

International Humanitarian Law Research Initiative

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What is IHL?

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International humanitarian law (IHL) – also known as the law of war and the law of armed conflict (LOAC) – is a legal framework applicable to situations of armed conflict. IHL can generally be defined as the laws and customs aiming to limit the effects of armed conflict for humanitarian reasons.¹ IHL limits those effects principally by protecting persons who are not, or who are no longer, participating directly in hostilities² and by restricting the means and methods of warfare.

IHL applies once there is an armed conflict.³ Armed conflicts may be international or non-international in character. The application of IHL is not dependent on a declaration or formal recognition of war. As the law in effect during armed conflict (known in Latin as the *jus in bello*), IHL is distinct from the legal regime enshrined in Article 2(4) of the UN Charter⁴ governing the resort to force (known in Latin as the *jus ad bellum*). This distinction is important as compliance with IHL may be significantly diminished if parties complied with it only when they deemed that the other party's resort to war was lawful.⁵

IHL has three primary sources: treaties, custom, and general principles. The 1863 Lieber Code⁶ is generally recognized as the first modern codification of customary laws of land warfare. Other important early formulations of IHL include the 1863 (First) Geneva Convention,⁷ the 1868 St. Petersburg Declaration,⁸ the 1874 Brussels Declaration,⁹ and the 1880 Oxford Manual.¹⁰

Treaties. Only states that have taken the necessary and sufficient steps to bring a treaty into force are bound by its terms. Today, IHL is codified largely in the Hague Conventions of 1899 and 1907,¹¹ the Geneva Conventions of 1949,¹² and their Additional Protocols of 1977 and 2005.¹³ IHL is further supplemented by such treaties as the 1925 Geneva Protocol on Gas Warfare,¹⁴ the 1954 Hague Convention on the Protection of Cultural Property in Armed Conflict¹⁵ and its 1999 Protocol,¹⁶ the 1980 Convention on Conventional Weapons and its Protocols,¹⁷ the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict¹⁸, the 1993 Chemical Weapons Convention,¹⁹ the 1997 Ottawa Convention on Anti-Personnel Mines,²⁰ and the 2008 Cluster Munitions Convention.²¹ The International Committee of the Red Cross (ICRC) provides a database containing IHL documents and treaties, listing which states are parties to which treaties.²²

Custom. Even if a state is not party to a specific IHL treaty, many IHL rules are now considered to reflect customary international law. Customary international law consists of rules derived from the consistent practice of states based on a belief that the law requires them to act in that way (the latter element is known in Latin as *opinio juris sive necessitatis*). In 2005, the International Committee of the Red Cross (ICRC) published a study²³ on customary international humanitarian law, to which at least one government responded.²⁴

Principles. Although a number of complex questions and concerns may arise in applying IHL to contemporary conflicts, certain fundamental principles provide basic guidance. For instance, the principles of distinction, proportionality, and necessity, all of which are part of customary international law, always apply to the use of armed force.

- **Distinction:**²⁵ Parties to an armed conflict must distinguish between the civilian population and combatants and between civilian objects and military objectives. Any intended target must be a military target.
- **Proportionality:** Attacks are prohibited if they cause incidental loss of civilian life, injury to civilians, or damage to civilian objects that is excessive in relation to the anticipated concrete and direct military advantage of the attack.
- **Necessity:** The use of military force is justified only to the extent it is necessary to achieve a military goal. This force used must not exceed the level required to stop the threatening activity.

Other fundamental IHL principles include the duty to take precautions to spare the civilian population before and during an attack; the prohibition against infliction of unnecessary suffering or destruction, or of superfluous injury; and the prohibition against engaging in indiscriminate attacks.

IHL is a branch of **public international law** (which is also known as the law of nations). The extent to which IHL relates to **international human rights law** (IHRL) and the nature of that relationship are not uniformly agreed upon.²⁶ The International Court of Justice²⁷ (the UN's principal judicial organ) held²⁸ in 1996 that the assessment of whether the right not to be arbitrarily deprived of life guaranteed in IHRL treaties²⁹ has been violated in an armed conflict must be determined by reference to IHL. In subsequent cases,³⁰ the ICJ held that depending on the situation, certain rights may be exclusively matters of either IHL or IHRL, or matters of both branches of law.

International Criminal Law (ICL) – which may be defined as the body of rules that proscribes international crimes – imposes duties on states to investigate, prosecute, or extradite offenders. It also regulates such judicial proceedings and serves as an enforcement regime for violations of IHL. Depending in part on their severity, violations of IHL may amount to war crimes. Other international crimes include crimes against humanity³¹ and genocide,³² though neither of those technically requires a link to an armed conflict (unlike war crimes). War crimes include grave breaches of the Geneva Conventions,³³ as well as other serious violations of the laws and customs of war. National courts and international courts (such as the International Criminal Court³⁴), as well as hybrid courts and tribunals (such as the Special Court for Sierra Leone³⁵) may investigate and prosecute allegations of war crimes under their jurisdiction. The ICRC has put together a comprehensive database³⁶ on national measures to implement IHL and hosts information³⁷ relating to IHL compliance more generally.

Additional background materials

The **ICRC's International Humanitarian Law**³⁸ page provides key documents, news reports, and other resources discussing IHL. The page includes a link to *International Humanitarian Law in Brief*,³⁹ as well as short articles outlining the differences between humanitarian law and human rights law⁴⁰ and the history of humanitarian law.⁴¹

The **Crimes of War Project's What the Public Should Know**⁴² page provides an overview⁴³ and introduction⁴⁴ to IHL. The site also offers an introduction to key IHL terms.

Reliefweb has assembled *An Easy Reference to International Humanitarian Law and Human Rights Law*.⁴⁵

The **Geneva Academy of International Humanitarian Law and Human Rights** hosts the *Rule of Law in Armed Conflicts Project*,⁴⁶ which provides a database of relevant legal instruments and overviews of IHL current issues.

Providing a brief history of IHL, the **International Institute of International Humanitarian Law** has assembled a summary⁴⁷ in addition to organizing a comprehensive list of the fundamental principles⁴⁸ of IHL.

The **Oxford Institute for Ethics, Law and Armed Conflict** produces policy and academic publications⁴⁹ relating to challenges in modern IHL, while the **London School of Economics' International Humanitarian Law Project** hosts many IHL-related events.⁵⁰

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