

Principles and Concepts of IHL

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WHAT IS IHL? WHY DID IHL ORIGINATE?

- ▶ What is IHL-**International humanitarian law** is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare.
- ▶ IHL also Called the law of war or law of armed conflict,
- ▶ IHL limits the effects of war, IHL protects persons who are not or are no longer participants in the hostilities and IHL restricts the means and methods of warfare
- ▶ Why Did IHL Originate?
- ▶ Modern warfare has taken an increasingly higher human toll
- ▶ The use of force is **NOT** prohibited absolutely
- ▶ International rules are needed to: 1.Limit the effects of war on people and property and 2. Protect certain particularly vulnerable persons

Where did IHL originate?

- ▶ International humanitarian law is rooted in the rules of ancient civilizations and religions – warfare has always been subject to certain principles and customs.
- ▶ Universal codification of international humanitarian law began in the nineteenth century. Since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare. These rules strike a careful balance between humanitarian concerns and the military requirements of States.
- ▶ As the international community has grown, an increasing number of States have contributed to the development of those rules. International humanitarian law forms today a universal body of law.

Where is IHL to be found?

- ▶ A major part of international humanitarian law is contained in the four Geneva Conventions of 1949.
- ▶ Nearly every State in the world has agreed to be bound by them.
- ▶ The Conventions have been developed and supplemented by two further agreements: the Additional Protocols of 1977 relating to the protection of victims of armed conflicts.
- ▶ Other agreements prohibit the use of certain weapons and military tactics and protect certain categories of people and goods. These agreements include:
 - ▶ the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols;
 - ▶ the 1972 Biological Weapons Convention; ! the 1980 Conventional Weapons Convention and its five protocols; ! the 1993 Chemical Weapons Convention;
 - ▶ the 1997 Ottawa Convention on anti-personnel mines;
- ▶ Many provisions of international humanitarian law are now accepted as customary law – that is, as general rules by which all States are bound.

When does IHL apply?

- ▶ International humanitarian law applies only to armed conflict; it does not cover internal tensions or disturbances such as isolated acts of violence. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting.
- ▶ International humanitarian law distinguishes between international and non-international armed conflict. International armed conflicts are those in which at least two States are involved. They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocol I.
- ▶ Non-international armed conflicts are those restricted to the territory of a single State, involving either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other. A more limited range of rules apply to internal armed conflicts and are laid down in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II.

What does IHL cover?

- ▶ International humanitarian law covers two areas:
- ▶ the protection of those who are not, or no longer, taking part in fighting;
- ▶ restrictions on the means of warfare – in particular weapons – and the methods of warfare, such as military tactics.

Outline Primary Concepts Fundamental Principles Operational Principles

- ▶ Three PRIMARY CONCEPTS underlie the LOAC :Military necessity; Humanity; and Chivalry
- ▶ There are three FUNDAMENTAL PRINCIPLES to the LOAC:
 - Humanitarian Principle: even in an armed conflict, there are certain basic human rights that must be respected
 - Principle of the Law of Geneva: those rendered hors de combat will be respected, protected, and treated humanely
 - Principle of the Law of the Hague: the right of the parties to a conflict to choose the methods and means of warfare is not unlimited
- ▶ There are four OPERATIONAL PRINCIPLES to the LOAC:
 - ▶ Distinction, Non-discrimination and Proportionality
 - ▶ Application in All Circumstances
 - ▶ Remember, LOAC does not exist to ban war but rather to regulate it!

Is IHL actually complied with?

- ▶ Sadly, there are countless examples of violation of international humanitarian law. Increasingly, the victims of war are civilians.
- ▶ However, there are important cases where international humanitarian law has made a difference in protecting civilians, prisoners, the sick and the wounded, and in restricting the use of barbaric weapons.
- ▶ Given that this body of law applies during times of extreme violence, implementing the law will always be a matter of great difficulty. That said, striving for effective compliance remains as urgent as ever.

What should be done to implement IHL?

- ▶ Measures must be taken to ensure respect for international humanitarian law. States have an obligation to teach its rules to their armed forces and the general public. They must prevent violations or punish them if these nevertheless occur.
- ▶ In particular, they must enact laws to punish the most serious violations of the Geneva Conventions and Additional Protocols, which are regarded as war crimes. The States must also pass laws protecting the red cross and red crescent emblems.
- ▶ Measures have also been taken at an international level: tribunals have been created to punish acts committed in two recent conflicts (the former Yugoslavia and Rwanda). An international criminal court, with the responsibility of repressing inter alia war crimes, was created by the 1998 Rome Statute.
- ▶ Whether as individuals or through governments and various organizations, we can all make an important contribution to compliance with international humanitarian law.

Brief history and Development of IHL

- ▶ Many examples of humanitarian rules of warfare throughout history (and many examples of the opposite): Use of poisoned or concealed weapons, killing of prisoners etc.

The origins of modern IHL:

- ▶ The battle of Solferino (1859)
 - Henri Dunant: "The Memory of Solferino" (1862)
- ▶ The first Geneva Convention 1864
- ▶ The Lieber Code 1863

Main Sources of IHL

- ▶ “Geneva law” Geneva Law (primarily pertaining to protection)
- ▶ The four Geneva Conventions (1949):
 1. Wounded and sick soldiers on land
 2. Wounded and sick soldiers on sea
 3. Prisoners of war
 4. Protection of civilians and occupation
- ▶ The two Additional Protocols (1977):

Additional rules on means and protection

 1. In international armed conflicts
 2. In non-international armed conflicts
- ▶ “Hague law”
- ▶ International customary law

GENEVA CONVENTIONS OF 12 AUGUST 1949 and Two additional protocols

▶ **I. Geneva Convention**

Amelioration of the condition of the wounded and sick in the armed forces in the field

▶ **II. Geneva Convention**

Amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea

▶ **III. Geneva Convention** Treatment of prisoners of war (POW)

▶ **IV. Geneva Convention** Protection of civilians in time of war

▶ I. Additional Protocol I: Relating to the protection of victims of **international** armed conflicts

▶ II. Additional Protocol II: Relating to the protection of victims of **non-international** armed conflicts

Core principles of IHL

- ▶ Core principles of IHL-- **Military Necessity; Humanity; Distinction, Proportionality**
- ▶ The four principles must be considered together in that no single principle can be considered in isolation from the other two.
- ▶ In other words, whilst military necessity may justify a particular action, the action may cause unnecessary suffering including civilian death, or damage may be totally disproportionate to the military advantage to be gained.
- ▶ If so, the action should not proceed because the military necessity is outweighed by proportionality and humanitarian considerations.

Fundamental Principles

Humanitarian Principle;

Military necessity must always be compatible with respect for the human person. Even in an armed conflict, there are certain basic human rights that must be respected.

Principle of the Law of Geneva

Persons rendered hors de combat (out of combat) and those not directly participating in hostilities shall be respected, protected and treated humanely. This principle specifies three duties towards the victims of war: to respect them, protect them and treat them humanely. These three requirements constitute a harmonious whole. To understand what they imply requires only common sense and good faith. It is the minimum treatment, which must be accorded to allow the individual to lead an acceptable existence.

Law of Geneva	Protection for:	Special protections for:
Wounded, sick and shipwrecked	Prisoners of war	Civilians affected by armed conflict
Special protections for:	Medical personnel	Medical transports
	Medical facilities	

Principle of the Law of War (Law of the Hague)

This principle is the corollary to the Martens Clause .

The right of the parties to a conflict to choose the methods and means of warfare is not unlimited.

This is directly related to the concept of military necessity, which implies that combatants shall not inflict harm on their adversaries out of proportion with the object of armed conflict, which is the prompt submission of the enemy.

Any use of military force that is not essential to this purpose is superfluous. For example, any use of unlawful weapons is prohibited. HVR Arts 22 & 23 (e)

Hague Law (primarily pertaining to means of war)

- ▶ The St. Petersburg Declaration 1868
- ▶ Hague Regulations of 1899 and 1907
- ▶ Gas protocol of 1925
- ▶ NPT (non-proliferation of nuclear weapons) 1968
- ▶ Biological weapons 1972
- ▶ Convention on inhuman weapons (CCW) 1980
- ▶ Chemical weapons 1993
- ▶ Anti Personnel Mines 1997
- ▶ Cluster Munitions 2008

Scope of application

- ▶ **PERSONAL** scope of application (to which subjects does IHL apply?)
- ▶ **MATERIAL and TEMPORAL** scope of application (in which situations does IHL apply?)
 - Material: To which situations?
 - Temporal: When does the applicability start and end?

Personal scope of application:

- ▶ To which subjects do IHL apply?
 - Who is *bound* by IHL?
 - Who is *protected* by IHL?
 - ▶ States (parties to the conflict and to IHL instruments)
 - ▶ Non-state armed groups (parties to the conflict)
 - ▶ Individuals (belonging to parties to the conflict):
 - Civilians and other protected persons (soldiers *hors de combat*) (have rights and obligations)
 - Combatants (have rights and obligations)
 - ▶ Distinction between combatants and non-combatants to be discussed later
 - ▶ International organisations

Material scope of application

-) International armed conflict and occupation
- 2) Non-international armed conflicts:
 - 2.1) Wars of national liberation
 - 2.2) Civil war
 - 2.3) Other non-international armed conflicts
- 3) Internal disturbances not amounting to armed conflict
- 4) Peace
- ▶ Temporal scope of application
- ▶ When does the applicability of IHL begin?
 - The moment of the first hostile act that puts at stake a provision in IHL
- ▶ When does the applicability of IHL end?
 - The end of military operations
 - ▶ But when is this?

Jus ad bellum and *jus in bello*

- ▶ *Jus ad bellum* are the international rules pertaining to to which extent the use of military force against another state is allowed.

- Not a key issue in this course

The prohibition against use of force:

- ▶ UN Charter Article 2 (4): The use or threat of use of force against states is prohibited
- ▶ ICC Statute: Crime of aggression

The only exceptions:

- ▶ UN Security Council resolution (UN Charter Articles 39 – 42)
- ▶ The right of self defence (UN Charter Article 51)
- ▶ Humanitarian intervention/responsibility to protect (R2P)?

Jus in bello

- ▶ *Jus in bello* are the international rules pertaining to how armed conflict must be conducted
- ▶ Protection of civilians and individuals *hors de combat*
- ▶ Protection of combatants
- ▶ Means and methods of warfare
- ▶ Relationship to neutral states

The Martens Clause

- ▶ **“Until a more complete code of the laws of war has been issued**, the High Contracting Parties .. declare that, in cases not included in the Regulations adopted by them, the inhabitants ... remain under the protection and the rule of the principles of the law of nations, as they result from the **usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience”**.
- ▶ Hague Convention IV: **“Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land”**. The Hague, 18 October 1907.

International conflicts and occupation

- ▶ IHL applies in **international armed conflict** or during **occupation**
- ▶ What is an **international armed conflict**?
 - When the armed forces of one state uses armed force against another state
- ▶ What is **occupation**?
 - When the armed forces of one state occupies territory outside its own territory
 - Hague Convention IV, annex, art. 42: "Territory is considered occupied when it is actually placed under the authority of the hostile army."
- ▶ IHL applies, to a certain extent, in **non-international armed conflicts**
 - When there is a situation in a state that amounts to an armed conflict, IHL applies

Purpose of IHL or Conclusion

- ▶ IHL seeks to limit suffering caused by war
- ▶ IHL offers special protections to children and women
- ▶ IHL applies to both international and non-international conflicts, and to **all** Parties to conflict

Reduce unnecessary suffering and Protect the victims of armed conflicts, whether combatants or non-combatants

Facilitate the restoration of peace

REDUCE UNNECESSARY SUFFERING e.g. prohibited weapons and restrictions on the use of lawful weapons

PROTECT VICTIMS OF ARMED CONFLICT

Wounded and sick Civilian population Others who are hors de combat – e.g. prisoners of war FACILITATE THE RESTORATION OF PEACE Brutality and savagery during conflict hinder future friendly relations