are the same.

### **Accordingly, the following recommendations can be given:**

- Activating the implementation of international agreements to protect international and non-international armed conflicts.
- Activating the national monitoring means to protect armed conflicts.

-Emphasizing on the fact that weapons that are use has not yet been written due to their novelty has to be controlled by the international custom.

-Informing the countries and other entities that custom is a way to bind all countries regardless of their accession or not, and regardless of the type of the conflict or the type of weapons.

### **Bibliography:**

---

<sup>1</sup> - Bouchet-Saulnier, Françoise, *The Practical Guide to Humanitarian Law The Practical Guide to Humanitarian Law* Edition 02 Rowman & Littlefield Publishers, P 82- 92 .

<sup>2</sup> - Eric David , " principes des droit des conflits armés" Troisième 'Edition, Bruylant , Bruxelles ;2002, p57.

<sup>3</sup> - Bouchet-Saulnier, Françoise, *op.cit*, P 82- 92 .

<sup>4</sup> - *Affaire de Detroit de Confou* ,CIJ,Rec , 1948 , p 22.

<sup>5</sup> - Chriatain Dominicé , "l'application du droit humanitaire par la cour internationale de justice, "in Jean- François Flauss (dir), "les nouvelles frontières du droit international humanitaire, "Bruylant, Bruxelles, 2003, P,p82 .

<sup>6</sup> - CIJ, Rec ,1986, p113 ,par 218.

<sup>7</sup> - Eric David ,*op, cit*, p 59.

<sup>8</sup> - *Statute-of-the-court-Article 38 -b*.

<sup>9</sup> - Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. *Customary International HUMANITARIAN Law. Volume I rules .* Cambridge: Cambridge University Press, 2005, PP32-41

<sup>10</sup> - *The advisory opinion of the International Court of Justice on the legal implications arising from the construction of the wall of lands in the occupied Palestinian territories issued in 09-07-2004, paragraph 101, p50.*

<sup>11</sup> - Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. , *op. cit*, PP43-44

<sup>12</sup> - Bouchet-Saulnier, Françoise, *op. cit*, P 82- 92 .

<sup>13</sup> - Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. *Op. cit*, P 45

<sup>14</sup> - Bouchet-Saulnier, Françoise, *op.cit*, P 82- 93-92 .

<sup>15</sup> - Robert Kolb , "jus in bello" , *le droit international des conflit armes* , Helbing& lichtenhahn, Bale-Genève- Munich, Bruylant, Bruxelles ,2003, p214.

<sup>16</sup> - Cij, Rec, 1986, p 113,218.

<sup>17</sup> - Christian Dominicé, *op. cit* ,p83.

<sup>18</sup> - *Affaire de l'application de la convention pour la prevention et la répression du crime de genocide : arrêt du 11 juillet 1996 sur les exception preliminaires : 11/07/1996 . Cij,Rec ,1996,p 31.*

<sup>19</sup> - Veronique Harouel- Bureloup, "traité de droit humanitaire", *Presse Universitaire de France* , 1er 'Edition , 2005 , p175.

<sup>20</sup> - Rosemary Abi-Saab "les principes généraux du droit humanitaire selon la cour internationale de justice " *Revue internationale de la croix-rouge genève, juillet-août 1987, 69° année- N°766, P 387.*

<sup>21</sup> - Cij, Rec 1986, PP 113-114, par 218.

<sup>22</sup> - Eric David, *Principe de droit des conflits, armés, Op.Cit*, 535

<sup>23</sup> - Robert Kolb, *Op.Cit*, P 79-80.

<sup>24</sup> - Claude Emanuelli "les forces des nations unies et le droit international humanitaire » in Luigi Condorelli, Anne-Marie La rosa Sylvie Scherrer (sous direction) "les Nations unies et le droit international humanitaire" Edition, Pedone, Paris, 1996, P360-361

<sup>25</sup> - Robert Kolb, *Op.Cit*, P 214.

<sup>26</sup> - *Ibid.*

<sup>27</sup> - Bouchet-Saulnier, Françoise, *op. cit*, P 82- 93.

<sup>28</sup> - Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. *Op. cit*, P240-239.

<sup>29</sup> - Ramich Taker, *international norms and international humanitarian law, Asian perspective, international review of the red cross, selections from the 2001 number, p 10( original article in Arabic)*

<sup>30</sup> - Robert kolb .*op .cit* p227-228.

<sup>31</sup> - Paragraph 78, p. 35, *Advisory opinion on nuclear weapons, op. cit.*

<sup>32</sup> - Bouchet-Saulnier, Françoise, *op. cit*, P: 82-92-93.

<sup>33</sup> - Rosemary Abi- Saab, *op-cit*, P 386-387.

<sup>34</sup> - Henckaerts, Jean-Marie, *op. cit*, P 240-239.

<sup>35</sup> - Bouchet-Saulnier, Françoise, *op. cit*, P 82- 93.