

International Humanitarian Law and the Law of Armed Conflict



COURSE AUTHOR

Mr. Antoine A. Bouvier

SERIES EDITOR

Harvey J. Langholtz, Ph.D.



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International Humanitarian Law and the Law of Armed Conflict



Cover Photo: Togolese peacekeepers from the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) patrol Menaka. 6 May 2018. UN Photo #761076 by Marco Dormino.

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Peace Operations Training Institute
1309 Jamestown Road, Suite 202
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www.peaceopstraining.org

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International Humanitarian Law and the Law of Armed Conflict

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Additional Resources »

Go to POTI's Quizlet page to access virtual flashcards for *International Humanitarian Law and the Law of Armed Conflict* and other UN-related topics. Available from: <<https://quizlet.com/508193431/international-humanitarian-law-acronyms-and-concepts-flash-cards/>>.



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Introductory Video »

View an introductory video to *International Humanitarian Law and the Law of Armed Conflict*, briefly summarizing each lesson and the course themes. Available from: <<https://www.peaceopstraining.org/videos/522/international-humanitarian-law-course-introduction/>>.

Method of Study

This self-paced course aims to give students flexibility in their approach to learning. The following steps are meant to provide motivation and guidance about some possible strategies and minimum expectations for completing this course successfully:

- Before you begin studying, first browse through the entire course. Notice the lesson and section titles to get an overall idea of what will be involved as you proceed.
 - The material is meant to be relevant and practical. Instead of memorizing individual details, strive to understand concepts and overall perspectives in regard to the United Nations system.
 - Set personal guidelines and benchmarks regarding how you want to schedule your time.
 - Study the lesson content and the learning objectives. At the beginning of each lesson, orient yourself to the main points. If possible, read the material twice to ensure maximum understanding and retention, and let time elapse between readings.
 - At the end of each lesson, take the End-of-Lesson Quiz. Clarify any missed questions by rereading the appropriate sections, and focus on retaining the correct information.
 - After you complete all of the lessons, prepare for the End-of-Course Examination by taking time to review the main points of each lesson. Then, when ready, log into your online student classroom and take the End-of-Course Examination in one sitting.
- » ***Access your online classroom at***
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from virtually anywhere in the world.
- Your exam will be scored electronically. If you achieve a passing grade of 75 per cent or higher on the exam, you will be awarded a Certificate of Completion. If you score below 75 per cent, you will be given one opportunity to take a second version of the End-of-Course Examination.
 - A note about language: This course uses English spelling according to the standards of the Oxford English Dictionary (United Kingdom) and the United Nations Editorial Manual.

Key Features of Your Online Classroom »

- Access to all of your courses;
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- Forums where you can discuss relevant topics with the POTI community.

LESSON

1

A Brief History of International Humanitarian Law



ICRC Photo V-P-HIST-D-00026.

This lesson will provide an overview of the origins and development of international humanitarian law.

In this lesson »

Section 1.1	General Definition of International Humanitarian Law (IHL)
Section 1.2	Origins of International Humanitarian Law
Section 1.3	The Progressive Development of IHL (1864–2019)
Section 1.4	The Standing of IHL Within Public International Law
Section 1.5	The Sources of International Humanitarian Law
Section 1.6	The Material Field of Application of IHL: When Does IHL Apply?
Section 1.7	A Delicate but Crucial Issue: The Classification of Situations
Section 1.8	The Basic Rules of International Humanitarian Law
Annex 1	Convention for the Amelioration of the Condition of the Wounded in Armies in the Field

Lesson Objectives »

- Understand the development of customary humanitarian law.
- Understand the history of IHL treaty codification.
- Describe how IHL relates to public international law.
- Explain the differences between *jus ad bellum* and *jus in bello*.
- Understand the definition of international humanitarian law.
- Understand the historical development of international humanitarian law up to the Geneva Convention of 1864.
- Trace the development of IHL since 1864.
- Recognize the different foci of Geneva Law and Hague Law.
- Understand how international humanitarian law has its sources in public international law.
- Understand the basic rules of IHL.



Geneva. Review Conference of the Geneva Conventions. July 1906. ICRC Photo V-P-HIST-00257.

Section 1.1 General Definition of International Humanitarian Law

“International humanitarian law applicable in armed conflict(s)” means international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems that arise directly from international or non-international armed conflicts. For humanitarian reasons, these rules protect persons and property that are, or may be, affected by conflict by limiting conflicting parties’ rights to choose their methods and means of warfare. The expression “international humanitarian law applicable in armed conflict(s)” is often abbreviated to international humanitarian law (IHL), or simply, humanitarian law.¹ Although the military tends to prefer the expressions “laws of armed conflict(s)” (LOAC) or “laws of war”, these two expressions should be understood as synonymous with IHL.

1) The International Committee of the Red Cross (ICRC) has elaborated on the definition of “humanitarian law”. The international community has generally accepted this definition. ICRC, *Commentary on the Additional Protocols of 8 June 1977* (Geneva: ICRC, 1987): xxvii. Available from: <<https://ihl-databases.icrc.org/ihl/INTRO/470>>.

Section 1.2 Origin of International Humanitarian Law

The main subject of this course will be the study of contemporary international humanitarian law. Nevertheless, it is necessary to briefly examine the evolution of that body of law. One can say that the laws of war are almost as old as war itself. Even in ancient times, there were interesting — although rudimentary — customs that today would be classified as humanitarian. It is interesting to note that the content and aim of these customs were the same for almost every civilization around the world. This spontaneous generation of humanitarian standards, at different times and among peoples or States that possessed limited means of communication with each other, is also an important phenomenon.

This phenomenon lends credence to the historical argument regarding:

- The necessity of having rules that apply to armed conflicts; and
- The existence of a feeling in many civilizations that, under certain circumstances, human beings, friend or foe, must be protected and respected.

Although scholars generally agree that the adoption of the First Geneva Convention of 1864 marked the birth of modern IHL, it is also clear that the rules contained in that Convention were not entirely new. In reality, a large portion of the First Geneva Convention was derived from existing international customary law.² In fact, there were rules protecting certain categories of victims in armed conflicts and customs concerning the means and methods of authorized or prohibited combat during hostilities as early as 1000 BCE.

Although these ancient and often very rudimentary rules were not established for humanitarian reasons, but rather for purely economic purposes, their *effect* was humanitarian.

For example:

- The prohibition against poisoning wells (reaffirmed in 1899 in The Hague) was originally made in order to permit the exploitation of conquered areas.
- The first reasons for the prohibition against killing prisoners (reaffirmed and developed in the Third Geneva Convention of 1949) were to safeguard the lives of future slaves or to facilitate the eventual exchange of prisoners.

Many different civilizations throughout the world and history had such prohibitions. For example, in many parts of Africa, there were specific rules regarding the commencement of hostilities between different peoples that correspond, to a large extent, to the classical European traditional obligation of declaring war. Moreover, in a treatise called *The Art of War*, written in 500 BCE, the Chinese writer Sun Tzu expressed the idea that wars must be limited to military necessity, and that prisoners of war, the wounded, the sick, and civilians should be spared.³ Likewise, in the Indian subcontinent, similar rules can be found. For example, in the *Code of Manu*, written in 200 BCE, one finds rules relating to behaviour in combat.⁴ The Code declared that barbed or poisoned weapons were prohibited, that wounded soldiers had to be cared for, and that surrendering combatants must be spared.⁵ The examples of humanitarian customs in various civilizations demonstrate that, even if the Geneva or The Hague Conventions were

2) For a definition of customary international law, see Section 1.5, The Sources of International Humanitarian Law of this course.

3) Sun Tzu, *The Art of War* (New York: Penguin Classics, 2003).

4) *The Law Code of Manu* (New York: Oxford University Press, Inc, 2009).

5) For more historical examples of other ancient rules and customs, please visit: Marco Sassòli, Antoine A. Bouvier, and Anne Quintin, "Historical Development of International Humanitarian Law", in *How Does Law Protect in War? Vol. 1* (HDLPIW) (Geneva: ICRC, 3rd edition), 3–10. Available from: <<https://www.icrc.org/en/document/how-does-law-protect-war-0>>.

not universal at inception, since they were drafted and adopted by lawyers and diplomats belonging to the European and mostly Christian culture, their sentiments are nearly universal. The principles they contain can be found in very different systems of thought — both European and non-European.

The cultural history of Europe also provides examples of both barbarism and humanity. The first significant development in respect to the law of war occurred in 300 BCE, with the Greek philosophical school called Stoicism. This school advocated a path towards humanity through understanding and sympathy — the need to understand and respect each other.

Between the sixteenth and eighteenth centuries, in the Renaissance and the Age of Reason, an interesting and humanitarian practice developed in Europe. Frequently, warriors met before hostilities and decided on guidelines to respect during the battle. These special agreements could, for example, establish the observance of an armistice two days per week, the obligation to collect the wounded, or a responsibility to release prisoners at the end of the war. Although warriors concluded these agreements on an ad hoc basis and limited the scope to which they applied, such precedents played a very significant role in the creation of IHL.

From this historical perspective, the documented origin of IHL developed in the mid-nineteenth century. Up to that point, the practice of the accepted rules of warfare reflected the theories of philosophers, priests, or jurists with local and special agreements.⁶ However, these customs were geographically limited, and there were no international or universal rules. The first universal treaty on humanitarian law was the Geneva Convention of 1864.

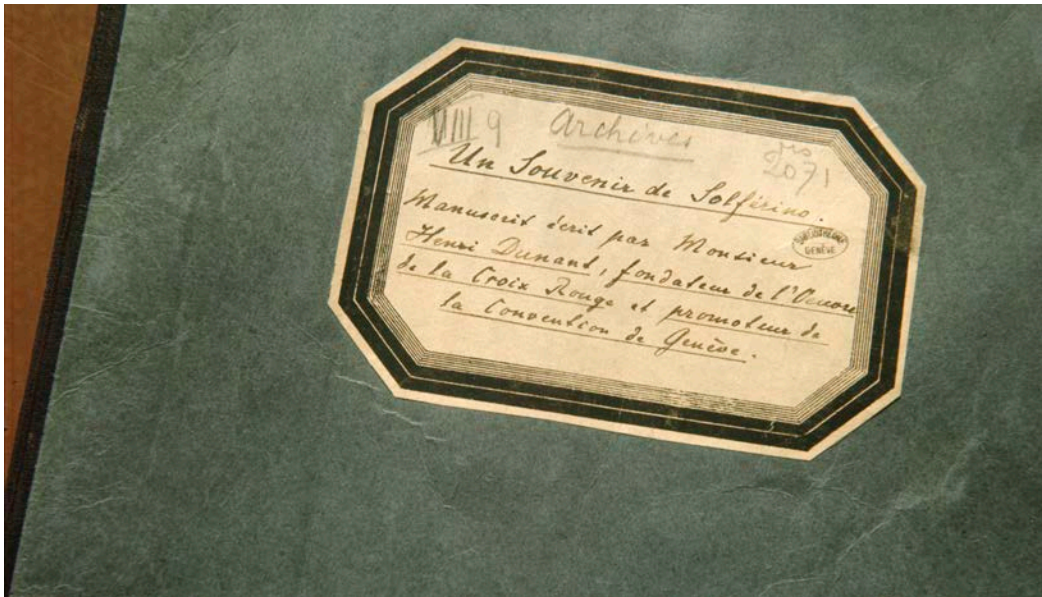
How and why did the Convention come to life?

The conception of IHL can be traced to the Battle of Solferino, a terrible conflict between French and Austrian forces that took place in northern Italy in 1859. One witness of that carnage, a businessman from Geneva named Jean-Henri Dunant (also known as Henry Dunant), was appalled not so much by the violence of that battle, but rather by the desperate and miserable situation of the wounded left on the battlefields. With the help of the local inhabitants, Dunant immediately decided to collect and care for the wounded.

Back in Geneva, Dunant published a short book in 1862, *A Memory of Solferino*, in which he vividly depicted the horrors of the battle:

“When the sun came up on the twenty-fifth June 1859 it disclosed the most dreadful sights imaginable. Bodies of men and horses covered the battlefield: corpses were strewn over roads, ditches, ravines, thickets and fields...The poor wounded men that were being picked up all day long were ghastly pale and exhausted. Some, who had been the most badly hurt, had a stupefied look as though they could not grasp what was said to them... Others were anxious and excited by nervous strain and shaken by spasmodic trembling. Some, who had gaping wounds already beginning to show infection, were

6) A good example of such agreements is the Lieber Code of 1863 (also known as the “Code for the Government Armies in the Field”), a code of conduct promulgated by the President of the United States during the US Civil War. Also, see: Lesson 4, Section 4.1.



Manuscript of *A Memory of Solferino* by Henry Dunant. Cover. ICRC Photo V-P-HIST-00963-05.

almost crazed with suffering. They begged to be put out of their misery, and writhed with faces distorted in the grip of the death struggle.”⁷

In his book, Dunant not only described the battle, but tried to suggest and publicize possible measures to improve the fate of war victims. He presented three basic proposals designed to mitigate the suffering of the victims of war. To this end, he proposed:

1. That voluntary societies be established in every country which, in time of peace, would prepare themselves to serve as auxiliaries to the military medical services;
2. That States adopt an international treaty guaranteeing legal protection to wounded and sick members of the armed forces, military hospitals, and medical personnel; and
3. That an international sign of identification and protection of medical personnel and medical facilities be adopted.

These three proposals were simple, but they have had deep and lasting consequences.

- The first proposal resulted in the whole system of National Red Cross or Red Crescent Societies (of which there are today 192 around the world).
- The second proposal gave birth to the First Geneva Convention of 1864 and to all subsequent treaties of IHL.
- The third proposal led to the adoption of the protective emblem of the Red Cross, and later on, the emblems of the red crescent and, more recently, the red crystal, a neutral alternative.

Dunant’s book enjoyed enormous success throughout Europe. Although it did not present entirely original ideas, the merit of the book is in large part due to the timeliness of its message.

7) Henry Dunant, *A Memory of Solferino* (Geneva: ICRC, 1986): 41-44. Available from: <<https://www.icrc.org>>.

At that time, a private welfare association existed in Geneva called the Society for the Public Good. Its president, Gustave Moynier, was impressed by Dunant's book and proposed to the members of the Society that they try to carry out Dunant's proposals. This suggestion was accepted, and five members of the Society — Dunant, Moynier, Guillaume-Henri Dufour, Louis Appia, and Théodore Maunoir — created a special committee in 1863 named the International Standing Committee for Aid to Wounded Soldiers. This committee would, 15 years later, become the International Committee of the Red Cross (ICRC) (see Lesson 8).

In 1863, the Committee convened military and medical experts at a conference in Geneva. The meeting aimed to examine the practicability and feasibility of the proposals made by Dunant. The results of the meeting were encouraging, and the members of the Committee persuaded the Swiss Federal Council to convene a Diplomatic Conference, a meeting of State representatives, whose task would be to give a legal form to Dunant's proposals.

To this end, a Diplomatic Conference was held in 1864 in Geneva, and the 16 States represented finally adopted what was formally called the "Geneva Convention of 22nd August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field". Its result was an international treaty open to universal ratification (that is, an agreement *not* limited to a specific region or conflict, with binding effects on the States that would formally accept it) in which States agreed to limit their own power voluntarily in favour of the individual. For the first time, armed conflict became regulated by written, general law.

The birth of modern international humanitarian law

In 10 concise articles, the First Geneva Convention gave a legal format to Dunant's proposals. It also established general protection for military wounded and a special status for medical personnel. The conference also chose the Red Cross on a white background as the only sign of identification of all military medical services.

The fact that this conference lasted fewer than 10 days provides a clear indication of the general support given to the propositions.

Of course, more modern and comprehensive treaties have replaced the original Convention. However, it illustrates in a concise manner the central objectives of humanitarian law treaties.⁸ Annex 1 contains the original Convention.

Beginning in 1866, the Geneva Convention proved its worth on the battlefield. By 1882, 18 years after its adoption, it had been universally ratified.⁹

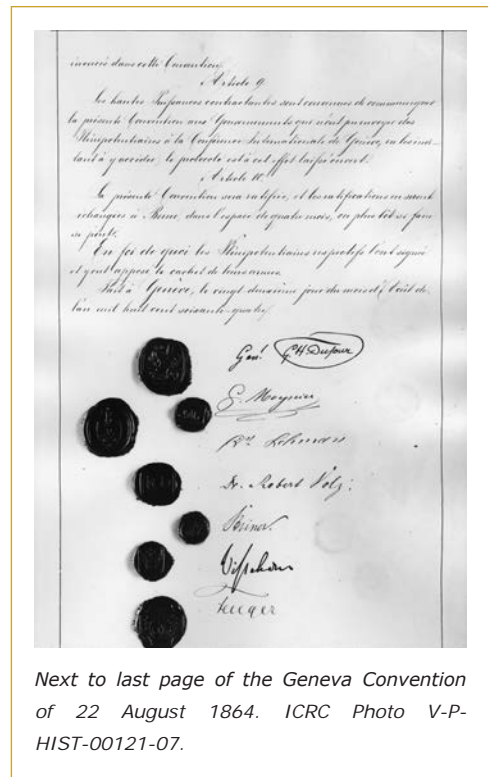
Section 1.3 The Progressive Development of IHL (1864–2019)

Figure 1-1 shown below illustrates the key developments in IHL since the adoption of the 1864 Geneva Convention. A thorough and detailed discussion of the post-1864 development of IHL would be beyond the scope of this course. However, the student should be aware of the three main characteristics that marked this evolution:

-
- 8) The First Geneva Convention of 1864 was ratified by 57 State parties, listed online. Available from: <<https://ihl-databases.icrc.org/ihl/INTRO/120?OpenDocument>>
- 9) Under Art. 2 of the 1969 *Vienna Convention on the Law of Treaties*, "ratification [...] mean[s] in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty". United Nations, *Vienna Convention on the Law of Treaties*, Treaty Series, 23 May 1969, Part I, Article II, 1(b). Available from: <<https://treaties.un.org>>.

1. The constant enlargement of the categories of war victims protected by humanitarian law (military wounded, sick and shipwrecked, prisoners of war, civilians in occupied territories, the entire civilian population), as well as the expansion of the situations in which victims are protected (international and non-international armed conflicts).
2. The regular updating and modernization of the treaties to account for the realities of recent conflicts. For example, the rules protecting the wounded adopted in 1864 were revised in 1906, 1929, 1949, and 1977. Critics have therefore accused IHL of always being “one war behind reality”.¹⁰
3. Two separate legal currents have, up until 1977, contributed to this evolution:

- **Geneva Law**, mainly concerned with the protection of the victims of armed conflicts; that is, the non-combatants and those who no longer take part in the hostilities; and
- **The Hague Law**, whose provisions relate to limitations and prohibitions of specific means and methods of warfare.



Next to last page of the Geneva Convention of 22 August 1864. ICRC Photo V-P-HIST-00121-07.

Formation of International Humanitarian Law

1000	Formation of initial humanitarian customs
	Formation of regional humanitarian customs (all over the world)
	Conclusion of treaties containing humanitarian clauses (clauses on peace, armistice, and 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 in the Event of Armed Conflict
1977	Additional Protocols to the 1949 Geneva Conventions
1980	Convention on Certain Conventional Weapons
1993	Chemical Weapons Convention
1995	Protocol on Blinding Laser Weapons
1996	Revision of the 1980 Convention

10) Sassòli, Bouvier, and Quintin, “Historical Development of International Humanitarian Law”.

1997	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty)
1998	Adoption in Rome of the Statute of the International Criminal Court
1999	Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict
2000	Optional Protocol on the Involvement of Children in Armed Conflict
2003	Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention)
2005	Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (the "Red Crystal")
2008	Convention on Cluster Munitions
2013	Arms Trade Treaty (ATT)
2017	Treaty on the Prohibition of Nuclear Weapons (TPNW)

Note: Geneva Law treaties above appear in bold; the Hague Law instruments appear in regular font.

*The Conventions currently in force have replaced the older Geneva Conventions.

Figure 1-1

These two legal currents were practically merged with the adoption of the two Additional Protocols of 1977 to the four Geneva Conventions of 1949. The 1949 Geneva Conventions currently in force have essentially replaced the older Geneva Conventions.

Strictly speaking, the Hague Law originated in the Declaration of St. Petersburg, which was proclaimed by a conference convened by Alexander III, the Tsar of Russia, in 1868. The Declaration prohibited the use of explosive bullets and enunciated some basic principles relating to the conduct of hostilities (see Lesson 4).

In 1899 the so-called First Peace Conference was convened in the Netherlands by another tsar, Nicholas II, in The Hague. That Conference adopted several Conventions whose general goal was to limit the evils of war. Among other things, these Conventions prohibited:

- The launching of projectiles from balloons;
- The use of poisonous gases; and
- The use of dum dum bullets.

One of the main achievements of this Conference was the adoption of a principle named for its initiator, Friedrich Martens, the legal adviser of the Russian Tsar. The Martens Clause states:

“Until a more complete code of the law of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as the result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.”¹¹

11) The Martens Clause was developed and reaffirmed in subsequent treaties (e.g. in Art. 1, para. 2 of Additional Protocol I of 1977 and preamble para. 4 of Additional Protocol II of 1977). Available from: <<https://www.icrc.org>>; The Hague, “Hague Convention II — Laws and Customs of War on Land”, 18 October 1907. Available from: <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>>.

The Martens Clause, understood today as of general applicability, has acquired the status of a customary rule. The effect of the clause is to underline that in cases not covered by IHL treaties, persons affected by armed conflicts will never find themselves completely deprived of protection. Instead, the conduct of belligerents remains regulated at a minimum by the principles of the law of nations, the laws of humanity, and from the dictates of public conscience.¹²

Another important success of the 1899 First Peace Conference was the extension of the humanitarian rules from the Geneva Convention of 1864 to the victims of naval conflicts. This adaptation is at the origin of the present Second Geneva Convention of 1949.

In 1906, the Geneva Convention of 1864, which protected the wounded and the sick of armies in the field, was revised. Although the revision expanded the Convention to 33 articles from the original 10 in the 1864 version, the fundamental principles remained the same.

In 1907, a second Peace Conference was convened in The Hague. On this occasion, the Conventions of 1899 were revised, and some new rules were introduced. Among the additions were a definition of combatants, rules on naval warfare, rules on the rights and duties of neutral powers, rules on military occupation, and rules regarding prisoners of war (POWs).

In 1925, as a direct result of the suffering endured during the First World War (1914–1918), a Protocol prohibiting the use of gas was adopted. Although it was adopted in Geneva, this Protocol clearly belongs, according to its content, to the legal current of the Hague Law.

In 1929, a Diplomatic Conference was convened in Geneva by the Swiss Confederation. The main results of that Conference were:

- The second revision (after 1906) of the 1864 Convention. This Convention was again modified. Among the new provisions, mention should be made of the first official recognition of the emblem of the red crescent. Although that emblem had been used as early as 1876, it was only in 1929 that it was authorized by law.
- The other remarkable success of the 1929 Conference was the adoption of the Convention relative to the Treatment of Prisoners of War (also a result of the First World War). Partially examined during the Peace Conferences of 1899 and 1907, this important issue was not deeply studied before 1929.

In 1949, just after the Second World War (note the parallel to the First World War and the Conference of 1929), the four current Geneva Conventions were adopted. The First (protection of sick and wounded), Second (protection of the shipwrecked), and Third Conventions (prisoners of war), are mainly revised versions of former Conventions. The Fourth Convention, establishing protection for the



*Fyodor Fyodorovich Martens (in Russian),
Frédéric Frommhold (de) Martens (in French).
ICRC Photo V-P-PER-E-00199 by E. Bieber.*

¹² Sassòli, Bouvier, and Quintin, "Sources of Contemporary International Humanitarian Law", in HDLPIW Vol. 1, 10.

civilian population, is an entirely new amendment and constitutes the greatest success of the 1949 Conference. Another decisive improvement of the 1949 Diplomatic Conference was the adoption of Article 3, common to the four Conventions, the first international provision applicable in situations of non-international armed conflicts. Up until the adoption of common Article 3, non-international armed conflicts (or “civil wars” as they were qualified in those times) were considered as purely internal affairs, in which no international rules were applicable.

In 1954, recognizing that military operations have often resulted in the destruction of irreplaceable cultural property — a loss not only to the country of origin but also to the cultural heritage of all people — the international community adopted the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. A Protocol dealing with cultural property during times of occupation was adopted at the same time as the 1954 Convention. Although the 1954 Convention strengthens protection for cultural property, its provisions have not always been adequately implemented. To address this problem, a second Protocol to the 1954 Convention was adopted on 26 March 1999. It provides for a new regime of protection, “enhanced protection”, for the cultural properties of the greatest importance to humanity.

In 1977, after four sessions of Diplomatic Conferences, two Additional Protocols to the Geneva Conventions of 1949 were adopted. The First Protocol is related to the protection of victims of international armed conflicts — the second to the protection of victims of non-international armed conflicts. To some degree, this Second Protocol can be regarded as an enlargement of Article 3 common to the four Geneva Conventions.

In 1980, another important convention was adopted under United Nations auspices — the Convention on Prohibitions or Restrictions on the use of Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects. This instrument limits or prohibits the use of mines, booby traps, incendiary weapons, and non-detectable fragments.



Geneva. Diplomatic Conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts. June 1977. ICRC Photo V-P-CER-N-00017-13 by Jean-Jacques Kurz.

In 1993, a comprehensive Convention prohibiting the development, production, stockpiling, and use of chemical weapons was adopted. This treaty supplements the basic prohibition contained in the 1925 Geneva Protocol.

In 1995, a new Protocol, an appendage to the 1980 Convention, was adopted. This new instrument prohibited the use of laser weapons designed to cause permanent blindness.

In 1997, a Convention prohibiting the use, stockpiling, production, and transfer of anti-personnel mines was signed in Ottawa.

In 1998, the Statute of the International Criminal Court (ICC) was formulated in Rome. This accomplishment was the culmination of years of effort and showed the resolve of the international community to ensure that those who commit grave crimes do not go unpunished. The ICC has jurisdiction over serious international crimes (genocide, crimes against humanity, war crimes, and aggression), regardless of where they are committed. Legally speaking, the Rome Statute is not an IHL treaty; it is, rather, a treaty of international criminal law. It should, however, be mentioned in this list because the Court has jurisdiction on war crimes, the most serious violations of IHL.

In 1999, a new Protocol to the 1954 Convention on cultural property was adopted. The Second Protocol (1999) enables the States party to that Convention to supplement and reinforce the protection system established in 1954. It clarifies the concepts of safeguarding and respect for cultural property; it lays down new precautions in attacks and against the effects of attacks; and institutes a system of enhanced protection for property of the greatest importance for humanity.

In 2000, an Optional Protocol to the 1989 Convention on the Rights of the Child was adopted. This Protocol raises the minimum age for compulsory recruitment from 15 to 18 and calls on States to raise the minimum age for voluntary recruitment above 15. It provides that armed groups should not use children under 18 years of age in any circumstances and calls on States to criminalize such practices.

In 2003, the international community adopted a treaty to help reduce the human suffering caused by explosive remnants of war and bring rapid assistance to affected communities. Explosive remnants of war are unexploded weapons such as artillery shells, mortars, grenades, bombs, and rockets left behind after an armed conflict.

In 2005, a Diplomatic Conference held in Geneva adopted a Third Additional Protocol to the Geneva Conventions, creating an additional emblem alongside the red cross and red crescent. Devoid of any religious, political, or cultural connotation, the additional emblem, known as the red crystal, should provide a comprehensive and lasting solution to the emblem question. It will appear as a red frame in the shape of a square placed on a diagonal on a white background.

In 2008, governments negotiated and adopted the Convention on Cluster Munitions. This important international humanitarian law treaty prohibits the use, production, stockpiling, and transfer of cluster munitions and requires States to take specific action to ensure that these weapons claim no future victims.¹³

In 2013, the Arms Trade Treaty (ATT) was adopted. It regulates international transfers of conventional arms, as well as their ammunition, parts, and components, with a view to reducing human suffering. The ATT makes arms transfer decisions subject to humanitarian concerns by forbidding transfers when

13) Sassòli, Bouvier, and Quintin, "Sources of Contemporary International Humanitarian Law", in HDLPIW Vol 1, 2.

there is a defined level of risk that war crimes or serious violations of international human rights law will be committed. The ATT was adopted on 2 April 2013 and opened for signatories on 3 June 2013. The Treaty came into force on 24 December 2014.

In 2017, a UN Diplomatic Conference resulted in the adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW). It is the first globally applicable multilateral agreement to comprehensively prohibit nuclear weapons. It is also the first to include provisions to help address the humanitarian consequences of nuclear weapon use and testing. The Treaty complements existing international agreements on nuclear weapons, in particular the Treaty on the Non-Proliferation of Nuclear Weapons, the Comprehensive Nuclear-Test-Ban Treaty and agreements establishing nuclear-weapon-free zones.

The TPNW was adopted by a United Nations Diplomatic Conference on 7 July 2017 and opened for signature on 20 September 2017. *The treaty is not yet in force.* It will enter into force once 50 States have notified the UN Secretary-General that they agree to be bound by it.¹⁴

It is worth noting that the international community supported the treaties of IHL. Although some instruments have been universally ratified (for example, the 1949 Geneva Conventions), other treaties still enjoy a much more limited degree of participation.¹⁵

Section 1.4 The Standing of IHL within Public International Law

The rules and principles of IHL are actually legal rules — not just moral or philosophical precepts or social custom. The result of the legal/normative nature of these rules is, of course, the existence of a detailed regime of rights and obligations imposed upon the different parties to an armed conflict. For those States that have accepted them, the treaties of IHL are of a *binding* character. This means, among other things (*inter alia*), that the most serious violations thereof trigger individual criminal responsibility (see Lesson 5).

International humanitarian law must be understood and analysed as a distinct part of a more comprehensive framework: The rules and principles regulating the coordination and cooperation between the members of the international community — that is, public international law.

Table 1-1 illustrates this fact: IHL should thus be considered as an integral (but distinct) part of public international law.

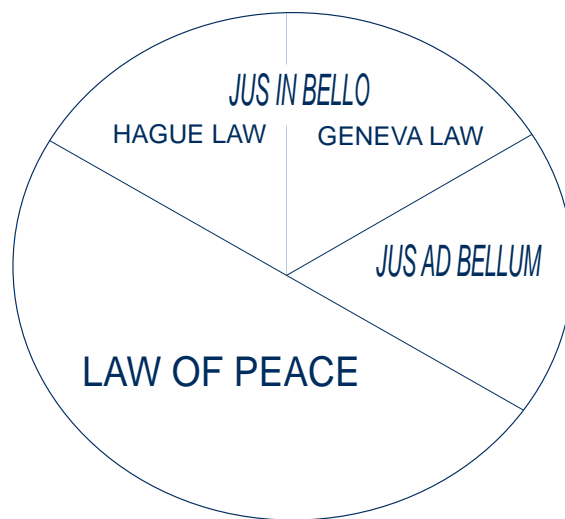


Figure 1-2: Relationship between public international law and international humanitarian law

14) On 24 October 2020, Honduras became the 50th State to ratify the treaty, allowing the treaty to enter into force in January 2021. "The Treaty on the Prohibition of Nuclear Weapons", ICRC, 04 December 2019. Available from: <https://www.icrc.org/en/download/file/109625/2017_treaty_on_the_prohibition_of_nuclear_weapons.pdf>.

15) See an updated table showing the States party to the main treaties at "Treaties, States Parties and Commentaries", ICRC, accessed 6 March 2020. Available from: <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>>.

REFUGEE LAW	HUMAN RIGHTS LAW
INTERNATIONAL HUMANITARIAN LAW	
LAWS GOVERNING DIPLOMATIC RELATIONS	LAWS GOVERNING ECONOMIC RELATIONS
LAWS GOVERNING THE PEACEFUL SETTLEMENTS OF CONFLICT	LAWS GOVERNING INTERNATIONAL ORGANIZATIONS

Table 1-1

Figure 1-2 shows more precisely how IHL fits into the general framework of public international law and how it differs from another distinct part of this whole, the principles of *jus ad bellum*.

The distinction between *jus ad bellum* and *jus in bello*

Jus ad bellum (which regulates the *resort* to armed force) refers to the principle of fighting a war based on precise causes, such as self-defence. On the other hand, *jus in bello* (the rules applicable in armed conflicts, aka IHL) refers to the principle of fighting a war justly and encompasses standards of proportionality and distinctions between civilians and combatants.

International humanitarian law (IHL) initially developed at a time when the use of force was a lawful form of international relations, when States were not prohibited from waging war, and when they had the right to make war (*jus ad bellum*). Consequently, it was not a problem logically for international law to contain certain rules of behaviour for States to observe in war (the *jus in bello*, or law regulating the conduct of war), if they resorted to that means.

Today, however, the use of force between States is prohibited by a rule of international law (the *jus ad bellum* has changed into a *jus contra bellum*).¹⁶ Exceptions to this general prohibition are allowed in cases of individual and collective self-defence,¹⁷ United Nations Security Council enforcement measures,¹⁸ and arguably to enforce peoples' right to self-determination (national liberation wars).¹⁹ Logically, at least one side of a contemporary international armed conflict is therefore violating the rules of *jus ad bellum*, just by using force, however respectful it may be of IHL. All municipal laws of the world equally prohibit the use of force against (governmental) law enforcement agencies.

Despite the prohibition against armed conflicts, they continue to occur. Today States recognize that international law has to address this reality of international life, not only by combating the phenomenon but also by regulating it to ensure a level of humanity in this fundamentally inhumane and illegal situation. For practical and humanitarian reasons, IHL must apply impartially to both belligerents: The one resorting lawfully to force and the one resorting unlawfully to force. Otherwise, it would be impossible to practically maintain respect for IHL as, at least between the belligerents, it is always

16) Expressed in United Nations, Charter of the United Nations, 26 June 1945, Chapter I, Art. 2(4): "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Available from: <<http://www.un.org>>.

17) Recognized in United Nations, Charter of the United Nations, 26 June 1945, Chapter VII, Art. 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

18) Established in Chapter VII of the Charter of the United Nations.

19) The legitimacy of the use of force to enforce the right of peoples to self-determination (recognized in Art. 1 of both United Nations Human Rights Covenants) was recognized for the first time in UN General Assembly resolution 2105 (XX), adopted on 20 December 1965. Available from: <<https://undocs.org>>.

controversial which party resorted to force in conformity with the *jus ad bellum* and which violated the *jus contra bellum*. In addition, from a humanitarian standpoint, the victims on both sides of the conflict need the same protection, and they are not necessarily responsible for the violation of the *jus ad bellum* committed by “their” party.

Therefore, IHL must be honoured independently of any argument for *jus ad bellum* and has to be completely distinguished from *jus ad bellum*. Any past, present, and future theory of a “just” war only concerns *jus ad bellum*. It cannot justify (but is frequently used to imply) that those fighting a “just” war have more rights or fewer obligations under IHL than those fighting an unjust war.

The preamble of the Additional Protocol I of 1977 clearly reaffirms this complete separation between *jus ad bellum* and *jus in bello* and reads:

“The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimising or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations, [emphasis added]

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict.”²⁰

This complete separation between *jus ad bellum* and *jus in bello* implies that IHL applies whenever there is *de facto* (in fact) an armed conflict, even when that conflict qualifies as illegal under *jus ad*

20) “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts”, 8 June 1977, Preamble. Available from: <<https://ihl-databases.icrc.org/ihl/INTRO/470>>.

The towers and gables of the Peace Palace, home of the International Court of Justice (ICJ) in The Hague. 19 January 1984. UN Photo #110327 by UN Photo.



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 (for example, render legitimate self-defence unlawful).

Section 1.5 The Sources of International Humanitarian Law

Since international humanitarian law is an integral part of public international law, its sources correspond, logically enough, to those of the latter. Article 38 of the Statute of the International Court of Justice defines these sources.

According to Article 38(1)(a–d) of the Statute of the International Court of Justice, which is regarded as an authoritative statement on 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.²¹

Treaties and custom are the main sources of international law. 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. While treaties are only binding upon parties to a treaty, States can also be bound by rules of **customary international law**.

“Such rules are established by way of repetitive and uniform practice of States involved in armed conflicts or of third States concerning armed conflicts, in the belief that the behaviour that is practiced is obligatory.

Two elements are considered in determining the existence of customary law: practice and *opinio iuris*. Practice refers to State conduct that is consistent (but not necessarily absolutely

21) United Nations, *Statute of the International Court of Justice*, 18 April 1946. Available from: <<https://www.icj-cij.org/en/statute>>.

uniform) over time. *Opinio iuris* is a subjective element, i.e., the belief that that specific pattern of action is required by law.

In the field of IHL, examples of practice include expressions in official statements, military manuals and can also be found in allegations of violations by one state against another state, or in defences against violations."²²

Customary international humanitarian law is of crucial importance in today's armed conflicts because it fills gaps left by treaty law in both international and non-international conflicts and so strengthens the protection offered to victims.

There is wide consensus among scholars that the rules contained in the four Geneva Conventions of 1949 for the protection of victims of war and in the Hague Convention (IV) of 1907 on the laws of war on land (with the exception of administrative, technical, and logistical regulations) reflect customary international law.²³ There is also agreement that many provisions of Additional Protocol I and, to a lesser degree, that the rules contained in Additional Protocol II, reflect custom. When treaty rules reflect custom, they become binding for all States.

The exact content of customary law is sometimes difficult to determine and possibly controversial. In 1995, the States parties to the Geneva Conventions invited the International Committee of the Red Cross (ICRC) to study the content of customary international humanitarian law. The ICRC worked with a broad range of renowned experts to look at current State practice in IHL. The aim was to identify customary law in this area and thereby clarify the legal protection it offered victims of war. The study, completed in 2005, identified 161 rules of customary IHL that constitute the common core of humanitarian law binding on all parties to all armed conflicts. These rules enhance the legal protection of victims of war throughout the world.²⁴

General principles of law also bind States. In regard to IHL, one may think of the fundamental principles of IHL, such as the principles of distinction, of humanity, of military necessity, or the principle of proportionality.²⁵

However, as shown in Figure 1-3, some sources specific to IHL must also be taken into consideration.

Section 1.6 The Material Field of Application of IHL: When Does IHL Apply?

International humanitarian law applies in two very different types of situations: International armed conflicts and non-international armed conflicts. Before defining these two situations of application, a few words should be said about the notion of "armed conflict", which from 1949 onward has replaced the traditional notion of "war".

22) "Customary international humanitarian law", ICRC, 29 October 2010. Available from: <<https://casebook.icrc.org/>>.

23) For the full text for the IV Hague Convention of 1907, please go to: The Hague, "Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land", 18 October 1907. Available from: <<https://ihl-databases.icrc.org/ihl/>>.

24) For more on the 161 rules of customary international humanitarian law and their commentary, please visit: "Customary IHL", ICRC, 29 October 2010. Available from: <<https://ihl-databases.icrc.org/>>.

25) See: Lesson 4.

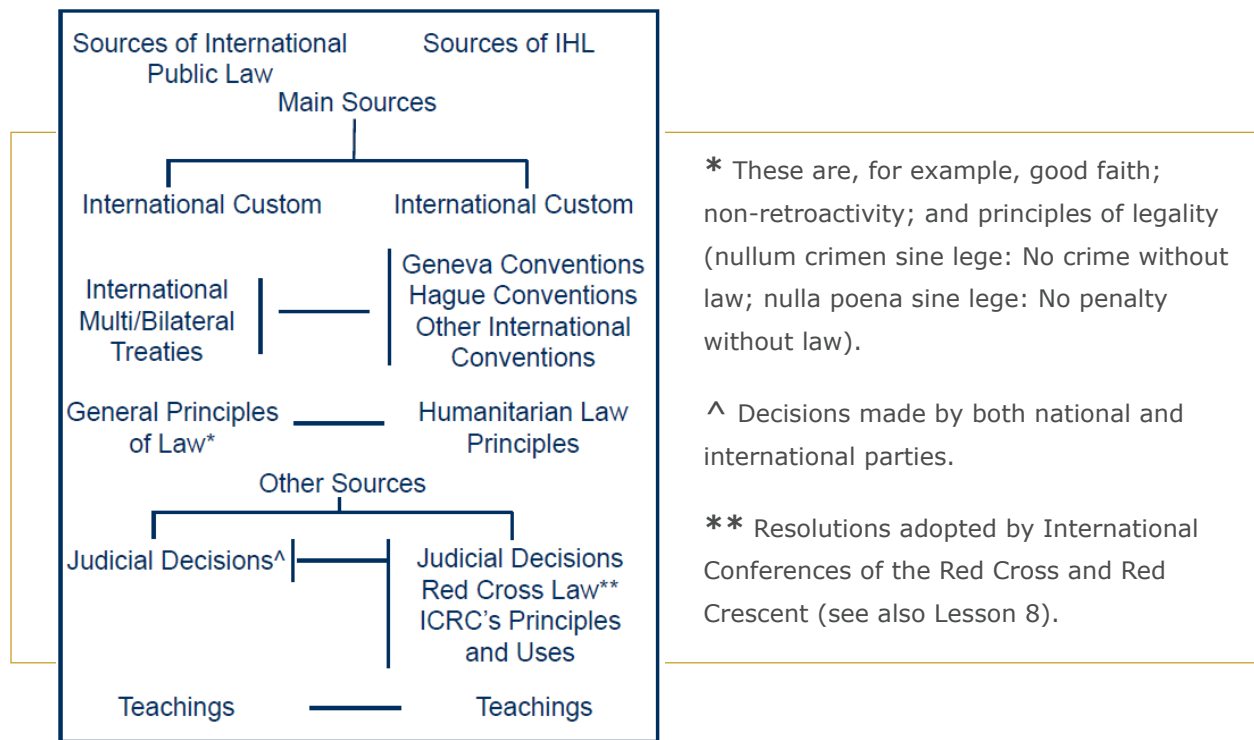


Figure 1-3: Sources of IHL

According to the Commentary on the First Geneva Conventions of 1949:

“The substitution of this much more general expression (‘armed conflict’) for the word ‘war’ was deliberate. One may argue almost endlessly about the legal definition of ‘war’. A State can always pretend when it commits a hostile act against another State, that it is not making war, but merely engaging in a police action, or acting in legitimate self-defence. The expression ‘armed conflict’ makes such arguments less easy. Any difference arising between two States and leading to the intervention of armed forces is an armed conflict ... even if one of the Parties denies the existence of a state of war.”²⁶

Although the treaties of IHL systematically refer to different types of “armed conflicts”, they do not provide for a general definition of that concept. The International Criminal Tribunal for the former Yugoslavia (ICTY) developed the first comprehensive definition. According to this definition, “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”²⁷

26) Jean S. Pictet, *Commentary of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Geneva: ICRC, 1952): 32. Available from: <<https://ihl-databases.icrc.org/ihl/COM/365-570005?OpenDocument>>.

27) Sassòli, Bouvier, and Quintin, “ICTY, The Prosecutor v. Tadić, Jurisdiction”, in HDLPIW Vol. 3, 7. See: ICTY, *ICTY Prosecutor v. Dusko Tadić*, IT-94-1-AR72 (1995).

This definition is now widely accepted and has since been used in a number of military manuals and in numerous court cases (which demonstrate how judicial decisions can become sources of IHL).

International armed conflict

IHL relating to international armed conflict applies “to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”²⁸ The same set of provisions also applies “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said **occupation** meets with no resistance”.²⁹

“In international humanitarian law, a territory is considered occupied when it is actually placed under the authority of the adverse foreign armed forces. The occupation extends only to the territory where such authority has been established and can be exercised. A State’s territory may therefore be partially occupied, in which case the laws and obligations of occupation apply only in the territory that is actually occupied. When a State consents to the presence of foreign troops, there is no occupation.

Detailed rules [contained in particular in the Fourth Hague Convention of 1907 and in the Fourth Geneva Convention of 1949] set out the rights and duties of the occupying forces which are, generally speaking, bound to take the necessary steps to restore law and order and public life and maintain them as well as possible while respecting the laws in force, unless absolutely prevented from doing so.”³⁰

Traditional doctrine thus limits the notion of international armed conflict to armed contests between States. During the Diplomatic Conference that led to the adoption of the two Additional Protocols of 1977, this conception was challenged, and it was finally recognized that “wars of national liberation” should also be considered international armed conflicts.³¹

Non-international armed conflict

Traditionally, non-international armed conflicts (or, to use an outdated term, “civil wars”) were considered purely internal matters for States, for which no international law provisions applied. The adoption of Article 3 common to the four Geneva Conventions of 1949 radically modified this view.

28) I Geneva Convention, “Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949”, 12 August 1949, Chapter I, Article 2. Available from: <<https://ihl-databases.icrc.org/ihl>>.

29) I Geneva Convention, “Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949”, 12 August 1949, Chapter I, Article 2. Available from: <<https://ihl-databases.icrc.org/ihl>>.

30) “Occupation”, ICRC, 1 May 2020. Available from: <<https://casebook.icrc.org>>.

31) Situations are defined in Art. 1(4) of Additional Protocol I as “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination”. “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts”, 8 June 1977, Part I, Article 1(4). Available from: <<https://ihl-databases.icrc.org/>>.

For the first time, the community of States agreed on a set of minimal guarantees to respect during non-international armed conflicts. In spite of its extreme importance, Article 3 does not offer a clear definition of the notion of non-international armed conflict.³²

During the Diplomatic Conference of 1974–1977, the need for a comprehensive definition of the notion of non-international armed conflict was reaffirmed and dealt with accordingly in Article 2 of Additional Protocol II.

According to that provision, it was agreed that Protocol II “shall apply to all armed conflicts not covered by Article 1 of Protocol I and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”³³

This fairly restrictive definition applies only to the situations covered by Additional Protocol II. The definition does not apply to all types of situations covered by Article 3 common to the four Geneva Conventions.³⁴ Practically, there are thus situations of non-international armed conflicts in which only Article 3 will apply, the level of organization of the dissident groups being insufficient for Protocol II to apply. Conversely, common Article 3 will apply to all situations covered by Additional Protocol II.

Other situations

IHL is not applicable in situations of internal violence and tensions. Article 1(2) of Additional Protocol II clearly makes this point, stating that “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.”³⁵

Section 1.7 A Delicate but Crucial Issue: The Classification of Situations

Why is the classification (also known as qualification) of situations important?

It is important because IHL applies only in very specific situations: armed conflicts, either international or non-international. In all other types of situations, different sets of rules will apply: Domestic law (including criminal law) and international human rights law (see Lesson 6).

32) Art. 3 common to the four Geneva Conventions of 1949 merely states that it is applicable “in the case of armed conflict not of an international character occurring on the territory of one of the High Contracting Parties”. I Geneva Convention, “Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949”, 12 August 1949, Chapter I, Article 3; II Geneva Convention, “Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949”, 12 August 1949, Chapter I, Article 3; III Geneva Convention, “Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949”, 12 August 1949, Chapter I, Article 3; IV Geneva Convention, “Relative to the Protection on Civilian Persons in Time of War of 12 August 1949”, 12 August 1949, Part I, Article 3. Available from: <<https://ihl-databases.icrc.org/ihl>>.

33) “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts”, 8 June 1977, Part I, Article I. Available from: <<https://ihl-databases.icrc.org/ihl>>.

34) “Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts”, 8 June 1977, Part I, Article I: “This Protocol, which develops and supplements Article 3 common to the four Geneva Conventions of 12 August 1949 without modifying its existing conditions of application [...]” Available from: <<https://ihl-databases.icrc.org/ihl>>.

35) The notion of internal disturbances and tensions had not been made the object of precise definitions during the 1974–1977 Diplomatic Conference. See: Lesson 3.

Who has the primary responsibility to classify situations?

State parties to the treaties have a primary responsibility in this field. By committing to “respect and ensure respect” of IHL (Article 1, common to the four 1949 Geneva Conventions and to the Additional Protocol I of 1977), the States have accepted the obligation to implement *bona fide* the objective elements of the definition of armed conflicts.

How are situations classified in practice?

In some cases, situations will be qualified by the parties to the conflict. This classification may be either *explicit*: The State (either by the executive branch, the judiciary, or parliament) will recognize the existence of an armed conflict, international or non-international; or *implicit*, for example, by granting to or demanding for the status of prisoner of war to captured combatants.

In many cases, States or non-State actors involved in a situation of violence will be reluctant, mostly for political reasons, to recognize the existence of an armed conflict. They will deny the existence of an armed conflict and claim that they are rather conducting law enforcement or police operations against bandits or terrorists.

In a growing number of cases the classification of situations will be given by third parties: Through resolutions adopted by the United Nations Security Council or General Assembly, by regional organizations, or by States not directly involved.

Section 1.8 The Basic Rules of International Humanitarian Law³⁶

The International Committee of the Red Cross drafted for its own understanding and use these seven basic informal rules intended to aid the ICRC itself in facilitating and promoting international humanitarian law:

- “1. Persons *hors de combat* (‘out of combat’) and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.
2. It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat*.
3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports, and equipment. The emblem of the red cross, the red crescent, or red crystal is the sign of such protection and must be respected.

36) These rules, drawn up by the ICRC, summarize the essence of international humanitarian law. They do not have the authority of a legal instrument and in no way seek to replace the treaties in force. They were drafted with a view to facilitating the promotion of IHL. “Basic rules of international humanitarian law in armed conflicts”, ICRC, 31 December 1988. Available from: <<https://www.icrc.org>>.

4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights, and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment, or cruel or degrading treatment.

6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare the civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives."³⁷



Serbian-Bulgarian War, 1885. The painting shows the practical application of the Geneva Convention. May 1996. ICRC Photo V-P-HIST-03584-34 by Thomas Pizer.

37) "Basic rules of international humanitarian law in armed conflicts", ICRC. Available from: <<https://www.icrc.org/en/doc/resources/documents/misc/basic-rules-ihl-311288.htm>>.

Annex 1: **Convention for the Amelioration of the Condition of the Wounded in Armies in the Field**

Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864

Article 1. Ambulances and military hospitals shall be recognized as neutral, and as such, protected and respected by the belligerents as long as they accommodate wounded and sick.

Neutrality shall end if the said ambulances or hospitals should be held by a military force.

Art. 2. Hospital and ambulance personnel, including the quarter-master's staff, the medical, administrative and transport services, and the chaplains, shall have the benefit of the same neutrality when on duty, and while there remain any wounded to be brought in or assisted.

Art. 3. The persons designated in the preceding Article may, even after enemy occupation, continue to discharge their functions in the hospital or ambulance with which they serve, or may withdraw to rejoin the units to which they belong.

When in these circumstances they cease from their functions, such persons shall be delivered to the enemy outposts by the occupying forces.

Art. 4. The material of military hospitals being subject to the laws of war, the persons attached to such hospitals may take with them, on withdrawing, only the articles which are their own personal property.

Ambulances, on the contrary, under similar circumstances, shall retain their equipment.

Art. 5. Inhabitants of the country who bring help to the wounded shall be respected and shall remain free. Generals of the belligerent Powers shall make it their duty to notify the inhabitants of the appeal made to their humanity, and of the neutrality which humane conduct will confer.

The presence of any wounded combatant receiving shelter and care in a house shall ensure its protection. An inhabitant who has given shelter to the wounded shall be exempted from billeting and from a portion of such war contributions as may be levied.

Art. 6. Wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for.

Commanders-in-Chief may hand over immediately to the enemy outposts enemy combatants wounded during an engagement, when circumstances allow and subject to the agreement of both parties.

Those who, after their recovery, are recognized as being unfit for further service, shall be repatriated.

The others may likewise be sent back, on condition that they shall not again, for the duration of hostilities, take up arms.

Evacuation parties, and the personnel conducting them, shall be considered as being absolutely neutral.

Art. 7. A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuation parties. It should in all circumstances be accompanied by the national flag.

An armlet may also be worn by personnel enjoying neutrality but its issue shall be left to the military authorities.

Both flag and armlet shall bear a red cross on a white ground.

Art. 8. The implementing of the present Convention shall be arranged by the Commanders-in-Chief of the belligerent armies following the instructions of their respective Governments and in accordance with the general principles set forth in this Convention.

Art. 9. The High Contracting Parties have agreed to communicate the present Convention with an invitation to accede thereto to Governments unable to appoint Plenipotentiaries to the International Conference at Geneva. The Protocol has accordingly been left open.

Art. 10. The present Convention shall be ratified and the ratifications exchanged at Berne, within the next four months, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed the Convention and thereto affixed their seals.

Done at Geneva, this twenty-second day of August, in the year one thousand eight hundred and sixty-four.

(Here follow signatures)

End-of-Lesson Quiz »

1. **The conception of IHL can be traced to Dunant's account of which war?**
 - A. The War of 1812
 - B. World War II
 - C. The Battle of Solferino
 - D. Wars in the Indian subcontinent

2. **True or False: In 1977, after four sessions of Diplomatic Conferences, two Additional Protocols to the Geneva Conventions of 1949 were adopted.**
 - A. True
 - B. False

3. **According to the Basic Rules of International Humanitarian Law:**
 - A. Captured combatants are not entitled to any protections.
 - B. Parties to a conflict have an unlimited choice of methods and means of warfare.
 - C. It is forbidden to kill or injure an enemy who surrenders.
 - D. Parties to a conflict are not required to distinguish between the civilian population.

4. **The Hague Law:**
 - A. Relates to limitations and prohibitions of specific means and methods of warfare.
 - B. Is concerned with non-combatants.
 - C. Was not relevant to the Conventions of 1899.
 - D. Provides protection for prisoners of war.

5. **As a direct result of the suffering endured during the First World War (1914–1918), a Protocol prohibiting the use of _____ was adopted.**
 - A. cluster munitions
 - B. gas
 - C. dum dum bullets
 - D. projectiles from balloons

6. **The Hague Convention (IV) of 1907 deals with:**
 - A. The rights of the elderly.
 - B. The laws of war on land.
 - C. The rights of a child.
 - D. The protection of the victims of non-armed conflicts.

7. **The First Geneva Convention was adopted in _____.**
 - A. 1906
 - B. 1949
 - C. 1866
 - D. 1864

8. **Dunant, Moynier, Guillaume-Henri Dufour, Louis Appia, and Théodore Maunoir created a special committee that would later become:**
 - A. The First Peace Conference.
 - B. The International Committee of the Red Cross (ICRC).
 - C. Four sessions of Diplomatic Conferences.
 - D. The Statute of the International Criminal Court (ICC).

9. **Article 3 common to the four Geneva Conventions of 1949:**
 - A. Radically modified the view that no international law provisions applied to non-international armed conflicts.
 - B. Provided a clear definition of non-international armed conflict.
 - C. Did not address civil wars.
 - D. Was never adopted by States.

Answer Key provided on the next page.

End-of-Lesson Quiz »

10. Protocol II of 1977 applies to _____.

- A. wars of national liberation
- B. non-international armed conflicts
- C. internal tensions
- D. riots in occupied territories

Answer Key »

- 1. C
- 2. True
- 3. C
- 4. A
- 5. B
- 6. B
- 7. D
- 8. B
- 9. A
- 10. B

Appendix A: List of Acronyms

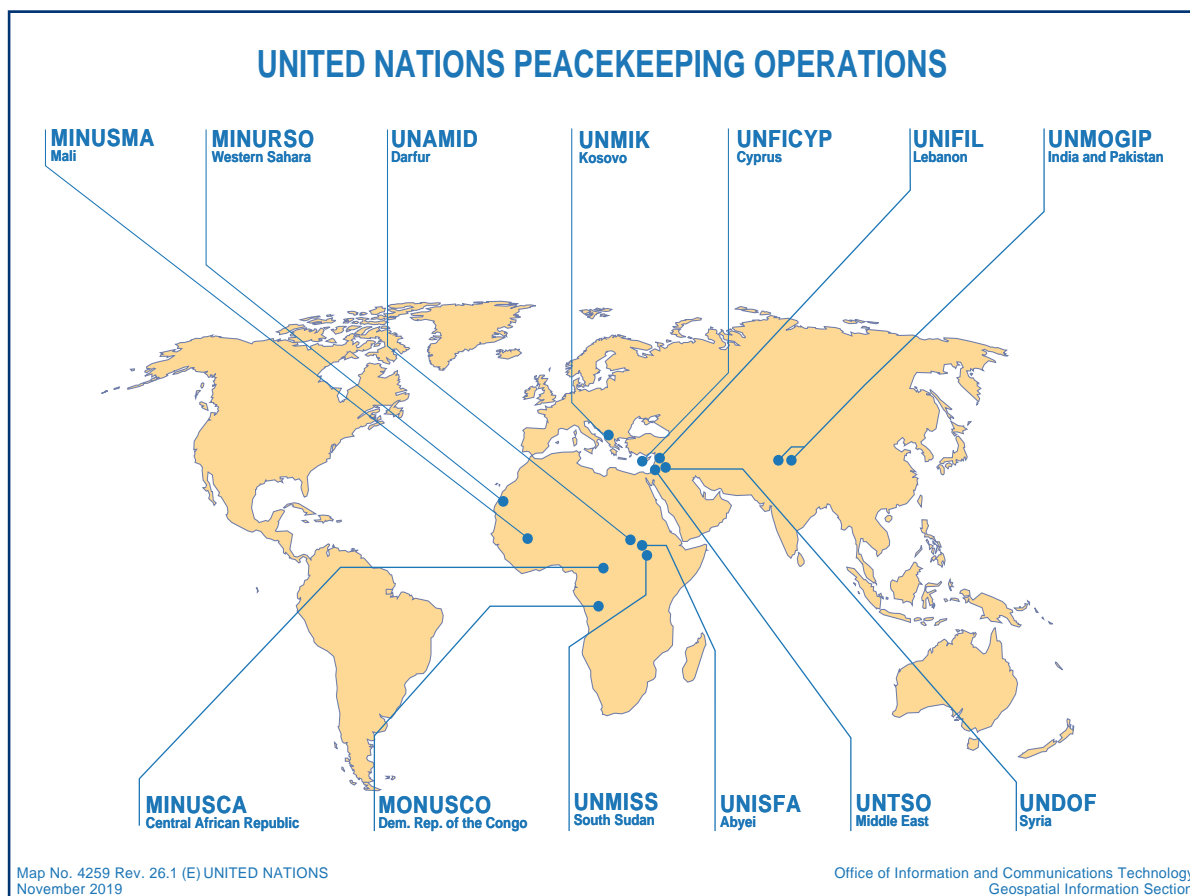
ACHR	American Convention on Human Rights; or the Pact of San José
Art.	Article
ATT	Arms Trade Treaty
BCE	Before the Common Era (previously BC, or Before Christ)
CBRN	chemical, biological, radiological, or nuclear (hazards)
CCM	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
CCW	Convention on Certain Conventional Weapons
CE	Common Era (previously AD, or <i>Anno Domini</i>)
CPTM	Core Pre-deployment Training Materials
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction
DPO	Department of Peace Operations (formerly DPKO: Department of Peacekeeping Operations)
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms; or European Convention on Human Rights (drafted 1950, into effect 1953)
ERW	explosive remnants of war
HDLPIW	<i>How Does Law Protect in War?</i>
HR	human rights
HRL	human rights law
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Tribunal for Rwanda
ICTY	International Tribunal for the former Yugoslavia
IHL	international humanitarian law
LOAC	laws of armed conflict(s)
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
N.B.	<i>nota bene</i> (but prefer “Note:”)
NGO(s)	non-governmental organization(s)
NIAC	non-international armed conflict

OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
POW(s)	prisoner of war(s)
POWs	prisoners of war
SOFA	status of forces agreement
TPNW	Treaty on the Prohibition of Nuclear Weapons
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNEF	United Nations Emergency Force (deployed in 1956)
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund (better known as UNICEF; rarely spelled out)
UNITAF	Unified Task Force
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNPROFOR	United Nations Protection Force
UNTSO	United Nations Truce Supervision Organization
WHO	World Health Organization

Latin and Foreign Terms

<i>hors de combat</i>	out of combat
<i>inter alia</i>	among other things
<i>jus ad bellum</i>	legitimate reasons a State may engage in war
<i>jus contra bellum</i>	prohibition of use of force
<i>jus in bello</i>	law in war (rules applicable in armed conflict)
<i>lex specialis</i>	determines which rule prevails over another in a particular situation
<i>nota bene</i>	note well
<i>nulla poena sine lege</i>	no penalty without law
<i>nullum crimen sine lege</i>	no crime without law
<i>opinio iuris/opinio juris</i>	opinion of law or necessity
<i>pacta sunt servanda</i>	treaties must be respected by their parties
<i>stricto sensu</i>	in a narrow sense

Appendix B: Current Peacekeeping Missions



UN Peacekeeping Map from the UN Cartographic Section, November 2019: <https://www.un.org/Depts/Cartographic/map/dpko/P_K_O.pdf>.

- » **Looking for statistics or other data about peacekeeping around the world today? Visit the UN Peacekeeping resource page for the most up-to-date information about current peacekeeping operations and other UN missions:**
<<https://peacekeeping.un.org/en/resources>>.

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United Nations

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United Nations human rights documents database: <<https://www.un.org/en/databases>>.

E-learning courses

ICRC The Basic Rules of IHL: <<https://www.icrc.org/en/online-training-centre>>.

About the Author: Mr. Antoine A. Bouvier

Mr. Antoine A. Bouvier is a former legal adviser of the International Committee of the Red Cross.

A Swiss national, Mr. Bouvier studied law and international relations at the University of Geneva and the Graduate Institute of International and Development Studies (now called the Graduate Institute, or IHEID). He joined the International Committee of the Red Cross (ICRC) Legal Division as a legal adviser in 1984. From 1993 to 1994 he served as head of the ICRC Mission in Malawi. After two years as deputy head of the ICRC Division for Policy and Cooperation within the Movement, he was appointed as a delegate to Academic Circles. In this capacity, he has conducted a large number of training sessions in all parts of the world. In 2009, Mr. Bouvier joined the ICRC Advisory Service on International Humanitarian Law. He is the author of several articles on international humanitarian law and its dissemination and the co-author of *How Does Law Protect in War?*, a collection of cases, documents, and teaching materials on contemporary practice in international humanitarian law, from which several parts of this course have been adapted.

He retired from the ICRC in 2016 and works as a consultant.

All photographs that appear in the course manual were selected by the Peace Operations Training Institute.

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The End-of-Course Examination is a multiple-choice exam that is accessed from the Online Classroom. Most exams have 50 questions. Each question gives the student four choices (A, B, C, and D), and only one is the correct answer. The exam covers material from all lessons of the course and may also include information found in the annexes and appendices. Video content will not be tested.

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