

# WHAT IS INTERNATIONAL HUMANITARIAN LAW?



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, directly or actively 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, which is made up primarily of treaties, customary international law and general principles of law (see Article 38 of the Statute of the International Court of Justice).

A distinction must be made between IHL, which regulates the conduct of parties engaged in an armed conflict (*jus in bello*), and public international law, as set out in the Charter of the United Nations, which regulates whether a state may lawfully 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. IHL does not stipulate whether the commencement of an armed conflict was legitimate or not, but rather seeks to regulate the behaviour of parties once it has started.

## WHAT ARE THE ORIGINS OF IHL?

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

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*The rules of IHL strike a careful balance between humanitarian concerns and the military requirements of States and non-State parties to armed conflict.*

The 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 laid down a series of practical rules in order to keep pace with evolving means and methods of warfare and the related humanitarian consequences. The rules of IHL 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, sick and shipwrecked members of armed forces; treatment of prisoners of war and other persons detained in connection with an armed conflict; protection for the civilian population and civilian objects; and restrictions on the use of certain weapons and methods of warfare (see next section).

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## WHAT ARE THE TREATY-BASED SOURCES OF IHL?<sup>1</sup>

The **four Geneva Conventions of 1949** (GC I, II, III and IV), which have been universally acceded to or 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 conflicts 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 means and methods of warfare and protect certain categories of persons and objects from the effects of hostilities. These treaties include:

- 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<sup>2</sup>
- the 1976 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques<sup>3</sup>

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1 For more information, refer to the ICRC's databases on IHL, available at: <https://www.icrc.org/en/icrc-databases-international-humanitarian-law>.

2 For more information, refer to the Advisory Services' 1972 Convention on the Prohibition of Biological Weapons factsheet, available at: <https://www.icrc.org/en/document/1972-convention-prohibition-bacteriological-weapons-and-their-destruction-factsheet>

3 For more information, refer to the Advisory Services' 1976 Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques factsheet, available at: <https://www.icrc.org/en/document/1976-convention-prohibition-military-or-any-hostile-use-environmental-modification>

- 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)<sup>4</sup>
- the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction<sup>5</sup>
- the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APMBC)<sup>6</sup>
- 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).<sup>7</sup>

### **Customary law as a source of IHL**

Alongside treaties, customary law remains an important source of IHL. It can fill gaps if treaty IHL is not applicable (e.g. owing to a lack of ratification or if the criteria for the applicability of treaties are not fulfilled), or where treaty law is less developed, as is the case for non-international armed conflicts.

Customary IHL is formed by “a general practice accepted as law”. In principle, customary IHL binds all states and, in non-international armed conflicts, non-state parties to the conflict.

In 2005, based on a mandate by the 26th International Conference of the Red Cross and Red Crescent, the ICRC published a study on customary IHL. One important finding of the study was that there is more customary IHL governing non-international armed conflicts than is laid down in IHL treaties.<sup>8</sup> The rules applicable to non-international armed conflict have a more limited scope than those governing international armed conflict.

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### **WHEN DOES IHL APPLY?**

IHL governs armed conflict. Apart from a few obligations that require implementation in peacetime (e.g. adoption of implementing legislation, dissemination of IHL), it does not apply outside armed conflict.

IHL applies once the conditions for an armed conflict or occupation are factually met on the ground. It applies equally to all sides, regardless of who started the fighting and regardless of motives (jus ad bellum – see discussion above).

IHL distinguishes between international and non-international armed conflict.

<sup>4</sup> For more information, refer to the Advisory Services’ 1980 Convention on Certain Conventional Weapons factsheet, available at: <https://www.icrc.org/en/document/1980-convention-certain-conventional-weapons>

<sup>5</sup> For more information, refer to the Advisory Services’ 1993 Chemical Weapons Convention factsheet, available at: <https://www.icrc.org/en/document/1993-chemical-weapons-convention>

<sup>6</sup> For more information, refer to the Advisory Services’ 1997 Anti-Personnel Mine Ban Convention factsheet, available at: <https://www.icrc.org/en/document/1997-convention-prohibition-anti-personnel-mines-and-their-destruction>

<sup>7</sup> For more information, refer to the Advisory Services’ 2008 Convention on Cluster Munitions factsheet, available at: <https://www.icrc.org/en/document/2008-convention-cluster-munitions>

<sup>8</sup> For more information, refer to the ICRC’s Customary IHL Database, available at: <https://ihl-databases.icrc.org/customary-ihl/>

**International armed conflicts** are those in which one or more states resort to the use of armed force against one or more other states. Situations of occupation are also covered by the law of international armed conflict, even if they meet with no armed resistance.

International armed conflicts are governed by the four Geneva Conventions; AP I, if applicable; other applicable treaties, such as those which regulate the use of weapons; and customary IHL.

Under AP I, conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination (colloquially known as “wars of national liberation”) are also addressed as international armed conflicts.

**Non-international armed conflicts** involve either governmental armed forces fighting one or more non-state armed groups, or such groups fighting each other.

Not every armed confrontation involving non-state armed groups amounts to a non-international armed conflict. To be governed by IHL, it must reach a certain level of intensity and the non-state parties involved must show a certain level of organization. AP II specifically explains in this respect that it “shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”.

Non-international armed conflicts are governed by Article 3 common to the four Geneva Conventions; AP II, if applicable;<sup>9</sup> other applicable treaties, such as those which regulate the use of weapons; and customary IHL.

The distinction between international and non-international armed conflict is not always immediately obvious. Situations can arise where both types of armed conflict are present. A case-by-case approach, which considers the state or non-state character of the opposing parties, is therefore required to determine which normative framework is applicable in each conflictual relationship. Where both are present, the ICRC classifies such situations as an “armed conflict with a double classification”. In this situation, both the law of international armed conflict and the law of non-international armed conflict apply in parallel in accordance with the fragmented approach advocated by the ICRC.

## WHAT DOES IHL COVER?

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

The Geneva Conventions regulate the protection and treatment of four categories of persons who are not, or are no longer, directly participating in hostilities, during an **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)
- civilians (GC IV)

Most of GC IV applies to civilians who find themselves in the hands of a party to the conflict or an occupying power of which they are not nationals. Civilians who satisfy this criterion are known as “protected persons”. This may include stateless persons, internally displaced persons, refugees and journalists. In addition, GC IV contains a number of general protections for the whole population of the countries in conflict, even if they are not “protected persons” in the sense of GC IV.

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<sup>9</sup> AP II applies to non-international armed conflicts that fulfil the following specific criteria: “take place in the territory of a High Contracting party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”

In **non-international armed conflict**, protection similar to that provided in international armed conflict applies to persons who are not, or are no longer, directly 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 treated humanely in all circumstances, with no adverse distinction founded on race, colour, religion, faith, sex, birth, wealth, or any other similar criteria.

It is, for example, forbidden to murder them, or to subject them to torture. The wounded and the sick must be collected and cared for. In order to ensure the performance of these medical activities, medical personnel, units and transports must be respected and protected. Access to humanitarian assistance for the civilian population affected by the conflict must be allowed and facilitated, subject to the consent of the parties concerned and their right of control. Under IHL, humanitarian personnel and objects must be respected and protected.

The prohibition of “non-adverse” distinction also means that differentiated and/or prioritized measures because of specific needs, capacities and risks of certain groups of people, including children, women or persons with disabilities, are not only allowed but are even required. This means they must be afforded specific respect and protection.

In addition, in international armed conflict, 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 exchange of messages with families.

In international armed conflicts, reprisals against persons protected by the Geneva Conventions, including the wounded, sick and shipwrecked, medical and religious personnel, captured combatants and civilians in occupied territory, are also explicitly prohibited.

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IHL defines a number of clearly recognizable “distinctive emblems”. 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 personnel, units and transports (protective use), 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 (indicative use).<sup>10</sup>

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

The right of parties to a conflict to choose means or methods of warfare is not unlimited (AP I, Article 35(1)). Restrictions apply to the type of weapons used, the way they are used and the general conduct of all those engaged in the armed conflict. In addition, IHL prohibits the use of means and methods of warfare that are of a nature to cause superfluous injury or unnecessary suffering. IHL regulates the 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. Direct attacks against civilians or civilian objects and indiscriminate attacks – that is, attacks that strike military objectives and civilians or civilian objects without distinction – are prohibited.

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<sup>10</sup> For more information, refer to the Advisory Services’ The Protection of the Red Cross, Red Crescent and Red Crystal Emblems factsheet, available at: <https://www.icrc.org/en/document/protection-red-cross-red-crescent-and-red-crystal-emblems-factsheet>

The principle of **proportionality**, a corollary to the principle of distinction, dictates that, when attacking a military objective, incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, must not be excessive in relation to the concrete and direct military advantage anticipated. This principle requires parties to anticipate incidental harm that might be caused directly by an attack and the indirect (i.e. reverberating) effects, provided that they are reasonably foreseeable.

The principle of **precaution** requires parties to an armed conflict to take constant care to spare the civilian population, civilians and civilian objects in the conduct of all military operations. These include troop movements and manoeuvres preparatory to combat, such as for ground operations in urban areas. The principle also requires parties to a conflict to take a range of precautions in attack (“active precautions”) and a range of precautions against the effects of attacks to protect civilians and civilian objects (“passive precautions”).

With respect to precautions in attack, all feasible precautions must be taken to avoid or at least minimize incidental civilian harm. Among others, this includes measures to verify that targets are military objectives and to give the civilian population an effective warning before the attack. It can also entail restrictions on the timing and location of an attack, as well as the weapons or tactics employed. At the same time, parties to an armed conflict must, to the maximum extent feasible, take necessary precautions to protect the civilian population and civilian objects under their control against the effects of attacks. For example, it requires parties to avoid locating military objectives within or near densely populated areas. It might also include temporarily evacuating civilians from, or at least allowing them to leave, a besieged area where hostilities are taking place. Feasible precautions are those that are possible in practice, considering all of the circumstances at the time, including humanitarian and military considerations.

Starvation of civilians and perfidy<sup>11</sup> are some of the **methods** of warfare specifically prohibited under IHL. It is forbidden to order that there be no survivors in battle (i.e. to order that “no quarter shall be given”). Specific rules also apply to demilitarized zones and non-defended areas.

The use of means and methods of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment are also prohibited.

The rules on the conduct of hostilities also grant specific protection to certain objects, including cultural property and places of worship (such as historic monuments), objects indispensable to the survival of the civilian population (including agricultural areas for the production of foodstuffs, crops or drinking water installations), and works and installations containing dangerous forces (namely dams, dykes and nuclear electrical generating stations). 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?

The 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. They must, for example, enact laws to provide effective penal sanctions for the most serious violations of the Geneva Conventions – the so-called “grave breaches” – violations that amount to war crimes. States must also adopt laws protecting the red cross, red crescent, red crystal and other symbols.

IHL treaties must be disseminated, for example, through the use of educational programmes for the armed forces and the general public. Other domestic implementation measures must also be taken, such as: the recruitment and training of qualified and specialized personnel and the production of identity cards and other documents for protected persons.

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<sup>11</sup> AP I, Article 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”.

IHL treaties also provide for certain mechanisms designed to support compliance. In particular, these include: the protecting powers 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 and the Geneva Conventions. Some weapons treaties, including the Anti-Personnel Mine Ban Convention (APMBC), the Arms Trade Treaty (ATT) and the Convention on Cluster Munitions (CCM), provide for reporting mechanisms aimed at monitoring states parties' compliance with the obligations deriving from these treaties.

In addition, the 1998 Statute of the International Criminal Court (ICC) established the Court's jurisdiction to prosecute the most serious crimes of international concern, including war crimes (Article 8). 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 that state has jurisdiction.

The United Nations Security Council has also 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 alleged crimes committed during certain armed conflicts, e.g. the conflicts in Cambodia, Lebanon, Sierra Leone and Timor-Leste.<sup>12</sup>

Additional information on domestic implementation of IHL measures adopted by states is available on the ICRC's National Implementation Database.<sup>13</sup>

### **WHAT IS THE DIFFERENCE BETWEEN IHL AND HUMAN RIGHTS LAW?**

There are similarities between some of the rules of IHL and human rights law. 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 and are contained in different treaties. In particular, human rights law – unlike IHL – applies during both armed conflict and peacetime, although some of its provisions can be derogated from during an armed conflict.<sup>14</sup>

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### **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: <https://www.icrc.org/en/war-and-law/ihl-domestic-law/documentation>

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<sup>12</sup> For more information, refer to the Advisory Service's Penal Repression: Punishing War Crimes factsheet, available at: <https://www.icrc.org/en/document/penal-repression-punishing-war-crimes>

<sup>13</sup> Available at: <http://www.icrc.org/ihl-nat>

<sup>14</sup> For more information, refer to the Advisory Service's International Humanitarian Law and International Human Rights Law: Similarities and Differences factsheet, available at: <https://www.icrc.org/en/document/international-humanitarian-law-and-international-human-rights-law-similarities-and>

## **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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**ICRC**

**International Committee of the Red Cross**  
19, avenue de la Paix  
1202 Geneva, Switzerland  
T +41 22 734 60 01  
[shop.icrc.org](https://shop.icrc.org)  
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