

40TH ANNIVERSARY OF THE 1977 ADDITIONAL PROTOCOLS TO THE 1949 GENEVA CONVENTIONS



STRENGTHENING THE RULES OF WAR IN TROUBLED TIMES

Forty years ago, against the backdrop of decolonization and the Cold War, States from around the world gathered in Geneva to reaffirm international humanitarian law (IHL) and develop it further. After the Second World War, non-international armed conflicts far outnumbered international armed conflicts, and civilians were left largely beyond the protection of the 1949 Geneva Conventions.¹ There was also a proliferation of asymmetric conflicts, with guerrilla fighters adopting unconventional tactics as they faced well-organized and well-equipped armies. The Cold War arms race and the development of new weapons technologies brought new realities to the battlefield, such as aerial weapons and rockets. They allowed strikes to take place virtually anywhere and were subject to few specific regulations. Lastly, the 1970s saw the number of States in the world triple as a result of decolonization. These States “inherited” rules of war that had been negotiated by others.

Given these experiences and the changing face of modern armed conflicts, the existing principles of IHL needed to be reaffirmed and clarified, and essential rules on the conduct of hostilities needed to be codified and developed further. On 8 June 1977 the Protocols additional to the Geneva Conventions of 1949 were adopted by 124 States, including many newly formed countries. They strengthened the protection for victims of armed conflict, including civilians, in both international (Protocol I) and non-international (Protocol II) armed conflicts. In fact, Additional Protocol II became the first universal treaty devoted exclusively to non-international armed conflicts. The Additional Protocols also placed limits on the way wars must be fought, giving parties to conflicts the means to strike a balance between humanity and military necessity. These efforts strengthened consensus among States about IHL and increased their ownership of it.

Today, the Additional Protocols are among the most broadly ratified instruments in the world. They still stand at the front line of contemporary conflicts, protecting civilians from the worst excesses of war and guiding parties to conflict as they navigate new realities.

¹ With the exception of Article 3 common to the Geneva Conventions, the Geneva Conventions of 1949 are applicable only in international armed conflicts.



On the occasion of the 40th anniversary of the adoption of the Additional Protocols, the International Committee of the Red Cross (ICRC) urges States to:

- adhere to the Additional Protocols – if they have not done so already – and encourage other States to adhere;
- work to fully implement, apply and enforce the Additional Protocols at the domestic level;
- ensure that parties to conflict respect the fundamental rules and principles found in the Additional Protocols;
- speak up for the Additional Protocols, for their practical relevance to today's conflicts and for the humanitarian impact they can have on people affected by armed conflict every single day.



WHAT HAVE THE 1977 ADDITIONAL PROTOCOLS BROUGHT TO IHL?

UNIVERSAL OWNERSHIP

In the 1970s, the number of States in the world had tripled as a result of decolonization. And the number of States involved in drafting the Additional Protocols was more than double the number that developed the Geneva Conventions of 1949. Just getting the basic IHL principles reaffirmed by the wider international community was therefore an important achievement in itself. Moreover, most articles from the Additional Protocols were adopted by consensus – a good indication of the level of global ownership and acceptance reached through this process.

RULES ON THE CONDUCT OF HOSTILITIES

The Additional Protocols codified and further developed fundamental rules on the conduct of hostilities, including:

- **Distinction:** Parties to conflict must at all times distinguish between civilians and civilian objects on the one hand, and combatants and military objectives on the other, and direct their operations only against the latter. Attacks directed against civilians and civilian objects are prohibited. Indiscriminate attacks are prohibited.
- **Proportionality:** Parties to conflict must not launch attacks expected to cause incidental harm to civilians or civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.
- **Precautions in attack:** Parties to conflict must take constant care to spare the civilian population and civilian objects in the conduct of military operations. They must take all feasible precautions to avoid, or at least minimize, incidental harm to civilians and civilian objects.
- **Precautions against the effects of attacks:** Parties to conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.

MORE PROTECTION

The Additional Protocols contributed to the reaffirmation, clarification and development of IHL, resulting in real improvements to the protection for the civilian population, prisoners and those who have laid down their weapons. Some examples are given below.

ADDITIONAL PROTOCOL I (INTERNATIONAL ARMED CONFLICTS)	ADDITIONAL PROTOCOL II (NON-INTERNATIONAL ARMED CONFLICTS)
<ul style="list-style-type: none">• strengthened the provisions on relief actions for the civilian population (Articles 68–71)• extended protection to civilian medical facilities other than hospitals (Article 12) and clarified who is entitled to protection as “wounded”, “sick” and “shipwrecked” (Article 8)• provided for the establishment of protected zones agreed upon between the parties to the conflict to provide people in need with protection from the effects of armed conflict (Articles 59–60)• prohibited the recruitment of children under the age of 15 and their use in hostilities (Article 77)• recognized that parties to conflict must provide families with information on the fate of their missing relatives, and detailed measures to account for missing persons (Article 32–34)• expressly prohibited attacks against cultural objects and places of worship (Article 53), objects indispensable to the survival of the civilian population (Article 54) and works and installations containing dangerous forces (Article 56)• spelled out rules specifically protecting the natural environment (Articles 35 and 55)• affirmed that parties to conflict do not have an unlimited right to choose methods or means of warfare (Article 35)• required that States determine whether the use of a new weapon, means or method of warfare would, in some or all circumstances, be prohibited under Protocol I or any other rule of international law applicable to the High Contracting Party (Article 36), and that they make legal advisers available in their armed forces, when necessary, to advise commanders and train soldiers on IHL (Article 82)	<ul style="list-style-type: none">• strengthened the fundamental guarantees, including against torture, rape and violence to life, enjoyed by all people not, or no longer, taking part in the hostilities, and enhanced the protection of children (Article 4)• laid down minimum protections for people deprived of their liberty and provided judicial guarantees for those prosecuted in connection with an armed conflict (Articles 5–6)• prohibited attacks directed against the civilian population and civilians (Article 13), and attacks against: objects indispensable to the survival of the civilian population (Article 14), works and installations containing dangerous forces (Article 15), and cultural objects and places of worship (Article 16)• prohibited the recruitment of children under the age of 15 and their use in hostilities (Article 4)• prohibited the forced movement of civilians unless their security or imperative military reasons so demand (Article 17)• explicitly protected all medical personnel, facilities and transport, whether civilian or military (Articles 9 and 11)

SHAPING THE PRACTICE OF PARTIES TO CONFLICT: TRAINING, RULES OF ENGAGEMENT AND CODES OF CONDUCT

Elements of IHL that were reaffirmed, clarified and developed in the Additional Protocols have been shaping military practice worldwide ever since. For instance, the obligation to make legal advisers available to armed forces has influenced the way many military operations are planned and executed. During wartime, military legal advisers work with commanders on the application of IHL to specific operations. During peacetime, they increase knowledge of IHL within armed forces (see text box). The presence of legal advisers has, along with other factors, resulted in a greater understanding and application of IHL in the armed forces. In addition, the principles of distinction, proportionality and precaution, and the prohibition against directing attacks against civilians and civilian objects, are set out in over 350 provisions in numerous military training manuals worldwide.²

Another example of how fundamental rules in the Additional Protocols have shaped practice is the development by armed forces of standing and mission-specific rules of engagement (RoE). They are internal operational directives that outline when, how and against whom military force can be used. The principles of distinction, proportionality and precaution are naturally at the heart of RoE. RoE translate IHL principles into concrete, practical guidance for use in the field. They are an application of and a complement to the IHL training received by soldiers.

“III Proportionality: This seeks to balance the sometimes conflicting interests of military necessity with the requirements of humanity. It requires that a soldier, in carrying out his mission, does so without causing excessive damage to the civilian population or civilian objects. It therefore requires an assessment of likely casualties, both military and civilian, and damage compared with the specific military advantage expected from the attack. For example, an attack on a military objective with few enemies located in a densely populated area should not be carried out if the probable damage to civilians is likely to exceed the military advantage to be gained from the attack.”

– Sierra Leone, *The Law of Armed Conflict. Instructor Manual for the Republic of Sierra Leone Armed Forces, Armed Forces Education Centre, September 2007, p. 20.*

² See the ICRC's Customary IHL Database, Rules 1, 7, 14 and 15: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

“Additional Protocol I lays down a general obligation on the parties to the conflict to take care in the conduct of military operations to spare civilians and their property and to ‘direct their operations only against military objectives’. So the commander will have to bear in mind the effect on the civilian population of what he is planning to do and take steps to reduce that effect as much as possible. In planning or deciding on or carrying out attacks, however, those responsible have more specific duties.”

– *United Kingdom, The Manual of the Law of Armed Conflict, Ministry of Defence, 1 July 2004, para. 5.32.1*

Additional Protocol I, Article 82: Legal advisers in armed forces – turning IHL into practice

In the face of increasingly complex armed conflicts, States negotiating Additional Protocol I (AP I) provided for the appointment of legal advisers in armed forces to help commanders apply and teach IHL. This role is stipulated in Article 82 of AP I. In times of war, the advisers’ role is to give commanders a legal opinion on current or planned operations, or challenges they may be facing, and to advise them on their specific duties as commanders. In the case of joint operations, legal advisers help ensure a degree of consistency in the practice of the various armed forces. In peacetime, legal advisers play an important role in the provision of IHL training for members of armed forces. They may also be involved in examining the development of new weapons, means or methods of warfare to determine whether they would be permissible under international law.³ Legal advisers have become key members of many armed forces today. They play a critical role in addressing practical or new challenges of modern warfare.

³ ICRC, *Legal Advisers in Armed Forces*, factsheet, 2003:
<https://www.icrc.org/en/document/legal-advisers-armed-forces-factsheet>



Many non-State armed groups also incorporate IHL into their internal rules, codes of conduct and unilateral declarations. Armed groups have developed internal codes of conduct on their own initiative at one time or another in Algeria, Colombia, Côte d’Ivoire, El Salvador, Liberia, Nepal, the Philippines, Sierra Leone, Sri Lanka and elsewhere. Codes of conduct vary in the way they reflect IHL, sometimes referring only to local traditions or cultural norms that have commonalities with principles of IHL. While codes of conduct do not necessarily guarantee compliance with IHL by armed groups, these tools have provided a basis for discussing the law and behaviour on the battlefield with them, where such contact and dialogue exist.⁴

“The principle of distinction means that during preparation for and conduct of combat a clear distinction must be made between civilians and combatants [and] between civilian objects and military objectives, with a view to ensuring protection of the civilian population and civilian objects from the consequences of hostilities and to concentrating the actions of forces exclusively against the enemy’s military objects.”

– Ukraine, Manual on the Application of IHL Rules, Ministry of Defence, 11 September 2004, para. 2.1.7

⁴ ICRC, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflict*, ICRC, Geneva, 2008. See also: ICRC, “A collection of codes of conduct issued by armed groups”, *International Review of the Red Cross*, Vol. 93, No. 882, June 2011, pp. 483–501.



PAVING THE WAY FOR STRONGER INTERNATIONAL NORMS AND STRONGER ACCOUNTABILITY

The Additional Protocols expanded the list of grave breaches of IHL for which individuals can incur criminal responsibility. Worldwide, 57 States have criminalized violations of IHL in their national legislation based on the provisions of the Additional Protocols. The Additional Protocols also helped develop international criminal law, in particular with respect to non-international armed conflicts. Definitions of war crimes set out in the statutes of international criminal tribunals established in the 1990s draw from language contained in the Additional Protocols. Significantly, these international tribunals established individual criminal responsibility for war crimes in non-international armed conflicts. Numerous States have now adopted legislation criminalizing war crimes committed in non-international armed conflicts, in particular as part of the implementation of the Rome Statute of the International Criminal Court domestically. Several individuals have been tried by domestic courts for war crimes committed during non-international armed conflicts.⁵

The Additional Protocols also provided a basis for the development of new international treaties that further strengthened the protection of civilians and civilian objects during armed conflict. For instance, when developing Article 35 of Additional Protocol I, which deals with limits in the choice of means and methods of warfare, delegates negotiating the Additional Protocols recommended holding a separate diplomatic conference on weapons. This led to the development of the 1980 Convention on Certain Conventional Weapons, which prohibits or restricts the use of certain weapons which might cause unnecessary suffering or have indiscriminate effects. The principles and rules set out in the Additional Protocols also underlie the 1997 treaty banning anti-personnel mines and the 2008 treaty prohibiting cluster munitions.

⁵ See more details in ICRC, Customary IHL Database, Rule 151: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule151

Another example of the influence of the Additional Protocols is on the issue of child soldiers. They were the first international treaties to address the recruitment of children into armed forces and their use in hostilities. The language of Additional Protocol I was used in the Convention on the Rights of the Child. In 2000, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) provided even stronger protections, by prohibiting the compulsory recruitment into the armed forces of children under 18. It also encouraged States Parties to raise the minimum age for voluntary enlistment as close as possible to 18 and to ensure that voluntary recruits under 18 do not take a direct part in hostilities.

LOOKING AHEAD

Rules contained in the Additional Protocols are playing an influential role in and informing current reflection on cyber warfare. What constitutes an “attack” or a “military objective” in the cyber world is governed by the definitions adopted in the Additional Protocols and by related practice. Another ongoing discussion is the issue of nuclear weapons. Nuclear weapons were the subject of difficult discussions during the negotiations of the Additional Protocols. But in 2017, negotiations began within the United Nations on a legally binding instrument prohibiting nuclear weapons. The negotiations are driven by concerns about the catastrophic humanitarian consequences of nuclear weapons and the compatibility of nuclear weapons with fundamental IHL rules, including on distinction, proportionality and precautions in attack, on the prohibition of indiscriminate attacks, and on the protection of the natural environment. All these rules were reaffirmed, clarified or developed forty years ago by the Additional Protocols.



WANT TO KNOW MORE?

Links to other material by the ICRC on the Additional Protocols

- Webpage on the 40th anniversary of the 1977 Additional Protocols:
<https://www.icrc.org/en/document/the-additional-protocols-at-40>
- Protocol I additional to the Geneva Conventions, 1977:
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470>
- Protocol II additional to the Geneva Conventions, 1977:
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475?OpenDocument>
- Factsheet about the Additional Protocols:
<https://www.icrc.org/en/document/additional-protocols-geneva-conventions-1949-factsheet>
- Q & A about the Additional Protocols:
<https://www.icrc.org/eng/resources/documents/misc/additional-protocols-1977.htm>
- Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949: <https://www.icrc.org/en/publication/0421-commentary-additional-protocols-8-june-1977-geneva-conventions-12-august-1949>
- Special issue of the International Review of the Red Cross for the 20th Anniversary of the Additional Protocols: <https://www.cambridge.org/core/journals/international-review-of-the-red-cross/issue/9532807661DA788CoD2913F0B4C7E572>
- Model instruments for ratification/accession to the Additional Protocols:
<https://www.icrc.org/eng/resources/documents/misc/57jr4u.htm>

“[8 June 1977] was a memorable date: the representatives of a majority of nations from all corners of the earth, who in our troubled times do not often find it easy to come to agreement, set their stamp to a document which I would not hesitate to call a Charter for Mankind.”




– Jean Pictet, former vice-president of the ICRC, in the opening address at the fourth round table on present problems of international humanitarian law, San Remo, September 1977



The ICRC helps people around the world affected by armed conflict and other situations of violence, doing everything it can to protect their dignity and relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles.



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