



**University of Mohamed Lamine Debaghine, Setif2**

**Faculty of law and political sciences**

**Department of law**



**Legal English terminology courses/ second class/ Fourth semester**

**Prepared by:**

**Teacher : ZERRARI Habiba**

## Criminal liability

**Definition of criminal liability:** Criminal liability is the obligation to bear the legal consequences resulting from the presence of the elements of the crime, and the subject of this obligation is to impose a penalty or precautionary measure specified by the legislator in the event that any person is held responsible

Criminal liability is also defined as: “A person’s obligation to bear the consequences of his criminal actions

**The basis for establishing criminal liability in Algerian legislation:** The Algerian legislator established criminal liability on the basis of freedom of choice. The evidence for this is that he excluded criminal liability in cases where freedom of choice was absent. Article 47 of the Penal Code states: “No punishment shall be imposed on anyone who was in a state of insanity at the time of committing the criminal act.” Article 48 states: “No punishment shall be imposed on anyone who was forced to commit a crime by a force that he was unable to repel.” Article 49 states: “Only protective and educational measures shall be imposed on a minor who has not completed the age of thirteen”

All these articles express the impossibility of criminal liability due to the loss of freedom of choice, but the legislator has restricted the scope of this freedom by adopting the middle school. In this context, he has decided on security measures for the insane person despite the impossibility of his responsibility to protect society from the dangers of his actions, as Article 74 has indicated the application of the provisions of the second paragraph of Article 21 with regard to judicial detention in a psychiatric institution. He has also adopted the mitigated liability when freedom of choice is diminished in the second paragraph of Article 49: “A minor who has reached the age of 13 to 18 years shall be subject to protection or educational measures or to mitigated penalties.”

**Exclusion of criminal liability:** The Algerian legislator has determined the factors for exclusion of criminal liability as personal factors, which he mentioned in Articles 47 to 51 under the chapter on criminal liability.

**Impediments to liability due to lack of awareness:** Capacity is absent due to lack of awareness in two cases (insanity and young age)

**Madness:** Article 47 states: “No punishment shall be imposed on anyone who was in a state of madness at the time of committing the crime.”

The Algerian legislator did not know what is meant by madness, and it is agreed upon that madness is a disorder in the mental faculties that causes a person to lose the ability to distinguish and control his actions. In general, when doubt surrounds the mental state of the

accused, the judge resorts to mental expertise (the specialist doctor). madness generally includes all deficiency in mental abilities, such as dementia and imbecility. madness may be continuous or intermittent, and other forms of nervous and psychological diseases that strip a person of perception fall under insanity. In this context, drunkenness and drugs are not included among the obstacles to responsibility, and therefore are punished with the prescribed penalties. In fact, drunkenness and drugs are sometimes considered aggravating circumstances of the crime, as in the case of murder or crimes of negligence, Article 290 of the Penal Code.

**Effects of madness:** madness results in the absence of responsibility, so the insane person is not punished and only therapeutic measures are taken regarding him.

**Conditions of insanity that does not lead to responsibility:** the following conditions are required for this type of madness:

**That the madness be contemporaneous with the commission of the crime:** This is what is inferred from the ruling of Article 7 “at the time of committing the crime.” madness is not taken into account if it occurred before or after the commission of the crime. However, madness that occurs after the commission of the crime results in some consequences, as follows:

If madness occurs before the judgment is issued, the case against the accused is suspended and his trial is suspended if he is in the process of being tried. Therefore, if madness occurs during the initial investigation before the investigating judge, it is likely to suspend the investigation against the accused due to his inability to defend himself

If madness occurs after the judgment is issued, the punishment must be postponed until he recovers (placed in a mental hospital). As for all other punishments, the afflicted person remains subject to them, as is the case with the fine

**That the madness be complete:** that is, it be so serious that there is no feeling, and this is an objective matter that is left to the judges of the subject matter to assess following medical expertise.

**Young age:** It is accepted that a child is born helpless, devoid of awareness and perception, and legislation differs in setting a specific age. After reaching maturity, a person is considered responsible for his criminal acts. According to most legislations, the child is initially devoid of discernment and therefore is not held accountable for any act he commits. At a later stage, he becomes discerning and here he is held accountable with reduced responsibility. This stage extends until he reaches adulthood, and then he is held accountable with full responsibility. According to the text of Article 49 of the Penal Code, the legislator has distinguished between three stages of criminal responsibility.

**First stage:** Boy under 13: Referring to the text of the first paragraph of Article 49, the boy at this stage is not considered responsible by law, but this does not prevent him from being subjected to protection or educational measures

**The second stage:** A minor between the ages of 13 and 18. Here he becomes a lesser liability. If he commits a crime after reaching the age of 13 and before 18 (the age of criminal majority), the law allows him to be subjected to protection or educational measures or to reduced penalties.

**The third stage:** It is the stage of criminal maturity, i.e. reaching the age of 18, when his awareness is complete, his mental and psychological faculties mature, and he becomes fully responsible for his actions.

**Second: Abstention from responsibility due to lack of will (coercion):** Article 48 of the Penal Code stipulates that there is no punishment for someone who was forced to commit a crime by a force that he is unable to repel. Unlike insanity, which causes loss of consciousness and discernment, coercion is a psychological cause that negates freedom of choice. Coercion is of two types: material and moral.

**Physical coercion:** the presence of a physical force that robs a person of his will and pushes him to do an act prohibited by law. There are several forms of this type:

**It may be a violent force of nature:** a flood that prevents the witness from reaching the scene to give his testimony.

**It may also result from the action of an animal:** such as an animal running wild with its rider and injuring a passerby. It may also result from the action of a human, such as someone grabbing the hand of another person to sign a forged contract, or someone threatening a bank teller with a firearm and forcing him to hand over the money deposited in it.

**Characteristics of physical coercion:** There are several characteristics of physical coercion, which are:

**Unpredictability of force:** That is, the force must be sudden, such as someone surprising a cashier and threatening him with a firearm to force him to hand over the deposited money

**Impossibility of repelling force:** This means that the perpetrator is in a position where it is impossible for him to do anything other than commit the crime.

**Moral coercion:** If physical coercion is characterized by physical force, then moral coercion is characterized by a moral force that weakens the will of the coerced person in a way that makes him lose his choice, so the person threatened by it commits the crime because he sees that its harm is less severe for him than the occurrence of the harm threatened, such as someone who threatens a person with killing his son or burning his shop if he does not

commit the crime. Thus, it was decided in France that moral coercion that removes criminal liability requires an external act with respect to the perpetrator

**Third: The state of necessity:** In this context, we will discuss the following idea:

1- **Definition of a state of necessity:** It is a state in which someone cannot protect himself or others from an imminent evil except by committing a crime against innocent people. An example of this is when a person tries to steal food to save himself from death, or when a doctor performs an abortion on a pregnant woman to save her life. Jurisprudence has been divided between those who say that it is an obstacle to criminal liability or a reason for permissibility. It is worth noting that Algerian law did not refer to a state of necessity, and its neglect is not justified, as this issue must be decided upon.

2- **The case of necessity and legitimate defense:** The case of necessity and legitimate defense are similar in that the perpetrator (the perpetrator of the crime of necessity or the defender in legitimate defense) in both cases performs his work to prevent a current danger, but there are fundamental points of difference between them, which are: The source of danger in the case of legitimate defense is the human being, while the non-human being is the source of danger in the case of necessity. The danger emanating from the human being (the act of attack) in legitimate defense is a crime, and the act of defense is directed to stop this crime, while the danger emanating in the case of necessity is not considered a crime, such as floods, and the act of necessity is directed to get rid of this danger by attacking an innocent person.

In the case of legitimate defense, the aggressor against whom the act of defense is committed may not use the right of legitimate defense. However, in the case of necessity, the person who is subjected to the act of necessity may use the right of defense against the perpetrator of the necessity. Legitimate defense erases the crime, so it is not permissible to demand civil compensation. However, in the case of necessity, it is permissible to demand civil compensation

3- **State of necessity and moral compulsion:** The state of necessity meets moral compulsion in the following:

- The will of the agent is not erased in both cases

- The will of the agent is stripped of freedom of choice in both cases

- The criminal incident is directed against an innocent person in both cases

The state of necessity differs from moral coercion in several aspects, which are:

- Moral coercion by human action, unlike the case of necessity by an act of nature

- The crime that occurs in a state of moral coercion aims to ward off harm that threatens the perpetrator personally, while in a state of necessity the danger may be to the person, his property, or others (broader in scope)

- In the case of moral coercion, freedom of choice is limited, while in the case of necessity, the actor usually has more than one course of action.

4-Conditions of a state of emergency: A state of emergency requires the presence of two elements: danger and a reaction to it.

a- Danger: There are several conditions for a danger that could be a cause of a state of necessity, which are:

- That the danger exists: It is not permissible to use a non-existent danger as an excuse to say that a state of necessity has occurred. However, if the perpetrator imagines that the danger exists and his imagination is based on reasonable reasons, then his action on this basis is not considered a crime, but rather a state of necessity.

- The danger must be serious: it affects the will because it threatens irreparable harm.

- To be present: that is, about to happen or that it has started but not finished

- That the will of the perpetrator has no role in the occurrence of the danger: that is, that the danger does not arise from the perpetrator himself. This condition was stipulated by the Egyptian legislator, and accordingly, the person who intentionally sets fire to a place is not exempted from criminal accountability if the fire surrounds it and he is forced to kill or injure a person while he is trying to escape.

- The law does not require the actor to bear the risk: An example of this is that some jobs impose risks on the actor, as a firefighter bears the consequences of his profession resulting from fires.

**Conditions of the act of necessity:** If the danger meets the previously mentioned conditions, the perpetrator may repel it by an act of necessity, which are:

- That the act of necessity be directed to avert the danger: If the act of necessity deviates from its goal, it is considered a crime and the perpetrator receives its punishment

- That the act be the only means of getting rid of the danger: If there are multiple means of getting rid of the danger, he is not permitted to follow the act that leads to committing the crime.

**Legal terms:**

Criminal liability	المسؤولية الجنائية
obligation	الالتزام
elements of the crime	عناصر الجريمة
penalty	العقوبة
precautionary measure	تدبير احترازي
legislator	المشرع
freedom of choice	حرية الاختيار
evidence	الدليل
punishment	العقوبة
to repel	دفع
minor	القاصر
Loss of freedom of choice	فقدان حرية الاختيار
Scope of this freedom	نطاق هذه الحرية
provisions	الأحكام
insanity	الجنون
detention	الاحتجاز
mitigated liability	مسؤولية مخففة
mitigated penalties	عقوبات مخففة
restricted	قيد
educational measures	تدابير تربوية
Protectivemeasures	تدابير الحماية
Security measures	الأمن
psychiatric institution	مؤسسة عقلية
Exclusion of criminal liability	انتفاء المسؤولية الجنائية
personal factors	عوامل شخصية
Impediments to liability	موانع المسؤولية
lack of awareness	انعدام الوعي
Capacity	الأهلية
young age	صغر السن
Madness	الجنون
disorder in the mental faculties	اضطراب في القدرات العقلية
to lose the ability to distinguish	فقدان القدرة على التمييز
Control of actions	السيطرة على الأفعال
the mental state	الحالة العقلية
mental expertise	الخبرة العقلية
dementia	العتة
imbecility	الغفلة
psychological diseases	أمراض نفسية
nervous diseases	أمراض عصبية
perception	الإدراك

drunkenness	السكر
the prescribed penalties	العقوبات المقررة
aggravating circumstances	ظروف مشددة
murder	القتل
negligence	الإهمال - الغفلة
Effects of madness	آثار الجنون
absence of responsibility	غياب/ انتفاء المسؤولية
therapeutic measures	تدابير علاجية
the madness is contemporaneous with...	الجنون معاصر/ مترامن مع...
the commission of the crime	ارتكاب الجريمة
trial is suspended	تتوقف الدعوى
the initial investigation	التحقيق الابتدائي
inability to defend himself	عدم القدرة على الدفاع عن النفس
the punishment must be postponed	يتم تأجيل العقوبة
the complete madness	الجنون التام
medical expertise	خبرة طبية
objective matter	مسألة موضوعية
helpless	عاجز
reaching maturity	البلوغ
criminal acts	الأعمال الإجرامية
discerning	مميز
accountable	مسؤول
reduced responsibility	مسؤولية مخففة
adulthood	سن الرشد
full responsibility	مسؤولية كاملة/ تامة
is not considered responsible	لا يعتبر مسؤولاً
lesser liability	مسؤولية مخففة
criminal majority	الرشد الجنائي
reduced penalties	عقوبات مخففة
mental and psychological faculties	الملكات الذهنية والنفسية
lack of will	انعدام الإرادة
coercion	الإكراه
Physical coercion	الإكراه المادي
act prohibited by law	فعل محظور بموجب القانون
violent force of nature	قوة طبيعية عنيفة
prevent	يمنع
testimony	الشهادة
animal running wild	حيوان جامح
forged contract	عقد مزور
threat	يهدد
bank teller	صراف البنك
firearm	سلاح ناري
to hand	يسلم
physical coercion	الإكراه المادي



Unpredictability of force	عدم توقع القوة
a cashier	أمين الصندوق
Impossibility of repelling force	استحالة دفع القوة
Moral coercion	إكراه معنوي
moral force	قوة معنوية
the harm	الضرر
external act	فعل خارجي
imminent evil	شر محقق
innocent people	ناس أبرياء
a doctor performs an abortion	الطبيب يقوم بالإجهاض
a pregnant woman	امرأة حامل
permissibility	إباحة
a state of necessity	حالة الضرورة
negligence	الإهمال
not justified	غير مبرر
legitimate defense	الدفاع الشرعي
The case of necessity	حالة الضرورة
the perpetrator	الجاني، مرتكب الجريمة
the defender	المدافع
to prevent a current danger	لتوقي الخطر الحال
moral compulsion	الإكراه المعنوي
innocent person	شخص بريء
to get rid of this danger	لدرء هذا الخطر
the aggressor	المعتدي
Legitimate defense erases the crime	الدفاع المشروع يمحو الجريمة
civil compensation	التعويض المدني
The will of the agent	إرادة الفاعل
The criminal incident	الحادثة الإجرامية
human action	الفعل البشري
to ward off harm	درء الضرر
state of emergency	حالة الضرورة
The danger must be serious	أن يكون الخطر جسيما
To be present	أن يكون حالا
intentionally	عمدا
exempted from criminal accountability	يعفى من المسؤولية الجنائية
to avert the danger	تجنب الخطر
getting rid of the danger	التخلص من الخطر
to committing the crime	لارتكاب الجريمة

Text N°9

## Civil procedure law

Civil procedure law is the body of law that sets out the rules and regulations along with some standards that courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law matters). These rules govern how a lawsuit or case may be commenced; what kind of service of process (if any) is required; the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases; the timing and manner of depositions and discovery or disclosure; the conduct of trials; the process for judgment; the process for post-trial procedures; various available remedies; and how the courts and clerks must function.

### **Differences from criminal procedure law**

In most cases, criminal prosecutions are pursued by the state in order to punish offenders, although some systems, such as in English and French law, allow citizens to bring a private prosecution. Conversely, civil actions are initiated by private individuals, companies or organizations, for their own benefit. Government agencies may also be a party to civil actions. Civil and criminal cases are usually heard in different courts.

In jurisdictions based on English common-law systems, the party bringing a criminal charge (in most cases, the state) is called the "prosecution", but the party bringing most forms of civil action is the "plaintiff" or "claimant". In both kinds of action the other party is known as the "defendant".

Most countries make a clear distinction between civil and criminal procedure. For example, a criminal court may force a convicted defendant to pay a fine as punishment for their crime, and the legal costs of both the prosecution and defence. But the victim of the crime generally pursues their claim for compensation in a civil, not a criminal, action. In France and England, however, a victim of a crime may incidentally be awarded compensation by a criminal court judge.

Evidence from a criminal trial is generally admissible as evidence in a civil action about the same matter. For example, the victim of a road accident does not directly benefit if the driver who injured them is found guilty of the crime of careless driving. The victim still has to prove his case in a civil action, unless the doctrine of collateral estoppel applies, as it does in

most American jurisdictions. The victim may be able to prove their civil case even when the driver is found not guilty in the criminal trial, because the standard to determine guilt is higher than the standard to determine fault. However, if a driver is found by a civil jury not to have been negligent, a prosecutor may be estopped from charging them criminally.

If the plaintiff has shown that the defendant is liable, the main remedy in a civil court is the amount of money, or "damages", which the defendant should pay to the plaintiff. Alternative civil remedies include restitution or transfer of property, or an injunction to restrain or order certain actions.

The standards of proof are higher in a criminal case than in a civil one, since the state does not wish to risk punishing an innocent person. In English law the prosecution must prove the guilt of a criminal "beyond reasonable doubt"; but the plaintiff in a civil action is required to prove his case "on the balance of probabilities". Thus, in a criminal case a crime cannot be proven if the person or persons judging it doubt the guilt of the suspect and have a reason (not just a feeling or intuition) for this doubt. But in a civil case, the court will weigh all the evidence and decide what is most probable.

Civil procedure law	قانون الإجراءات المدنية
courts	المحاكم
adjudicating civil lawsuits	الفصل في الدعاوى المدنية
criminal law	القانون الجنائي
pleadings	المرافعات
applications	الطلبات
prosecutions	المحاكمات
offenders	الجنة
civil actions	الدعاوى المدنية
private individuals	الأفراد
companies or organizations	الشركات أو المنظمات
Government agencies	وكالات/ هيئات حكومية
common-law	القانون العام

prosecution	النيابة العامة
plaintiff	المدعي
claimant	المدعي
defendant	المدعى عليه
a convicted defendant	المتهم المدان
claim for compensation	المطالبة بالتعويض
the victim of a road accident	ضحية حادث مرور
guilty	مذنب
careless driving	قيادة متهوره
fault	الخطأ
negligent	مهمل
charging them criminally	متابعتهم/ اتهامهم جنائيا
liable	مسؤول قانونيا
damages	تعويضات
property	ملكية
injunction	أمر قضائي
prosecution	الإدعاء
the suspect	المشتبه فيه
civil case	دعوى/ قضية مدنية
to prove	لإثبات
proof	الدليل

**Text N°10**

**international treaties**

Treaties are one of the main sources of international law which means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation

**Means of expressing consent to be bound by a treaty:**

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed

**Consent to be bound by a treaty expressed by signature:**

1-The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

**A**-the treaty provides that signature shall have that effect.

**B**-it is otherwise established that the negotiating States were agreed that signature should have that effect.

**C**-the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

**Signing the Treaty:** the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed.

the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

**Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty:**

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

1-the instruments provide that their exchange shall have that effect.

2-it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

**Consent to be bound by a treaty expressed by ratification, acceptance or approval:**

**1**-The consent of a State to be bound by a treaty is expressed by ratification when:

**A**-the treaty provides for such consent to be expressed by means of ratification.

**B**-it is otherwise established that the negotiating States were agreed that ratification should be required.

**C**-the representative of the State has signed the treaty subject to ratification.

**D**-the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

**2**-The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

**Consent to be bound by a treaty expressed by accession:**

The consent of a State to be bound by a treaty is expressed by accession when:

**A**-the treaty provides that such consent may be expressed by that State by means of accession.

**B**-it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession.

**C**-all the parties have subsequently agreed that such consent may be expressed by that State by means of accession

**Exchange or deposit of instruments of ratification, acceptance, approval or accession:**

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

a-their exchange between the contracting States.

b-their deposit with the depositary.

c-their notification to the contracting States or to the depositary, if so agreed

### **Consent to be bound by part of a treaty and choice of differing provisions**

**1-**Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

**2-**The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

### **Obligation not to defeat the object and purpose of a treaty prior to its entry into force:**

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

**a-**it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.

**b-**it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

international treaties	المعاهدات الدولية
main sources	المصادر الأساسية
international agreement	اتفاقية دولية
international law	القانون الدولي
instrument	وثيقة
to be bound by a treaty	الالتزام بالمعاهدة
may be expressed by signature	يعبر عنه بالتوقيع
exchange of instruments constituting a treaty	تبادل الوثائق المكونة للاتفاقية
ratification	التصديق
acceptance	الموافقة
approval	القبول
accession	الإنضمام
representative	ممثّل
the treaty provides	تنصّ المعاهدة
the effect	الأثر
negotiating States	الدول المتفاوضة
intention of the State	نية/ قصد الدولة
full powers	صلاحيات كاملة/ تفويض كامل
To express	التعبير

Signing the Treaty	توقيع المعاهدة
initialling	توقيع بالأحرف الأولى
if confirmed by his State	إذا أجازت دولته ذلك
instruments exchanged	الوثائق المتبادلة
Consent to be bound by a treaty	تعبر الدولة عن رضاها الالتزام بالمعاهدة
accession	الإنضمام
Exchange or deposit of instruments	تبادل أو إيداع الوثائق
contracting States	الدول المتعاقدة
depository	جهة الإيداع
notification to the contracting States	إخطار الدول المتعاقدة
part of a treaty	جزء من المعاهدة
choice of differing provisions	الاختيار بين نصوص مختلفة
Without prejudice to articles	عدم الإخلال بالمواد
is effective	نافذا
Obligation not to defeat	الالتزام بعدم تعطيل
object and purpose of a treaty	موضوع أو غرض الإتفاقية
entry into force	الدخول حيز التنفيذ
defeat the object and purpose of a treaty	تعطيل موضوع وغرض المعاهدة

## Text N°11

### International treaties

The term *treaty* is used generically to describe a variety of instruments, including conventions, agreements, arrangements, protocols, covenants, charters, and acts. In the strict sense of the term, however, many such instruments are not treaties. The key distinguishing feature of a treaty is that it is binding. For example, whereas the United Nations (UN) Charter (1945) created a binding agreement and is thus a treaty, the Charter of Paris (1990), which established the Organization for Security and Co-operation in Europe (formerly the Conference on Security and Co-operation in Europe), is not a binding document as such and thus is not officially a treaty. Treaties are expected to be executed in good faith, in keeping with the principle of *pacta sunt servanda* (Latin: “agreements must be kept”), arguably the oldest principle of international law. Without this principle, which is explicitly mentioned in many agreements, treaties would be neither binding nor enforceable.



A treaty is normally negotiated between plenipotentiaries provided by their respective governments with the “full power” to conclude a treaty within the scope of their instructions. A country’s signature is often sufficient to manifest its intention to be bound by the treaty, especially in the case of bilateral treaties. In multilateral (general) treaties, however, a country’s signature is normally subject to formal ratification by the government unless it has explicitly waived this right. Apart from such an express provision, the instrument does not become formally binding until ratifications have been exchanged. Multilateral treaties bind only those states that are parties to them and go into effect after a specified number of ratifications have been attained. After the time specified for states to sign the treaty has passed, states may become parties to the treaty through a process known as accession.

The use of multilateral treaties has increased dramatically since the early 20th century (e.g., the 1919 Treaty of Versailles and the 1945 UN Charter). Such treaties have proved to be effective in establishing new rules of international law—particularly where there is a need to respond quickly to changing circumstances or where the issue in question is unregulated. An example of the former kind of treaty is the Convention on the law of the sea which is signed in 1982 and came into force 12 years later. Examples of the latter kind of treaty include a range of environmental treaties, such as the Geneva Convention on Long-Range Transboundary Air Pollution (1979) and the Vienna Convention for the Protection of the Ozone Layer (1985) as well as their succeeding protocols; the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (both of which were adopted in 1992); and the Kyoto Protocol (1997)—the first addition to the UNFCCC—which was superseded by the Paris Agreement on climate change in 2015. In addition, human rights protections have been expanded tremendously through a series of international conventions and regional agreements, including the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the European Convention on Human Rights (1950), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), and the Inter-American Convention on Human Rights (1969).

Treaties do not need to follow any special form. A treaty often takes the form of a contract, but it may be a joint declaration or an exchange of notes. Important treaties, however, generally follow a fixed plan. The preamble provides the names and styles of the contracting parties and is a statement of the treaty's general objectives. It is usually followed by the articles containing the agreed-upon stipulations. If the treaty is concluded for a definite period, a statement of the period follows; or, if it is in perpetuity, there may be a provision inserted that either party may "denounce" (give notice to terminate) the treaty. Any reservations, which alter the treaty's provisions for the concerned state, may then appear; they are followed by an article that provides for the treaty's ratification and for the time and place for the exchange of ratifications. The treaty usually ends with a clause stating that "in witness whereof the respective plenipotentiaries have affixed their names and seals," below which are the signatures and indications of the signatory and the date. "Additional articles" often are appended and signed by the plenipotentiaries, with the declaration that they have the same force and value as if they had been included in the body of the treaty or convention.

International jurists have classified treaties according to a variety of principles. In addition to the distinction between multilateral and bilateral treaties, there is also the distinction between treaties representing a definite transaction (e.g., a cession of territory) and those seeking to establish a general rule of conduct (e.g., the "renunciation of war"). Treaties also have been classified according to their object, as follows: (1) political treaties, including peace treaties, alliances, territorial cessions, and disarmament treaties; (2) commercial treaties, including tariff, consular, fishery, and navigation agreements; (3) constitutional and administrative treaties, such as the conventions establishing and regulating international unions, organizations, and specialized agencies; (4) treaties relating to criminal justice, such as the treaties defining international crimes and providing for extradition; (5) treaties relating to civil justice, such as the conventions for the protection of human rights, for trademarks and copyright, and for the execution of the judgments of foreign courts; and (6) treaties codifying international law, such as the procedures for the peaceful settlement of international disputes, rules for the conduct of war, and definitions of the rights and duties of states. In practice it is often difficult to assign a particular treaty to any one of these classes, and the legal value of such distinctions is minimal.

### Legal terms:

conventions	معاهدات
agreements	اتفاقيات
arrangements	اتفاقيات
protocols	بروتوكولات

covenants	العهود
charters	موثائق
treaties	اتفاقيات
binding	ملزم
United Nations charter	ميثاق الأمم المتحدة
Organization	منظمة
Security and Co-operation	الأمن والتعاون
Conference	مؤتمر
binding document	وثيقة ملزمة
to be executed	تنفذ
in good faith	بحسن نية
principle of <i>pacta sunt servanda</i>	العقد شريعة المتعاقدين
principle of international law	مبدأ القانون العام
explicitly mentioned	مذكور صراحة/ منصوص عليه صراحة
enforceable	قابل للتنفيذ
negotiated	يتم التفاوض عليها
plenipotentiaries	المفوضون
respective governments	حكوماتهم المعنية
full power	تفويض كامل
to conclude a treaty	لإبرام اتفاقية
instructions	تعليمات
bilateral treaties	معاهدات ثنائية
multilateral treaties	معاهدات متعددة الأطراف
formal ratification	تصديق رسمي
waive the right	التنازل عن الحق
Treaty of Versailles	اتفاقية فرساي
Convention on the Law of the Sea	اتفاقية قانون البحار
came into force	دخلت حيز النفاذ
environmental treaties	معاهدات بيئية
Geneva Convention	اتفاقية جنيف
Geneva Convention on Long-Range Transboundary Air Pollution	اتفاقية حول تلوث الهواء على المدى البعيد عبر الحدود
Vienna Convention for the Protection of the Ozone Layer	اتفاقية فيينا لحماية طبقة الأوزون
succeeding protocols	البروتوكولات اللاحقة
the UN Framework Convention on Climate Change	اتفاقية الأمم المتحدة الإطارية بشأن تغير المناخ
Convention on Biological Diversity	اتفاقية التنوع المناخي
Kyoto Protocol	بروتوكول كيوتو
Paris Agreement on climate change	اتفاقية باريس للتغير المناخي
regional agreements	اتفاقيات إقليمية
Crime of Genocide	اتفاقية الإبادة
Convention on the Elimination of All Forms of	اتفاقية القضاء على كل أشكال التمييز العنصري

Racial Discrimination	
International Covenant on Economic, Social and Cultural Rights	العهد الدولي للحقوق الاقتصادية والاجتماعية والثقافية
International Covenant on Civil and Political Rights	العهد الدولي للحقوق المدنية والسياسية
Inter-American Convention on Human Rights	الإتفاقية الأمريكية لحقوق الإنسان
a joint declaration or an exchange of notes	إعلان مشترك أو تبادل للوثائق
Preamble	ديباجة
contracting parties	الأطراف المتعاقدة
Statement	بيان
Reservations	التحفظات
Clause	بند
In witness	الشهود، إثباتا لذلك
Seals	الأختام
Value	القيمة
International jurists	خبراء القانون الدوليون
definite transaction	معاملة محددة
cession of territory	تنازل عن الإقليم
political treaties	المعاهدات السياسية
peace treaties	معاهدات السلام
alliances	التحالفات
territorial cessions	تنازلات إقليمية
disarmament treaties	إتفاقيات نزع السلاح
commercial treaties	اتفاقيات تجارية
Tariff	التعرفة الجمركية
Consular	قنصلية
Fishery	مصائد السمك
navigation agreements	اتفاقيات الملاحة
constitutional	دستورية
administrative treaties	اتفاقيات إدارية
international unions	اتحادات دولية
specialized agencies	وكالات متخصصة
criminal justice	عدالة جنائية
extradition	تسليم المجرمين
civil justice	عدالة مدنية
Trademarks	علامات تجارية
Copyright	حقوق التأليف
execution of the judgments	تنفيذ الأحكام
foreign courts	المحاكم الأجنبية
treaties codifying international law	المعاهدات التي تدون القانون الدولي
peaceful settlement	التسوية السلمية
international disputes	النزاعات الدولية
conduct of war	قواعد/ سلوك/ إدارة الحرب

legal value	قيمة قانونية
-------------	--------------

## Text N°12

### Geneva Convention

Geneva Convention relative to the Protection of Civilian Persons in Time of War

**Article1:** The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

**Article 2:** 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.

**Article 3:** 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, colour, 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 endeavour 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.

**Article 4:** Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative

to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.

**Article 5:** Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

#### Legal terms :

Geneva Convention	معاهدة جنيف
relative to the protection	المتعلقة بحماية
Civilian Persons	الأشخاص المدنيين
Time of War	زمن الحرب
The High Contracting Parties	الأطراف السامية المتعاقدة
undertake to respect	تتعهد باحترام
implemented in peacetime	تسري وقت السلم
declared war	حرب معلنة
armed conflict	نزاع مسلح
partial or total occupation	احتلال جزئي أو كلي
territory	الإقليم
armed resistance	مقاومة مسلح
Powers in conflict	دول النزاع
mutual relations	علاقات متبادلة
international character	طابع دولي
following provisions	الأحكام التالية
hostilities	الأعمال العدائية

laid down their arms	ألقوا أسلحتهم
detention	احتجاز
treated humanely	يعاملون بإنسانية
distinction founded on race	تمييز على أساس العرق
religion	الدين
faith	معتقد
prohibited	محظور/ ممنوع
violence to life and person	الإعتداء على الحياة والشخص
murder	القتل
mutilation	التشويه
cruel treatment	المعاملة القاسية
torture	التعذيب
Taking of hostages	أخذ الرهائن
Outrages upon personal dignity	الاعتداء على كرامة الشخص
humiliating and degrading treatment	المعاملة المهينة والحاطة
The passing of sentences	إصدار الأحكام
previous judgment	أحكام سابقة
carrying out of executions	تنفيذ العقوبات
regularly constituted	مشكلة قانونا
judicial guarantees	ضمانات قضائية
civilized peoples	الشعوب المتعدنة
impartial humanitarian body	هيئة إنسانية غير متحيزة
International Committee of the Red Cross	اللجنة الدولية للصليب الأحمر
to bring into force	لوضعها حيز التنفيذ
special agreements	اتفاقيات خاصة
application of the preceding provisions	تطبيق الأحكام السابقة
legal status	الوضع القانوني
Nationals of a State	رعايا دولة
Nationals of a neutral State	رعايا دولة محايدة
co-belligerent State	دولة متحاربة
diplomatic representation	تمثيل دبلوماسي
Wounded and Sick	الجرحى والمرضى
Shipwrecked Members	الأفراد الغرقى
Armed Forces at Sea	القوات البحرية المسلحة
Treatment of Prisoners of War	معاملة أسرى الحرب
the State in whose hands they are	الدولة التي يقعون تحت سلطتها



## Human Rights

Human rights are rights we have simply because we exist as human beings, these universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language or any other status. They range from the most fundamental- the right to life – to those that make life worth living, such as the rights to food, education, work, health and liberty.

The universal declaration of human rights (UDHR) adopted by the UN General assembly in 1948, was the first legal document to set out the fundamental human rights to be universally protected. The UDHR continuous to be the foundation of all international human rights, its 30 articles provide the principles and building blocks of current and future human rights conventions.

The UDHR, together with the 2 covenants – the international covenant for civil and political rights and the international covenant for economic, social and cultural rights – make up the international Bill of rights.

### **Universal and inalienable:**

The principle of universality of human right is the cornerstone of international human rights law. This means that we are all equally entitled to our human rights, it is as first emphasized in the UDHR, and repeated in many international human rights conventions, declarations and resolutions.

Inalienability of human rights means that they should not be taken away except in specific situations and according to due process, for example the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

**Indivisible and interdependent:** All human rights are Indivisible and interdependent, this means that one of set of rights cannot be enjoyed fully without the other, for example, making progress in civil and political rights makes it easier to exercise economic, social and cultural rights, similarly violating economic, social and cultural rights can negatively affect many other rights.

**Equal and non discriminatory:** Article 1 of the UDHR states: « All human beings are born free and equal in dignity and rights, freedom from discrimination set out in the article 2, is what insures the equality. Non discrimination cuts across all in human rights law, this principle is present in all major human rights treaties, and provides the central theme of two core instruments: the international convention on the Elimination of all forms of racial discrimination, and the convention on the Elimination of all forms of discrimination against woman.

### **Legal terms:**

Human rights	حقوق الانسان
Guaranted	مضمونة
State	الدولة
Universal rights	حقوق عالمية
Nationality	الجنسية
Fundamental human rights	حقوق الانسان الاساسية
Universal declaration on human rights	الاعلان العالمي لحقوق الانسان

UN general assembly	الجمعية العامة للأمم المتحدة
Adopted	المتبناة – المعتمدة
Legal document	وثيقة قانونية
Universally protected	محمية عالميا
Foundation	اساس
Articles	مواد
International covenant on civil and political rights	العهد الدولي للحقوق السياسية والمدنية
International covenant on economic, social and cultural rights	العهد الدولي للحقوق الاقتصادية والاجتماعية والثقافية
International bill of rights	الشرعة الدولية لحقوق الانسان
Principle of universality of human rights	مبدأ عالمية حقوق الانسان
Inalienability of human rights	عدم قابلية حقوق الانسان للتصرف
International human rights conventions	الاتفاقيات الدولية لحقوق الانسان
Declarations	اعلانات
Resolutions	لوائح – قرارات
Due process	اجراءات قانونية
Found guilty=convicted	مدان
Crime	جريمة
Court of law	المحكمة
To exercise rights	ممارسة الحقوق
Equality	المساواة
Non discrimination	عدم التمييز
To state- to set out	تنص- تؤسس
Human rights treaties	معاهدات حقوق الانسان
Human rights law	قوانين حقوق الانسان
Instruments	وسائل- صكوك
Convention on elimination of all forms of racial discrimination	اتفاقية القضاء على كل أشكال التمييز العنصري
Convention on elimination of all forms of discrimination against woman (CEDAW)	اتفاقية القضاء على كل أشكال التمييز ضد المرأة

## **HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW**

Human rights law is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain rights that must be respected and protected by their States. The body of international human rights standards also contains numerous non-treaty-based principles and guidelines ('soft law'). The main treaties of human rights law are given below:

### **a) Universal instruments :**

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)

### **b) Regional instruments :**

European Convention on Human Rights (1950)

American Convention on Human Rights (1969)

African Charter on Human and Peoples' Rights (1981).

These treaties are supervised by human rights bodies, such as the Human Rights Committee for the International Covenant on Civil and Political Rights and the European Court for Human Rights for the European Convention on Human Rights.

While IHL and human rights law have developed in their separate ways, some human rights treaties include provisions that come from IHL: for instance, the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict, and the Convention on Enforced Disappearance.

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. For example, both IHL and human rights law prohibit torture or cruel treatment, prescribe basic rights for persons subject to criminal process, prohibit discrimination, contain provisions for the protection of women and children, and regulate aspects of the right to food and health. There are however important differences between them: their origins, the scope of their application, the bodies that implement them, and so on.

### Legal terms :

Human rights law	قانون حقوق الانسان
International humanitarian law	القانون الدولي الانساني
international rules	القواعد الدولية
Established by treaty or custom	التي وضعتها، أرسنها، أنشأتها المعاهدة أو العرف
Claim rights	المطالبة بالحقوق
international human rights standards	المعايير الدولية لحقوق الانسان
non-treaty-based principles and guidelines	المبادئ التوجيهية
Soft law	القانون الرخو ( المرن )
Universal instruments	الصكوك العالمية
Convention on the Prevention and Punishment of the Crime of Genocide	اتفاقية الوقاية من جريمة الابادة ومعاقبته
Convention on the Elimination of All Forms of Racial Discrimination	اتفاقية القضاء على كل أشكال التمييز العنصري
International Covenant on Civil and Political Rights	العهد الدولي للحقوق السياسية والمدنية
International Covenant on Economic, Social and Cultural Rights	العهد الدولي للحقوق الاقتصادية والاجتماعية والثقافية
Convention on the Elimination of All Forms of Discrimination against Women	اتفاقية القضاء على كل اشكال التمييز ضد النساء ( سيداو )
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	اتفاقية مناهضة التعذيب وكل أشكال المعاملة القاسية واللاانسانية والمهينة
Convention on the Rights of the Child	اتفاقية حقوق الطفل
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	الاتفاقية الدولية لحماية حقوق العمال المهاجرين وأفراد عائلاتهم
International Convention for the Protection of All Persons from Enforced Disappearance	الاتفاقية الدولية لحماية الاشخاص من الاختفاء القسري
Convention on the Rights of Persons with Disabilities	اتفاقية حقوق الاشخاص ذوي الاحتياجات الخاصة
Regional instruments	الصكوك الجهوية
European Convention on Human Rights	الاتفاقية الاوروبية لحقوق الانسان
American Convention on Human Rights	الاتفاقية الامريكية لحقوق الانسان

African Charter on Human and Peoples' Rights	الميثاق الافريقي لحقوق الانسان والشعوب
Treaties	معاهدات
Are supervised	يشرف عليها، يتولى رقابتها
Human rights bodies	هيئات حقوق الانسان
Human Rights Committee	لجنة حقوق الانسان
European court	المحكمة الاوروبية
Optional Protocol on the involvement of children in armed conflict	البروتوكول الاختياري الخاص باشتراك الاطفال في النزاعات المسلحة
the Convention on Enforced Disappearance.	اتفاقية الاختفاء القسري
prohibit torture or cruel treatment	تحظر = تمنع التعذيب والمعاملة القاسية
Criminal process	المحاكمة الجنائية
To regulate	تنظم وتضبط
the scope of their application	نطاق تطبيقها
The bodies that implement them	الهيئات التي تنفذها