

# Ethical Paradigm of Buddhism:

## A Buttress for Compliance with International Humanitarian Law

*Pimchanok Palasmith\**

The core Buddhist morality revolves around the instruction “[t]o avoid all evil, to cultivate good, and to cleanse one's mind” (Dhammapada 183).<sup>1</sup> To achieve these aims, Buddhist lay followers were taught to uphold precepts and practice meditation. These are means to inhibit physical and mental immoral activities. Correspondences between Buddhist practices and IHL will be illustrated upon to argue that the moral alignment reinforces legitimacy of the law and compliance. Furthermore, this article argues that keeping the five precepts and practicing mindfulness of breathing (*Ānāpānasati bhāvana*) are conducive for compliance with International Humanitarian Law (IHL) physically and psychologically. Lastly it proposes some practical means to integrate IHL through ethical doctrines into Buddhist community which should contribute to more efficient application of IHL.

**Keywords:** International Humanitarian Law, the Five precepts, Mindfulness of Breathing

### 1. Introduction

Compliance with International Humanitarian Law (IHL) like other laws is dependent on various factors. It depends on the interplay between IHL and diverse practical, strategic, socio-political, normative and psychological considerations that determines its effectiveness.<sup>2</sup> Generally people comply with the law because they believe it is the ‘right thing to do’.<sup>3</sup> Personal morality is also a

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\* LL.B. (Hons), Chulalongkorn University, Bangkok Thailand. The author is grateful to the anonymous reviewers for their constructive comments on the earlier draft of this article.

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<sup>1</sup> “Dhammapada 183”, translated by Acharya Buddharakkhita, *Buddhavagga: The Buddha*, 1996, available at: <https://www.accesstoinight.org/tipitaka/kn/dhp/dhp.14.budd.html>.

<sup>2</sup> Marco Sassòli, “The Implementation of International Humanitarian Law: Current and Inherent Challenges”. *Yearbook of International Humanitarian Law*, Vol. 10, 2007, pp. 45 – 73, doi:10.1017/S1389135907000451.

<sup>3</sup> Jonathan Jackson, et al., “Compliance with the Law and Policing by Consent: Notes on Police and Legal Legitimacy”, *Legitimacy and Compliance in Criminal Justice*, Routledge, London, UK, 2012, pp. 22–49, LSE Research Online, available at: [https://eprints.lse.ac.uk/30157/1/Jackson\\_etal\\_Compliance\\_with\\_the\\_law\\_and\\_policing\\_by\\_consent\\_2012.pdf](https://eprints.lse.ac.uk/30157/1/Jackson_etal_Compliance_with_the_law_and_policing_by_consent_2012.pdf) (all

significant predictor of compliance and legitimacy of the law can significantly influence the degree to which people follow it.<sup>4</sup> While IHL regulates conduct in armed conflicts, Buddhism encourages its followers to be self-disciplined and lead ethical lives. This article thus argues that disseminating IHL through religious norms and moral reasoning reinforces its perceived legitimacy and fosters combatants' internalized control.

The second section thus elaborates on the elementary Buddhist concepts which spiritually support IHL compliance. The religious influence can be helpful especially when the formal settings of IHL dissemination and implementation are weak or rare. The major findings in the “Roots of Restraint in War” by the International Committee of the Red Cross (ICRC), also suggested that “integrating the law into doctrine and training, linking it to local norms and values gives it greater traction that increases restraint on the battlefield”.<sup>5</sup> The third part draws on correspondences between the Buddhist precepts and IHL. It argues that the law accords with Buddhist fundamental virtues, therefore is morally legitimate. Legal legitimacy is the public belief that laws are binding and leads individuals to follow rules neither because they agree with each specific rule, nor because they expect punishment, but because they accept that it is morally right to abide by the law.<sup>6</sup> The fourth part discusses corresponding psychological aspects between Buddhist mental culture and IHL as a supplement to IHL adherence. It argues that ingrained spiritual incentive affects an individual's behavior to a greater extent than that of law, especially in the fog of war. Lastly this article proposes practical means to integrate these moral and legal alignments into Buddhist community. Supposedly, assimilation of religious and psychological factors with the law offers value-based motivation for voluntary deference and establish a greater

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internet references were accessed on or before 27 June 2023); see also Tom R. Tyler. “Psychological Perspectives on Legitimacy and Legitimation”, *Annual Review of Psychology*, 2006, pp. 375–400, available at: <https://doi.org/https://doi.org/10.1146/annurev.psych.57.102904.190038>; See also Tom R. Tyler, *Why People Obey the Law*, Princeton University Press, 2006.

<sup>4</sup> Jonathan, Jackson, et al., “Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions”, *British Journal of Criminology*, Vol. 52, No. 6, 5 Feb. 2012, pp. 1051 – 1071, available at: <https://doi.org/https://dx.doi.org/10.2139/ssrn.1994490>; see also Tom R. Tyler and Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*, Russell Sage Foundation, 2002.

<sup>5</sup> *The Roots of Restraint in War*, ICRC, 2018, available at: <https://www.icrc.org/en/publication/4352-roots-restraint-war>.

<sup>6</sup> J. Jackson, above note 3; see also Jonathan Jackson et al., “Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions”, *British Journal of Criminology*, Vol. 52, No. 6, 5 Feb. 2012, pp. 1051–1071, available at: <https://doi.org/https://dx.doi.org/10.2139/ssrn.1994490>

sense of inclusivity which could reduce the perception of IHL as far-fetched, western-imposed rules.

## **2. Ethical Paradigm of Buddhism**

Elementally, Buddhism considers all living creatures as comprising of body and mind that interact interdependently. The trained or untrained mind affects one's whole behavior. The five precepts and mindfulness of breathing will be the primary focus of this article, and both will be reviewed together as a comprehensive self-restraint mechanism, physically and mentally. Upholding the five precepts requires abstention from taking life, stealing, sexual misconduct, false speech, and taking intoxicants. Mindfulness of breathing helps to cultivate mental restraint. These doctrines are considered to be the most fundamental and prevalent principles which are commonly observed by Buddhists. Both are the Buddhist law of conduct which both lay Buddhists and monastic are preached to undertake daily through their whole lives. Observing the precepts means to generate favorable karma whilst refraining from causing unfavorable karma. It is also a preparative process for cultivating higher mental state through meditation.

Additionally, other core Buddhist values which promote an ethic of empathy e.g., non-violence (Ahimsa), compassion (Karuṇā), forbearance (khanti), etc. are also vital for following the path of the Buddha. Buddhists are taught to be decent human beings while striving to achieve the ultimate goal of Buddhism, nibbana (nirvana). However, the Buddhist approach to spiritual life yields a great degree of flexibility. It ought to be noted that not all Buddhists crave for nibbana. Some might just want to accumulate favorable karmic results for rebirth in a finer condition, for instance, in heaven. In the same vein, Buddhists are instructed to avoid committing bad karma because its consequences will lead to a rougher condition e.g., to rebirth as an animal or in hell. However, Buddhist followers can exert themselves as much or as little as they wish, so long as principal moral rules are not violated.

Furthermore, the law of karma (kamma) is also a foundational doctrine in Buddhism. Everyone is inevitably subject to retributive consequences of moral responsibility of his/her actions. According to the Buddha,

"... A woman or a man, a householder or one gone forth into homelessness/monastic life should often reflect thus:

'I am the owner of my kamma, the heir of my kamma;

I have kamma as my origin, kamma as my relative, kamma as my resort;

I will be the heir of whatever kamma, good or bad, that I do".<sup>7</sup>

Indeed, good karma can be analogous to pure water which by its nature cannot nullify but dilute concentration of salt or competing effect of bad karma. However, the degree of volition (cetana) can affect the gravity of unwholesomeness of an action. For instance, it may be argued that killing enemy combatants to protect innocent civilians or inflicting unintentional harm incurs less bad karma than deliberately harming civilians. However, the matter of intention that affects karmic consequences need to be addressed cautiously. This narrative can adversely contradict IHL principles and can be used to justify oppression or demonization of others. For instance, the propaganda that killing the adversary is not sinful because the intention is to protect one's own race or religion or that others have less 'virtue'.

### **3. Convergences with IHL**

The main purpose of IHL is to regulate means and methods of warfare and protect the victims of armed conflict. It acknowledges the possibility of lawful conduct of war, while balancing the competing principles of humanity and military necessity. The Pāli Canon also recognizes the existence of violence and war. Yet there is no resource for its justification nor the just war theory.<sup>8</sup> The Pāli Canon suggests that, as long as human beings have not eliminated all sensual desires, verbal and physical abuses or violent activities towards one another seems to be unavoidable.<sup>9</sup>

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<sup>7</sup> "Abhiṅhapaccavekkhitabbaṭṭhāna Sutta", *Aṅguttara Nikāya*, translated by Bhikkhu Bodhi, SuttaCentral, available at <https://suttacentral.net/an5.57/en/bodhi?reference=none&highlight=false>.

<sup>8</sup> Mahinda Deegalle, "Norms of War in Theravada Buddhism", *World Religions and Norms of War*, edited by Gregory M. Reichberg and Vesselin Popovski, United Nations University Press, Tokyo, Japan, 2009, pp. 60–86; see also Peter Harvey, "War and peace", *An Introduction to Buddhist Ethics: Foundations, Values and Issues*, Cambridge University Press, 2000, p. 255.

<sup>9</sup> "Maha-Dukkhakkhandha Sutta: The Great Mass of Stress" translated by Thanissaro Bhikkhu, 2005, available at: <https://www.accesstoinsight.org/tipitaka/mn/mn.013.than.html>; see also Mahinda Deegalle, "Introduction: Buddhism, Conflict and Violence" *Buddhism, Conflict and Violence in Modern Sri Lanka*, Routledge, Taylor & Francis Group, London, 2006, p. 6.

Realistic recognition of war, violence and sensual desires, therefore, allows Buddhist combatants to simultaneously fulfill their military duties and to observe the religious doctrine while complying with IHL. It is true that, as Marco Sassóli argued, “IHL does not seek to promote ‘love’, ‘mercy’ or ‘human empathy’ ... but respect based upon objective criteria.”<sup>10</sup> Nevertheless, supposedly broader psychological aspects of religious teachings can reinforce cross-disciplinary effort that supplement effective implementation of IHL, as will be discussed below.

### 3.1 Protected persons under IHL

The Dhammika Sutta (Sn. v. 394) indicates that “a lay person should not kill a living being, nor cause it to be killed, nor should he incite another to kill. Do not injure any being, either strong or weak”.<sup>11</sup> Additionally, in Buddhism murder is also regarded as one of the greatest sins (*adhamma*) a person can commit. Whereas IHL ensures protection to a person or objects based on their status or function, either civilian or military, the first precept prohibits intentional destruction of life of a sentient being, regardless of their status or justification. Indeed, Buddhists are instructed to refrain from causing harm to others. For “The thing that is disliked by me is also disliked by others. Since I dislike this thing, how can I give that pain to someone else?”<sup>12</sup>

#### 3.1.1 Respect and protection for those who do not or are no longer taking part in hostilities

Under IHL, civilians, detainees, prisoners of war, persons *hors de combat*, e.g., wounded, sick, and shipwrecked members of the armed forces, and religious and medical personnel, are entitled to protection of their physical and psychological integrity. In this respect, the first precept and IHL correspond on the prohibition of murder or violence to life to protected persons, including order

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<sup>10</sup> Marco Sassóli, “Autonomous Weapons and International Humanitarian Law: Advantages, Open Technical Questions and Legal Issues to Be Clarified”, *International Law Studies*, Vol. 90, 2014, available at <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1017&context=ils>.

<sup>11</sup> “Dhammika Sutta: Dhammika”, translated by John D. Ireland, available at: <https://www.accesstoinight.org/tipitaka/kn/snp/snp.2.14.irel.html>.

<sup>12</sup> “Sotāpatti Saṃyutta SN 55.7”, *Veḷudvāreyya Sutta*, available at: <https://suttacentral.net/sn55.7/en/sujato?layout=plain&reference=none&notes=asterisk&highlight=false&script=latin>.

or threat that there shall be no survivors, or to conduct hostilities on this basis.<sup>13</sup> Declaring that no quarter will be given is also a war crime,<sup>14</sup> and prohibited under the customary international law.

Furthermore, considering the underlying purpose of the first precept, which is to protect lives, along with core Buddhist values, torture, maiming or inflicting harm to others, etc. can be interpreted as contradictions to the precept. It is thus consistent with the protection afforded by IHL which prohibits corporal and collective punishment, mutilation and all cruel, degrading treatment against protected persons, as well as scientific or biological experiments that are not necessitated by the medical treatment.<sup>15</sup> If such experiments cause death or seriously endanger the person's health, it constitutes a war crime in both international and non-international armed conflicts.<sup>16</sup> The underpinning values of Buddhism of compassion and benevolence, also supplement IHL provisions on ensuring humane treatment. Thereby, civilians and persons *hors de combat*, must be protected in all circumstances, against violence, slavery,<sup>17</sup> forced labor,<sup>18</sup> taking of hostages, and outrages upon personal dignity.

Furthermore, the first precept which prohibits killing, both directly and by the agency of another person,<sup>19</sup> also prohibits use of human shields.<sup>20</sup> The use of human shields involves intentionally taking advantage of the proximity of protected persons or objects under IHL to prevent or avoid the attack on military objectives,<sup>21</sup> since the perpetrator knowingly subjects them to danger by foreseeable effect of the attack. In this regard, the International Criminal Tribunal for the Former Yugoslavia (ICTY) qualified physically securing or holding peacekeeping forces

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<sup>13</sup> AP I Art. 40.

<sup>14</sup> ICC Statute: Article 8(2)(b)(xii).

<sup>15</sup> GC I-IV Art. 3, GC I-II Art. 12, GC III Arts. 13, 17, 87, 89, GC IV Arts. 32, 34, AP I Art. 75 and AP II Arts. 4, 6.

<sup>16</sup> Under ICC Statute, Art. 8(2)(b)(x) and (e)(xi).

<sup>17</sup> AP II, Art. 4(2)(f).

<sup>18</sup> GC III, Art. 49, GC IV, Arts. 40, 51, 95.

<sup>19</sup> P. Harvey, above note 8, p. 249

<sup>20</sup> GC III, Art. 23, GC IV, Art. 28, AP I, Art. 51(7) .

<sup>21</sup> "Rule 97. Human Shields", *Customary IHL*, ICRC, available at: [https://ihl-databases.icrc.org/en/customary-ihl/v1/rule97#Fn\\_C7C1EC06\\_00010](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule97#Fn_C7C1EC06_00010).

against their will at potential NATO air targets as using “human shields.”<sup>22</sup> The use of human shields is a war crime in international armed conflict under the ICC Statute.<sup>23</sup>

Apart from enjoying general protection under the first precept -- and under IHL as civilian persons -- children are entitled to further special protection under IHL, for instance, evacuation to safer zones,<sup>24</sup> special provisions on assistance<sup>25</sup> and detention,<sup>26</sup> prohibition against compulsory labor, and exemption from death penalty.<sup>27</sup> IHL protections for children also include non-participation and prohibition on recruitment of a child under the age of fifteen years in armed conflict.<sup>28</sup> However, the Optional Protocol on the Involvement of Children in Armed Conflict requires that a child under the age of 18 years does not have a direct participation in hostilities<sup>29</sup> and will not be recruited into the State armed forces.<sup>30</sup> Nonetheless, children who take a direct part in hostilities are still entitled to special protection when captured or subject to the power of an adversary, according to Article 77(3) of the Additional Protocol I and Article 4(3) of the Additional Protocol II.

### 3.1.2 Treatment to combatants and civilians taking direct part in hostilities

Combatants who have the privileged status to fight only exist in international armed conflict. S/he has the right to attack the enemy and may become subject to attack by the virtue of his/her combatant status alone.<sup>31</sup> As discussed above, civilians must be protected from the effects

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<sup>22</sup> ICTY, *The Prosecutor of the Tribunal Against Radovan Karadžić and Ratko Mladić case*, Case No. IT-95-5-1, Review of the Indictments, July 1995, available at: <https://www.icty.org/x/cases/mladic/ind/en/kar-ii950724e.pdf>

<sup>23</sup> ICC Statute, Article 8(2)(b)(xxiii)

<sup>24</sup> GC IV Arts. 14, 17, 24 (para. 2), 49 (para. 3), 132 (para. 2), AP I Art. 78, AP II Art. 4 (para. 3(e))

<sup>25</sup> GC IV Arts. 23, 24 (para. 1), 38 (para. 5), 50, 89 (para. 5); AP I Art. 70 (para. 1) and 77 (para. 1); P II Art. 4 (para. 3)

<sup>26</sup> GC IV Arts. 51 (para. 2), 76 (para. 5), 82, 85 (para. 2), 89, 94, 119 (para. 2), 132; AP I Art. 77 (paras. 3, 4), AP II Art. 4 (para. 3(d))

<sup>27</sup> GC IV Art. 68 (para. 4), AP I Art. 77 (para. 5), AP II Art. 6 (para. 4).

<sup>28</sup> AP I Article 77, the AP II Article 4, 3(c), the Convention on the Rights of the Child, Art. 38

<sup>29</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, UNGA Res 54/264, UN Doc A/RES/54/263, 25 May 2000, Art. 1.

<sup>30</sup> *Ibid* Art. 2.

<sup>31</sup> Françoise J. Hampson, “Direct Participation in Hostilities and the Interoperability of the Law of Armed Conflict and Human Rights Law”, *International Law Studies*, Vol. 87: International Law and the Changing Character of War, available at: <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1080&context=ils>; see also ICTY, *The Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Appeal Judgment, 17 Dec 2004, para. 51.

of armed conflict and are immune from direct attack, unless and for 'such time' as they directly participate in hostilities. According to the ICRC, a member of an organized armed group of a party to the conflict, who exercises 'continuous combat function' loses his/her protection as civilian.<sup>32</sup> Consequently, it makes him/her a lawful target of attack, even when they are not participating in hostilities, analogous to members of the armed forces.<sup>33</sup>

It is submitted that Buddhism is against all forms of infliction harm as elaborated above. Supposedly, the conundrum for Buddhist combatants is the treatment of adversary combatants or those who take a direct part in hostilities. In this manner, a lesson learned from the Angulimala Sutta is that a person can always opt for non-violence, regardless of severe harm s/he has caused. Angulimala was a decent man who became a serial murderer out of unquestioning respect for his teacher. Angulimala was asked to honor him with a thousand human little fingers. He had collected 999 fingers from those he had killed. Once Angulimala encountered the Buddha, Angulimala also wanted to take his. However, he could not reach the Buddha, despite his formidable strength and speed. Angulimala then asked the Buddha to stop. The Buddha replied that, "I have stopped, Angulimala, you too stop".

The Buddha further stated

"I have stopped, Angulimala, once & for all,  
having cast off violence toward all living beings.  
You, though, are unrestrained toward beings.  
That's how I've stopped and you haven't."  
So that is why I have stopped and you have not."<sup>34</sup>

By hearing the Buddha's teaching, Angulimala decided to renounce all evils and was ordained as a monastic. Through his own cultivation and intention to cease all forms of violence,

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<sup>32</sup> Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, May 2009, available at: <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf>.

<sup>33</sup> Michael N. Schmitt and Eric W. Widmar. "'On Target': Precision and Balance in the Contemporary Law of Targeting" *Journal of National Security Law & Policy*, Vol. 7:379, 2014, available at: [https://jnslp.com/wp-content/uploads/2015/03/Precision-and-Balance-in-the-Contemporary-Law-of-Targeting\\_2.pdf](https://jnslp.com/wp-content/uploads/2015/03/Precision-and-Balance-in-the-Contemporary-Law-of-Targeting_2.pdf).

<sup>34</sup> "Angulimala Sutta: About Angulimala", translated by Thanissaro Bhikkhu, available at: <https://www.accesstoinsight.org/tipitaka/mn/mn.086.than.html>.



he later attained the final enlightenment, nibbana.<sup>35</sup> However, one day during the alms-round, he was severely injured, due to resentful sentiments. Yet he was told by the Buddha “...Bear with it, brahman, Bear with it, the fruit of the kamma ....”<sup>36</sup>

From the Sutta, the Buddha did not give a comment on or justify the violence and killings committed, rather he asserted the undeniable effects of our karmic results, whether good or bad. It was emphasized that Angulimala’s attempt to cease unwholesome deeds through non-violence does not counteract his past karma. He unavoidably served competing karmic retribution albeit was alleviated by positive karma. Regretting misdeeds is wholesome, but Buddhism emphasizes a future-directed morality, in which one always seeks to do better in the future, in an increasingly complete way.<sup>37</sup>

It is also worth noting that Angulimala’s unquestioning obedience to his teacher can be analogous to the military chain of command that superior orders must be strictly followed. At times, military manuals may not indicate explicitly that military personnel must obey only lawful orders and must not obey unlawful commands.<sup>38</sup> However, Buddhist combatants should be reminded that under the Buddhist doctrine and international law, s/he will not be exempted from karmic consequences and individual criminal liability of his/her own act. This includes illegal acts s/he was ordered to be committed, if s/he knew – or should have known, due to the nature of the act ordered – that the order was unlawful.<sup>39</sup> On this front, the ICTY and ICTR Statutes<sup>40</sup> provide that the fact that an accused person acted in pursuant to an order of a government or of a

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<sup>35</sup> Hellmuth Hecker, “Angulimala A Murderer's Road to Sainthood”, available at: <https://www.accesstoinsight.org/lib/authors/hecker/wheel312.html>; “Angulimala Sutta”, available at: [http://buddhasutra.com/files/Buddhist\\_Sutra\\_A2.pdf](http://buddhasutra.com/files/Buddhist_Sutra_A2.pdf).

<sup>36</sup> T. Bhikkhu, above note 34.

<sup>37</sup> P. Harvey, above note 8, p. 68.

<sup>38</sup> As it was written in the US and the UK military Manuals. See “United States of America: Customary IHL - 154. Obedience to Superior Orders.” *Customary IHL*, ICRC, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_us\\_rule154](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_us_rule154); see also: “United Kingdom of Great Britain and Northern Ireland: Customary IHL - 154. Obedience to Superior Orders”, *Customary IHL*, ICRC, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_gb\\_rule154](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_gb_rule154)., respectively.

<sup>39</sup> Hague Convention IV Respecting the Laws and Customs of War on Land, (entered into force 18 October 1907) Art. 3; GC I Art. 49; GC II Art. 50; GC III Art. 129; GC IV Art. 146; AP I Art. 86, 87, CIHL Rules 154, 155, ICC Statute, Art. 25

<sup>40</sup> ICTY Statute, Art 7.4, and ICTR Statute, Art 6.4.

superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment.<sup>41</sup>

Intrinsically, infringement upon the first precept requires an element of death as a result of killing.<sup>42</sup> In this regard, it can be argued that the inherent material of the first precept is simply not taking life. In Theravada school of Buddhism, injuring other livings does not break the precept. Although it incurs unfavorable karmic consequences and violates the underlying value of the precept, it is to a lesser degree than that of homicide. The first precept and IHL then converge, for example, as when fighting Buddhist combatants should resort to the use of force merely to neutralize or incapacitate their enemies. It should be noted as well that the ICJ recognized that “the prohibition on causing combatants unnecessary suffering” is one of the cardinal principles of IHL. It further defined unnecessary suffering as “a harm greater than that unavoidable to achieve legitimate military objectives”.<sup>43</sup> Presumably the soldiers’ main duties are not to kill but to serve their nations. Furthermore, killing is not an easy thing to do psychologically. Indeed, humanization of military operations helps soldiers cope with post-conflict trauma and stress. It should also be emphasized that IHL requires parties to an armed conflict not to cease fighting, but to fight more humanely and avoid causing unnecessary suffering. Therefore, complying with it does not adversely affect the capacity of the armed forces. Neither does directing attacks against civilians or civilian objects serve a military purpose nor would it make the attacking party be more competent. However, as a Buddhist combatant engaging in armed conflict, his/her individual judgement will be weighed to the same extent as those of other religions-- against violence.

### 3.2 Prohibition of pillage

The second precept prohibits stealing and appropriation of what belongs to someone else without the consent of the owner. The purpose of this precept is to protect the property of individuals from

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<sup>41</sup> ICTY, *The Prosecutor v. Drazen Erdemovic*, Case No. IT-96-22-T, Sentencing Judgment, 12 November 1996, para. 19, and Judgment in the Appeals Chamber, 7 October 1997, para. 19.

<sup>42</sup> Bhikku Bodhi, “2.1 THE FIVE PRECEPTS”, in *Going for Refuge; Taking the Precepts*, available at: [https://www.themindingcentre.org/dharmafarer/wp-content/uploads/2010/02/BBD1-Five-Precepts.bodhi\\_.pdf](https://www.themindingcentre.org/dharmafarer/wp-content/uploads/2010/02/BBD1-Five-Precepts.bodhi_.pdf).

<sup>43</sup> Nuclear Weapons Advisory Opinion, ICJ Rep 226, 8 July 1996, paras. 77, 78, 95.

illegitimate confiscation,<sup>44</sup> whether by deceitful or coercive ways. It correlates with the prohibition of pillage under IHL and customary international law.<sup>45</sup> Pillage is the unlawful appropriation of public and private property in armed conflicts,<sup>46</sup> not justified by military necessity. It is a war crime in both international armed conflict<sup>47</sup> and non-international armed conflict.<sup>48</sup>

In this regard, the ICC Element of the Crime of pillage requires that “[t]he perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use”.<sup>49</sup> Nevertheless, the ICTY jurisprudence, stated that “according to international law, the regulations do not allow arbitrary and unjustified plunder for army purposes or for the individual use of army members, even if the property seized can be used collectively or individually”.<sup>50</sup> Moreover, the Special Court for Sierra Leone (SCSL) noted that “the requirement of ‘private or personal use’ is an unwarranted restriction on the application of the offence of pillage”.<sup>51</sup> Such requirement was also found unduly restrictive and ought not to be an element of the crime of pillage”.<sup>52</sup> The ICC later observed that the requirement is not reflected in customary or conventional international humanitarian law.<sup>53</sup> The court jurisprudence, hence, grants wider protection and resonates with

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<sup>44</sup> Bhikkhu Bodhi, “Taking the Precepts” in *Going for Refuge; Taking the Precepts*, Buddhist Publication Society, Kandy, Sri Lanka, 1981, available at: [https://www.bps.lk/olib/wh/wh282\\_Bodhi\\_Going-For-Refuge--Taking-The-Precepts.pdf](https://www.bps.lk/olib/wh/wh282_Bodhi_Going-For-Refuge--Taking-The-Precepts.pdf).

<sup>45</sup> GC IV Art. 33, its AP II Article 4(2)(g); Jean Marie Henckaerts and Louise Doswald-Beck. *Customary International Humanitarian Law*, Vol. I, Cambridge University Press, 2005, p. 182.

<sup>46</sup> ICTY, *Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998, para. 591; see also ICTY, *The Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Appeal Judgement, 17 Dec 2004, para. 79.

<sup>47</sup> ICC Statute Art.8(2)(b)(xvi)

<sup>48</sup> ICC Statute Art.8(2)(e)(v)

<sup>49</sup> ICC, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Case No. ICC-01/04-01/07, Decision on the Confirmation of Charges (Pre-Trial Chamber I), 30 September 2008, para. 332; *The Prosecutor v. Jean-Pierre Bemba Gombo (Situation of the Central African Republic)*, Case No. ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 320.

<sup>50</sup> ICTY, *The Prosecutor v. Hadžihasanović & Kubura*, Case No. IT-01-47-T, Judgement, 15 March 2006, para. 52.

<sup>51</sup> SCSL, *The Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-T, Judgement, 2 August 2007, para. 160.

<sup>52</sup> SCSL, *The Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Judgement, 22 February 2008, paras. 753 - 4

<sup>53</sup> ICC, *The Prosecutor v. Bemba*, Case No. ICC-01/05-01/08-3343, Judgment Pursuant to Article 74 of the Statute, 21 March 2016, para. 120; however, the Appeal Chamber finds that the elements of crimes is a useful indication of the *opinio juris* of States and the ICRC customary IHL study concluded that pillage is the “specific application of the general principle of law prohibiting theft” thereby involving the “appropriation” of property “for private or personal use.” see SCSL, *The Prosecutor v. Fofana and Kondewa* (CDF Case), Case No. SCSL-04-14-A, Appeal Judgement, 28 May 2008, paras. 403-404.

the underlying moral of the second precept, on prohibition of unlawful confiscation in all forms, irrespective of the perpetrators' special intent.

Additionally, the second precept covers the act of plundering of natural resources in contemporary resource-driven armed conflicts. For instance, illegal exploitation and trafficking of mineral, coffee, and wildlife products. According to the ICJ, the Uganda's People Defense Forces, involved in the looting, plundering, and exploitation of the DRC's natural resources were in violation of the international prohibition of pillage pursuant to Article 47 of the 1907 Hague Regulations and Article 33 of the 1949 Geneva Convention IV."<sup>54</sup>

Additionally, the precept corresponds with prohibition on the unlawfully and wantonly extensive destruction and appropriation of property, in international armed conflict, not justified by military necessity,<sup>55</sup> and the prohibition of destroying or seizing the enemy's property in international armed conflict<sup>56</sup> and non-international armed conflict,<sup>57</sup> unless it is imperatively demanded by the necessities of war.

### 3.3 Prohibition of sexual violence in armed conflicts

According to the jurisprudence of the International Criminal Tribunal for Rwanda (ICTR), for the purposes of international criminal law, sexual violence was defined as any act of a sexual nature committed on a person under circumstances which are coercive.<sup>58</sup> It can be broadly defined as acts of a sexual nature imposed by physical force, threats, intimidation, coercion, or by taking advantage of a coercive environment or a person's incapacity to give genuine consent.<sup>59</sup> Examples of such acts are enforced prostitution, sexual slavery, forced public nudity, sexual harassment, forced stripping, and mutilation of sexual organs, recreational or opportunistic rape, etc.

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<sup>54</sup> ICJ, *Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of the International Court of Justice of 19 December 2005, I.C.J. Reports 2005, paras. 242, 245.

<sup>55</sup> ICC Statute Art. 8(2)(a)(iv).

<sup>56</sup> ICC Statute Art. 8(2)(b)(xiii).

<sup>57</sup> ICC Statute Art. 8(2)(e)(xii).

<sup>58</sup> ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4, Judgment, 2 September 1998, para. 688; ICTR, *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13, Judgment, 27 January 2000, para. 965.

<sup>59</sup> "Prevention and Criminal Repression of Rape and Other Forms of Sexual Violence during Armed Conflicts", ICRC, 11 March 2015, available at: <https://www.icrc.org/en/document/prevention-and-criminal-repression-rape-and-other-forms-sexual-violence-during-armed>.

The third Buddhist precept is abstention from sexual misconduct concerning wrong sensuous pleasure. Accordingly, rape or other forms of sexual violence whether by physical compulsion or psychological pressure, is a breach of the precept.<sup>60</sup> Originally the third precept focused primarily on transgression against women, who are under forms of protection. It correlates with early IHL instruments which initially indicate protection specifically to the honour of women, against indecent assault. Article 27(2) of the Geneva Convention IV states that “[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. However, recent scholarship has criticized that articulating sexual violence as an attack against women’s honour rather than their physical and psychological security is inadequate and exacerbates stigmatization.<sup>61</sup> Article 75 (2)(b) of the Additional Protocol I of 1977 provides that “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault are prohibited...”. While Article 76(1) protects women specifically “against rape, forced prostitution and any other form of indecent assault, and Article 77(1) affords special protection to children against any form of indecent assault.

Even though women and girls are of particular attention when addressing sexual violence in armed conflict, these crimes are not limited to female or gender-conforming victims. Thus, the modern interpretation of such IHL provisions is more inclusive and non-discriminatory. All persons regardless of their sex are entitled to protection against sexual violence in armed conflict under customary IHL.<sup>62</sup> Article 4(2)(e) of the Additional Protocol II is the first IHL provision that explicitly prohibits outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault without distinction of victims’ sex. The ICC statute also indicates that rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization or any other forms of sexual violence of comparable gravity,

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<sup>60</sup> B. Bodhi, above note 42.

<sup>61</sup> International Committee of the Red Cross (ICRC), *Gendered Impacts of Armed Conflict and Implications for the Application of International Humanitarian Law*, ICRC, Geneva, June 2022, available at: <https://shop.icrc.org/gendered-impact-of-armed-conflict-and-ihl-pdf-en.html>; see also Priya Gopalan, “Rejecting Notions of ‘Honour’ to Mitigate Stigma: Prosecution for Sexual Violence Before the Bangladeshi International Criminal Tribunals”, *LSE Center For Women, Peace and Security*, 2021, available at: [www.lse.ac.uk/women-peace-security/assets/documents/2021/WPS27Gopalan.pdf](http://www.lse.ac.uk/women-peace-security/assets/documents/2021/WPS27Gopalan.pdf).

<sup>62</sup> “Rule 93. Rape and Other Forms of Sexual Violence”, *Customary IHL*, ICRC, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule93](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93).

are war crimes in international<sup>63</sup> and non-international armed conflict.<sup>64</sup> It should be noted that the Elements of Crimes for the International Criminal Court defines the war crime of rape by the concept of “invasion,” which is intended to be gender-neutral.<sup>65</sup>

Moreover, even if Article 3 common to the four Geneva Conventions of 1949, applicable in a situation of non-international armed conflict, contains no specific prohibition against sexual violence, it requires that in all circumstances, persons not or no longer taking active part in hostilities must be treated humanely, and prohibits torture and outrages upon personal dignity, including humiliating and degrading treatment. On this front, rape and other forms of sexual violence can constitute torture, inhuman treatment, or willfully causing great suffering or serious injury to body or health.<sup>66</sup> The ICTR in the Akayesu case also recognized that sexual violence could fall within the scope of inhumane acts, outrages upon personal dignity and serious bodily or mental harm, thereby violating Common Article 3. In the Celebići case, the ICTY ruled for the first time that rape can constitute torture. Moreover, the court noted that sexual violence could constitute torture and an outrage upon personal dignity (i.e., war crimes), as well as a crime against humanity.<sup>67</sup>

#### 2.4 The prohibition of perfidy and improper use of a flag of truce and distinctive emblems

The fourth precept is abstention from communication of falsehood, with intent to misguide or deceive others, resulting in fraud or dishonesty. Any form of lying or deception through speech, writing, gestures, etc., is a breach of the precept.<sup>68</sup> Accordingly, the precept reinforces IHL and customary international law on the prohibition of perfidy. It is an act that invites the confidence of an adversary to believe that he is entitled to protection under international law, with intent to

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<sup>63</sup> ICC Statute Art. 8(2)(b)(xxii).

<sup>64</sup> ICC Statute Art. 8(2)(e)(vi).

<sup>65</sup> Elements of Crimes for the ICC, available at: [asp.icc-cpi.int/sites/asp/files/asp\\_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf](http://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf).

<sup>66</sup> ICRC, above note 59.

<sup>67</sup> United Nations Department of Peacekeeping Operations, *Review of the Sexual Violence Elements of the Judgements of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone in The Light of Security Council Resolution 1820*, available at:

[https://www.icty.org/x/file/Outreach/sv\\_files/DPKO\\_report\\_sexual\\_violence.pdf](https://www.icty.org/x/file/Outreach/sv_files/DPKO_report_sexual_violence.pdf); see ICTY Statute Art.5(g)

<sup>68</sup> P. Harvey, “Key Buddhist Values”, above note 8, p. 75.

betray that confidence. Article 37(1) of the Additional Protocol I prohibits killing, injuring, or capturing an adversary by resort to perfidy. Moreover, pursuant to Article 8(2)(b)(xi) of the ICC Statute, ‘killing or wounding treacherously individuals belonging to the hostile nation or army’ is a war crime.

Even if it is considered treacherous when someone assumes a false character to deceive his/her enemy to affect hostile acts, not all deception is unlawful under IHL. For instance, ruses of war or routine military deception, although they infringe upon the moral of the fourth precept, are not prohibited by IHL. Those are acts that intended to confuse or mislead an adversary or to induce him to act recklessly, which are not perfidious.<sup>69</sup>

Additionally, the fourth precept which is against conveying false impression also covers the prohibition of improper use of insignia, a white flag of truce, and distinctive or protected emblems, as indicated in Article 38(1) of the Additional Protocol I. Article 8(2)(b)(vii) of the Rome Statute stipulates that “making improper use of a flag of truce, of the flag, or of the military insignia and uniform of the enemy or of the United Nations and the distinctive emblems of the Geneva Conventions” is a war crime if resulting in death or serious personal injury.

#### **4. Mindfulness in the conduct of hostilities**

This part focuses on Buddhist approaches that can promote IHL compliance cognitively. While IHL does not cover the psychological aspect of how to conduct warfare in accordance with its principle, its core principles of distinction, proportionality and precautionary measures appear to highly rely on the performance of the combatant's mental faculty in distress. This section hence argues that Buddhist practices of the fifth precept and mindfulness of breathing which are measures that promote a clear state of mind and strengthens self-control can be developed into autonomous moral agents that buttress IHL adherence in the conduct of hostilities.

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<sup>69</sup> The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation., see also The UK Military Manual mentions the following examples of lawful ruses: surprises; ambushes; feigning attacks, retreats or flights; simulating quiet and inactivity; giving large strongpoints to a small force; constructing works, bridges, etc.; see “Rule 57. Ruses of War.” *Customary IHL*, ICRC, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule57](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule57).

#### 4.1 The fifth precept and mindfulness of breathing

The fifth precept requires abstention from taking intoxicants or drugs that are the basis for heedlessness. Even if this precept is set for restraining physical action, it rather emphasizes maintaining one's consciousness to prevent un contemplated deeds. Providing that one's mind is beclouded, s/he is more susceptible to other forms of wrongdoings, for instance killing, stealing, sexual misconduct and lying. According to Buddhaghosa, breach of the fifth precept is always 'greatly blamable' as it obstructs the practice of Dhamma,<sup>70</sup> including mindfulness meditation.

##### *Mindfulness of Breathing (Ānāpānasati bhāvana)*

Mindfulness of breathing is one of the meditative methods in the ancient Theravāda meditation system.<sup>71</sup> The term means observation of natural breathing as a meditative object, to be mindful of the way it occurs in its own accord.<sup>72</sup> Mindfulness of breathing helps stimulate self-awareness, emotional regulation and stability. As a result, practitioners' minds will be temporarily freed from lust-greed, hatred, and delusion.<sup>73</sup> It is the process of cleansing one's mind in Buddhism. According to the Buddha, all wars are fought within the mind of people.<sup>74</sup> In this manner, mindfulness meditation is believed to help diminish the psychological roots of conflicts, i.e., greed and hatred.

Salient in mindfulness training is the ability to remain aware of what happens on purpose, without spontaneously reacting to it. For it helps to decrease activity in the fight-or-flight parts of

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<sup>70</sup> P. Harvey, above note 8.

<sup>71</sup> Andrew Skilton, et al., "Terms of Engagement: Text, Technique and Experience in Scholarship on Theravada Meditation", *Contemporary Buddhism*, Vol. 20, No. 1 - 2, 2019, pp. 1–35., available at: <https://doi.org/10.1080/14639947.2019.1666342>.

<sup>72</sup> Dr. Santosh Vishnu Bhutekar and Dr. Rajesh Shirsath, "Effect of Anapanasati Technique on Learning and Stress among Adolescents", *The International Journal of Indian Psychology*, Vol. 7, No. 31 March 2019, available at <https://doi.org/DOI: 10.25215/0701.121>; see also Bhikkhu Anālayo, "Somatics of Early Buddhist Mindfulness and How to Face Anxiety." *Mindfulness*, Vol. 11, No. 6, 8 May 2020, pp. 1520–1526., available at: <https://doi.org/10.1007/s12671-020-01382-x>.

<sup>73</sup> Dr. Ari Ubeysekara, "Walking Meditation in Theravada Buddhism", *Drarisworld*, 27 February 2021, available at: <https://drarisworld.wordpress.com/2020/04/22/walking-meditation-in-theravada-buddhism/>.

<sup>74</sup> "Dhammapada verse 103", *Self-Conquest is the Highest Victory*, available at: [https://www.buddhanet.net/dhammadapa/d\\_thous.htm#:~:text=Verse%20103.&text=one%20is%20the%20greatest%20conqueror,self%20is%20the%20greatest%20conqueror](https://www.buddhanet.net/dhammadapa/d_thous.htm#:~:text=Verse%20103.&text=one%20is%20the%20greatest%20conqueror,self%20is%20the%20greatest%20conqueror).



the brain (i.e., the amygdala) that can cause us to be impulsive. Meanwhile, the part of the brain that controls awareness, concentration, rational thinking, and decision-making (i.e., the pre-frontal cortex) measurably increases in activity.<sup>75</sup> These brain activity alterations enhance attentional processes and cognitive capacity that, in turn, help military members to perform better with fewer lapses.<sup>76</sup> The positive psychological effects of mindfulness exercise have been evident in empirical scientific research. Indeed, it is generally associated with higher emotional intelligence and lower stress.<sup>77</sup> Mindfulness meditation positively improves soldiers' overall cognitive resilience and better prepares them for high-stress combat situations.<sup>78</sup> It also helps soldiers to recover from post-deployment distress such as post-traumatic stress disorder (PTSD).

The fifth precept and mindfulness of breathing are means that nurture self-awareness and psychological restraint. Thereby the practices pave the way for compliance with the aforementioned four precepts and IHL. Furthermore, mindfulness meditation was also found to increase introspection and compassionate responses to suffering.<sup>79</sup> In this regard, it can also help deter conflict-related sexual violence, which often has no relation to sexual desire, but is instead linked to power, violence, and abuse of authority.<sup>80</sup>

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<sup>75</sup> Nikolett Eisenbeck, et al., "Effects of a Focused Breathing Mindfulness Exercise on Attention, Memory, and Mood: The Importance of Task Characteristics", *Behaviour Change*, Vol. 35, No. 1, 18 April 2018, pp. 54–70., available at: <https://doi.org/10.1017/bec.2018.9>.

<sup>76</sup> "Mindfulness for the Military", HPRC, 28 April 2020, available at: <https://www.hprc-online.org/mental-fitness/sleep-stress/mindfulness-military>; see also C.P.T. Thomas H. Nassif, et al., "Optimizing Performance and Mental Skills with Mindfulness-Based Attention Training: Two Field Studies with Operational Units: Corrigendum", *Military Medicine*, Vol. 187, No. 1-2, 26 November 2021, available at: <https://doi.org/10.1093/milmed/usab477>.

<sup>77</sup> Peerayuth Charoensukmongkol, "Benefits of Mindfulness Meditation on Emotional Intelligence, General Self-Efficacy, and Perceived Stress: Evidence from Thailand", *Journal of Spirituality of Mental Health*, Vol. 16, No. 3, 28 July 2014, available at: <https://www.tandfonline.com/doi/abs/10.1080/19349637.2014.925364>; see also Richard Mogg, "Mindfulness for Military: Improving Human Performance, Cognitive Mastery, Emotional Intelligence and Resilience", *Grounded Curiosity*, 8 August 2020, available at: <https://groundedcuriosity.com/mindfulness-for-military-improving-human-performance-cognitive-mastery-emotional-intelligence-and-resilience/#.Y2yiHy8RqRt>.

<sup>78</sup> Melissa Myers, "Improving Military Resilience through Mindfulness Training", USAMRMC Public Affairs, 1 June 2015, available at: [https://www.army.mil/article/149615/improving\\_military\\_resilience\\_through\\_mindfulness\\_training](https://www.army.mil/article/149615/improving_military_resilience_through_mindfulness_training).

<sup>79</sup> Paul Condon et al., "Meditation Increases Compassionate Responses to Suffering", *Psychological Science*, Vol. 24, No. 10, 21 August 2013, pp. 2125–2127, available at: <https://doi.org/10.1177/0956797613485603>; see also Sue McGreevey, "Eight Weeks to a Better Brain", *The Harvard Gazette*, Harvard Gazette, 12 September 2019, available at: <https://news.harvard.edu/gazette/story/2011/01/eight-weeks-to-a-better-brain/>.

<sup>80</sup> Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, "Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward", *Special Report of the United States Institute of Peace*, No. 323, 8 February 2013, p. 6,

Nevertheless, to ensure implementation of IHL during one of the most anarchic situations (i.e., the time of armed conflict) the instruction of the law itself seems to be insufficient. Therefore, adequate trainings for fostering mental restraint are necessary to ensure that while carrying arms in the conduct of hostilities, combatants are bearing humanity at the forefront of their minds. People who are taking on the obligations associated with cultural or religious norms and values as aspects of their own motivation, become self-regulating.<sup>81</sup> Indeed, mindfulness exercise has been integrated into various military trainings. For instance, the Royal Australian Air Force have trialed Corporate Based Mindfulness Training as part of Resilience Training.<sup>82</sup> Additionally, research in the US armed forces has shown that Buddhist-inspired mindfulness exercises can enhance soldiers' resilience and situational awareness which enables them to perform calmly and effectively under pressure and to adhere to norms of restraint.<sup>83</sup> Furthermore, it is suggested that mindfulness training be used as a tool for improved operational readiness and effectiveness, as well as well-being in military cohorts.<sup>84</sup> Hence, Buddhist practices should also strengthen psychological elements for IHL implementation, since better concentration and cognitive performance assist combatants in planning, deciding and executing military operations, in accordance with the principle of distinction, proportionality, and precautionary measures.

#### 4.2 Distinction, Proportionality and Precautionary measures

Combatants with enhanced awareness should better distinguish between civilians and combatants, civilian objects, and military objectives. Arguably, fighting only with the adversary

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available at: [www.usip.org/sites/default/files/wartime%20sexual%20violence.pdf](http://www.usip.org/sites/default/files/wartime%20sexual%20violence.pdf); see also Patrick Chiroro, Gerd Bohner, G. Tendayi Viki and Christopher Jarvis, "Rape Myth Acceptance and Rape Proclivity: Expected Dominance Versus Expected Arousal in Acquaintance-Rape Situations", *Journal of Interpersonal Violence*, Vol. 19, No. 4, 19 April 2004, pp. 427–442.

<sup>81</sup> T. Tyler, above note 3, pp. 375–400.

<sup>82</sup> R. Mogg, above note 77.

<sup>83</sup> Roland A. Carlstedt, *Handbook of Integrative Clinical Psychology, Psychiatry, and Behavioral Medicine: Perspectives, Practices, and Research*, Springer Pub. Co., 2010; Amishi P. Jha et al., "Minds 'at Attention': Mindfulness Training Curbs Attentional Lapses in Military Cohorts", *PLoS ONE*, Vol. 10, No. 2, 11 February 2015, available at: <https://doi.org/10.1371/journal.pone.0116889>.

<sup>84</sup> Amishi P. Jha, et al., "Deploying Mindfulness to Gain Cognitive Advantage: Considerations for Military Effectiveness and Well-Being", *University of Miami*, available at: [https://lab.amishi.com/wp-content/uploads/Jhaetal\\_2019\\_HFM\\_302\\_DeployingMindfulness.pdf](https://lab.amishi.com/wp-content/uploads/Jhaetal_2019_HFM_302_DeployingMindfulness.pdf).

while engaged in combat and protecting innocent people helps alleviate Buddhist combatants' unpleasant spiritual and legal consequences. Attacking persons other than combatants and civilians who take a direct part in hostilities would violate the principle of distinction. Of course, the civilian population itself must be distinguished at all times and cannot be the object of attack according to Article 48 of the Additional Protocol I and Article 13(2) of Additional Protocol II to the Geneva Conventions of 1949 in international and non-international armed conflicts respectively. Under IHL, it is crucial to define who and what may be attacked so that the attacks may be directed only at combatants and military objectives.<sup>85</sup> An object is a military objective if it makes effective contribution to the adversary's military action, and if its total or partial destruction, capture or neutralization offers a definite military advantage -- both of which must be present in the circumstances at the time. Civilian objects are those which are not military objectives.<sup>86</sup> In case of doubt, it must be presumed to be a civilian object.<sup>87</sup> The object nevertheless becomes a military objective once it is converted to military use, however slight.<sup>88</sup> Moreover, the principle of distinction is further encapsulated in IHL customary rules,<sup>89</sup> which prohibit the use of weapons that are by nature indiscriminate.<sup>90</sup>

After legitimate targets are identified, under IHL it is important to verify such military objectives as a precaution. Enhanced situational awareness helps combatants be alert and present in volatile combat environments. Mindfulness helps ensure that combatants take constant care to minimize incidental loss of civilian lives and objects.<sup>91</sup> They can have better context-dependent judgement to select the means of warfare that will cause the least harm to civilians and civilian objects.<sup>92</sup> They can promptly cancel or suspend the attack if the target is not a military objective

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<sup>85</sup> AP I Art. 48, Art. 52 (2).

<sup>86</sup> ICRC CIHL Study Rule 9.

<sup>87</sup> AP I Art. 52(3), "In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used."

<sup>88</sup> M. Schmitt, E.W. Widmar, above note 33.

<sup>89</sup> Rules 11, 12 supported by Rule 71.

<sup>90</sup> J.M. Henckaerts, L. Doswald-Beck, above note 45, pp. 244–250.

<sup>91</sup> AP I Art. 57, "In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects."; AP II Art. 13(1) "The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations."; see also "Rule 15. Principle of Precautions in Attack." *Customary IHL*, ICRC, available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>.

<sup>92</sup> AP I Art. 57(3).

or the attack is expected to be disproportionate. Advanced warning can also be effectively given if an attack may affect the civilian population.<sup>93</sup>

Moreover, even though a lawful target was identified and precautionary measures have been implemented, before launching an attack, a proportionality assessment must be taken to ensure that damage to civilian lives and objects are not excessive compared to the direct military advantage anticipated.<sup>94</sup> In this regard, mindfulness can strengthen combatants' reasoning in order to carry out only a proportionate attack. The principle of proportionality is deemed as customary IHL. It is interesting to note that the Final Report to the Prosecutor Reviewing the NATO Bombing Campaign in the Federal Republic of Yugoslavia noted, that “[e]ven when targeting admittedly legitimate military objectives, there is a need to avoid excessive long-term damage to the economic infrastructure (...) with a consequential adverse effect on the civilian population”<sup>95</sup>

Furthermore, the ICC refers to civilian injuries, loss of life or damage that are clearly excessive ‘in relation to the concrete and direct overall military advantage anticipated’ constitutes a war crime.<sup>96</sup> The Elements of Crimes specify that ‘concrete and direct overall military advantage’ refers to a “military advantage that is foreseeable by the perpetrator at the relevant time.”<sup>97</sup> In this respect, the ICTY adopted a “reasonable military commander” standard: “In determining whether an attack was proportionate it is necessary to examine whether a reasonably well-informed person in the circumstances of the actual perpetrator, making reasonable use of the information available to him or her, could have expected excessive civilian casualties to result from the attack.”<sup>98</sup>

Indeed, proper application of the IHL principles of distinction, proportionality, and precautions assists Buddhist combatants to reconcile with their spiritual beliefs when conducting

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<sup>93</sup> AP I Art. 57(2)(c).

<sup>94</sup> AP I Arts. 51(5)(b), 57, 85(3)(b).

<sup>95</sup> ICTY, *Final Report to the Prosecutor Reviewing the NATO Bombing Campaign in the FRY*, para. 18.

<sup>96</sup> ICC Statute, Art. 8(2)(b)(iv): “[i]ntentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated”.

<sup>97</sup> Such advantage may or may not be temporally or geographically related to the object of the attack; ICC, above note 65, Art. 8(2)(b)(iv).

<sup>98</sup> ICTY, *The Prosecutor v. Galic*, Case No. IT-98-29-T, Judgement, 5 December 2003, para. 58; see also above note 95.

hostilities. They can be reassured that the least harm is expected to be caused only to the extent that is proportionate and necessitated, resulting in lighter unfavorable karmic consequences.

## 5. Conclusion

Psychologists have traditionally recognized that internalization, which is the process by which people take on values as their own, provides an important basis for compliance with rules.<sup>99</sup> Perceiving IHL through the fundamental Buddhist doctrines of the five precepts and mindfulness of breathing enhances Buddhist combatants' sense of inclusiveness while securing IHL more legitimacy. For it helps to internalize moral values underpinning the law which increases motivation for willing cooperation and acts as an associated compliance mechanism. Ability to gain voluntary acceptance from people, due to their sense of obligation increases effectiveness during periods of scarcity, crisis, and conflict.<sup>100</sup>

While IHL applies only during times of armed conflict to regulate warfare and protect its victims, theoretically, a Buddhist combatant should not inflict harm, be deceitful or heedless against anyone at any time. Although the ultimate goal of Buddhism is to achieve nibbana and the utmost aspiration of humanity is absence of war where IHL would not have to be implemented. The two disciplines yet accommodate pragmatic approaches to strive towards mitigating suffering and regulating violence if not yet eradicated. The Buddhist doctrine and IHL therefore allow Buddhist combatants to seek balance between their spiritual commitment and maintaining their duties as combatants, between humanity and military necessity.

It is worth accentuating that by complying with IHL and conducting hostilities as humanely as possible, Buddhist combatants can simultaneously cultivate positive karma while attenuating the gravity of negative karma. The cross-disciplinary normative frameworks discussed above can be pragmatically implemented to buttress compliance of IHL. The interdisciplinary military manual or module for combatants and laypersons can be further developed and

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<sup>99</sup> Jonathan Jackson, et al., "Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions", *British Journal of Criminology*, Vol. 52, No. 6, 5 February 2012, pp. 1051–1071, available at: <https://doi.org/https://dx.doi.org/10.2139/ssrn.1994490>.

<sup>100</sup> T. Tyler, above note 3, pp. 375–400.

disseminated through the Buddhist military chaplain and the network of National Red Cross Societies, etc. In fact, the Thai Army Chaplain Division has carried out Buddhist teachings sessions regularly.<sup>101</sup> Additionally, the Essential Buddhist Teachings for the Armed Forces has been distributed in the Republic of Korea.<sup>102</sup> Through these methods, the Buddhist communities can find the rules more practically accessible thereby contributing to more effective implementation of IHL.

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<sup>101</sup> “คู่มือการอนุศาสนาจารย์กองทัพบก พ.ศ.2538.” Google Drive, Google, available at:

<https://drive.google.com/file/d/1AetzqRKxSfDqhVTTcO7gJYUiw4X2VZMR/view>.

<sup>102</sup> Hyein Lee, “Between Common Humanity and Partiality: The Chogye Buddhist Chaplaincy Manual of the South Korean Military and Its Relevance to International Humanitarian Law”, *Contemporary Buddhism: An Interdisciplinary Journal*, Vol. 22, Issue 1-2, 22 August 2022, available at:

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