

INTERNATIONAL HUMANITARIAN LAW INTERNATIONAL HUMAN RIGHTS LAW

SIMILARITIES AND DIFFERENCES



Both international humanitarian law (IHL) and international human rights law (IHRL) strive to protect the lives, health and dignity of individuals, albeit from a different angle. It is therefore not surprising that, while very different in formulation, the essence of some of the rules is similar, if not identical. For example, the two bodies of law aim to protect human life, prohibit torture or cruel treatment, prescribe basic rights for persons subject to a criminal justice process, prohibit discrimination, comprise provisions for the protection of women and children, regulate aspects of the right to food and health. On the other hand, rules of IHL deal with many issues that are outside the purview of IHRL, such as the conduct of hostilities, combatant and prisoner of war status and the protection of the red cross and red crescent emblems. Similarly, IHRL deals with aspects of life in peacetime that are not regulated by IHL, such as freedom of the press, the right to assembly, to vote and to strike.

WHAT IS INTERNATIONAL HUMANITARIAN LAW?

IHL is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice.

IHL main treaty sources applicable in international armed conflict are the four Geneva Conventions of 1949 and their Additional Protocol I of 1977. The main treaty sources applicable in non-international armed conflict are article 3 common to the Geneva Conventions and Additional Protocol II of 1977.

IHL is a set of international rules, specifically intended to protect persons and property that are, or may be, affected by an armed conflict. They also limit the rights of parties to a conflict to use methods and means of warfare of their choice.

...AND WHAT IS INTERNATIONAL HUMAN RIGHTS LAW?

IHRL is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments. Human rights are inherent entitlements which belong to every person as a consequence of being human. Numerous non-treaty based principles and guidelines ("soft law") also belong to the body of international human rights standards.

IHRL main treaty sources are the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), as well as Conventions on Genocide (1948), Racial Discrimination (1965), Discrimination Against Women (1979), Torture (1984), Rights of the Child (1989),

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Enforced Disappearances (2006), and Rights of Persons with Disabilities (2006). The main regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Declaration of the Rights and Duties of Man (1948) and Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981).

While IHL and IHRL have historically had a separate development, recent treaties include provisions from both bodies of law. Examples are the Convention on the Rights of the Child, its

Optional Protocol on the Participation of Children in Armed Conflict, and the Rome Statute of the International Criminal Court.

WHEN ARE THEY APPLICABLE?

IHL is applicable in times of armed conflict, whether international or non-international. International conflicts are wars involving two or more states, situations of occupations or fights for self-determination. Non-international armed conflicts are those in which government forces are fighting against armed insurgents, or rebel groups are fighting among themselves. Because IHL deals with an exceptional situation – armed conflict – no derogations whatsoever from its provisions are permitted.

In principle, IHRL applies at all times, i.e. both in peacetime and in situations of armed conflict. However, some IHRL treaties permit governments to derogate from certain rights in situations of public emergency threatening the life of the nation. Derogations must, however, be proportional to the crisis at hand, must not be introduced on a discriminatory basis and must not contravene other rules of international law – including rules of IHL.

Certain universal human rights are never derogable. Among them are the right not to be arbitrarily deprived of life, prohibition of torture or cruel, inhuman or degrading treatment or punishment, prohibition of slavery and servitude and the prohibition of retroactive criminal laws.

WHO IS BOUND BY THESE BODIES OF LAW?

IHL binds all parties to an armed conflict: in international conflicts it must be observed by the states involved, whereas in internal conflict it binds the government, as well as the groups fighting against it or among themselves. Thus, IHL lays down rules that are applicable to both state and non-state actors.

IHRL lays down rules binding governments in their relations with individuals. While there is a growing body of opinion according to which non-state actors – particularly if they exercise government-like functions – must also be expected to respect human rights norms, the issue remains unsettled.

Both...IHL and...IHRL strive to protect the lives, health and dignity of individuals, albeit from a different angle.

ARE INDIVIDUALS ALSO BOUND?

IHL imposes obligations on individuals and also provides that persons may be held individually criminally responsible for “grave breaches” of the Geneva Conventions and of Additional Protocol I, and for other serious violations of the laws and customs of war (war crimes). Treaty IHL clearly requires States to establish universal jurisdiction over “grave breaches”. For other serious violations of the laws and customs of war, under Customary IHL (Rule 157 CIHL Study), States have the right to vest universal jurisdiction.¹ With the establishment of both the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda at the beginning of the 1990s, and their resulting jurisprudence, individuals have also been held accountable for war crimes committed in non-international armed conflicts. The entry into force of the Rome Statute of the International Criminal Court has solidified such development.

While individuals generally do not have specific duties under IHRL treaties, IHRL also provides for individual criminal responsibility for violations that may constitute international crimes, such as genocide, crimes against humanity and torture. These crimes are also subject to universal jurisdiction.

The ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as the International Criminal Court, have jurisdiction over violations of both IHL and IHRL.

WHO IS PROTECTED?

IHL aims to protect persons who do not, or are no longer directly taking part in hostilities. Applicable in international armed conflicts, the Geneva Conventions deal with the treatment of the wounded and sick in the armed forces in the field (Convention I), wounded, sick and shipwrecked members of the armed forces at sea (Convention II), prisoners of war (Convention III) and civilian persons (Convention IV). Under Convention IV and Protocol I, civilian persons include internally displaced persons, women, children, refugees, stateless persons, journalists and other categories of individuals.

Similarly, the rules applicable in non-international armed conflict (article 3 common to the Geneva Conventions and Protocol II) deal with the treatment of persons not taking, or no longer directly taking part in the hostilities.

IHL also protects civilians through rules on the conduct of hostilities. For example, parties to a conflict must at all times distinguish between combatants and non-combatants and between civilian objects and military objectives. Neither the civilian population as a whole nor individual civilians may be the object of attack. It is also prohibited to attack military objectives if that would cause disproportionate harm to civilians or civilian objects.

IHRL, being tailored primarily for peacetime, applies to all persons.

While IHL is applicable in times of armed conflict, IHRL applies at all times, i.e. both in peacetime and in situations of armed conflict.

¹ For more information on universal jurisdiction, please refer to the Advisory Service Fact-sheet entitled “Universal jurisdiction over war crimes”.

WHAT IS THE SYSTEM OF IMPLEMENTATION... ...AT THE NATIONAL LEVEL?

The duty to implement both IHL and IHRL lies first and foremost with states.

States have a duty to take a number of legal and practical measures – both in peacetime and in armed conflict situations – aimed at ensuring full compliance with IHL, including:

- preventing and punishing war crimes, through the enactment of penal legislation;
- protecting the red cross, red crescent and red crystal emblems;²
- applying fundamental and judicial guarantees;
- disseminating IHL;
- training personnel qualified in IHL and appointing legal advisers to the armed forces.

IHRL also contains provisions obliging states to implement its rules, whether immediately or progressively. They must adopt a variety of legislative, administrative, judicial and other measures that may be necessary to give effect to the rights provided for in the treaties. This may include enacting criminal legislation to outlaw and repress acts prohibited under IHRL treaties, or providing for a remedy before domestic courts for violations of specific rights and ensuring that the remedy is effective.

IHL binds all actors to an armed conflict while IHRL lays down rules binding governments in their relations with individuals.

...AT THE INTERNATIONAL LEVEL?

As regards international implementation, states have the responsibility to respect and to ensure respect for IHL in all circumstances. The system also comprises the Protecting Power mechanism, the enquiry procedure and the International Humanitarian Fact-Finding Commission envisaged in Article 90 of Protocol I. States parties to Protocol I also undertake to act in cooperation with the United Nations in situations of serious violations of Protocol I or of the Geneva Conventions.

The ICRC is a key component of the system, by virtue of the mandate entrusted to it under the Geneva Conventions, their Additional Protocols and the Statutes of the International Red Cross and Red Crescent Movement. It ensures protection and assistance to victims of war, encourages states to implement their IHL obligations and promotes and prepares any development of IHL. ICRC's right of initiative allows it to offer its services or to undertake any action which it deems necessary to ensure the faithful application of IHL.

The IHRL supervisory system consists of bodies established either by the United Nations Charter or by the main IHRL treaties. The principal UN Charter-based organ is the Human Rights Council. "Special procedures" have also been developed by the Human Rights Council over the last two decades, i.e. thematic or country-specific special rapporteurs, and working groups entrusted with monitoring and reporting on the human rights situations within their mandates.

Ten of the main IHRL treaties also provide for the establishment of committees of independent experts charged with monitoring their implementation.

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² The 1949 Geneva Conventions recognized also the red lion and sun as another emblem. However, it is no longer used.

A key role is played by the Office of the High Commissioner for Human Rights which has primary responsibility for the overall protection and promotion of human rights. The Office aims to enhance the effectiveness of the UN's human rights machinery, to increase UN system-wide implementation and coordination of human rights, to build national, regional and international capacity to promote and protect human rights and to disseminate human rights texts and information.

...AT THE REGIONAL LEVEL?




The work of regional human rights courts and commissions established under the main regional human rights treaties in Europe, the Americas and Africa is a distinct feature of IHRL, with no equivalent in IHL. Regional human rights mechanisms are, however, increasingly examining violations of IHL.

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The European Court of Human Rights is the centrepiece of the European system of human rights protection under the 1950 European Convention. The main regional supervisory bodies in the Americas are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are the supervisory bodies established under the 1981 African Charter.

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.

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