

International Humanitarian Law

Concept: International Humanitarian Law

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Description International Humanitarian Law (IHL) regulates the means by which armed conflict may be conducted, and the protections afforded to soldiers, civilians, and other non-combatants (e.g., medical personnel). It is a separate body of law from the international peace and security framework of the United Nations Charter, which regulates when armed conflict is lawful to begin with (e.g., when states are entitled to act in self-defense).

IHL is related to International Human Rights Law to the extent that both seek to protect the physical and psychological security of individuals and groups. Thus, for example, each framework encompasses the 1951 Convention on the Status of Refugees, and the 1984 Torture Convention. However, IHL is distinct in that it applies strictly to situations of armed conflict. Together, widespread and systematic violations of IHL (War Crimes) and International Human Rights Law (Crimes against Humanity and Genocide) constitute the underlying basis of International Criminal Law, as legally codified in the 1998 Rome Statute of the International Criminal Court.

Although norms and moral codes of armed conflict have an ancient historical basis, the modern IHL framework originates from the 1864 Geneva Convention, which introduced basic protections for war victims. Henry Dunant, founder of the International Red Cross/Crescent (ICRC), and winner of the first Nobel Peace Prize in 1901, played a crucial role in this development. His commitment to alleviating the tragedies of unregulated warfare stemmed from his eyewitness accounts of horrific battle, famously detailed in his 1862 publication, *A Memory of Solferino*. The 1899 and 1907 Hague Conventions represented a further step by distinguishing between combatants and civilians, but IHL continued to apply only to international conflicts (i.e., conflicts between states).

The 1949 Geneva Conventions I-IV reflected a realization that armed conflicts were no longer simply isolated contests between professional armies without direct impact upon civilian populations. They address the following categories of war victims: wounded and sick soldiers in the field; wounded, sick, and shipwrecked soldiers; prisoners of war; and civilians. Among the most significant provisions: (i) civilians and other non-combatants are entitled to respect for their lives and their moral and physical integrity; (ii) surrendering enemy soldiers are not to be killed or injured; (iii) the wounded and sick are to be collected and cared for; (iv) captured combatants, and civilians under the authority of an adverse party, are not to be subjected to physical or mental torture, corporal punishment,

or cruel or degrading treatment; (v) weapons causing unnecessary loss of life or excessive suffering are prohibited; and (vi) civilian populations are not to be targeted.

Two Protocols, added in 1977, elaborate upon these protections. Other international agreements have addressed more specific aspects of warfare, including the 1954 Hague Convention on Cultural Property, and the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines. Nuclear weapons have not been specifically banned by international agreement, but their potential use has been greatly restricted, if not prohibited, by customary international law.

As patterns of warfare have evolved since World War II, the IHL framework has been applied flexibly and progressively. Thus, for example, its provisions are now held to be applicable to internal civil wars, consistent with unprecedented threats and potential severity that such conflicts pose. The issue of global terrorism presents a more complicated challenge for IHL. A primary issue concerns the legal status of terrorists or suspected terrorists. IHL may deem such individuals to be "unlawful combatants" and, therefore, entitled to considerably fewer rights and protections than combatants (i.e., soldiers partaking in conventional armed conflicts).

The current state of IHL is further complicated by the evolving customary law of Humanitarian Intervention. This involves actions taken by outside actors (i.e. states or groups of states) in situations where egregious humanitarian and/or human rights violations are occurring, or where the target state is experiencing a natural or other humanitarian disaster (e.g., famine, epidemic). Such crises often contribute to, exacerbate, or result from armed conflict. Although the UN Charter generally prohibits intervention in the internal affairs of states, collective, limited and well-intentioned interventions may now be lawful according to customary international law. If so, this would not affect the UN Security Council's sole authority concerning matters of international peace and security. Recent discussions and proposals for legal codification aim to provide a governing framework for Humanitarian Intervention: the circumstances in which it may undertaken, the measures which may be employed, the entity or entities which should be permitted to take such actions, and the appropriate forum for making such determinations on a case-by-case basis.

IHL has made significant progress in mitigating some of the most devastating aspects of warfare. Although the rules are not universally respected or enforced, they provide a yardstick to guide global public opinion and political response. In endorsing the notion of a "world community" in 1995, the International Criminal Tribunal for Yugoslavia declared that "a state-sovereignty approach has been gradually supplanted by a human-being-oriented approach." The progressive legal codification of IHL, and of International Criminal Law, signals that humanitarian and human rights atrocities committed during armed conflict fundamentally offend global standards of conduct. They also both reflect, and reinforce,

an emerging global ethic which is increasingly concerned with individual human security and autonomy, which are often under greatest threat during times of armed conflict, whether international or internal.

Suggested
Reading:

Dunant, Henry. 1862/1986. *A memory of Solferino*. Geneva: International Committee of the Red Cross.

Holzgrefe, J.L. and Robert O. Keohane. eds. 2003. *Humanitarian intervention: Ethical, legal, and political dimensions*. New York: Cambridge University Press.

International Commission on Intervention and State Sovereignty. 2001. *The responsibility to protect: Report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre.

Sassoli, M. and A.A. Bouvier. eds. 1999. *How does law protect in war?*. Geneva: International Committee of the Red Cross.