



# Handbook on the Practical Use of International Humanitarian Law

**Handbook on the Practical Use of  
International Humanitarian Law**

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**Danish Red Cross** 

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Handbook on  
the practical  
use of IHL

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# Foreword

In today's mediatised world the public is becoming more and more aware of the importance of International Humanitarian Law (IHL). It is more difficult than previously to ignore the consequences of armed conflicts on civilian populations, and States are even being called upon to react to the plight of other States' citizens. The principle of universal jurisdiction over the most serious international crimes is therefore being increasingly recognized by international and national courts.

But in spite of these advances the situation on the ground has changed for the worse. More than ever civilians are the victims of armed conflict. Whereas the ratio of civilian to combatant casualties was one to nine during the First World War, it is now the other way round, nine to one. Moreover, conduct such as the detention of persons at Guantanamo and Abu Ghraib clearly damage efforts to promote compliance with IHL across the world.

It was against this background that the Danish Red Cross decided to publish the "Handbook on the Practical Use of International Humanitarian Law" in 2004. It was felt that there was a need for a short and accessible introduction to the law, its main concepts and how humanitarian actors can work with it in practice.

This proved to be correct and once the two first circulations were out of stock, the Danish Red Cross decided to update and reissue the text. The result is this second edition of the Handbook, which we hope will continue to be useful to humanitarian practitioners and other interested readers.

The text was submitted to the International Committee of the Red Cross (ICRC) and the revised text to the members of the Danish Government's Committee for the Implementation of International Humanitarian Law in Denmark (Regeringens Røde Kors Udvalg). The Danish Red Cross is very grateful for their valuable comments.

The Danish Red Cross likewise wishes to thank external contributors for their texts. While the Handbook is a Danish Red Cross publication, the viewpoints expressed do not necessarily reflect those of the Danish Red Cross.

Anders Ladekarl  
Secretary General



# Thinking About Protection

The underlying assumption of protection activities is that there is an interrelation between violations of international law and the need for humanitarian assistance. Protection is thus generally defined as ‘all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, i.e. human rights, IHL and refugee law’.<sup>1</sup> Depending on their mandate, various actors undertake protection activities aimed at ensuring respect for different branches of law: generally speaking, the United Nations High Commissioner for Refugees (UNHCR) undertakes activities to protect refugees, the International Committee of the Red Cross (ICRC) activities to ensure respect for International Humanitarian law (IHL) and the United Nations High Commissioner for Human Rights (OHCHR) activities to ensure respect for human rights activities. The focus of this handbook is IHL, with emphasis primarily on activities aimed at ending or preventing violations of IHL.

It is crucial to recognise that, even where protection is not the aim of a given field activity, all humanitarian activities undertaken in situations of active or latent conflict have a potential protective impact or, in the worst case, a counter-protective impact. It is important for humanitarian actors who operate in such contexts to discuss protection methodologies, to be aware of the consequences of their actions and to ensure that they do not leave their field staff on the ground without the right tools to address situations of abuse.

Awareness of IHL will help to strengthen the protective aspect of an activity – thus hopefully strengthening the programme’s overall impact. Furthermore, adding an analysis of foreseen or actual protective impacts to programme documents helps to focus efforts and raises general awareness of the relationship between the need for humanitarian action and violations of IHL.

Field staff are often ‘doing protection’ while carrying out other activities: sometimes by fulfilling the right to basic material assistance, sometimes through the potentially preventive effect of humanitarian field staff’s presence or,

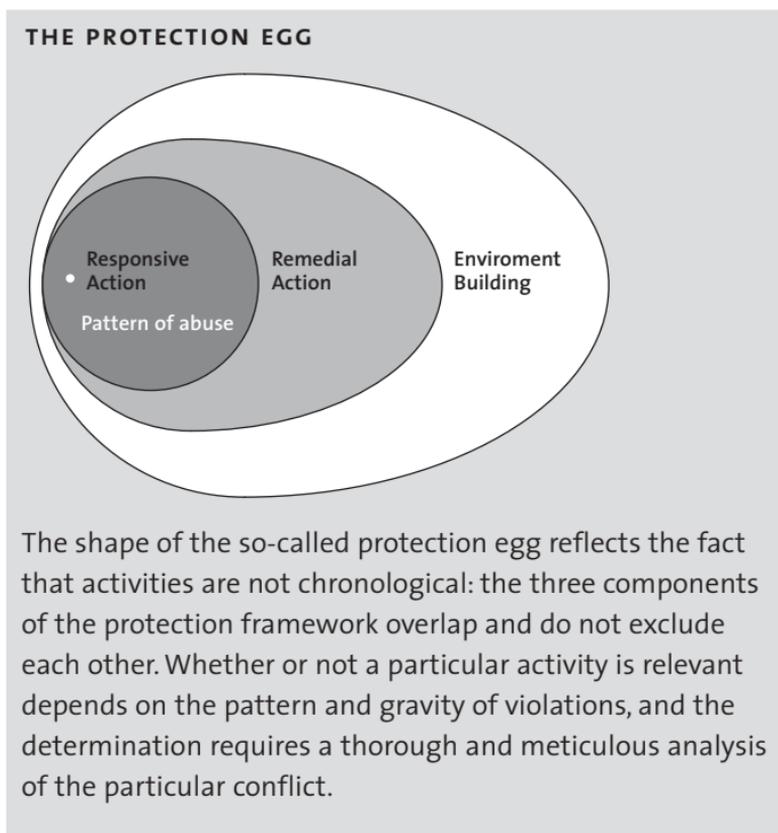
more specifically, through the exposure of or dialogue with an authority responsible for violations. It is necessary – for the benefit of those whom they are meant to assist – for humanitarian actors to be conscious of the effects of their actions and to have formulated a policy on what to do when faced with IHL violations. Furthermore, most humanitarian actors stay on after active conflict has ceased and play a role in the reconciliation and stabilisation process, which can be strengthened by efforts to create awareness of humanitarian principles. Similarly, in pre-conflict situations, experience has shown that IHL will only be respected in conflict if it is made known during times of peace.

When discussing protection in a situation of armed conflict, the following questions are of guidance:

- What are the types and patterns of abuses (when, where and how)?
- Which Conventions have been signed by the Party(ies) to the conflict? Is the conflict international or non-international – that is, which Convention(s) is (are) applicable? Which Convention(s) protect(s) the group of persons who are subject to abuses and violence?
- Who is at highest risk (groups or individuals)?
- What is the source of the threat to civilians (and to humanitarian actors) and what are the *modi operandi*/goals of the perpetrators of abuses?
- What is the dynamic nature of the situation (how are conditions likely to change)?
- How will those who are responsible for violations react to intervention?
- Is there a risk to staff, both local and expatriate?
- How are those under threat reacting to the situation – what action do they propose?
- Are there any potential protection allies?
- Has it been clarified what field personnel should do when they witness IHL violations?<sup>2</sup>

## Taking Action

It may be useful as a planning tool to view protection activities as categorised into three different types of action: responsive action, remedial action and environment building.<sup>3</sup>



Responsive action is undertaken in the context of an emerging or established pattern of abuses to prevent or stop their recurrence, and/or alleviate their immediate effects. It can aim at modifying the behaviour of the violators for example through disclosures or representations or to tackle the protection problem through actions, such as registration of displaced persons or, as a last resort, evacuations. Responsive action could be:

- pressure on the authorities concerned through public disclosure, direct dialogue or more indirectly through other influential actors who have privileged access to the aut-

authorities concerned and may be able to persuade them to take the necessary measures to stop breaches of IHL and prevent their recurrence;

- pressure on third parties to act, for example on influential States to uphold their obligation to ensure respect for IHL;<sup>4</sup>
- direct assistance in accordance with IHL provisions, for example material or medical assistance or psychological care;
- protective action through, for example registration of displaced persons, or evacuations in accordance with IHL, or through support to authorities to undertake such tasks;
- dissemination and promotion of respect for basic IHL principles and humanitarian values among the Parties to the conflict and other relevant actors.

Remedial (corrective) action aims to restore people's dignity and ensure adequate living conditions subsequent to a pattern of abuse, for example through:

- pressure on the authorities concerned through public disclosure, dialogue or indirect pressure through other actors to take the restorative measures required;
- direct assistance, for example material or medical assistance, psychological care and/or technical support for local facilities, public or private;
- protective action, for example through assistance in securing repatriation/resettlement/integration/final arrangements, establishment of mechanisms to clarify the fate of missing persons or provision of legal aid;
- support for and protection of governmental, local, non-governmental (NGOs) and other organisations that work to defend the rights of vulnerable persons.

Environment building seeks to foster a social, cultural, institutional and legal environment conducive to respect for the rights of the individual, for example by:

- advocating the ratification of IHL Conventions and the implementation of customary international law;
- taking action to bring perpetrators of violations to justice in accordance with IHL and international legal principles, for example, by promoting justice for victims, documenting violations and ensuring that evidence is kept;

- advocating the incorporation of IHL into national law and the institutionalisation of the measures prescribed, such as legislation on misuse of the emblem, criminal legislation on grave breaches, and disciplinary systems in the armed forces;
- advocating an end to impunity through the establishment of a fair system of justice;
- disseminating and promoting knowledge of and respect for IHL and humanitarian values among all groups concerned;
- reminding governments of their IHL obligations in times of peace;<sup>5</sup>
- helping to develop organisations, both governmental and non-governmental, capable of enhancing respect for humanitarian law, for example National IHL Committees or IHL research and teaching at universities;<sup>6</sup>
- supporting mechanisms for the implementation of IHL, for example by promoting the inclusion of an IHL mandate for national ombudsman institutions or human rights-commissions.

All dialogue with authorities or responsible actors affords an opportunity to raise protection concerns and should be approached very consciously. The root causes of the need for assistance, for example should be analysed thoroughly, as should opportunities to address them. Where for example the need for food aid is a consequence of actions by the authorities concerned, such as blockade of trade or the free movement of people or livestock, humanitarian actors must analyse carefully how the issue can be addressed during dialogue with those concerned. How can it be approached diplomatically, while achieving the objective of the meeting? What could the reaction and consequences be? What are the motivating factors of the interlocutor? What would be in the interest of the victims of the conflict?

## **Protecting People Taking Refuge: Médecins sans Frontières in the Camps in Goma**

**By Liesbeth Schockaert, Research Centre, Médecins Sans Frontières-Belgium**

From early April to mid-July 1994, between 500,000 and one million Rwandan Tutsi and Hutu opponents of the governing regime of Rwanda were systematically exterminated in an organised genocide. This was planned by extremists, both inside and close to the government, and was carried out by militias recruited from among Rwandan citizens (interahamwe) and by the regular Rwandan Armed Forces (FAR).

Soon after the genocide started, the rebel Rwandan Patriotic Front (RPF) invaded from Uganda and made rapid territorial gains. Fearing the RPF's advance, about 2 million Rwandans, including civilians, members of the interahamwe militia and FAR soldiers, fled to neighbouring Zaire (now Democratic Republic of the Congo), Tanzania and Burundi. They rapidly settled in large refugee camps close to the Rwandan border.

Most of the civilians who left Rwanda did so on the orders of their town leaders, who had told them that they had to flee from the advancing RPF. The seemingly chaotic flight was orchestrated, with the local leaders having total control over the population.

The medical and humanitarian situation in the Goma camps Between 13 and 17 July 1994, 500,000 to 800,000 Rwandans streamed into Zaire, north of Lake Kivu, where they settled in and around the town of Goma. They were exhausted from their flight and lacked clean water, food and medical care. Médecins Sans Frontières (MSF) quickly mobilised its operational resources, providing 65 tons of emergency aid to help to accommodate the hundreds of thousands of refugees arriving in the Goma region.

Owing to the refugees' exhaustion and poor living conditions, diseases spread quickly. On 18 July, the first cases of cholera

were confirmed among the refugees in Goma. The disease spread rapidly, with more than 3,000 cases being reported on the first day. Dysentery and cerebrospinal meningitis quickly followed the cholera outbreak. By 28 July, an estimated 14,000 refugees had died of cholera, dysentery, and meningitis. Approximately 10% of the total Goma refugee population died during the cholera epidemic. About 20% of children under five were found to be acutely malnourished in August 1994.

MSF was working in the different camps during this time, supplying water and food, setting up medical clinics, launching a measles vaccination campaign and addressing the cholera outbreak.

### **Violence and insecurity in the camps**

At the same time violence and insecurity reigned in the camps. From the time they arrived in Goma, the refugees were subjected to violence by the militias, former FAR members and Zairian soldiers. Lists were circulated naming people to be exterminated. The victims were Tutsi refugees, moderate Hutus and anyone suspected of being linked to the RPF. Any refugees who expressed the desire to return to Rwanda were beaten, tortured or killed.

The camps were organised along the same lines as the previous administrative system found in Rwanda, so that the power structures that existed in Rwandan communities continued to function. This effectively left the former leaders in charge of the refugees. At the beginning of the crisis, few MSF volunteers knew that the former Rwandan administration had encouraged the refugees' flight.

Once the cholera epidemic was contained, MSF found itself confronted with camps that were under the tight control of 'refugee leaders' implicated in the genocide. Non-governmental organisations (NGOs), including MSF, had unknowingly recruited killers as national staff members. Those people served as 'intermediaries' between the refugees and the aid organisations. Food distribution and access to health units were controlled by militiamen.

The camps had been transformed into bases from which Hutu leaders prepared to retake Rwanda. Part of their strategy included massive manipulation of aid, violence, propaganda, and threats against refugees wishing to be repatriated.

**A humanitarian dilemma: Should the innocent be punished for the mistakes of the guilty?**

Given the gravity of the situation in the camps, MSF faced the following dilemma: should MSF allow its aid to be manipulated by leaders who were engaging in violence against the refugees and proclaiming their intention to finish off the genocide in Rwanda? Could MSF renounce assistance to a population in distress and how could it justify such a decision? Leaving the camps would mean death for many innocent people. Could MSF stop providing aid to an extremely vulnerable population in order to guarantee the independence, impartiality and neutrality of its actions?

Although all MSF volunteers were revolted by the situation, they were divided over how the dilemma should be resolved. Some thought that MSF should cease its activities in the camps immediately; others believed that as long as it was possible to improve the refugees' humanitarian situation a presence was justified within certain limits.

**The 'humanitarian resistance strategy' or the fight from within**

In November 1994 the French section of Médecins Sans Frontières decided to withdraw from the Rwandan refugee camps. The Belgian section considered such action to be premature and believed that leaving immediately would amount to an abdication of its responsibility to the refugees. MSF-Belgium was convinced that it was possible to continue to address the medical needs of the vulnerable, while at the same time trying to reduce the influence and control of the former perpetrators of genocide over the population and attempting to diminish the manipulation of aid supplies. From September 1994 onwards, it advocated a strategy of 'humanitarian resistance'.

The objective of this strategy was to limit the control of the militia groups and former government forces in the camps and diminish violence. It sought to reduce the extent to which humanitarian assistance could be used to control the camp population. One of the first strategic actions was to put pressure on United Nations High Commissioner for Refugees (UNHCR) to conduct a population count in all the camps. The census showed that the camp population was 30% lower than previously estimated. This indicated that camp figures had been artificially inflated in order to manipulate supplies. Secondly, MSF-Belgium demanded that supplies be distributed independently of the camp leaders. MSF-Belgium also cut the salaries of local staff in order to limit the amount of tax imposed on them by the perpetrators of genocide. Simultaneously, MSF-Belgium demanded that the international community guarantee the security of the refugees by undertaking to break up the camp organisation, isolate the leaders who incited others to violence, disarm militias and soldiers and support the deployment of an international police force in the camps.

MSF-Belgium defined a means of evaluating whether the strategy was working well enough for the organisation to justify continuing its work in the camps. This involved defining the following set of objective criteria.

- **Impunity:** Law and order in the camps should under no circumstances be maintained by refugees selected by the leaders, since many of them were suspected of having been involved in the genocide. At the same time MSF denounced the failure of the international community to try suspects and urged the creation and establishment of an international tribunal.
- **Camp control:** MSF demanded that political leaders, militia and former FAR soldiers be separated from the civilian population and denounced military training in the camps.
- **Food aid:** MSF demanded that relief be distributed by bodies independent of the leaders. In addition MSF criticised the fact that the number of refugees had been overestimated. The organisation used the home visitor programme to

recount the population and successfully pressured UNHCR into carrying out a census.

- **Refugee safety:** MSF, together with other NGOs, constantly urged UNHCR to assume full protection responsibilities. In late July 1994, MSF lobbied for an increase in the number of United Nations human rights observers and greater involvement of private human rights organisations such as Amnesty International and Human Rights Watch. It asked the latter organisations to establish permanent field teams to investigate both the genocide and ongoing abuses in the camps and in Rwanda.
- **Aid abuse and diversion:** MSF constantly speculated about the final use of the aid provided and whether it ran the risk of supporting a military system in the camps and, if so, how such support could be avoided.
- **Direct access to the population:** MSF insisted on having direct access to the population so that it could assess whether it was still reaching the most vulnerable people. Special emphasis was placed on single and female-headed households, the weak, the sick and children. Through direct access to the population, MSF was able to assess whether humanitarian aid was actually reaching the most vulnerable.
- **Security of local and expatriate teams:** MSF always evaluated whether the lives of relief workers were being threatened and the impact of MSF's actions on the security of local and expatriate teams.
- **Press:** MSF constantly urged the media to investigate what was happening in the camps.
- **Advocacy:** MSF denounced the situation in the camps to the United Nations Security Council and the various European Union institutions submitting, among others, two reports, 'Breaking the cycle' and 'Deadlock in the Rwandan Crisis', based on information from all MSF sections in the field.
- **NGO coalition:** An NGO coalition was formed, comprising the various MSF sections, the International Rescue Committee, the American Refugee Committee, Oxfam, Médecins du Monde, Care, and other organisations. MSF played a leading role in maintaining the coalition. Among other things, in November 1994, the coalition jointly

demanded that the United Nations address the dangerous security situation. The NGOs in the coalition threatened to withdraw from the camps if there was no considerable improvement in the situation. The coalition's message was strong and had significant weight, since the NGOs involved provided 60% of the aid in Goma.

- **Staff and salaries:** MSF recognised that paying refugee staff significant amounts of money discouraged repatriation and probably contributed to the finances of the regime in exile. Therefore MSF investigated who on the organisation's staff had been appointed by camp 'leaders' and evaluated the extent to which staff salaries were being diverted. MSF took the difficult decision to cut personnel and salaries. MSF also encouraged all other NGOs and UNHCR to interview their local staff about their history.

MSF constantly evaluated its presence in the camps on the basis of these criteria. The criteria allowed the teams to see how the situation was evolving, whether there had been any positive or negative developments and how much room for manoeuvre humanitarian organisations had left to make fundamental changes to the refugees' living conditions. They provided the teams with objective reference points in a very emotional debate.

In June 1995, after nine months of implementing the 'humanitarian resistance strategy', an overall assessment of the situation in the camps was carried out. The assessment showed that while medical needs were covered and the medical and nutritional emergency had ended, the political situation in the camps had not changed fundamentally. MSF-Belgium came to the conclusion that its scope for improving the overall situation was more and more limited and that leaving the camps would not change much in medical terms, as other NGOs were willing to take over MSF's programmes. The influence of the Hutu leaders remained very strong and there had been only little progress in meeting MSF-Belgium's goals of bringing suspects to trial, diminishing the leaders' control over the population and separating soldiers from civilians. The continued provision of aid in such circumstances would

have meant consolidating the political situation in the camps. Given that political efforts had stalled and that the medical situation was under control, MSF-Belgium's presence could no longer be justified and the organisation decided, on 2 August 1995, to leave the camps.

MSF-Belgium had provided aid in the Goma camps, but was not prepared to continue at any price. It had set out conditions and tried as best it could to protect and preserve that portion of the population victimised twice by the former Hutu regime. Goma represented an extreme example of a humanitarian dilemma.

The example shows responsive action taken in a situation of extreme complexities. Among relevant IHL rules are the principles protecting civilians and the obligation to bring to justice violators of IHL. Under IHL the presence of non-civilians among the civilian population does not deprive the population of its civilian character. In order to protect the civilian population, military objectives may not be placed in a densely populated area. Under IHL only impartial relief consignments can claim a right to access and there is a risk that continued diversion of relief, namely to combatants, may deprive it of its humanitarian character and ultimately call into question its impartial character.

Next is an example of environment building. It is from Mexico, from a period where fighting was still ongoing in certain areas but where most of the country was peaceful. It describes efforts to combine legal and medical expertise in a procedure, which ultimately aimed at eradicating torture. In the end, the Mexican authorities chose to implement only the medical aspects of the negotiated procedure. Nonetheless, the example shows the challenge of creating practical tools in this respect.

## Combating Torture

**By Victor Madrigal-Borloz, Danish Institute for Human Rights, head of the first International Rehabilitation Centre for Torture victims (IRCT) negotiating delegation, and Anders Folmer Buhelt, Danish Institute for Human Rights, former IRCT Programme Coordinator**

States are under an obligation to initiate a prompt and impartial investigation if there are grounds for believing that an act of torture has been committed. This rule, enshrined in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, has emerged as a general principle of international law, binding both in times of peace and in times of armed conflict. Even though the obligation to protect the individual against torture is unchallengeable, the form that the investigation might take is not determined beforehand. It must, however, comply with international standards.

In the summer of 2001, the Office of the United Nations High Commissioner for Human Rights (OHCHR) requested the International Rehabilitation Council for Torture Victims (IRCT) to carry out a pilot experiment in Mexico. The project was part of a technical cooperation agreement signed in December 2000 by President Vicente Fox and Commissioner Mary Robinson. The pilot experiment consisted in designing and negotiating a medical procedure for the examination of allegations of torture. In a nutshell, the idea was to empower every medical officer in Mexico to detect and efficiently denounce torture.

The work undertaken by IRCT entailed a number of significant challenges. First, the medical protocol required to detect and document torture had to be merged with legal proceedings under which documented cases would be investigated and eventually punished. Second, United Nations standards had to be taken as the starting point and to be rendered operational in national law. Third, the process had to be simple and flexible enough to be operational in a country as complex as Mexico, with such diverse realities as the armed

conflict in Chiapas and the urban sophistication of León. The work was undertaken through a series of steps.

**Identification of principles:** the first step was to identify the primary guiding standards of effective and efficient investigation, which comprises the obligation to investigate and prosecute, the availability of means to do so thoroughly, promptly and impartially, and the guarantee of an effective remedy.

**Design of a model procedure:** in designing the model procedure, the IRCT relied primarily on the Istanbul Protocol,<sup>7</sup> which aims to combine the health professional's expertise in documenting torture objectively and the legal profession's expertise in utilising medical documentation in criminal cases. In drafting the model procedure, particular emphasis was placed on criminal proceedings, standard rules on the participation of forensic experts in criminal investigation, the federal legislation on health, and standard rules on the participation of health professionals in the public, social and private sectors.

The analysis resulted in a Protocol for the physical and psychological examination of persons in the following circumstances:

- while in the custody of any State authority, whether in police offices, military facilities or penitentiary centres, be it on remand, under a sentence or upon entry into such a centre; and
- persons treated in medical practices, health centres or hospitals, and alleging that they have been victims of torture.

Acknowledging the need for health professionals to be trained thoroughly to become experts, the Protocol suggested a detection format that could be used by any general practitioner with access to persons in the target groups listed above. The detection format provided the general practitioner with a conclusive tool for deciding whether a given case should be passed on to the torture documentation experts. The tools given to medical practitioners consisted, for example, of a checklist of physical and psychological symptoms typically caused by torture, or standard drawings of the human body

to permit graphic reports on marks and bruises. Emphasis was placed on commonly used methods. This would ensure that cases other than those involving explicit allegations would also be given attention by experts and the authorities.

**Negotiation:** the negotiation of the model procedure took place within a Steering Committee, which included participants from the Mexican Ministry of Foreign Affairs, the Public Ministry (Office of the Public Prosecutor), civil society organisations, indigenous and peasant organisations, the National Human Rights Commission and the OHCHR. The major focus of the negotiation was on the legal aspects of the impartiality and independence of investigations. This was due to the basic paradox faced in combating torture: the bodies mandated to investigate and prosecute are usually the same ones that may have committed the violation. In such a context, it is always a challenge, in all countries, to ensure due impartiality.

**Incorporation:** the next step was to incorporate the agreed procedure into Mexican legislation. Priority was given to those states with the highest occurrence of torture cases. This relates to the assumption that in Mexico, as in many other places, torture has changed in many ways from being a means of political repression to become a means of investigation used by the police force. In certain areas of Mexico, however, there has been and still is armed conflict, and in those areas torture can certainly often be a means of repression. At the same time, as mentioned above, the documentation, investigation and punishment of torture is as important during armed conflict as it is in times of peace, and so the model procedure was also intended for, though not directed mainly at, the armed forces of Mexico.

The difficulties of merging medical and legal procedures were evident throughout the negotiation process, and the legal aspects of the model procedure were never adopted. In the end, the Mexican Authorities chose to develop an alternative procedure in cooperation with Physicians for Human Rights, consisting only of the medical aspects of detection and treatment.

The combination of legal and medical standards and the development of tools in this regard are therefore still a very pressing item on the agenda of organisations in this field.

## Modes of Action

The organisations' responses in a protection situation can be categorised into five modes of action: public exposure, including disclosure of information on violations (denunciation); dialogue with the authorities responsible (persuasion); engaging third parties with the aim of persuading them to take action (mobilisation), providing services or aid directly to the victims of violations (substitution) and enabling existing national and/or local bodies to carry out their functions through project-oriented aid (support).

The term 'denunciation' is most often used to refer to the mode of action where information is publicly disclosed on a particular situation.<sup>8</sup> In reality, organisations conduct a wide range of activities falling within this category that do not necessarily come to the naming and shaming that the term may imply. Some organisations, such as Amnesty International and Human Rights Watch, publicise reports on violations without naming alleged perpetrators, while others, such as ICRC, UNHCR, WFP or UNICEF, may express concern publicly, issue statements or prepare reports drawing attention to a particular situation, but without accusing anyone openly.

There is no hierarchy between the various modes of actions and most organisations use them in combination, depending on their mandate, capacity and analysis of the situation. In some situations, public exposure may have been a necessary mode of action to gain access so that substitution or capacity building can begin. In most situations, substitution can – and should – be accompanied by persuasion to bring the primary duty bearers to take action. Responsive action may be and is often taken in parallel with environment building.

It is important for all organisations constantly to assess and analyse the context to see which modes of action will best address a given situation and the way in which it has evolved and may evolve. Ultimate responsibility for the welfare of its population and the people on its territory lies with the State as the primary duty bearer. Consequently, the opportunities and possibilities for using persuasion as a mode of action, possibly combined with mobilisation or public disclosure, should always be assessed.

Typically, the organisations that may seem to have the clearest mode of action are those that primarily disclose information publicly – they do not usually have field activities to protect. Often, though, they will work with and support local organisations. Typically, the only organisations that do not use public disclosure as a mode of action are those with a ‘political layer’ above them, such as the European Commission’s Humanitarian Aid Office (ECHO), which can transmit information to the European Commission. It will then be for the Commission to react.

To create awareness or focus on the protection aspects of ongoing activities or plan new activities, it may be useful to use the matrix shown below as an analytical tool.<sup>9</sup> In an analysis of one’s own activities, and potentially those of other organisations, they can be plotted into the grid to show gaps or clusters of activities. Activities and modes of action may change over time to adapt to a particular conflict pattern or they may not change significantly in frozen conflicts.

**COMPLEMENTARITY MATRIX**

	Substitution	Support to structures	Mobilisation	Persuasion	Denunciation
Responsive Action					
Remedial Action					
Environment Building					

## Tools for Operationalising Protection

**By Kathrine Starup, Policy Adviser, Danish Refugee Council**

In the past five or more years, the Danish Refugee Council (DRC) has developed and further refined a number of analytical tools to facilitate the design of relevant, appropriate and efficient interventions with a protective outcome. DRC's work is based on a rights-based approach and the point of departure for these analytical tools is the Protection Egg and the five modes of action.

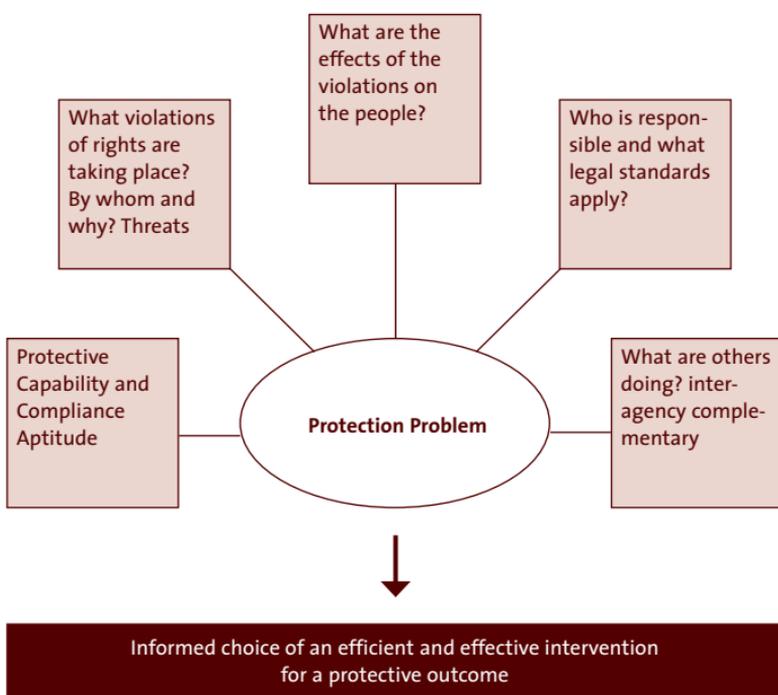
### Four Analytical Tools

DRC has identified and further developed four analytical tools that constitute the analytical framework for programming interventions with a protective outcome. They are:

1. the Risk Equation, used to analyse the threats and the vulnerabilities and capacities of people at risk with the aim of identifying ways of reducing threats and vulnerabilities while building and strengthening the capacities of people;
2. the Stakeholder Analysis, which identifies the various stakeholders (i.e. rights-holders, duty bearers and key stakeholders), including the Compliance Aptitude of the responsible duty bearers. (The ability of a duty bearer to respect, protect and fulfil rights is determined by a mixture of capabilities and practical resources, political attitude/intent and personal attributes. These must be understood, as they are critical to the context in which DRC provides assistance. These various resources and characteristics are encapsulated in the 'compliance aptitude' concept);
3. linking legal standards and responsibility – the Responsibility Assessment Tool – which links the specific protection problem/rights violation to the relevant legal standards and bodies of law, including IHL, and again to the responsible duty bearers, namely those who are duty bound to respect, protect and fulfil the particular right(s) that is (are) being violated;

4. the Inter-Agency Complementarity Mapping Tool, which, in the matrix developed by DRC (see p. 26), maps and visualises ways of combining different types of activities and modes of action, reflecting the variety of work done by agencies. The aim of the complementarity mapping tool is to reflect the programming capacities, priorities, expertise and ‘added value’ of different agencies and organisations with a view to identifying gaps to be filled and facilitate complementarity in their work, thus reducing the likelihood of duplication, of overlap and of jeopardising each other’s strategies.

The individual steps of the process in using these four analytical protection tools are illustrated in the model below.



DRC stresses the importance of thoroughly analysing the context, including protection issues and rights violations, and the usefulness of the above four fairly simple, yet relevant, analytical protection tools. The type of intervention, the activities and the modes of action to be chosen will depend on the result of such thorough analysis. Moreover, the modes of

action and activities are bound to change in line with changes in people's specific context, protection issues and rights violations.

### **Applying these tools in Sri Lanka**

The foregoing can be illustrated by an example from DRC's IDP/Refugee Integrated Livelihood Rehabilitation, Protection and Emergency Response Programme in North-East Sri Lanka. The overall objective of DRC's programme, implemented in Sri Lanka since 1998, has been to promote durable solutions for internally displaced people and refugees in the wake of the war.

From early 2002, when the ceasefire took effect, to mid-2006, the situation in North-East Lanka was relatively stable. Though there was not much, if any, progress in the peace process, large numbers of IDPs were returning or being relocated to new areas and (re-)establishing their livelihoods. The protection elements of DRC's programme in North-East Sri Lanka at that time, including the capacity development of State and non-State duty-bearing authorities and advocacy, very clearly illustrate the modes of action and types of activity relevant and feasible in that specific context.

In regard to the Complementarity Mapping Tool above and the modes of action of the Protection Egg framework, DRC activities in Sri Lanka at that time were primarily remedial in nature, while building and supporting an *environment conducive* to ensuring respect, protection and fulfilment of people's rights (environment building). The protection issues facing communities in North-East Sri Lanka at that time included problems relating to documentation, land/property, child care (including recruitment, underage labour, violence and non-attendance at school), violence against women, intimidation, freedom of movement, alcohol and drug abuse, access to health care and education services and dereliction of duty by officials.

Accordingly, the DRC Sri Lanka programme responded by, among other things, providing concrete assistance and advice to people about how to acquire and/or recover civil

documentation through awareness raising, training, information campaigns and support for community-led advocacy activities, seeking to empower and provide support to IDPs and returnees to understand their rights, build confidence and develop and implement strategies to realise those rights. Moreover, the programme promoted the development of an environment of respect for the rights of IDPs and returnees by developing the capacities of State and non-State (i.e. LTTE (Liberation Tigers for Tamil Eelam)) duty bearers through training, dialogue and advocacy. As such the approach was primarily remedial, entailing environment building and such modes of action as substitution, structural support, mobilisation and persuasion.

When the situation in Sri Lanka changed in early/mid-2006 owing to the renewal of the conflict, new displacements, regular confrontations and battles between the military and the LTTE and gross human rights violations, DRC adjusted its programme accordingly. Today, DRC's programme in North-East Sri Lanka is much more responsive in nature and focuses largely on emergency response activities. Hence the programme's classical protection activities have also changed and are now to a large extent focused on protection monitoring, referral and follow-up action to ensure that the protection situation of the displaced is being monitored, protection information is being shared with the relevant stakeholders, action is being taken on that information and individual cases are being appropriately dealt with. These elements are all responsive in nature and the modes of action are substitution, structural support, mobilisation and persuasion. There is, however, still scope for more remedial and environment-building activities such as building the capacity of the government officials, LTTE and civil society organisations, training and awareness raising for IDPs and returnees, and advocacy. The trend is, however, that the DRC programme has moved more towards the upper left corner of the (complementarity) matrix, reflecting the changes in the context.

The Sri Lanka case illustrates how the above analytical tools can be used to design and conceptualise an appropriate and

relevant intervention with a protective outcome based on the specific context and the protection challenges and risks faced by people there. Moreover, it illustrates how the tools and the analysis can again be used to adjust the approach and intervention to reflect changes in the context, the humanitarian situation and protection issues.

Anyone who has worked in a situation in which people are the victims of abuse would like to believe that the presence of humanitarian actors has had a protective impact – a view often expressed by the local people themselves. However, whether this is so is in fact difficult to demonstrate – most often humanitarian workers only stay for a short time, their visits are widely spaced and their presence will often have the greatest impact in areas of less military value.<sup>10</sup> The protective impact of their presence can be strengthened by conscious and strategic planning. The next external contribution will discuss how this can be achieved.

## **Protective Presence**

**By Liam Mahony, Independent Consultant**

International humanitarian law, human rights law, refugee law and the rest of the international normative framework applied to conflict are only as relevant as their impact on the ground on people in need. There is a growing experience and best practices documentation on how the field staff of international and national institutions can actively *use* these norms and have an impact on abuses. One recent study and manual, 'Proactive Presence: Field strategies for the protection of civilians',<sup>11</sup> analyses how the field staff of intergovernmental and nongovernmental organisations have developed practical strategies to this end.

A well-designed field mission committed to protection can create an atmosphere in which the costs of abuse are more apparent to the perpetrators of violence against civilians. It can provide a safer space for civilians paralysed and stigma-

tised by terror tactics, support reform efforts inside a state apparatus or armed group structure and create a bridge between parties where extended conflict has cut off pathways for dialogue.

A significant field presence effectively alters the political landscape, sometimes dissuading perpetrators from attacking civilians, encouraging civil society to protect itself better and supporting internal reformers in action to change abusive systems. Perpetrators of abuses are, to varying degrees, sensitive to an international presence. Diplomacy, advocacy or other direct or indirect communication – if done well – can have an impact on their decisions.

The prerequisite for an effective field impact is first to carry out a thorough political analysis to identify the institutions and people committing abuses, their chains of command, motivations, objectives and all of the interests driving their decisions, be they political, economic, criminal, personal, familial or ethnic. Field missions must design realistic national and local plans to influence each relevant actor, mapping out channels for applying sanctions or offering incentives to change behaviour – with sub-strategies going right down the chain of command. Based on such analysis and strategy, field operations combine diverse and creative approaches to have an impact.

**Sustained multi-level diplomacy:** Diplomatic intervention in daily situations and constant discourse with key political actors nationally and locally can reduce abuses and conflicts. If you talk to people, they think more about you. If you do not, they will find it easier to ignore what you stand for. Whether a formal meeting or an informal cup of tea, the cumulative impact of constant interaction can affect both local and national decision making. Every interaction is a political and diplomatic event requiring a strategy and a high level of communication skills. Close governmental relations are vital, as is direct communication with armed groups. Protection officers need diplomatic skills to develop messages, open

multiple channels of communication and master nuanced techniques of respectful and culturally sensitive communication.

**Visibility:** Without a word, field presence, whenever noticed, should remind all actors that international concern must be considered in their political calculations. Such visibility can also serve to build civilian confidence. The protective impact of an organisation can be enhanced by establishing regional sub-offices throughout the territory, by using frequent rural visits to isolated or vulnerable areas to send a protective message to abuser groups or by directly accompanying particularly threatened individuals, organisations or communities.

**Encouragement and empowerment:** A field mission's efforts should complement and strengthen civil society's own capacity to confront abuses. Through diverse methods, field staff and collaborative programmes can help people to overcome their inhibitions and fears about civic activism, while actively supporting and protecting communities or organisations whose non-violent mobilisation will further promote protection objectives.

**Bridging and convening:** An international field presence is a potential bridge across divides created by conflict and a variety of mechanisms can take advantage of this unique position. Through shuttle diplomacy, by organizing multipartite delegations or investigations, or convening meetings or workshops of multiple actors, it can help to bridge polarisation and limit violence. Through longer-term complex initiatives such as working groups, thematic commissions, early warning mechanisms and humanitarian accords, different parties take on a responsibility to work together and address the concerns of civilians. Missions also link local actors to the international community – reminding perpetrators of the political costs of abuse and helping progressive functionaries to find external support for reform.

**Public advocacy:** Public exposure can be politically costly to any abuser and public encouragement is an incentive for reform. Globally-targeted advocacy by a field mission can

increase the level of international political attention and pressure being applied by others, generating additional future political costs. Public methods do not simply entail overt “name-and-shame” denunciation of those responsible for abuses. In fact this approach does not usually involve direct accusations; it encompasses a wide range of reporting and use of the media to draw attention to issues of concern and the need to mobilise solutions.

‘Proactive Presence’ points to many of the institutional weaknesses of large international institutions that inhibit effective use of these protection approaches and proposes a range of necessary institutional reforms. In particular, it calls for wider deployment of field staff specialised in human rights monitoring and civilian protection activities and, concomitantly, improvements in the selection and training of such staff.

The last example in this chapter shows how the ICRC has approached the dilemma of risking to sustain a military effort by providing assistance to a population in need.

### **Bringing Relief and ensuring Respect for the Law of Occupation: the ICRC in Israel, the Autonomous and Occupied Territories<sup>12</sup>**

The severe restrictions placed on the freedom of movement of the Palestinian people in the spring of 2002 and the consequential drastic reduction in income led the International Committee of the Red Cross (ICRC) – for the first time in its 36 years of continued presence in the Occupied Territories – to launch a major assistance programme in the West Bank. Under the rural relief programme, families received food and other basic items, while under the urban voucher programme, town-dwellers were provided with coupons, which could be exchanged for goods in designated stores. By June 2003, the ICRC had reached its target of assisting 300,000 people.

Although the restrictions, destruction of land and property and blockage of access to basic services continued and in

some instances could be viewed as even more severe, the ICRC decided to start downscaling the programme from the summer of 2003 with a view to ending it by the end of 2003. In its press release the ICRC said:

‘The concerns of the Israeli authorities for the safety of their civilian population are widely understood. However, the measures they have imposed in the occupied Palestinian territories over the past two years run contrary to the basic rights of the population of those territories. Lack of access to income and basic goods and services has caused the economy to largely collapse, a situation that cannot be rectified by humanitarian aid, no matter what its scale.

Under the Fourth Geneva Convention, an occupying power must ensure that the basic needs of the civilian population are met. The provision of humanitarian aid in no way relieves Israel of its obligations toward the population of the territories it occupies. The ICRC therefore once again urges the Israeli authorities to meet their legitimate security needs in a manner that complies with international humanitarian law, by minimising the adverse effects of their security measures on the civilian population in order to allow Palestinians to live as normal a life as possible.’

Putting an end to the programme was certainly not an easy decision to make and it was preceded by a thorough analysis of the situation and deliberations on the organisation’s mandate. Before and following the announcement, the ICRC met the relevant officials on both the Palestinian and the Israeli side to explain and discuss the decision. Likewise, meetings were held with aid organisations in a position to take over the programme. In a November 2003 press release the ICRC observed:

‘The ICRC’s large-scale distributions of relief aid to several hundred thousand Palestinians living in the towns and villages of the West Bank came to an end in mid-November 2003. Since June 2002, the ICRC had provided urgently needed aid to about 50,000 families (roughly 300,000 people) struggling to make ends meet. However, humanitarian aid is no longer

the best way to help them. It is essential that the West Bank Palestinians' basic rights under international humanitarian law are respected. Right from the start, the ICRC made it clear that its assistance programmes in the West Bank could only provide a short-term solution.'

This is an example of a combination of different modes of action taken by an organisation with a very clear protection mandate: substitution, by the provision of direct assistance in accordance with Article 59 of the Fourth Geneva Convention; support, by maintaining local bodies and businesses under the urban voucher programme; and persuasion, before the launching of the programme, during and in connection with the decision to discontinue the programme, through ICRC's ongoing dialogue with the Occupying Power on its obligations under IHL, in this case Article 60 in particular, which provides that relief consignments shall in no way relieve the Occupying Power of its duty to ensure that the population is adequately provided for. Unusually for the organisation, it voiced a degree of denunciation through its press releases by publicly urging Israel to meet its responsibility under IHL as the Occupying Power.





# Introduction to International Humanitarian Law

International humanitarian law (IHL) is a set of rules that seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not – or no longer – taking part in hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war, the law of armed conflict or *ius in bello*.

IHL applies only in situations of armed conflict. It applies to both international and non-international armed conflicts, though the body of treaty rules regulating international armed conflict is more comprehensive than that regulating non-international armed conflict. However, the customary rules regulating situations of non-international armed conflict are well developed.<sup>13</sup>

IHL does not regulate whether a State may actually use force; this is governed by another distinct part of international law, set out primarily in the Charter of the United Nations. Whether a State has lawfully attacked another has no bearing on the applicability or interpretation of IHL – IHL applies equally to all Parties to the conflict.

The history of IHL is intrinsically connected with the Red Cross. In 1859, after their defeat at the Battle of Magenta, the Austrian army retreated eastwards where, at Solferino in Lombardy, it met the allied French and Piedmontese army commanded by Napoleon III and Victor Emmanuel II, the future king of a unified Italy. The battle left 14,000 Austrians and 15,000 French and Piedmontese soldiers killed or wounded.

A Swiss citizen from Geneva, Henry Dunant, passed by Solferino on a business trip just as the battle was ending and witnessed the suffering of wounded soldiers left to die untended. With the help of local women he did what he could to care for them. After returning to Geneva, Dunant wrote 'A Memory of Solferino', in which he set out two ideas. The first was to establish in each country a society to bring relief to the wounded, which, in the event

of an armed conflict, could help the army's medical services to carry out their task. That was the origin of today's Red Cross and Red Crescent Movement, consisting of the International Committee of the Red Cross (ICRC), the 186 National Societies and their Federation. The second was that Governments should adopt an international convention to provide a legal basis for the protection of military hospitals and medical personnel.

The ICRC was founded by Henry Dunant and four other Swiss citizens on 17 February 1863 in Geneva. In the same year, on 29 October, in Geneva, an international conference of government representatives and philanthropists adopted 10 resolutions, which brought the International Red Cross Movement into being.<sup>14</sup> The ICRC then directed its efforts towards the establishment of national relief societies for the military wounded.

In agreement with the ICRC, the Swiss Federal Council invited all the States of Europe, the United States of America, Brazil and Mexico to Geneva for a diplomatic conference held on 8 August 1864. Already on 22 August of the same year, the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was signed by the representatives of 12 States.

The Red Cross principles had already been applied in practice by then. In March 1864, two delegates had been sent to the Prussian-Danish war, one to the Austro-Prussian armies and one to Denmark. In addition to providing care for prisoners and wounded and sick soldiers at the front, the delegate to Denmark also contacted an association in Copenhagen and thus contributed to the establishment of the Danish Red Cross.

## Basic Principles of IHL

While the IHL treaty documents contain hundreds of articles, the basic principles of IHL can be expressed in just a few paragraphs.<sup>15</sup>

The Parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Neither the civilian population as a whole nor individual civilians may be the object of an attack. Attacks may be made solely against military objectives, subject to military necessity.

Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose the means and methods of warfare. It is prohibited to cause unnecessary suffering to combatants; accordingly it is prohibited to use weapons causing them such harm or uselessly aggravating their suffering.

People who do not or who no longer take part in the hostilities are entitled to respect for their lives and for their physical and mental integrity. Such people must in all circumstances be protected and treated with humanity, without any unfavourable distinction whatever. It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting.

Captured combatants and civilians who find themselves under the authority of the adverse Party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and to receive aid. They must enjoy basic judicial guarantees.

The wounded and sick must be 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 spared. The red cross, crescent or crystal on a

white background is the distinctive sign indicating that such persons and objects must be respected.

## **IHL Sources and Structure of the Geneva Conventions and Additional Protocols**

The four Geneva Conventions of 1949 (GC I-IV) and the two Additional Protocols of 1977 (AP I-II) are the main treaty sources of IHL.<sup>16</sup> It is generally recognised that GC I-IV have gained customary status.<sup>17</sup> A great part of the provisions of AP I-II have gained customary status as well, as have other significant IHL documents. In 2007, the third Additional Protocol (AP III), in which a third emblem was adopted in addition to the red cross and red crescent, entered into force. Otherwise, AP III merely reconfirms GC I-IV and AP I-II rules on the use of the emblems.

### **International armed conflicts**

Each of the four Conventions deals with a specific topic and category of protected persons.

Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I) contains rules on the protection of belligerents and certain other groups, the medical mission of the armed forces and National Red Cross or Red Crescent Societies or other voluntary aid societies duly recognised by their governments. It applies during international armed conflict taking place on land.

Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC II) contains rules on the protection of sick, wounded and shipwrecked belligerents and certain other groups, military hospital ships and their personnel and crew, hospital ships utilised by National Red Cross or Red Crescent Societies, other voluntary aid societies or private persons duly recognised by their governments. It applies during international armed conflict taking place at sea.

Geneva Convention III relative to the Treatment of Prisoners of War (GC III) contains rules on the protection of prisoners of war. As with the other three Conventions, it applies during international armed conflict; the concept of prisoners of war is not regulated by the law applicable during non-international armed conflicts.

Geneva Convention IV relative to the Protection of Civilian Persons in Time of War from 1949 (GC IV) contains rules on the protection of civilians in times of international armed conflict. The Convention contains a short part on the general protection of all civilians. By far the largest part of the Convention concerns civilians in enemy hands, namely civilians in enemy territory or civilians in occupied territory.

The First Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts from 1977 (AP I) elaborates on and extends the protection afforded under GC I-IV in international conflicts. It contains rules on the means and methods of war and is the first international treaty explicitly stating that civilians may not be made the object of direct attack. AP I also contains provisions on, for example, the civilian medical mission and persons, civil defence and basic judicial guarantees.

### **Non-international armed conflict**

Article 3, common to all four Geneva Conventions, is the only article in the Conventions that applies to armed conflict not of an international character. This follows directly from the wording of the article. Furthermore, owing to the fundamental character of the protection that it affords to those who do not, or no longer, take part in the conflict, it has gained customary status, and it is generally acknowledged that it must be respected in all conflict situations .

The Second Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (AP II) elaborates on and extends the protection afforded under Common Article 3 in non-international armed conflicts. It contains rules on, for example, the pro-

tection of the wounded and sick, persons deprived of liberty, judicial guarantees and the civilian population. It codifies the principle that civilians may not be made the object of direct attack.

## **Applicability of IHL**

IHL applies only in situations of armed conflict and distinguishes between international and non-international armed conflicts; a different set of rules applies to each. The Conventions apply in international armed conflicts, that is during all situations of armed conflict between two or more States or partial or total occupation<sup>18</sup> Whenever a State is using armed force against another, it has to respect IHL provisions.

### **International Armed Conflicts**

The four Geneva Conventions apply even though war has not been declared. Previously, war was usually preceded by official declarations. While this is no longer necessarily the case, such statements may nonetheless serve a purpose at the national level for domestic wartime legislation to be applicable.<sup>19</sup> The Conventions apply even though one or more of the Parties do not recognise the state of war. The Conventions are also applicable where one Party has not recognised the Government of another Party. Common Article 2 of the Conventions specifies that they apply to situations of occupation, even though there may be no armed resistance.

The application of the Conventions ceases at the general close of military operations and, in occupied territories, at the end of the occupation, except for those categories of people whose final release, repatriation or settlement takes place at a later date. These people continue to benefit from the relevant provisions of the Conventions.

AP I applies in all situations in which the four Geneva Conventions apply – that is, in all international armed conflicts provided that the Parties to the Conflict have signed the

Protocol.<sup>20</sup> Furthermore AP I extends the definition of international armed conflict to cover all 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’.<sup>21</sup> Consequently, on the adoption of AP I in 1977, it became applicable, together with the Conventions, to certain armed conflicts that did not take place between two States. The extension of applicability was motivated by the wish to improve the protection of victims of wars fought to realise the right to self-determination and was based not least on the experience of the African wars of liberation.<sup>22</sup> Needless to say, this aspect of AP I gave rise to long discussions at the Diplomatic Conferences and it is the reason why some States did not wish to ratify the Protocol. They were uncomfortable with what they perceived as a mix of *ius ad bellum* (the right to use force) and *ius in bello* (IHL), and felt that it legitimatised insurgent groups.

### **Non-international armed conflicts**

Common Article 3 applies to all non-international armed conflicts. It has been called a mini-convention in that it in just one article sets out the bare minimum protection for victims of non-international conflicts. It is of particular importance in the event of non-international armed conflicts not covered by AP II, or where the State has not ratified AP II. Arguably, Common Article 3 should be applied as widely as possible. The article merely demands respect for certain basic humanitarian rules.<sup>23</sup> Nevertheless, Common Article 3 does not cover internal tensions or disturbances such as isolated acts of violence, banditry, unorganised and short-lived insurrections, or terrorist activities.

Modern wars have resulted in a growing number of victims among the civilian population and today non-international armed conflicts constitute the vast majority of armed conflicts. AP II adopted in 1977, which is applicable in non-international armed conflicts and strengthens the protection afforded by Common Article 3, was therefore a much-needed development.

The situations to which it applies are narrower in scope than those covered by Common Article 3. AP II applies to all armed conflicts that (a) take place in the territory of a State that has ratified the Protocol, (b) between the State's and dissident armed forces or other organised armed groups, if (c) the dissident armed forces or organised armed groups:

- are under responsible command;
- exercise such control over a part of the State's territory as to enable them to carry out sustained and concerted military operations and to implement the Protocol.<sup>24</sup>

AP II does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature. Examples of situations covered by AP II are the conflicts in Colombia and the Russian Federation (Chechnya).

## **In times of peace**

States also have certain obligations under IHL in times of peace. They have agreed to disseminate the Conventions and their Protocols as widely as possible in times of peace and war.<sup>25</sup> The study of IHL must be included in the training programmes of the military and, if possible, in civilian instruction. Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and AP I must be fully acquainted with the texts.

These obligations are important: experience has shown that IHL will only be respected in war if it is made known in times of peace. Humanitarian actors can play an invaluable role either by supporting governments' efforts in this regard or by holding Governments to their promise.

The Conventions and their Protocols must be fully incorporated into national law, so that they can be enforced by domestic legal means. In some national legal systems, international legal obligations are automatically a part of dome-

stic law. In others, explicit domestic legislation is required. In particular, legislation must be adopted to prevent misuse of the emblem – also in times of peace – and to ensure that perpetrators of grave breaches can be brought to justice.<sup>26</sup> Moreover, States are under an obligation to search for and bring to justice perpetrators of grave breaches, regardless of where the crimes were committed and regardless of the perpetrators' nationality.<sup>27</sup>

### **Assisting States fulfilling Peacetime Obligations: Disseminating IHL and Humanitarian Values to Young People**

**By Solweig Nielsen, Head of the Support Team for Europe and Line Rønnow, Project Coordinator, the School Service, Danish Red Cross.**

Since 2003, the Danish Red Cross (DRC) has disseminated IHL to young people under the Exploring Humanitarian Law (EHL) educational programme<sup>28</sup>. The dissemination has taken place in Denmark, and in Serbia in cooperation with Red Cross of Serbia. EHL was developed by the ICRC and has been promoted in countries throughout the world since 1999.

EHL rests on the premise that IHL education is relevant and useful to young people in all societies, partly because armed conflicts and other situations of violence are occurring in many parts of the world today and are increasingly affecting young people. Even in societies unaffected by armed conflicts, young people in greater numbers than ever are exposed to media coverage of several kinds of violence.

In 2003, the DRC School Service received several requests from pupils and teachers following the Danish involvement in the armed conflicts in Afghanistan and Iraq. There was a growing need for an IHL educational programme. The DRC began testing the original EHL material in the autumn of 2003. The test period showed that there was indeed a need for EHL, but that the material needed to be adapted substantially to

the Danish education system. In 2005, the Danish edition of EHL – “When war is raging” – for pupils aged 13-16 was launched with the participation of Minister of Education Bertel Haarder. At the same time, the DRC began offering IHL courses for pupils and teachers in Copenhagen. During a course day, teachers are introduced to IHL and pupils participate in role-play, performing the parts of lawyers, judges and witnesses. In the autumn of 2006, a website featuring an Internet game “Will you shoot the boy” was launched with the participation of Crown Prince Frederik of Denmark.<sup>29</sup> From 2005 to 2008, more than 20,000 Danish pupils worked with the Danish edition of EHL. An evaluation in 2008 shows that both teachers and pupils find the material very relevant.

In October 2008, new IHL educational material, aimed at pupils aged 16-18, will be launched. The material “Rules of war” deals with current IHL issues such as terrorism, private military companies and the international justice system.

In Serbia, EHL activities were initiated against the background of the armed conflicts in the Balkans in the 1990s. After a period of humanitarian response to the victims of the armed conflicts, the Danish Red Cross and the Red Cross of Serbia formed a partnership in the autumn of 2003 to implement an EHL project for Serbian youth. The project supported the Red Cross of Serbia in assisting the government in raising awareness of IHL.

While the ICRC called at the time for EHL to be included in the secondary school system in Serbia, the Danish Red Cross and the Red Cross of Serbia chose to address the non-formal sector (for example youth clubs and summer camps). The activities were based on the materials developed by the ICRC in order to introduce youth to the basic rules and principles of international humanitarian law. It was hoped that the young people would thus strengthen their capacity to cope with both past and current conflict situations and to act on the basis of humanitarian norms. The project has since addressed a significant segment of both in-school and out-of-school youth throughout the territory of Serbia.

## Human Rights, Refugee and International Humanitarian Law

Human rights law, refugee law and IHL share the same purpose: the protection of the individual – but they differ in origin, approaches and reasoning. IHL tries to strike a balance between military necessity and humanity; in particular, the part of the law that governs the conduct of hostility allows much scope for military needs. Human rights law is articulated as rights, and then a balance between individuals and State is created through limitation clauses and possible derogations.<sup>30</sup> The similarity between IHL, human rights and refugee law is also one of context: lack of respect for IHL and human rights will naturally often cause populations to flee and, perhaps, become refugees. However, there are also thematic differences. IHL does not directly address, for example, democratic rights, an area covered by human rights.

Human rights law is applicable at all times, that is, both in times of peace and times of armed conflict. However, some human rights treaties permit derogations in a situation of public emergency that threatens the life of the nation.<sup>31</sup> Derogations must, however, be proportional to the crisis at hand, they must not be introduced on a discriminatory basis and must not contravene other rules of international law – including the rules of IHL.

Certain human rights are never derogable. These include the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the prohibition of slavery and servitude and the prohibition of retroactive criminal laws. The right to life is also a non-derogable provision, though it is subject to IHL's rules on the use of force in times of war.<sup>32</sup>

It is never possible to derogate from IHL – it applies only in situations of armed conflict and therefore takes the extraordinary circumstances into consideration.

Human rights treaty law regulates the relationship between the State and persons on its territory or subject to its juris-

diction and are binding only on States. IHL binds all actors in an armed conflict, both States and non-state armed groups. Under IHL, individuals can be held responsible for grave breaches of the Conventions and AP I and for other serious violations of the laws and customs of war, including in non-international armed conflicts. Under human rights, only States can, in principle, be held responsible; nevertheless, certain violations such as torture have been specifically criminalised and individuals can be held responsible for such acts also under international law.

Human rights courts may take up cases between States and/or between States and individuals. When faced with situations of armed conflict, the courts have had to deliberate on the relationship between IHL and human rights and have directly or indirectly applied IHL.<sup>33</sup>

In its decision on the request for precautionary measures regarding the US-held detainees in Guantanamo Bay, Cuba, the Inter-American Commission of Human Rights made the following observation regarding the relationship between human rights and IHL:<sup>34</sup>

‘It is well-recognized that international human rights law applies at all times, in peacetime and in situations of armed conflict. In contrast, international humanitarian law generally does not apply in peacetime and its principal purpose is to place restraints on the conduct of warfare in order to limit or contain the damaging effects of hostilities and to protect the victims of armed conflict, including civilians and combatants who have laid down their arms or have been placed hors de combat. Further, in situations of armed conflict, the protections under international human rights and humanitarian law may complement and reinforce one another, sharing as they do a common nucleus of non-derogable rights and a common purpose of promoting human life and dignity. In certain circumstances, however, the test for evaluating the observance of a particular right, such as the right to liberty, in a situation of armed conflict may be distinct from that applicable in time of peace. In such situations, international law,

including the jurisprudence of this Commission, dictates that it may be necessary to deduce the applicable standard by reference to international humanitarian law as the applicable *lex specialis*.<sup>35</sup>

The European Court of Human Rights has also had to look at the application of human rights in situations of armed conflict. In a decision regarding the killing of a Kurdish woman during a Turkish military operation in Eastern Turkey, the Court did not refer directly to IHL provisions, but IHL wording was used in the decision.<sup>36</sup>

Refugee law provides protection for a certain group of persons whether in times of peace or armed conflict. Refugee law defines who is a refugee, the rights of refugees and the legal obligations of States. According to the 1951 Refugee Convention, Article 1, a refugee is someone, who is outside his or her country of nationality or habitual residence, has a well-founded fear of persecution because of his or her race, religion, nationality, membership of a particular social group or political opinion and is unable or unwilling to avail himself or herself of the protection of that country, or to return there for fear of persecution. According to Article 1 F (a), the 1951 Refugee Convention does not apply to persons with respect to whom there is serious reason for considering that he or she has committed crimes against peace, a war crime or a crime against humanity.<sup>37</sup>

The Organisation of African Unity's Refugee Convention and the Cartagena Declaration, which is applied in Latin American States as a matter of practice, contain a broader definition of 'refugee'. The OAU Convention, for example, also considers a refugee to be a person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.<sup>38</sup>

IHL contains some specific rules on refugees, for example AP I, Article 73 and GC IV, Article 44. The primary purpose of these two articles is to protect refugees or stateless persons from adverse treatment.

## The “war” against terrorism

**By Peter Vedel Kessing, Research Fellow at the Danish Institute for Human Rights and Lecturer at the Faculty of Law, Copenhagen University.**

Acts of terrorism have traditionally been perceived as national and international crimes. Consequently, terrorism has been combated by the intelligence services, the police and the criminal justice system.

After 11 September 2001, some States, including the United States of America, have argued that they are at war with transnational terrorist movements, notably the al-Qaeda terrorist network. However, the term “war” is not used in international law. From an international law perspective, the relevant question would be whether the fight against terrorism can be qualified as:

- a threat against “international peace and security” for, pursuant to Article 42 of the Charter of the United Nations (*ius ad bellum*), this would imply that the Security Council might, as a last resort, authorise the use of force against the terrorist movement;
- an “armed attack” for, pursuant to Article 51 of the Charter of the United Nations (*ius ad bellum*), this would imply that the State might use necessary and proportionate armed force against the terrorist movement.

If a transnational terror attack can be qualified as threat to “international peace and security” or as an “armed attack”, it may be legal for the attacked State to use armed force

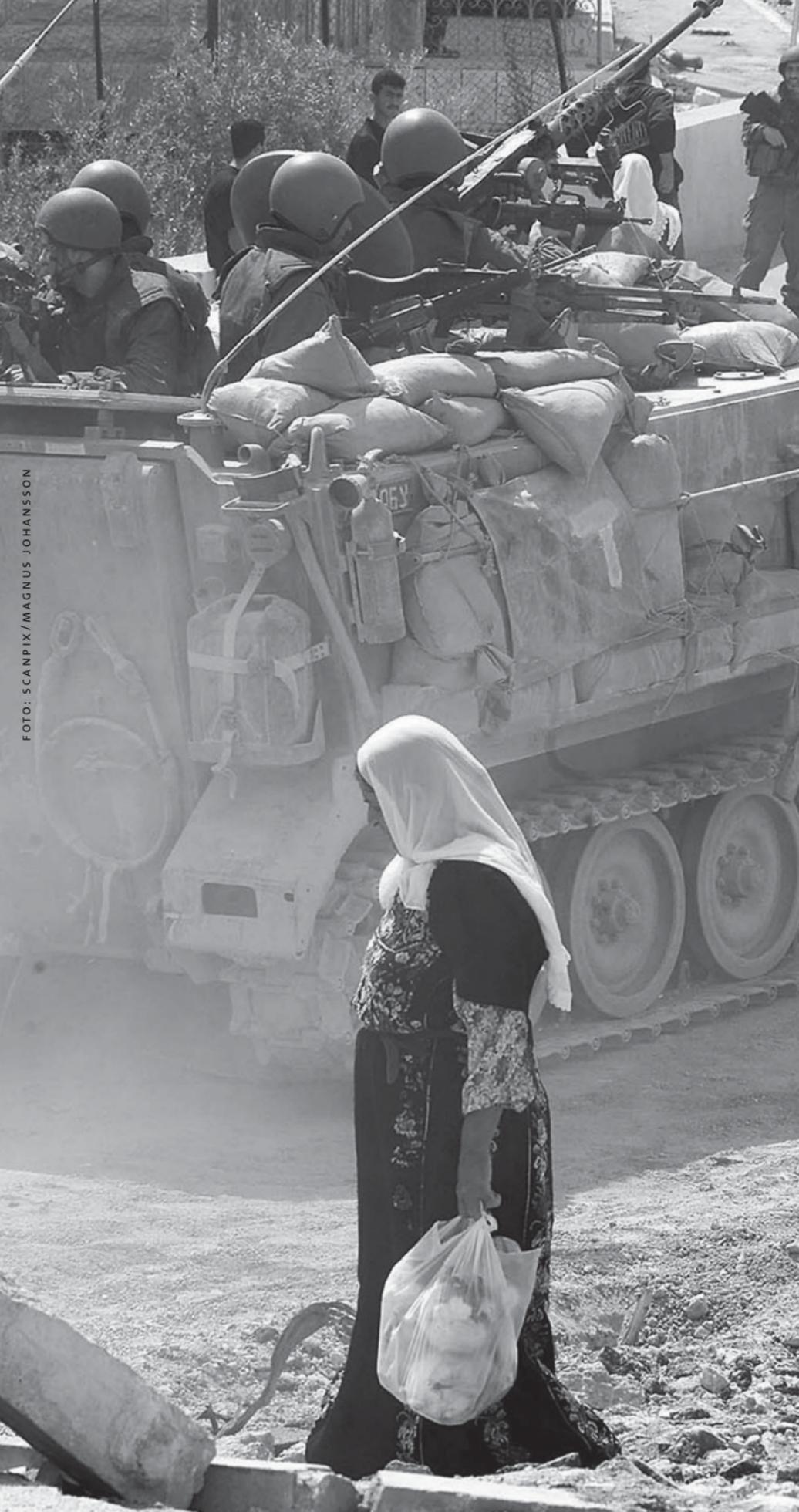
against the terrorist movement. Conversely, it is debatable whether the fight against terrorism can be qualified as:

- an “armed conflict” for, pursuant to common Articles 2 and 3 of the Geneva Conventions (*ius in bello*), this would imply that the provisions of the Geneva Conventions apply, depending on whether the conflict is an international or non-international armed conflict.

International armed conflicts are conflicts between States. Consequently, a conflict between a State and a transnational armed movement may only be qualified as an international armed conflict to the extent that the activities of the movement can be attributed to a State. Pursuant to the Geneva Conventions, it is *inter alia* possible in international armed conflicts to use armed force against individuals, including terrorists, who may be qualified as combatants or as civilians taking part directly in hostilities. Likewise, they may be interned for the duration of hostilities.

A conflict between a State and a transnational armed movement can arguably be qualified as a non-international armed conflict, depending on the intensity of the conflict and the organisation of the parties to the conflict. However, neither common Article 3 nor Additional Protocol II regulates directly States’ use of armed force and detention for security reasons.





# IHL Concepts

## Access to Victims of War

**See also: impartiality, internally displaced persons, international disaster response law, neutrality, starvation, the Red Cross and Red Crescent Movement**

Access to victims of armed conflict is a precondition for humanitarian action. Under international law, however, States bear the primary responsibility for protecting and providing for the population living in territory under their control: humanitarian aid can only be complementary and access is an issue only where the State is unable or unwilling – and cannot be persuaded – to meet its responsibilities.

Under IHL impartial, humanitarian and non-discriminatory relief actions must be allowed access by the Parties to a conflict if the population is not adequately provided for. In the Geneva Conventions, the ICRC is mentioned as an example of an organisation that supposedly per se fulfils the criteria. It is generally understood that impartial refers to the organisation in question and means organisations that do not support a Party to the conflict. *Humanitarian* refers to the nature of the activities that must be carried out to provide relief. Non-discriminatory implies that relief must be provided solely on the basis of need, without any adverse distinction as to race, nationality, religion, sex, political opinion or any other reason.

Under IHL the State in question must agree to access for relief actions. Arguably, the only legitimate reason a State has for denying access is that the civilian population is already provided for or that the intended action does not meet the required criteria of being impartial, humanitarian and non-discriminatory.

IHL seeks to balance humanitarian needs and military necessity and it is therefore accepted that a State may deny access to a specific area for imperative military reasons, for example ongoing active hostilities – the State could not guarantee protection in such a situation. Furthermore, States have the right to search relief consignments or prescribe technical arrangements (for example routes and timing). However,

consignments may under no circumstances be diverted. States always have the right to decide who may enter their national territory and IHL gives States the right to approve the participation of relief personnel in relief schemes. States may deny access to or expel anyone found to be exceeding the terms of their assignment, for example by providing relief to enemy combatants.

IHL prohibits starvation of the civilian population as a means of warfare.

**Relevant articles:** GC IV, Articles 23 and 59-61; AP I, Articles 54 and 69-71; and AP II, Articles 14 and 18.

## Children

**See also: child soldiers, education, the family unit, protection of civilians,**

In situations of armed conflict children are afforded the same general protection as civilians and must therefore be shielded from the effects of war. Also, the particularly vulnerable situation of all children – including those who have participated in hostilities – is recognised under IHL: children ‘shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require’.<sup>39</sup> A number of IHL provisions contain specific obligations relevant to the protection of children, centred primarily around maintaining family unity and ensuring the necessary assistance, care and education.

IHL does not lay down an age limit until which a person is considered a child. It affords protection for children of different ages, for example, under AP I the recruitment of children under the age of 15 is prohibited, GC IV encourages Parties to a conflict to supply children under 12 with identity discs and AP I prohibits carrying out the death sentence on persons who were under 18 at the time they committed the offence. However, it is important to recognise that relevant

IHL provisions are supplemented by the Convention on the Rights of the Child, which may provide a better level of protection and which considers any person under 18 to be a child.

**Relevant articles:** General protection: AP I, Article 77; and AP II, Article 4 (para. 3).

Evacuation and special zones: GC IV, Articles 14, 17, 24 (para. 2), 49 (para. 3) and 132 (para. 2); AP I, Article 78; and AP II, Article 4 (para. 3. e)).

Assistance and care: GC IV, Articles 23, 24 (para. 1), 38 (para. 5), 50 and 89 (para. 5); AP I, Articles 70 (para. 1) and 77 (para. 1); and AP II, Article 4 (para. 3).

Identification, family reunification and unaccompanied children: GC IV, Articles 24-26, 49 (para. 3), 50 and 82; AP I, Articles 74, 75 (para. 5), 76 (para. 3) and 78; and AP II, Articles 4 (para. 3. b)) and 6 (para. 4).

Education and cultural environment: GC IV, Articles 24 (para. 1), 50 and 94; AP I, Article 78 (para. 2); and AP II, Article 4 (para. 3. a)).

Arrested, detained or interned children: GC IV, Articles 51 (para. 2), 76 (para. 5), 82, 85 (para. 2), 89, 94, 119 (para. 2) and 132; AP I, Article 77 (paras. 3 and 4); and AP II, Article 4 (para. 3. d)).

Exemption from death penalty: GC IV, Article 68 (para. 4); AP I, Article 77 (para. 5); and AP II, Article 6 (para. 4).

## Child Soldiers

**See also: children, combatants**

In international armed conflicts, States are obliged under AP I to take all feasible measures to prevent children under 15 from taking a direct part in hostilities and it is prohibited to recruit children under 15 into the armed forces. When recruiting from persons between the age of 15 and 18, priority must be given to the oldest.

If children – for whatever reason – participate in an international armed conflict and are captured, they may be entitled to prisoner-of-war status, depending on the circumstances. Regardless of whether they are prisoners of war, they continue to benefit from the special protection afforded them as

children under IHL; for example, a death sentence pronounced on a child prisoner of war for a war crime may not be executed.<sup>40</sup>

In non-international armed conflicts, AP II prohibits the recruitment into the armed forces or armed groups of children under 15 as well as their participation in hostilities.

The Convention on the Rights of the Child contains wording similar to that of AP I prohibiting the recruitment of children under 15.<sup>41</sup> When the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict entered into force in February 2002, the age limit for compulsory recruitment by States was raised to 18 and States were encouraged to increase the minimum age for voluntary recruitment.<sup>42</sup> Under the Protocol organised armed groups should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years and States are required to take all feasible precautions to prevent such practices.

**Relevant articles:** AP I, Article 77; and AP II, Article 4.

## Civilians

**See also:** combatants, endangering civilians, unlawful combatants, internally displaced persons, judicial guarantees, military necessity, protection of civilians, precautions in attack

In international armed conflicts a civilian is any person who does not come under IHL's definition of a combatant. Civilians are protected unless and for such time as they take a direct part in hostilities. If there is doubt as to whether a person is a civilian during hostilities, he or she must be considered to be so. If combatants are staying or even hiding among the civilian population, that does not deprive the population as such of its civilian character.<sup>43</sup>

GC IV was drafted on the basis of the experiences of the Second World War and the atrocities committed in the con-

centration camps and in occupied territories. The drafters specifically wished to increase the protection of civilians in enemy hands. Therefore and as a consequence of what was possible to agree on at the time, GC IV only contains a short part on the protection of all civilians (Part II), which deals mainly with the establishment of hospitals or neutral zones, the protection of the medical mission, relief consignments and the protection of children and the family unit.

The primary part of GC IV deals with the protection of civilians in enemy hands. According to its Article 4, protected persons are those who, in any manner whatsoever, find themselves in the hands of an Occupying Power or Party to the conflict of which they are not nationals. GC IV excludes from its definition of protected persons:

- persons in the territory of a State involved in an international conflict who are nationals of a neutral State or of a co-belligerent State, as long as the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. As an example, Iraqi nationals in the United States of America are protected persons as long as the United States was engaged in an international armed conflict with or occupying Iraq. Swedish nationals in the United States of America were not protected persons, as Sweden is not part of the coalition and therefore a neutral State; Danish or British nationals are not protected, as they were nationals of a co-belligerent State;
- persons in occupied territory who are nationals of a co-belligerent State while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. As an example, Iraqis in Iraq were protected persons as long as Iraq was occupied, as were Swedish nationals in Iraq, but Danish or British nationals in Iraq were not;
- nationals of a State that is not bound by the Convention.

As the Geneva Conventions have been universally ratified, this last exemption is no longer relevant in practice.

In regard to non-international armed conflict, the term ‘civilian’ is not directly defined in treaty law. According to AP II,

civilians are protected ‘unless and for such time as they take a direct part in hostilities’. Common Article 3, also applicable in non-international armed conflicts, similarly states that those who do not take part in hostilities must be treated humanely, without any adverse distinction. In conclusion any civilian who does not – or ceases to – take a direct part in hostilities is protected. Members of State armed forces however, obviously not being civilian, are only protected once they have actually laid down their arms or are sick, wounded or captured.

**Relevant articles:** Common Article 3; GC IV, Article 4; AP I, Article 50; and AP II, Article 13.

## Civil Defence

**See also: international disaster response law, military necessity, protection of civilians, the emblem**

Civilians working for civil defence organisations and their buildings, vehicles and other equipment are protected as civilian under IHL. Moreover, civil defence organisations are given a special status because of the importance of the work they perform: they must be respected and protected and allowed to carry out their work, except in cases of imperative military necessity. Imperative military necessity allowing a State to deny access could, for example, be ongoing active hostilities – the State would not be able to guarantee protection in such a situation. Buildings, vehicles and other equipment belonging to civil defence organisations must not be destroyed or diverted from their use, except by the State to which they belong.

Civilians who – even though they are not formally members of a civil defence organisation – respond to an appeal from the competent authority and perform civil defence tasks under its control are also protected. The competent authority might, for example, be the ministry of the interior – it should not, however, be a military authority. While it is accepted that on the battlefield civil defence organisations may have to take orders from and coordinate with the military, they must

not be dependent on the military to such an extent that they lose their civilian character.<sup>44</sup>

Civilian defence organisations belonging to neutral States or States not Parties to the conflict are protected if they operate in the territory of a Party to the conflict. An example would be the Swedish civil defence organisation operating in the former Yugoslavia from the time that conflict became international.

Military personnel assigned to civil defence organisations are protected provided that they fulfil certain criteria, namely that they do not take part in hostilities, they are permanently assigned to civil defence tasks, and they operate only within their own national territory.

AP I contains special provisions on civil defence organisations in occupied territory, protecting them against interference by the Occupying Power and obliging the Occupying Power to facilitate their work.

AP I lists humanitarian tasks defined as 'civil defence' when undertaken to protect the civilian population against the dangers arising from hostilities or other disasters, to help it to recover from the immediate effects of such events or to provide the conditions necessary for its survival:

- warning;
- evacuation;
- management of shelters;
- management of blackout measures;
- rescue;
- medical services, including first aid, and religious assistance;
- fire-fighting;
- detection and marking of danger areas;
- decontamination and similar protective measures;
- provision of emergency accommodation and supplies;
- emergency assistance in the restoration and maintenance of order in distressed areas;
- emergency repair of indispensable public utilities;
- emergency disposal of the dead;

- assistance in the preservation of objects essential for survival;
- complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organisation.

The protection to which civilian defence personnel, buildings and matériel are entitled ceases if they commit or are used to commit acts harmful to the enemy. Before protection ceases proper warning must be given and, where appropriate, a time limit must be set.

**Relevant articles:** GC IV, Article 63; and AP I, Articles 61-67.



The sign of a blue triangle on an orange background may be used to identify civil defence organisations and their buildings and matériel. It may also be used to mark shelters for the civilian population.

## Command Responsibility

**See also: ensuring respect for IHL, impunity, war crimes**

Under IHL military commanders may be held responsible for violations of IHL by their subordinates if they knew or should have known that a violation was being committed and failed to take the measures within their power to prevent or repress it or to submit the matter for investigation and prosecution.<sup>45</sup>

Military commanders must report violations of IHL to the competent authorities, take the necessary steps to prevent such violations and, where appropriate, take disciplinary or penal action.

To prevent violations, commanders must ensure that members of the armed forces under their command are aware of their obligations under IHL. Anyone who, during an armed conflict, takes responsibility for persons protected

by the Conventions must possess the text of the relevant Convention and be specially instructed as to its provisions. States must ensure that legal advisers are available, in times of war as in times of peace, to advise military commanders at the appropriate level.

**Relevant articles:** GC I, Article 47; GC II, Article 48; GC III, Article 127; GC IV, Article 144; and AP I, Articles 82, 86 and 87.

## Combatants

**See also: civilians, child soldiers, prisoners of war, unlawful combatants**

In international armed conflicts only combatants may legally participate in hostilities. They cannot therefore be held criminally responsible for their use of force or violence during the armed conflict as long as they do so in accordance with IHL. On the other hand they shall always be held responsible for war crimes or other serious breaches of international law such as crimes against humanity or genocide. If captured, they must be protected as prisoners of war. Combatants are legitimate military targets as long as they are not hors de combat due to surrender, injury, capture or any other reasons.

The notion of combatants has been defined only for international armed conflicts and includes:

- all members of the armed forces of a Party to the conflict except religious or medical personnel. This includes all organised armed forces, groups and units under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognised by an adverse Party.
  - civilians living in non-occupied territory who spontaneously take up arms to resist an invading force without having had time to be organised into regular armed units, provided they carry arms openly and respect the laws and customs of war.
- AP I provides that where owing to the nature of the hostilities combatants cannot distinguish themselves from the civilian population, they shall retain their combatant status if they

carry their arms openly during each military operation and are visible to the adversary during military deployment preceding the launching of an attack. The drafters had in mind certain kinds of guerrilla warfare, for example in occupied territory. To this day, this is a controversial matter for some States, such as the United States of America, and a reason for which they have not ratified AP I.

In regard to non-international armed conflicts there is no legal definition of a combatant and the notion itself is not used in applicable treaty law. One reason is the so-called combatant privilege: the right to participate in hostilities. States did not want opposing forces fighting on their territory to be granted such a right.

**Relevant articles:** AP I, Articles 43 and 44; GC III, Article 4; and Hague IV, Articles 1-3.

‘Party to the conflict’ in this respect means State signatory of the Conventions and Party to an international armed conflict. In the Tadic judgment of 15 July 1999, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia had to deal with the issue of combatant status.

According to the Appeals Chamber, an Israeli military court sitting in Ramallah (Kassem et al, 13 April 1969) had rightly stated that: ‘In view, however, of the experience of two World Wars, the nations of the world found it necessary to add the fundamental requirement of the total responsibility of Governments for the operations of irregular corps and thus ensure that there was someone to hold accountable if they did not act in accordance with the laws and customs of war’. The Israeli Military Court consequently held that the accused, members of the PLO captured by Israeli forces in the territories occupied by Israel, did not belong to any Party to the conflict.

As the court put it: ‘In the present case [...] no Government with which we are in a state of war accepts responsibi-

lity for the acts of the Popular Front for the Liberation of Palestine. The Organisation itself, so far as we know, is not prepared to take orders from the Jordan [ian] Government, witness[ed by] the fact that [the Organisation] is illegal in Jordan and has been repeatedly harassed by the Jordan[ian] authorities.'

See also the ICRC Commentary to GC III, Article 4.

## Crimes against Humanity

**See also: command responsibility, customary international law, genocide, impunity, responsibility to protect, war crimes**

The notion of crimes against humanity as an independent juridical concept was first recognised in the Nuremberg Charter that granted the Nuremberg Tribunal jurisdiction over major World War II war criminals. Although not previously codified the term 'crimes against humanity' had been used in a non-technical sense as early as 1915 and in subsequent statements concerning the First World War, and was implied in the preamble to the 1907 Hague Convention IV. The customary status of the concept of crimes against humanity is thus well established.

The Statute of the International Criminal Court contains the first codification in international treaty law of the definition of the crime against humanity.<sup>46</sup> Crimes against humanity cover certain acts (for example murder, deportations, imprisonment, torture, slavery and rape) directed against the civilian population, whether in times of peace or war and independent of the motive. The attacks must be widespread or systematic.

The statutes and case law of the International Criminal Tribunals for the former Yugoslavia and Rwanda and the Statute of International Criminal Court have played a vital role in developing the law on crimes against humanity and other serious violations of international law.

**Relevant articles:** Statute of the International Criminal Court, Article 7; Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 5; and Statute of the International Criminal Tribunal for Rwanda, Article 3.

## Customary International Humanitarian Law

States usually become legally bound by international law by signing and ratifying a treaty or convention. Whereas signature signals the State's intention to be bound, ratification is the national process under which the State actually becomes bound by the convention in question. However, customary law is another form of international law binding on States, even though it may not appear in a treaty or the State has not ratified the treaty in question.

Customary international law is binding, whether or not the State concerned has ratified a treaty or convention codifying the rule in question. The Statute of the International Court of Justice refers to customary international law as 'a general practice accepted as law'.<sup>47</sup> Elements emphasised in determining whether State practice has become customary law are duration, uniformity, consistency, generality of the practice and whether the practice is considered to be obligatory or, to quote the Statute, 'accepted as law'.<sup>48</sup>

In its advisory opinion on the Threat or Use of Nuclear Weapons of 8 July 1996, the International Court of Justice made the following observations on the customary nature of IHL:

'It is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and "elementary considerations of humanity" as the Court put it in its Judgment of 9 April 1949 in the Corfu Channel case (1. C. J. Reports 1949, p 22), that the Hague and Geneva Conventions have enjoyed a broad accession. Further

these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law.’

The Geneva Conventions have now been universally ratified. The two Additional Protocols also codify customary international law to a large extent.

In 2005, the ICRC issued a study on customary IHL rules. It was prepared after States officially mandated the organisation to do so at the 26th International Conference of the Red Cross and Red Crescent in 1995.<sup>49</sup> The study identified 161 customary IHL rules.

## Deprived of Liberty

**See also: civilians, judicial guarantees, prisoners of war, the family unit, the Red Cross and Red Crescent Movement, torture, unlawful combatants**

All persons deprived of liberty for reasons relating to an armed conflict are entitled to humane treatment independent of the reason for their deprivation of liberty and independent of their nationality, ethnic group, gender, political conviction or any other reason. Violence, torture and inhumane or degrading treatment are under all circumstances prohibited. They are entitled to respect for their honour, family rights, religious convictions and practices, manners and customs.

A person captured by an enemy Party during an international armed conflict is either protected by GCIII as prisoner of war or by GCIV as a civilian. The fact that a civilian has illegally engaged in conflict before being captured does not deprive him or her of that protection, or of his or her civilian status, but may lead to certain, limited, waivers of rights and privileges.<sup>50</sup>

IHL distinguishes between detention and internment: detainees have been deprived of liberty as a result of a

judicial decision, most likely arising from a criminal charge. Internees are deprived of liberty as a result of an administrative decision, most likely as a security precaution.

Civilians interned by an enemy or Occupying Power are protected by GC IV, which contains detailed rules on their treatment, place of detention, medical attention, disciplinary sanctions, right to correspondence and other matters.<sup>51</sup> GC IV also contains a number of judicial guarantees protecting persons living in occupied territory who have been accused of a criminal offence by the Occupying Power.

AP I contains a number of fundamental guarantees that must be respected in respect of anyone deprived of liberty in relation to an international armed conflict, including the right to be informed about the reasons for the deprivation of liberty and, if relevant, the criminal charges, the right to be released when the circumstances leading to the deprivation of liberty no longer exist, and the right to defence and a fair trial.<sup>52</sup>

AP II protects persons deprived of liberty for reasons relating to a non-international armed conflict, whether interned or detained. They must be provided with medical care and appropriate conditions of detention and may not be imprisoned close to the combat zone. AP II also contains a number of essential judicial guarantees. IHL does not provide for the granting of prisoner of war status in non-international armed conflicts, and so these rules also protect arms bearers deprived of liberty.

The United Nations Standard Minimum Rules for the Treatment of Prisoners set out principles and practices on the treatment of prisoners and the management of places of detention.<sup>53</sup>

The ICRC has a treaty-based right to visit civilian detainees and internees in situations of international armed conflicts. The aim of the visits is to assess the prison conditions and monitor the treatment of the prisoners. In non-international armed conflicts and situations of internal violence, Article 3 common to the four Geneva Conventions and the Statutes of the Movement encour-

rage the ICRC to offer its services to visit detainees, and many governments accept its proposal to do so.<sup>54</sup>

**Relevant articles:** GC IV, general protection in Article 27, detainees in Articles 37 and 76, internees in Articles 79-135, judicial guarantees in occupied territory in Articles 64-75; AP I, Article 75; Common Article 3; and AP II, Articles 4-6.

## Destruction of Property

**See also: environment, hospitals, military necessity, precautions in attack, principle of proportionality, protected zones, protection of civilians, starvation**

A civilian object is any object that is not a legitimate military objective. It is prohibited to attack civilian objects such as, for example living quarters used by the civilian population or factories, shops, vehicles and other objects exclusively used for civilian purposes.

Military targets are all objectives that by their 'nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage'.<sup>55</sup> Whereas a person is civilian as a consequence of status, objects are civilian as a consequence of the use that is – or is not – being made of them. If there is doubt as to whether or not a normally civilian object is being used for military purposes, an object should be presumed not to be so used and therefore protected.

Some objects are entitled to special protection under IHL. Attacking or destroying objects indispensable to the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value to the civilian population or adverse party, is prohibited. It is prohibited to commit acts of hostility against cultural objects such as historic monuments, works of art or places of worship or

to use them in any way to support the military effort. Dams, dykes and nuclear power plants containing dangerous forces that, if released, would be uncontrollable and most likely extremely dangerous to the civilian population are also afforded special protection.

The destruction of private or public property in occupied territory is specifically prohibited, except where such destruction is absolutely necessary for military operations. The exception does not apply to destruction for any other purpose, such as administrative or law enforcement.

**Relevant articles:** Hague IV, Article 23; GC IV, Article 53; AP I, Articles 48, 52-54 and 56; AP II, Articles 15 and 16; and the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and its Protocols.

Many attempts have been made to define and draw up lists of exactly what constitutes a military target. In 1956 the ICRC submitted a set of Draft Rules for the Limitation of Dangers incurred by the Civilian Population in Time of War. They were never adopted but they contained a list of examples of objectives which, 'in view of their essential characteristics, were generally acknowledged to be of military importance' and may be a general guideline:

- (1) Armed forces, including auxiliary or complementary organisations, and persons who, though not belonging to the above-mentioned formations, nevertheless take part in the fighting.
- (2) Positions, installations or constructions occupied by the forces indicated in subparagraph 1 above, as well as combat objectives (that is to say, those objectives which are directly contested in battle between land or sea forces including airborne forces).
- (3) Installations, constructions and other works of a military nature, such as barracks, fortifications, War Ministries (e.g. Ministries of Army, Navy, Air Force, National Defence, Supply) and other organs for the direction and administration of military operations.

- (4) Stores of arms or military supplies, such as munition dumps, stores of equipment or fuel, vehicles parks.
- (5) Airfields, rocket launching ramps and naval base installations.
- (6) Those of the lines and means of communication (railway lines, roads, bridges, tunnels and canals) which are of fundamental military importance.
- (7) The installations of broadcasting and television stations; telephone and telegraph exchanges of fundamental military importance.
- (8) Industries of fundamental importance for the conduct of the war:
  - (a) industries for the manufacture of armaments such as weapons, munitions, rockets, armoured vehicles, military aircraft, fighting ships, including the manufacture of accessories and all other war material;
  - (b) industries for the manufacture of supplies and material of a military character, such as transport and communications material, equipment for the armed forces;
  - (c) factories or plant constituting other production and manufacturing centres of fundamental importance for the conduct of war, such as the metallurgical, engineering and chemical industries, whose nature or purpose is essentially military;
  - (d) storage and transport installations whose basic function it is to serve the industries referred to in (a)-(c);
  - (e) installations providing energy mainly for national defence, e.g. coal, other fuels, or atomic energy, and plants producing gas or electricity mainly for military consumption.
- (9) Installations constituting experimental, research centres for experiments on and the development of weapons and war material.

II. The following however, are excepted from the foregoing list:

- (1) Persons, constructions, installations or transports

which are protected under the Geneva Conventions I, II, III, of August 12, 1949;

- (2) Non-combatants in the armed forces who obviously take no active or direct part in hostilities.’

## Displacement

**See also: endangering civilians, internally displaced persons, protection of civilians, precautions in attack, starvation, the family unit**

IHL prohibits the forceful displacement of the civilian population both within a State (transfer) and across an international border (deportation). GC IV and AP II, however, provide for total or partial evacuation of the civilian population ‘if the security of the population or imperative military reasons so demand’. In that case, all possible measures must be taken to ensure that the evacuated civilian population is received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Under GC IV evacuated persons must be moved back to their homes as soon as hostilities in the area in question have ceased.

It is prohibited to expose the civilian population to unnecessary danger for example by moving them to an unsafe area where fighting is in progress or to use them as shields against attacks.

**Relevant articles:** GC IV, Article 49; AP I, Article 85 para. 4.a); and AP II, Article 17.

The International Criminal Tribunal for the former Yugoslavia examined the question of deportation of civilians as opposed to transfer in the Krstic (Srebrenica) case (IT-98-33). The case concerned the events surrounding the Bosnian Serb takeover of the United Nations ‘safe area’ of Srebrenica in Bosnia and Herzegovina, in July 1995:

‘Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacements within a State. ...

The Bosnian Muslim women, children and elderly assembled at Potocari were forcibly transferred to Kladanj, an area in the territory of Bosnia-Herzegovina controlled by the [Armija Bosnia-Herzegovina], in order to eradicate all trace of Bosnian Muslims in the territory in which the Bosnian Serbs were looking to establish their own State. However, Bosnia-Herzegovina was the only State formally recognised by the international community at the time of the events. Since the Srebrenica civilians were displaced within the borders of Bosnia-Herzegovina, the forcible displacement may not be characterised as deportation in customary international law.

The Chamber therefore concludes that the civilians assembled at Potocari and transported to Kladanj were not subjected to deportation but rather to forcible transfer. This forcible transfer, in the circumstances of this case, still constitutes a form of inhumane treatment covered under Article 5 of the Statute [of the International Criminal Tribunal for the former Yugoslavia].’

## Education

### See also: Children

IHL recognises the right to education, including in situations of armed conflict. Besides the important provision that the Parties to a conflict must provide children with the care and aid that they require, a number of specific rules also apply.

In an international armed conflict, the Parties must ensure that children under 15 who have been separated from their

parents can continue to receive education. Their education should, as far as possible, be entrusted to persons of a similar cultural tradition. Likewise, an occupying power must facilitate the proper working of all institutions devoted to the care and education of children, in cooperation with national and local authorities. If children are interned, the interning authority must provide for their education and allow them to continue to attend school, whether within or outside the internment facility. Interned adults should be encouraged to pursue educational activities and the interning authority should take measures to ensure that educational activities are possible, for example by providing the necessary premises. Internees should be allowed to receive packages and assistance in the form of educational material.

In regard to non-international armed conflicts, Additional Protocol II provides that children shall be provided with the care and assistance that they require, in particular education.

Unless used for purposes harmful to the enemy, schools and other educational institutions are obviously civilian objects and protected from attack.

**Relevant articles:** GV IV, Articles 24, 50, 94, 108 and 142; AP I, Articles 77 and 78; and AP II, Article 4.

## The Emblem

**See also: hospitals, medical assistance, the Red Cross and Red Crescent Movement.**

The Geneva Conventions and their Additional Protocols refer to four different emblems: the red cross, crescent, lion and sun, and crystal. The red lion and sun is no longer used.

The emblem may be put to two different uses: it may be used for protective purposes, which is a visible manifestation of the protection accorded under IHL to medical personnel, units and transports. Use of the emblem for indicative purposes in wartime or in times of peace shows that a person or item

of property has a link with the Red Cross and Red Crescent Movement.

In times of armed conflict, the emblem may be used mainly for protective purposes by:

- the armed forces' medical services;
- the Red Cross and Red Crescent Movement;
- civilian hospitals and other medical facilities recognised as such by the government and authorised to display the emblem for protective purposes (first-aid posts, ambulances, for example);
- other voluntary relief agencies with government recognition and authorisation may use the emblem for personnel and equipment assigned exclusively to medical services.

In times of peace the emblem may be used for indicative purposes by:

- the Red Cross and Red Crescent Movement;
- ambulances and first-aid stations, on condition that it is used in conformity with national legislation, that the Red Cross or Red Crescent National Society has authorised such use and that the first-aid stations are exclusively designed to provide treatment free of charge.

The red lion and sun was used by Iran until the Islamic revolution. In 1980 the Islamic Republic of Iran declared that it was waiving its right to use of the red lion and sun and would henceforth use the red crescent while it reserved the right to return to the red lion and sun. The Third Additional Protocol entered into force in January 2007 and the Red Crystal was adopted concomitantly. The purpose was to give States that could not agree on the use of either of the two existing emblems an alternative that was not perceived as having any political, religious or other connotation.

IHL specifies that States must take steps to prevent and punish misuse of the emblem in both wartime and peacetime. States must ensure that national legislation is in place to prevent and repress misuse of the emblem.

A particularly grave form of misuse of the emblem is perfidy: the illegal use of the emblem during armed conflict to protect combatants or military equipment with the intent to kill, wound or capture the enemy.

As an example of what appears to have been misuse, the ICRC expressed serious concern after a member of a Colombian army team involved in an operation to free 15 hostages in July 2008 was shown on Colombian television wearing a tabard marked with the red cross emblem.

**Relevant articles:** GC I, Articles 38-44 and 53-54; GC II, Articles 41-45; and AP I, Article 18; AP II Article 12; and AP III.



## Endangering Civilians

**See also:** displacement, environment, internally displaced persons, military necessity, precautions in attack, protection of civilians, protected zones

Civilians must be protected against the dangers arising from military operations, especially against acts of violence. It follows that civilians may not be forced to carry out dangerous tasks connected with the military effort such as searching houses or persons during military operations.

To ensure that civilians are not exposed to unnecessary danger, the Parties to a conflict must avoid, to the maximum extent feasible, locating military objectives within or near a densely populated area.

IHL prohibits what has come to be known as human shields: the presence or movements of the civilian population or indi-

vidual civilians may not be used to render an area immune from attacks or to shield military operations. It is prohibited to place civilians on or close to a military objective – for example a bridge or military barracks – to prevent the enemy from attacking it, or to make civilians walk in front of combatants, for example during house searches.

**Relevant articles:** GC IV, Articles 27 and 28; AP I, Articles 51 and 58; and AP II, Articles 4 and 13.

On 6 October 2005, the High Court of Justice ruled that it was illegal for the Israeli Defence Forces (IDF) to use Palestinian civilians during military operations. The decision was made on a petition filed by seven human rights organisations in 2002. The petition followed the IDF's use of Palestinian civilians as human shields since the beginning of the second intifada, primarily during IDF operations in Palestinian population centres.

Chief Justice Aharon Barak declared: 'You cannot exploit the civilian population for the army's military needs, and you cannot force them to collaborate with the army.' He added: 'Based on this principle, we rule it illegal to use civilians as human shields, and we also rule it illegal to use civilians to pass military warnings from the army to those the army wants to arrest.'<sup>56</sup>

## Ensuring Respect for IHL

**See also: impunity, responsibility to protect, the Red Cross and Red Crescent Movement, war crimes**

States have an obligation to respect and ensure respect for IHL. The meaning of this is twofold: States must do their utmost to ensure that IHL is respected by their own agents (in particular the military) and by all others under their jurisdiction. They must furthermore take all possible steps to ensure that IHL is respected by other States that have ratified the Conventions, in particular by the Parties to an armed conflict, and to react against violations. The obligation to

respect and ensure respect for international humanitarian law applies in both international and non-international conflicts.<sup>57</sup>

States have adopted a number of different measures aimed at ensuring respect for IHL, often depending on the political circumstances of a particular conflict. Sometimes States have publicly denounced other States' actions, in other cases protests have been lodged with the diplomatic missions of the country in question. States have acted to ensure that persons responsible for war crimes are brought to justice, for example by prosecution at national courts and by establishing international criminal courts or tribunals, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court. Conferences have been held to discuss specific aspects of IHL or of a conflict, and embargoes have been imposed. An example of action that would fall under the heading of ensuring respect is the European Union's trade agreement with Israel, under which preferential treatment is extended only to produce from within the 1948 borders and not to produce grown in the illegal settlements. Another example is the warning, by a senior European Union security official to the chief EU official for Kenya and Somalia, that that Ethiopian and Somali military forces in Somalia might have committed war crimes and that donor countries could be considered complicit if they did nothing to stop them.<sup>58</sup>

IHL provisions refer, for instance, to the following measures to ensure respect:

- States may convene meetings to consider general problems concerning the application of the Conventions and AP I;
- States must assist each other to the greatest extent possible in relation to trials for war crimes. Such assistance might consist in handing over information or evidence, arrest and extradition for the trial, forensic assistance, assistance with legal matters and other forms of assistance;
- the system of protecting powers may be used. A protecting power is a State mandated by a State involved in armed conflict to safeguard its interests in humanitarian matters;<sup>59</sup>

- States may call on the International Fact-Finding Commission to inquire into facts surrounding alleged war crimes and facilitate the restoration of respect of IHL;<sup>60</sup>
- States may call upon the United Nations to act in cooperation to end serious cases of IHL violations;
- States have given the ICRC a mandate to monitor the application of IHL.

**Relevant articles:** GC I-IV, Common Article 1 and Articles 8 and 9 respectively; and AP I, Articles 5, 7 and 88-90.

## Environment

**See also:** destruction of property, starvation, weapons

The 1976 Convention on the prohibition of military or any hostile use of environmental modification techniques (ENMOD) prohibits military or any other hostile use of environmental modification techniques that have widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party. According to the Convention, the term ‘environmental modification techniques’ refers to any technique for changing – through the deliberate manipulation of natural processes – the dynamics, composition or structure of the Earth.

AP I prohibits the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment and specifically obliges the Parties to the conflict to take care to protect the environment against such damage. The prohibition is found in two different, but similarly worded, articles in the Protocol. At the diplomatic conferences leading to the adoption of the Protocol, the delegates considered this and explained that the wording in Article 35 was meant to restrict the means and methods of warfare and prohibit unnecessary suffering. The wording of Article 55 was meant specifically to protect the civilian population against the consequences of damage to the natural environment. The delegates therefore decided against merging the two articles.<sup>61</sup> With regard to

ENMOD, the conclusion was that the Protocol was ‘aimed at protecting the natural environment against damage which could be inflicted on it by any weapon, whereas the goal of the Convention [was] to prevent the use of environmental modification techniques as a weapon. Moreover, ‘the Protocol applie[s] only to armed conflict, while the prohibition contained in the Convention applies to the use of these techniques for hostile purposes, even in a case where there had been no declaration of war whatsoever, and where no other weapons were used’.

With regard to the severity of the damage prohibited, the Commentary to the Protocol states that in the ENMOD convention, the term ‘long-lasting’ was defined as lasting for a period of months or approximately a season, while ‘long-term’ in the Protocol was interpreted as a matter of decades.

No similar prohibition is found in the law applicable in non-international armed conflict, in which the general protection of civilian objects or the prohibition of attacks against objects indispensable to the survival of the civilian population or installations containing dangerous forces, should such attack cause the release of such forces, apply.

Prohibition of the use of certain weapons, such as biological or chemical weapons, mines or rules on the clearing of unexploded remnants of war also provide protection for the natural environment.

**Relevant articles:** ENMOD, Article 1 and 2; AP I, Articles 35 and 55; and AP II Articles 14 and 15.

## Family Unity

**See also:** children, deprived of liberty, displacement, internally displaced persons, prisoners of war, the Red Cross and Red Crescent Movement

As a general rule, the family unit is protected in situations of armed conflict. IHL lays down a number of rules aimed at

preventing the separation of families, for instance if deprived of their liberty, family members should be accommodated together in places of detention, and during evacuations the Parties to a conflict must ensure that members of the same family are not separated.

IHL confirms the right to be informed of the fate of missing relatives. In international armed conflicts, States must establish a National Information Bureau to collect information relating to persons protected by the Conventions. The National Information Bureau must transmit such information to the Central Tracing Agency, which is a division of the ICRC. Together with the National Red Cross or Red Crescent Societies, the Central Tracing Agency works to restore contacts between victims of conflict situations and, if necessary, to help to reunite separated family members, especially children and their parents.<sup>62</sup>

In an international armed conflict, the Parties to the conflict must facilitate enquiries by family members separated because of the conflict to help them to restore contact with one another and try to bring them together again. They must also encourage the work of organisations engaged in this task. API provides that the Parties to the conflict must search for persons reported missing by an adverse Party. When children are evacuated abroad, a card must be drawn up with full details on each child to facilitate the child's subsequent return home. These cards must be sent to the Central Tracing Agency.

Civilians in the territory of a Party to the conflict or in occupied territory have the right to send and receive news of a strictly personal nature, possibly through the Central Tracing Agency if the normal postal service has broken down. The Parties in conflict may insist on the use of a standard 25-word message form and limit the number of messages sent to one per month.

In non-international armed conflicts, Parties must take all appropriate steps to facilitate the reunion of separated families. Persons whose liberty has been restricted as a consequence of the conflict must be allowed to send and receive letters

and cards, though the competent authority may restrict the number, if it deems it necessary.

Humanitarian organisations play an important role in facilitating communication, reuniting families or taking practical steps to prevent families from being separated in the first place, and the Parties to the conflict must facilitate this work. Many factors must be taken into consideration when working to restore family links. Care must always be taken not to reveal a hiding place or secret identity of a person who does not wish to be found. The consent of a person who is being sought must always be confirmed before any information is passed on.<sup>63</sup>

In times of armed conflict and should other means of communication be limited, Red Cross messages may be a vital means of communication, enabling families to exchange information of a strictly personal nature. Red Cross messages consist of small, open cards that may be censored by the Parties to the conflict at any time. The ICRC and the National Red Cross and Red Crescent Societies facilitate their collection and distribution.

In December 2006, the United Nations General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance. It will enter into force when ratified by 20 States.

**Relevant articles:** GC I, Article 16; GC II, Article 18; GC III, Article 122; GC IV, Articles 25-27 and 136; AP I, Articles 32-34, 74 and 78; and AP II, Articles 4 and 5.

## Genocide

**See also: command responsibility, crimes against humanity, impunity, responsibility to protect, war crimes**

As defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and as included in the Statute of the International Criminal Court, genocide is the

commission of certain acts such as murder or serious bodily or mental harm with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. The central part of the definition is the perpetrator's intent: in order to be held responsible for genocide, it is not enough to have committed atrocious acts against a group of people; such acts must have been committed with the intent to destroy that particular group. Genocide can be committed both in times of war and in times of peace. The Genocide Convention criminalises the commission of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.

Relevant articles: The Genocide Convention, Article 2; Statute of the International Criminal Court, Article 6; Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 4; and Statute of the International Criminal Tribunal for Rwanda, Article 2.

## Hospitals and Medical Units

**See also: medical assistance, protected zones, the emblem**

As a logical consequence of the special emphasis in IHL on the provision of care for the wounded and sick, all medical units, whether hospitals or other care facilities, are entitled to special protection under IHL and may not be attacked. The same consideration is reflected in the special protection afforded to medical personnel.

Hospitals and other medical units may not be used for purposes that do not fall within their humanitarian duties and that are harmful to the enemy. If so used, their protection shall cease, but only after due warning, setting, in all appropriate cases, a reasonable time limit and only after such warning has not been heeded. Personnel employed at the hospital may be armed for their own defence or that of the wounded and sick in their charge. Small arms taken from the wounded and sick must be handed over to the appropriate authorities. If a hospital or other medical unit falls into enemy hands it

must still be reserved for the same purpose and staff must be free to pursue their duties, as long as the capturing power does not itself provide the necessary care of the wounded and sick. An occupying power has a duty to meet the medical needs of the wounded and sick, and of the civilian population in an occupied territory. This does not necessarily mean that the occupying power is required to meet those needs itself, but rather that it should leave existing facilities in place and facilitate their continued functioning.

Hospitals and other medical units may use the Red Cross, Crescent or Crystal emblem to mark their protection under IHL.

**Relevant articles:** GC I, in particular Articles 19-23, 33, 42; AP I, Articles 12-14, 18; Common Article 3; and AP II, Articles 11 and 12.

## Impartiality

**See also:** access to victims of war, neutrality

Impartiality, in a humanitarian context, is generally understood to mean provision of assistance without regard to the beneficiary's party, gender, political, national, ethnic, racial, religious affiliation or other distinction. The only difference in treatment allowed is on the basis of need.

The provisions of the Geneva Conventions and Protocols in regard to assistance, be that medical or any other kind, are based on the principle of impartiality. For example, the medical service of the armed forces must provide medical aid to sick or wounded combatants regardless of the side to which they belong.

While the principle of neutrality has been contested, impartiality is generally well understood and accepted.

The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in disaster response programmes refers to the principle of impartiality, in particular in its rule number 2:

'Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone.'

The Code of Conduct was drawn up in 1994 to set ethical standards for organisations involved in humanitarian work and has been widely adopted by humanitarian agencies. In the event of armed conflict, the Code of Conduct must, as indicated in its stated purpose, be interpreted and applied in conformity with international humanitarian law. It thus indicates that its principles should also be observed in such contexts.

**Relevant articles:** GC I, Article 12; GC II Article 12; GC III, Article 16; GC IV, Article 27; AP I, Articles 10 and 75; AP II, Articles 4 and 7; and Common Article 3.

## Impunity

**See also:** crimes against humanity, genocide, responsibility to protect, war crimes

It was perhaps the Pinochet case that first embodied the international call for an end to impunity for the most serious of international crimes. In 1998, General Augusto Pinochet, former President of Chile, travelled to London for medical treatment. While in London, he was indicted by a Spanish magistrate and arrested. A lengthy legal battle over his extradition to Spain then ensued. General Pinochet was finally allowed to return to Chile on medical grounds in 2000, but only after the House of Lords, the highest court in the United Kingdom, had ruled that no one, not even former Heads of State, was immune from prosecution for some international crimes, such as torture. In Chile, he was again indicted. When General Pinochet died on 10 December 2006, he had been implicated in more than 300 criminal charges in Chile.<sup>64</sup>

At the time, the Rome Statute for the International Criminal Court had already been adopted and both the International

Criminal Tribunals for Rwanda and the former Yugoslavia had begun prosecution for crimes relating to their specific contexts. What was exceptional was that the Spanish court, which issued the original warrant against General Pinochet, was a national court and had based the case on the principle of universal jurisdiction, which allows States to hold perpetrators of the most serious international crimes liable, regardless of their nationality, the nationality of the victims or the place where the crime was committed. The Geneva Conventions require States to establish universal jurisdiction over the most serious violations (also referred to as grave breaches), as do some other international treaties with regard to other serious crimes under international law.

States have enshrined universal jurisdiction in their national legislation in various ways, some providing for easier access to prosecution than others. Belgian legislation, for example, was particularly progressive, but was limited in 2003 after pressure from some States and a judgment by the International Court of Justice, which held that the Minister of Foreign Affairs of the Democratic Republic of the Congo was immune from prosecution in Belgian courts while still holding that office.<sup>65</sup> A Belgian court had charged the Minister as perpetrator or co-perpetrator of war crimes and crimes against humanity. The difference compared to the Pinochet case was that the Minister was still in office when charged, while General Pinochet was no longer in office as Head of State.

The International Criminal Court has since become operational and more specialised courts and tribunals have been established for Cambodia and Sierra Leone. National courts have continued to try indictees for international crimes and convictions have fallen, for example in Ethiopia against former President Mengistu Haile Mariam who was convicted in absentia in 2006 for genocide during the Derg-regime, in the United Kingdom against a former Afghan warlord who was convicted in 2005 for torture and kidnapping and in Belgium, where two Rwandan nuns were convicted in 2001 for their role in the Rwandan genocide.

Still, effective implementation – and acceptance – of the obligation to prosecute for serious violations of international law continues to be problematic. That has been the case, for example, with regard to Uganda, where the International Criminal Court issued arrest warrants in 2005 for five senior leaders of the Lord’s Resistance Army for crimes against humanity and war crimes. The cases were originally referred to the court by the Ugandan Government, but as peace talks between the Lord’s Resistance Army and the Government waxed and waned, amnesty for the leaders concerned continued to be a negotiation point. However, the Government has never formally requested the court to withdraw the arrest warrants and it is doubtful whether it could have done so without at least trying those concerned in the national courts. On a positive note for international justice, in July 2008 the former Bosnian Serb political leader, Radovan Karadzic, was arrested by Serbian authorities after 13 years on the run. He stands accused at the International Criminal Tribunal for the former Yugoslavia of genocide, crimes against humanity and war crimes committed between April 1992 and July 1995 during the Bosnian war and has been extradited to the Tribunal.

**Relevant articles:** GC I, Articles 49; GC II, Articles 50; GC III, Articles 129; GC IV, Articles 146; and AP I, Articles 87-89.

## Internally Displaced Persons

**See also:** displacement, family unity, protection of civilians, starvation

There is no concept of internally displaced persons (IDPs) under IHL; rather IHL protects anyone who does not take part in the armed conflict, whether or not that person decides to stay at home or to flee. IHL protects against displacement in the first place, both through its explicit prohibition against forced displacement and through the prohibitions against, for example, attacks on civilians, starvation as a means of combat, arbitrary execution and inhumane treatment.

The same protection applies throughout displacement and,

by prohibiting discrimination, IHL affords IDPs the same entitlement to protection as all other persons. Furthermore, the family unit is protected by rules designed to prevent separation and enable family members to stay in touch.

In 1998 the United Nations Secretary-General's Special Representative on Internally Displaced Persons issued Guiding Principles on Internal Displacement. The Principles are based on IHL and human rights and are meant to serve as an international standard to guide governments, NGOs and humanitarian agencies in assisting and protecting IDPs. The guidelines stress the primary duty of national authorities to prevent displacement and provide protection and humanitarian assistance where it occurs. IDPs must be protected against forcible return or resettlement. They shall not be interned or confined to a camp, but must be free to move into and out of camps or other settlements. The guidelines stress the national authorities' primary duty to establish conditions and provide the means for IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence or to resettle voluntarily elsewhere. IDPs have the right to recognition everywhere as persons before the law. The Guiding Principles as such are non-binding, but the law on which they are based is, of course, binding.

**Relevant articles:** GC IV, Articles 25-27 and 49; AP I, Articles 32-34, 74, 78 and 85, para. 4.a); and AP II, Articles 4, 5 and 17.

## International Courts and Tribunals

**See also: impunity, crimes against humanity, genocide, responsibility to protect, war crimes**

The precedents set by the Nuremberg and Tokyo Tribunals after the Second World War were not followed for decades. In the late twentieth century, however, States were again ready to be committed to international justice. The result was the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and for Rwanda (ICTR), followed by the International Criminal Court (ICC). A court is different

from a tribunal in that a court is permanent while a tribunal is temporary.

The permanent ICC may prosecute individuals for genocide, crimes against humanity and serious violations of IHL committed after the Statute of the Court entered into force. The Court will also have jurisdiction over the crime of aggression once the crime and the circumstances under which the Court will have jurisdiction have been defined by States. The jurisdiction of the ICC is complementary to that of national courts, which means that it will act only when States are unable or unwilling to investigate or prosecute. The Court may exercise jurisdiction if the accused is a national of a State Party or a State that has otherwise accepted the jurisdiction of the Court, if the crime took place on the territory of a State Party or a State that has otherwise accepted the jurisdiction of the Court or if the United Nations Security Council has referred the matter to the Prosecutor, irrespective of the nationality of the accused or the location of the crime. The Statute of the ICC has been ratified by 106 States.<sup>66</sup>

The International Criminal Tribunal for Rwanda (ICTR) was established to prosecute persons charged with genocide, crimes against humanity and serious violations of IHL committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. It may also deal with the prosecution of Rwandan citizens charged with genocide and other violations of international law committed in the territory of neighbouring States during the same period.<sup>67</sup>

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established to prosecute persons charged with genocide, crimes against humanity and serious violations of IHL committed on the territory of the former Yugoslavia since 1991.<sup>68</sup>

Important also is the International Court of Justice (ICJ), the principal judicial organ of the United Nations, which was established in 1945 under the Charter of the United Nations. The ICJ considers cases between States concerning international law and

gives advisory opinions on legal questions. Five organs of the United Nations, including the Security Council and the General Assembly, and 16 specialised agencies of the United Nations family may request an advisory opinion from the Court.<sup>69</sup>

Special or hybrid courts and tribunals have also been established, for example, for Sierra Leone and Cambodia, and international investigations have been conducted on assassinations in Lebanon.<sup>70</sup>

## International Disaster Response Laws

**See also: access to victims of war, civil defence, displacement, internally displaced persons, the Red Cross and Red Crescent Movement**

The term ‘international disaster response law’ refers to the laws, principles and guidelines applicable to the international response to disaster outside an armed conflict. Provisions of human rights and refugee law are also relevant, as are laws on privileges and immunities, transport and customs.

It seeks to bridge the gap between victims’ need for efficient and quick assistance on the one hand and States’ interest in regulating access to and activities on their territory on the other. In the last few decades, the diversity and number of NGOs and other agencies active in disaster-stricken areas has increased considerably, further complicating attempts to regulate responses.

The International Federation of Red Cross and Red Crescent Societies has done extensive work on the subject.<sup>71</sup>

## Journalists

**See also: prisoners of war, protection of civilians**

IHL distinguishes between three categories of journalists:  
– military journalists or communication personnel who form

- part of the armed forces; they have a right to prisoner of war status if captured;
- journalists who accompany, but are not part of, the armed forces. If captured they are entitled to prisoner of war status, provided that they have been authorised by the armed forces that they accompany. They must be provided with an identity card similar to the model annexed to GC III;
  - journalists who neither form part of nor accompany the armed forces. As civilians, they must be protected against the effects of war.<sup>72</sup> This is reaffirmed by AP I, which states that journalists engaged in dangerous professional missions in areas of armed conflict are to be regarded as civilians and must be protected as such, provided that they take no action adversely affecting their the protection owed to them as civilians – such as, for example spying, smuggling weapons and other actions.

AP I provides a model identity card for journalists. The identity card may be issued by the State of which the journalist is a national, in whose territory he or she is employed or in which the news medium for which he or she is employed is located.

**Relevant articles:** GC III, Article 4 A. (4); GC III, Annex IV; AP I, Article 79; and AP I, Annex II.

## Judicial Guarantees

**See also:** deprived of liberty, torture

One of the most fundamental judicial guarantees is the prohibition against self-incrimination under compulsion and against forced confessions, which reflect the prohibition against torture and inhuman or degrading treatment.

IHL addresses other fundamental aspects of trial and criminal procedures. Anyone detained in relation to an armed conflict must be informed promptly, in a language that he or she understands, of the reasons for the deprivation of liberty. The person must be presumed innocent until proven otherwise

and has the right to have the case heard by an impartial and duly constituted court. The accused must without delay be informed of the details of the accusation and of the right to a defence lawyer and to examine, or have examined, witnesses on the same conditions as witnesses heard by the prosecution.

Collective punishment is prohibited under IHL; a person may be convicted only for an offence individually committed. Retroactive criminalisation is also prohibited; this means that no one shall be accused or convicted of an offence that was not criminalised at the time when it was committed, nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed and, should a lighter penalty have been introduced, the person concerned should benefit thereof. No one may be tried for an offence on which final judgment has already been passed and in regard to which the person concerned has been acquitted or convicted.

The accused has the right to be present when the case is heard, and judgment must be pronounced publicly. He or she must be advised of rules for contesting or appealing against the judgment and of applicable time limits.

These and other rules set out in human rights treaties apply regardless of the charge against the accused and the gravity of the accusations.

**Relevant articles:** Common Article 3; AP I, Article 75; and AP II, Article 5.

## Lex Specialis

**See also:** chapter 2, 'Human Rights, Refugee Law and IHL

According to the principle of *lex specialis*, in the event of conflict between two norms, the law governing a specific subject (*lex specialis*) takes precedence over the law governing general matters (*lex generalis*).

When applying the principle to IHL and human rights law, the latter applies at all times, in both peace and armed conflict. IHL applies only in situations of armed conflict – it is therefore *lex specialis* and where it has more specific rules on a given subject, they should be given precedence over conflicting human rights law. In most cases though, two directions of law do not conflict but supplement each other.

## Medical Assistance

**See also: the emblem, hospitals**

Access to emergency medical services in situations of armed conflicts for all those in need is of paramount importance. Such access must not be unduly delayed or denied. Ambulances and medical personnel must be allowed to move about unharmed and must not be prevented from discharging their medical duties. All those taking part in the violence must respect and assist the medical services, whether deployed by the armed forces or civilian and humanitarian organisations.

The sick and the wounded must be respected and protected. Whenever circumstances permit, they must be searched for and collected so they can be given the appropriate care. In an international armed conflict, the Parties must identify the wounded, sick, or dead of the adverse Party and information concerning them must be forwarded to the National Information Bureau and then to the Central Tracing Agency. Combatants should be given an identity card to facilitate their identification.

All of GC I-II concern the protection of combatants and the personnel and facilities used to provide care for them. GC IV contains a number of provisions concerning civilians and medical services. AP I elaborates on such protection.<sup>73</sup>

**Relevant articles:** GC I, in particular Articles 12, 15, 16, 19 and 24-26; GC II, in particular Articles 12, 18, 19, 22 and 36-39; GC III, Article 17; GC IV, Articles 14, 16-22, 56 and 57; AP I, Articles 8-31; and AP II, Articles 7-11.

## Mercenaries

**See also: prisoners of war, private military companies, unlawful combatants**

AP I defines mercenaries as any person who:

- is specially recruited locally or abroad in order to fight in an armed conflict;
- does, in fact, take a direct part in the hostilities;
- is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- is not a member of the armed forces of a Party to the conflict; and
- has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

Mercenaries are not entitled to combatant or prisoner of war status. The provision on mercenaries found in AP I was motivated primarily by the African wars of liberation and States wished to make it clear that mercenaries did not enjoy combatant privilege; they did not have the right to participate in the armed conflict and could therefore be prosecuted.

Deprived of combatant and henceforth prisoner of war status, mercenaries are entitled to the protection afforded civilians in IHL: if captured they must be respected and treated humanely. If criminal proceedings are instigated against them for their participation in the armed conflict or any other reason, they must be afforded essential judicial guarantees. They lose their protection against attack if, and for as long as, they participate directly in hostilities .

**Relevant articles:** AP I, Articles 45, 47 and 79.

## Military Necessity

**See also: principle of proportionality, protection of civilians, precautions in attack**

Military necessity is part of the IHL equation which allows the warring Parties to carry out acts that may have adverse effects – even terrible consequences – on both members of the armed forces and civilians, if the act is necessary for the military defeat of the enemy.

State practice shows that military commanders often have to make decisions on the basis of incomplete information, without knowing exactly what the effect of the act – or the consequences of not acting – will be. Military commanders are therefore allowed a large degree of discretion and for humanitarian actors trying to discuss the necessity of a certain act, this is without fail frustrating.

Military necessity does not, however, give armies *carte blanche* and is subject to constraints:

- the act must be legal. Any practices unconditionally prohibited by IHL, such as direct attacks against civilians, torture, collective punishment or intentional starvation of the civilian population are always illegal and may never be justified on the basis of military necessity;
- the act must serve a military – not a political – purpose and must be intended and necessary for the military defeat of the enemy. This criterion obviously raises issues such as whether the destruction of property was necessary in order to win the battle or whether it served to ethnically cleanse a village; whether an aerial bombardment was necessary or whether it was indeed used to terrorise the civilian population;
- the principle of proportionality must be respected. Acts are prohibited if they are likely to cause harm to civilians or civilian objects that is excessive in relation to the military gain;
- in order to justify an otherwise prohibited act, an exception in favour of military necessity must be explicitly foreseen in the relevant IHL norm. In some cases the formulation of the

relevant article makes it clear that there is a presumption against the legality of the act. Where words such as ‘imperative’ or ‘absolute’ are used in connection with ‘necessity’, a significant burden of proof is placed on the attacker. An example is GC IV, Article 53, which prohibits the destruction of property in occupied territory, except where such destruction is rendered absolutely necessary by military operations. AP I prohibits the ‘scorched earth policy’ except on national territory in defence against invasion where required by imperative military necessity. The 1954 Hague Convention on Cultural Property prohibits attacks on cultural property, the prohibition may be waived only in cases where military necessity imperatively requires such a waiver.

## Neutrality

**See also: access to victims of war, impartiality**

Neutral humanitarian action is generally understood to mean not taking sides in a given conflict. Arguably, neutrality has to do with perception: through behaviour and conduct one must be perceived to be neutral towards the parties involved.

Neutrality of humanitarian action has sometimes been contested and taken for indifference. Some organisations believe that it is a tool for gaining access to victims of war and they argue that they act with neutrality towards the parties to the conflict, not towards the plight of the victims.

Linked to the issue of neutrality are discussions on humanitarian space. In particular, since the beginning of the so-called war on terror, many humanitarian organisations have objected to a perceived blurring of lines between military, political and humanitarian action, which has affected people’s perception of the work of humanitarian agencies, and thus their safety and access to the persons whom they are trying to assist and protect.<sup>74</sup> Organisations have fought to defend a humanitarian space and some have chosen neutrality as a strategy.

## Neutrality as an Operational Necessity: The Case of Iraq

By Greg Hansen, Independent Researcher

All too often, humanitarian actors discuss and defend the humanitarian principle of neutrality in the abstract, rather than in terms of how neutrality serves their work and the interests of people in need. Some actors bow to pragmatism over principle, warning that insistence on neutrality can trump the humanitarian imperative to assist and protect in situations of acute donor and political pressure to take sides or to become affiliated with a combatant. In a number of recent conflicts, the false choice facing humanitarians has been between compromising their neutrality or disengaging altogether.

Recent research among beneficiaries and providers of humanitarian aid in Iraq demonstrates the importance of real and perceived neutrality to beneficiary safety and humanitarian operations, at least in highly-politicised contexts.<sup>75</sup> It also shows that neutrality can be maintained even in the most politically-charged environments.

Interviews conducted in Iraqi communities for the Iraq country study of the Humanitarian Agenda 2015 project have revealed that many people in beneficiary communities regarded neutrality as an essential form of protection against targeted attack by combatants of all stripes. Well-resourced assistance efforts have been instrumentalised by combatants in Iraq to further their own military and political objectives. In this environment, however, perceived affiliations with combatants and their affiliates have proven toxic and life-threatening both to the beneficiaries and to the providers of needs-based humanitarian assistance. Some beneficiaries considered that acceptance of assistance from agencies perceived to be affiliated with one combatant or another has put them at grave risk. Out of self-preservation, Iraqis have learnt to scrutinise the neutrality of aid agencies. It has not been uncommon for Iraqis in the worst conflict-affected areas to reject assistance outright from agencies whose neutrality is in doubt.

As the country study has observed, ‘Iraqis are neither stupid nor lacking in a sense of right and wrong, and yet, as Iraqis themselves explained it to our research team with consistency and clarity, that is precisely how they often understand the assumptions underlying humanitarian action that has been instrumentalised in the service of an occupying force or some other political/military objective’. The Iraq case has also highlighted ‘...the dangers inherent in shackling and subordinating a humanitarian response to a military or political agenda that is subject to changing fortunes’. When a combatant falls out of favour with a local population, so too do those organisations affiliated with the combatant in the experience or perceptions of local people.

Some experienced humanitarian actors in Iraq are adamant that the exercise of neutrality in their day-to-day work has allowed them to be perceived differently from combatants and their affiliates. This has allowed them to win a degree of acceptance in communities and relieves them of the need for high-profile protective and deterrent strategies that are likely to be counter-productive for security by drawing unwanted attention. As one Iraqi field coordinator stated recently, ‘We have been functioning in the most insecure governorates of Iraq – Anbar, Baghdad, Salahuddin and Ninewa – for more than four years without being escorted by a single Iraqi policeman, and we faced a lot of situations that our neutrality rescued us’.

## Non-State Armed Groups

**See also: Chapter 2, ‘Applicability of IHL’ and ‘Human Rights, Refugee Law and IHL’**

IHL binds all parties to a conflict, also including non-State armed groups such as militia, paramilitary or vigilante groups operating outside state control. It thus differs from, for example, human rights treaty law, which is binding on States and regulates the activities of State actors. Furthermore, under IHL individuals, including those not acting on behalf of a State, may be held criminally liable for grave breaches.

This makes IHL a unique entry point for discussing behaviour and compliance with non-State armed groups in situations of non-international armed conflict. While treaty law applicable in non-international armed conflict may be less developed, it is supplemented by customary law.<sup>76</sup>

There are, on the other hand, provisions that are not relevant to non-State armed groups, for example the rules on prisoners of war. GC III only applies in situations of international armed conflict and only protects persons fighting on behalf of a State and in the hands of an enemy State. However, Common Article 3 and customary law lay down rules for the protection of anyone deprived of liberty in relation to an armed conflict and AP II develops treaty law applicable in non-international armed conflicts.

**Relevant articles:** Common Article 3 and AP II.

## Occupation

**See also:** protection of civilians, civilians, access to victims of war

A territory is considered occupied when it is under the actual authority of a foreign hostile army and is as such only a concept relevant in international armed conflict. Occupation is by nature considered a temporary situation and involves no transfer of sovereignty.<sup>77</sup> The Occupying Power does not become a 'State authority' over the population of the occupied territory or over the territory itself, but takes over the territory's administration from the sovereign State, temporarily and in a limited manner. IHL confers certain rights and obligations on the Occupying Power.

The population under occupation is entitled, in all circumstances, to respect for their persons, honour, family rights, religious convictions and practices, manners and customs. They must be treated humanely and must be protected, especially against acts of violence or threats thereof and against insults and public curiosity.<sup>78</sup> The Occupying Power must

ensure public order and maintain living conditions as normal as possible in the occupied territory.

The Occupying Power assumes responsibility for ensuring the basic needs of the population living under occupation. If the population is inadequately supplied the Occupying Power must agree to relief schemes undertaken by other States or impartial humanitarian organisations. Such relief consignments do not relieve the Occupying Power of its own responsibilities. The Occupying Power must maintain medical facilities and services, ensure public health and hygiene, and facilitate the work of educational institutions.

A basic principle of the law of occupation is that status quo in occupied territory must be maintained in order not to preclude the final settlement of the conflict/occupation. The Occupying Power must refrain from interfering in the economic and social structures of the occupied territory and respect local customs and practices. It must respect the laws in force in the territory it occupies and may only repeal or suspend them if they are a threat to its security or an obstacle to the implementation of IHL. The Occupying Power may subject the population to provisions that are necessary to implement IHL, ensure its own security or maintain orderly government in occupied territory.

Should legal proceedings be instituted against a person from an occupied territory, the Occupying Power must respect all judicial guarantees and ensure a regular trial for such persons.

Individual or mass forcible transfers within as well as deportations from the occupied territory to the territory of the Occupying Power or to any other country are prohibited. It is prohibited to deport or transfer parts of the Occupying Power's own civilian population into the occupied territory.

**Relevant articles:** GC IV, Articles 27-34 and 47-78; and Hague Convention IV, Articles 42-56.

## Precautions in Attack

**See also: displacement, environment, military necessity, proportionality, protection of civilians**

Those who plan or decide upon an attack must do everything feasible to verify that the objects that they intend to attack are neither civilians nor civilian objects nor in any other way subject to special protection under IHL, such as protected cultural sites or objects containing dangerous forces. When choosing what means and methods to use all feasible precautions must be taken to avoid, and in any event minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects – often referred to in the media as collateral damage. If it is possible to choose between several military objectives in order to obtain a similar military advantage, the objective that is expected to cause the least danger to civilian lives and to civilian objects must be selected.

Unless circumstances make it impossible, effective advance warning must be given of attacks that may affect the civilian population. For example, during the Second World War, particularly in the case of attacks taking place in occupied territory, warnings were given by radio or by pamphlets; in other cases aircraft flew very low over the potential target, giving civilians, workers or simply people in the town time to leave. The Israeli armed forces also used warnings during the war in Lebanon in 2006.

The Parties to a conflict must, to the maximum extent feasible, take precautions against the effect of an attack by removing the civilian population and civilian objects under their control from the vicinity of military objectives. They must avoid locating military objectives within or near densely populated areas and in general take the necessary measures to protect the civilian population and civilian objects under their control.

**Relevant articles: AP I, Articles 57-58.**

## Prisoners of War

**See also: combatants, deprived of liberty, mercenaries, the Red Cross and Red Crescent Movement, torture, unlawful combatants**

Generally speaking, a prisoner of war is a combatant who has been captured by an enemy Party in an international armed conflict. Certain other persons are also entitled to prisoner of war status if captured by an enemy Party; they include war correspondents, supply contractors, merchant marine and civil aircraft crews. Should there be any doubt as to whether a captured person who committed a belligerent act is prisoner of war or not, his or her status must be determined by a competent tribunal. A 'competent tribunal' does not need to be military, but might be. It must be assigned responsibility under national legislation for such decisions. Until the person's status has been determined, he or she must be treated as a prisoner of war.

Prisoners of war must be treated humanely and with respect. They must be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Exposing prisoners of war to public curiosity includes filming them or showing pictures of them in a way that is disrespectful of their honour, for example by photographing a humiliating process of capture or persons who are visibly frightened or have been mistreated. While it is not per se prohibited to take pictures of prisoners of war, they should never be shown without careful consideration and understanding of the captives' situation. For some persons it may for instance be very dangerous if it becomes known to their own State that they have been captured – they may be suspected of leaking information or of collaboration.

Prisoners of war may be interrogated, but are under an obligation to give only their surname, first names, rank, date of birth and army, regimental, personal or serial number or equivalent information. Captured combatants can be held accountable for war crimes, but not for their participation in the war.

Prisoners of war have the right, immediately upon capture, to send a capture card to their families and to the Central Tracing Agency. Subject to censorship, they are entitled to send and to receive letters and cards. Prisoners of war may also send and receive legal documents through the Central Tracing Agency (such as, for example, powers of attorney). Death certificates must be drawn up for prisoners of war who die in captivity and then sent to the National Information Bureau.<sup>79</sup>

Prisoners of war must be released and repatriated without delay after the cessation of active hostilities. They are protected by IHL until their final release and repatriation.

The ICRC is entitled to visit prisoners of war to assess their detention conditions and monitor their treatment.

There is no entitlement to prisoners-of-war status or treatment in the law applicable to non-international armed conflict and the concept is not regulated in applicable treaty law.

**Relevant articles:** GC III in its entirety concerns the treatment of prisoners of war. See, in particular, determination of status: Articles 4 and 5; treatment: Articles 13 and 17; correspondence: Articles 70, 71, 76 and 77; and death: Articles 120 and 121. AP I, Articles 44-47.

## Private Military and Security Companies

**See also: combatants, mercenaries, protection of civilians, unlawful combatants**

In recent years, private companies have been playing an increasing role in armed conflicts and, for example in Iraq, have been providing logistical and technical support, security for buildings or persons and training for the Iraqi army.<sup>80</sup> They have also, controversially, been involved in holding detainees and have on occasion been engaged directly in hostilities.

Generally, a distinction is made between private military companies, which may replace or back-up an army or armed

group, and private security companies, which provide services to protect businesses and property from criminal activity.

Personnel working for private military companies only seldom fulfil the complicated definition of mercenaries in Article 47 of AP I. Whether they are civilians or combatants depends on the actual circumstances, for example, whether they are incorporated into the armed forces of the employing State or form part of a militia fighting on behalf of a State. If they meet the criteria for combatant status, they have the right to engage directly in hostilities, but are also military targets and may be attacked. If not, they are protected as civilians and may only be attacked if, and so long as, they take part directly in hostilities. Direct participation in hostilities under international law is not limited to the use of force but may arguably also extend to the guarding of military installations.<sup>81</sup>

A major challenge has been the regulation of private military companies, for example if individuals act contrary to national legislation or even IHL, where it has proved difficult to ascertain jurisdiction. In April 2005, an Afghan court reduced the sentence but upheld the conviction of three Americans for kidnapping and torture. The men had been ‘running a freelance operation to catch and interrogate al-Qaida suspects’.<sup>82</sup>

**Relevant articles:** AP I, Article 43 and 47; GC III, Article 4; and AP II, Article 13.

## Proportionality

**See also:** destruction of property, endangering civilians, military necessity, precautions in attack, protection of civilians

The principle of proportionality underlies all legal systems, whether national or international. In IHL it is expressed, for example, in the prohibition of attacks that ‘may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated’.<sup>83</sup>

- Proportionality

IHL prohibits direct attacks against civilians, but accepts that an attack on a legitimate military target may cause civilian casualties – which has also become known as ‘collateral damage’, a term not found in the Geneva Conventions, which refer to ‘incidental loss of civilian life’.

The function of the principle of proportionality is to relate means to ends. It is impossible to say exactly when an attack causes incidental loss of life or damage that is disproportionate. That depends on an interpretation of the circumstances prevailing at the time, the expected military advantage gained by striking a certain military target, knowledge of civilian presence that the persons planning the attack actually had or could be expected to have, and other considerations.

The principle of proportionality is relevant only when the target attacked is legitimate. If the target attacked is not a military target, the attack is prohibited per se, as a consequence of the prohibition against attacking civilian objects, and proportionality does not come into play.

**Relevant articles:** AP I, Articles 51 and 57; and Hague Convention IV, Article 26.

In its judgment in the case against General Stanislav Galic (IT-98-29-T9) concerning events surrounding the military encirclement of the city of Sarajevo in 1992 by Bosnian Serb forces, the International Criminal Tribunal for the former Yugoslavia elaborated on the principle of proportionality: ‘One type of indiscriminate attack violates the principle of proportionality. The practical application of the principle of distinction requires that those who plan or launch an attack take all feasible precautions to verify that the objectives attacked are neither civilians nor civilian objects, so as to spare civilians as much as possible. Once the military character of a target has been ascertained, commanders must consider whether striking this target is ‘expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objectives or a

combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'. If such casualties are expected to result, the attack should not be pursued. The basic obligation to spare civilians and civilian objects as much as possible must guide the attacking party when considering the proportionality of an attack.'

## Protection of Civilians – The Principle of Distinction

**See also: civilians, destruction of property, environment, military necessity, precautions in attack, proportionality, protected zones, unlawful combatants**

The principle of distinction is essential to IHL: all those involved in hostilities must distinguish between those who take part in hostilities and those who do not or no longer take part. Attacks may be directed only at combatants and others who take a direct part in hostilities. Civilians enjoy general protection against dangers arising from military operations and may not be made the object of attack. Acts or threats of violence made for the primary purpose of spreading terror among the civilian population are prohibited.

The protection to which civilians are entitled is only lost if they take a direct part in hostilities, for example by attacking the enemy or engaging in acts of sabotage, but then only for as long as they do so.<sup>84</sup> It is only protection, and not civilian status as such, that is temporarily lost.

Indiscriminate attacks are prohibited. Indiscriminate attacks are defined as attacks that are not or cannot be directed at a specific military objective or that have consequences that cannot be sufficiently limited, and consequently are of a nature to strike military objectives and civilians and civilian objects without distinction. If, for example, a legitimate military target, for example a combatant, is present among a group of civilians and opposing armed forces attack the

combatant without adapting their means and methods in order to minimise the expected harm to the civilians, such an attack would be considered an indiscriminate attack. If no legitimate military target is present and the armed forces attack the crowd, such an attack is of course a direct attack and a violation of the principle of distinction.

While IHL prohibits direct attacks on civilians, it is accepted that an attack on a legitimate military target may cause civilian casualties, subject to the principle of proportionality.

**Relevant articles:** Common Article 3; GC IV, Art 27; AP I, Articles 40, 41, 48, 51 and 57; and AP II, Articles 4 and 13.

## Protected Zones

**See also: access to victims of war, displacement, hospitals, internally displaced persons, precautions in attack, protection of civilians**

IHL contains rules on zones under special protection. Provided that they fulfil the required conditions, these zones may under no circumstances be attacked. A distinction is made between:

- hospital zones, which are areas established outside the combat zone to shelter military or civilian wounded and sick;
- safety zones, which are areas established outside the combat zone to shelter certain categories of civilians who require special protection (children, old people, expectant mothers, and other persons);
- neutralised zones, which are areas established in the actual combat zone to protect the wounded and sick and the civilian population;
- non-defended localities, which are areas situated near the conflict zone that are open for occupation and fulfil certain listed criteria for demilitarisation;
- demilitarised zones, which are areas fulfilling demilitarisation criteria similar to those of neutralised zones. It is prohibited to extend military operations to demilitarised zones.

Protected zones can only be created by agreement between the opposing Parties, though non-defended localities may be declared unilaterally. The opposing Parties may also agree to protect localities that do not fulfil the demilitarisation criteria set out in the provision on non-defended localities.

During the Falklands-Malvinas conflict, ICRC delegates travelled to Port Stanley/Puerto Argentino to facilitate the establishment of a neutral zone, which had been agreed between the Parties to the conflict. The zone was meant to shelter civilians, should fighting break out in the capital. This never happened.

**Relevant articles:** GC IV, Articles 14 and 15 and Annex I; AP I, Articles 59 and 60; and Hague IV, Article 25.

The Krstic case at the International Criminal Tribunal for the former Yugoslavia (IT-98-33) dealt with the events surrounding the Bosnian Serb takeover of the 'safe area' of Srebrenica in July 1995.

In 1992, the international community had debated the establishment of neutral zones as opposed to 'safe areas' to shelter the civilian population from the war raging in the former Yugoslavia. The idea of neutral zones was eventually dropped, as it was felt that it would be impossible to obtain the required consensus. On 16 April 1993 the Security Council adopted resolution S/RES/819 and proclaimed Srebrenica a 'safe area'. The Parties were required to withdraw all weapons and combatants. An agreement concluded the next day between the Parties to the conflict and UNPROFOR provided for the demilitarisation of the enclave.

Thus, the 'safe area' was the result of a unilateral decision on which the belligerents were not consulted. One of the mandates of UNPROFOR was to protect the 'safe area'. But the area was never completely disarmed; at the very most the attackers were supposed to withdraw their arms to a distance from which they ceased to be a threat.

The International Criminal Tribunal for the former Yugoslavia noted: 'On 2 July 1995, the Drina Corps commander, General Zivanovic signed the orders for a planned attack on Srebrenica. On 6 July the attack was launched from south of the enclave. Thousands of Bosnian Muslims fled to the town. The Bosnian Serb forces encountered no resistance. On 9 July, President Karadzic decided that, under the prevailing conditions, the town was to be taken. On 10 July, the panicked Bosnian Muslim population began to flee toward the United Nations facilities in the town (Bravo company) or out of the town towards the north, on the Bratunac road, to Potocari. The commander of the Dutch Battalion often called Dutchbat, asked for air support but did not receive it. On 11 July, General Mladic, Chief-of-Staff of the Bosnian Serb army, along with General Zivanovic, General Krstic and many other VRS (the Bosnian Serb army) officers, made a triumphant entry into a Srebrenica deserted by its inhabitants.'

In the chaos and mass flight following the fall of Srebrenica it is estimated that 7-8000 men were captured by the Serbian forces. Almost all of them were killed.

## The Red Cross and Red Crescent Movement

**See also: access to victims of war, impartiality, neutrality, the emblem**

The Red Cross and Red Crescent Movement consists of the ICRC, the 186 National Red Cross and Red Crescent Societies and their Federation.<sup>85</sup>

ICRC has been deeply involved in the development of IHL and together with the National Red Cross and Red Crescent Societies it is mentioned several times in the Conventions and Protocols.

The ICRC is a private Swiss-based, humanitarian organisation, which works throughout the world and enjoys international

legal status. The ICRC primarily works in situations of armed conflict or other situations of violence. Due to its historical background and its work as a neutral and impartial humanitarian organisation, the ICRC has been given a mandate in the Geneva Conventions and their Protocols to monitor compliance with IHL and so maintains a dialogue with all warring parties and acts as a neutral intermediary in situations of armed conflict and violence. ICRC has been given the role of guardian of IHL and so the organisation works with dissemination and development of the law. Established in 1863, it is the founding body of the Red Cross and Red Crescent Movement. Its work involves:

- visiting prisoners of war and security detainees;
- searching for missing persons;
- transmitting Red Cross messages between separated family members;
- reuniting dispersed families;
- providing safe water, food and medical assistance to those in need;
- monitoring compliance with IHL;
- promoting respect for IHL;
- contributing to the development of IHL.<sup>86</sup>

The National Red Cross and Red Crescent Societies act as auxiliaries to the public authorities of their own countries in the humanitarian field and provide a range of services, including disaster relief, health and social programmes, and assistance to people affected by war. National society programmes and services include:

- emergency shelter, food and medicine;
- water and sanitation;
- restoring family contact for disaster victims;
- disaster preparedness;
- community-based health and care;
- first aid training and activities;
- control and prevention of diseases;
- HIV/AIDS prevention;
- blood donor recruitment, collection and supply;
- youth and volunteer activities;
- dissemination of IHL.<sup>87</sup>

Founded in 1919, the International Federation of Red Cross and Red Crescent Societies directs and coordinates international assistance provided by the Movement to victims of natural and technological disasters, to refugees and in health emergencies. It acts as the official representative of its member Societies in the international field. It promotes cooperation among National Societies, and works to strengthen their capacity to carry out effective disaster preparedness, health and social programmes.<sup>88</sup>

**Relevant articles:** ICRC – Common Article 3; GC I, Articles 9-11 and 23; GC II, Articles 9-11; GC III, Articles 9-11, 56, 72, 73, 75, 79, 81, 123, 125 and 126; GC IV, Articles 10-12, 30, 59, 61, 76, 96, 102, 104, 108, 109, 111, 140, 142 and 143; AP I, Articles 5, 6, 33, 78, 81, 97 and 98; and AP II, Article 24; National Societies – GC I, Article 26; GC II, Articles 24 and 25; GC IV, Articles 25, 30 and 63; AP I, Articles 6, 8, 17, 33 and 81; and AP II, Article 18.

The work of the Red Cross and Red Crescent Movement is guided by seven fundamental principles: humanity; impartiality; neutrality; independence; voluntary service; unity; universality.

## Responsibility to Protect

**See also: impunity, war crimes**

In the 1990s and at the beginning of the new millennium, a consensus began to emerge that the State's right to non-interference in its internal affairs had to be weighed against the individual's right to protection from serious violations of international law. There was an emerging principle 'that intervention for human protection purposes, including military intervention in extreme cases, is supportable when major harm to civilians is occurring or immediately apprehended, and the State in question is unable or unwilling to end the harm, or is itself the perpetrator'.<sup>89</sup>

Traditionally, State sovereignty has been the basis of inter-

national relations and law. State sovereignty is the defining feature of States' legal identity in international law and of their sovereign jurisdiction within their own borders. It also underpins recognition of the equality of States and the right of States and their people to determine their own system of government and their destiny. The corollary has been the obligation of States not to interfere in the internal affairs of other States.

As noted, the interpretation of State sovereignty has developed over time. The responsibility to protect lies first and foremost with the State whose citizens are facing harm or threat thereof. However, it recognises a residual responsibility of other States to prevent violations, react if they occur and assist in reconstruction and rehabilitation in the wake of such events.

**Relevant articles:** Charter of the United Nations, Article 2, paras. 1 and 7.

In 2000, an independent International Commission on Intervention and State Sovereignty was established by the Canadian Government in response to United Nations Secretary-General Kofi Annan's challenge to the international community to endeavour to build a new international consensus on how to respond to massive violations of human rights and humanitarian law. The Commission's report 'The Responsibility to Protect' was submitted to the United Nations General Assembly at its 56th session. On the choice of language, the Commission noted:

'...we have made a deliberate decision not to adopt [the terminology of humanitarian intervention], preferring to refer either to "intervention", or as appropriate "military intervention", for human protection purposes. We have responded in this respect to the very strong opposition expressed by humanitarian agencies, humanitarian organisations and humanitarian workers towards any militarisation of the word "humanitarian": whatever the motives of those engaging in the intervention, it is anathema for

the humanitarian relief and assistance sector to have this word appropriated to describe any kind of military action. The Commission has also been responsive to the suggestion in some political quarters that use in this context of an inherently approving word like “humanitarian” tends to prejudge the very question in issue – that is, whether the intervention is in fact defensible.<sup>90</sup>

## Slavery and Forced Labour

**See also: child soldiers, endangering civilians, prisoners of war**

There is no explicit prohibition against slavery in IHL applicable in international conflicts – however, both specific rules and the general prohibition of humiliating and degrading treatment also aim to prevent slavery and forced labour.

Prisoners of war are in the hands of the enemy Power, but not in those of the individuals or military units by whom they have been captured: prisoners of war are not to be seen as the property of those who have captured them. GC III details what kind of labour prisoners of war may be asked to carry out, and the duration and conditions of such labour. Prisoners of war must be paid for their work.

Civilians in enemy territory may be forced to work only to the same extent as nationals of the Party to the conflict on whose territory they are – they may not be forced to serve in the armed forces.

Civilians in occupied territory may not be forced to work by the Occupying Power unless they are over the age of 18, and then only for the benefit of the civilian population of the occupied territory or when necessary for the needs of the army of occupation.<sup>91</sup> GC IV contains rules on working conditions, work legislation, wages and other labour provisions. Civilians in occupied territory may not be forced to serve in the armed forces or in any other way to take part in military operations. Internees have the right to refuse to work, though

the detaining power is entitled to employ certain interned professionals such as medical personnel and dentists to work for the benefit of fellow internees.

Slavery and the slave trade in all their forms are explicitly prohibited in non-international armed conflicts. The prohibition in AP II was drawn from the Slavery Convention, the first universal instrument on the subject, adopted in 1926.<sup>92</sup>

**Relevant articles:** GC III, Articles 12 and 49-57; GC IV, Articles 40, 51, 52 and 95; and AP II, Article 4.

## Starvation

**See also: destruction of property, protection of civilians, war crimes, environment, displacement, internally displaced persons**

IHL prohibits the use of starvation as a means of warfare. It also prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water facilities and supplies and irrigation works. While exceptions may be made in international armed conflict, they are permissible only when such objects are used only by, or in direct support of, the armed forces. Moreover, the general principle of distinction, which protects both civilians and civilian property in conflict situations, also provides protection for fields, storage facilities and other items or livestock of importance to the provision of food for civilians.

Often, starvation during armed conflict is a consequence, not necessarily of deprivation of food directly or its destruction, but of other prohibited acts. Displacement, for example, or restrictions on the freedom of movement compound the vulnerability of the population in question.

IHL prohibits the displacement of population groups, except where it is for their own protection or for imperative military reasons, in which case the authority in charge has an obliga-

tion to ensure that the displaced population is provided for. According to the Commentary to the Fourth Geneva Convention, 'the right to personal liberty, and in particular, the right to move about freely, can naturally be made subject in war time to certain restrictions made necessary by circumstances. So far as the local population is concerned, the freedom of movement of civilians of enemy nationality may certainly be restricted, or even temporarily suppressed, if circumstances so require. That right is not, therefore, included among the other absolute rights laid down in the Convention, but that in no way means that it is suspended in a general manner. Quite the contrary: the regulations concerning occupation and those concerning civilian aliens in the territory of a Party to the conflict are based on the idea of the personal freedom of civilians remaining in general unimpaired. The right in question is therefore a relative one which the Party to the conflict or the occupying power may restrict or even suspend within the limits laid down by the Convention'. A similar prohibition against arbitrary restriction on the freedom of movement also exists for persons not falling under GV IV's strict nationality criteria. Restrictions on the freedom of movement, both in pastoral and farming societies, can have major impact on food security affecting, for example, pastoralists' access to water, grazing lands or markets for livestock and farmers' access to fields or markets.

The prohibition against collective punishment provides protection against, for example, a trade blockade adversely affecting the civilian population or a group of civilians.

**Relevant articles:** AP I, Article 54; AP II, Article 14; GC IV, Article 27 and 33.

## Terror

**See also: crimes against humanity, endangering civilians, protection of civilians, war crimes**

IHL prohibits acts or threats of violence, the primary purpose of which is to spread terror among the civilian population.

Under IHL an act of terror is different from what has been called ‘political terror’ in that it need not be carried out to further a cause or to compel, for example a government, political group or international organisation to do or abstain from doing something.<sup>93</sup> The central point is that the act must have been carried out with the intent to spread extreme fear among the civilian population.

It must be borne in mind that IHL is applicable only in situations of armed conflict; most of the acts of terror that occurred in the last few years were perpetrated outside an armed conflict and IHL was therefore not applicable. Obviously such acts are still prohibited, for example under national criminal law, or under international law as for example a hijacking or possibly a crime against humanity.<sup>94</sup>

**Relevant articles:** GC IV, Article 33; AP I, Article 51; and AP II, Articles 4 and 13.

The case against Stanislav Galic at the International Criminal Tribunal for the former Yugoslavia dealt with terror as a war crime (IT-98-29). According to the proceedings of the case, Stanislav Galic was in command of the Sarajevo Romanija Corps from September 1992 to August 1994 and ‘civilians in [Armija Bosnia-Herzegovina]-held areas of Sarajevo were directly or indiscriminately attacked from Sarajevo Romanija Corps-controlled territory during the Indictment Period, and as a result and as a minimum, hundreds of civilians were killed and thousands others were injured’.

The Tribunal convicted Stanislav Galic of war crimes, involving acts of violence committed for the primary purpose of spreading terror among the civilian population. It defines terror as wilfully committing acts of violence directed against civilians not taking direct part in hostilities, causing death or serious injury to body or health, and doing so for the primary purpose of spreading terror among the civilian population. The central part of the definition is the

intent of the perpetrator: in order to be held responsible for terror as a war crime, the acts of violence must have been carried out with the specific intent to spread terror. The Tribunal interpreted ‘terror’ as meaning ‘extreme fear’.

## Torture

**See also: deprived of liberty, judicial guarantees, prisoners of war, the Red Cross and Red Crescent Movement**

IHL prohibits any form of torture, and inhuman or degrading treatment. Not only is this stated explicitly in several places in the Conventions, but the Conventions consist in large measure of rules aimed at preventing torture, for example by stating that the ICRC must be allowed to visit protected persons to monitor their situation.

The Geneva Conventions or their Additional Protocols do not define torture. It is clear that what constitutes torture under the Torture Convention is definitely covered, but the Conventions and Protocols are not limited thereto.<sup>95</sup> Under the Torture Convention, for example, the perpetrator must be acting in an official capacity. This is not required under IHL. Under the Torture Convention, the act must have been perpetrated for a specific purpose, for example to extort information, as punishment, as an act of intimidation or on the basis of discrimination. IHL prohibits torture regardless of the purpose.

**Relevant articles:** Common Article 3; GC I, Article 12; GC II, Article 12; GC III, Articles 17 and 87; GC IV, Articles 27 and 31-33; AP I, Article 75; and AP II, Article 4.

‘To give itself sufficient scope for action, the ICRC has never defined the term ‘torture’. There are always two aspects to torture, one physical and the other psychological; they are interlinked and inseparable. The psychological effects often go far deeper than the physical effects. For instance, seeing torture inflicted on one’s children or other

loved ones, or even on somebody else, may prove much more traumatic than actually undergoing physical torture oneself. Torture also has a strong cultural connotation. Its significance within a given social order – and the intention behind it – varies widely. Some behaviour may be regarded as ‘benign’ in one culture, whereas in another it may violate, for example, a religious taboo.

The ICRC has therefore decided not to adopt any of the definitions of torture formulated by the international community in recent years, although it may refer to them if it feels that doing so might help to combat the phenomenon of torture.’

*From the ICRC website*

## Unlawful Combatants

**See also: civilians, combatants, deprived of liberty, mercenaries, private military companies**

The concept of ‘unlawful’ or ‘illegal’ combatants has been discussed extensively in relation to the deprivation of liberty of persons in relation to the conflicts in Afghanistan and Iraq. The deprivation of liberty of persons by the United States of America at Guantanamo Bay has been the subject of extensive cases in US courts. The concept illegal/unlawful combatant does not as such exist in IHL treaty texts. Under the IHL system, a person captured by an enemy Party during an international armed conflict either has prisoner-of-war status and is protected by GC III or civilian status and is protected by GC IV. The fact that a civilian has illegally engaged in conflict before being captured does not deprive him or her of civilian status, but may lead to some, limited, waiving of rights and privileges.<sup>96</sup>

In non-international armed conflicts, the concepts of combatant and prisoner of war do not exist. Instead, AP II provides general protection to persons, whether detained or interned, whose liberty has been restricted for reasons related to the

armed conflict. Common Article 3 provides minimum protection for anyone who does not, or has ceased to, participate in the armed conflict.

Besides the issue of deprivation of liberty, the issue of lawful participation in hostilities is addressed in the rules applicable in international armed conflict, which provide that only combatants may legally participate in hostilities. They may not be held criminally liable for their use of force or violence during the armed conflict as long as they do so in accordance with IHL. Civilians, on the other hand, who engage in hostility, may be held criminally liable for their use of violence. Furthermore, mercenaries do not enjoy combatant privileges and may be held criminally liable for their participation in the armed conflict.

In non-international armed conflicts, where the combatant concept does not exist, AP II states that at the end of hostilities, the broadest possible amnesty should be granted to persons who have participated in the armed conflict, or those deprived of their liberty for reasons relating to the armed conflict, whether interned or detained. This, of course, does not include amnesty for war crimes.

In its report on terrorism and human rights, the Inter-American Commission on Human Rights observed, with regard to combatants' legal participation in hostilities:

'The combatant's privilege in turn is in essence a licence to kill or wound enemy combatants and destroy other enemy military objectives. A privileged combatant may also cause incidental civilian casualties. A lawful combatant possessing this privilege must be given prisoner of war status, as described below, upon capture and immunity from criminal prosecution under the domestic law of his captor for his hostile acts that do not violate the laws and customs of war. This immunity does not, however, extend to acts that transgress the rules of international law applicable in armed conflict.'<sup>97</sup>

**Relevant articles:** GC III, Article 4; GC IV, Article 5; AP I, Articles 43 and 75; AP II, Articles 5 and 6; and Common Article 3.

## War Crimes

**See also: crimes against humanity, command responsibility, genocide, impunity, responsibility to protect**

Individuals can be held responsible for serious violations of IHL – also known as war crimes – they commit or order others to commit.<sup>98</sup> War crimes are unlawful acts committed during a war and includes, in particular, the specific acts termed as grave breaches in the Geneva Conventions and AP I. War crimes include, amongst others, the following acts:

- wilful killing of a protected person (such as a wounded or sick combatant, a prisoner of war or a civilian);
- torture or inhuman treatment of a protected person;
- wilfully causing great suffering to, or serious injury to the body or health of, a protected person;
- intentionally attacking the civilian population;
- unlawful deportation or transfer;
- using prohibited weapons or methods of warfare;
- making improper use of the distinctive red cross, crescent or crystal emblem or other internationally recognised signs;
- killing or wounding perfidiously individuals belonging to a hostile nation or army;
- pillage of public or private property.

The Conventions and AP I make clear that grave breaches must be punished. States must enact legislation that makes it possible to bring to justice individuals responsible for such acts. States must search for and bring to justice war criminals, regardless of their nationality and the place where the crime was committed, or alternatively extradite them to a country that is willing to do so. As such, war crimes are subject to what is called universal jurisdiction.

In regard to serious violations of IHL committed in relation to non-international armed conflicts, neither Common Article 3 nor AP II contain provisions on grave breaches or the respon-

sibility to bring perpetrators of such acts to justice. States must nevertheless ensure compliance with all provisions of IHL and must take whatever measures necessary to prevent and suppress violations. States have recognised that violations of IHL committed in non-international armed conflicts constitute war crimes, as confirmed in the statutes and case law of the International Criminal Tribunals for Rwanda and the former Yugoslavia and the Statute of the International Criminal Court.<sup>99</sup>

Crimes against peace or the crime of aggression are not war crimes as they refer to the law on the right to use force and not to the law applicable during a war.

**Relevant articles:** GC I, Articles 49 and 50; GC II, Articles 50 and 51; GC III, Articles 129 and 130; GC IV, Articles 146 and 147; and AP I, Articles 11 and 85; Statute of the International Criminal Court, Article 8; Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 3; and Statute of the International Criminal Tribunal for Rwanda, Article 4.

## Weapons

**See also:** environment, military necessity, precaution, protection of civilians, the principle of proportionality, war crimes

Even in war there are limits: IHL expressly states that belligerents do not have an unlimited right to choose means and methods of warfare. At the core of the rules on means and methods of warfare is a set of general and well-established principles that apply to all weapons used in war, such as the principles of distinction and proportionality, the prohibition of the use of means or methods of warfare of a nature to cause superfluous injury or unnecessary suffering and the prohibition of the use of means and methods of war that may cause widespread, long-term and severe damage to the environment.

Many of the IHL rules on weapons have been derived from these general principles and specific treaties prohibit, for

examples the use, development or stockpiling of biological and chemical weapons.<sup>100</sup> A total ban on nuclear weapons has not been negotiated by governments; however, States have agreed on a non-proliferation system allowing some States to possess nuclear weapons while others agree not to acquire or produce them.<sup>101</sup> Nonetheless, in its Advisory Opinion on the Legality of the threat or use of nuclear weapons, the International Court of Justice concluded that the threat or use of nuclear weapons would generally be contrary to IHL, but it could not conclude definitely whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State was at stake.<sup>102</sup>

Specific treaties also prohibit the use of dum-dum (expanding) or explosive bullets.<sup>103</sup> The 1980 Convention on Certain Conventional Weapons prohibits the use of blinding laser weapons and weapons, which cause injury through fragments that cannot be detected by X-rays, and restricts the use of incendiary weapons, landmines and booby-traps.<sup>104</sup> In 2001 the 1980 Convention was amended to apply in non-international conflicts as well, and on 28 November 2003 a new treaty on explosive remnants of war was adopted, requiring the Parties to a conflict to clear unexploded munitions once the fighting is over.<sup>105</sup>

In 1997 States adopted the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, also called the Ottawa Convention.

In May 2008, States agreed on a text for a Convention to ban the use, production, stockpiling and transfer of cluster munitions. The Convention also requires States to clear areas contaminated with unexploded cluster munitions and provide assistance to victims.<sup>106</sup> It will be open for signature in December 2008.

AP I obliges States to assess all new weapons, means or met-

hods of warfare it studies, develops, acquires or adopts in order to determine whether their employment would violate IHL. Unfortunately very few States have established such a weapon review mechanism.<sup>107</sup>

**Relevant articles:** AP, I Articles 35, 36 and 55.

## Women

Women are afforded protection under IHL on an equal footing with men – IHL specifically prohibits discrimination based on sex. IHL prohibits all kinds of indecent attacks, in particular rape and enforced prostitution, against women and men.

Women, if detained, must have separate sleeping quarters and sanitary facilities from male detainees or internees. Their specific needs as expectant or nursing mothers while in detention or as members of the civilian population are recognised and protected by IHL. According to AP I, the Parties to a conflict should avoid to the widest extent possible pronouncing the death penalty on pregnant women or mothers with dependent infants and if such a sentence is passed, it should not be executed.

**Relevant articles:** GC I, Article 12; GC II, Article 12; GC III, Articles 14, 25, 29 and 88; GC IV, Articles 14, 16, 17, 21-23, 27, 38, 50, 76, 85, 89, 91, 97, 124, 129 and 132; AP I, Articles 8, 75 and 76; and AP II, Articles 5 and 6.



# Notes

- 1 'Strengthening Protection in War', ICRC, 2001.
- 2 The questions are adapted from the book 'Growing the Sheltering Tree, Protecting Rights Through Humanitarian Action', Inter-Agency Standing Committee, 2002.
- 3 The protection egg and the various categories of response were developed at the third workshop on protection for human rights and humanitarian organisations, held at the ICRC in Geneva in 1999. See 'Strengthening Protection in War', ICRC, 2001.
- 4 See Chapter 3, 'Ensuring Respect for IHL'.
- 5 See Chapter 2, 'In Times of Peace'.
- 6 For more on the role and work of National IHL Committees and a table of existing committees, see [www.icrc.org](http://www.icrc.org).
- 7 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted to the United Nations High Commissioner for Human Rights, 9 August 1999.
- 8 See for example 'Strengthening Protection in War', ICRC, 2001 or 'Protection - An ALNAP Guide for Humanitarian Agencies,' Hugo Slim and Andrew Bonwick, 2005.
- 9 The Complementarity Matrix has been developed by the Danish Refugee Council. It is included in the Danish Refugee Council's Programme Handbook.
- 10 For an interesting comment on the impact of presence see 'The "protection crisis": A review of field-based strategies for humanitarian protection in Darfur', by Sara Pantuliano and Sorcha O'Callaghan, Humanitarian Policy Group, HPG Discussion Paper, December 2006.
- 11 The full text of the study 'Proactive Presence: Field strategies for the protection of civilians' by Liam Mahony can be found on [www.hdcenre.org](http://www.hdcenre.org).
- 12 Based on ICRC official public sources and discussions with the ICRC protection department.
- 13 See Chapter 3, Customary International Law.
- 14 For more about the Red Cross and Red Crescent Movement, see Chapter 3, IHL Concepts.

- 15 Extract from the ICRC publication 'International humanitarian law: answers to your questions', which can be found on [www.icrc.org](http://www.icrc.org).
- 16 The ICRC has compiled an IHL database consisting of all the IHL treaties, information on ratifications, signatures and reservations, and Commentaries to the four Geneva Conventions and their two Additional Protocols; see [www.icrc.org/ihl](http://www.icrc.org/ihl). The IHL Research Initiative homepage also contains the international treaties, national IHL legislation and various United Nations documents; see [www.ihlresearch.org](http://www.ihlresearch.org)
- 17 See Chapter 3, 'Customary International Law'.
- 18 Article 2, common to GC I-IV.
- 19 Both the International Covenant on Civil and Political Rights and The European Convention on Human Rights, Article 4 and 15 respectively, provide that Signatory States must inform the Secretary-General of the United Nations or the Secretary General of the Council of Europe if they wish to avail themselves of the possibility to derogate from the Conventions in case of conflict or public emergency. This would obviously be a strong indication for the application of IHL, whether the conflict is international or non-international.
- 20 AP I, Article 1.
- 21 AP I, Article 1, para. 4.
- 22 Technically speaking the African wars of liberation were fought within the territory of just one State signatory of the Conventions.
- 23 See ICRC Commentary on the Geneva Conventions of 12 August 1949 to Common Article 3. The Commentary can be found on the ICRC's website, see [www.icrc.org/ihl](http://www.icrc.org/ihl).
- 24 AP II, Article 1.
- 25 GC I, Article 47; GC II, Article 48; GC III, Article 127; GC IV, Article 144; AP I, Article 83 and AP II, Article 19.
- 26 In particular: GC I, Articles 49 and 54; GC II, Articles 45 and 50; GC III, Article 129; GC IV, Article 146 and AP I, Article 85.
- 27 GC I, Article 50; GC II, Article 51; GC III, Article 130; GC IV, Article 147 and AP I, Article 85.
- 28 For more on the role of national Red Cross and Red Crescent Societies as auxiliaries to the governments and in disseminating IHL, see the entry on the Red Cross and Red Crescent Movement in Chapter 3, IHL Concepts.
- 29 See [www.skole.drk.dk/krigenraser](http://www.skole.drk.dk/krigenraser).

- 30 'Similarities and differences between Humanitarian Law and Human Rights Law, Consequences on the action of NGOs', Louise Doswald-Beck, in *World Civil Society*, 17 July 2002. The paper can be found on [www.ihlresearch.org](http://www.ihlresearch.org). For a comprehensive collection of human rights instruments, see the website of The University of Minnesota on [www1.umn.edu/humanrts/instreet/ainstls1.htm](http://www1.umn.edu/humanrts/instreet/ainstls1.htm)
- 31 See, for example, the International Covenant on Civil and Political Rights, Article 4, or the European Convention on Human Rights, Article 15.
- 32 For more on this principle of interpretation, see the entry on *lex specialis* in Chapter 3, IHL Concepts.
- 33 Courts have also had to consider whether States are bound by human right treaties outside the territory of the State in question. This depends on an interpretation of the relevant treaty and of the concept of 'effective control', which falls outside the scope of this handbook, but see, for example, the judgment of the European Court of Human Rights in *Bankovic and others v. Belgium and others*, 12 December 2001 (inadmissibility decision) which dealt specifically with a situation of conflict; *Loizidou v. Turkey*, 23 March 1995 and *Öcalan v. Turkey*, 12 March 2003.
- 34 Inter-American Commission on Human Rights, *Detainees in Guantanamo Bay, Cuba, Request for Precautionary Measures*, 13 March 2002. See also the Commission's 'Report on Terrorism and Human Rights', 22 October 2002, in particular para. 61.
- 35 For more on the interpretation principle of *lex specialis*, see the entry in Chapter 3, IHL Concepts.
- 36 *Case of Ergi vs. Turkey*, 28 July 1998. The case can be found on [www.echr.coe.int](http://www.echr.coe.int). See also, for example, *Isayeva v. Russia*, 24 February 2005 and *Isayeva, Yusupova and Bazayeva v. Russia*, 24 February 2005.
- 37 For more information on refugee law, see [www.unhcr.ch](http://www.unhcr.ch)
- 38 OAU Refugee Convention, Article 1, para. 2.
- 39 AP I, Article 77.
- 40 AP I, Article 77 (5); see the general provisions on death sentences in GC III, Article 100-102 and 107.
- 41 Article 38. The Convention on the Rights of the Child brings together legal protection found in other international instruments, in particular human rights conventions.
- 42 For more on child soldiers and the protection of children in armed conflicts in general, see for example [www.unicef.org](http://www.unicef.org), [www.icrc.org](http://www.icrc.org) and [www.child-soldiers.org](http://www.child-soldiers.org)

- 43 The text by Médecins sans Frontières-Belgium on assistance in the camps in Goma in the former Zaire concerns a controversial situation where arms bearers were staying among the civilians population, see page 14.
- 44 See AP I, Article 65, and the ICRC's Commentary thereto, especially para. 2599, which comment on situations where the armed forces instructs civil defence organisations: 'such instructions and supervision should only take place exceptionally, for if they were permanent, it would amount to genuine "dependence", and the civilian character of the organisations concerned here would be cast in doubt. The distinction between 'receiving instructions' from and being 'responsible to' military authorities was highlighted explicitly in the debate: 'the idea of dependence evoked an element of permanence, which was absent from the idea of receiving instructions'.
- 45 See also the Statute of the International Criminal Court, Article 28.
- 46 Statute of the International Criminal Court, Article 7.
- 47 Statute of the International Court of Justice, Article 38, para. 1, b).
- 48 See, for example, the Asylum Case, International Court of Justice, judgment of 20 November 1950. All of the Court's cases can be found on [www.icj-cij.org](http://www.icj-cij.org).
- 49 Customary International Humanitarian Law, Jean-Marie Henckaerts and Louise Doswald-Beck, Cambridge University Press, 2005.
- 50 See GC IV, Article 5. For more on the discussion of unlawful combatants/armed civilians, see 'The legal situation of "unlawful/unprivileged combatants"', by Knut Dörmann, International Review of the Red Cross, No. 849, March 2003. The International Review can be found on the ICRC's website [www.icrc.org](http://www.icrc.org). See also the Crimes of War Project, including their expert analysis 'Trial, Detention or Release?' [www.crimmesofwar.org](http://www.crimmesofwar.org).
- 51 For a definition of Civilians and persons protected by GC IV, see the entry on Civilians as well as the Commentary to GC IV, Article 4. For more in internment, 'Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence', by Jelena Pejic, International Review of the Red Cross No. 858, 2005.
- 52 See also the entry on judicial guarantees.
- 53 The Standard Minimum Rules can be found in the University of Minnesota's human rights library: <http://www1.umn.edu/humanrts/>.
- 54 For more on the ICRC's visits to persons deprived of liberty, see [www.icrc.org](http://www.icrc.org) as well as 'Protection of detainees: the ICRC's action behind bars', by Alain Aeschlimann, published in 2005, which can be found on the ICRC's website [www.icrc.org](http://www.icrc.org).

## Notes

- 55 AP I, Article 52.
- 56 From the websites of Btselem [www.btselem.org](http://www.btselem.org) and the Independent [www.independent.co.uk](http://www.independent.co.uk).
- 57 While it is not explicitly mentioned in AP II, Common Article 3 applies in non-international armed conflicts and AP II merely elaborates on Common Article 3 (AP II, Article 1). See 'Common Article 1 of the Geneva Conventions revisited: Protecting collective interests', Laurence Boisson de Charzournes and Luigi Condorelli, *International Review of the Red Cross*, No. 837, 31 March 2000. The *International Review* can be found on the ICRC's website [www.icrc.org](http://www.icrc.org) under Info resources.
- 58 See 'EU "complicit in Somali war crimes"', by Chris Tomlinson, *The Independent*, 7 April 2007.
- 59 The system of appointing Protecting Powers is very old but has not been used much in recent times. It was used, for example during the two world wars, when some States were the Protecting Power of two opposing States. Protecting Powers were appointed in the Suez conflict (1956), the conflict in Goa (1961) and the conflict between India and Pakistan (1971-1972). A more recent case is that of the 1982 conflict between Argentina and the United Kingdom, during which two States exercised functions as intermediaries and communicated information (Commentary to AP I, Article 5).
- 60 Seventy States have made a declaration of prior acceptance of the competence of the International Fact-Finding Commission. For more, see the Commentary to AP I, Article 90 and the Commission's website [www.ihffc.org](http://www.ihffc.org).
- 61 See the Commentaries to Article 35.
- 62 GC III, Article 123 and GC IV, Article 140; see also 'The Central Tracing Agency of the International Committee of the Red Cross' by Gradimir Djurovic, ICRC, 1986.
- 63 For more on maintaining family links see <http://www.icrc.org/web/eng/siteeng.nsf/html/themissing>. The ICRC has also established a special website to facilitate the search for missing persons and the exchange of news. The address is [www.familylinks.icrc.org](http://www.familylinks.icrc.org).
- 64 Más de 300 querellas abiertas, *El Periódico*, 10 September 2007.
- 65 'Belgium: Universal Jurisdiction Law Repealed', statement by Human Rights Watch and five other human rights groups, Brussels, 1 August 2003. The International Court of Justice's decision can be found on the Courts website.
- 66 See [www.icc-cpi.int](http://www.icc-cpi.int).
- 67 See [www.ictr.org](http://www.ictr.org).

- 68 See [www.icty.org](http://www.icty.org).
- 69 See [www.icj-cij.org](http://www.icj-cij.org).
- 70 For more on international justice, see for example Human Rights Watch website, [www.hrw.org](http://www.hrw.org).
- 71 See [www.ifrc.org/idrl](http://www.ifrc.org/idrl) as well as 'Law and Legal Issues in International Disaster Response: A Desk Study', David Fisher, published by the International Federation of Red Cross and Red Crescent Societies 2007. The publication is available on the website.
- 72 The Reporters Without Borders Charter for the Safety of Journalists Working in War Zones or Dangerous Areas contains 8 principles applying to such work; see [www.rsf.org](http://www.rsf.org). The ICRC has established a hotline for journalists on dangerous assignments. The hotline is open 24 hours a day and can be used to alert the ICRC if a journalist is missing, captured, arrested or detained. The telephone number is + 41 79 217 32 85. See [www.icrc.org](http://www.icrc.org)
- 73 For more on the issue of IHL and the medical mission, see 'War and public health: handbook on war and public health', a manual intended for medical and other personnel responsible for humanitarian activities in armed conflicts. The publication – and many others on medical assistance and war – can be ordered through the ICRC's website [www.icrc.org](http://www.icrc.org)
- 74 The writing on this topic is extensive. Besides the article which forms the background to the case study on Iraq, see: 'CIVMIL Relations, Discussion Paper for NGO Seminar on Civil-Military Relations (CIVMIL)', 03-04 December 2007, Brussels, by Raja Rana (consultant) and Frank Reber (researcher); 'Humanitarian principles - the importance of their preservation during humanitarian crises', text of a speech delivered by the Director-General of the ICRC, Angelo Gnaedinger, at the conference Humanitarian Aid in the Spotlight: upcoming challenges for European actors held in Lisbon on 12 October 2007; or 'Resetting the rules of engagement, Trends and issues in military-humanitarian relations', Humanitarian Policy Group, Research Report, March 2006, edited by Victoria Wheeler and Adele Harmer.
- 75 The Iraq country study, 'Taking Sides or Saving Lives: Existential Choices for the Humanitarian Enterprise in Iraq', by Greg Hansen is available on the website of the Feinstein International Center, Tufts University at <http://fic.tufts.edu/downloads/HA2015IraqCountryStudy.pdf>. The Humanitarian Agenda 2015: Final Report - The State of the Humanitarian Enterprise is also available at <http://fic.tufts.edu/downloads/HA2015FinalReport.pdf>.
- 76 See the ICRC's customary law study, 'Customary International Humanitarian Law', Jean-Marie Henckaerts and Louise Doswald-Beck, Cambridge University Press, 2005.
- 77 Under the Charter of the United Nations, it is illegal to acquire territory by means of occupation or annexation. The Charter forbids wars of aggression, see Articles 1, paras. 1, 2, 3 and 4.

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- 78 See the ICRC's Commentary to GC IV, Article 27. For more on the law of occupation, see the ICRC's website [www.icrc.org](http://www.icrc.org) as well as 'International Law and the Administration of Occupied Territories', Emma Playfair (Editor), Oxford University Press, 1992.
- 79 Models of the capture card, letter, correspondence card and death certificate are annexed to GC III.
- 80 'Armed Entrepreneurs Private Military Companies in Iraq', James Kwok, *Harvard International Review*, Vol. 28 (1), Spring 2006.
- 81 'Involvement of Private Contractors in Armed Conflicts: Implications under International Humanitarian Law', Alexandre Faite, *Defence Studies*, Volume 4, Number 2, Summer 2004.
- 82 'Court cuts torture sentences', Declan Walsh, *The Guardian*, 1 April 2005.
- 83 AP I, Article 57, para. 2. (b).
- 84 AP I, Article 51.
- 85 See more about the history of the Red Cross in Chapter 2, 'Introduction to International Humanitarian Law'.
- 86 See more about the ICRC on [www.icrc.org](http://www.icrc.org). The information provided here is taken from the brochure 'ICRC in action'.
- 87 The addresses of the National Societies can be found on <http://www.ifrc.org/address/directory.asp>
- 88 See more about the Federation on [www.ifrc.org](http://www.ifrc.org).
- 89 'The Responsibility to Protect', Report of the International Commission of Intervention and State Sovereignty, December 2001, para. 2.25.
- 90 'The Responsibility to Protect', Report of the International Commission of Intervention and State Sovereignty, December 2001, para. 1.39 and 1.40.
- 91 For a definition of who is protected by GC IV, see Chapter 3, 'Civilians'.
- 92 A Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery was adopted in 1956 and it supplements and reinforces the existing prohibition by including certain institutions and practices comparable to slavery, such as servitude for the payment of debts, serfdom, the purchase of wives and the exploitation of child labour (ICRC Commentary to AP II, Article 4).
- 93 See, for a comparison, the definition of terror in the 1999 International Convention for the Suppression of the Financing of Terrorism: 'Art. 2: ... (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an

active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.’

- 94 For a discussion on the attack against the World Trade Centre in New York on 11 September 2001 and terror as an international crime in general, see for example [www.ihlresearch.org](http://www.ihlresearch.org) or [www.crimesofwar.org](http://www.crimesofwar.org). See also Chapter 2, ‘Human Rights, Refugee Law, and IHL’ for which law is applicable in the so-called war on terror.
- 95 The Torture Convention can be found on [www.unhchr.ch](http://www.unhchr.ch), together with other relevant material on the United Nations’ work to combat torture.
- 96 For more on the discussion of unlawful combatants/armed civilians, see ‘The legal situation of “unlawful/unprivileged combatants”’, by Knut Dörmann, *International Review of the Red Cross*, No. 849, March 2003. The *International Review* can be found on the ICRC’s website [www.icrc.org](http://www.icrc.org). See also the Crimes of War Project, including their expert analysis ‘Trial, Detention or Release?’ [www.crimesofwar.org](http://www.crimesofwar.org).
- 97 Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, 22 October 2002, para. 68.
- 98 This is different from human rights law, which in principle only binds States and under which only States may be held responsible.
- 99 See for example the Statute of the International Criminal Court, Article 8 which contains a comprehensive definition of war crimes also in non-international armed conflicts.
- 100 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, London, Moscow, Washington, 1972, Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction, Paris 1993.
- 101 Treaty on the Non-Proliferation of Nuclear Weapons, New York, 1970.
- 102 The advisory opinion, which was given on 8 July 1996, can be found on [www.icj-cij.org](http://www.icj-cij.org)
- 103 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight (Saint Petersburg Declaration) 1868, Declaration (IV, 3) concerning Expanding Bullets, The Hague 1899.
- 104 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. Geneva, 10 October 1980 and its Protocols I - IV.

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- 105 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. Geneva, 10 October 1980, Protocol V.
- 106 The text of the Convention can be found on [www.clusterconvention.org](http://www.clusterconvention.org).
- 107 See more on this obligation and the practical experience of a number of States that have established such a review mechanism in the Danish Red Cross publication 'Reviewing the Legality of New Weapons'. See also I. Daoust, R. Coupland and R. Ishoey, 'New wars, new weapons? The obligation of States to assess the legality of means and methods of warfare', *Review of the International Red Cross*, June 2002, Vol. 84, No. 846.

# Further Reading

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‘Commentary on the Additional Protocols of 8 June 1977 to  
the Geneva Conventions of 12 August 1949’, ICRC, 1987

‘The Practical Guide to Humanitarian Law’, Françoise Bouchet-  
Saulnier, Rowan & Littlefield Publishers, Inc., 2002

‘Crimes of War, What the Public Should Know’, Roy Gutman,  
W.W. Norton, 1999. Updated in 2007.

‘Constraints on the Waging of War: an Introduction to  
International Humanitarian Law’, Frits Kalshoven, Liesbeth  
Zegveld, ICRC, 2001

‘International Humanitarian Law: Answers to Your Questions’,  
ICRC, 2004

# Abbreviations Frequently Used

## **AP I**

First Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977.

## **AP II**

Second Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977.

## **Hague Convention IV**

Convention IV respecting the Laws and Customs of War on Land and its Annex. Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

## **Hague Convention on Cultural Property**

Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954.

## **ICC**

International Criminal Court. Information on the Court can be found on [www.icc-cpi.int](http://www.icc-cpi.int).

## **ICJ**

International Court of Justice, the principal judicial organ of the United Nations. [www.icj-cij.org](http://www.icj-cij.org).

## **ICRC**

International Committee of the Red Cross.

## **ICRC's Commentary**

The ICRC has written a Commentary to each of the four Geneva Conventions and their two Additional Protocols, consisting of explanations on each of the articles. They can be found on the Internet on [www.icrc.org/ihl](http://www.icrc.org/ihl).

## **ICTR**

International Criminal Tribunal for Rwanda. [www.icttr.org](http://www.icttr.org).

## **ICTY**

International Criminal Tribunal for the former Yugoslavia. [www.icty.org](http://www.icty.org).

## **IHL**

International Humanitarian Law.

**GC I**

Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949.

**GC II**

Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949.

**GC III**

Geneva Convention III relative to the Treatment of Prisoners of War, 12 August 1949.

**GC IV**

Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

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Humanitarian organisations today play an ever more important role in and are exposed to conflicts that have become increasingly complex. Who are the parties to those conflicts? What rules come into play? Who has the final word? These are just a few of the questions that are integral to today's armed conflicts. Working in the context of ever more complex armed conflicts, humanitarian actors inevitably find themselves in a position to influence the situation and any decisions made – for better or for worse. As a result, aid workers today are most likely to be faced with situations in which knowledge of international humanitarian law is not only relevant, but necessary.

This handbook gives practical information on international humanitarian law and on how to incorporate it actively into field activities. It provides an introduction to the basic principles of international humanitarian law and its relationship to other areas of international law. It also contains an encyclopaedic introduction to international humanitarian law concepts of particular relevance to field activities.

