



International Humanitarian Law in the Work of Relief Personnel

World Food Programme
Emergency Response Training

Revinge, May 2007

AT THE END OF THIS PRESENTATION YOU SHOULD:

- be aware of the importance IHL has in framing the WFP's activities both in fulfilling its mandate and in carrying out broader "protection" activities in favour of the civilian population;
- be familiar with the protection IHL bestows on the civilian population;
- have an understanding of the legal framework IHL establishes to promote and protect humanitarian assistance activities;
- Have an idea on how to use IHL and its provisions as a "tool" when engaging the parties to the conflict.

WHY SHOULD RELIEF WORKERS HAVE A GRASP OF IHL?

Because...

- ... it provides the legal foundations for the **protection of civilians** in times of armed conflict;
- ... it helps defining the **“mandate”** of the relief organization and the **legal entitlements** it has according to the situation;
- ... it sets out a mandatory **“code of conduct”** for relief organizations operating in times of armed conflict;
- ... relief workers must be aware of behaviours that might potentially constitute **crimes** under IHL (both, with the aim of reporting them and of avoiding to commit them);
- ... it is a useful entry point for **negotiations with the parties to the conflict** and might prove a valuable instrument in the bargaining process.

WHO IS ENTITLED TO PROTECTION UNDER IHL (AND TO RECEIVE RELIEF ITEMS)?

In general, the civilian population as a whole is entitled to respect and protection. Specific provisions exist regarding certain categories of persons:

- population of occupied territories,
- women,
- children,
- internees,
- wounded and sick persons,
- detainees.



WHO IS A CIVILIAN?

- IHL defines civilians in the negative:

Whoever is not a combatant is a civilian.

- All civilians make up the “civilian population”



Hence the question becomes:

WHO IS A COMBATANT?

- Combatants are all those individuals who belong to the armed forces of the State or (in case of a Non-International Armed Conflict) all those who belong to the organized armed groups involved in the conflict.



WHAT KIND OF PROTECTION DO CIVILIANS ENJOY UNDER IHL IN INT.L ARMED CONFLICTS?

- The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations (art. 51, AP I)
- The presence of combatants within the civ.pop. does not deprive the latter of its civilian character (art. 50, AP I)
- The civ.pop. shall not be attacked nor be subject to acts of terror (art. 51, AP I)
- The civ.pop. can not be subject to reprisals or used to shield military operations or military objectives (art. 51, AP I)
- Civilians shall at all times be humanely treated and are entitled to respect for their honour, family rights, religious practices, manners and customs (art. 27, GC IV)
- Special protection is envisaged for women (art. 27, GC IV & art. 76 AP I) and children (arts. 77-78 AP I)

WHAT PROTECTION DO CIVILIANS ENJOY IN OCCUPIED TERRITORIES?

- Individual or collective deportation from OTs is forbidden (but evacuation for security reasons is allowed) (art. 49, GC IV)
- Destruction of private or public property is forbidden (unless absolutely necessary for military purposes) (art. 53, GC IV)
- The Occupying Power must ensure the the fullest extent of the means available to it the food and medical supplies to the civilian population of OTs. (art.55 GC IV)
- Abusive judiciary, internment or detention procedures are forbidden (art. 71, GC IV)
- Refugees in OTs shall not be arrested, prosecuted, or deported (art. 70, GC IV)

WHAT PROTECTION DO CIVILIANS ENJOY IN NON-INTL. ARMED CONFLICTS?

- Civilians shall in all circumstances be treated humanely and shall not be subject to attack (art. 13, AP II) nor adverse discrimination based on any ground (art. 3, GCs)
- The following acts are expressly prohibited:
 - violence to life, health and physical or mental well-being;
 - collective punishments;
 - taking of hostages;
 - pillage;
 - acts of terrorism (art. 4, AP II)
 - forced displacement (art. 17 AP II)
- Special protection for women (art. 5(2) & art. 6(4)) and children (art. 4, AP II) is envisaged

WHAT DOES IHL SAY ABOUT THE RIGHT TO FOOD OF THE CIVILIAN POPULATION?

- The use of **starvation** as a means of warfare against the civilian population is prohibited (art. 54, AP I & art. 14 AP II), as well as sieges, embargoes and blockades that cause it.
- Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, **such as** foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installation, irrigation works is (almost always) prohibited (art. 54, AP I & art. 14 AP II).

HOW DOES IHL REGULATE THE PROVISION OF HUMANITARIAN ASSISTANCE?

By establishing:

- Who is entitled to receive relief items;
- What kind of items can be dispatched;
- What the rights and duties of
 - the parties to the conflict
 - the relief organisationsare with reference to humanitarian relief operations;
- How and when humanitarian access can be gained.
- IHL also sets forth some basic principles which need to be considered in providing relief in situations of armed conflict.

WHAT KIND OF ITEMS CAN FORM THE CONTENT OF RELIEF DELIVERY?

- **As a minimum**, the relief items delivered to the civilian population can include those objects that are “indispensable” for its survival:
 - **Foodstuffs**;
 - Medicines and medical supplies;
 - Objects necessary for religious worship;
 - Essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases.
- In OTs the list does also include:
 - Clothing, bedding, means of shelter, other supplies essential for the survival of the civilian population (art. 69, AP I)

WHAT ARE THE RIGHTS AND DUTIES OF THE PARTIES TO THE CONFLICT IN RESPECT OF THE NEEDS OF THE CIVILIAN POPULATION?

- If the population of any territory is not adequately provided with the supplies essential for its survival, relief operations can be undertaken. (arts. 17, 23 & 59 GC IV; art. 70 AP I; art. 18 AP II)
- Detaining or Occupying powers bear responsibility for the well-being of individuals who are in their power as a result of detention, internment or occupation. They must also allow **independent humanitarian evaluation of the situation** and of the needs of the population. (art. 30, GC IV)

WHAT ARE THE RIGHTS AND DUTIES OF THE PARTIES TO THE CONFLICT? (cont.)

- The belligerent parties are under an obligation to **allow and facilitate the free passage** of these supplies, even if they are intended for the population of the enemy. **They may not forbid or hinder them**, but can ask relief organization to subscribe technical agreements on the shipping and distribution of the aid. (art. 70, AP I)
- State parties undertake to provide humanitarian organizations with **all facilities within their power** needed to carry out the protection and assistance functions assigned to them by IHL. They shall **protect relief consignments and facilitate their rapid distribution**. (art. 70, AP I)

WHAT ARE THE RIGHTS AND DUTIES OF RELIEF ORGANISATIONS?

- Humanitarian organizations have a **right to offer impartial relief assistance**, and such an offer “shall not be regarded as an interference in the armed conflict or as an unfriendly act (art. 70, AP I)
- The ICRC and other impartial humanitarian organizations may always offer their services to the parties to the conflict and, **with their consent**, they may undertake relief and protection activities for the civilian population (art. 10, GC IV & art. 3, GCs)
- Relief organization shall make sure that the **relief is not diverted for military purposes** and shall take into account the **security requirements of the party** in whose territory they are carrying out their duties.

IS CONSENT ALWAYS NECESSARY?

The sovereignty, territorial integrity and national unity of states must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided **with the consent** of the affected country and in principle on the basis of an appeal by the affected country.

Each state has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected state has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.

“Strengthening of the coordination of humanitarian emergency assistance of the United Nations”, UNGA Resolution 46/182, 19 December 1991.

YES, consent is (almost) always necessary, but the parties to the conflict cannot refuse it arbitrarily.

HOW DOES IHL PROTECT RELIEF PERSONNEL?

- The personnel participating in relief actions must be respected and protected. (art. 71, AP I)
- Their participation in relief operations shall be subject to the approval of the party in whose territory they carry out their mandate (art. 71, AP I)

However...

- Members of relief personnel must **not exceed the mandate** of their mission, always take into consideration the **security requirements of the parties** to the conflict and **always respect the laws of the hosting country**.
- If they fail to do so, their mandate may be terminated (art. 71, AP I)



THE PROTECTION OF UN RELIEF PERSONNEL

- Members of humanitarian organizations may benefit from various statutes, which may grant them more or less extensive rights and protections, depending on the organization they represent.
- In particular WFP operators enjoy - in addition to the protection granted by general IHL - the specific rights and privileges listed in the 1994 **“Convention on the Safety of UN and Associated Personnel”**.
- The Convention contains provisions on transit (art. 5); duty to ensure the safety and security of UN Personnel (art. 7); duty to release and return UN Personnel captured or detained (art. 8); criminalisation of certain acts against UN Personnel (art. 9); duty to prevent such acts (art. 11).

PROBLEMS: - the Convention does not apply to all UN operations;
- not many States have ratified it.

WHAT PRINCIPLES SHOULD GUIDE RELIEF WORKERS IN ARMED CONFLICT SITUATIONS?

IHL requires them to respect the three fundamental principles of

HUMANITY,

IMPARTIALITY and

NEUTRALITY,

which have also been endorsed by the WFP.

THE WFP CORE HUMANITARIAN PRINCIPLES

- I. Humanity.** WFP will seek to prevent and alleviate human suffering wherever it is found and respond with food aid when appropriate. It will provide assistance in ways that respect life, health and dignity.
- II. Impartiality.** WFP's assistance will be guided solely by need and will not discriminate in terms of ethnic origin, nationality, political opinion, gender, race or religion. In a country, assistance will be targeted to those most at risk from the consequences of food shortages, following a sound assessment that considers the different needs and vulnerabilities of women, men and children.
- III. Neutrality.** WFP will not take sides in a conflict and will not engage in controversies of a political, racial, religious or ideological nature. Aid will not be provided to active combatants.

(see WFP/EB.A/2004/5-C)

HOW CAN WE USE IHL WHEN ENGAGING WITH THE PARTIES TO THE CONFLICT?

- Make the party aware that they are bound by certain provisions of International Law.
- Attract their attention to the fact that breaches of IHL trigger an aggravated system of responsibility and that the international community has showed its willingness to bring perpetrators to justice.
- Underline that respect for IHL will improve the perception of the group among national and international actors.
- Underscore that failing to respect IHL will alienate the support of their constituency.

INTERNET RESOURCES ON IHL

ICRC	www.icrc.org
Harvard Portal	www.ihlresearch.org
Crimes of War Project	www.crimesofwar.org
Bochum University	www.ifhv.de
OCHA Webpage on protection of civilians	ochaonline.un.org

**ANY
QUESTIONS?**