



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

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## What is international humanitarian law?

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International humanitarian law (IHL) is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, participating in hostilities, and imposes limits on the means and methods of warfare. IHL is also known as 'the law of war' or 'the law of armed conflict'.

IHL is part of public international law – the body of rules governing relations between States. Public international law is made up primarily of treaties or conventions concluded between States, customary rules (general practice accepted as law), and general principles of law (see Article 38 of the Statute of the International Court of Justice).

Distinction must be made between IHL, which regulates the conduct of parties engaged in an armed conflict (*jus in bello*), and that part of public international law set out in the Charter of the United Nations that regulates whether a State may rightfully resort to armed force against another State (*jus ad bellum*). The Charter prohibits such use of force, with two exceptions: cases of self-defence against an armed

attack, and when the use of armed force is authorized by the United Nations Security Council.

### What are the origins of IHL?

Warfare has always been subject to certain principles and customs. It may be said therefore that IHL has its roots in the rules of ancient civilizations and religions.

Universal codification of IHL began in the nineteenth century, notably through the adoption of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field and the 1868 Declaration of Saint Petersburg, which prohibited the use of certain projectiles in wartime. Since then, States have agreed to and codified a series of practical rules to keep pace with evolving means and methods of warfare and the related humanitarian consequences. These rules strike a careful balance between humanitarian concerns and the military requirements of States and non-State parties to armed conflict. They address a broad range of issues, including: protection for wounded and sick soldiers; treatment of prisoners of war and other persons detained in connection with an armed conflict; protection for the civilian population and civilian objects,

such as cultural property; and restrictions on the use of certain weapons and methods of warfare (see next section).

Over time, the number of States adhering to these rules has grown, securing virtually universal acceptance for the core treaties of IHL.

### What are the treaty-based sources of IHL?

The four **Geneva Conventions of 1949** (GC I, II, III and IV), which have been universally ratified, constitute the core treaties of IHL. The Conventions have been supplemented by **Additional Protocols I and II of 1977** (AP I and AP II) relating to the protection of victims of international and non-international armed conflict respectively; and by **Additional Protocol III of 2005** (AP III) relating to an additional distinctive emblem (the red crystal).

Other international treaties prohibit the use of certain weapons and military tactics, and protect certain categories of person and object from the effects of hostilities. These treaties<sup>1</sup> include:

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<sup>1</sup> For more information, see the various Advisory Service factsheets on specific international treaties.

- the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
- the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999
- the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction
- the 1976 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques
- the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) and its five Protocols of 1980 (I, II and III), 1995 (IV), and 2003 (V)
- the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
- the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APMBC)
- the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- the 2006 International Convention for the Protection of All Persons from Enforced Disappearance

- the 2008 Convention on Cluster Munitions (CCM).

In addition, the 1998 Statute of the International Criminal Court (ICC) established the Court's jurisdiction in respect of war crimes (Article 8), thus strengthening States' obligation to prevent serious violations of IHL.

Many provisions of the treaties mentioned above are now thought to reflect customary IHL and are, consequently, binding on all States and all parties to a conflict.<sup>2</sup>

#### When does IHL apply?

IHL applies only to situations of armed conflict. It does not cover internal tensions or disturbances such as isolated acts of violence that do not reach the threshold of an armed conflict. In addition, IHL distinguishes between international and non-international armed conflict.

**International armed conflicts** are those in which one or more States resort to the use of armed force against another State. Wars of national liberation, under certain conditions, and situations of occupation are regarded as international armed conflicts.

International armed conflicts are governed by the four Geneva Conventions and Additional Protocol I.

**Non-international armed conflicts** are restricted to the territory of a single State and involve either governmental armed forces fighting one or more non-State armed groups, or such groups fighting each other. The rules applicable to non-international armed conflict have a more limited scope than those governing international armed

conflict. These rules are set out in Article 3 common to the four Geneva Conventions and in AP II. However, customary law expands the protection provided by certain rules of IHL to all types of armed conflict, including non-international conflicts.

IHL applies once the conditions for an armed conflict or occupation are met on the ground – even if a state of conflict is not recognized as such by one of the parties and regardless of whether the occupation encounters armed resistance. IHL applies equally to all sides, irrespective of who started the fighting and, in the case of international armed conflict, even if one of the belligerent States is not party to the Geneva Conventions or Additional Protocol I.

The distinction between international and non-international conflict is not always clear-cut. In recent years, conflicts have arisen that contain elements of both. A case-by-case approach is therefore recommended to determine which normative framework is applicable.

#### What does IHL cover?

1) *The protection of those who are not, or no longer, taking part in hostilities.*

The Geneva Conventions regulate the protection and treatment of four categories of person during **international armed conflict**:

- the wounded and sick in armed forces in the field (GC I)
- wounded, sick and shipwrecked members of the armed forces at sea (GC II)
- prisoners of war (GC III)

<sup>2</sup> More information on these customary rules can be found in the two-volume ICRC study, *Customary International*

*Humanitarian Law* (2005, 2009) and in its customary IHL database

(<http://www.icrc.org/customary-ihl/eng/docs/home>).

- civilians, including those in occupied territories (GC IV).

The civilians protected under GC IV are those held by a party to the conflict, or an occupying power, of which they are not nationals. Internally displaced persons, women, children, refugees, stateless persons, and journalists are some of the groups that qualify for such protection.

Protection similar to that provided in international armed conflict applies in **non-international armed conflict** to persons who are not, or are no longer, taking part in hostilities.

Persons protected by IHL are entitled to respect for their lives, their dignity, and their physical and mental integrity. They are also afforded various legal guarantees. They must be protected and treated humanely in all circumstances, with no adverse distinction.

More specifically, it is forbidden to kill or wound an enemy who surrenders or is unable to defend himself or herself. The wounded and the sick must be collected and cared for by the party in whose power they find themselves. Medical personnel, units and transports must all be protected. Access to humanitarian assistance for the civilian population affected by the conflict must be facilitated, subject to the consent of the parties concerned.

In addition, detailed rules govern the conditions of detention for prisoners of war and the treatment of civilians under the authority of an enemy power. These rules cover such matters as the provision of food, shelter and medical care, judicial and

procedural guarantees, and the right – of the people in question – to exchange messages with their families.

Reprisals against protected persons are forbidden.

In order to facilitate the protection of those who are not, or are no longer, participating in hostilities, IHL defines a number of clearly recognizable ‘distinctive emblems’, with a view to identifying and protecting objects and persons providing humanitarian assistance and medical care. These emblems are the red cross, the red crescent, the red lion and sun (which is no longer used), and the red crystal (for States that have ratified AP III). The distinctive emblems can be used, in times of armed conflict, to identify protected persons, places and objects (including, primarily, armed forces’ medical units and transports, as well as other medical and religious services). They may also be used, either during armed conflict or in peacetime, for the purpose of identifying persons or objects linked to the International Red Cross and Red Crescent Movement.<sup>3</sup>

*2) Restrictions on the means of warfare – in particular weapons – and the methods of warfare, such as military tactics.*

As a general rule, IHL prohibits means and methods of warfare that cause superfluous injury or unnecessary suffering.

Specific treaties have therefore banned or restricted the use of many weapons, including exploding bullets, chemical and biological weapons, blinding laser weapons, anti-personnel

mines, cluster munitions, and incendiary weapons. Pillage, starvation and perfidy<sup>4</sup> are some of the methods of warfare specifically prohibited under IHL.

IHL also regulates the general conduct of hostilities on the basis of three core principles: distinction, proportionality, and precaution. The principle of **distinction** requires that the parties to an armed conflict distinguish at all times between civilians and civilian objects on the one hand, and combatants and military objectives on the other, and that attacks may only be directed against combatants and military objectives. The purpose of this is to protect individual civilians, civilian property, and the civilian population as a whole. Under this principle, indiscriminate attacks are prohibited.

The principle of **proportionality**, a corollary to the principle of distinction, dictates that incidental loss of civilian life and property or injury to civilians must not be excessive in relation to the concrete and direct military advantage anticipated. In order to implement the restrictions and prohibitions on targeting, the principle of **precaution** requires all parties to an armed conflict to take specific precautions such as, when conducting an attack, to verify that targets are military objectives or to give the civilian population an effective warning before the attack. It can also entail restrictions on the timing and location of an attack.

In addition, Articles 35(3) and 55 of AP I prohibit methods and means of warfare that cause widespread, long-term and

<sup>3</sup> For more information, see the Advisory Service factsheet entitled “The Protection of the Red Cross / Red Crescent Emblems”

([http://www.icrc.org/eng/assets/files/other/protection\\_emblems.pdf](http://www.icrc.org/eng/assets/files/other/protection_emblems.pdf)).

<sup>4</sup> AP I, Art. 37(1), defines perfidy as “[a]cts inviting the confidence of an adversary to lead him to believe that he is entitled to, or

is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence”.

severe damage to the natural environment.

The rules on the conduct of hostilities also grant specific protection to certain objects, including cultural property and places of worship (the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; AP I, Article 53; AP II, Article 16), objects indispensable to the survival of the civilian population (AP I, Article 54; AP II, Article 14), and “works and installations containing dangerous forces” (AP I, Article 56; AP II, Article 15). Such works and installations, as well as cultural property and civil defence personnel and facilities, can be identified by specific symbols.

#### **How is IHL implemented?**

Implementation of IHL is primarily the responsibility of States. They must respect and ensure respect for these rules in all circumstances (Article 1 common to the four Geneva Conventions).

States must adopt legislation and regulations aimed at ensuring full compliance with IHL. In particular, they must enact laws to punish the most serious violations of the Geneva Conventions and their Additional Protocols – that is, violations that amount to war crimes. States must also adopt laws protecting the red cross, red crescent, red crystal and other symbols.

Other domestic implementation measures should also be taken: developing educational programmes for the armed forces and the general public; recruiting and/or training qualified, specialist personnel; producing identity cards and other

documents for protected persons, etc.

At the international level, IHL treaties provide for certain compliance mechanisms. These include, in particular: the protecting power system; the possibility to resort to an enquiry procedure; and the International Humanitarian Fact-Finding Commission, a mechanism specifically envisaged in Article 90 of AP I. States party to AP I also undertake to cooperate with the United Nations to deal with serious violations of AP I or of the Geneva Conventions. Some weapons treaties, including the APMBC, the CCW and the CCM, provide for reporting mechanisms aimed at monitoring States Parties' compliance with the obligations deriving from these treaties.

In terms of repression of IHL violations, the ICC is empowered to prosecute the most serious crimes of international concern, including war crimes. By virtue of the principle of complementarity its jurisdiction is intended to come into play only when a State is genuinely unable or unwilling to prosecute alleged war criminals over which it has jurisdiction. In addition to the ICC, the United Nations Security Council has established two international tribunals to prosecute crimes committed during the armed conflicts in the former Yugoslavia and in Rwanda, including serious violations of IHL. Mixed courts, comprising both domestic and international elements, have also been put in place to address crimes committed during certain armed conflicts, including the ones in Cambodia, Lebanon, Sierra Leone and Timor-Leste.<sup>5</sup>

Additional information on domestic implementation of IHL measures adopted by States is available on the ICRC's National Implementation Database.<sup>6</sup>

#### **What is the difference between humanitarian law and human rights law?**

There are similarities between some of the rules of humanitarian law and human rights law. And both bodies of law strive to protect the lives, health and dignity of individuals. However, these two branches of public international law have developed separately, have different scopes of application, are contained in different treaties, and are subject to different compliance mechanisms. In particular, human rights law – unlike international humanitarian law – applies during both armed conflict and peacetime, although many of its provisions can be derogated from during an armed conflict.<sup>7</sup>

#### **Where can more information on IHL be found?**

The ICRC's Advisory Service on IHL, which offers legal and technical support to States for the implementation of IHL, has developed a set of factsheets on various important IHL issues. They are available online at: <http://www.icrc.org/eng/resources/documents/legal-fact-sheet/national-implementation-legal-fact-sheets.htm>

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<sup>5</sup> For more information, see the Advisory Service factsheet titled “Penal Repression: Punishing War Crimes” ([http://www.icrc.org/eng/assets/files/other/penal\\_repression.pdf](http://www.icrc.org/eng/assets/files/other/penal_repression.pdf)).

<sup>6</sup> <http://www.icrc.org/ihl-nat>

<sup>7</sup> For more information, see the Advisory Service factsheet entitled “International Humanitarian Law and International Human Rights Law:

Similarities and differences” ([http://www.icrc.org/eng/assets/files/other/ihl\\_and\\_ihr.pdf](http://www.icrc.org/eng/assets/files/other/ihl_and_ihr.pdf)).