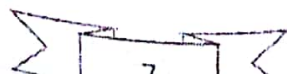


1864	Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field
1868	St. Petersburg Declaration (prohibiting the use of certain projectiles in wartime)
1899	The Hague Conventions respecting the Laws and Customs of War on Land, and the adaptation to maritime warfare of the principles of the 1864 Geneva Convention
1906	Review and development of the 1864 Geneva Convention
1907	Review of The Hague Conventions of 1899 and adoption of new Conventions
1925	Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
1929	Two Geneva Conventions: <ul style="list-style-type: none"> <li>• Review and development of the 1906 Geneva Convention</li> <li>• Geneva Convention relative to the Treatment of Prisoners of War</li> </ul>
1949	Four Geneva Conventions: <ol style="list-style-type: none"> <li>I. Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field</li> <li>II. Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea</li> <li>III. Treatment of Prisoners of War</li> <li>IV. Protection of Civilian Persons in Time of War</li> </ol>
1954	The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
1972	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction



1976

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

1977

Two Protocols additional to the four 1949 Geneva Conventions, strengthening protection for victims of international (Additional Protocol I) and non-international (Additional Protocol II) armed conflicts

1980

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW). The CCW includes:

- Protocol (I) on Non-Detectable Fragments
- Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices
- Protocol (III) on Prohibitions or Restrictions on the Use of Incendiary Weapons

1989

Convention on the Rights of the Child (Article 38)

1993

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

1995

Protocol (IV) on Blinding Laser Weapons (added to the CCW of 1980)

1996

Revised Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II [revised] to the CCW of 1980)

1997

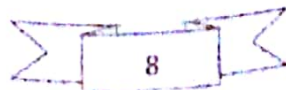
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

1998

Rome Statute of the International Criminal Court

1999

Second Protocol to the Hague





	Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict
2000	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
2001	Amendment to Article I of the CCW of 1980
2003	Protocol (V) on Explosive Remnants of War (added to the CCW of 1980)
2005	Protocol additional to the Geneva Conventions, and relating to the Adoption of an Additional Distinctive Emblem (Additional Protocol III)
2006	International Convention for the Protection of All Persons from Enforced Disappearance
2008	Convention on Cluster Munitions
2013	Arms Trade Treaty

This list clearly shows that some armed conflicts have had a more or less immediate impact on the development of IHL:

During the First World War (1914-1918), methods of warfare, including those that were not completely new, were used on an unprecedented scale. These included poison gas, the first aerial bombardments and the capture of hundreds of thousands of prisoners of war. The treaties of 1925 and 1929 were a response to those developments.

In the Second World War (1939-1945), civilians and military personnel were killed in equal numbers, as against a ratio of 1:10 in the First World War. In 1949, the international community responded to those shocking casualty rates, and more particularly to the terrible effects the war had on civilians, by revising the conventions then in force and adopting a new instrument: the Fourth Geneva Convention for the protection of civilians.

The Additional Protocols of 1977 were a response to the consequences, in human terms, of wars of national liberation, which the 1949 Conventions only partially covered through Article 3 common to the four Geneva Conventions (*common Article 3*).

The Geneva Conventions of 1949 and their Additional Protocols of 1977 contain almost 600 articles and are the main instruments of IHL.



## CUSTOMARY IHL

IHL is developed by States mainly through the adoption of treaties and the formation of customary law. Customary law is formed when State practice is sufficiently dense (widespread, representative, frequent and uniform) and accompanied by a belief among States that they are legally bound to act – or prohibited from acting – in certain ways. Custom is binding on all States except those that have persistently objected, since its inception, to the practice or rule in question.

In 1995, the ICRC embarked on a detailed study of the customary rules of IHL: it took approximately ten years and was published by Cambridge University Press in 2005.

The study can be accessed on the Web at <https://www.icrc.org/customary-ihl>.

This database provides an updated version of the study and is divided into two parts.

- **Rules:** This presents an analysis of existing rules of customary IHL. Although extremely detailed, the study does not purport to be an exhaustive assessment of all rules in this area of law. This part of the study is available in Arabic, Chinese, English, French, Russian and Spanish. A summary of the study and a list of the rules are available in many other languages.
- **Practice:** This contains the underlying practice for the rules analysed in Part 1. It is regularly updated by the ICRC, in cooperation with the British Red Cross. Source materials are gathered by a network of ICRC delegations and by National Red Cross and Red Crescent Societies around the world and incorporated by a research team based at the Lauterpacht Centre for International Law at the University of Cambridge.

### 5. WHEN DOES IHL APPLY?

IHL applies only in situations of armed conflict. It offers two systems of protection: one for international armed conflict and another for non-international armed conflict. The rules applicable in a specific situation will therefore depend on the classification of the armed conflict.

#### A) International armed conflict (IAC)

IACs occur when one or more States resort to the use of armed force against another State. An armed conflict between a State and an international organization is also classified as an IAC.

Wars of national liberation, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, are classified as IACs under certain conditions (See Article 1, paragraph 4, and Article 96, paragraph 3, of Additional Protocol I).



## **B) Non-international armed conflict (NIAC)**

Many armed conflicts today are non-international in nature. An NIAC is an armed conflict in which hostilities are taking place between the armed forces of a State and organized non-State armed groups, or between such groups. For hostilities to be considered an NIAC, they must reach a certain level of intensity and the groups involved must be sufficiently organized.

IHL treaty law establishes a distinction between NIACs within the meaning of common Article 3 and NIACs falling within the definition provided in Article 1 of Additional Protocol II.

- **Common Article 3** applies to “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties.” These include armed conflicts in which one or more organized non-State armed groups are involved. NIACs may occur between State armed forces and organized non-State armed groups or only between such groups.

- **Additional Protocol II** applies to armed conflicts “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.” (See Article 1, paragraph 1, of Additional Protocol II.) The definition of an NIAC in Additional Protocol II is narrower than the notion of NIAC under common Article 3 in two aspects.

- 1) It introduces a requirement of territorial control, by providing that organized non-State armed groups must exercise such territorial control “as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”

- 2) Additional Protocol II expressly applies only to armed conflicts between State armed forces and dissident armed forces or other organized armed groups. Unlike common Article 3, Additional Protocol II does not apply to armed conflicts between organized non-State armed groups.

In this context, it must be kept in mind that Additional Protocol II “develops and supplements” common Article 3 “without modifying its existing conditions of application.” (See Article 1, paragraph 1, of Additional Protocol II.) This means that this restrictive definition is relevant only for the application of Additional Protocol II; it does not extend to the law of NIAC in general.

### **Simultaneous existence of IAC and NIAC**

In certain situations, several armed conflicts may be taking place at the same time and within the same territory. In such instances, the classification of the armed conflict and, consequently, the applicable law will depend on the relationships between the belligerents.



Consider this hypothetical example. State A is involved in an NIAC with an organized non-State armed group. State B directly intervenes on the side of the organized non-State armed group. State A and State B would then be involved in an IAC, but the armed conflict between State A and the organized armed group would remain non-international in character. If State B were to intervene on the side of State A, both State A and the organized non-State armed group and State B and the organized non-State armed group would be involved in an NIAC.

### MAIN RULES APPLICABLE IN INTERNATIONAL AND NON-

Non-international armed conflict (NIAC)	International armed conflict (IAC)
Common Article 3	Four Geneva Conventions
Additional Protocol II	Additional Protocol I
Customary IHL for NIAC	Customary IHL for IAC

### INTERNATIONAL ARMED CONFLICTS

The rules for NIACs remain less detailed than those for IACs. For instance, there is no combatant or prisoner-of-war status in the rules governing NIACs. (For definitions of 'combatants' and 'prisoners of war', see Question 7.) That is because States have not been willing to grant members of organized non-State armed groups immunity from prosecution under domestic law for taking up arms. Given the principle of State sovereignty and States' reluctance to subject internal matters to international codification, it has proven difficult to strengthen the system of protection in NIACs. It should be noted however that the important gap between treaty rules applying in IACs and those applying in NIACs is gradually being filled by customary law rules, which are often the same for all types of armed conflict.

### WHAT LAW APPLIES TO INTERNAL DISTURBANCES AND TENSIONS?

Internal disturbances and tensions (such as riots and isolated and sporadic acts of violence) are characterized by acts that disrupt public order without amounting to armed conflict; they cannot be regarded as armed conflicts because the level of violence is not sufficiently high or because the persons resorting to violence are not organized as an armed group.

IHL does not apply to situations of violence that do not amount to armed conflict. Cases of this type are governed by the provisions of human rights law (see Question 9) and domestic legislation.

## **6. WHAT ARE THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS?**

### **The origins of the 1949 Geneva Conventions**

The Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted in 1864. It was revised and developed in 1906 and 1929. Another convention, relative to the Treatment of Prisoners of War, was also adopted in 1929. In 1934, the 15th International Conference of the Red Cross met in Tokyo and approved the text of an international convention – drafted by the ICRC – on protection for civilians of enemy nationality on territory belonging to or occupied by a belligerent.

No action was taken on that text, States refusing to convene a diplomatic conference to decide on its adoption. As a result, the provisions contained in the Tokyo draft were not applied during the Second World War. It was only in 1949, after the Second World War had ended, that States adopted the four Geneva Conventions, which remain the cornerstone of IHL. While the first three Geneva Conventions of 1949 grew out of existing treaties on the same subjects, the fourth Geneva Convention was absolutely new, being the first IHL treaty to deal specifically with the protection of civilians during armed conflict. The death toll among civilians during the Second World War was one of the reasons for the development and adoption of such a treaty.

### **The origins of the 1977 Additional Protocols**

The 1949 Geneva Conventions were a major advance in the development of IHL. After decolonization, however, there was a need for rules applicable to wars of national liberation as well as civil wars, whose occurrence increased significantly during the Cold War. What is more, treaty rules on the conduct of hostilities had not evolved since the Hague Regulations of 1907. Since revising the Geneva Conventions might have jeopardized some of the advances made in 1949, it was decided to adopt new texts in the form of Protocols additional to the Geneva Conventions, which took place in June 1977.

In 2005, a third Protocol additional to the Geneva Conventions was adopted. This instrument recognizes an additional emblem – composed of a red frame in the shape of a square on edge on a white ground – which has come to be known as the ‘red crystal’. This additional emblem is not intended to replace the red cross and red crescent but to provide a further option. The shape and the name of this additional emblem were arrived at after a long selection process, the goal of which was to create an emblem free of any political, religious or other connotation and that could be used throughout the world.

### **Content of the Geneva Conventions and the Additional Protocols**

The Geneva Conventions protect every individual or category of individuals not or no longer actively involved in hostilities:

• **First Geneva Convention:** Wounded or sick soldiers on land and members of the armed forces' medical services

• **Second Geneva Convention:** Wounded, sick or shipwrecked military personnel at sea, and members of the naval forces' medical services

• **Third Geneva Convention:** Prisoners of war

• **Fourth Geneva Conventions:** Civilians, such as:

– Foreign civilians on the territory of parties to the conflict, including refugees

– Civilians in occupied territories

– Civilian detainees and internees

– Medical and religious personnel or civil defence units.

Common Article 3 provides minimum protection in non-international armed conflicts. It is regarded as a treaty in miniature, representing a minimum standard from which belligerents should never depart. The rules contained in common Article 3 are considered to be customary law. (See box.)

Additional Protocol I supplements the protection afforded by the four Geneva Conventions in international armed conflict. For example, it provides protection for wounded, sick and shipwrecked civilians and civilian medical personnel. It also contains rules on the obligation to search for missing persons and to provide humanitarian aid for the civilian population. Fundamental guarantees are provided for all persons, independently of their status. In addition, Additional Protocol I codified several rules on protection for the civilian population against the effects of hostilities.

Additional Protocol II develops and supplements common Article 3 and applies in non-international armed conflicts between the armed forces of a State 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." (On the conditions for applying Additional Protocol II, see Question 5.) Additional Protocol II strengthens protection beyond the minimum standards contained in common Article 3 by including prohibitions against direct attacks on civilians, collective punishment, acts of terrorism, rape, forced prostitution and indecent assault, slavery and pillage. It also provides rules on the treatment of persons deprived of their liberty.

### **COMMON ARTICLE 3**

In the case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:



1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2) The wounded and sick shall be collected and cared for

– An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

– The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

– The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

## 7. WHOM DOES IHL PROTECT?

IHL protects all victims of armed conflicts, including both civilians and combatants who have laid down their arms. The nature of the protection it provides varies and is determined by whether the person in question is a combatant or a civilian.

## INTERNATIONAL ARMED CONFLICTS

### Civilians

Civilians are entitled to protection in two different situations. First, they enjoy general protection against dangers arising from hostilities. (See Question 11.) Civilians, defined as all persons who are not combatants (see definition of 'combatants' below), must not be the object of attacks. The only exceptions to this rule are civilians who directly participate in hostilities, for example, by taking up arms against the enemy. In such instances, they may be targeted for attack, but only so long as they directly participate in hostilities.

Second, civilians are 'protected persons' under IHL when in the hands of a party to the conflict, provided that:

- They are not nationals of this enemy State
- They are not nationals of an ally of this enemy State (unless these two States do not enjoy normal diplomatic relations)
- They are not nationals of a neutral State, i.e. a non-belligerent State (unless these two States do not enjoy normal diplomatic relations). In occupied territories, however, nationals of a neutral State are always protected persons.

The rationale is that these civilians must be protected by IHL because they no longer enjoy the protection of their own State – either because it is at war with the State in whose power they are or because it has no diplomatic relations with that State. The aim is also to protect civilians from arbitrary acts of an adverse party because of their allegiance to its enemy.

Protected civilians are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must not be subjected to torture, cruel or degrading treatment or corporal punishment and must be protected against all acts of violence or reprisal.

Civilians are particularly at risk when they are in a territory occupied by the army of a belligerent power or when they are detained for reasons related to an armed conflict. In occupied territory, the occupying power has a particular obligation to provide food and medical supplies for protected civilians. Deportation and forced transfers are prohibited. There are also rules on confiscating or seizing property. IHL provides detailed rules protecting civilians deprived of their liberty, particularly on the conditions of their detention, the judicial and procedural guarantees to which they are entitled, and their release.

### **Combatants *hors de combat***

Although they do enjoy protection from superfluous injury or unnecessary suffering, combatants are not protected against the effects of hostilities. (See Question 12.) Thus, they can be attacked unless they are *hors de combat*.

All members of the armed forces of a party to the conflict (except medical and religious personnel) are defined as 'combatants'. The armed forces of a party to a conflict consist of all organized armed forces, groups and units that are under a command responsible to that party for the conduct of its subordinates. (See Article 43, paragraphs 1 and 2, of Additional Protocol I. See also Rules 3 and 4 of the ICRC's study on customary IHL.) Typically, this includes members of the regular armed forces. It also includes members of militia or volunteer corps (so-called 'irregular' armed forces), as well as members of organized resistance movements. The Third Geneva Convention is stricter than Additional Protocol I and provides



specific additional conditions that members of irregular armed forces and of organized resistance movements must meet to be regarded as prisoners of war.

Combatants are considered to be *hors de combat* when they are in the power of an adverse party, when they clearly express an intention to surrender, or when they are wounded or sick to such an extent that they are incapable of defending themselves. In each of these cases, these persons are *hors de combat* if they abstain from any hostile act and if they do not attempt to escape. As soon as a combatant is *hors de combat*, he must be shown due regard and protected.

Moreover, when combatants fall into the power of the enemy – owing to capture, surrender, mass capitulation or some other reason – they enjoy the status of ‘prisoners of war’. As such, they cannot be prosecuted or punished for having directly participated in hostilities. In fact, combatants have a right to directly participate in hostilities and enjoy immunity from prosecution for their acts of belligerence. If they commit war crimes, however, they must be held responsible.

Prisoners of war are entitled to humane treatment and respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must not be subjected to torture, cruel or degrading treatment or corporal punishment and must be protected against all acts of violence or reprisal. IHL contains detailed rules protecting prisoners of war, particularly on the conditions of their detention, the judicial and procedural guarantees to which they are entitled, and their release and repatriation.

#### **NON-INTERNATIONAL ARMED CONFLICTS**

IHL does not recognize any specific categories of person in non-international armed conflicts. That is because States do not want to give members of organized non-State armed groups the status of ‘combatants’, which entails the right to take a direct part in hostilities. Therefore, common Article 3 and Additional Protocol II simply provide that everyone not actively involved in hostilities, or no longer taking part in them, is entitled to protection. This enables IHL to protect civilians and those who are no longer taking a direct part in hostilities. Because there is no ‘combatant’ status in non-international armed conflicts, there is no prisoner-of-war status either. This means that members of organized non-State armed groups taking up arms in such a conflict may be prosecuted under domestic law for doing so.

#### **PROTECTION FOR THE WOUNDED, SICK AND SHIPWRECKED AND FOR MEDICAL SERVICES**

The wounded, sick and shipwrecked, regardless of their status, are entitled to protection. Such persons must be searched for, collected and cared for by the party to the conflict that has them in its power. Medical personnel and medical establishments, transports and equipment must be respected and protected in all circumstances. The red cross, red crescent or red crystal on a white background is the

distinctive sign showing that such persons and objects must be protected. (See Question 13.)

### **SPECIFIC PROTECTION: WOMEN AND CHILDREN**

Certain categories of person, such as women and children, have specific needs in armed conflicts and must be given particular respect and protection.

Children must receive the care and aid they require. All feasible measures must be taken to prevent children under the age of 15 from taking a direct part in hostilities and, if they have become orphaned or separated from their families as a result of an armed conflict, to ensure that they are not left to their own resources. Their maintenance, the exercise of their religion and their education should be facilitated in all circumstances. Children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units. The death penalty must not be carried out against persons who were under the age of 18 when they committed the offence in question.

The specific protection, health and assistance needs of women affected by armed conflict must be taken into account. Pregnant women and young mothers must be treated with particular care. The prohibition against sexual violence applies equally to men and women, but it is often the case that women bear the brunt of the sexual violence that occurs during armed conflicts. Women therefore have a specific need to be protected against all forms of sexual violence – for instance, through separation from men while deprived of their liberty, except where families are accommodated as family units. Women must also be under the immediate supervision of women, not men.

### **FUNDAMENTAL GUARANTEES REGARDLESS OF STATUS**

In addition to the protection described above, IHL provides for certain fundamental guarantees that apply to all persons *hors de combat* regardless of their status (Article 75 of Additional Protocol I; Article 4 of Additional Protocol II).

The person, honour, convictions and religious practices of all such persons must be respected. The following acts in particular are prohibited under all circumstances, whether committed by civil or military agents:

a) Violence to the life, health and physical or mental well-being of persons, particularly:

- Murder
- Torture, whether physical or mental
- Corporal punishment