



# International Humanitarian Law for Humanitarian Workers: An Introduction

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World Food Programme  
Emergency Response Training

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## **AT THE END OF THIS PRESENTATION YOU SHOULD:**

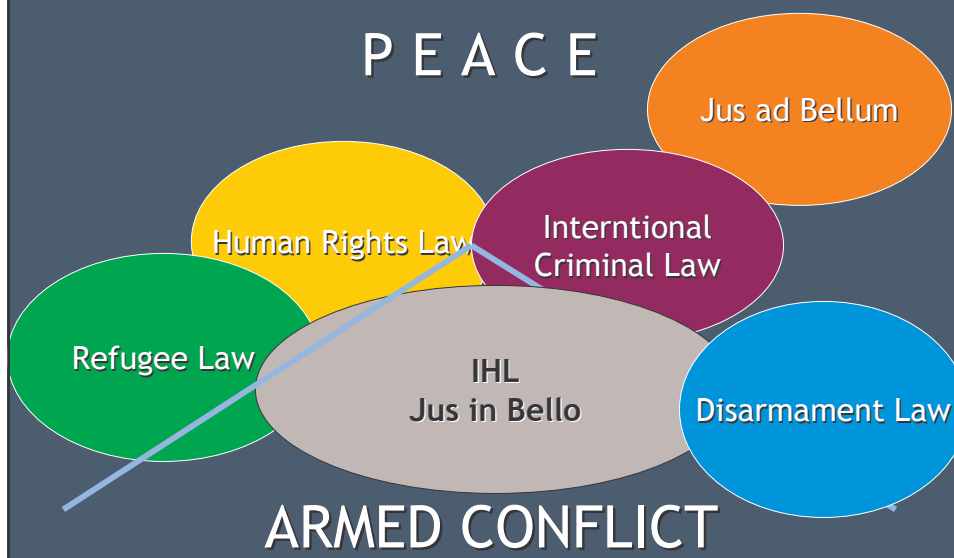
- be able to place IHL in the framework of international law, next to its other branches dealing with the protection of the human person
- know the difference between International and Non-International armed conflicts in terms of the applicability of IHL;
- have familiarized with the main principles of IHL;
- be aware of the consequences attached to breaches of IHL.

## What is International Humanitarian Law? (a.k.a. “The Law of War” or “Jus in Bello”)

IHL is the branch of international law limiting the use of violence in armed conflicts by:

- a) sparing those who do not or no longer directly participate in hostilities;
- b) limiting the violence to the amount necessary to achieve the aim of the conflict, which can be – independently of the causes fought for – only to weaken the military potential of the enemy.

Where does IHL stand with respect to other branches of International Law relevant for the protection of individuals in situation of violence?



## WHAT ARE THE SOURCES OF IHL?

As in International Law in general, rules of IHL come from:

- **Customary international law**  
(Comprehensive and uniform repetition of a given behaviour by States over a long period, in the belief that such behaviour is obligatory)
- **Conventional international law**  
(i.e. Treaties, Conventions, Protocols, etc.)

## WHAT TREATIES MAKE UP CONVENTIONAL IHL?

**Hague Conventions** (1899 and 1907)

**Four Geneva Conventions** (1949)

- I Amelioration of the condition of the wounded and sick of armed forces in the field
- II Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea
- III Treatment of prisoners of war
- IV Protection of civilian persons in time of war

**Two Additional Protocols to 1949 Geneva Conventions** (1977)

- AP I protection of victims of international armed conflicts
- AP II protection of victims of international non-international armed conflicts

**Weapons Conventions** (e.g. 1993 Chemical Weapons Convention, 1997 Anti-personnel mines Convention, etc.)

## WHEN DOES IHL APPLY?

IHL concerns two kinds of situations:

- a) **International armed conflicts**, which involve at least two states; e.g. the Gulf War, the Ethiopia vs. Eritrea War



- b) **Non-international armed conflicts**, i.e. “Civil Wars”, fought between a government and rebel forces or between different rebel forces; e.g. Colombia

## WHEN DOES IHL RELATING TO INT.L ARMED CONFLICTS APPLY?

- According to art. Common to the 4 GCs they apply...  
“(…) to all **cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties ...** and to all cases of **partial or total occupation of the territory of a High Contracting Party**”
- AP I expands the application of the Geneva Conventions and of the Protocol itself to cover also **Wars of National Liberation**.

## WHEN DOES IHL RELATING TO NON-INT.L ARMED CONFLICTS APPLY?

Common Art. 3 to the GCs applies...

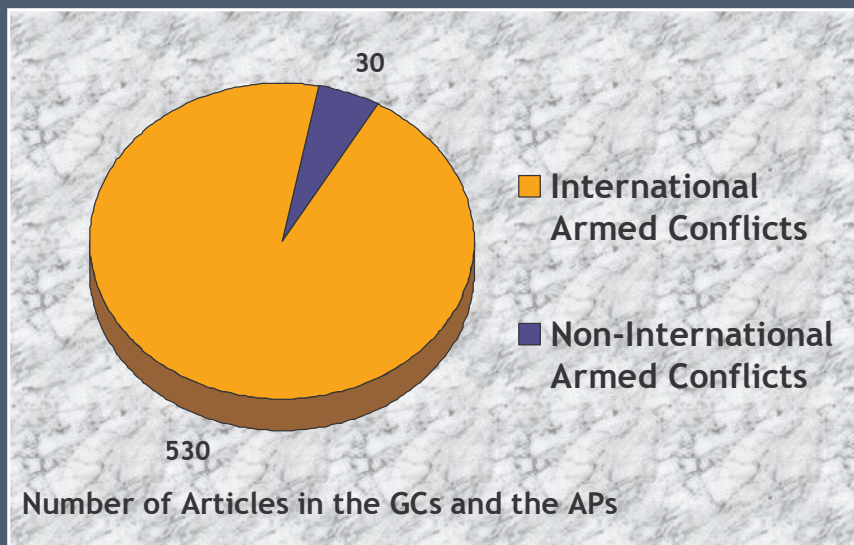
“In the case of **armed conflict not of an international character occurring in the territory of one of the High Contracting Parties**”

Additional Protocol II has a narrower field of application. It only applies if the rebel group:

- are sufficiently organized and act under a responsible command;
- exercise permanent control over part of the State territory
- are able to carry out “sustained and concerted” military operations
- are capable of implementing the protocol.

The Protocol does **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.

**IT IS PARAMOUNT TO GIVE A CORRECT QUALIFICATION OF THE CONFLICT BECAUSE THE LAW APPLICABLE DEPENDS ON THIS!!!!**



## WHAT SITUATIONS ARE NOT COVERED BY IHL?

- Lower levels of internal violence, e.g. internal disturbances and tensions involving violent demonstrations and riots.
- It can sometimes be difficult to tell exactly when the threshold for application has been crossed, and States often deny that IHL is applicable at all.
- In these circumstances, the law applicable is **Human Rights Law, Refugee Law** along with the **domestic law of the State concerned**.

## PROBLEM: THE "GREY AREA" OF INTERNAL STRIFE

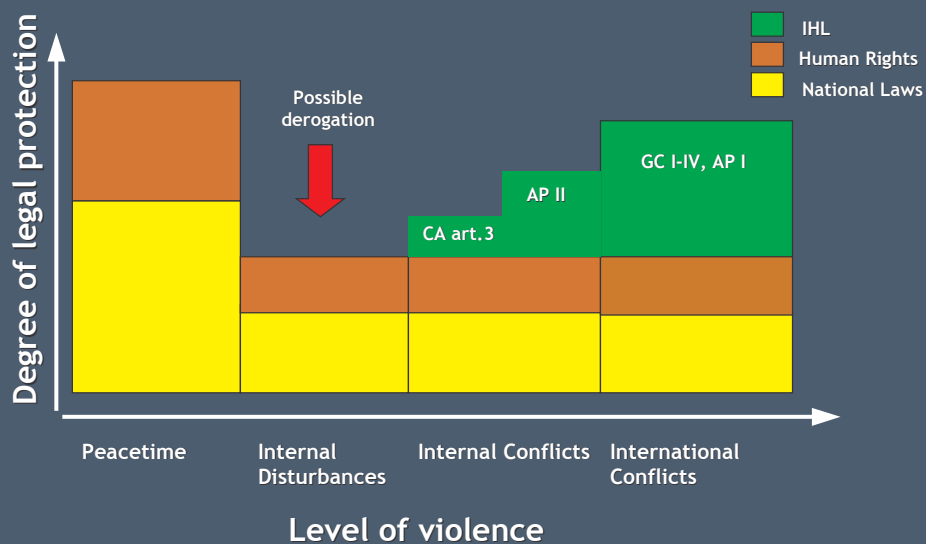
The most important HR treaties contain a so called "derogation clause" which allows States to **temporarily suspend** the application of certain human rights when they are facing a "**public emergency threatening the life of the nation**".

These situations are problematic because States can suspend certain rights, but IHL is not yet applicable.

There are, however, a certain number of rights that can never be suspended:

- right to life;
- freedom from torture, cruel, inhuman or degrading treatment or punishment;
- freedom from slavery and servitude;
- freedom from the retroactive application of criminal law;
- right to recognition as a person before the law;
- freedom of thought, conscience and religion.

## LEVEL OF VIOLENCE AND LEGAL PROTECTION



## WHO IS BOUND BY IHL?

- A. States
- B. Other Subjects
  - B.1. International Organisations
  - B.2. Non-state actors (e.g. armed groups)
  - B.3. Individuals

## A. STATES

- All States have a legal obligation to “respect and to ensure respect” for IHL.
- They have the direct and primary responsibility for guaranteeing that their soldiers respect IHL and to prosecute individuals who have committed war crimes.

## B.1. INTERNATIONAL ORGANISATIONS

- Organisations such as UN, NATO, ECOWAS, are subjects of International Law and, as such, bound at least by the customary rules of IHL.
- The UN Secretary-General's "Bulletin on Applicability of IHL to UN Forces. (6 August 1999) clearly establishes that UN troops need to comply with the "spirit and principles" of IHL and with customary law.





## B.2. NON-STATE ACTORS (e.g. Armed Groups)

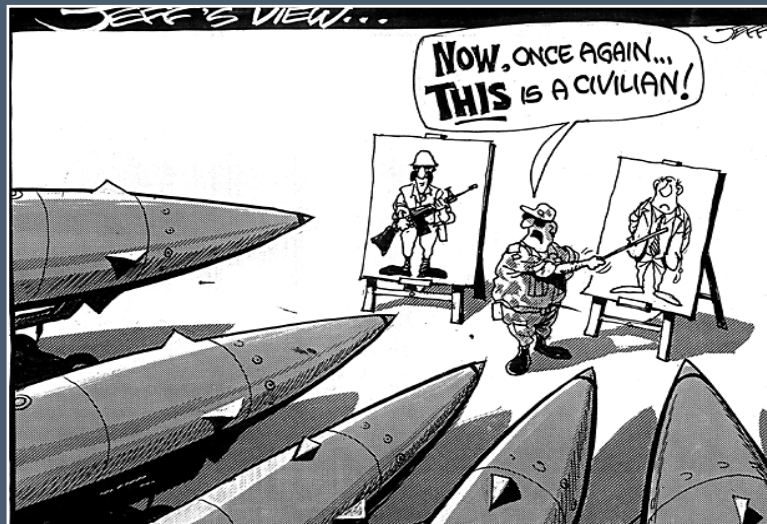
- They might differ very much in their aim, their degree of organization and force.
- There is a **minimum core of rights and duties** (drawn from IHL, Human Rights Law, International Criminal Law, Refugee Law) **that has to be respected by any kind of entity.**
- If the situation is classified as a Non-International Armed Conflict, the armed groups opposing the State must comply with Common Art. 3 to the GCs, Customary IHL and, if applicable, Additional Protocol II.

## B.3. INDIVIDUALS

- **Each single individual is subjected to the laws of armed conflict, under which he possesses rights and duties.**  
Violations of IHL involve the criminal liability of the offender.
- Prosecution for violations of IHL can be exercised at both national or international level (through *ad hoc* Int.l Tribunals, the Int.l Criminal Court, etc.).
- Criminal liability applies to everyone who has actually acted in a way contrary to IHL, as well as to all those who could have used their influence to avert those violations and did not do it.



## WHAT ARE THE MAIN PRINCIPLES OF IHL?



### Principle of Distinction

➤ Combatants must always clearly distinguish between enemy combatants and civilians or the civilian population as such. Combatants may be attacked unless they are out of action, i.e. they are *hors de combat*.



➤ Civilians are protected from attack but lose that protection whenever they take a direct part in hostilities for the time of their participation.

➤ Similarly, combatants must always distinguish between military objectives which can be attacked and civilian objects which must be respected.

## Principle of Proportionality

- When military objectives are attacked, civilians and civilian objects must be spared from incidental or **collateral damage** to the maximum extent possible. Incidental damage must not be excessive in relation to the direct and concrete military advantage that can be anticipated from the military operations.



- Excessive use of force quite clearly violates the law of armed conflict.

## Principle of Necessity

- The principle implies that military forces in planning military actions are permitted to take into account the practical requirements of a military situation at any given moment and the imperatives of winning.
- However, there are 3 constraints upon the free exercise of military necessity.
  - 1) any attack must be intended and tend toward the **military** defeat of the enemy;
  - 2) even an attack aimed at the military weakening of the enemy must not cause harm to civilians or civilian objects that is excessive in relation to the concrete and direct military advantage anticipated (**proportionality**)
  - 3) military necessity cannot justify violation of the other rules of IHL.

## Principle of Precaution

- If military and civilian objects are near one another, a certain number of specific precautions must be taken in planning and carrying out an attack so as to limit any detrimental effects that civilians might incur.

E.g. The attacker should:

- do everything feasible to verify that the objectives attacked are military and not civilian and are not subject to special protection;
- choose means and methods of attack that are likely to minimize collateral damage;
- give an effective advance warning of attacks which may affect the civilian population;
- if the destruction of two military objects would provide the same military advantage, attack the one whose destruction is likely to cause the least danger to civilians and civilian objects.

## Prohibition to inflict "unnecessary suffering"

- In any armed conflict, the right of the parties involved to choose methods and means of warfare is not unlimited, i.e. IHL limits how weapons and military tactics may be used.
- Weapons and tactics that are of a nature to cause unnecessary suffering are prohibited.
- The principle bans the use of weapons designed to cause injuries that are impossible to treat or that result in a cruel and lingering death.

E.g. Bacteriological weapons, dum-dum bullets, bombs using non-detectable fragments, etc.



## A Legal Safety Net: The Martens Clause

- Included in many IHL treaties, it states that:

*“...in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience...”*

- Hence the actions of armed forces in times of conflict—even if not governed explicitly by the more formal treaty law—are constrained by norms of established practice regarding protection of those not or no longer engaged in hostilities and must be in consonance (or at least not strikingly at variance) with what is considered to be morally acceptable behaviour.

## WHAT HAPPENS WHEN IHL IS BREACHED?

- International law qualifies certain egregious violations of IHL as **war crimes**.
- Prosecution of war crimes is subjected to a special regime:
  - War crimes are prosecutable by every State, irrespective of where they were committed, the nationality of the perpetrator or the nationality of the victim (= **UNIVERSAL JURISDICTION**);
  - There's **no statute of limitations** for war crimes;
  - **“Superior Orders”** is no defence;
  - **Commanders are co-responsible** for the crimes of their subordinates if they *“either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes.*
  - **“Official capacity”** is not a bar to the jurisdiction of International Courts (but it still is in national courts).

## WAR CRIMES: SOME EXAMPLES

Some of the war crimes listed in the Statute of the Int.l Criminal Court:

- wilful killing of a protected person (e.g. wounded or sick combatant, prisoner of war, civilian);
- torture or inhuman treatment of a protected person;
- wilfully causing great suffering to, or serious injury to the body or health of, a protected person;
- unlawful deportation or transfer;
- using prohibited weapons or methods of warfare;
- making improper use of the distinctive red cross or red crescent emblem or other protective signs;
- pillage of public or private property;
- conscripting or enlisting children under the age of fifteen years;
- committing rape, sexual slavery, enforced prostitution, forced pregnancy.

## WAR CRIMES PARTICULARLY RELEVANT FOR RELIEF PERSONNEL

Article 8 of the ICC Statute mentions, *inter alia*, the following conducts as constituting war crimes:

- attacking the civilian population;
- intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- **attacking aid workers and peace-keepers;**
- **intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.**

**ANY  
QUESTIONS?**