

Protection of Civilians in Situations of Armed Conflict

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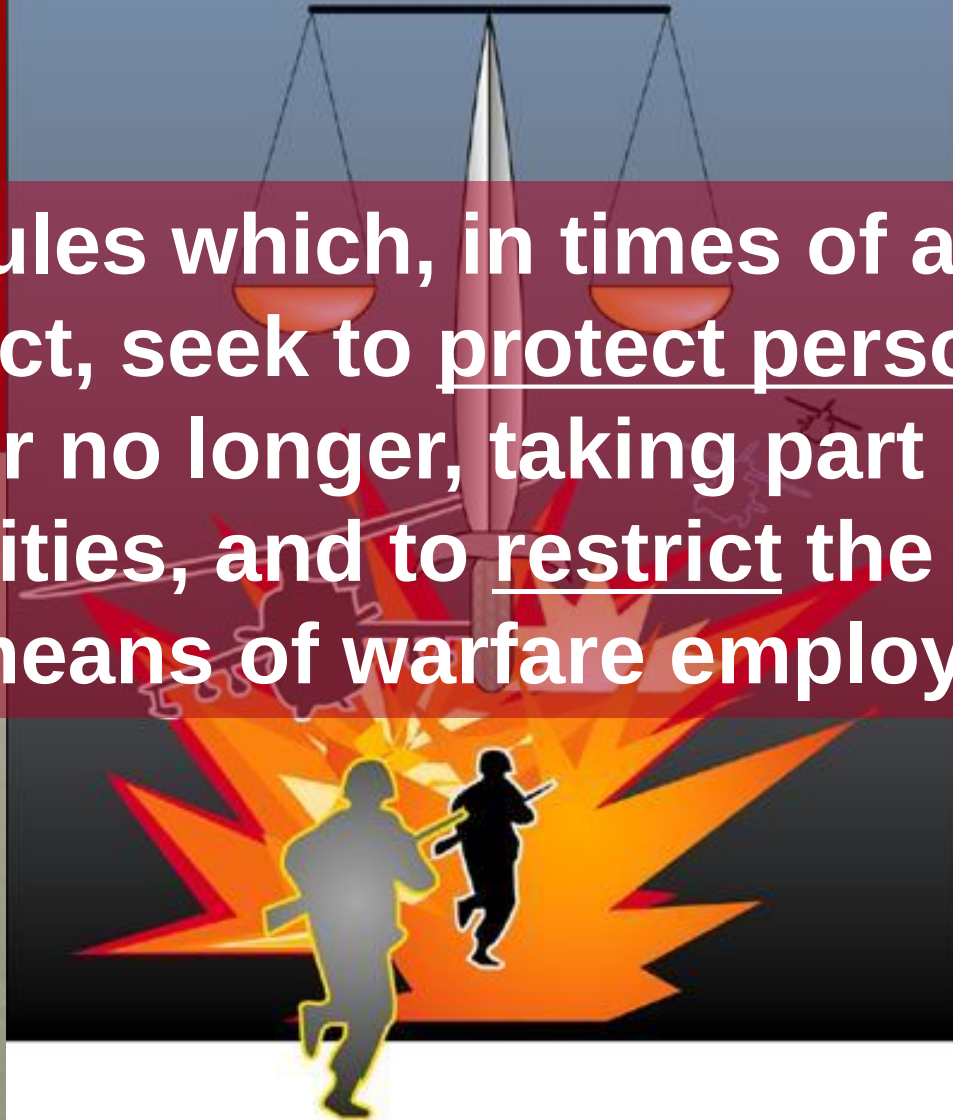
What is International Humanitarian Law (IHL)

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 and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by an armed conflict.

Also known as: Law of Armed Conflict (LOAC) or Law of War

IHL

The rules which, in times of armed conflict, seek to protect persons who are not, or no longer, taking part in the hostilities, and to restrict the methods and means of warfare employed



IHL – SOME DISTINCTIONS

- *jus ad bellum* vs. *jus in bello*
 - Rules governing the resort to armed force – *The UN Charter*
 - Rules applicable between warring parties during armed conflict - IHL
- Other branches of Public International Law
 - International Human Rights Law (IHRL)
 - International Refugee Law
 - International Criminal Law (ICL)
 - Law on Disarmament

SOURCES OF IHL

- A branch of Public International Law
 - Conforms to general principles of international law
- Sources:
 - Treaties (multilateral agreements)
 - International Custom
 - General principles of law [Article 38 (1) (c) Statute of ICJ], humanitarian law principles
 - Judicial decisions, resolutions of the International Red Cross/Crescent Conference.

IHL TREATIES

- *1949 Geneva Conventions on Protection of Victims of war*
 - CG I: Wounded and Sick
 - CG II: Wounded, Sick and Shipwrecked
 - CG III: Prisoners of War
 - CG IV: Civilians
- *1977 Additional Protocols to the Geneva Conventions*
 - AP I: International Armed Conflict
 - AP II: Non International Armed Conflict
 - AP III: Additional Distinctive Emblem
- Hague Conventions of 1907
- Other international treaties
 - Protection of certain categories of persons or objects
 - On limitation of the use of specific weapons
 - Of International Criminal Law



Geneva Conventions of 1949



**ETHICAL FRAMEWORK
HUMANITARIAN PRINCIPLES
(BASED ON SEVEN FUNDAMENTAL
PRINCIPLES OF THE
RED CROSS & RED CRESCENT MOVEMENT)**

- ▶ Humanity
- ▶ Neutrality
- ▶ Independence
- ▶ Impartiality

PROTECTION DEFINED

Broad sense:

Ensuring the full respect of the rights of the individual and the obligations of the authorities/arms carriers in accordance with the letter and the spirit of the relevant bodies of law and, therefore, to preserve people's safety, integrity and dignity.

PROTECTION DEFINED

Strict sense:

Those activities aimed at preventing or putting an end to and/or avoiding the recurrence of violations of their obligations or the rights of individuals by the authorities/arms carriers in accordance with the letter and spirit of IHL and other protective norms in situations of armed violence.

PROTECTION OF CIVILIANS

- Protection for the civilian population is a basic element of humanitarian law: civilians and all those not taking part in the fighting must on no account be attacked and must be spared and protected.
- The 1949 Geneva Conventions and their 1977 Additional Protocols contain specific rules to protect civilians.

PROTECTION OF CIVILIANS

- In situations that are not covered by the IHL treaties, in particular internal disturbances, civilians are protected by other international bodies of law, notably human rights law and its inalienable rights, by national laws compatible with international laws and by the principle of humanity.

PROTECTION OF CIVILIANS

- Unfortunately, today's reality shows that the civilian population and, in armed conflicts, those no longer participating in hostilities, do suffer most from the consequences of armed violence.
- Civilians are not only increasingly directly caught up in the violence, but control over the civilian population is often one of the stakes in the conflict.

PROTECTION OF CIVILIANS

- The development of such a situation can be attributed to
 - increased inter-communal,
 - ethnic and religious tensions,
 - the collapse of State structures,
 - fighting for control of natural resources,
 - the widespread availability of weapons,
 - the rise of acts of terror and

PROTECTION OF CIVILIANS

- The proliferation of so-called asymmetric armed conflicts. Nowadays, the general lack of protection in crises affecting civilians caught up in armed conflict and other situations of violence is not due to an inadequate legal framework but to poor compliance

PROTECTION OF CIVILIANS

- **What law will apply**
- **What is the status of protected people**
- **What do you mean by *Levee en masse***
- **What is the Notion of Direct Participation of Civilian in Hostilities**

PROTECTION OF CIVILIANS

- **Civilians - Are Protected by IHL**
- **Under IHL Civilians have the general right to protection against the effects of hostilities, but cannot participate in hostilities**
- **If they participate in armed conflict, the protections which are provided under IHL will be not extended.**

PROTECTION OF CIVILIANS

- Civilians are defined under Art. 50 AP I.
- A civilian is any person who is not a combatant:
 - is not a member of the armed forces
 - has not taken arms spontaneously to resist an invading force
 - if in doubt treat as a civilian

PROTECTION OF CIVILIANS

- It is prohibited for civilians to:
 - engage in combat
 - engage in acts harmful to the enemy, such as sabotage or assisting a POW to escape
 - provide front line support.
 - take a direct part in hostilities;
- Civilians may not be the object of an attack unless they take a direct part in hostilities.

PROTECTION OF CIVILIANS

- Civilians bear criminal responsibility for killing or injuring members of the opposing force or for causing damage or destruction to property
- Civilians may be tried for breaches of IHL and other international crimes

PROTECTION OF CIVILIANS

- Civilians may only be punished as a result of a fair and regular trial;
- If captured, interned or detained civilians:
 - must be treated humanely; and
 - are not entitled to POW status.

PROTECTION OF CIVILIANS

- Responsibility of states for the protection of civilians:
- The IHL conventions obligates the state parties with specific obligations, it provides that
 - “parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.”

PROTECTION OF CIVILIANS

- The convention also prohibits the use of civilians as a shield to protect certain areas or installations, usually of military importance, from enemy attack.
- The collective punishment of civilians and measures aimed at intimidating or terrorising the civilian populations, pillage, hostage taking and reprisals against civilians are forbidden.

PROTECTION OF CIVILIANS

- Civilians under the power of enemy forces must be treated humanely in all circumstances, without any adverse distinction of race, colour, sex, language, religion, belief, political or any other manner inconsistent with the obligations.
- Civilians must be protected against all forms of violence, inhumane and degrading treatment, including murder and torture.

PROTECTION OF CIVILIANS

- Article 75 of the AP1 and Article 4 of the AP II provides **fundamental guarantees** for the protection of the civilians as well as persons of *hors de combat*.
- Civilians in the occupied territories are protected by the Fourth Geneva Convention

PROTECTION OF CIVILIAN - CHILDREN

- Attacks on their lives, dignity, and physical integrity, and also attacks against caregivers
- Separation from parents or other caregivers
- Lack of health services or of food and basic commodities, inadequate shelter, and presence of mines/explosive remnants of war
- Association with armed forces/armed groups (recruitment, live combat, physical and /or sexual exploitation, abuse)
- Attacks on educational structures and staff, which interrupt learning and cause psychological trauma and loss of "safe areas".

PROTECTION OF CIVILIAN - WOMEN

- Sexual violence and/or attacks on their lives, dignity and physical integrity (they are at greater risk when separated from family)
- Restricted access to essential goods and services, and life-saving health care, including reproductive health care
- Having to assume responsibility to provide for their families
- Exceptional vulnerability when forced to support weapons bearers.

CHALLENGES OF ENFORCING IHL

- Accountability
- Monitoring and enforcement of compliance
- Proper application of IHL - failure to implement existing norms due to lack of political will
- Changing nature of armed conflicts, (e.g., increase of non-international armed conflicts)
- Enforcement of IHL at the national level
- Lack of knowledge of IHL (arms bearers without IHL training directly involved in fighting)
- Clarifications & developments of IHL should preserve current standards of protection

DISPLACEMENT – IHL FRAMEWORK

Particular violations of IHL causing displacement:

- Attacks on civilians or civilian property, indiscriminate attacks
- Starving civilians as a method of warfare, destroying objects indispensable to survival
- Reprisals against civilians and civilian property
- Use of civilians as "human shields"
- Collective punishment, destroying homes
- Hindering passage of relief supplies and provisions of assistance necessary for the survival of civilians.

DISPLACEMENT – IHL FRAMEWORK

Parties may not, except for security or imperative military reasons:

- deport or forcibly transfer civilians of an occupied territory (Int'l armed conflict)
- order the displacement of the civilian population (Non-international armed conflict)
- In case of displacement, all possible measures must be taken in order that civilians are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

(Customary IHL, rules 129 & 131).

PROTECTION OF CIVILIANS- IDPS

- Direct or indiscriminate attacks, reprisals, collective punishment, looting, harassment, insecurity and general lack of safety
- Becoming separated from their families
- Secondary displacement, restricted movement
- Exploitation, coercion, disenfranchisement, marginalization
- Inadequate shelter, food, & essential services
- Restricted employment and/or subsistence opportunities
- Forced return, in violation of right to voluntary, safe, dignified return with long-term solutions.

PROTECTION OF CIVILIANS



RESTORING FAMILY LINKS



ASSISTANCE FOR WAR VICTIMS



PREVENTION

- ▶ Promoting knowledge of and respect for IHL e.g., with lawmakers, judiciary, diplomats, universities.
- Providing technical support for national legislation and regulations to incorporate IHL at the national level
- Promoting measures to restrict the use of weapons that cause unnecessary suffering

CONCLUSION

- ▶ Respecting the rights of the civilian population in armed conflict and other situations of violence is the best prevention against displacement.