

Fundamental Principles of International Humanitarian Law

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Definition of IHL

- principles and rules that limit the use of violence during armed conflicts:
 - o to spare those not directly involved in hostilities
 - o limit the effects of violence to the amount necessary for the purpose of war

Origins of IHL

- Henry Dunant, Battle of Solferino

Sources

- Hague Law
 - o Conventions of 1899 and 1907 dealing with the actual conduct of hostilities – regulating the means and methods of warfare
- Geneva Law
 - o Four conventions (1949) and three protocols (1977, 2005) relating to the protection of persons hors de combat or not taking part in hostilities – sick and wounded, prisoners of war, civilians
- more specific treaties
 - o conventions prohibiting or regulating the use of specific types of weapons, eg anti-personnel landmines, or establishing specialised protection regimes, eg for cultural property
- customary international law
 - o *Nuclear Weapons Advisory Opinion* (1996 ICJ Reports)
 - o ICRC study on Customary International Humanitarian Law (2005)
- humanitarian law principles
 - o basic principles underlying IHL

IHL and Public International law

- IHL protects human rights during armed conflicts – how does it differ from human rights law?
- *jus in bello* v *jus ad bellum*

When does IHL apply?

- international armed conflicts (IACs)
- non-international armed conflicts (NIACs)
 - o IACs –
 - Geneva Conventions (1949), common Art 2:
 - o all cases of declared war or of any other armed conflict which may arise between two or more Parties, even if they do not recognise the state of war
 - o all cases of partial or total occupation of the territory of a Party, even where there is no resistance to the occupation
 - Additional Protocol I (1977), Art 1.4
 - o Armed conflicts where people are fighting against colonial domination and alien occupation and against racist regimes in exercise of their right to self-determination
 - o
 - o NIACs-
 - Geneva Conventions (1949), common Art 3:
 - o “armed conflicts not of an international character”
 - Additional Protocol II (1977)
 - o NIACs taking place in territory of a party, between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained military operations and to implement the Protocol
 - o Note threshold – it does **NOT** apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and similar acts.

Fundamental principles of IHL

Martens clause – in cases not covered by treaties, civilians and combatants remain under the protection and authority of the principles of international law derived from custom, from the principles of humanity and from the dictates of public conscience.

Humanity – this aims to restrict activities that might otherwise be justified as not contrary to specific treaties and allowed by military necessity

Necessity – those measures indispensable for securing the aims of the conflict, and which are not contrary to laws of armed conflict

Distinction

- parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare civilian population and property.
- Neither the civilian population as such nor civilian persons shall be the object of attack
- Attacks shall be directed solely against military objectives

Proportionality

- Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare: it is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering

International humanitarian law: the essential rules

These rules, drawn up by the ICRC, summarize the essence of international humanitarian law. They do not have the authority of a legal instrument and in no way seek to replace the treaties in force. They were drafted with a view to facilitating the promotion of the law.

The parties to a conflict must at all times **distinguish between the civilian population and combatants** in order to spare the civilian population and civilian property. Neither the civilian population as a whole nor individual civilians may be attacked.

- Attacks may be made solely against military objectives. People who do not or can **no longer take part in the hostilities are entitled to respect for their lives** and for their physical and mental integrity. Such people must in all circumstances be protected and treated with humanity, without any unfavorable distinction whatever.
- It is **forbidden to kill or wound an adversary who surrenders** or who can no longer take part in the fighting.
- Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare. It is forbidden to use **weapons or methods of warfare that are likely to cause unnecessary losses** or excessive suffering.
- The **wounded and sick must be collected and cared for** by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared.
- The **red cross, red crescent or red crystal on a white background** is the distinctive sign indicating that such persons and objects must be respected.
- **Captured combatants and civilians** who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They **must be protected against all acts of violence** or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.