

POWERS

Peace, War and the World in European Security Challenges



Module 4 “Regional and national security: stability and potential conflicts”

International Humanitarian Law: *Definition, characteristics, application and examples*



Voronezh State University
Prof. Irina Foret

This publication reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Co-funded by the
Erasmus+ Programme
of the European Union



- International humanitarian law (also known as the law of war or the law of armed conflict) is a set of rules, established by treaty or custom, which seek, for humanitarian reasons, to limit the effects of armed conflict.



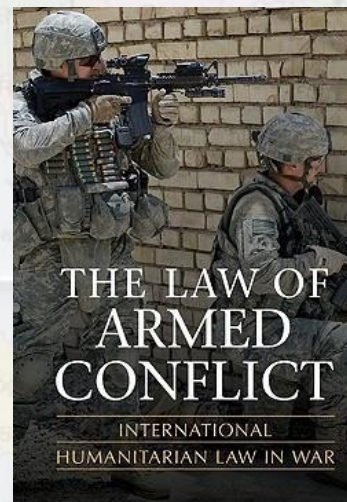
Definition

- It protects persons (and property) who are not or are no longer participating in the hostilities and restricts the means and methods of warfare.
- International humanitarian law is part of international law, which is the body of rules governing relations between States.



Definition

- International organizations, universities and even States tend to favor international humanitarian law, whereas the military tends to prefer the expressions “Laws of Armed Conflicts” (LOAC) or “Laws of War”.





Where did international humanitarian law originate?

Since 19 century, States have agreed to a series of practical rules, that 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.



Formation of IHL

FORMATION OF INTERNATIONAL HUMANITARIAN LAW

1000 A.D.	Formation of initial humanitarian customs Formation of regional humanitarian customs (all over the world) Conclusion of treaties containing humanitarian clauses (Clauses on peace, armistice, capitulation)
1864	First Geneva Convention
1868	Declaration of St. Petersburg
1899	The Hague Conventions
1906	Review of the First Geneva Convention
1907	The Hague Conventions
1925	Geneva Protocol on chemical weapons
1929	"First" and "Third" Geneva Conventions
1949	First, 2nd, 3rd and 4th Geneva Conventions + Common Art. 3 *
1954	Convention for the protection of cultural property
1977	Additional Protocols to the 1949 Geneva Conventions

1980	Convention on the use of conventional weapons
1993	Convention on chemical weapons
1995	Protocol relating to blinding laser weapons
1996	Revision of the 1980 Convention
1997	Convention on anti personnel mines (Ottawa Treaty)
1998	Adoption in Rome of the Statute of the International Criminal Court
1999	Protocol II to the 1954 Convention for the protection of cultural property
2000	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts
2003	Protocol on explosive remnants of war (Prot V to the 1980 Convention)
2005	Protocol III to the 1949 Geneva Conventions, relating to the adoption of an additional distinctive emblem (the "Red Crystal")
2008	Convention on cluster munitions

JUS AD BELLUM and JUS IN BELLO

JUS AD BELLUM

**RULES GOVERNING PARTIES WHO
RESORT TO ARMED FORCE
(PRACTICALLY DISAPPEARED)**

**NB: 3 POSSIBLE CASES IN
INTERNATIONAL LAW:**

- COLLECTIVE SECURITY OPERATIONS
- WAR OF NATIONAL LIBERATION
- LEGITIMATE DEFENCE

JUS IN BELLO

**RULES OF INTERNATIONAL LAW
APPLICABLE BETWEEN THE PARTIES TO
AN ARMED CONFLICT AND RELATED TO
ARMED CONFLICT (A.K.A. IHL, FORMED
BY 2 MAIN CURRENTS: GENEVA LAW
AND THE HAGUE LAW)**

JUS AD BELLUM and JUS IN BELLO

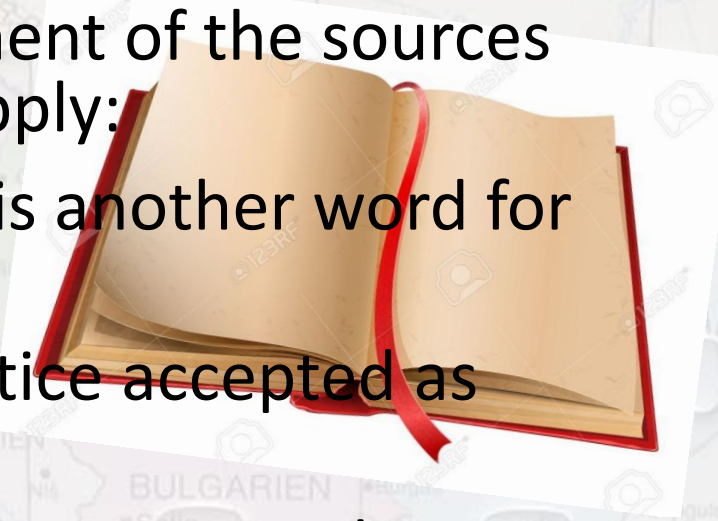
This implies that IHL applies whenever there is de facto an armed conflict, however that conflict can be qualified under jus ad bellum, and that no jus ad bellum arguments may be used in interpreting IHL.

However, it also implies that the rules of IHL may not render the jus ad bellum impossible to implement, e.g., render legitimate self-defense unlawful.

Sources of IHL

According to Art 38 (1) of the Statute of the International Court of Justice, which is regarded as an authoritative statement of the sources of international law, the Court shall apply:

- international conventions (please note convention is another word for treaty);
- international custom, as evidence of a general practice accepted as law;
- the general principles of law recognized by civilized nations, and;
- judicial decisions and the teachings of the most highly qualified publicists, as subsidiary means for the determination of rules of law.



Distinction of IHL

the “law of Geneva”
is designed to safeguard
military personnel who
are no longer taking part
in the fighting and people
not actively involved in
hostilities, i.e. civilians.



the “law of The Hague”
establishes the rights and
obligations of belligerents in the
conduct of military operations,
and limits the means of harming
the enemy.

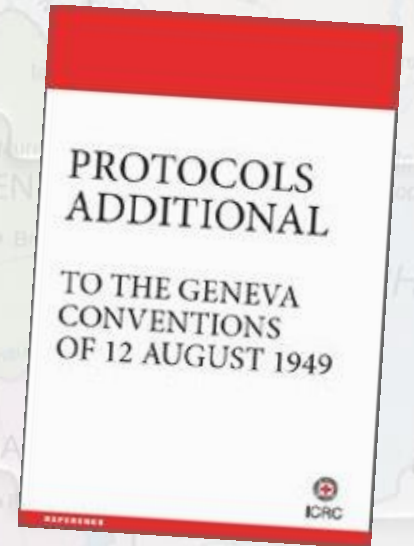


The two branches of IHL draw their names from
the cities where each was initially codified.

With the adoption of the Additional Protocols of
1977, which combine both branches, that
distinction is now of merely historical and didactic
value.

Where is international humanitarian law 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***



Treaties

In respect to IHL, the most important treaties are

- the Geneva Conventions of 1949,
- the Additional Protocols of 1977, and
- The so called Hague Conventions.



Other agreements

- 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;
- the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

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 international humanitarian law 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.



Important to remember

It is important to differentiate between **international humanitarian law** and **human rights law**.

In particular, **human rights law** – unlike international humanitarian law – **applies in peacetime**, and many of its provisions may be suspended during an armed conflict.



Types of situations

International humanitarian law distinguishes between

*International
armed
conflicts*

*Non-
international
armed conflicts*



International armed conflict

“to all cases of declared war or of any other armed conflict which may arise between two or more States, even if the state of war is not recognized by one of them.”



International armed conflict

- They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocol I.
- “wars of national liberation” should also be considered international armed conflicts

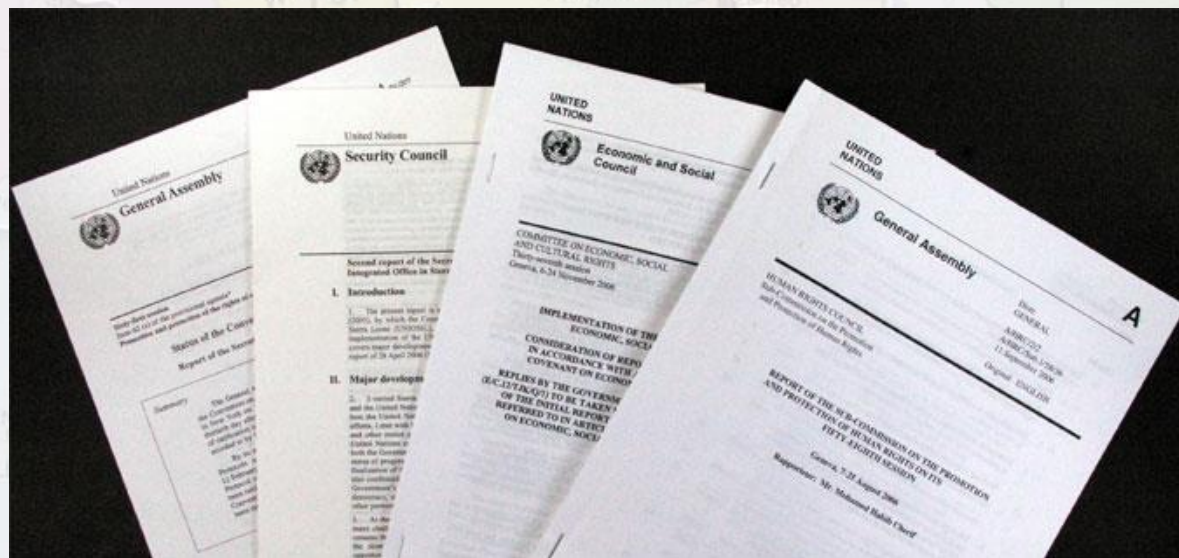


- are those restricted to the territory of a single State, involving either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other.



Non-international armed conflicts

- 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.



Other situations

- IHL is not applicable in situations of internal violence and tensions.
- Article 1 (2) of Additional Protocol II:
“This Protocol 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, as not being armed conflicts.”



What is “protection”?

International humanitarian law protects the following groups of people:

- *civilians:*

- prisoners of war;
- foreign civilians on the territory of parties to the conflict, including refugees;
- civilians in occupied territories;
- civilian detainees and internees;
- medical and religious personnel or civil defence units.
- *medical and religious military personnel*
- *wounded, shipwrecked and sick combatants, and prisoners of war.*



What is “protection”?

More specifically:

- it is forbidden to kill or wound an enemy who surrenders or is unable to fight,
- the sick and wounded must be collected and cared for by the party in whose power they find themselves.
- Medical personnel, supplies, hospitals and ambulances must all be protected.



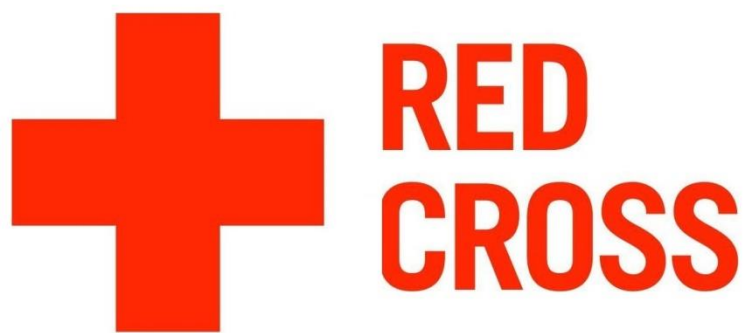
What is “protection”?

There are also detailed rules governing the conditions of detention for prisoners of war. This includes the provision of food, shelter and medical care, and the right to exchange messages with their families.



What is “protection”?

The law sets out a number of clearly recognizable symbols which can be used to identify protected people, places and objects. The main emblems are **the red cross, the red crescent** and the symbols identifying cultural property and civil defence facilities.



What restrictions are there on weapons and tactics?

International humanitarian law prohibits all means and methods of warfare which:

- fail to discriminate between those taking part in the fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property;
- cause superfluous injury or unnecessary suffering;
- cause severe or long-term damage to the environment.



Restrictions on weapons

- Humanitarian law has therefore banned the use of many weapons, including exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines.





Prohibited methods of warfare

- perfidy
- terror
- starvation
- reprisals against non-military objectives
- indiscriminate attacks
- damage to the natural environment or to works and installations containing dangerous forces;
- ordering that there shall be no survivors;
- pillage;
- taking hostages;
- and attacks on persons hors de combat or parachuting from an aircraft in distress



Co-funded by the
Erasmus+ Programme
of the European Union



The basic rules of IHL

- 1) Neither the civilian population as a whole, nor individual civilians, may be attacked. Attacks may be made solely against military objectives.
 - 2) It is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.
 - 3) It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting.
- And etc...



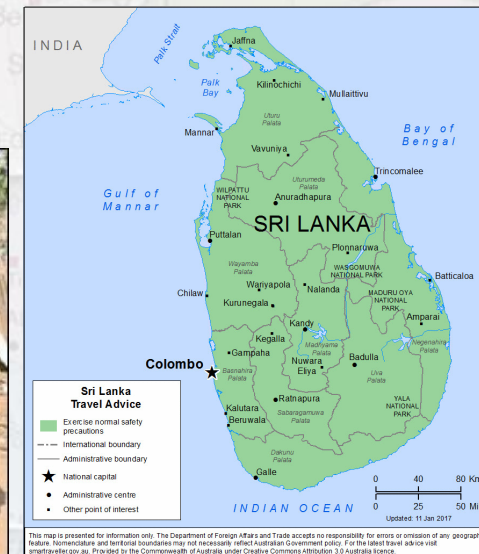
Is international humanitarian law actually complied with?

- 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.



○ Sri Lanka, Evacuation of the Wounded and Sick

During the conflict between Sri Lanka and the LTTE, successful evacuations of the wounded and sick were undertaken by the Sri Lankan Navy, with support of the ICRC.



- **Iraq, Computer Modelling in Collateral Damage Estimates and Choice of Weapons**

In the planning of attacks in Iraq in 2003, the US and the UK Air Forces reduced the danger to civilians by resorting to computer modelling to assess collateral damage, by modifying their targeting and improving weaponry and technology.





○ **Eritrea/Ethiopia, Repatriation of Prisoners of War**

In the aftermath of the Eritrean–Ethiopian War (1998-2000), both parties repatriated Prisoners of War (PoWs). The Algiers Peace Agreement enabled an independent commission to hear claims related to potential violations of international humanitarian law. This included an assessment as to whether POWs repatriation was made in compliance with IHL.

- **Mali, IHL Training for Organized Armed Groups and Malian Armed Forces**

IHL training has been undertaken by the Malian armed forces and various non-state armed groups operating in Mali. The humanitarian principles of IHL find foundation in Malian domestic law and culture.





The Role of the International Committee of the Red Cross (ICRC)

- to monitor the changing nature of armed conflict;
- to organize consultations with a view to ascertaining the possibility of reaching agreement on new rules;
- to prepare draft texts for submission to diplomatic conferences



ICRC

the
ime
of the European Union





What should be done to implement the law?

- to teach its rules to their armed forces and the general public
- to enact laws to punish the most serious violations of the Geneva Conventions and Additional Protocols, which are regarded as war crimes
- to pass laws protecting the red cross and red crescent emblems
- 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



Co-funded by the
Erasmus+ Programme
of the European Union



*Thank
you*

