



MINI EXPLORING HUMANITARIAN LAW

The essence of humanitarian law



ICRC

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Mini EHL

The essence of humanitarian law

Mini EHL is a resource kit for exploring the principles and basic rules of international humanitarian law (IHL). It consists of five sets of sequential learning activities, each 45 minutes long, designed for use in both formal and non-formal education for young people and other interested groups. It can be used in a half-day workshop or spread out over five separate sessions. Mini EHL, which was developed by the International Committee of the Red Cross (ICRC), is a shorter, modified version of the Exploring Humanitarian Law (EHL) education programme. It contains a number of new exercises and source materials. During the process of its development, it was tested with 500 participants from over 20 countries.

The learning materials are based on real-life situations and show how IHL aims to protect life and human dignity during armed conflict and to prevent or reduce the suffering and the devastation caused by war. By studying situations involving actual people – their behaviour and the dilemmas that they often have to face – participants develop a new perspective and begin to understand the need for rules during war as well as the complexity of their application.

Mini EHL employs the same participative and interactive methodology as the full EHL programme. By enhancing life skills and by building on concepts such as 'human dignity' and 'humanitarian act,' it helps to foster the development of a humanitarian perspective.

Facilitators do not need to be experts in IHL to teach Mini EHL effectively. Their role is to guide the exploration of perceptions, attitudes and content. The resources for facilitators that are included in the various sessions provide background information on many of the topics covered. The *IHL Guide** provides additional IHL content in a straightforward question-and-answer format.

Very few resource materials are needed to teach Mini EHL. Photocopies of the resources for participants and a board to record notes are all that are needed to make the contents of Mini EHL accessible. If it is not possible to watch the video, the video transcript and photos that are provided will serve as adequate substitutes.

There is a wealth of EHL resource materials that can provide further support and guidance, particularly the *Glossary** of IHL-related terms. Facilitators will find the *Methodology Guide*,* which lays emphasis on their role, of great help when they prepare to teach Mini EHL. It contains a number of training workshops that will help them familiarize themselves with the concepts and interactive methods used, as well as with the exploratory perspective.

* Available on www.ehl.icrc.org under Resources/Teaching Materials/Additional Resources

Mini EHL

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-

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Session 1: The humanitarian perspective

The first session sets the tone with an open discussion in which the facilitator and the participants explore difficult questions together. There are no 'right answers' at this stage, and participants are not expected to be well informed on the subject.

The session is organized around a story about an ordinary man who, on his own, and in a situation of violence, acted to protect the life and human dignity of people whom he did not know or whom he would

not ordinarily have been inclined to help or protect. He acted despite physical and material risk to himself. Most humanitarian acts create dilemmas; in fact, many of them are performed on impulse.

This session enables participants to define the basic concepts around which Mini EHL is organized: 'human dignity,' 'bystander,' 'social pressure,' 'dilemma,' and 'humanitarian act.'

OBJECTIVES

- to explore some of the reasons why we need rules
 - to explore the concepts of 'human dignity,' 'bystander,' 'social pressure,' 'dilemma' and 'humanitarian act'
 - to explore the effects of a bystander's decision to act or not
-

1.1. ICE BREAKER: CHAIRS (10 minutes)

Find an open space for participants; when they come in, seat them in chairs. Give each participant a different instruction. Should there be several doors or no window, make clear what you mean by "window" and "door." Use the cards from the resources.

Participants should carry out the instructions immediately. They may speak to one another, but must keep the written instructions to themselves. The exercise ends when it is clear that some kind of agreement has been reached, or when – after seven or eight minutes – it becomes obvious that there is a stalemate.



Discuss what was said, done, seen, heard, felt and thought. In brief, find out what happened.

List the results on a flip chart. Probably, your list will look something like this: "(lack of) communication, listening, understanding others' needs, seeing big picture, compromise, consensus, different goals, interpretation of instructions."

The key idea in this exercise is the **need for common rules** that are clearly communicated and agreed upon. Participants are introduced to one of the core issues that will be examined throughout Mini EHL: Do we need rules in war?

Establish the rules for the discussion:

- listen carefully to others and wait until they have finished before you speak;
- feel free to disagree with the views expressed by others, but treat your fellow participants and their opinions with respect.

Note to facilitators

One possible solution might be a wide circle of chairs between the door and the window.

Session 1: The humanitarian perspective

1.2. EXPLORE THE STORY (15 minutes)

Participants are divided into small groups. Each group reads and discusses the story, first amongst themselves and then all together. Remind participants that this is an account of something that actually happened.

PARTICIPANT
1.2 **RESOURCES**

Brave shopkeeper

There is a corner of a road in Bangkok where fighting among groups of boys sometimes occurred. One day, a group of boys from the mechanics school picked on a boy from another school and chased him down the road. The poor boy ran for his survival and no passer-by tried to help him. He reached the little shop at the corner of the road. The boys giving chase were everyday customers at this shop. The shopkeeper saw what was happening. The boy knocked on his door. Quickly, the vendor opened the back door of his shop to let the boy slip in.

Source: Achara Permpool, teacher from Thailand. Shortened version of original story included in EHL Module 1.

Possible questions

- > When and where did the events in the story take place?
- > Whose life or human dignity is at risk in this situation and how?
- > Who were the bystanders and what choices did they make? Why?
- > What obstacles did the rescuer face? What was he risking? What pressures and risks were involved?
- > What were the immediate results of the bystanders' actions? And later?
- > Do you have any examples, from school, your neighbourhood or your family, in which somebody did something to protect someone's life or human dignity?
- > What would you have done in a similar situation?

1.3. MIND MAP (20 minutes)

Ask participants, working in the same small groups as before, to define the concepts of 'human dignity,' 'bystander,' 'social pressure,' 'humanitarian act' and 'dilemma' based on the previous discussion. Each group should tackle two concepts and at least two groups should define the same concepts.

The groups' spokespersons then present their preliminary definitions. Other groups can pose questions and comment on these definitions.

Meanwhile, facilitators should be noting the key words on a flip chart, creating a mind map. Based on the mind map, participants are asked to create common definitions.

(Optional) If there is time, participants can write these common definitions on a flip chart and give illustrations.

There is always a moment when the moral choice is made. Often because of one story or one book or one person, we are able to make a different choice, a choice for humanity, for life.
– Elie Wiesel, from Carol Rittner, Sondra Myers (eds), *The Courage to Care: Rescuers of Jews During the Holocaust*

Session 1: The humanitarian perspective

Note to facilitators

Here are some key definitions:

- **Human dignity:** (self) respect.
- A **bystander** is someone who is aware of an incident, without being involved, where the life or human dignity of others is in danger. The bystander has to decide whether to act or not, because doing either may put him or her – or the people he or she is trying to protect – at risk, physically or materially. Either choice can have complex and long-term consequences for all involved.
- **Social pressure** is the influence exerted by family, friends or other groups of people that puts pressure on an individual to behave in a particular manner.
- A **dilemma** is a situation that requires a choice between options that are or seem equally unfavourable or mutually exclusive.
- A **humanitarian act** is an act carried out to protect someone whose life or human dignity is in danger, especially someone whom one would not ordinarily be inclined to help or protect. Such acts are likely to involve personal or material risk.

Goodness, like evil, often begins in small steps. Heroes evolve; they aren't born. Very often the rescuers make only a small commitment at the start – to hide someone for a day or two. But once they had taken that step, they began to see themselves differently, as someone who helps.
– Ervin Staub, *The Roots of Evil*

! KEY IDEAS

- One of the core issues that will be examined throughout Mini EHL is this: Do we need rules?
- The concepts of 'human dignity,' 'bystander,' 'dilemma,' 'social pressure' and 'humanitarian act' are central to the process of exploring humanitarian law and will be revisited throughout Mini EHL.
- Ordinary people can, in times of violence, act to protect the lives or dignity of people they might not know or whom they would not ordinarily be inclined to help or protect.
- Some of the questions that arise in Mini EHL might have no single right answer or indeed any easy answers. One of the aims of Mini EHL is to identify such questions and to explore them.

Session 2: Basic rules of IHL

Session 1 examined a humanitarian act that an ordinary person carried out spontaneously to protect life and human dignity in a situation of violence other than armed conflict. Session 2 shifts the focus to rules of behaviour that are specifically designed to protect the lives and human dignity of people affected by armed conflict.

Participants explore various experiences arising from armed conflict to suggest rules needed to limit unnecessary suffering and to protect life and human dignity. They then compare their findings with the basic rules of international humanitarian law (IHL).

OBJECTIVES

- to understand some of the reasons why rules are needed in armed conflict
 - to identify and understand the basic principles and rules of IHL
-

2.1. DISCUSSION – “WAR” (10 minutes)

Tell participants that:

- in this session they will consider the need for rules in armed conflict and look at examples of such rules;
- the purpose of this discussion is only to find out what they think before they begin to study IHL;
- no one is expected to be well-informed on the subject, and no one has to speak if he or she is uncomfortable about any issue that might come up.

Possible questions

- > What is war?
- > What images come to mind when you hear the terms ‘war’ and ‘armed conflict’?
- > What wars are going on today? What past wars do you know about?
- > If it is important to have rules that protect life and dignity in times of peace, what about times of war? How are people’s lives and human dignity affected in times of war?

‘Armed conflict’ means:

- fighting between countries (international armed conflict); or
- fighting between a country’s armed forces and armed groups, or between armed groups (non-international armed conflict).

2.2. WHAT RULES ARE NEEDED IN ARMED CONFLICT? (20 minutes)

Divide the participants into small groups. Present the photo, “Blindfolded captive.” Ask participants to imagine themselves in the shoes of the captive or his guards.

 **PARTICIPANT**
21 **RESOURCES**

Have participants discuss the photo amongst themselves, in their groups. Suggest these points, one at a time:

Session 2: Basic rules of IHL

Possible questions

- > What might the captive be thinking? The guards?
- > Imagine that the captive is your brother. How would you want him to be treated? Why?
- > Imagine that the captive killed your friend in battle. How would you want him to be treated? Why?

Then reconvene the class and discuss the following questions:

- > How should a man or woman taken prisoner during armed conflict be treated?
- > Suppose prisoners have important information. Should that affect their treatment?
- > In what way is a prisoner's human dignity at risk? A guard's?

The most dominant emotion is of bewildering fear at the alien surroundings and uncertainty of one's ultimate fate. Embodied in this sense of loss (friends, family) is the uncertainty of time. How long? Forever? – a captured aircraft pilot

Ask participants to quickly think up rules that might be needed to protect prisoners during armed conflict.

Present "Photo collage."

PARTICIPANT
2.2 **RESOURCES**

Have participants examine the photos and suggest other rules that might be needed. Make a list of these proposed rules and ask participants to give their reasons for each rule.

Then, discuss the participants' suggestions. Identify those rules with which the group either agrees or disagrees, and explore the reasons for participants' views.

Possible questions

- > How would each of your rules change the experience of war?
- > What might be the difficulties in implementing them?
- > Which of your rules apply to combatants who can no longer fight (e.g. captured, wounded, sick or shipwrecked combatants)?

Note to facilitators

Here are some examples and arguments that participants may raise in discussing the need for rules to regulate the conduct of warfare: belligerents are not criminals, and even criminals have rights; if adversaries treat each other humanely during a conflict, it may ease the process of reconciliation after the conflict.

Session 2: Basic rules of IHL

2.3. DISCOVER THE BASIC RULES AND PRINCIPLES OF IHL (15 minutes)

Present the chart titled “Basic Rules of IHL.” Use the following questions to guide the discussion:

- > Which of these rules and principles are similar to the ones that you suggested in the previous exercise?
- > Are there any rules or principles in this chart that you find surprising?

(Optional) Choose one rule (the principles are too general) and discuss what would happen if it did not exist.

 **PARTICIPANT**
2.3 RESOURCES

 **FACILITATOR**
2.1 RESOURCES

Note to facilitators

Here are some rules that illustrate the underlying principles of IHL:

- **Principle of humanity:** *Civilians and wounded, sick, captured or surrendering soldiers must be treated humanely.*
- **Principle of distinction:** *Those who are fighting must distinguish themselves from those who are not.*
- **Principles of proportionality and precaution:** *There are limits to the types of weapon and methods of warfare that can be used to overcome an adversary.*

KEY IDEAS

- In the extreme circumstances of war, rules are needed to ensure that human dignity is preserved and those who are most vulnerable, protected.
- The basic principles of IHL are humanity, distinction, proportionality and precaution.
- IHL is a set of rules that aim to preserve human dignity during armed conflict by protecting those who are most vulnerable and by limiting the way in which war is conducted.

Session 3: The law in action

In Session 3, participants will use a case study to try to apply the rules they identified in Session 2. This will enable them to explore the dilemmas that may arise in applying international humanitarian law (IHL).

Session 3 also gives participants an opportunity to explore the differences between human rights law and IHL.

OBJECTIVES

- to be able to recognize dilemmas that may arise in respecting IHL in combat situations
 - to explore the similarities and differences between IHL and human rights law
-

3.1. CASE STUDY: GOATHERD UNDER ATTACK? (20 minutes)

Divide participants into small groups. They read the story and discuss it, first amongst themselves within their groups and then all together. Remind participants that this is an account of something that actually happened during the armed conflict in Afghanistan.



Wandering Afghan goatherd amidst lethal attack on Taleban roadside bombers

Four Taleban insurgents appeared at one end of a bridge and began to dig a hole for a roadside bomb. Buzzing above them was a drone, relaying pictures of the scene to the British commanders.

Soon, two fighter jets had flown in and were ready to pulverize the Taleban fighters. Just as they were about to swoop in for the kill there was a shout over the radio: "Stop, hold fire – there's a boy with goats approaching."

Paraphrased from: Marco Sassòli, Antoine Bouvier, Anne Quintin, *How Does Law Protect in War?* ICRC, Geneva, 2011, pp. 2311-2312.

Note to facilitators

The primary objective of this session is to analyse the dilemma created by the situation and illustrate the challenges involved in applying the rules governing war; it is not to decide under what circumstances an attack would have been lawful. Nevertheless, the question of legality might arise in the discussion. For example, participants might ask whether an attack on the insurgents, endangering the goatherd, would be a breach of IHL. The relevant principles and legal analysis have been included in the resources for facilitators.

Possible questions

- > What are the options available to the pilots, the commanders, and the Taleban insurgents?
- > What are the possible consequences of each action?
- > Which rules would apply to this situation?

What actually happened?

The commanders waited until the boy and the goats were no longer in harm's way before giving the pilots the order to attack the insurgents. Because of the time it took for the goatherd to leave the area, the attackers were unable to prevent the insurgents from planting the explosive device. The next day, a hundred foot soldiers accompanied by two bomb-disposal specialists had to go to the area in order to conduct a dangerous bomb-disposal operation.

Session 3: The law in action

3.2. SIMILARITIES BETWEEN IHL AND HUMAN RIGHTS LAW (15 minutes)

Tell participants to refer back to their own list of rules from Session 2. *(Note: If they do not have the list, they can refer to the resource titled "Basic Rules of IHL.")* Ask them to explore, in small groups again, which of these rules should also apply when there is no war.

Then, present "The Universal Declaration of Human Rights" and have participants compare it with their new list. They should, generally, realize that there is a set of core rules that is common to both. One of the core rules that participants may point to is the prohibition against torture.

Point out that these similarities exist because the two sets of rules complement each other. Explain that human rights law applies at all times, whereas IHL applies only in armed conflict. Therefore, they may be said to provide complementary forms of protection.

PARTICIPANT
2.3 RESOURCES

PARTICIPANT
3.2 RESOURCES

3.3. DISTINCTION BETWEEN IHL AND HUMAN RIGHTS LAW (10 minutes)

Continue working in small groups. Give each group the following table and a set of answers. Ask them to fill in the table by entering each answer in the correct cell.

PARTICIPANT
3.3 RESOURCES

FACILITATOR
3.2 RESOURCES

| | HUMAN RIGHTS LAW | IHL |
|--|---|---|
| When does it apply? | at all times | during armed conflict |
| Can it be limited or suspended? | possible during public emergencies, except for 'hard-core' human rights | not possible |
| Who is protected? | individuals from the arbitrary power of the government | individuals who do not or who no longer take part in fighting |
| Who is bound? | governments | governments, armed groups, individuals |

Explain that in contrast to certain human rights, the rules of IHL may never be restricted. This is because the rules of IHL were developed deliberately as minimal rules so that they could realistically be applied even under the extreme conditions of armed conflict.

! KEY IDEAS

- Although the rules of IHL may appear to be straightforward, their application to real-life situations of conflict often creates dilemmas.
- Both IHL and human rights law aim to protect life and human dignity.
- IHL applies only to armed conflict whereas human rights law applies at all times.
- IHL includes the 'hard core' of human rights, but it does not replace human rights law. The two bodies of law complement each other.

Session 4: Violations of IHL

In Session 4, participants go on to consider why people violate international humanitarian law (IHL) and who bears the responsibility for ensuring that the rules are respected. They explore one of these violations:

the recruitment and use of children by armed forces and armed groups. Participants also trace the way in which one violation can set off a chain reaction.

OBJECTIVES

- to be able to identify violations of IHL
 - to explore the issue of child soldiers
 - to understand how one violation can lead to another
-

4.1. ROLE-PLAYING EXERCISE: I DON'T WANT TO GO BACK (20 minutes)

Divide the participants into two groups: 'Actors' and 'Reporters'. There should be at least 10 people in the group of 'Actors'.

Give the 'Actors' the instructions and let them read them.

Divide the 'Reporters' into no more than three smaller groups. Give them the cards with instructions: each group must be given the same card.



After they have read the instructions, explain to the 'Actors' that one of them should play the young boy (the main character) in all three scenes. A second participant should play the person being killed in Scene 1 and the killer in Scene 3. The others will take on various roles linked to specific scenes. Now, give them five minutes to prepare the three scenes.

Meanwhile, check whether the 'Reporters' have any questions. Encourage them to be creative and analytical, as they understand and explain what is going on, but brief (three to five sentences).

Session 4: Violations of IHL

Instructions to 'Reporters':

Select the medium you want to represent (newspapers, TV, radio, etc.), and write a news story about each scene that the 'Actors' will present. Report in front of everyone after each scene. All the members of your group should take part.

Instructions to 'Actors':

Act out the following three scenes, in reverse chronological order, starting with the most recent.

Scene 1: A young boy kills four people (2000)

During an armed conflict, a young boy attacks and kills a man. He then proceeds to kill, without reason, three other people who just happened to be in the vicinity.

Scene 2: A young boy is recruited to be a child soldier (1999)

An armed conflict is in progress in the country. A young boy is sitting outside, in the street where he lives. There is a sad expression on his face and he seems lost in thought. A friend comes along to convince him to join the army, of which he is a member. After a while, the boy is persuaded and his friend takes him to be introduced to the colonel who then gives him a gun.

Scene 3: The happy family (1998)

An armed conflict has just broken out in the country. A happy young boy is in the living room of his house getting ready to go to school. He is explaining to his parents and young sister that he wants one day to become a politician. The boy is about to leave the house when a combatant breaks in through the back door and threatens the whole family with a weapon. The father confronts the man and they fight; he is killed, as is his daughter. The mother runs away, leaving the young boy alone in the house.

4.2. VIDEO: *I DON'T WANT TO GO BACK* (15 minutes)

Tell participants that the story of the young boy in the video that you are about to show them is true. View an excerpt from the video, *I don't want to go back*, which shows a former child soldier being interviewed: the role-playing exercise was based on this boy's life (start the video at 1:26).

 **PARTICIPANT**
4.2 RESOURCES

 **FACILITATOR**
4.1 RESOURCES

Note to facilitators

The video is available at www.ehl.icrc.org, under "Student videos."

Possible questions

- > What are your reactions?
- > In the video, whose human dignity was affected? How?
- > What are the consequences of children taking part in war? For the child? For the family? For society?
- > What should be, in your view, the minimum age for recruitment to armed forces or armed groups?
- > What does Todorov's statement mean?

Session 4: Violations of IHL

Explain to the participants how legal protection is provided to children in armed conflict.

- Children in war benefit from the protection afforded to civilians by IHL (see “Basic Rules of IHL”). Because of their particular vulnerability and needs, there are special rules that prevent their recruitment into armed forces and armed groups, as well as their participation in hostilities.
- Under IHL, it is specifically prohibited to recruit children under the age of 15 and to allow them to take part in hostilities.
- The Convention on the Rights of the Child, the main human rights instrument protecting children, also prohibits recruitment and participation in hostilities of children under the age of 15.
- Since 2000, a majority of States have agreed that the age limit for *compulsory* recruitment into State armed forces and direct participation in hostilities is 18. States Parties are also required to raise the minimum age for *voluntary* recruitment beyond 15. Non-State armed groups should not, under any circumstances, recruit or use in hostilities persons under 18.
- While universal recognition of 18 as the minimum age for recruitment and participation in hostilities has not yet been achieved, there is increasing pressure from a large number of States, non-governmental organizations and humanitarian actors for this to happen.

There are children who join for so-called voluntary reasons. But I think one has to be very careful to recognize that there is truly no voluntary joining, in the sense that the vast majority of children who join willingly do so out of necessity or victimization, fear for their security. Unaccompanied children who have no parents to protect them, people who are fearful that they will die of hunger or who have inadequate health care, all may seek military activity.
– Dr Mike Wessells,
professor of psychology
and author of *Child Soldiers: From Violence to Protection*

4.3. HOW ONE VIOLATION LEADS TO ANOTHER (10 minutes)

Re-establish the groups from Exercise 1 and have them indicate which rules of IHL were violated in the story “I don’t want to go back”; ask the participants to use their worksheet on the “Basic Rules of IHL.”

Then, ask them to identify the links between these violations; for this they should use the chart on “Chains of Consequences.”

PARTICIPANT
2.3 **RESOURCES**

PARTICIPANT
4.3 **RESOURCES**

(Optional) Ask every group to imagine a different chain of consequences using the chart and present it to the others.

[Some examples: the placing of a gun on the roof of a hospital by one side in a conflict, which leads to an attack on that hospital by the other side; one side’s killing someone they have taken prisoner leading to the other side’s killing prisoners in revenge; a captor’s cruel treatment of a prisoner that might lead to the captor then killing the prisoner or to other captors following his lead, and so on.]

Note to facilitators

Not all violations of IHL are war crimes, but the violations referred to in the story are considered to be war crimes. The term ‘war crime’ encompasses grave breaches of IHL and other serious violations of IHL committed in both international and non-international armed conflicts. War crimes include deliberate attacks against civilians and the use of children under the age of 15 for active participation in hostilities.

Session 4: Violations of IHL

! KEY IDEAS

- There are various reasons why violations of IHL take place (fear, retaliation, hatred, etc.).
- Under IHL, certain categories of person are recognized as particularly vulnerable, and thus entitled to special protection. Children are among them.
- One form of protecting children is setting and respecting a minimum age for recruiting children into armed forces or armed groups or using them in armed conflict.
- Violations of IHL often set off a chain reaction, leading to further violations.

Session 5: Dealing with violations

Session 4 took up the subject of violations of international humanitarian law (IHL) and participants discovered why such violations occur. Session 5 is designed to broaden participants' understanding of the ways in which IHL is implemented. It presents a number of ways of dealing with IHL violations, such

as bringing perpetrators to trial, uncovering the truth, reconciliation and forms of reparation. Session 5 first asks participants to consider some reasons for dealing with violations of IHL. It then asks them to explore ways of doing this and touches upon the responsibilities of the different actors involved.

OBJECTIVES

- to explore how dealing – or not dealing – with IHL violations can affect a society after armed conflict
 - to understand who is responsible for addressing IHL violations
 - to identify the needs of victims of IHL violations, other than justice, and brainstorm ways to address them
-

5.1. CONSEQUENCES OF FORGETTING OR OF ADDRESSING VIOLATIONS OF IHL (20 minutes)

Ask participants to position themselves in four corners, according to the answer they give to the following question: When a war is over, should people who have broken the rules of war:

- > Corner 1: be put on trial?
- > Corner 2: be exposed to the public but not put on trial?
- > Corner 3: be granted amnesty?
- > Corner 4: be forgiven or forgotten about because the war is over?

Note to facilitators

Amnesty is a measure of clemency that the authorities grant at the end of hostilities in a non-international armed conflict to persons who took part in it – except persons suspected of, accused of or sentenced for war crimes.

Allow the participants to position themselves between the corners as well, and ask some of them why they have positioned themselves in a particular place. Now, while they are still in their positions, ask somebody to recapitulate briefly the story about the child soldier from the previous session.

Discuss the following question:

- > How did the commander violate the rules of IHL?

Ask participants whether after discussing the violations committed by the commander, they want to change their position, and let them explain their decision.

Now, ask them:

- > Who else in the story violated IHL?

[Note: The child soldier did so, by killing unarmed people.]

Then, ask them again if they want to change their position, and let them explain why.

Note to facilitators

Participants might say that prosecuting the commander could restart the war, and that prosecuting the child seems unjust. This makes the point once more that although the principles of IHL are rather simple, implementation of the law itself is not.

Session 5: Dealing with violations

Now, divide the participants into three (or six) groups, and give each a card with the following questions:

Based on the story of the child soldier, what, in your view, are the effects on the following groups of people of taking action or of not doing so?

- > The victims of violations of IHL
- > The perpetrators of violations of IHL
- > The society as a whole in the aftermath of armed conflict

 **PARTICIPANT**
5.1 **RESOURCES**

Then, every group should summarize their discussions for all the participants.

Finally, show participants the graph “Opinions on what to do with people breaking the rules of war.”

 **PARTICIPANT**
5.2 **RESOURCES**

Tell participants that according to this survey, it is a widely held opinion that people who broke the rules of war should be put on trial. Now, they will explore the question of who is responsible for doing that.

5.2. RESPONSIBILITIES FOR IMPLEMENTING IHL (10 minutes)

Tell participants that military commanders, courts and governments all have specific responsibilities for bringing alleged perpetrators to court.

Announce that the next exercise will clarify these responsibilities. Now, give participants – who will be working in the same groups as before – the first set of phrases (Set of phrases 1) to put together.

Ask the group that finishes first to read out its sentence. Repeat the activity with the second and third sets of phrases.

 **PARTICIPANT**
5.3 **RESOURCES**

Solution:

- The **courts** are responsible for trying and punishing persons who have committed grave breaches. These can be national courts or international tribunals/courts.
- The **government** is responsible for enacting national laws that prohibit and punish grave breaches. It is ultimately responsible for searching for and prosecuting persons accused of committing grave breaches. It must also ensure that its military commanders take action against those under their authority who commit grave breaches.
- **Commanders of armed forces or armed groups** are responsible for monitoring the application of IHL and must stop violations. They must report all violations of the law and take disciplinary measures. They are also responsible for bringing to court martial persons under their authority who commit grave breaches.

Session 5: Dealing with violations

5.3. WHAT ELSE CAN BE DONE? (15 minutes)

Tell participants that the two previous exercises of the session concentrated on the perpetrators of violations.

Now, ask them to identify all the victims in the story of the child soldier (they will be working in the same groups as before). Participants should also reflect on other needs that victims of violations may have, besides justice. For example, the boy may want to know what happened to his mother, who disappeared. If she is still alive, he may want to find her.

Ask participants to share their thoughts. Make a list of their suggestions.

Then, ask the groups to choose one of the needs they have thought of and draw up a strategy for addressing it.

Note to facilitators

Some examples: attempts to bring about a reconciliation between the perpetrators and victims' relatives, efforts to find the remains of the 'disappeared' and to return them to their families, public apologies, financial compensation to relatives for their loss, establishing memorials, establishment of fact-finding and reconciliation commissions. [The most famous fact-finding commissions are those that were set up in Argentina (after the end of the military dictatorship) and in South Africa (after the end of the apartheid system).]

Possible questions

> Who do you think could initiate these efforts?

[For example: the international community, the government, non-governmental organizations, relatives of the victims, concerned citizens]

> Who do you think could carry them out?

[For example: the international community, the government, the navy, the perpetrators, those who gave the orders]

Review and discuss their suggestions.

! KEY IDEAS

- States must establish laws to try and to punish those who commit grave breaches of IHL.
- The responsibility for enforcing IHL lies primarily with governments, but others can play a significant role as well.
- Bringing perpetrators to trial is not the only way to deal with violations of IHL.
- Many different perspectives must be considered to help societies move beyond the atrocities of the past.

Ice breaker: Chairs

| | | |
|---|---|---|
|  |  |  |
| <p>Put the chairs NEAR THE DOOR</p> | <p>Put the chairs NEAR THE WINDOW</p> | <p>Put the chairs IN A CIRCLE</p> |

Brave shopkeeper

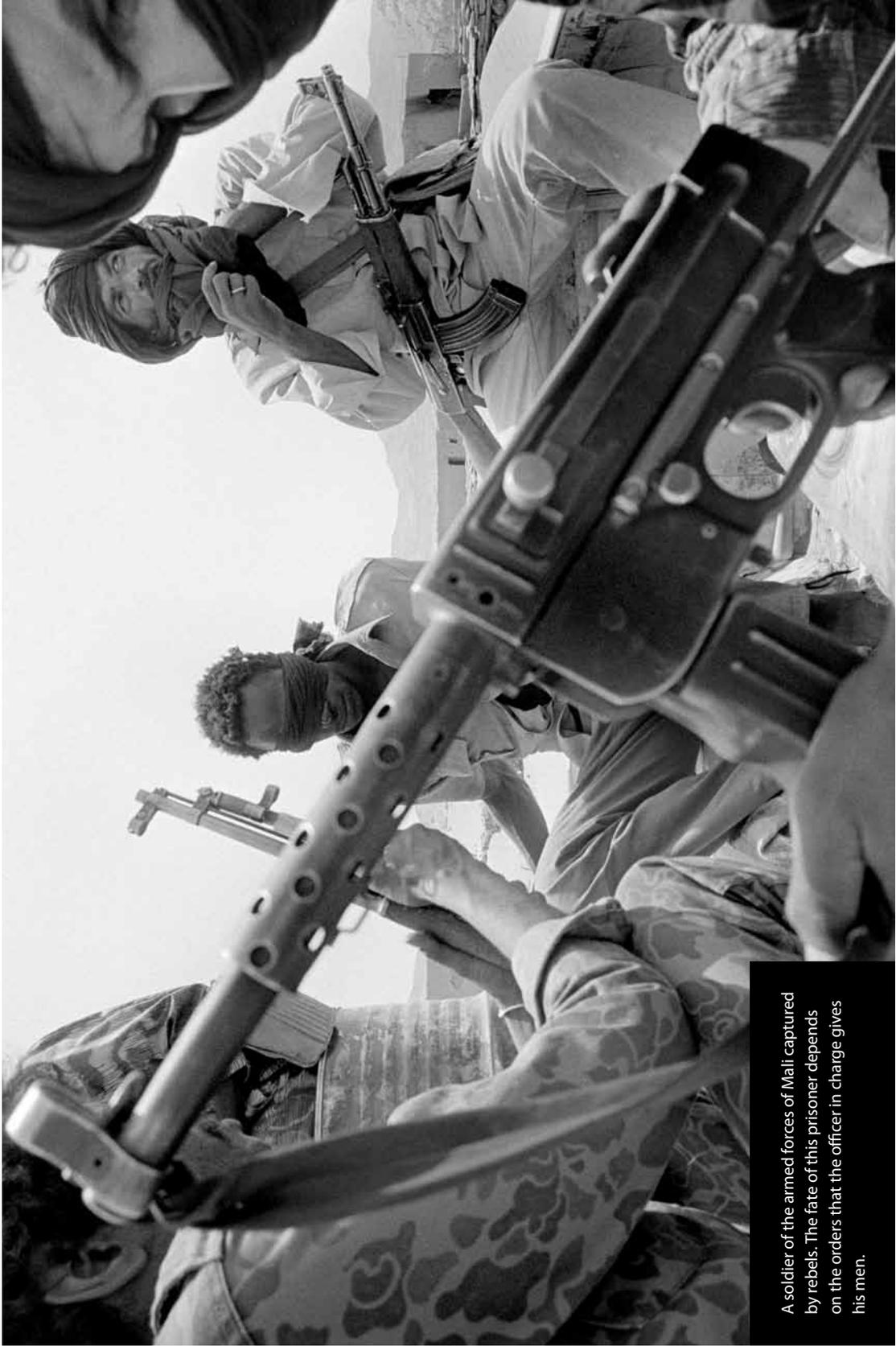
There is a corner of a road in Bangkok where fighting among groups of boys sometimes occurred. One day, a group of boys from the mechanics school picked on a boy from another school and chased him down the road. The poor boy ran for his survival and a passer-by tried to help him. He reached the little shop at the corner of the road. The boys giving chase were everyday customers at this shop. The shopkeeper saw what was happening. The boy knocked on his door. Quickly, the vendor opened the back door of his shop to let the boy slip in. He let the boy hide in his shop.

Source: Achana Permool, teacher from Thailand.



Source: Tanchanok Taksiri, Thai student

Blindfolded captive



© Raymond Depardon/Magnum Photos

A soldier of the armed forces of Mali captured by rebels. The fate of this prisoner depends on the orders that the officer in charge gives his men.

Basic rules of IHL

IHL is a set of rules that aim to preserve human dignity in armed conflict by **protecting** the most vulnerable persons and by **limiting** the way in which war is conducted.

IHL strikes a balance between the principle of **humanity** and **military necessity**.

| | PROHIBITIONS | OBLIGATIONS |
|--|--|---|
| <p>PROTECTING THE MOST VULNERABLE PERSONS</p> <p>civilians wounded and sick detainees health-care workers</p> | <p>It is forbidden to:</p> <ul style="list-style-type: none"> • attack civilians and civilian objects (houses, schools, places of worship, cultural or historic monuments, etc.); • murder and torture; • commit acts of sexual violence; • forcibly displace and starve civilians; • attack hospitals, ambulances and health-care workers; • use human shields; • destroy stocks of food, farming areas, and the water supply); • recruit or use children under the age of 15 in armed conflict; • misuse the red cross / red crescent / red crystal emblem; • interfere with the delivery of humanitarian relief; • damage the environment. | <p>Captured civilians and enemy combatants:</p> <ul style="list-style-type: none"> • must be given adequate food, water, clothing, shelter and medical care; • must be allowed to have contact with their families; <p>Children and women must be detained separately from men, to the extent feasible.</p> <p>Enemy combatants who are wounded, sick, shipwrecked, or surrendering:</p> <ul style="list-style-type: none"> • must be searched for, collected and cared for; • must not receive preferential treatment, except on medical grounds. <p>A surrendering enemy must not be wounded or killed.</p> <p>The specific protection, health and assistance needs of women affected by armed conflict must be respected.</p> <p>Everyone is entitled to a fair trial.</p> |
| <p>LIMITING THE WAY IN WHICH WAR IS CONDUCTED</p> <p>weapons use of force</p> | <p>It is forbidden to:</p> <ul style="list-style-type: none"> • use weapons that cause unnecessary suffering (such as poison, blinding laser weapons or nuclear weapons); • use weapons that cannot distinguish between civilians and military targets (such as landmines); • take hostages; • pretend to be a civilian while fighting; • order or threaten that there shall be no survivors. | <p>Those who are fighting must distinguish themselves from those who are not.</p> <p>Attacks must be limited to military objectives.</p> <p>During an attack, every precaution must be taken to minimize the potential harm to civilians and civilian objects.</p> |

Respect human dignity

Minimize collateral damage

Do not target civilians

DEFINITIONS

Civilian: Any person who is not a combatant. When civilians take a direct part in fighting, they lose their protection from attack. (Should there be any doubt about a person's status, he or she shall be considered to be a civilian.)

Combatant: Member of armed forces, member of any armed group under the orders of a party to the conflict.

Hors de combat: Literally means "out of fight" and describes combatants who have been captured or wounded or who are sick or shipwrecked and thus no longer in a position to fight.

Civilian object: Any object that is not a military objective. When a civilian object is used in support of military action, it becomes a legitimate military target and loses its protection. (When there is any doubt about its status, it shall be considered to be a civilian object.)

Military objective: Object that by its nature, location, purpose or use makes an effective contribution to military action and whose destruction offers a definite military advantage.

Goatherd under attack?

WANDERING AFGHAN GOATHERD AMIDST LETHAL ATTACK ON TALEBAN ROADSIDE BOMBERS

Four Taleban insurgents appeared at one end of a bridge and began to dig a hole for a roadside bomb. Buzzing above them was a drone, relaying pictures of the scene to the British commanders.

Soon, two fighter jets had flown in and were ready to pulverize the Taleban fighters. Just as they were about to swoop in for the kill there was a shout over the radio: "Stop, hold fire – there's a boy with goats approaching."

Paraphrased from: Marco Sassòli, Antoine Bouvier, Anne Quintin, How Does Law Protect in War? ICRC, Geneva, 2011, pp. 2311-2312.



Omar Sobhani/Reuters

The Universal Declaration of Human Rights

On 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR). The first of its 30 articles proclaims that:

All human beings are born free and equal in dignity and rights.

It further provides that everyone – without distinction – has the right to:

- a. live, and to live in freedom and safety;
- b. be free from slavery;
- c. be free from torture and from cruel, inhuman or degrading treatment or punishment;
- d. be treated equally under the law;
- e. be free from arbitrary arrest and detention;
- f. receive a fair trial, and be considered innocent until proven guilty;
- g. not be convicted or punished for an act that was not a crime at the time it was committed;
- h. have his or her privacy respected;
- i. move about freely within or outside his or her country;
- j. seek protection from persecution in another country;
- k. get married and have a family;
- l. own property;
- m. freely practice his or her own religion;
- n. think and express himself or herself freely;
- o. organize or take part in peaceful meetings;
- p. take part in his or her country's political affairs and have equal access to government services;
- q. work, and to work in favourable conditions;
- r. have adequate living standards;
- s. go to school.

While exercising these rights, everyone must respect the rights of others. No one may take away any of these rights.

Worksheet

Distinction between IHL and human rights law

| | HUMAN RIGHTS LAW | IHL |
|--|---|--|
| When does it apply? | | |
| Can it be limited or suspended? | | |
| Who is protected? | | |
| Who is bound? | | |
| NO | INDIVIDUALS FROM THE ARBITRARY POWER OF THE GOVERNMENT | YES, BUT ONLY SOME RIGHTS AND FOR A LIMITED TIME ONLY |
| DURING ARMED CONFLICT | GOVERNMENTS | GOVERNMENTS, ARMED GROUPS, INDIVIDUALS |
| INDIVIDUALS WHO DO NOT OR WHO NO LONGER TAKE PART IN FIGHTING | AT ALL TIMES | NO |

Instructions for the role-playing exercise: I don't want to go back

| REPORTERS: | ACTORS: |
|--|--|
| <p>Select the medium you want to represent (newspapers, TV, radio, etc.) and write a news story about each scene that the 'Actors' will present. Report in front of everyone after each scene. All the members of your group should take part.</p> | <p>Act out the following three scenes, in reverse chronological order, starting with the most recent.</p> <p>Scene 1: A young boy kills four people (2000) During an armed conflict, a young boy attacks and kills a man. He then proceeds to kill, without reason, three other people who just happened to be in the vicinity.</p> <p>Scene 2: A young boy is recruited to be a child soldier (1999) An armed conflict is in progress in the country. A young boy is sitting outside, in the street where he lives. There is a sad expression on his face and he seems lost in thought. A friend comes along to convince him to join the army, of which he is a member. After a while, the boy is persuaded and his friend takes him to be introduced to the colonel who then gives him a gun.</p> <p>Scene 3: The happy family (1998) An armed conflict has just broken out in the country. A happy young boy is in the living room of his house getting ready to go to school. He is explaining to his parents and young sister that he wants one day to become a politician. The boy is about to leave the house when a combatant breaks in through the back door and threatens the whole family with a weapon. The father confronts the man and they fight; he is killed, as his daughter. The mother runs away, leaving the young boy alone in the house.</p> |

Video transcript

I don't want to go back

Narrator: Today, more than 250,000 children participate in armed conflicts on four continents. These boys and girls, some as young as seven, serve alongside adults in government forces, rebel opposition groups and guerrilla armies.

Comfort Cassell, former child soldier
They killed my brother, my grandmother and my little sister. That made me do what I was not supposed to do – it may happen to you. If you hear people say, "They killed your mother. They killed your father," you want to revenge them – to get your mother back – but it will never happen. I loved my grandmother. She used to take care of me and also my brother. That's why I did that. But it was not my intention to do what I was not supposed to do. I want to free myself. I want my conscience to be clear. I want to have little children. I will never do again what I'm not supposed to do. No.

Abraham

Abraham: My name is Hitler. Killer, but my real name is Abraham.

Interviewer: Why is your name Hitler Killer?

Abraham: It's my fighting name, a name they gave me in the bush.

Interviewer: Who gave it to you?

Abraham: My boss man.

Interviewer: Who is Hitler?

Abraham: I don't know.

Abraham: You know, I went there because they killed my father. I went there to join because my friends were going too. So I went there with my friends to join them.

Interviewer: Because you wanted to find the man who killed your father?

Abraham: Yes.

Interviewer: Do you know him?

Abraham: Yes.

Interviewer: So what did you do?

Abraham: I saw him and he came to fight me and I killed him. And I went in the bush, and I joined the people, and fought for them. So they saw what I did, they gave me a gun.

Interviewer: You have seen many people killed?

Abraham: Yes.

Interviewer: How many?

Abraham: Many people. Plenty, plenty of people. People who were not fighting, people who were not rebels – the rebel boss killed them.

Interviewer: Have you killed people yourself?

Abraham: Yeah.

Interviewer: Many?

Abraham: Yeah.

Interviewer: How many?

Abraham: Ten people.

Interviewer: How?

Abraham: They came to attack me, so I fought them. They were coming to kill me.

Interviewer: And how did you do this?

Abraham: They were coming with weapons, I advanced. When all of them came and Wolf fired, then we shot him. I wanted to be a soldier because they killed my father. So I went there to be a soldier.



ICRC



ICRC

Video transcript

I don't want to go back

Colonel Mother Blessing

My name is Colonel Abu Bakar Camarra, commonly called Colonel Mother Blessing. I have 978 men under my command. And I have 176 of Hitler the Killer. Some are 9, 10, 11, the highest is 12. They go on the advance team. They are at the forefront of the war. The soldiers who are above 20, when I tell them to do certain operations, they will always be afraid. But, like Hitler the Killer, the small soldiers, they are not afraid. I trust them and they are my best because they execute any order I give them. When I say, "Hitler the Killer, get that man," it means they will get you. When I say, "OK, that man should be executed," for sure they will do that. So I have the trust and confidence in them.

Abraham

Abraham: It was all right. There was no war. Then the war came. We lost, my father died. And my sister and my mother went away. So I went by myself.
Interviewer: What did you do with your family before?
Abraham: I was staying with them. I was going to the school.
Interviewer: What do you want to do now?
Abraham: I'd like to go to school – to become somebody official.
Interviewer: What do you want to be when you are a big man?
Abraham: I want to be working, in an office.
Interviewer: Do you miss the fighting? Would you like to go back?
Abraham: No, I don't want to go back there.

Interviewer: When your Colonel, Abu Bakar, tells you to go back with him to fight, you have to.
Abraham: Yeah, I have to go in. But if he tells me to go, I will not do it. Because I don't want to go back there.
Interviewer: But he says if you don't obey his order, he will execute you.
Abraham: If he tells me to go and I say no, he can't do anything to me because we are not in the bush – and if he does something, you will catch him.
Interviewer: So what will you do?
Abraham: Nothing – I don't know.

For evil to take place, the acts of a few people are not sufficient; the great majority also has to remain indifferent. That is all quite capable.
 – Tzvetan Todorov,
 Franco-Bulgarian literary theorist



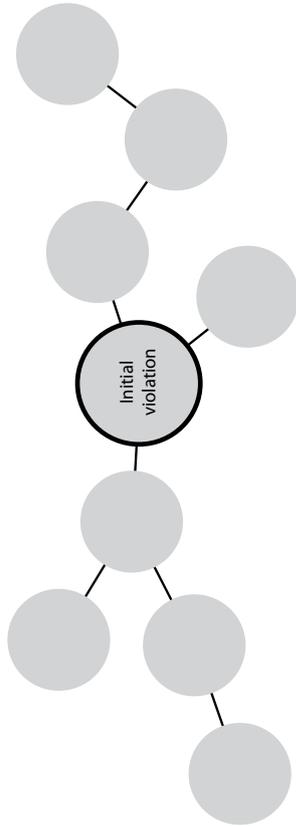
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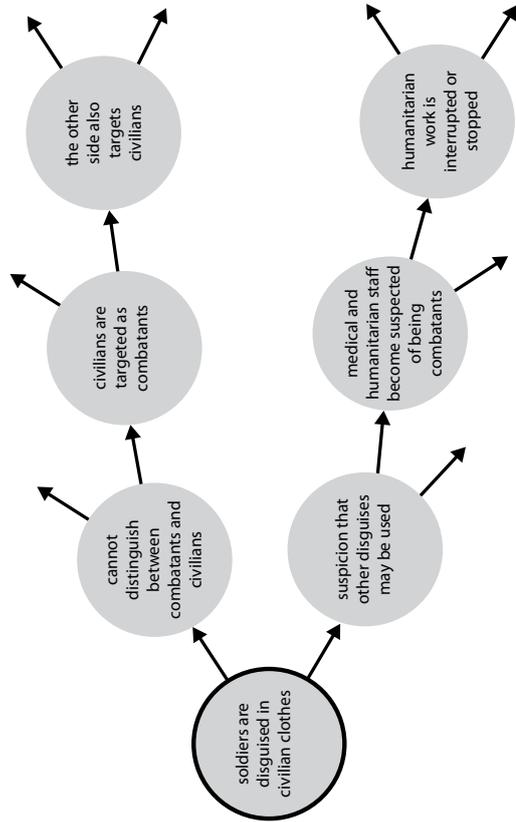
Chains of consequences

Select a violation of IHL and make a diagram of the chains of consequences that the violation could create. Some consequences might result in many other chains of consequences.



Example

There are a lot of situations when soldiers changed uniforms for ordinary suits ...



Consequences of forgetting or of addressing violations

Based on the story you heard, what are the effects **on the victims** of violations of IHL:

- > of taking action against the perpetrators?
- > of not taking action against the perpetrators?

Based on the story you heard, what are the effects **on the perpetrators** of violations of IHL:

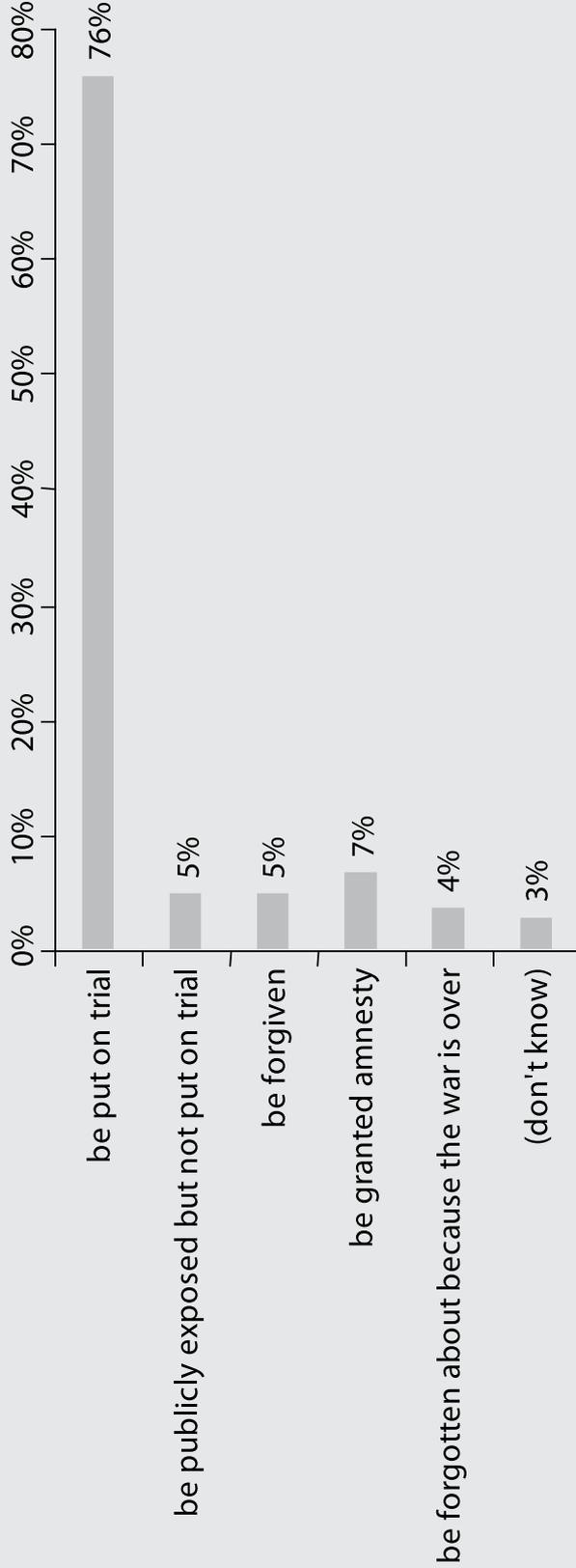
- > of taking action against them?
- > of not taking action against them?

Based on the story you heard, what are the effects **on the society** in which violations of IHL occurred:

- > of taking action against the perpetrators?
- > of not taking action against the perpetrators?

Opinions on what to do with people breaking the rules of war

WHEN A WAR IS OVER, SHOULD PEOPLE WHO HAVE BROKEN THE RULES OF WAR:



In 1998-1999, a survey entitled *People on War* was conducted by the International Committee of the Red Cross in 16 countries (12 of which had recently experienced armed conflict). This graph shows the views of the respondents.

Worksheet

Distinction between IHL and human rights law

Set of phrases 1

| | | |
|---|---|---|
| <p>² These can be national courts grave breaches. or international tribunals/courts.</p> | <p>¹ The courts are trying and punishing persons</p> | <p>responsible for who have committed</p> |
|---|---|---|

Set of phrases 2

| | | |
|--|--|---|
| <p>its military commanders take action</p> | <p>who commit grave breaches.</p> | <p>searching for and prosecuting</p> |
| <p>¹ The government is committing grave breaches. against those under their authority</p> | <p>that prohibit and punish grave breaches. responsible for enacting national laws</p> | <p>³ It must also ensure that persons accused of</p> |
| | <p>² It is ultimately responsible for</p> | |

Set of phrases 3

| | | |
|--|--|--|
| <p>and must stop violations. are responsible for monitoring the application of IHL persons under their authority all violations of the law</p> | <p>bringing to court martial and take disciplinary measures.</p> | <p>who commit grave breaches. ¹ Commanders of armed forces or armed groups ³ They are also responsible for</p> |
| | <p>² They must report</p> | |

* Numbers indicate start of a new sentence.

If your participants ask...

The following suggestions can be used to help participants think through questions they themselves raise about why those who are fighting accept and respect rules of war.

In most cases, using the “No easy answers” teaching method is recommended for questions like these. (See *Methodology Guide*.) In addition, however, you might consider using some of the approaches suggested here, if time allows.

1. If I am winning in a war, why should I obey rules that limit my behaviour?

- a. Look at your side’s long-term interest. Do you want to be seen by the world as a criminal?
 - b. What if your side starts losing? (Consider historical examples of sides who thought they could not lose, but did.) What will happen when your people need protection?
 - c. Some reasons for governments to obey the rules can include: respect for human dignity, legal obligation, to improve prospects for peace, risk of prosecution, value of maintaining discipline among the troops, to win the support of the population in combat zones and of the public at home and abroad and the belief that the other side might then follow the rules as well.
 - d. Although armed groups did not participate in making the rules of international humanitarian law (IHL), as a party to the conflict, they have essentially the same reasons to feel obliged to accept and respect the rules of this body of law. Among the reasons for armed groups to respect IHL are the following: the desire to earn the support of the population in combat zones and the good opinion of the international community.
-

2. If these rules are broken all the time, why have them?

- a. They are not broken all the time. Most of the time they are respected.
- b. Does abiding by the rules make news? It is usually violations that make the news.
- c. Even if imperfectly respected, these rules do protect many people.
- d. When rules are broken, it is often because combatants have no fear of being punished. This is why it is necessary for governments to make sure that both military personnel and civilians are familiar with the rules of IHL, that implementation is monitored and that the law is enforced.

If your participants ask...

3. Why waste resources caring for enemy prisoners?

- a. If you don't help enemy prisoners, what will that mean for people from your side who are held prisoner by the enemy?
 - b. Providing for the basic needs of detainees does not affect your own fighting capacity.
-

4. Who ensures respect for these rules?

- a. The primary responsibility for ensuring that the rules of IHL are respected rests with the governments involved in armed conflict. At the same time, armed groups are obliged to respect the rules of IHL.
 - b. All countries are obliged to prevent and suppress any violations of IHL as well as to search for and punish those committing 'grave breaches.'
 - c. The international community has increasingly played a role in enforcing IHL by establishing international mechanisms, such as criminal tribunals.
-

Goatherd saved from attack?

Source: "Wandering Afghan goatherd holds up lethal attack on Taliban roadside bombers," Michael Evans, Times Online, 5 May 2009, available at <http://www.timesonline.co.uk/tol/news/world/asia/article6222494.ece>

Wandering Afghan goatherd holds up lethal attack on Taliban roadside bombers

Four Taliban insurgents appeared at one end of a bridge on Route Cowboys and began to dig a hole for a roadside bomb. Buzzing above them at a height of 9,000ft was a Hermes unmanned aerial vehicle, relaying pictures of the scene to British commanders.

Soon, two Belgian Air Force F16s had flown in and were ready to pulverize the Taliban fighters. Just as they were about to swoop in for the kill there was a shout over the radio: "Stop, hold fire – there's a boy with goats approaching."

Sure enough, a young Afghan goatherd with a few goats around him was walking towards the bridge. The world seemed to freeze. The F16 pilots remained on alert. The Taliban continued burying their explosives, and with growing frustration British officers watched – in operations rooms within sight of the bridge, in battlegroup headquarters at Forward Operating Base Delhi farther north, and in Camp Bastion, the main base in central Helmand – the goatherd's slow progress.

(...) The nearest base is Patrol Base Hassan Abad (...) and the bridge is Bridge Three.

If the insurgents registered the presence of the F16s it did nothing to stop them – two of them continued working while a third began to walk backwards holding a wire and disappeared from view. The fourth, apparently the leader, had left on a motorcycle.

Finally the goatherd was safely clear of the area and the jets were given the order to attack. Rather than dropping a 500lb bomb that would have damaged the bridge, one of the jets came roaring in and strafed the area with 30mm cannon where the two Taliban had nearly finished burying their improvised explosive device (IED). They both died.

The insurgent with the wire had climbed on to a motorbike and the Hermes drone followed him as he drove south, taking photographs that told the F16 pilots where he was heading. The man went into a compound to change his clothes and then drove off again to a rendezvous spot known to be a Taliban command centre. He was allowed to escape.

At 4.30am the next day, 100 soldiers set off from Hassan Abad base towards Bridge Three. They were accompanied by two US Marine bomb-disposal specialists (...)

Progress is painstaking. Overnight it is possible that the Taliban have planted more IEDs. Every patrol "multiple" has a soldier with a metal detector sweeping the ground in front of him as the rest of us follow, knowing that the Taliban are watching from the poppy and wheat fields as the dim light turns to dawn. Hermes 450, with that reassuring and familiar buzzing engine, watches our progress.

(...)

We reach Bridge Three without being shot at. The journey – two miles as the crow flies – has taken nearly five hours, partly because a compound suspected of being used by the Taliban has had to be searched (...) Soldiers spread out to control the ground and make sure there is no one concealed within sight of the bridge who might be able to detonate a bomb.

Lieutenant Ed Hattersley, 25 (...) approaches the area of the suspected IED, lies full stretch on the ground and starts to dig away gently with his knife, scooping away the dry earth with a paintbrush. All the rest of the group can do is wait.

The young lieutenant finds enough evidence to confirm the presence of an IED, and the two experts from the US Marine Corps move in. They uncover four mortar shells filled with explosives and linked – known as a "daisy-chain" device.

With no protection other than normal body armour and helmets, they pick up the bombs and carry them away from Bridge Three. They pack their own explosives around the bombs, draw back a distance, and give the signal: "Sixty seconds, heads down" (...) fingers to ears, helmeted heads tucked into chests.

The bomb is destroyed and we return to camp. The IED was planted at about 5pm the previous day; it is now 11.30am the day after, and 100 men are exhausted from the strains of a seven-hour mission.

That was only one IED – and there are scores more.

Source: Marco Sassòli, Antoine Bouvier, Anne Quintin, How Does Law Protect in War? ICRC, Geneva, 2011, pp. 2311-2312

Goatherd saved from attack?

The legal principles and analysis:

In carrying out an attack, soldiers/pilots/commanders must target only military objectives. Once they have established that their target is legitimate, the attackers have an obligation to minimize civilian casualties and damage to civilian objects by carefully deciding when and how (with what weapons and tactics) they will carry out the attack. The principles of distinction, proportionality and precaution dictate this logic.

If we apply these principles (see the chart titled “Basic Rules of IHL”) to the case at hand, it can be said that:

- the insurgents planting the roadside bomb were a legitimate military objective – **principle of distinction**;
- the presence of the boy in the area meant that an attack on the insurgents would likely also kill a civilian (the boy) and civilian property (the goats). The commanders and the pilots had to assess whether

the loss of life and damage to property would be excessive in relation to the military advantage gained from killing the insurgents – **principle of proportionality**;

- by postponing the attack, the commanders preserved the life of the boy, while managing to reach their target (the insurgents) – **principle of precaution**.

In this case, the price the attackers paid for saving the boy took the form of a risky bomb-disposal operation. Waiting for the goatherd to leave the area meant that it was no longer possible for the attackers to kill the insurgents; it also put the pilots’ lives at risk. The attackers could also have decided not to postpone the attack. As long as the ensuing loss of life and damage to civilian property was not excessive in relation to the military advantage gained, such a decision would have been lawful under IHL.

IHL and human rights law – content and complementarity

International humanitarian law (IHL) and human rights law are complementary. Together, they provide a framework for the comprehensive protection of people in situations of violence.

Human rights law is a set of international rules, established by treaty or custom, which applies to everyone at all times and in all circumstances. The purpose of human rights law is to protect the lives and human dignity of individuals from arbitrary behaviour by their own governments. Human rights law therefore continues to apply even during armed conflict.

Some human rights treaties, however, permit governments to limit or suspend certain rights (e.g. freedom of movement, liberty and security, freedom of association) during public emergencies, although only to the extent strictly required by the situation. Nevertheless, there remains a ‘hard core’ of human rights that may never be limited or suspended under any circumstances, not even during public emergencies or armed conflict. The ‘hard core’ of human rights includes:

- the right to life;
- the prohibition against torture;
- the prohibition against cruel or inhuman treatment or punishment;
- the prohibition against humiliating or degrading treatment or punishment;
- the prohibition against slavery;
- the prohibition against convicting or punishing someone for an act that was not a crime at the time it was committed.

During armed conflict, IHL comes into effect as well, as a set of rules, established by treaty or custom, especially adapted to situations of armed conflict. The purpose of IHL is to protect the lives and human dignity of people who are not or are no longer taking part in the fighting and to set limits on conducting war. It thus aims to limit the suffering and the damage caused by war. The rules of IHL may never be restricted or suspended, precisely because they were conceived for the extreme situation of armed conflict. Thus, IHL is a set of fundamental rules to protect people affected by armed conflict, which necessarily includes the ‘hard core’ of human rights as well.

| | HUMAN RIGHTS LAW | IHL |
|--|---|---|
| When does it apply? | at all times | during armed conflict |
| Can it be limited or suspended? | possible during public emergencies, except for ‘hard-core’ human rights | not possible |
| Who is protected? | individuals from the arbitrary power of the government | individuals who do not or who no longer take part in fighting |
| Who is bound? | governments | governments, armed groups, individuals |

IHL and human rights law – content and complementarity

HUMAN RIGHTS LAW

The first traces of human rights law date back to the late eighteenth century, to the period in which the *Declaration of the Rights of Man and of the Citizen* in France and the *Bill of Rights* in the United States were adopted. Under the influence of the United Nations (UN), the development of human rights law began in earnest with the adoption of the Universal Declaration of Human Rights in 1948.

Two important covenants were signed in 1966 under the auspices of the UN: the International Covenant on Civil and Political Rights (marking the ‘first generation of human rights’: civil and political rights) and the International Covenant on Economic, Social and Cultural Rights (marking the ‘second generation of human rights’: economic, social and cultural rights).

The first covenant has served as a model for many other treaties as well as for national charters on civil and political rights and freedoms. The second one, on the other hand, has seen its impact limited by countries’ varying capacities to implement it.

There is a new tendency to refer to a ‘third generation of human rights,’ involving, for example, the right to national self-determination, minority rights, economic and social development, peace or a healthy environment, which continues to be debated.

The importance of human rights has also been recognized by regional inter-governmental organizations, such as the Council of Europe, the Organization of American States and the African Union. These organizations have developed a number of regional human rights treaties. While, in general, the duty to implement human rights law lies first and foremost with States, most of these instruments provide for mechanisms of implementation, in the form of actual judicial bodies (e.g. the European Court of Human Rights and the Inter-American Court of Human Rights), quasi-judicial bodies (e.g. the United Nations Human Rights Committee and the African Commission on Human and Peoples’ Rights), or reporting organs (special rapporteurs and working groups of the UN Human Rights Council).

INTERNATIONAL HUMANITARIAN LAW

IHL, also known as the ‘law of war’ or the ‘law of armed conflict,’ is a body of international rules that seeks to limit the suffering caused by war. It does so by:

- regulating the conduct of fighting, in particular by setting limits on methods and means of warfare;
- protecting persons who are not or are no longer taking part in fighting, in particular civilians, wounded, sick and shipwrecked combatants, prisoners of war and others detained in relation to the conflict.

This body of law developed from a variety of sources.

- In some contexts, unwritten rules based on local customs regulated behaviour in armed conflict.
- In other cases, warring parties concluded bilateral agreements.
- Countries also issued regulations to their own troops in certain instances.

IHL and human rights law – content and complementarity

Such rules were generally valid for only one battle or for a specific conflict. Moreover, they were not uniform, varying according to period, place and tradition.

The 1864 Geneva Convention laid the foundations for contemporary international humanitarian law. Since this treaty's adoption, the law has continued to evolve in stages to limit the devastation caused by technological advances in weapons and new types of conflict. Today the four Geneva Conventions of 1949 and their Additional Protocols of 1977 are the main IHL treaties.

IHL strikes a realistic and pragmatic balance between military necessity and principles of humanity. It does this by prohibiting the infliction of suffering, injury or destruction not necessary for accomplishing legitimate military goals.

IHL is applicable only in armed conflicts. The rules of IHL regulate both international and non-international armed conflicts. However, they do not cover situations of internal disturbance and tension, such as riots or isolated and sporadic acts of violence that do not reach the level of armed conflict.

IHL addresses the reality of armed conflict and regulates only those aspects of the conflict which are of humanitarian concern (*jus in bello*). It does not consider the reasons for or the legality of resorting to force (*jus ad bellum*); the provisions of IHL thus apply equally to all warring parties.

All parties to a conflict must respect the rules of IHL. In addition, States party to IHL instruments are obliged to ensure respect for IHL and to prevent and suppress violations of the law as well as to search for and punish those committing 'grave breaches' of IHL.

Measures have also been taken at the international level to ensure respect for IHL. A permanent body, the International Fact-Finding Commission, was constituted in 1991 with the primary purpose of investigating allegations of 'grave breaches' and other serious violations of IHL. Since the early 1990s, international and 'internationalized' criminal tribunals have been established around the world to try and punish the perpetrators of such crimes in particular contexts. In 1998, the international community created the first permanent international criminal tribunal with jurisdiction over the most serious international crimes, regardless of where they were committed.

Child soldiers and international law

Both human rights law and international humanitarian law (IHL) extend protections to children affected by armed conflict. While protections under human rights law are provided within the general framework of children's fundamental rights, IHL addresses the specific needs of children in situations of armed conflict.

Both bodies of law contain rules regarding the participation of children in armed conflict. As child soldiers, their involvement may range from helping combatants (carrying weapons, conducting reconnaissance missions, delivering messages, etc.) to actually fighting.

The two Protocols additional to the Geneva Conventions (Additional Protocol I and Additional Protocol II), of 8 June 1977, were the first international treaties to address these issues. Additional Protocol I, which provides rules for international armed conflict, requires governments to take all possible measures to prevent children under 15 from taking direct part in fighting. It expressly prohibits their recruitment into the armed forces and encourages governments, when recruiting children between the ages of 15 and 18, to give priority to the oldest. Additional Protocol II, which provides rules for non-international armed conflict, goes even further. It prohibits not only the recruitment of children under 15 but also their actual participation in fighting.

Human rights law subsequently addressed the issue in the 1989 UN Convention on the Rights of the Child (CRC), again using 15 as the minimum age. In fact, this law mirrors the rules of IHL that are applicable in international armed conflict. Thus, like Additional Protocol I, it obliges governments to take all possible measures to prevent children under 15 from taking direct part in fighting and prohibits their recruitment. It also encourages governments to give priority in recruitment to the oldest when choosing from among those aged between 15 and 18. From the very

beginning, these sections of the CRC drew considerable criticism. For one thing, they are the only part of the CRC that depart from the general definition of a 'child' as anyone under 18, in spite of the fact that they deal with one of the most dangerous situations that children can be exposed to – armed conflict. Moreover, these sections added nothing new and even risked distracting attention from the stronger standard contained in Additional Protocol II, which provides absolute and more comprehensive prohibitions in non-international armed conflicts.

In light of the criticisms, and in keeping with the international community's growing awareness of and concern for the plight of children affected by armed conflict, an initiative to raise the minimum age for recruitment and participation to 18 years was taken only a few years after the CRC entered into force.

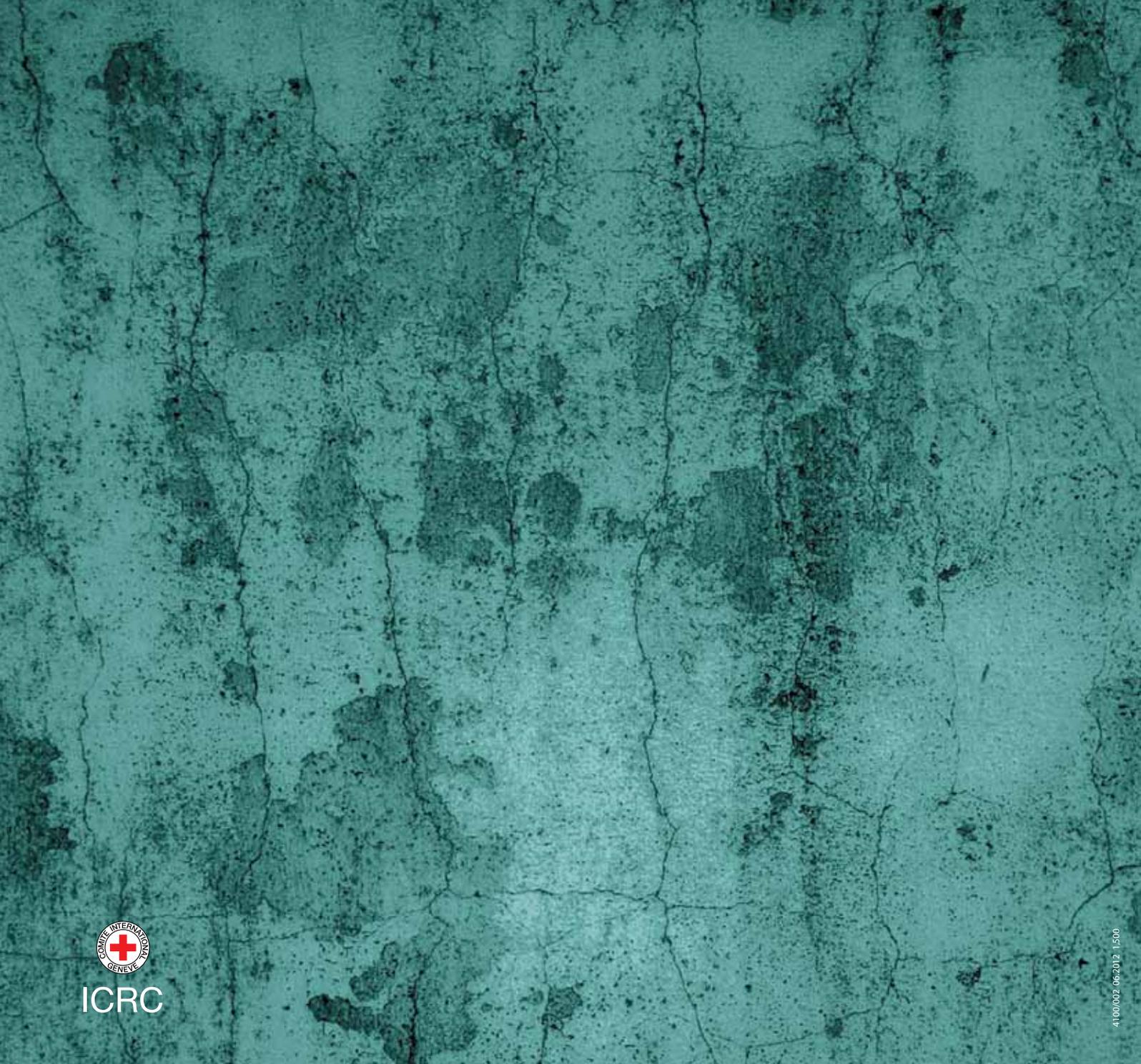
After more than 10 years of international effort, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force in 2002. Under the Optional Protocol, governments must take all possible measures to ensure that members of their armed forces below the age of 18 years do not take a direct part in fighting. The Optional Protocol also raises the minimum age for compulsory recruitment into armed forces to 18 years, and requires governments to increase the minimum age for voluntary enlistment from 15 years as well. In addition, under the Optional Protocol, non-State armed groups should not, under any circumstances, recruit or use in fighting persons under the age of 18.

Raising the age limit from 15 to 18 for participation in armed conflict represents a strengthening of the protection previously provided by IHL. It reinforces the world's desire to shield all children from the horrors of armed conflict, and, particularly, to prevent them from taking part in fighting.

Notes

MISSION

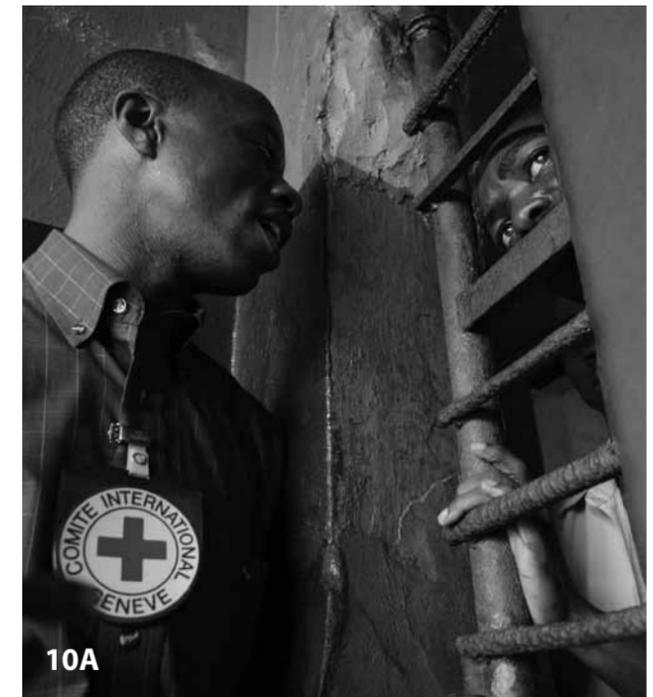
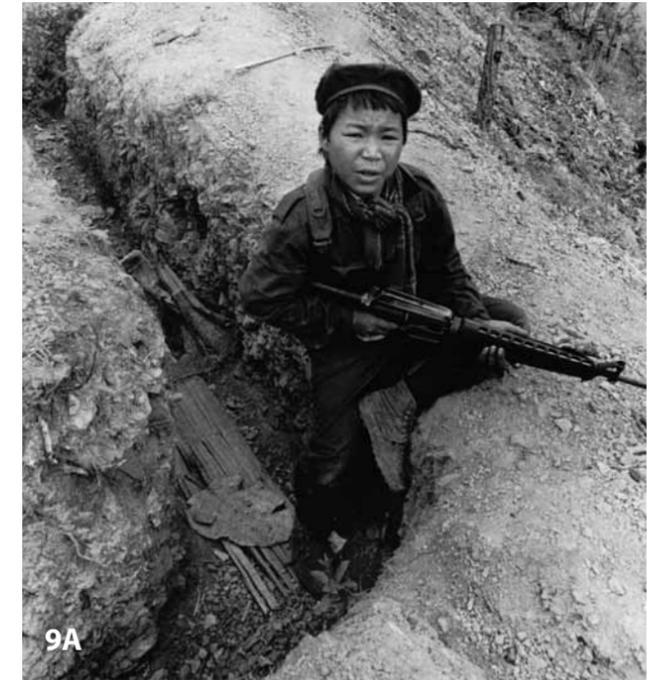
The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.



ICRC

Limiting the devastation of war

Photo Collage



1A Assisting Rwandan refugees, Goma, Zaire, 1996. Bo Mathisen/Verdens Gang. **2A** Sign indicating minefields, Nicaragua, 1998. Mary Anne Andersen/ICRC. **3A** Arrival of refugees in Nong Chan, Thailand, 1980. Jean-Jacques Kurz/ICRC. **4A** Damaged cemetery, Beirut, Lebanon, 1982. Luc Chessex/ICRC. **5A** Damaged ICRC vehicle, Bosnia-Herzegovina, 1992. Roland Sidler/ICRC. **6A** House devastated by the army, East Jerusalem, 1997. Thierry Gassmann/ICRC. **7A** A mosque destroyed during conflict, South Lebanon, 2006. Marko Kokic/ICRC. **8A** Refugee in Hadrut, Armenia/Azerbaijan, 1991. Zaven Khachikian/ICRC. **9A** A 13-year-old Karenni soldier prepares for an imminent ground offensive, Myanmar, 1999. Dean Chapman/Panos Pictures. **10A** ICRC prison visit, Monrovia, Liberia, 2006. Boris Heger/ICRC.