# INTERNATIONAL HUMANITARIAN LAW

## Origin, Application & Implementation

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## 1.The Origin of IHL – historical background

Before I present what the International Humanitarian Law (IHL) or Law of Armed Conflict (LOAC) is I am going to give you a short historical overview. Starting from the Prehistoric examples till the contemporary IHL after the universal codification settled up during and after WWI and WWII.

> *"International humanitarian law is rooted in the rules of ancient civilizations and religions – warfare has always been subject to certain principles and customs."*

### 1.1 Former examples

It would be a great fault thinking that the International Humanitarian Law or Law of the Armed Conflict borned in modern times after the foundation of the International Committee of the Red Cross (1863) or after the adoption of the first Geneva Convention (1864). As Quincy Wright said : "... *from the procedure of war of the primitives peoples it shows up different kinds of international relations: rules which distinguish different categories of enemies; rules which define circumstances, form and the right to begin and end a war; rules which establish limits to the person, to the time, to the place and to the means of warfare; and rules which could put war out of law...*"[1]

During the history there has always been unwritten rules based on customs. We have also found written examples of how different societies were trying regulate the armed conflicts.

1. XVII century BC – **The Code of Hammurabi,** created by King of Babylonia, Hammurabi (1792 – 1750 BC); it is the first example of a written code of Law of Justice – composed by 282 articles. In this code, Hammurabi promoted the idea establishing laws to avoid that the stronger treat with ferocity the weaker ;
2. 500 BC India **- The Manu laws.** Prohibition against incendiary and poisonous weapons:

   Ancient law-books – religious and civil laws - formed the basis of Hindu law. First among them is the *Laws of Manu* from around AD 200. Manuals on dharma (right behaviour, law and such things) is heavy stuff. There are just as severe rules of conduct as in the Old Testament here and there, if not stricter. Ancient Hindu manuals

   - proclaim duties of people at various stages of life (student hood, householder ship, retirement, and asceticism);
   - bring dietary regulations; describe offenses and expiations minutely;
   - systematise rights and duties of rulers;
   - discuss purification rites, funerary ceremonies, forms of hospitality, and daily oblations;
   - bring up juridical matters.

   The prohibition against incendiary and poisonous weapons is included in Art. 90: "*When he fights with his foes in battle, let him not strike with weapons concealed (in wood), nor with (such as are) barbed, poisoned, or the points of which are blazing with fire*." ;
3. 990 AD - **Catholic Church - "Pax Dei". Women, clerics, churches and pilgrims are under the protection of the pope.** The Pax Dei was a consular movement which began in southern France in the late tenth century and spread to most of Western Europe over the next century, surviving in some form until at least the thirteenth century. It combined lay and ecclesiastical legislation regulating warfare and establishing a social peace. Its origins coincided with the failure of the last Carolingian rulers to keep order in West Frankland, and the accession of Hugh Capet, founder of a new dynasty in 987. Throughout the kingdom, the decentralizing forces that had plagued Charlemagne's empire from its inception, intensified, with, in some places an intensification of regional power bases (counts, dukes) and in others the appearance of independent warlords with new fortifications (castellani) and bands of retainers (milites). In the ensuing disorders, local initiatives to re-establish social order found expression in a variety of measures, the most spectacular of which were Peace assemblies. Typically, these councils were held in large open fields around exceptional gatherings of saints' relics, brought from the surrounding regions. Each relic brought with it a throng of faithful, enthused both by their novel proximity to the sacred, and the miracles that these relics "performed." In the presence of the large crowds of commoners attracted by these relics, the elders of the council (dukes, counts, bishops, abbots) would proclaim Peace legislation designed to protect civilians (unarmed churchmen, peasants, merchants, pilgrims) and control the behaviour of warriors. Often the warriors would swear an oath on the relics in the presence of all assembled.

1 See Wright, Q., "*A study of war*", Chicago University Press: Chicago, 1942

4. 1139 AD **The Lateran Council - Prohibition against using crossbows**

   The council likewise condemned the errors of the Petrobrusians and the Henricians, the followers of two active and dangerous heretics, Peter of Bruys and Arnold of Brescia. The council promulgated against these heretics its twenty-third canon, a repetition of the third canon of the Council of Toulouse (1119) against the Manichaeans. Finally, the council drew up measures for the amendment of ecclesiastical morals and discipline that had grown lax during the schism. Twenty-eight canons pertinent to these matters reproduced in great part the decrees of the Council of Reims, in 1131, and the Council of Clermont, in 1130, whose enactments, frequently cited since then under the name of the Lateran Council, acquired thereby increase of authority. Concerning the prohibition of the use of the crossbows, it is contained in Art. 29 ("*We prohibit under anathema that murderous art of* ***crossbowmen and archers****, which is hateful to God, to be employed against Christians and Catholics from now on."*) in order to avoid unnecessary sufferance provoqued by this kind of weapons as it will be developed by the St. Petersburg Convention (1868) and which will become one of the most important pillar of the LOAC.

5. 1280 AD **Vikayah - The Koran lays down rules for warfare**

   The *Vikayah (al-Wiqayah*), which was written in the seventh century of the Hijrah by Burhan ash-Shariyat Mahmud, is an elementary work to enable the student to study and understand the *Hidayah*. The *Vikayah* is printed, and invariably studied, with its celebrated commentary, the *Sharh ul-Vikayah*, written by Ubaidullah Bin Masuud. who died A.H. 745. The *Sharh-ul-Vikayah* contains the text of the *Vikayah* with a gloss most perspicuously explanatory and illustrative; so much so, that those chapters of it which treat of marriage, dower, and divorce, are studied in the Madrassahs of India in preference to the *Hidayah* itself. There are also other commentaries on the *Vidayah*, but not so useful as the above. On the *Sharh-ul-Vikayah* , again, there is an excellent commentary, entitled the *Chalpi*, written by Akhi Yusuf Bin Junid who was one of the then eight professors at Constantinople. This work was commenced to be written about AH. 891, and completed A.H. 901; and the whole of it was published in Calcutta A.H. 1245 and extracts there from have been printed.

6. 1474 AD **Burgundy - The Breisach tribunal. First tribunal for war criminals**

   This tribunal is considered by someone are the first international war crimes trial to have been the prosecution of Peter von Hagenbach in 1474 — for atrocities committed during an attempt to compel Breisach to submit to Burgundian rule — by a tribunal comprising judges drawn from different States and principalities [1]. Today the rules governing the prosecution of offenders are principally to be found in the 1949 Geneva Conventions, which oblige States to try or extradite (*aut dedere aut judicare*) individuals responsible for having committed "grave breaches" of the Conventions [2], and in Article 85 of Additional Protocol I.

## 1.2 IHL in modern times – the Official Start

**1583 – 1645 Hugo Grotius: "*De Jure Belli ac Pacis*"**

Ugo Grotius in 1625 promoted the idea of the *Ius Gentium* (Law of nations) which was a code of law relating to the management of the International Relationships between States, between States and others subjects of the International Community. With this terms, With this code, Grotius promoted the idea that the Law derives not from God but from the man rationality, and that the law does not come before but derives from procedure. When Grotius wrote about the *Ius Gentium,* he referred to what is know called as Public International Law or – more generally – International Law; with this code he created the basic rule which are still the basis of the Law of War.

**1712-1778 Jean-Jacques Rousseau: « *Le Contrat Social* »**

Rousseau advocated the idea of war as a struggle only between states, which makes humanity between individuals possible. States should submit to a set of laws just like individuals. The states should build an international community with binding laws, to which great nations should be party, and withdrawal should not be possible. The community would have instruments of power. Power must not precede justice, Rousseau said. He claimed that his plan would do away with the most frequent causes of war. Disputes should be solved peacefully through mediation and judgement.

> *"War is not a relation between a man and another man, but a relation between States, in which peoples are faithfully enemies; not as men, and neither as citizens, but only as soldiers (...). Since the war's objective is to destroy the enemy State, it will be allowed to kill the enemies till they still keep weapons; but since they are surrenders, they stop immediately to be enemy or agent of the enemy and they are back as men only, for this reason none as right on their lifes".* Jean-Jacques Rousseau

**1828-1910 Henry Dunant**

The Swiss banker Henry Dunant was more successful than Rousseau in promoting his humanitarian ideas. The time was right.

By pure accident Dunant, when travelling to through the area, found himself a witness to a bloody battle in the war of Italian Unification, between the French (Franco-Sardinian forces) and the Austrian armies at Solferino in 1859. One of the most bloody and brutal battles of the XIX century.

He was horrified by the sight of thousands of soldiers from both armies left on the battlefield to suffer and to die without medical services.

He could not forget what he had seen upon his return to Switzerland, and a few years later Dunant wrote a book on the massacre and in 1862 he published "A Memory of Solferino." In the book he launched the idea of organising volunteer societies in peacetime to assist wounded soldiers in war time. He made two solemn appeals:

- for relief societies to be formed in peacetime, with nurses who would be ready to care for the wounded in wartime;
- for these volunteers, who would be called upon to assist the army medical services, to be recognized and protected through an international agreement.

Henry Dunant's book was a huge success; it was translated into virtually all the European languages and read by the most influential people of his time. The battle of Solferino and the book have lead to the founding of the Red Cross.

1863 - the Geneva Society for Public Welfare, a charitable association based in Geneva, set up a five-member commission ("Committee of Five") This committee, (which comprised Moynier, Dunant, General Guillaume-Henri Dufour, Dr Louis Appia and Dr. Theodore Maunoir,) was initially called the International Committee for Relief to the Wounded

In 1875 the committee was reformed and the name was changed into the ICRC. (International Committee of the Red Cross)

**1863 The Lieber Code**

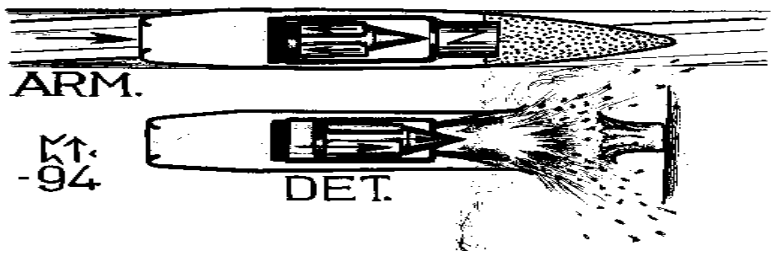
The first document on the laws of war in modern times was named after the American professor Francis Lieber. The Lieber Code was the first attempt to codify the already existed customary law of war. This handbook catalogue the laws and customs of war, and it has influenced the work on and development of the laws of war ever since, although it is now only of historical interest. According to Art14, military necessity - as understood by modern civilized nations consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war. Military necessity does not admit of cruelty - that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to ex tort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult[2]. The Lieber Code could not be considered as a treaty because of it was valid only for the Union Soldiers fighting in the American Civil war, period during which President Lincoln adopted this code.

**1864 Diplomatic Conference**

Swiss government sent a letter of invitation all the European governments and to the United States of America, Brazil and Mexico. 22nd August 1864 the Diplomatic Conference signed the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Modern international humanitarian law was born.

**1868 The St. Petersburg Declaration**

Prohibition against weapons causing "unnecessary suffering". The only legitimate goal in war is to weaken the enemy's military power. The use of weapons which cause superfluous sufferings, run counter to the idea of humanity. The parties commit themselves not to use exploding bullets with a weight less than 400 grams.




2 See The Lieber Code, art 16

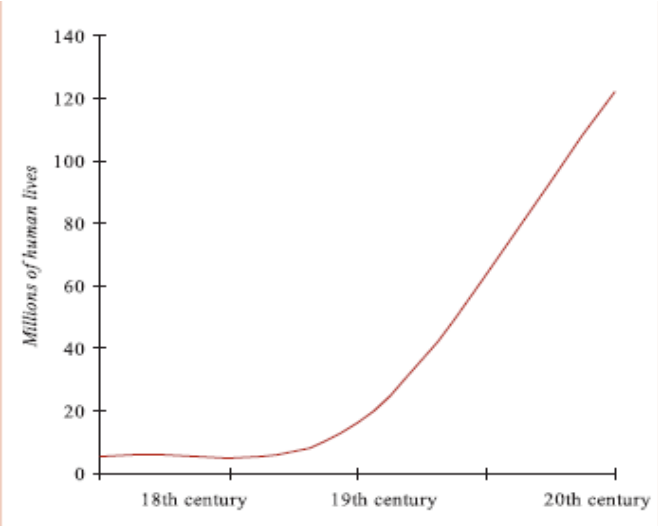
**1899 The Martens' Close**

In the 1899 Fyodor Martens promoted the idea that civilians and combatants remain under the protection and the authority of the principles of the international law derived from established customs, from the principles of humanity and from the dictates of public conscience.

> *"Civilian and belligerents remain under the protection of the principles of international law, as they result from the usages established between civilized nations from the laws of humanity and the requirements of the public conscience"*

## 1.3 IHL in contemporary history – the Universal codification of IHL

The Universal Codification of the IHL began in the XIX$^{th}$ century; since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare. Some armed conflicts have had a more or less immediate impact on the development of humanitarian law. These rules strike a careful balance between humanitarian concerns and the military requirements of States. The 20th century, the deadliest of all. With each passing century, war has taken a higher toll in human lives:

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|---|---|
| 18th century. | 5.5 Million |
| 19th century | 16 Million |
| World War I | 38 Milion |
| World War II | 60 Million (about 38,000 per month in about 100 conflicts) |
| 1949 – 1995 | 24 Million |

Besides the fact that an especially high number of armed conflicts have broken out since 1945, new types of conflict have emerged (wars of national liberation, guerrilla warfare) and technological progress has resulted in the development of numerous high-performance weapons.)

As the international community has grown, an increasing number of States have contributed to the development of those rules. International humanitarian law forms today a universal body of law.

**The First World War (1914-1918)**

Witnessed the use of methods of warfare that were, when not completely new, at least deployed on an unprecedented scale. These included poison gas, the first aerial bombardments and the capture of hundreds of thousands of prisoners of war. The treaties of 1925 **the Geneva Protocol** and 1929 were a response to those developments 1925 the Geneva Protocol

Despite the **prohibition of 1907**, poisonous gas was used as a weapon in the First World War. The use of gas aroused

abhorrence among politicians and ordinary people alike, which in its turn led to the prohibition on the use of chemical and biological weapons in war. But it was still legal to develop, produce and stockpile these weapons. Nearly 50 years passed before a ban on B-weapons came into effect and even longer for C-weapons. The following ones are the most important step in this scenario

**The Hague Declaration (The Hague - 29 July 1899)**

This Declaration prohibits – on the base of a particular technical specification about a weapon system called "*the construction of bullets*" - the use in war of the Dum-Dum bullet on the spot of the Declaration of St. Petersburg of 29 November 1868. In the Hague Declaration (signed by 31 countries), the Contracting Parties agree to not use bullets which expand or flattern easily in the body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions in any case to avoid unnecessary sufferance to the humankind[3].

**The Hague Conventions (The Hague - 8 October 1907 )**

Held to expand the 1899 Hague Declaration, it comprises 13 conventions of which some are not in force., but which compose what is often called as "*Law of the Hague*" . They constitute a system of law – entered into force on 26 January 1910 - concerning the alleviation the effect of armed conflict in that this convention regulates and limits the methods and means of warfare used by the parties to the conflict.

**The Second World War (1939-1945)** saw civilians and military personnel killed in equal numbers, as against a ratio of 1:10 in the First World War. The following ones are the most important treaties, conventions etc. which constitute the response of the International Community to this scenarios.

**Convention on the Prevention and Punishment of the Crime of Genocide (New York - 9 December 1948)**

The Convention, which was a result of what had happened during World War II, seeks to prevent and punish intended extermination of entire groups of people according to the United Nations Resolution 96 (1) dated 11 November 1946 in which genocide is considered a crime under international Law - both in time of peace and time of war.

**The Fourth Geneva Conventions (Geneva – 12 August 1949)**

**In 1949** the international community responded to those tragic figures, and more particularly to the terrible effects the war had on civilians, by revising the Conventions then in force and adopting a new instrument: **the Fourth Geneva Convention for the protection of civilians.**

**Convention for the Protection of Cultural Property (The Hague - 14 May 1954)**

Protection of the Cultural Property in the Event of Armed Conflict Contains rules for international protection of cultural property and a protecting emblem for suck property. This convention is composed by 7 chapters include 40 articles, which are.

**The Two Additional Protocols of the Fourth Geneva Conventions (Geneva – 1977)**

In 1977, the **Additional Protocols** were a response to the effects in human terms of wars of national liberation, which the 1949 Conventions only partially covered.

**The Convention on Conventional Weapons (Geneva – 10 October 1980)**

The Convention on Conventional Weapons (CCW) on prohibition or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects according to the IHL. This Convention is structured in 4 protocols.

**The Ottawa Convention (Ottawa – 3 December 1997)**

Result of the so called "Ottawa Process" - started by the Canadian Government from the 1980 Convention on Conventional Weapons, this Convention prohibits the use, stockpiling, production and transfer of anti-personnel mines and their destruction. In December 1997 representatives from 121 states gathered in Ottawa to sign the convention, which came into effect in 1999, six months after it had been ratified by 40 states. The USA, China and India have not ratified the convention. The International Campaign ……. Landmines (ICBL) was awarded the Nobel Prize for Peace in 1997. With this Convention the parties determine to put end to the suffering and the casualties caused by anti-personnel mines that "*.....kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement.....*"[4]

3 See. Declaration (IV, 3) concerning Expanding Bullets. The Hague, 29 July 1899.

4 See Various Authors, *The Ottawa Convention – Preamble*, Ottawa, 3 December 1997

## 2. What is IHL?

### 2.1 Definitions and Scope of IHL

The International Humanitarian Law is a set of rules which seek, for humanitarian reasons, *to limit the effects of armed conflict.* It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict, without considering the parties to which those persons belong. A practical idea of humanitarian law does not call into question the lawfulness of war; rather it aims first and foremost to limit the superfluous suffering that war can cause. War may now be ''outlawed'', but it continues to be waged in countless places around the world and to take far too high a toll.

IHL is universal – not only because that is how it is intended but also because it is acknowledged as such by the persons interviewed in the various contexts surveyed. However, this statement needs to be qualified inasmuch as the consensus relates not to the *application* but to the *acknowledgement* 5 of such general norms as the fact that certain kinds of behaviour are prohibited in time of war or that civilians must not be the object of indiscriminate attack. Many cultures have sought to limit the suffering that war can cause. International Humanitarian Law simply expresses that idea in legal terms. By making respect for the human being in war an international obligation, the States show that they want international humanitarian to be binding on all.

The scope of IHL is to prohibit those actions which go beyond what is necessary to achieve military objectives, or which make it more difficult to resume peaceful relations after the conflict ends. It also reinforces military discipline. In addition, the basic rules of IHL reflect a universal humanitarian instinct, and overlap with human rights law. During armed conflicts, such rules include care for the wounded, regardless of whether they are friends or enemies; humane treatment of prisoners and civilians, and limiting attacks to military targets. IHL does not aim to determine whether a State does or does not have the right to resort to armed force. That question is governed by a major but separate branch of international public law within the framework of the United Nations Charter. International humanitarian law stems from the codes and rules of religions and cultures around the world.

It is important to define that **"International Humanitarian Law", "Law of Armed Conflict"** and **"Law of war"** are equivalent, and choosing one definition or another depends only from the procedure and who use this definition. For example the International Organisations, Universities and States use mainly the definition of **International Humanitarian Law***,* on the other hand the Armed Forces prefer to refer to this field as **Law of Armed Conflict *(LOAC)*** and **Law of War.**

It is also important to differentiate between **international humanitarian law** and **human rights law**. While some of their rules are similar, these two bodies of law have developed separately and are contained in different treaties. According to the common definitions, the International Humanitarian Law is a set of rules which seek, for humanitarian reasons, to limit the effect of the armed conflict. It would be applied in situations of international or non-international armed conflict, and it protects persons who are not or are no longer participating to the hostilities and restricts the means and methods of warfare[5]. It covers two areas:

- the protection of those who are not, or no longer, taking part in fighting;
- restrictions on the means of warfare – in particular weapons – and the methods of warfare, such as military tactics.

On the other hand human rights law establishes rules to protect the rights of citizens against State Authorities, and it includes the basic rights and freedoms to which all humankind are entitled (i.e. Right of life and liberty, freedom of thought and expression and equality before the law). If the IHL would be applied in particularly during the armed conflict, the Human Rights would be applied in peacetime, and many of its provisions may be suspended during an armed conflict. Those rights are contained in a UN instruments such as the UN Covenant on Civil and Political Rights, and in regional conventions and charters in Europe, Africa and the Americas; the two most important right contain in those instruments are:

- the right to life – even in armed conflicts, acts such as the killing of prisoners and execution of hostage are unlawful;
- the prohibition of torture – no one may be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

Generally speaking we could say that IHL is applicable in time of armed conflict and occupation. Conversely, human rights law is applicable to everyone within the jurisdiction of the State concerned in time of peace as well as in time of armed conflict. Thus while distinct, the two sets of rules may both be applicable to a particular situation and it is therefore sometimes necessary to consider the relationship between them. However these Guidelines do not deal with human rights law. Even if the main purpose of both, however, is to safeguard human dignity in all circumstances.

5 See ICRC website, section Humanitarian Law/IHL in brief, www.icrc.org

Another important distinction to be made is between the so called *Ius in Bello* and *Ius ad Bellum.* The ***Ius in Bello (Law in war)*** is the used during an armed conflict without considering reasons or the right of the use of force; it manages the aspect of an armed conflict related to humanitarian matters. The rules of the *Ius in Bello* are applied to the parties involved in a armed conflict without considering the reasons of this conflict or which of the parties involved is in right. On the other side the so called ***Ius ad Bellum*** or ***Ius contra Bellum*** is the right to use force.

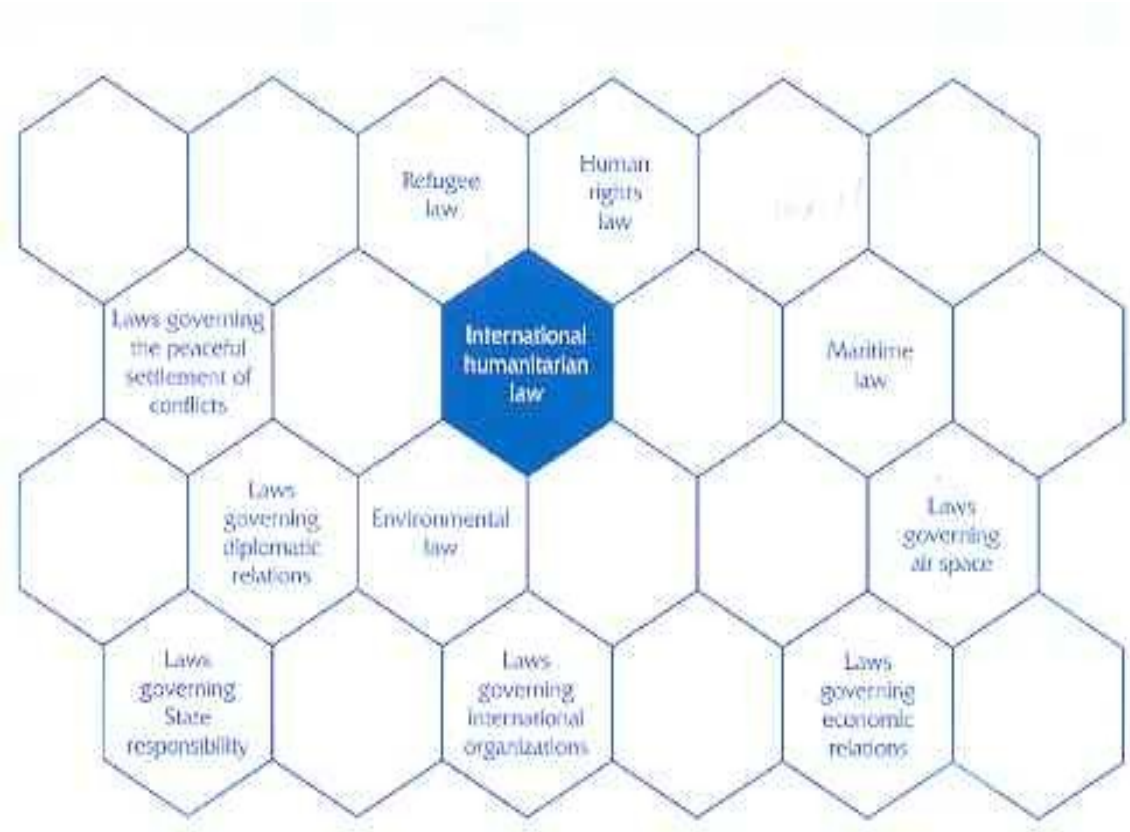
The International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practise considered by them as legally binding, and in general principles. International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter.

Just like individuals in a society need regulations and rules of law in their contact with each other, states need rules of law guiding their relations.

The International Law – infact – consist in a series of principles which govern and deal nations with each other. When we speak about International Law, it is useful make a distinction between *Public* and *Private International Law*. The first concerns with questions of rights between several nations and citizens and other subjects of other nations; the second is dealing with controversies between private persons – natural or juridical – arising out of situations having significant relationship to more than one nation[6].

Basic, classic concepts of law in a national legal system, substantive law, procedures, process and remedies are including in the International Law, whose primary sources are the Customary and the Conventional law (see below for acknowledgement about those law)

International Law impose to the nations certain duties among which the respect of the individuals. For this reason it is a violation to the International Law treat an individual in a manner which does not agree with the International Standards of Justice; but in absence of specifically agreement, only the State of which is a national could complain of such violation before an international tribunal.




6 See Cromwell Law School website, *International Law – International Law: an overview*

## 2.2 Where is international humanitarian law to be found?

The International Humanitarian Law could be found in four different kind of sources:

- The Geneva Law;
- The Hague Law;
- The International Customary Law;
- Customs of War.

### 2.2.1 The Geneva Law

The **Geneva law** concerns those rules which are relating to the protection of civilians and those persons who are not or not more involved in hostilities. This Law is contained in the **Fourth Geneva Conventions** (1949) and in its **Two Addional Protocols** (1977).

These statements are the **core of the International Humanitarian Law,** and they provide for a whole legal system for the safeguard of the warfare and of the protection of individuals. They specifically protect people who do not take part in the fighting (civilians, medics, chaplains, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war). More than **190 States** are adhered to the Conventions (almost every country in the world).

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 attacked.

- Attacks may be made solely against military objectives. People who do not or can 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.
- Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare. It is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.
- The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared.
- The red cross or red crescent on a white background is the distinctive sign indicating that such persons and objects must be respected.
- 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 receive aid. They must enjoy basic judicial guarantees.

The four Geneva Conventions (1949) for the protection of victims of war, often referred to as The Red Cross Conventions. They cover:

- Wounded and sick on Land;
- Wounded and Sick and Shipwrecked in War at sea ;
- Treatment of Prisoners of War;
- Protection of Civilian population.

Concerning the two Additional Protocols – created the 08 June 1977, they were created to supply all the lack left during the editing of the Four Conventions mainly about the protection of the victims. In fact the two protocols are focused on that field developing it in two different field:

- Protection of Victims of International Armed Conflict;
- Protection of Victims of Non-International Armed Conflict.

A third Additional Protocol was added to the Four Geneva Conventions and to the 2 previous Addional Protocols the 8th December 2005, on the adoption of an Additional Distinctive Emblem.

#### 2.2.1.1 First Geneva Convention -Wounded and Sick in War on land

The First Convention foresees that wounded or sick combatants shall be respected and cared for, whatever their nationality; personnel attending them, the buildings in which they shelter and the equipment used for their benefit, shall be protected; a red cross on white ground shall be the emblem of this immunity. All the articles contained in this convention are as precise as possible to guarantee privileges of medical personnel and the protection of wounded or sick during both war and peace time.

It is structured in this way:

- Chapter II: dealing with wounded and sick
- Chapter III: Medical Units and Establishments
- Chapter IV: Medical Personnel and Chaplains
- Chapter V: Medical Equipment
- Chapter VI: Provision for transport vehicles
- Chapter VII: Distinctive Emblem
- Chapter VIII: Application of the Conventional
- Chapter IX: Repression of the Abuses and Infractions

#### 2.2.1.2 Second Geneva Convention - Wounded and Sick and Shipwrecked in War at sea

The Second Convention is the adoption of the first Convention to the maritime warfare. This Convention covers the same field and protects the same categories of persons as the First without any comments on its basic principles - 63 articles adapting the Convention to the maritime warfare.

It is structured in this way:

- Chapter II: protection of the shipwrecked in addition to the wounded and sick
- Chapter III: Hospital Ships and other relief craft
- Chapter IV: Medical Personnel at sea are given wider protection than on land. In particular, the medical personnel and crew, vital to the hospital ships as such, may not be captured is retained.
- Chapter V: Medical transports
- Chapter VI: Distinctive Emblem
- Chapter VII: Execution of the Convention

#### 2.2.1.3 Third Geneva Convention - Treatment of Prisoners of War

The Third Convention interprets the desire of the all 190 Countries to submit all aspects of captivity to humane regulation by International Law. The 43 articles contained in this Convention accepted the principle that a prisoner of war are not a criminal, but merely an enemy no longer able to bear arms, which should be liberated at the close of hostilities, and be respected and humanely treated while in captivity.

It is structured in this way:

- Part II: General Protection of Prisoners of War
- Part III: Condition of Captivity. It is divided into 6 sections:
    1. Events immediately after capture and deals with such matters as interrogation of prisoners, disposal of their personal effects, their evacuation etc.
    2. Living Conditions for prisoners in Camp or during transfer and deals with the places and methods of internment, accommodation, food and clothing, hygiene and medical attention
    3. Prisoner's labour in camp
    4. Financial resources of prisoners
    5. Everything concerned with correspondence and relief shipments
    6. Relations between prisoners of war and the detaining authorities complaints regarding captivity, prisoner's representatives, and penal and disciplinary sanctions (this section constitute a brief code of penal and disciplinary procedures)

- Part IV: Various measures for the termination of captivity. It is divided into 3 sections:
    1. Repatriation and accommodation of prisoners in neutral countries during the hostilities
    2. Repatriation at the close of hostilities
    3. Death of prisoners of war
- Part V: Provisions about Prisoners of War, information bureaux and assistance to the prisoners
- Part VI: Execution of the convention
- Annex I: Model agreement concerning Direct Repatriation and Accommodation in Neutral Country of Wounded and sick, prisoners of war
- Annex II: Regulation concerning Mixed Medical Commission
- Annex III: Regulation concerning Collective Relief
- Annex IV: Standards model documents (ID cards, capture cards, correspondence and death notifications cards
- Annex V: Model Regulation concerning Payments sent by Prisoners to their own country

#### 2.2.1.4 Fourth Geneva Convention - Protection of Civilian population

> *"Persons protected by the Convention are those who, at a given moment and in any matter whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying power of which are not nationals"*[7]

The Fourth Convention introduce nothing new or add no specially news idea but it confirms the principle for which the dignity of human person shall be respected . This forms an important contribution to written International Law in the humanitarian domain. This Convention in no way invalidates the Regulations concerning the Laws and Customs of War on Land otherwise it contains 159 articles and two annexes inspired by the "*the eternal principles of that law which is the foundation and the safeguard of civilization"*[8] and designed to "*ensure the respect of human personality and dignity by putting beyond of attack those rights and liberties which are the essence of its existence"*[9].

It mainly prohibits:

- Violence to life and person, in particular torture, mutilations or cruel treatment
- The taking of hostages
- Deportations
- Outrages upon personal dignity, in particular humiliating or degrading treatment, or adverse treatment founded on differences of race, colour, nationality, religion, beliefs, sex, birth or social status
- The passing of sentence and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording al the judicial guarantees reconfigure as indispensable by civilized peoples.

It is structured in this way:

- Part II: General Protection of the Population against certain consequences of war
- Part III: It defines the status and treatment of protected persons, and the manner of the application of the Convention. This part is divided in 3 section:
    1. Aliens territory of a Party to the conflict, and deals with the right to leave the territory, protection in case of internment and refugees
    2. Prescriptions for occupied territories (deportations, transfers and evacuation, children, labour, food, hygiene and public health etc.)
    3. It deals with the internment ,and it self divide into 10 sub-chapter
        i. Chapter 1: General Provisional

7 See. AA.VV., *The Geneva Conventions of August 12 1949,* edited by ICRC, p. 20
8 See. AA.VV., op. cit., p. 19
9 See. AA.VV., op. cit., p. 19

ii. Chapter II: Places for internment
iii. Chapter III: Food and Clothing
iv. Chapter IV: Hygiene and medical attention
v. Chapter V: Religious intellectual and physical activities
vi. Chapter VI: Personal property and intellectual resource
vii. Chapter VII: Administration and disciplinary
viii. Chapter VIII: Relations with the exterior
ix. Chapter IX: Penal and disciplinary sanctions
x. Chapter X: Information Bureau and Central Agency

- Part IV: Execution of the convention.

**2.2.1.5 Additional Protocol I to the Four Geneva Convention – Protection of Victims of International Armed Conflict**

The First Additional Protocol to the Geneva Conventions of 12 August 1949, is relating to the Protection of Victims of International Armed Conflict of 08 June 1977. It is divided in 6 part + 2 annex:

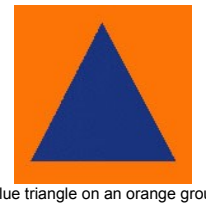
1. General Provision
2. Wounded, Sick and Shipwrecked; structured in 3 section:
   - ✔ Section I: General Protection
   - ✔ Section II: Medical Transportation
   - ✔ Section II: Missing and Dead Persons
3. Methods and Means of Warfare Combatant and Prisoners of War Status; structured in 2 sections:
   - ✔ Section I: Methods and Means of Warfare
   - ✔ Section II: Combatant and Prisoner of War Status
4. Civilian Population; structured in 3 sections which are subdivided into chapter:
   - ✔ Section I: General Protection against effects of hostilities
     - ➔ Chapter I: Basic Rule and Field of Application
     - ➔ Chapter II: Civilians and Civilian Population
     - ➔ Chapter III: Civilian Objects
     - ➔ Chapter IV: Precautionary Measures
     - ➔ Chapter V: Localities and Zones under Special Protection
     - ➔ Chapter VI: Civil Defence
   - ✔ Section II: Relief in favour of the civilian population
   - ✔ Section III: Treatment of persons in the power of party to the conflict
     - ➔ Chapter I: Field of Application and Protection of Persons and Objects
     - ➔ Chapter II: Measures in favour of women and children
     - ➔ Chapter III: Journalist
5. Execution of the Conventions and of this Protocol; structured in 2 sections
   - ✔ General Provisions
   - ✔ Repression of Breaches of the Conventions and of this Protocol

6. Final Provisions

7. Annex I: Regulations concerning identification; structured in 6 chapters
   - ✔ Chapter I: Identity Cards
   - ✔ Chapter II: The Distinctive Emblem

(Distinctive Emblems in red on a white ground, Medical and Religious Services and Red Cross or Crescent Organizations: 1949 Geneva Convention I, Art. 38 / 1977 Protocol I Additional, Art. 18 /1977 Protocol II Additional, Art. 12)

   - ✔ Chapter III: Distinctive Signals
   - ✔ Chapter IV: Communications
   - ✔ Chapter V: Civil Defence



Blue triangle on an orange ground

   - ✔ Chapter VI: Works and installations containing dangerous forces

(International Special Sign for works and installations containing dangerous forces: 1977 Protocol I Additional, Art. 56.7

8. Annex II: Identity Card for Journalist on dangerous Professional Missions

**2.2.1.6 Additional Protocol II to the Four Geneva Convention – Protection of Victims of Non- International Armed Conflict**

The second Additional Protocol to the Geneva Conventions of 12 August 1949, is relating to the protection of victims of Non-International Armed Conflict (08 June 1977). It is divided in 5 parts:

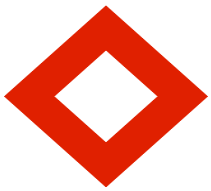
1. Scope of this Protocol
2. Humane treatment
3. Wounded, Sick and shipwrecked
4. Civilian Population
5. Final Provision

### 2.2.1.7 Additional Protocol III to the Four Geneva Convention – Adoption of an Additional Distinctive Emblem

The Third Additional Protocol to the Geneva Conventions of 12 August 1949, is relating to the adoption of an Additional Distinctive Emblem has as key point the following ones:

- Reaffirming the provisions of the Geneva Conventions of 12 August 1949 and – where applicable – their Additional Protocols of 08 June 1977
- To supplement the overmentioned provisions to enhance their protective value and universal character
- TO recognise right of High Contracting Parties to continue to use the emblems they are using in conformity with their obligations under the Geneva Conventions and Protocol Additional
- Recalling the obligation to respect persons and objects protected by the Geneva Conventions and the Protocols Additional
- Stressing that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political significance
- Emphasising the importance of ensuring full respect for the obligations relating to the distinctive emblems recognised in the Geneva Conventions
- Recalling GI art 44[10] "*Restrictions in the use of the Emblem. Exception*" it necessary makes a distinction between the protective and the indicative use of the distinctive emblems
- Recalling that National Societies undertaking activities on the territory of another State must ensure that the emblems they intend to use may be used in the country where the activity takes place and in the country or countries of transit.
- Recognising the difficulties of some Sates and National Societies in using the existing distinctive emblems.
- The International Committee or the Red Cross, the International Federation of the Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement maintain the same name and emblems than before.

This Protocol Additional (add art. 2 par. 2 ) an additional distinctive emblem composed of rd frame in the shape of a square on edge on a white ground.



According to Protocol Additional III art. 3 par. 1, National Societies which decide to use the third Protocol Emblem, could use it in conformity with the relevant national legislation and they choose to incorporate it for indicative purpose:

- a distinctive emblem recognised by the Geneva Conventions or a combination of these emblems
- another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol

### 2.2.2 The Hague Law

This is very much practical soldier's law. Its aim is to lay down rules for the conduct of operations, on how the fighting is to be carried out, by stating, for example, what you can attack and how you should attack it. It gives rules which limit the destructive effects of combat exceeding what is really necessary to achieve the military aim or mission. Those rules and obligations are contained in **the Hague Declaration** (1899) and in **the Hague Convention** (1907).

10 See. AA. VV., The Geneva Conventions of August 12 1949, edited by ICRC, p. 41.

#### 2.2.2.1 The Hague Declaration (The Hague - 29 July 1899)

This Declaration prohibits – on the base of a particular technical specification about a weapon system called "*the construction of bullets*" - the use in war of the Dum-Dum bullet on the spot of the Declaration of St. Petersburg of 29 November 1868. In the Hague Declaration (signed by 31 countries), the Contracting Parties agree to not use bullets which expand or flattern easily in the body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions in any case to avoid unnecessary sufferance to the humankind[11].

It is structured in 4 section:

- Section I – Pacific Settlement of International Disputes;
- Section II – Laws and Customs of War on Land;
- Section III – Adaptation to Maritime Warfare of Principles of Geneva Convention 1864;
- Section IV – Prohibiting Launching of Projectiles and Explosive from Balloons.

And 3 Declarations:

- Declaration I – On the Launching of Projectiles and Explosive from Balloons;
- Declaration II – On the use of Projectiles the Object of which is the diffusion of Asphyxiating or Deleterious Gases;
- Declaration III – On the use of Bullets which expand or flattern easily in the human body.

#### 2.2.2.2 The Hague Conventions (The Hague - 8 October 1907 )

Held to expand the 1899 Hague Declaration, it comprises 13 conventions of which some are not in force., but which compose what is often called as "*Law of the Hague*" . They constitute a system of law – entered into force on 26 January 1910 - concerning the alleviation the effect of armed conflict in that this convention regulates and limits the methods and means of warfare used by the parties to the conflict. The Hague Convention is structured in the following way:

- I - Pacific Settlement of International Disputes;
- II - Limitation of Employment of Force for Recovery of Contract Debts ;
- III - Opening of Hostilities ;
- IV –Law and Customs of War on Land;
- V –Rights and Duties of Neutral Powers in Case of War on Land;
- VI –Status of Enemy Merchant Ships at the Outbreak of Hostilities;
- VII -Conversion of Merchant Ships into War-Ships ;
- VIII -Laying if Automatic Submarine Contact Mines;
- IX –Bombardment by Naval Forces in Wartime ;
- X – Adaptation to Maritime War of the Principles if the Geneva Convention;
- XI – Certain Restrictions with Regard to the Exercise of the Right of Capture Naval War;
- XII – Creation of an Int.le Prize Court for the resolution of conflicting claims to captured shipping during wartime (not ratified);
- XIII – Rights and Duties of Neutral Powers in Naval War – it contains the prohibition on employing poison and poisoned weapons;

and 2 Declarations:

- Declaration I – Extending Declaration II from the 1899 Conference to other types of Aircraft;
- Declaration II – on the obligatory arbitration.

### 2.2.3 The Customary International Law

The law of armed conflict is clearly based on our customs and traditions and our experience of armed conflict throughout the ages. A good example is the universal ban on poisoning as a form of warfare, which dates back to ancient times when, for example, the military on both sides would issue orders not to poison wells, as much for their benefit as for that of the civilian population – they might need the water one day. Over the years, these customs, traditions and experiences have developed into "hard law", namely customary international law and treaty law. Both are legally binding.

The Customary International Law derives from "a general practice accepted as law". Such practice can be found in official accounts of military operations but is also reflected in a variety of other official documents, including military manuals, national legislation and case law. The requirement that this practice be "accepted as law" is often referred to as "opinio juris". This characteristic sets practices required by law apart from practices followed as a matter of policy, for example. Those practice may be maden in respect to any matter except to the extent that the agreement conflict with the rules of international law incorporating standards of international conduct or the obligations of a member Sate under the

11 See. Declaration (IV, 3) concerning Expanding Bullets. The Hague, 29 July 1899.

Charter of the United Nations (San Francisco – 26 June 1945)[12]. t was recently codified by the *Vienna Convention on the law of treaties* (Vienna – 23 May 1969). This Convention was built up in ".... *recognizing the ever-increasing importance of treaties as a source of international Law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social system*...."[13]. Customary international Law is the result of following by States certain practices generally and consistently out of a sense of legal obligation.

Customary international law "... consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way." (Rosenne, *Practice and Methods of International Law*, p. 55). It follows that customary international law can be discerned by a "widespread repetition by States of similar international acts over time (State practice); Acts must occur out of sense of obligation (opinio juris); Acts must be taken by a significant number of States and not be rejected by a significant number of States." According to the Statute of the International Court of Justice (1998) the Customary International Law is "....*a general practice accepted as law*..."[14]. In short Customary International Law constitutes – on the one hand -the cornerstone of modern treaty law , on the other hand developed from treaty law, and sometimes it fills the gaps where no treaty law exists.

The existence of a rule of Customary International Law requires the presence of two elements:

- State Practice (*usus*) - It contributes to the creation of Customary International Law, and the assessment of this practice establishes a rule of Customary International Law. For what concern the creation of Customary International Law, there are 7 criteria that should be mentioned:

  - ✔ Both Physical and verbal acts of States constitute practice that contributes to the creation of Customary International Law;
  - ✔ The practice of the executive, legislative and judicial organs of a State can contribute to the formation of Customary International Law;
  - ✔ Acts do not contribute to the formation of Customary International Law if they are never disclosed;
  - ✔ Although decisions of International Courts are subsidiary sources of International Law, they don't constitute State Practice. This is because, unlike national courts, international courts are not State organs;
  - ✔ International Organisations have international legal personality and can participate in international relations in their own capacity, independently of their member states;
  - ✔ The negotiation and adoption of resolutions by International Organisations or conferences, together with the explanations of vote, are acts of the States Involved;
  - ✔ The practice of armed opposition groups, such as codes of conduct. Commitments made to observe certain rules of IHL and other statements, does not constitute State Practice as such.

- *Opinio Juris sive necessitatis* - opinion of Justice in English – is the believe that a behaviour is done because it is a legal obligation. This definition is in contrast to a behaviour being the result of different cognitive reaction, or behaviours that are habitual to the individual. This term is usually used in legal proceedings such as a defence for a case. A situation where Opinio juris would be feasible is a case concerning Self-defence. A condition must be met were the usage of force is limited to the situation at hand. The act of striking an attacker may be done with legal justification, however legal territory limits the acceptability of such a claim. Even in this case, the usage of force must be acceptable to the conditions of the environment, the attacker, and the physical conditions of the people involved, as well as any weapons or tools used. In international law, when a particular custom is developed, usually arising from consideration of consistent state practices among numerous international state actors, states are expected, and thus, to an extent, obligated to continue to act in accordance with said custom. This has been deemed a source of international law under Article 38.1 of the charter of the International Court of Justice, and is deemed, in jurisprudence, as *Opinio juris*. has been established as a source of international law, it may thus be legitimately cited in international legal cases.

  A wealth of state practice will usually carry with it a presumption that *opinio juris* exists. It would then be for the state against which the rule is pleaded to rebut that presumption by demonstrating the absence of *opinio juris* in the activities being relied upon by the other party.

  In cases where practice (of which evidence is given) comprises abstentions from acting, consistency of conduct might not establish the existence of a rule of customary international law. The fact that no nuclear weapons have been used since 1945, for example, does not render their use illegal on the basis of a customary obligation because the necessary *opinio juris* was lacking. Although the ICJ has frequently referred to *opinio juris* as being an equal footing with state practice, the role of the psychological element in the creation of customary law is uncertain.

12 See Cromwell Law School website, *International Law – International Law: an overview*
13 See Various Authors, *Vienna Convention on the Law of Treaties*
14 See ICJ Statute, Art. 38(1)(b)

The 3 main characteristics of the Customary International Law are the following one[15]:

- It provides for "general" International Laws which bind all States without need a formal adherence;
- Essence of Customary International Rules on the Conduct of hostilities applies to all armed conflict both international and non-international;
- Customary International Law could help in the interpretation of treaty law.

While the four Geneva Conventions of 1949 have been ratified universally, other treaties of international humanitarian law have not. This is the case, for example, of the 1977 Additional Protocols to the Geneva Conventions. Some studies show, however, that a number of rules and principles contained in these treaties also exist under customary law, such as a significant number of rules governing the conduct of hostilities and the treatment of persons not or no longer taking a direct part in hostilities. As part of customary international law, these rules and principles are applicable to all States regardless of their adherence to relevant treaties.

In addition, despite the fact that most contemporary armed conflicts are non-international in nature, treaty law covering such conflicts remains fairly limited (mainly common Article 3 of the four Geneva Conventions and Additional Protocol II). The study shows, however, that there exist an important number of customary rules of international humanitarian law that define in much greater detail than treaty law the obligations of parties to a non-international armed conflict. This is notably the case with rules on the conduct of hostilities. For example, while treaty law does not expressly prohibit attacks on civilian objects in non-international armed conflicts, such a prohibition has developed under customary international law.

The study also shows that a large number of customary rules of international humanitarian law are applicable to both international and non-international armed conflicts. As a result, for the application of these rules, the qualification of the conflict as international or non-international is not relevant. These rules apply in *any* armed conflict.

Finally, customary international humanitarian law can also be useful in the case of coalition warfare. Contemporary armed conflicts often involve a coalition of States. When the States composing such a coalition do not have the same treaty based obligations because they have not ratified the same treaties, customary international humanitarian law represents those rules that are common to all members of the coalition. These rules can be relied upon as a minimum standard for drafting common rules of engagement or for adopting targeting policies. It should be borne in mind, however, that these customary rules cannot weaken the applicable treaty obligations of individual coalition members The Customary International Law cover a wide variety of aspects of warfare, and – even if it is notorious for its imprecision – it bring with it some advantages such as binding States have not persistently and openly dissented in relation to a rule while that rule was in the process of formation. It also could help to improve respect for IHL and offer greater protection to the victims of war.

Customary international humanitarian law fills in certain gaps in protection provided to victims of armed conflict by treaty law. These gaps result either from the lack of ratification of relevant treaties or from the lack of detailed rules on non-international armed conflicts in treaty law. The advantage of customary law is that it is not necessary for a State to formally accept a rule in order to be bound by it, as long as the overall State practice on which the rule is based is "widespread, representative and virtually uniform" and accepted as law.

As it identifies the rules of customary international humanitarian law, the study helps to ensure better knowledge of the applicable rules. Awareness of these rules by those who are required to apply them ensures greater respect for the law. The combined effect of knowledge of the law and the existence of possible sanctions, in particular those applied by national and international courts, allows international humanitarian law to ensure the protection of persons affected by armed conflict.

In addition to treaties and other expressed or ratified agreements that create international law, the International Court of Justice, jurists, the United Nations and its member states consider customary international law, coupled with general principles of law, to be primary sources of international law. The vast majority of the worlds governments (including the United States) accept in principle the existence of customary international law, although there are many differing opinions as to what rules are contained in it. The UN charter acknowledges the existence of customary international law (article 38(1)(b) of the Statute, incorporated into the Charter by article 92 thereof): "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply... international custom, as evidence of a general practice accepted as law;". In other words, customary international law must be derived from a clear consensus among states, as exhibited both by widespread conduct and a discernible sense of obligation. Customary international law can therefore not be declared by a majority of States for their own purposes; it can be discerned only through actual widespread practice. For example, laws of war were long a matter of customary law before they were codified in the Geneva Conventions and other treaties.

15 See Henckaerts, J.-M., Doswald-Beck L., *op. cit.*, p. X

### 2.2.4 Customs of War

Another important source of the International Humanitarian Law is for sure the *Laws and Customs of War* catalogued by the by the Lieber Code which create a pattern on behaviour *vis-à-vis* combatants and civilians, primary based on the concept of the soldier's honour – which prohibits behaviour considered unnecessarily cruel or dishonourable. In 1899 USA, Mexico, Japan, Persia (contemporary Iran), Siam (contemporary Thailand), and other 19 countries – including the major European Countries - signed a convention with respects to the Law and Customs of War (187 Consol. T.S. 429) to broad outlines of the Lieber Code and addressed the relationship between an occupying power and non combatant civilian inhabitants.

This Convention lead in 1914 to replace the Lieber Code by an army manual entitled "*The Law of land Warfare*" -which is s still in force today.

As we could see in the Hague Convention (IV) of 1907 respecting the Laws and Customs of War on Land – art. 22/23:

- The right of belligerents to adopt means of injuring the enemy is not unlimited. (art. 22)
- In addition to the prohibitions provided by special conventions, it is especially forbidden:
  - ✔ To employ arms, projectiles, or material calculated to cause unnecessary suffering. (art 23)

The violations of the Laws and Customs of War include:

- using of poisoned weapons or other weapons calculated to provoque unnecessary suffering;
- destruction of civilian areas not justified by military necessity;
- attack or bombardment of undefended towns;
- seizing of harming buildings dedicated to religion / charity or education;
- plundering public or private property.

## 2.3 What are the most important rules in International Humanitarian Law?

These rules are laid down in international treaties that can be grouped into four categories:

- treaties on the protection of victims of war;
- treaties on the limitation and/or prohibition of different types of arms;
- .treaties on the protection of certain objects;
- treaties governing international jurisdiction (repression of crimes).

All these treaties deal with specific humanitarian concerns in situations of armed conflict. While some of them apply almost exclusively to international armed conflicts, others apply to non-international armed conflicts. 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 attacked.

Attacks may be made solely against military objectives. People who do not or can 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. Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare. It is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.

The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared. (GC I GC II, 12/13 – GP I , 8). The red cross or red crescent on a white background is the distinctive sign indicating that such persons and objects must be respected. 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 receive aid. They must enjoy basic judicial guarantees.

Some other agreements regulates the prohibit use of certain weapons and military tactics and protect certain categories of people and goods. These agreements include:

- The Convention on the Prevention and Punishment of the Crime of Genocide (1948);
- The Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols (1954);
- The Biological Weapons Convention (1972);
- The Conventional Weapons Convention and its five protocols (1980);
- The Chemical Weapons Convention (1993);
- The Ottawa Convention on anti-personnel land mines (1997);
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (2000).

### 2.3.1 Convention on the Prevention and Punishment of the Crime of Genocide (New York - 9 December 1948)

The Convention, which was a result of what had happened during World War II, seeks to prevent and punish intended extermination of entire groups of people according to the United Nations Resolution 96 (1) dated 11 November 1946 in which genocide is considered a crime under international Law - both in time of peace and time of war.

This Convention includes 19 articles:

- Article 1 – Crime Under International Law;
- Article 2 – Genocide Define;
- Article 3 – Punishable Acts;
- Article 4 – Responsible Individuals;
- Article 5 – National Legislation;
- Article 6 – Tribunals;
- Article 7 – Extradition;
- Article 8 – Prevention and Suppression;
- Article 9 – Disputes submitted to the International Court of Justice;
- Article 10 – Languages;
- Article 11 – Signature, Ratification and accession;
- Article 12 – Territories;
- Article 13 – Entry into Force;
- Article 14 – Time Periods in effect;
- Article 15 – Denunciations;
- Article 16 – Revision;
- Article 17 - Notifications;
- Article 18 – Deposit and transmittal;
- Article 19 – Registration.

This Convention include a definition of what "*Genocide*" is (article II) for which it is "....*an act committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*...."[16]. The convention provide in article III also to underline what acts could be punished, for example:

- Genocide;
- Conspiracy to commit Genocide;
- Direct and public incitement to commit Genocide;
- Attempt to commit Genocide;
- Complicity in Genocide;

According to Article 9, every single dispute between contracting parties about interpretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice to be solved.

16 See UN General Assembly , *Convention on the Prevention and Punishment of the Crime of Genocide*, article II, New York 1948

### 2.3.2 Convention for the Protection of Cultural Property (The Hague - 14 May 1954)

Protection of the Cultural Property in the Event of Armed Conflict contains rules for international protection of cultural property and a protecting emblem for such property. This convention is composed by 7 chapters include 40 articles, which are:

**Chapter I – General Provision Regarding Protection**

- Art.1 – Definition of Cultural Property;
- Art. 2 – Protection of Cultural Property;
- Art. 3 - Safeguarding of Cultural Property;
- Art. 4 – Respect of Cultural Property;
- Art. 5 – Occupation;
- Art. 6 – Distinctive marking of Cultural Property:
- Art. 7 – Military Measures;

**Chapter II – Special Protection**

- Art. 8 – Granting of Special protection;
- Art. 9 – Immunity of Cultural Property under special protection;
- Art. 10 – Identification & control;
- Art. 11 – Withdrawal of Immunity;

**Chapter III – Transport of Cultural Property**

- Art. 12 – Transport under Special Protection;
- Art. 13 – Transport in Urgent Cases;
- Art. 14 – Immunity from Seizure, Capture & Prize;

**Chapter IV – Personnel**

- Art. 15 – Personnel;

**Chapter V – The distinctive Emblem**

- Art. 16 – Emblem of the Convention;
- Art. 17 – Use of the Emblem;

**Chapter VI - Scope of Application of the Convention**

- Art. 18 – Application of the Convention;
- Art. 19 – Conflicts not of an International Character;

**Chapter VII – Execution of Convention**

- Art. 20 – Regulations for the Execution of the Convention;
- Art. 21 – Protecting Powers;
- Art. 22 – Conciliation Procedures;
- Art. 23 – Assistance of UNESCO;
- Art. 24 – Special Agreements;
- Art. 25 – Dissemination of the Convention;
- Art. 26 – Translating Reports;
- Art. 27 – Meetings;
- Art. 28 – Sanctions;
- Art. 29 – Languages;
- Art. 30 – Signature;
- Art. 31 – Ratification;
- Art. 32 – Accession;
- Art. 33 – Entry into Force;
- Art. 34 – Effective Application;
- Art. 35 – Territorial extension of the Convention;
- Art. 36 – Relation to Previous Conventions;
- Art. 37 – Denunciation;
- Art. 38 – Notifications;
- Art. 39 – Revision of the Convention & the Regulations for its Execution;
- Art. 40 Registration.

### 2.3.3 The Biological Weapons Convention (Washington, London and Moscow – 10 April 1972)

This Convention acts effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control.

Recognizing the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war, reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them, recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of June 17, 1925, desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere, desiring also to contribute to the realization of the purposes and principles of the Charter of the United Nations, convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents. Recognizing that an agreement on the

prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end, determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons, convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk.

### 2.3.4 The Convention on Conventional Weapons (Geneva – 10 October 1980)

The Convention on Conventional Weapons (CCW) on prohibition or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects according to the IHL. This Convention is structured in 4 protocols:

- Protocol I – CCW restricts fragmentation weapons;
- Protocol II – CCW restricts landmine;
- Protocol III – restricts incendiary weapons
- Protocol IV – on Blinding Laser weapons (This protocol does not restrict the use of laser system in combat, and Article 3[17] recognises the accidental blindness may result for legitimate military use of this system, such against optical equipment.)

### 2.3.5 The Chemical Weapons Convention (Paris – 13 January 1993)

This Convention is the first disarmament agreement negotiated within a multilateral framework that provides for the elimination of an entire category of weapons of mass destruction. Its scope, the obligations assumed by States Parties and the system of verification envisaged for its implementation are unprecedented.

It prohibits all development, production, acquisition, stockpiling, transfer, and use of chemical weapons. It requires each State Party to destroy chemical weapons and chemical weapons production facilities it possesses, as well as any chemical weapons it may have abandoned on the territory of another State Party. The verification provisions of the CWC not only affect the military sector but also the civilian chemical industry, world-wide, through certain restrictions and obligations regarding the production, processing and consumption of chemicals that are considered relevant to the objectives of the Convention. They will be verified through a combination of reporting requirements, routine on-site inspections of declared sites and short-notice challenge inspections. The Convention also contains provisions on assistance in case a State Party is attacked or threatened with attack by chemical weapons and on promoting the trade in chemicals and related equipment among States Parties. The CWC consists of 24 main articles and three annexes:

- Article I: outlines the basic prohibitions of the treaty;
- Article II: includes definitions of various terms used throughout the CWC;
- Article III: obliges states parties to submit declarations of their past programmes, including information on current holdings of chemical weapons and production facilities;
- Articles IV and V: lay out states parties' responsibilities with regard to chemical weapons and their production facilities;
- Article VI: requires states parties to allow a degree of verification of chemical industry facilities working with certain "dual-use" chemicals;
- Article VII: contains rules to facilitate the implementation of the CWC by each state party;
- Article VIII: establishes the OPCW and defines the powers and functions of its three constituent organs - the Conference of the States Parties, the Executive Council and the Technical Secretariat;
- Article IX: details procedures through which states parties can resolve any questions related to non-compliance which they may have;
- Article X: gives states parties the right to develop protective programmes against the use of chemical weapons and outlines assistance which can be provided by the OPCW, also in the event of an attack by chemical weapons;
- Article XI: states that the CWC should not inhibit the economic and technological development of states parties or hamper free trade in chemicals and related technology and information;
- Article XII: includes measures to redress a situation of non-compliance, including sanctions;
- The remaining 12 articles are shorter and deal with legal issues such as the CWC's relationship to other international agreements, settlement of disputes, amendments, duration and withdrawal, status of the annexes, ways in which states can join the Convention and the way in which it comes into force, reservations and the depositary.

17 See *The Convention on Conventional Weapons*, article 3, Geneva 10 October 1980, "*.... Blinding as an accidental or collateral effect of legitimate military employment of laser systems used against optical equipment, is not covered by the prohibition of this Protocol...*"

The three annexes - on chemicals, on implementation and verification and on the protection of confidential information - are an integral part of the CWC. The annex on chemicals lists in three schedules 43 chemicals and families of chemicals which were selected for the application of special verification procedures. The annex on implementation and verification provides great detail on the conduct of the CWC's verification provisions, from declarations and inspections to challenge inspections and investigations of alleged use. The annex on the protection of confidential information sets out principles for the handling of confidential information, measures to protect sensitive installations and data during inspections and procedures in case of breaches of confidentiality.

### 2.3.6 The Ottawa Convention (Ottawa – 3 December 1997)

Result of the so called "Ottawa Process" - started by the Canadian Government from the 1980 Convention on Conventional Weapons, this Convention prohibits the use, stockpiling, production and transfer of anti-personnel mines and their destruction. In December 1997 representatives from 121 states gathered in Ottawa to sign the convention, which came into effect in 1999, six months after it had been ratified by 40 states. The USA, China and India have not ratified the convention. The International Campaign ……. Landmines (ICBL) was awarded the Nobel Prize for Peace in 1997. With this Convention the parties determine to put end to the suffering and the casualties caused by anti-personnel mines that "*.....kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement*....."[18]

According to the Article 1 of this Convention, the Member States undertakes never under any circumstances[19]:

- To use anti-personnel mines;
- To develop, produce otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
- To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

To be the most understandable as possible, this Convention – in its article 2 – provide for a definition of what in general a mine is: "*...munitions designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle*...", and in the specific what a anti-personnel mine is: "*.....a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with ant. handling devices, are not considered anti-personnel mines as a result of being so equipped*...."[20]

This Convention is composed by 22 articles:

- Article 1: General Obligations;
- Article 2: Definitions;
- Article 3: Exceptions;
- Article 4: Destruction of stockpiled anti-personnel mines;
- Article 5: Destruction of anti-personnel mines in mined areas;
- Article 6: International Co-operation and assistance;
- Article 7: Transparency measures;
- Article 8: Facilitation and clarification of compliance;
- Article 9: National Implementation measures;
- Article 10: Settlement of Disputes;
- Article 11: Meeting of the States Parties;
- Article 12: Review Conferences;
- Article 13: Amendments;
- Article 14: Costs;
- Article 15: Signature;
- Article 16: Ratification, Acceptance, approval or accession;
- Article 17: Entry into force;
- Article 18: Provisional Application;
- Article 19: Reservations;
- Article 20: Duration and withdrawal;
- Article 21: Depositary;
- Article 22: Authentic texts.

18 See Various Authors, *The Ottawa Convention – Preamble*, Ottawa, 3 December 1997
19 See Various Authors, *The Ottawa Convention – Art. 1 General Obligation*
20 See Various Author, *The Ottawa Convention – Article 2: Definitions*

### 2.3.7 The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (New York – 25 May 200)

This Convention is divided into 13 articles, and it encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child, reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security, it disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development.

It also condemned the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals, noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts, considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict, Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

This Convention convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children, noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities, welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict, condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard.

It recalled the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law, Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law, bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation, recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender, Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts, convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict, encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol.

## 2.4 The basic rules of IHL in armed conflicts

Just as military operations have principles of attack, defence, withdrawal, etc., so does the law of armed conflict contain a set of clearly defined principles? The principles of IHL in Armed Conflict are practical, reflect the realities of conflict and, most important of all, do not include anything that a professional soldier could not apply in battle. They strike a balance between humanity and military necessity, and are valid at all times, in all places and under all circumstances. You are not free to do what you want. As commanders or staff officers, it is of the utmost importance that you know and understand these principles. They must be taken into account as a matter of routine in any military appreciation, planning and indeed training that you undertake. Soldiers under your command must also understand them. You will find the following principles throughout the law of armed conflict.

### 2.4.1 The Distinctive Emblems

The red cross or red crescent on a white background is the **distinctive emblem indicating that such persons and objects must be respected**.
The International Red Cross and Red Crescent Movement today welcomed the decision of the Diplomatic Conference held in Geneva to adopt a Third Additional Protocol to the Geneva Conventions, creating an additional emblem alongside the red cross and red crescent.

The additional emblem, known as the red crystal, will provide a comprehensive and lasting solution to the emblem question. It will appear as a red frame in the shape of a square on edge, on a white background, and is free from any religious, political or other connotation[21].

21 See Protocol additional to the Geneva Convention, of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) – 8 December 2005

The characteristic of the Distinctive Emblems ensure the protection to the following categories of persons (GI artt.38-44):

1. Persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction; (GP I, 41,/42)
2. It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat.* (out of the action); (GC III, 13)
3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and equipment. The emblem of the Red Cross or the Red Crescent is the sign of such protection and must be respected; (GC I, 12/13 - GC II, 12/13 – GP I, 8)
4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief; (GC III, 5/13 - GP. I, 44)
5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment; (GC III, 13/19/20/50)
6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering. (H. IV. R, 23 - G. BC / G. CW. P. I. - G. CW. P. II, 2/4/5/6/7 - G. CW. P. III, 1/2 - H. VIII, 1/3)
7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.

   (GC III, 4 - GC IV, 4 - GP. I, 44,/50)

**2.4.2 Distinction between combatants and non combatants**

- A **combattant** is any member of an armed force- except medical personnel and religious personnel - who could take part in hostilities and may be attacked (GC III, 4). He wears a uniform, distinctive emblems (e.g. Badge, rank symbols, flag of nationality and company/regiment symbols etc.), he is related to a clear and well defined chain of command, and he carries openly weapons;
- A **non combattant** or person *hors de combat* cannot take part in hostilities or take part no more longer and may not be attacked (e.g. civilians, medical & religious personnel, the wounded and sick). (GC. III, 4 - GP. I, 41/42/44) A non combattant who takes part in hostilities looses his protection and could be attacked.

The distinction between civilians and combatants, which represents one of the pillars of IHL, was often blurred well before the current day. Michael Walzer, for example, reports that, in Vietnam, the American rules of engagement only made a show of acknowledging and respecting this combatant/non-combatant distinction. In reality, they instituted a new dichotomy between non-combatants seen as “loyal” or “disloyal”, “friendly” or “hostile”. While ICRC delegates are certainly of the opinion that the distinction is often less than clear-cut, they believe that violations of IHL are more often the result of a deliberate intention to attack the civilian population rather than of any objective difficulty in distinguishing the one from the other. The two problems need to be separated.

In certain cases, civilians are perceived as having forfeited their civilian status because, willingly or not, they are contributing to the enemy’s war effort. In the other case before us, civilians are perfectly identifiable as such and are deliberately targeted in their civilian status. The IHL distinction between civilians and combatants is then replaced by a distinction between guilty and innocent.

Another important actor is represented by the Non-State armed groups. All armed groups capable of launching operations with some semblance of a military character have structures of one kind or other – one or more leaders and degrees of organization which, though they may vary, exist and need to be identified. They have their own objectives, strategies, diasporas, links with crime, sources of finance, codes of conduct and the like. Given that the mechanisms identified above (moral disengagement, submission to authority, etc.) are also at work within these armed groups, humanitarian organizations would do well to remove the term “destructured conflict” from their vocabulary – or at least not to abuse the term – and to explore whatever avenues would allow them to know the groups better and approach them more effectively.

**2.4.3 Proportionality**

When military objectives are attacked, civilians and civilian objects must be spared from incidental or collateral damage to the maximum extent possible. Incidental damage must not be excessive in relation to the direct and concrete military advantage you anticipate from your operations.

Excessive use of force quite clearly violates the law of armed conflict. Here we get down to some basic military requirements, especially from commanders. To avoid violating this principle requires thought and effort.

### 2.4.4 Military Necessity

This principle is enshrined in the preamble to the 1868 St Petersburg Declaration, which states that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy” and that “for this purpose it is sufficient to disable the greatest possible number of men”. Today we would of course also include women. This principle is entirely practical. It accepts the realities of battle.

It allows for whatever **reasonable force is necessary, is lawful and can be operationally justified in combat to make your opponent submit.**

Activities which are clearly unnecessary militarily are prohibited. The principle of military necessity protects good commanders and allows them to fulfil their mission. If an action is necessary – fine, then carry it out. Just ensure it is within the law and complies with all the other principles, in particular those of distinction and proportionality. You must never use military necessity as an excuse for slackness, indifference, poor planning or leadership. Military necessity is built into the law; it cannot be invoked to justify violations of the law.

### 2.4.5 Military objectives and civilian objects

Only Military objectives may be targeted

A **military objective** is person, place or thing which by its nature, location, purpose and use, make effective contribution to the military action except medical service and religious personnel and object. (H. IX, 2 - GP I, 43/52)

- Combattants;
- Location and beses;
- Headquarters;
- Defence Position;
- Weapons;
- Vehicles

**Civilian objectives** are any objective which are not military ones, and they must not be attacked (e.g. schools, churches, hospitals, houses, shops, factories etc) (GP I, 52) Exception could be made for usual civilian objectives which – according to the military situation – become military ones, and for this reason they lose their protection. ( GP I, 52).

### 2.4.6 Limitation

In any armed conflict, the right of the parties involved to choose methods and means of warfare **is not unlimited**, i.e. IHL limits how weapons and military tactics may be used. Weapons and tactics that are of a nature to cause **unnecessary suffering or superfluous injury** are prohibited.

The purpose of the second sentence of this principle is to prohibit weapons which cause more suffering or injury than is necessary to put enemy combatants out of action. It applies, for example, to weapons designed to cause injuries that are impossible to treat or that result in a cruel and lingering death. It does not prohibit weapons such as fragmentation weapons or armour-piercing rounds which, even when properly used, may have those unintended consequences as a result of their use rather than their design. Remember always that there are limits and you must know exactly what they are.

### 2.4.7 Good Faith

Good faith between opponents is a customary principle of warfare. The military should show good faith in their interpretation of the law of armed conflict. Good faith must also be observed in negotiations between opponents and with humanitarian organizations.

### 2.4.8 Humane Treatement and non-discrimination

All people must be treated humanely and without discrimination based on sex, nationality, race, religion or political beliefs. Those who are out of action *(hors de combat)*, such as surrendering combatants, air crew parachuting from downed aircraft, the wounded, sick and shipwrecked, prisoners of war and other captives and detainees, must be identified as such and treated humanely.

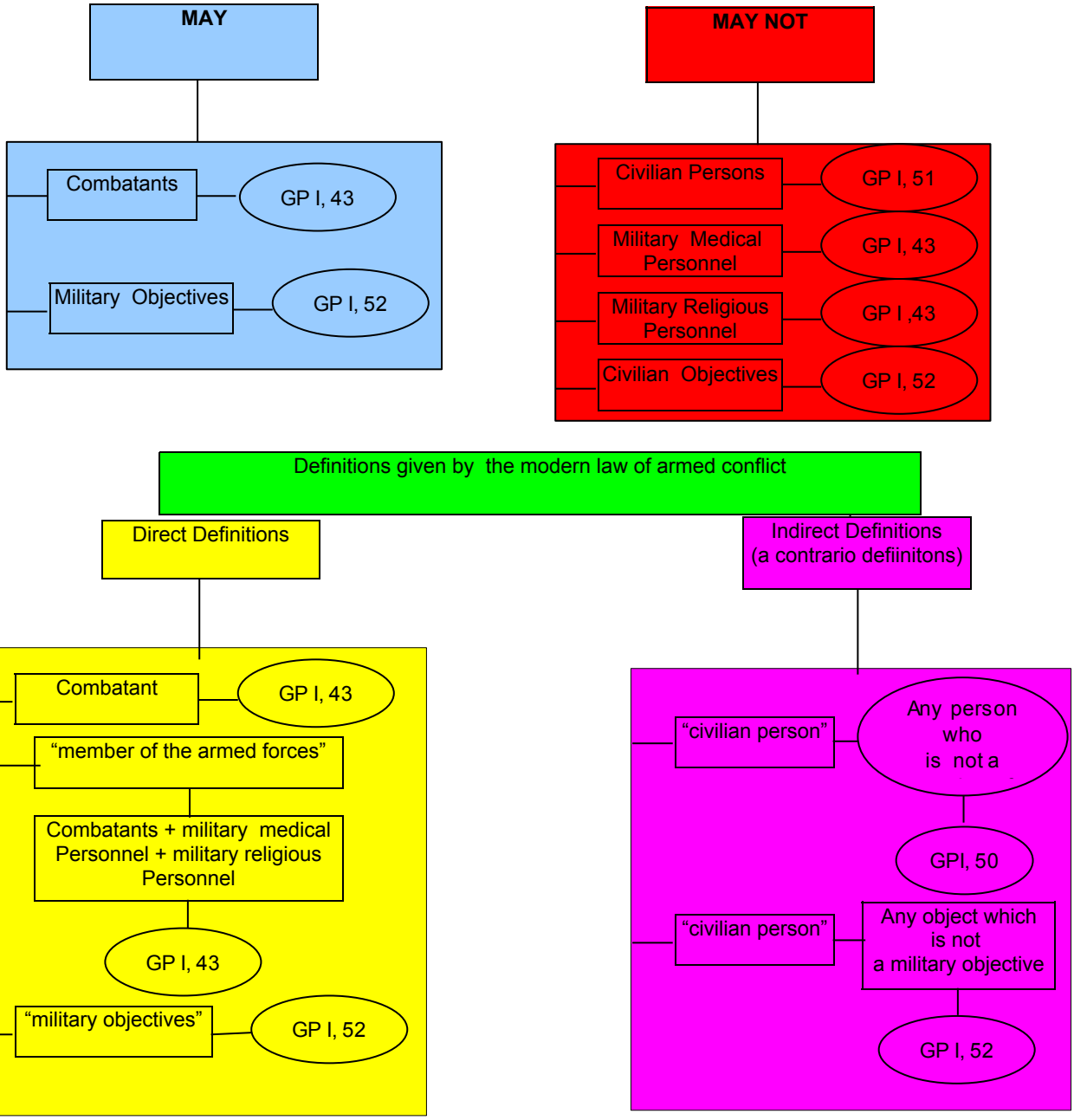
## 2.4.9 The Principles of the Law versus the Realities of combat

We have now covered the basic principles of the law of armed conflict. You can see that no principle asks you as a soldier or a commander to implement rules that are impossibly difficult. Remember that in any case the law evolved from military experience. The law of armed conflict was born on the battlefield. Its aim is to provide protection for the victims of conflict and to lay down rules for the conduct of military operations, good practical rules with which you are legally obliged to comply as members of the profession of arms. It is also worth remembering that the law, if correctly applied, is there to help you as well as the victims of armed conflict.

## 2.4.10 Main categories of persons and objects

Basic criteria:

- may participate directly in hostilities;
- may be attacked



## 3. Implementation of the International Humanitarian Law

### 3.1 Why respect international humanitarian law?

The treaties of international humanitarian law oblige the States to adopt a number of implementing measures in the broad sense of the term. This reflects the need to translate international humanitarian law into national legislation, procedures, policy and infrastructure.

In order to ensure complete compliance with international humanitarian law, the provisions thereof must be accessible to the people whose duty it is to respect them. To start with, the treaties of international humanitarian law must, if necessary, be translated into the country's language(s). In the field, moreover, soldiers tend to work with military manuals rather than treaties of international humanitarian law. It is therefore important to incorporate international humanitarian law into military doctrine and to make sure that there are no contradictions between what the soldier is ordered to do and international humanitarian law.

International humanitarian law prohibits the use of weapons causing superfluous injury and unnecessary suffering. But how can one guarantee that the armed forces do not use such weapons? If the prohibition is not taken into account when weapons are chosen and conceived, the armed forces may discover too late that the weapons available or used do not meet the criteria of international humanitarian law. Procedures must therefore be put in place that incorporate humanitarian concerns in the decision-making process.

By the same token, international humanitarian law obliges the parties to a conflict to take measures to designate and identify dangerous sites or protected objects, such as certain cultural objects. These obligations imply that choices and regulatory adjustments must be made in time of peace.

**A moral duty -** The State is responsible for its citizens. It must ensure their protection in the event of war. Every culture has rules strictly limiting the use of force. International humanitarian law simply translates those rules into legal and universal language. By adopting them, States give themselves the means of ensuring respect for humanity in time of war; they also guarantee that human dignity will be upheld in circumstances that threaten it.

**A reasonable military option -** It makes sense from the military point of view to respect international humanitarian law. Acts such as the massacre of civilians, the slaughter of surrendering troops and the torture of prisoners have never led to military victory. Respect for international humanitarian law, however, and for its concepts such as proportionality, is part of a modern strategy based on the rational use of resources.

**A sensible political choice -** Treating the enemy armed forces and population with due regard for international humanitarian law is undoubtedly one of the best means of inciting the enemy to do so, too. Respecting one's obligations encourages others to do the same.

A legal obligation - When a State becomes party to a treaty of international humanitarian law, it undertakes to respect all the obligations contained in that treaty. It may therefore be liable under penal law if it does not meet its obligations.

### 3.2 Who is bound by the IHL?

Generally speaking there are two categories who are bounded by the International Humanitarian Law, and they are:

- **States** - The States party to international humanitarian law treaties are formally bound to comply with the rules thereof. They must do everything in their power to respect and ensure respect for humanitarian law.
  There are other, equally important reasons to be familiar with the law of armed conflict and to comply with it. Compliance also:
  - ✔ underlines the true professionalism of members of the armed forces;
  - ✔ enhances morale and discipline;
  - ✔ ensures the support of the civilian population at home and in the theatre of operations;
  - ✔ makes reciprocal treatment, for example of the wounded and sick and prisoners of war, more likely;
  - ✔ improves the prospects for a return to lasting peace (lingering bitterness caused by inhuman or brutal behaviour in conflict will slow down any peace process);
  - ✔ ensures that the military effort is concentrated on defeating the adversary and not on unnecessary and counter-productive operations.

- **Individuals** - International humanitarian law must be respected by everyone, combatants and the population as a whole. The obligation to comply with international humanitarian law is such that non-compliance can, in some cases, render the individual liable under penal law, as many national and international courts have recognised. The first important point to emphasise is that everyone has:
  - ✔ a personal responsibility to comply with the International Humanitarian Law;
  - ✔ to ensure that it is complied with by others
  - ✔ to take action in the event of violations

> *"The Inter-Parliamentary Council calls on all States to remind military commanders that they are required to make their subordinates aware of obligations under international humanitarian law, to make every effort to ensure that no violations are committed and, where necessary, to punish or report any violations to the authorities."* Inter-Parliamentary Union, 90th Conference, September 1993

The purpose of International Humanitarian Law is to regulate the relationship between States and, therefore, it is binding upon States. This is also true for international humanitarian law, whether treaty or customary, as it regulates armed conflicts arising between States.

However, a particular feature of international humanitarian law is that some of its rules regulate armed conflicts occurring between a State and an armed opposition group or between such groups. The rules that regulate such conflicts are applicable to all parties, whether a State or an armed opposition group. The analysis of State practice shows that many rules of customary international humanitarian law applicable in non-international armed conflicts bind States as well as armed opposition groups.

Only States may become parties to international agreements, and thus to the 1949 Geneva Conventions and their 1977 Additional Protocols. However, non-State entities – usually dissident groups or national liberation movements such, in the past, as the African National Congress or the Palestine Liberation Organisation – may commit themselves to accepting the principles or rules contained in IHL treaties.

However, all parties to an armed conflict whether States or non-State actors are bound by international humanitarian law. The obligation of States to respect the International Humanitarian Law is a part of their obligation in respect International Law – according to the Geneva Convention 1929 – 1949[22]. (GC I, II, III, IV common art. 1). This State obligation is not limited to ensuring respect for international humanitarian law by its own armed forces but extends to ensuring respect by other persons or groups acting infact on its instructions, or under its direction or control. In addition, certain basic rules are said to apply to all armed groups, notably those contained in Article 3 common to all four Geneva Conventions, relating to non-international armed conflicts. Such rules, which prohibit torture and the taking of hostages, are also part of customary law. At the end of 2003, almost all the world's States - 191, to be precise - were party to the Geneva Conventions. The fact that the treaties are among those accepted by the greatest number of countries testifies to their universality. In the case of the Additional Protocols, 161 States were party to Additional Protocol I and 156 to Protocol II by the same date.

The International humanitarian law is part of international law, which is the body of rules governing relations between States. The International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practise considered by them as legally binding, and in general principles. International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter.

Multilateral treaties between States, such as the Geneva Conventions and their Additional Protocols, require two separate procedures:

- **signature followed by ratification**. While signature does not bind a State, it does oblige the State to behave in a way which does not render the substance of the treaty meaningless when the State subsequently ratifies and solemnly undertakes to respect the treaty;
- **accession.** This is the act whereby a State which did not sign the text of a treaty when it was adopted consents to be bound by it. Accession has the same implications as ratification.

A newly independent State may, by means of a declaration of succession, express the desire to remain bound by a treaty which applied to its territory prior to independence. It may also make a declaration of provisional application of the treaties while examining them prior to accession or succession. Within the context of those procedures and under certain conditions, a State may make reservations in order to exclude or modify the legal effect of certain provisions of the treaty. The main condition is that such reservations do not run counter to essential substantive elements of the treaty.
Lastly, national liberation movements covered by Article 1, paragraph 4, of Protocol I may undertake to apply the Conventions and the Protocol by following the special procedure set down in Article 96, paragraph 3, of Protocol I.

22 See Henckaerts, J.-M., Doswald-Becks, L., *op. cit.*, p. 495

## 3.3 When does international humanitarian law apply?

International humanitarian operations are carried out in conflict zones to protect and assist conflict victims and to alleviate their suffering. Humanitarian action is a stopgap measure, dealing with urgent needs that would otherwise go unmet. It is aimed at the most vulnerable individuals and groups.
Humanitarian action can only be carried out if the following basic conditions have been met:

- unrestricted access to the conflict victims;
- unfettered dialogue with the authorities;
- independence: total control over all stages of the operation and over the resources required.

In accordance with international humanitarian law, the principles of humanity and impartiality must be upheld in any humanitarian operation. Aid must be distributed solely on the basis of need, independently of all political, strategic and military considerations.
What can parliamentarians do to facilitate humanitarian action in time of armed conflict? They should do all they can to facilitate humanitarian operations undertaken by neutral humanitarian organisations such as the International Committee of the Red Cross. In practical terms, this means that parliamentarians should:

- make sure that their country expedites visa procedures for humanitarian personnel;
- facilitate transportation by air/land/sea;
- offer tax exemptions;
- ensure protection of humanitarian personnel, facilities and relief supplies;
- remove all bureaucratic obstacles impeding humanitarian efficiency;
- support humanitarian operations with contributions in cash, kind and services.

International humanitarian law applies **only to armed conflict;** it does **not** cover **internal tensions or disturbances** such as isolated acts of violence. IHL is applicable to any armed conflicts, both international and non-international and irrespective of the origin of the conflict. It also applies to situations of occupation arising from an armed conflict. Different legal regimes apply to international armed conflicts, which are between States, and non-international (or internal) armed conflicts, which take place within a State. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting. International humanitarian law distinguishes between international and non-international armed conflict.

International armed conflicts are contest which concerns government and/or territory where the use of armed forces between at least two States[23]. They are subject to a wide range of rules, including those set out in the four Geneva Conventions (artt. 1-2) and Additional Protocol I (art. 3). The treaty provisions on international armed conflicts are more detailed and extensive. Non-international armed conflicts are subject to the provisions in Article 3 common to the Geneva Conventions and, where the State concerned is a Party, in the 1977 Additional Protocol II. Rules of customary international law apply to both international and internal armed conflicts but again there are differences between the two regimes.

Non-international armed conflicts are "... *armed confrontations occurring within the territory of a single State and in which the armed forces of no other State are engaged against the central* government..."[24]. A more limited range of rules apply to internal armed conflicts and are laid down in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II.

In the event of a non-international conflict, Article 3 common to the four Conventions and Protocol II apply. It should be noted that the conditions of application of Protocol II are stricter than those provided for by Article 3. In such situations, humanitarian law is intended for the armed forces, whether regular or not, taking part in the conflict, and protects every individual or category of individuals not or no longer actively involved in the hostilities, for example:

- wounded or sick fighters;
- people deprived of their freedom as a result of the conflict;
- the civilian population;
- medical and religious personnel.

23 See Wallensteen, P., Sollenberg, M., "*Armed Conflict 1989-2000*", in Journal of Peace Research 38(5), pp. 629-644,
24 See Schmitt, M. N., Garraway, C.H.B., Dinstein, Y., "*The Manual on the Law of Non-International Armed Conflict*", Martinus Nijhoff Publishers: Leiden/Boston, p. 2

The general principles of IHL applicable in a non-international armed conflict are:

- Principle of discrimination: Make a distinction between members of the opposing force and civilians not taking part in hostilities;
- Principle of proportionality: Conduct of operations constantly keeping to a minimum the civilian losses and damage to cultural property.

| Humanitarian laws applicable to a non-international armed conflict | | | |
|---|---|---|---|
| **No** | **Nature** | **Conditions** | **Law Applicable** |
| 1 | Internal tensions and unrest | Riots, sporadic & isolated acts of violence | Human Rights, Marten Clause, National Laws |
| 2 | Internal & Low intesity Conflicts | Armed conflict between regular troops and rebels/dissidents. The latter do not control parts of territories. | GC I to GC IV,3 H.CP., 4<br>National Laws(unless there are derogations)<br>Marten Clause |
| 3 | Internal & High Intensity conflict (Civil War) | Opposing forces:<br>➢ responsible command;<br>➢ exercising such control over part of its territory to enable them to carry out sustained military ops;<br>➢ respect for IHL | GC I, 3 GC IV,3 GP II,3 H.CP., 4 |

In both internal and international armed conflicts, all the parties must comply with the rules of international humanitarian law, which nevertheless makes a distinction between the two. International armed conflicts are those in which two or more States have clashed using weapons and those in which people have risen in opposition to a colonial power, foreign occupation or racist crimes. They are subject to a broad range of rules, including those set forth in the four Geneva Conventions and Additional Protocol I.

A more limited set of rules is applied in internal armed conflicts. They are contained in particular in Article 3 common to the four Geneva Conventions and in Additional Protocol II, which has a narrower scope.

Article 3 common to the Geneva Conventions states that, ‘‘*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

*(1) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.*
*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*
*(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
*(b) taking of hostages;*
*(c) outrages upon personal dignity, in particular humiliating and degrading treatment;*
*(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable to civilised peoples.*

*(2) The wounded and sick shall be collected and cared for.*
*An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.*
*The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.*
*The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.’’*

There is much talk today of “new” conflicts. This expression covers different types of armed conflict: those known as “anarchic” conflicts and others in which group identity becomes the focal point. These terms are used fairly loosely.
“Anarchic” conflicts, the upsurge of which doubtless results from the end of the Cold War, are often marked by the partial, and sometimes even total, weakening or breakdown of State structures. In such situations, armed groups take advantage of the political vacuum in an attempt to grab power. This type of conflict is, however, marked above all by a weakening or breakdown in the chain of command within the same armed groups.
Conflicts aimed at asserting group identity often seek to exclude the adversary through “ethnic cleansing”. This consists

in forcibly displacing or even exterminating populations. Under the effect of spiralling propaganda, violence and hatred, this type of conflict strengthens group feeling to the detriment of the existing national identity, ruling out any possibility of coexistence with other groups.

International humanitarian law still applies in these "anarchic" and "identity-related" conflicts, in which the civilian population in particular is exposed to violence. Common Article 3 (see opposite) requires all armed groups, whether in rebellion or not, to respect individuals who have laid down their arms and those, such as civilians, who do not take part in the hostilities. Consequently, it is not because a State's structures have been weakened or are nonexistent that there is a legal vacuum with regard to international law. On the contrary, these are precisely the circumstances in which humanitarian law comes fully into its own.
Admittedly, the humanitarian rules are harder to apply in these types of conflict. The lack of discipline among belligerents, the arming of the civilian population as weapons flood the territory and the increasingly blurred distinction between fighters and civilians often cause confrontations to take an extremely brutal turn, in which there is little place for the rules of law. As a result, this is the type of situation in which particular efforts are needed to make people aware of humanitarian law. Better knowledge of the rules of law will not solve the underlying problem which led to the conflict, but it is likely to attenuate its deadlier consequences.

## 3.4 How ensure respect IHL

International humanitarian law does not contain detailed implementing measures. It does specify some of the types of measures to be taken, but the choice of means is left to the States. It is the responsibility of the Executive and the Administration to take most of the measures, usually by adopting implementing regulations. The list of adaptations required to prepare implementation of international humanitarian law is not infinite. This does not mean, however, that they can be taken at the last minute and in haste. Adaptation of internal regulations must be prepared, preferably in time of peace.

Respect for international humanitarian law implies taking a number of legal measures (for example, ratifying the appropriate international instruments and adopting the required legislation and implementing rules). This purely legal work does not suffice, though.
Ensuring respect for international humanitarian law also implies ''breathing life into it'', by spreading knowledge of its contents and ensuring respect for the principles on which it is based, by political means as well.

> *''Parliaments and their members have a key role to play in promoting respect for the rules of IHL and the punishment of violations of these rules (...) not only where armed conflicts have actually broken out but also, on a preventive basis, outside periods of hostility.''*
>
> Inter-Parliamentary Union, 161st session of the Council,
> September 1997

**In time of war as in time of peace** - International humanitarian law applies in armed conflicts, but measures must be taken at all times to ensure that it is respected. Just as most countries ready their defences even when threatened by no immediate conflict.

**In time of peace** - the measures mentioned above must be taken to ensure that any war will be conducted with due regard for international humanitarian law. When conflict seems likely, it is often already too late. Countless preventive measures can be taken in time of peace to ensure compliance with international humanitarian law. Within and beyond national borders. The idea that States must not only respect international humanitarian law within their borders but also ensure its respect throughout the world is fundamental. That is why in Article 1 common to the Geneva Conventions, the parties undertake to ''respect and ensure respect for'' the rules of the Convention.

Here below there is a list of some measure that it should be taken to ensure respect of IHL:

- Measures to be taken in Peace Time;
- Measures to be taken at the outbreak of an International Armed Conflict;
- Measures to be taken at the end of an International Armed Conflict.

| Measures to be taken in Peace Time | | | | |
|---|---|---|---|---|
| **No** | **Measures** | **Law Refernce** | **Responsibility** | |
| | | | **Civilian** | **Military** |
| 1 | Measure for execution (orders & instructions) | GC I, 45 GC II, 46 GP I, 80, 84 | Government | Commander in Chief (C in C) |
| 2 | Transition of texts, laws, rules | GC I, 48 GC II, 49 GC III, 128 GC IV, 145 GP I, 84 | Government | C in C |
| 3 | Dissemination | GC I, 47 GC II, 48 GC III, 128 GC IV, 144 GP I, 83 GP II, 19 H CP, 25 | | |
| 4 | Legal Adviser in armed forces | GP I, 82 | Government | C in C |
| 5 | Training of qualified personnel | GP I, 6 | Government | |
| 6 | Repression of grave breaches | GC I, 49 GC II, 50 GC III, 129 GC IV, 146 GP I, 85-86 | Government | |
| 7 | Duty of Commaders | GP I, 87 | | All |
| 8 | Mutual legal assistance in criminal matters and co-operation in matters of extraditions | GP I, 88 | Government | |
| 9 | Interantional Fact Finding Commission | GP I, 90 | Government | |
| 10 | Localisation of fixed medical units | GC I, 19 GP I, 87 | Government | C in C |
| 11 | Use of distinctive Emblems | GC I, 42/44/53/54 GC II, 41/45 GC IV, 18 | Government | |
| 12 | Identification of civilian medical & religious personnel | GP I, 15/18 & annex I | Government (health) | |
| 13 | Measures relating to hospital ships and costal life boats and other hospital vessels | GC I, 20 GC II, 22/24/25/27 GC IV, 21 GP I, 22/23 | Government | C in C |
| 14 | Measures relating to medical aircraft | GC I, 36 GC II, 39 GC IV, 22 GP I, 24/31 | Government | C in C |
| 15 | Establishment of a National Info Bureau | GC III, 122 GC IV, 136/141 | Government | C in C |
| 16 | The study of compatibility of methods & means of combat | GP I, 36 | | C in C |
| 17 | Determining the quality of members of the armed forces (identification & notification) | GC I, 13 GC II, 13 GC III, 4/17 GP I, 43 | Government / Ministry of Defence (MoD) | C in C |
| 18 | Protection of persons who have taken part in hostilities (status) | GP I, 45 | Government | |
| 19 | Necessary measures for the application of the III Convention | GC III | | C in C |
| 20 | Protection of the cultural objects and places of worship | GP I, 53 | Government | |
| 21 | Identification of works and Installations containing dangerous forces | GP I, 56 & annex I | Government | |
| 22 | Precautions against the effects of attacks | GP I, 58 | Government | C in C |

| | | | | |
|---|---|---|---|---|
| 23 | Organisation of civilian defence | GP I, 61-67 & annex I | Government | |
| 24 | Fundamental guarantees and penal guarantees, law in the occupied territory | GC IV, 64/67 GP I, 75<br>GP II, 4/6 | Government | C in C |
| 25 | Measures for the internment of civilians | GC IV, 41/43/50/68/79/141<br>GP I, 76/77 | Government | C in C |
| 26 | Measures for the internment of PoWs (penal and disciplinary sanctions) | GP III, 21/22 | Government / Ministry of Defence (MoD) | C in C |
| 27 | Measures of protecting for the journalist, war correspondents (status-accreditation) | GP I, 79 & annex I | Government | C in C |
| 28 | Activities of the Red Cross and other humanitarian organisations | GC I, 26 GC IV, 63/142<br>GP I, 81 | Government | |
| 29 | Report on the measures of the application of the IHL | | Government | |

| **Measures to be taken at the outbreak of an International Armed Conflict** | | | | |
|---|---|---|---|---|
| **No** | **Measures** | **Law Refernce** | **Responsibility** | |
| | | | **Civlian** | **Military** |
| 1 | Appointments of Protecting Powers | GP I, 5 | Government | |
| 2 | Check the applicability of IHL | GC common article 2<br>GP common article 1 | Government | C in C |
| 3 | Posting of Conventions | GC II, 41 GC IV, 99 | | C in C |
| 4 | Creation of hospital zones & localities | GC I, 23 GC II, 14 GC IV, 14 | Government | |
| 5 | Creation of demilitarised & non-defended localities | GP I, 59/60 | Government | |
| 6 | Repatriation of remains of the dead-burial service | GC I, 17 GC II, 20 GC III, 120 GC IV, 129/130 GP I, 34 | Government | C in C |
| 7 | Institution of a National Info Bureau | GC III, 122 GC IV, 136/141 | Government | C in C |
| 8 | Missing persons (search-registration – information) | GP I, 33 | Government | |
| 9 | Measures for reuniting dispersed families | GC IV, 26 GP I, 74 | Government | |
| 10 | Measures for evacuating certain categories of civilians | GP I, 58/78 | Government | |
| 11 | Control of measures taken at the cessation of hostilities; execute those which have not been prepared | | Government | C in C |
| 12 | Repatriationof PoWs and internees | GC II, 118/119 | Government | C in C |
| 13 | Report of breaches, enquires & tracking | GP I, 86 | Government | C in C |

| Measures to be taken after the end of an International Armed Conflict | | | | |
|---|---|---|---|---|
| **No** | **Measures** | **Law Reference** | **Responsibility** | |
| | | | **Civilian** | **Military** |
| 1 | Repatriation of remains of the dead-burial service | GC I, 17 GC II, 20 GC III, 120 GC IV, 129/130 GP I, 34 | Government | C in C |
| 2 | Institution of a National Info Bureau | GC III, 122 GC IV, 136/141 | Government | C in C |
| 3 | Missing persons (search-registration – information) | GP I, 33 | Government | |
| 4 | Measures for reuniting dispersed families | GC IV, 26 GP I, 74 | Government | |
| 5 | Control of measures taken at the cessation of hostilities; execute those which have not been prepared | | Government | C in C |
| 6 | Repatriationof PoWs & internees | GC III, 118/119 | Government | C in C |
| 7 | Mutual legal assistance in criminal matters & co-operation in matters of extradition | GP I, 88 | Government | |
| 8 | International Fact Finding Commission | GP I, 90 | Government | |
| 9 | The establishment of a National Information Bureau | GC III, 122 GC IV, 136/141 | Government | C in C |
| 10 | Protection of persons who have taken part in hostilities (status) | GP I, 45 | Government | |
| 11 | Necessary measures for the application of the III Convention | G III | | C in C |
| 12 | Fundamental guarantees and penal guarantees, law in the occupied territory | GC IV, 64/67 GP I, 75<br>GP II, 4/6 | Government | C in C |
| 13 | Activities of the Red Cross & other Humanitarian Org, | GC I, 26 GC IV 63/142 GP I, 81 | Government | |
| 14 | Measures for the internment of civilians | GC IV, 41/43/50/68/79/141<br>GP I, 76/77 | Government | C in C |
| 15 | Measures for the internment of PoWs (penal & disciplinary sanctions) | GP III, 21/22 | Government / Ministry of Defence (MoD) | C in C |
| 16 | Report of breaches, enquires & tracking | GP I, 86 | Government | C in C |

## 3.5 Implementation of IHL

Every party involved in the conflict should respect and ensure respect for the IHL by its armed forces and other persons or group acting in fact on its instructions, or under its direction or control[25]. The State's obligation to respect and ensure respect for International Humanitarian Law should be applicable in both International and Non-International armed conflicts, in accordance Article 60 of the Vienna Convention on the Law of Treaties about the termination or suspension of the operation of a treaty as a consequence of a breach[26].

States are primarily responsible for enforcing IHL. They are required to take preventive measures to comply with the law, spreading knowledge of its principles and enacting legislation to protect the red cross and red crescent emblems. These protective signs enable the medical services of the armed forces and other authorised medical, religious and humanitarian personnel to assist the wounded and other vulnerable people during armed conflicts, including on the

25 See Henckaerts, J.-M., Doswald-Becks, L., *op. cit.,* p. 495
26 See The Vienna Convention on the law of treaties, art 60(1-5), "Termination or suspension of the operation of a treaty as a consequence of its breach", Vienna, 23 May 1969

battlefield. States must ensure that the special protective force of the emblems is not eroded through misuse, taking legal and practical measures to uphold the emblems' integrity. States are also required to prosecute and punish those members of their armed forces who have committed serious violations of IHL.

There are other measures for implementing the law. The International Committee of the Red Cross (ICRC) has a recognised role under the Geneva Conventions to monitor compliance with its provisions, for example with respect to the humane treatment of prisoners of war. National Red Cross and Red Crescent Societies, such as the British Red Cross, have a special responsibility to work with their Governments in spreading knowledge of, and ensuring respect for, IHL.

Action by the United Nations, diplomatic efforts and pressure from the media and public opinion can promote compliance with the law. There is also an International Fact-Finding Commission established under Additional Protocol I, and it is hoped that the International Criminal Court (ICC), once established, will help ensure that those who commit the gravest crimes will not go unpunished.

In case of violation, international humanitarian law can be enforced through diplomatic means, including by international organizations, such as through measures adopted by the UN Security Council. Another means to enforce the law is its application by national and international courts and tribunals, for example the trial of an individual responsible for a violation.

To implement an ensure respect foot the IHL, the main means are:

- Becoming Party of the Treaties of International Humanitarian Law;
- Taking implementing measures to ensure respect of IHL;
- Establishing a National Implementation commission;
- Prevention;
- Taking Action to obtain universal respect for IHL;
- Control.

### 3.5.1 Becoming Party of a treaties

To express determination to respect the law By becoming party to the treaties of international humanitarian law, States agree to be legally bound in the long term and express their determination with respect to the international community.
To strengthen the law, every time a State becomes party to a treaty of international humanitarian law, that treaty's image among decision-makers and public opinion is strengthened. In 1999, for example, 188 States are party to the Geneva Conventions. The Conventions can therefore be said to have the support of the entire international community, which gives them great authority. There are two possibilities: signing the treaty and then ratifying it, or, if it is no longer open for signature, acceding to it.

**Signature and ratification** - Treaties are usually open for signature for a limited period after they have been drafted (often until they enter into force). A State that has signed a treaty has a moral obligation not to behave in a way that would run counter to its provisions. To be fully committed, however, a State must ratify the treaties it has signed.

Ratification procedures vary from one country to another, but in most countries ratification is the responsibility of Parliament and usually takes the form of a vote authorising the Executive to make the State bound by a treaty in conformity with pre-established procedure. When a State ratifies a treaty it can issue reservations or make declarations of understanding, on condition that they are not ‘‘contrary to the purpose and objective ’’ of the treaty and do not ‘‘undermine its substance ’’. Moreover, the pertinence of those reservations and declarations of understanding must subsequently be periodically re-examined. The instrument of ratification must then be sent to the depository State; When ratifying certain treaties of international humanitarian law, the States can make additional declarations:

- States becoming party to Protocol I of 1977 can accept the competence of the International Fact-Finding Commission;
- States becoming party to Protocol IV (blinding laser weapons) to the 1980 Conventional Weapons Convention can make a declaration specifying that the Protocol shall apply ‘‘in all circumstances’’, including in non-international armed conflicts.

**Accession** - When a State has not signed a treaty and that treaty is no longer open for signature, the State can accede to it. The procedure is exactly the same and has the same effects as ratification except that it is not carried out in confirmation of a signature. The entry into force of a treaty in national law When a State becomes party to an international treaty, it usually has to inform not only the legal depository but also its citizens, by means of an announcement in the official gazette.
Depending on the system in your country, an international humanitarian law treaty can take effect in national law

automatically, i.e. as soon as the State has notified that it has become a party to it. In that case, legislation must be brought into line with the treaty, either before or after its entry into force. The treaty's entry into force may, however, depend on the incorporation into national legislation of the international rules it contains. In that case, the legislation must be adapted before the State becomes party to it. In any event, national legislation must be adapted without delay.

According to the 163rd Session of the Inter-Parliamentary Union (IPU) of September 1998, The role of parliamentarians varies depending on the stage in the process. Generally speaking, parliamentarians can urge the Executive to sign treaties of international humanitarian law, but their most important role undoubtedly comes at the next stage, that of ratification or accession and of the adoption of implementing legislation. Parliamentarians can open a dialogue with the Government on sending Parliament a draft bill of ratification or accession; if that fails, they can also draft such legislation themselves.

**What can you do**

- *Make sure your State is party to the following treaties*:
  - ✔ the four Geneva Conventions of 12 August 1949;
  - ✔ .the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), of 8 June 1977;
  - ✔ .the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the
  - ✔ protection of victims of non-international armed conflicts (Protocol II), of 8 June 1977;
  - ✔ the 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 and its four Protocols (relative to non-detectable fragments, mines, incendiary weapons and blinding laser weapons), of 10 October 1980;
  - ✔ the Convention on the prohibition of the development, production, stockpiling and transfer of chemical weapons and on their destruction, of 13 January 1993;
  - ✔ the Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel landmines and their destruction, of 3-4 December 1997;
  - ✔ the Statute of the International Criminal Court, of 17 July 1998.
- *If your State has become party to those treaties, check that it has made the following declarations :*
  - ✔ declaration accepting the competence of the International Fact-Finding Commission, if your State is party to Protocol I of 1977;
  - ✔ declaration of consent to be bound by Protocol IV of the UN Convention on Certain Conventional Weapons;
  - ✔ declaration of intent to apply the Ottawa Convention on landmines provisionally.
- *Make sure that when your State ratifies or accedes to a treaty it does not issue reservations or make declarations of understanding that:*
  - ✔ are contrary to the object and purpose of the treaty,
  - ✔ undermine the substance of the treaty.
- *In all events, regularly check to make sure that the reservations or declarations of understanding made by your State when it ratified to succeeded to the treaty are still valid, or if they should be reconsidered.*
- For all of the above, do not hesitate to:
  - ✔ ask the relevant government services for information,
  - ✔ put questions to the Government,
  - ✔ open a parliamentary debate,
  - ✔ mobilise public opinion.

### 3.5.2 Taking implementing measures to ensure respect

According to the 161st IPU Session of the Council in September 1997, the responsibility for adopting appropriate regulations lies with the Executive and the different Ministries concerned, it is up to parliamentarians to make sure that the necessary measures have been taken within a reasonable time and that they are regularly re-examined and, if necessary, updated.

**What can you do**

- *Make sure that all the treaties of international humanitarian law have been translated, if necessary, into your national language(s).*

If your State is party to the Geneva Conventions and their Additional Protocols:

- *Make sure that military codes and doctrine are in conformity with the obligations of international humanitarian law, and in particular that they provide that:*

  - ✔ people not or no longer participating in the fighting are treated with humanity and without discrimination,
  - ✔ assistance is provided to the wounded, the sick and the shipwrecked without any adverse discrimination,
  - ✔ medical activities in armed conflicts are defined and protected,
  - ✔ military and/or civilian medical units are entitled to work in situations of conflict and are immune from attack,
  - ✔ any attack against medical staff or goods is strictly prohibited,
  - ✔ any constraint or abusive treatment of the civilian population is prohibited,
  - ✔ in the event of a trial, civilians have the right to certain procedural guarantees and that sentences are handed down on the basis of law,
  - ✔ prisoners of war are treated without discrimination and their upkeep guaranteed free of charge,
  - ✔ prisoners of war have access to the relevant treaties of international humanitarian law,
  - ✔ if tried, prisoners of war have the right to procedural guarantees and that sentences are handed down on the basis of law,
  - ✔ the minimum legal age for enrolment in the armed forces is not under 18 years,
  - ✔ civilian persons and objects are protected from military operations,
  - ✔ the weapons made available to the armed forces are not prohibited by international humanitarian law,
  - ✔ the health and physical or mental integrity of internees is not compromised,
  - ✔ combatants are obliged to distinguish themselves from the civilian population,
  - ✔ the fundamental guarantees are provided for with regard to civilians and soldiers,
  - ✔ the hostilities are conducted with a view to protecting the environment,
  - ✔ attacks against works and installations containing dangerous forces are prohibited,
  - ✔ journalists are protected and bear specific identity cards;
- *Make sure that medical personnel are adequately identified, and in particular that they:*
  - ✔ have arm bands identifying them as medical personnel,
  - ✔ have special identity discs bearing the emblem;
- *Find out how well national infrastructure has been adapted to respect for international humanitarian law, by making sure in particular that:*
  - ✔ medical zones and establishments are designated as such and are identified by means of the emblem, that they are located in areas where they do not risk being affected by military operations and that their infrastructure has been prepared,
  - ✔ the ships which will function as hospital ships in time of armed conflict have been designated as such,
  - ✔ medical aircraft have been identified,
  - ✔ places of internment have been chosen in keeping with the norms of international humanitarian law,
  - ✔ the regulations on the organisation and functioning of internment camps are in conformity with the norms of international humanitarian law,
  - ✔ the internal set-up of the camps is defined in accordance with the norms of international humanitarian law,
  - ✔ military sites and targets are not located near the civilian population,
  - ✔ military and security zones have been identified as such,
  - ✔ ambulances and hospitals have been clearly identified with the red cross or red crescent emblem,
  - ✔ in the event of conflict, information bureaux on prisoners of war and protected persons are immediately set up,
  - ✔ a procedure exists for making sure that any new weapon brought into use is in conformity with international humanitarian law,
  - ✔ works and installations containing dangerous forces are adequately identified and whenever possible not near any military objective,
  - ✔ the civilian population is moved away from the military objectives,
  - ✔ in the event of conflict, demilitarised zones are designated in agreement with the adverse party;

- *Make sure that qualified staff and armed forces legal advisers are trained in the application of international humanitarian law:*

If your State is party to the 1954 Hague Convention on the protection of cultural property:

- *Make sure that military codes and doctrine provide for the protection of cultural property;*
- *Make sure that use of the distinctive sign for cultural property is adequately regulated;*
- *Find out whether infrastructure has been adequately adapted and make sure that cultural property is appropriately marked.*

If your State is party to the Ottawa treaty on anti-personnel landmines:

- *Make sure that your country and other countries have drawn up lanes:*
  - ✔ for the destruction of existing mines,
  - ✔ for mine clearance,
  - ✔ for assisting the victims of anti-personnel landmines.

In any event:

- *If the efforts of the Executive are not sufficient, do not hesitate to:*
  - ✔ put questions to the Government,
  - ✔ make representations to the Executive and relevant Ministries with a view to speeding up the adaptation of infrastructure,
  - ✔ take any other appropriate measures;
- *If necessary, call a vote on a framework law providing guidelines for regulatory action by the Executive;*
- *Make sure that adequate budgets are approved for any measures requiring expenditure;*
- *In the event of conflict, make sure that the measures for the application of international*
- *humanitarian law continue to be scrupulously respected.*

### 3.5.3 Establishing a national Implementation commission

The implementation of international humanitarian law is an important task requiring long-term effort. Some authority has to be in charge. For this reason, many States have successfully created national implementation commissions.

Commissions of this type are to be found in many countries. Most of them consist of an inter-ministerial working group whose aim is to advise and assist the government in the implementation, dissemination and effective application of international humanitarian law. National implementation commissions meet several needs.

**They guarantee inter-ministerial co-ordination** - The implementation of international humanitarian law often implies co-operation among different Ministries, for example those of Defence, Health and Justice. If those Ministries do not co-ordinate their efforts, implementation may be disorderly and delayed. By creating a national commission, however, a government can draw up an agenda and set priorities.
**They guarantee long-term action** - The creation of a national implementation commission with an institutional memory is the best means of ensuring that efforts to bring national legislation in line with humanitarian law are sustained and coherent.

There are no specific rules on how to set up a national implementation commission, and existing commissions go by different names, such as national inter-ministerial commission for the implementation of international humanitarian law, national commission on humanitarian law.
The main thing is that the commission be able to provide advice and effective assistance to the government in terms of implementation, in particular by being in a position to assess needs and submit recommendations. The commission can also play a major role in promoting international humanitarian law. One of the best means of making sure that the national implementation commission runs smoothly is to ensure that it is made up of competent people (representatives from the Ministries concerned, soldiers, specialists in international humanitarian law, members of the National Red Cross or Red Crescent Society). It is also important for the national commission to have permanent status so that it can carry out its activities in the long term.

An example of a national commission for the implementation of international humanitarian law El Salvador.

The Commission's tasks:

- to recommend to the government that it ratify or accede to international humanitarian law instruments;
- to safeguard humanitarian law norms in different sectors of society;
- to propose amendments to existing domestic legislation with a view to meeting the international obligations arising from humanitarian law treaties;
- to draw up a yearly plan and establish working methods;
- to draw up an annual report on activities and submit it to the President of the Republic;
- to draw up another report on the progress made in terms of the adoption, application and effective dissemination of the norms of international humanitarian law;
- to set up working groups within the Commission to analyse issues pertaining to international humanitarian law.

Budget:

- In order to meet its objectives, the Commission can use funds from public or private institutions.

Members:

- the Ministries of Foreign Affairs,
- the Ministries of Interior,
- the Ministries of Justice and Public Security,
- the Ministries of Education,
- the Ministries of National Defence and Public Health and Social

Welfare;

- the Attorney-General of the Republic;
- The Ombudsman for the defence of human rights;
- The National Red Cross Society.

### 3.5.4 Prevention

One of the main tools to ensure respect of IHL by all parties involved in an armed conflict is the prevention and the knowledge of Law.. Preventive measures, based on the duty of States to comply with humanitarian law, are mostly about dissemination.

They include:

- spreading knowledge of IHL;
- training qualified personnel to facilitate the implementation of IHL, and the appointment of legal advisers in the armed forces;
- adopting legislative and statutory provisions to ensure compliance with IHL;
- translating the texts of the Conventions.

Prevention is one of the obligation of States in respecting IHL in the framework of the general obligation to ensure respect of international law. State practice establishes those rules as a norm of customary international law applicable both in international and non-international armed conflicts. (GC I II III IV, Common art 1). Its obligations are supported by the Un Security Council in the Resolution 681[27] adopted in 1990 calling on the States parties to the 4th Geneva Conventions to ensure respect.

If the rules of international humanitarian law are to be respected, they must be known not only to those who must apply them most directly, but also to the entire population. Promotion of the rules of international humanitarian law among civil servants and government officials, in academic circles and in primary and secondary schools, in medical circles and among the media, is essential to creating a culture of international humanitarian law and promoting its respect. There are many means of spreading knowledge of humanitarian law among the general public. School textbooks, for example, can contain a presentation of the law. Generally speaking, posters, television spots and cinema ads, lectures and seminars are all effective means of achieving this end.

States have a legal obligation to spread knowledge of the Conventions and Protocols:"...*The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains*..."(GP II, 19)"....*The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population*...." (GC I GC II GC III GC IV, common artt. 47/48/127/144) "...*This Protocol shall be disseminated as widely as possible*...". (GP I, 83). Under the Statutes of the International Red Cross and Red Crescent Movement, it is the task of the ICRC to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof .

Soldiers must receive instruction in international humanitarian law. It is not sufficient for them to sit through the occasional brief course on the law. The principles thereof must be a truly integral part of military training programmes. One of the best ways of instructing troops in international humanitarian law is to incorporate a ''humanitarian dimension'' into manoeuvres with a view to bringing soldiers face-to-face with situations that they may subsequently have to manage. International humanitarian law provides that legal advisers shall be trained in time of peace so that they are available in time of conflict to advise military commanders on the application of the rules of international humanitarian law. The presence of such experts is required by the growing complexity of this branch of the law. These experts also have a role to play in dispensing appropriate instruction to the armed forces.

27 See UN Security Council Res. 681, Vol II, Ch 41, p. 211

The tools mentioned above are the useful means to respect and ensure respect of IHL, in accordance to the Final Declaration of the International Conference on Human Rights in Teheran (1968) ["*...to act in cooperation with the UN Charter to ensure full compliance with International Humanitarian Law in serious violations of this law...*"[28]] and to the International Conference for the Protection of War Victims ["*...ensure effectiveness of International Humanitarian Law and take resolute actions, in accordance with that law, against States bearing responsibility for violations of International Humanitarian Law with a view to terminating such violations*"[29]].

The main objective of those efforts is naturally to spread knowledge of the law among those who are primarily required to comply with its provisions, namely members of the armed forces. Teaching of the law has often been neglected or taken lightly; if it is to be done efficiently, it must become an integral part of military instruction and be taken seriously by the military hierarchy from top to bottom. That hierarchy must be convinced that compliance with international humanitarian law by the armed forces is not only a humanitarian imperative but also helps to enhance their military efficiency, because the ethics and discipline inherent in respect for the law are obviously positive factors in that regard. A dialogue with the senior military authorities of States, and in particular with those in charge of training, is therefore a priority. The ICRC is also helping, in States which so desire, to introduce and follow up teaching programmes in international humanitarian law and to organize international seminars to help train senior army officers for the task awaiting them in that area.

In addition, in recent years it has responded to an increasing number of requests for definition and teaching of the humanitarian precepts that armed forces and the police must comply with in situations of internal strife which are below the threshold of armed conflict and are therefore not covered by international humanitarian law. I should mention, however, that although a dialogue with properly organized armed forces is still a priority, other channels are also being used to spread knowledge of international humanitarian law. Nowadays, the protagonists in conflict situations are no longer just the members of organized armed forces, so an effort must be made to reach all persons bearing arms. That is obviously more difficult, but dialogue must be sought with all the parties involved before field operations begin. Admittedly, such a dialogue with parties other than the organized armed forces can usually take place only after the conflict has broken out, since it is in times of conflict that such irregular groups are formed. Nonetheless, it can still have a preventive function because many conflicts drag on and on. As mentioned earlier, however, the dialogue is extremely difficult, if not impossible, in some particularly chaotic contexts. That is why the ICRC has sought to gain a better understanding of the cultural contexts in which it operates and has explored all possible means of reaching its target groups. A prime example of this approach is the mobilization of African musicians who enjoy a high degree of popularity across the continent. The objective of preventing violations of humanitarian law by spreading knowledge of its rules must therefore be taken further. Wherever possible, an effort is made to introduce the rudiments of the law and the principles and values on which it is based into school curricula at a very early age.

Often coupled with the teaching of basic human rights, this effort is based on the idea that combatants and all those who have to comply with humanitarian law cannot be expected suddenly to start behaving in accordance with the law unless they have been imbued with its values from their most tender years. Clearly, an institution like the ICRC cannot provide such teaching on a long-term basis. Its role is to try to convince governments and to identify partners in different countries to promote the idea and develop it further: National Red Cross or Red Crescent Societies first and foremost, but also government officials and those in academic circles can fulfil such a function. Raising awareness in government circles and among the general public also implies winning over the media, whose support is essential.

### 3.5.5 Taking Action to obtain universal respect for IHL

When the States become party to the Geneva Conventions, the States undertake to respect and ensure respect for international humanitarian law, i.e. to ensure that it is respected by all States. This means that when the rules of international humanitarian law are violated, the States have not only the right but also the duty to take action to bring a halt to those violations by reminding the State at fault of its obligations and by showing it that the violations it is responsible for are not to be tolerated. A whole series of measures of varying importance can be taken to ensure respect for international humanitarian law.

**Fact-finding** - When entire regions become inaccessible, a conflict can turn a country into a blank on the map. Very little information can be had about these regions. This is when the risk of impunity and violations of international humanitarian law is the highest. To respect and ensure respect for international humanitarian law, it is therefore vitally important to make sure that the law is applied. Efforts must be made to find out, in precise and objective terms, if humanitarian rules are being respected or if, on the contrary, they are being violated. In the latter case, it must be ascertained when, in what circumstances and where. Expressing concern about violations of international humanitarian law and showing the parties to conflicts that their behaviour is being observed and judged in terms of international law is one way of reminding them of their obligations. In such a context, political credibility depends on trustworthy information. There must be not the slightest hint of partiality. This implies listening to all the parties to a conflict, an approach that will make it possible to identify the true perpetrators of violations and the extent of those violations.

**Carrying out an inquiry** - In addition to traditional sources of information (eyewitness accounts, the press), the most trustworthy means of verifying allegations of violations of international humanitarian law is to set up an inquiry. The inquiry can take several forms. It may involve a simple administrative inquiry or the creation of a parliamentary

28 See International Conference on Human Rights, Res. XXIII, Teheran, 1968
29 See International Conference for the Protection of the War Victims - Final Declaration, p. 43

commission of inquiry. If it receives the authorisation of the State or the States concerned, a parliamentary commission of inquiry, especially one that is multi-national or has been set up by a regional or universal inter-parliamentary organisation such as the Inter-Parliamentary Union, can travel to places where violations of international humanitarian law have been reported.
No matter what the circumstances, the mission of inquiry should be able to meet with people who have been victim or witnesses of alleged violations of international humanitarian law. The mission should take place in conditions allowing it to carry out its work in reasonable circumstances.

**Acting on reliable information to remedy the situation** - Once trustworthy information has been collected, it can be used. To start with, a diplomatic dialogue can be engaged with the parties concerned on the basis of the information. A State may have failed to meet its obligations under international humanitarian law because it does not know about them or for lack of means. Making it aware of the facts can be a first step in bringing about a change in behaviour. If dialogue does not suffice to remedy the situation, the observations and the conclusions reached must be rendered public. Silence can lead those who have violated international humanitarian law to believe that violations have no political cost. By making the alleged violations public, the political authorities can be made more aware of them and can be prompted to act more responsibly.
There is no lack of means for starting a public debate on violations of international humanitarian law. The mission reports or summaries can, for example, be published. The information they contain can then be picked up by the press and other media.
Generally speaking, political debate on the need to bring a halt to violations of international humanitarian law and on the means of achieving that aim should be encouraged. Public opinion in particular must be made aware of the existence of violations of international humanitarian law so that it can be mobilised to bring a halt to those violations.

**Exhorting the political authorities** - to bring a halt to the violations Public debate and denunciation are not always sufficient. Sometimes more coercive measures are necessary. It is at this point that third party States must assume their responsibilities and use their influence to ensure respect for international humanitarian law.
The first step a State can take to bring a halt to violations of international humanitarian law is, for example, to exert diplomatic pressure in the form of protests. More coercive measures can and perhaps should be taken later.

### 3.5.6 Control

Measures for monitoring compliance with the provisions of humanitarian law for the duration of the conflict are ones of the most important means for implementing IHL. They are acting by:

- Protecting Powers or their substitutes;
- ICRC ;

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances (GC I/II/III/IV, art 1). They should monitor situations within their areas of responsibility where IHL may be applicable, drawing on advice, as necessary, regarding IHL and its applicability. Where appropriate they should identify and recommend action to promote compliance with IHL. According to the GP I, art 6 "..The High Contracting Parties shall (...) in peacetime endeavour (...) to train qualified personnel to facilitate the application of the Conventions and of this Protocol (...)."
According to the GP I, art 82, they should ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts (GC I/II/III/IV, art 49/50/129/146)

According to ICRC's Statues art. 5 (2c), the role of the International Committee of the Red Cross is "t*o undertake the tasks incumbent upon it under the Geneva Conventions, to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law.*". It must encourage respect for the law. It does so by spreading knowledge of the humanitarian rules and by reminding parties to conflicts of their obligations; it does so chiefly through its Advisory Service on international humanitarian law, which provides technical guidance to States and helps their authorities adopt national implementing laws and regulations. On the strength of the conclusions it draws from its protection and assistance work, the ICRC makes confidential representations to the relevant authorities in the event of violations of humanitarian law. If the violations are serious and repeated and it can be established with certainty that they have occurred, the ICRC reserves the right to take a public stance; it does so only if it deems such publicity to be in the interest of the people affected or threatened. This therefore remains an exceptional measure. At the end we could say that IHL enables ICRC to ensure the respect to its rules as mentioned in GC II, art 126, and GC IV, art 143.

ICRC's activities contribute to a wider acknowledgement of humanitarian norms, they do not have any direct impact on their application. Nevertheless, they do have an indirect effect. If it is true that combatants, when they perceive themselves as victims, call for the application of humanitarian norms only in so far as they are aware of them, it has to be conceded that the efforts undertaken by the ICRC to raise awareness of IHL – whether through dissemination or through

specific activities – have not been in vain. In any event, it may be affirmed that the ICRC helps to prevent combatants from entering into a spiral of violence.
During international armed conflicts, the ICRC bases its work on the four Geneva Conventions of 1949 and Additional Protocol I of 1977 (see Q4). Those treaties lay down the ICRC's right to carry out certain activities such as bringing relief to wounded, sick or shipwrecked military personnel, visiting prisoners of war, aiding civilians and, in general terms, ensuring that those protected by humanitarian law are treated accordingly. During non-international armed conflicts, the ICRC bases its work on Article 3 common to the four Geneva Conventions and Additional Protocol II (see Index). Article 3 also recognizes the ICRC's right to offer its services to the warring parties with a view to engaging in relief action and visiting people detained in connection with the conflict.
In violent situations not amounting to an armed conflict (internal disturbances and other situations of internal violence), the ICRC bases its work on Article 5 of the Movement's Statutes, which sets out among other things the ICRC's right of humanitarian initiative. That right may also be invoked in international and non-international armed conflicts.

There are other implementation measures, which encompass prevention, control and repression; the last two are derived chiefly from the duty of States to ensure respect for humanitarian law. They include:

- the enquiry procedure;
- the International Fact-Finding Commission;
- the examination procedures concerning
- the application and interpretation of legal provisions;
- cooperation with the United Nations.

In addition to the International Implementation of IHL, every single state have its own set of rules which should implement the respect of IHL in the national territory. For Example in Italy a set of laws which ensure the respect of IHL:

- Constitution of the Italian Republic
  - ✔ Art 10: International Law;
  - ✔ Art 11: Condemnation of War;
  - ✔ Art 26: Extradition;
  - ✔ Art 80: Ratification of Treaties;
  - ✔ Art 87: Presidential Duties
- Law No. 740 of 30 June 1912 on the use of the name and emblem of the red cross
- Law No. 962 of 9 October 1967 on the prevention and punishment of the crime of genocide
- Criminal Military Code of War
  - ✔ Book I: Crminal Military Law
    - ✗ Title I: Military Penal Law and its Application (art 13)
  - ✔ Book III:On Military offences
    - ✗ Title IV: Acts Prohibited by laws and customs of war
      - Chapter I General Provision (art 165)
      - Chapter II Illegal acts of war Section I Misuse of Means of warfare intended to injure enemies (artt 174 – 184 bis)
      - Chapter II Illegal acts of war Section II Illegal Acts of warfare committed against enemy civilian persons and property (artt 185 – 185 bis)
      - Chapter V Prisoners of War Section II Acts against Prisoners of War (art 209)
- Law on cooperation with the International Tribunal for the prosecution of serious violations of humanitarian law committed in the territory of the former Yugoslavia
- Law No. 181 of 2 August 2002 on cooperation with the International Tribunal responsible for severe violations of human rights committed in the territory of Rwanda and adjacent States
- Law of war
  - ✔ Art 8: Reprisals;
  - ✔ Art 35: Prohibited means and methods;
  - ✔ Art 42: Prohibition of bombardments;
  - ✔ Art 51: Prohibition og gases;
  - ✔ Art 101: Treatment of Prisoners of War;
  - ✔ Art 508: Punishment of violations.
- Law No. 77 of 29 March 1999 on urgent measures relative to international peace missions abroad
- Law No. 496 of 18 November 1995 on the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, of 13 January 1993
- Law No. 93 of 4 April 1997 implementing and amending Law No. 496
- Law No. 374 of 29 October 1997 banning anti-personnel landmines
- Law No. 106 of 26 March 1999 on ratification and implementation of the Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction, signed in Ottawa on 3 December 1997. Amendments to Law No. 374 of 29 October 1997 concerning the prohibition of anti-personnel mines

## 4. Breaches of IHL

Why are the humanitarian rules not always respected and violations not always repressed?

This question can be answered in various ways. Some claim that ignorance of the law is largely to blame, others that the very nature of war so wills it, or that it is because international law and therefore humanitarian law as well is not matched by an effective centralized system for implementing sanctions, among other things, because of the present structure of the international community. Be that as it may, whether in conflict situations or in peacetime and whether it is national or international jurisdiction that is in force, laws are violated and crimes committed.

Yet simply giving up in the face of such breaches and halting all action that seeks to gain greater respect for humanitarian law would be far more discreditable. This is why, pending a more effective system of sanctions, such acts should be relentlessly condemned and steps taken to prevent and punish them. The penal repression of war crimes must therefore be seen as one means of implementing humanitarian law, whether at national or international level. The categories of the causes of the violations of IHL are as follows:

- the encouragement to crime that is part of the nature of war;
- the definition of war aims;
- reasons of opportunity;
- psycho-sociological reasons;
- reasons connected with the individual.

The following acts constitute grave breaches of the Geneva Conventions:

- wilful killing,
- torture or inhuman treatment, including biological experiments,
- wilfully causing great suffering or serious injury to body or health,
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,
- compelling a prisoner of war to serve in the forces of the hostile Power,
- wilfully depriving a prisoner of war of the right to a fair and regular trial prescribed in the Third Convention,
- unlawful deportation or transfer,
- unlawful confinement,
- hostage-taking.

The following acts, when committed wilfully, in violation of the relevant provisions of the Protocol I of 1977:, and causing death or serious injury to body or health:

- making the civilian population or individual civilians the object of attack;
- launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- making non-defended localities and demilitarised zones the object of attack;
- making a person the object of attack in the knowledge that he is *hors de combat*;
- the perfidious use of the distinctive emblem of the red cross or red crescent or of other protective signs recognised by the Conventions or the Protocol.

The following acts are also regarded as grave breaches of Protocol I of 1977:

- the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
- unjustifiable delay in the repatriation of prisoners of war or civilians;
- practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
- attacking clearly-recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement;
- depriving a person protected by the Conventions or referred to in Article 85 paragraph 2 of the Protocol of the right to a fair and regular trial.

The following acts also constitute grave breaches of Protocol I of 1977. Endangering the physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 of the Protocol by any unjustified act or omission.

It is, in particular, prohibited to carry out on such persons, even with their consent:

- physical mutilations;
- medical or scientific experiments;
- removal of tissues or organs for transplantation, except where these acts are justified in conformity with the conditions provided for the Protocol.

## 4.1 Repression of Violations

Except in certain rare cases, accession to an international treaty does not automatically mean that it will be immediately applied in internal law. The ratification and entry into force of a treaty of international humanitarian law must therefore be followed by the adoption of the corresponding domestic legislation. This can imply minor or major amendments to existing legislation or the adoption of entirely new texts. This legislation, whose basic purpose is to set the legal framework, must then be supplemented with detailed and adequate rules. Certain specific acts listed in the Geneva Conventions and Protocol I, such as wilful killing, torture or inhuman treatment, rape and any other act wilfully causing great suffering or injury to body or health.

In order to repress violations of international humanitarian law, penal legislation must define the crimes and their punishment. Indeed, it is a principle of penal law that no one can be sentenced for an act that was not a crime at the time it was committed. It is therefore absolutely necessary to draft legislation repressing violations of international humanitarian law.

Repressive measures, based on the duty of the parties to the conflict to prevent and put a halt to all violations. Mechanisms for repression include:

- the obligation for the national courts to repress grave breaches considered as war crimes;
- the criminal liability and disciplinary responsibility of superiors, and the duty of military commanders to repress and denounce offences;
- mutual assistance between States on criminal matters.

Apart from the fact that they are inherent in any consistent legal construct, these repressive measures also serve as a deterrent. There are other implementation measures, which encompass prevention, control and repression; the last two are derived chiefly from the duty of States to ensure respect for humanitarian law. They include:

- the enquiry procedure;
- the International Fact-Finding Commission;
- the examination procedures concerning the application and interpretation of legal provisions;
- cooperation with the United Nations.

The main measures that it could be taken to repress violations of IHL are:

- Prohibit and repress grave breaches in legislation applying to allpersons, no matter what their nationality, who have committed or given the order to commit grave breaches, including when those violations result from failure to act when under a duty to do so, and covering acts committed on national territory and elsewhere.
- Search for and bring to trial people suspected of having committed grave breaches, by starting proceedings against them and if required by extraditing them so that they can be tried in another State.
- Require military commanders to prevent grave breaches, to put a stop to ongoing breaches and to take measures against people under their authority who are guilty of committing grave breaches.
- Provide other States with legal assistance in any procedure concerning grave breaches.

Other means to implement the International Humanitarian Law are represented by the Diplomatic efforts and pressure from the media and public opinion also help ensure implementation of IHL, and the Legal Provisions contained in the Conventions and Protocols and concerning implementation.

In particular and complicated situations, the normal means it ensure and implement the respect of the IHL are not enough. In this case *ad hoc* tribunal are founded to reply to those particulars needs. Here below some example:

- 1993-1994 - Criminal Tribunals on war crimes
- 1993 Yugoslavia - The International Criminal Tribunal for Former Yugoslavia based in The Hague.
- 1994 The International Criminal Tribunal for Rwanda, based in Arusha, Tanzania

## 4.2 The International Criminal Court, ICC

The International Criminal Court was established by the Rome Statute of the International Criminal Court, so called because it was adopted in Rome, Italy on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. The Rome Statute is an international treaty, binding only on those States which formally express their consent to be bound by its provisions. These States then become "Parties" to the Statute. In accordance with its terms, the Statute entered into force on 1 July 2002, once 60 States had become Parties. Today, 103 States have become Parties to the Statute. The States Parties meet in the Assembly of States Parties which is the management oversight and legislative body of the Court.

According to the Rome Statute of the International Criminal Court (17 July 1998), art. 1 the International Criminal Court is a permanent institution with the power to exercise is jurisdiction over persons for the most serious crimes of international concerns, ad complementary to the national criminal jurisdiction. Its jurisdiction is in any case governed by the provisions of the Rome Statute. Following the adoption of the Rome Statute, the United Nations convened the Preparatory Commission for the International Criminal Court. As with the Rome Conference, all States were invited to participate in the Preparatory Commission. Among its achievements, the Preparatory Commission reached consensus on the Rules of Procedure and Evidence and the Elements of Crimes. These two texts were subsequently adopted by the Assembly of States Parties. Together with the Rome Statute and the Regulations of the Court adopted by the judges, they comprise the Court's basic legal texts, setting out its structure, jurisdiction and functions.

The Court's Statute was adopted on 17 July 1998 and recognises the Court's competence with regard to war crimes committed during both international and non-international armed conflicts. Article 8 defines the war crimes covered by the Statute. Unlike the International Court of Justice, whose jurisdiction is limited to States, the ICC will be able to charge individuals. And unlike the war crimes tribunals for Rwanda and the former Yugoslavia, its jurisdiction will be limited neither in time nor place. The ICC therefore represents the emergence of the first-ever overall positive duty for individuals, i.e. the obligation to respect the rule of law in situations of conflict.

According to its Statute, art. 4 - the Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. It may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

The ICC will come into being when 60 States have ratified the Statute. As at 30 June 1999, 85 States had signed the Statute and 3 had ratified it. As of 1 November 2006, 103 countries are States Parties to the Rome Statute of the International Criminal Court. Out of them 28 are African States, 12 are Asian States, 15 are from Eastern Europe, 22 are from Latin America and the Caribbean, and 26 are from Western Europe and other States. On 1st November 2006, Chad deposited its instrument of ratification to the Rome Statute. The Statute will enter into force for Chad on 1st January 2007. This will bring the total number of States Parties to 104 on 1st January 2007.

The organs of the Court are:

- The presidency;
- The appeals Division;
- The Trial Division;
- The Pre-Trial Division;
- the Office of the Prosecutor;
- The registry.

The Assembly of States Parties is the management oversight and legislative body of the International Criminal Court. It is composed of representatives of the States that have ratified and acceded to the Rome Statute. Each State Party is represented by a representative who is proposed to the Credential Committee by the Head Of State of government or the Minister of Foreign Affairs (Chapter IV of the Rules of Procedure of the Assembly of States Parties). The Assembly of States Parties has a Bureau, consisting of a President, two Vice Presidents and 18 members elected by the Assembly for a three-year term, taking into consideration principles of equitable geographic distribution and adequate representation of the principal legal systems of the world. On its second session in September 2003 the Assembly of States Parties decided to establish the Permanent Secretariat (ICC-ASP/2/L.5). The Assembly of States Parties decides on various items, such as the adoption of normative texts and of the budget, the election of the judges and of the Prosecutor and the Deputy Prosecutor(s). According to article 112 (7), each State Party has one vote and every effort has to be made to reach decisions by consensus both in the Assembly and the Bureau. If consensus cannot be reached, decisions are taken by vote.

According to the article 13 of the Rome Statute, The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

According with art. 9 (Elements of Crime) - the Court could be assisted by Elements of Crime in the interpretation and application of articles 6, 7and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties. Amendments to the Elements of Crimes may be proposed by:

- Any State Party;
- The judges acting by an absolute majority;
- The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

The Prosecutor may start his investigations *proprio motu* (by hisself initiative) based on the information on crimes under the jurisdiction of Court. Before starting, he should analyse the seriousness of the informations he got, and for this purpose he/she could seek additional information from States, organs of the United Nations, Intergovernmental and Non-governmental Organisations or reliable sources that the Prosecutor deems appropriate. If he/she concludes that there are true basis ton proceed with investigations, he/she could submit to the Pre-Trial Chamber a request to obtain the authorisation to investigate. If the Pre-Trial Chamber find this basis reasonable, it could give authorisation to the beginning of the investigations without prejudice to subsequent determination by the Court with regard to the jurisdiction of the case. No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.[30]

According to the Articles 21 of the Rome Statute, the Court may apply principles and rules of law as interpreted in its previous decisions. The applicable laws are:

- In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
- In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
- Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

The principle of criminal law on which is based the International Criminal Court is that one of the *Nullum Crimen sine Lege* [included in article 22 of the 1998 Rome Statute] and the Jurisdiction *Ratione Temporis* [included in art. 11 of the Court's Statute]. For the principle of *Nullum Crimen sine lege* - a person should not be considered criminally responsible unless the conduct in question constitutes a crime under the jurisdiction of the Court. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted. It is important to determine that – according to the article 24 *Non retroactivity of Ratione personae* – no persons should be considered criminally responsible prior the date of the entry into force of the Rome Stature: the 1st July 2002. According to the art. 11 on Jurisdiction *Ratione Temporis* - the Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

The jurisdiction of the Court – contained in art. 5 of its Statute - shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- the crime of genocide,
- crimes against humanity,
- war crimes,
- the crimes of aggression;
- Crimes against United Nations and associated personnel;
- Other categories of crimes.

30 See The Rome Statute of the International Criminal Court, Articles 15 -16, International Criminal Court: Rome, 17 September 1998

#### 4.2.1 Crime of Genocide

The ICC has jurisdiction over the crime of genocide under Article 6 of the Statute, which reiterates the terms used in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.
This crime is defined in the Statute as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

#### 4.2.2 Crimes against humanity

The ICC also has jurisdiction over crimes against humanity. Under Article 7 of the Statute, these crimes comprise any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population:

- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of the population;
- imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- torture;
- rape,
- sexual slavery,
- enforced prostitution,
- forced pregnancy,
- enforced sterilization, or any other form of sexual violence of comparable gravity;
- persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- enforced disappearance of persons;
- the crime of apartheid;
- other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

**"Attack directed against any civilian population"** means a course of conduct involving the multiple commission of acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

**"Extermination"** includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

**"Enslavement"** means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

**"Deportation or forcible transfer of population"** means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

**"Torture"** means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

**"Forced pregnancy"** means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

**"Persecution"** means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectively;

**"The crime of apartheid"** means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

**"Enforced disappearance of persons"** means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

### 4.2.3 War Crimes

Under Article 8 of the Statute, the ICC has jurisdiction in respect of war crimes. These include most of the serious violations of international humanitarian law mentioned in the 1949 Geneva Conventions and their 1977 Additional Protocols, whether committed during international or non-international armed conflicts.

War crimes are understood to mean serious violations of international humanitarian law committed during international or non-international armed conflicts.

Several legal texts contain definitions of war crimes, namely the Statute of the International Military Tribunal established after the Second World War in Nuremberg, the Geneva Conventions and their Additional Protocols, the Statutes and case law of the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the Statute of the International Criminal Court.

Definitions of the notion of war crime are also given in the legislation and case law of various countries. It is important to note that one single act may constitute a war crime. A number of offences are specifically identified as war crimes in the Statute, including:

- wilful killing of a protected person (e.g. wounded or sick combatant, prisoner of war, 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;
- Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- Unlawful deportation or transfer or unlawful confinement;
- Taking of hostages.

Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military bad vantage anticipated;
- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- Killing or wounding treacherously individuals belonging to the hostile nation or army;

- Declaring that no quarter will be given;
- Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- Pillaging a town or place, even when taken by assault;
- Employing poison or poisoned weapons;
- Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

Certain other serious violations of international humanitarian law, such as unjustifiable delay in the repatriation of prisoners and indiscriminate attacks affecting the civilian population or civilian objects, which are defined as grave breaches in the 1949 Geneva Conventions and 1977 Additional Protocol I, are not specifically referred to in the Statute. There are only a few provisions concerning certain weapons whose use is prohibited under various existing treaties, and these do not apply with respect to non-international armed conflicts. For example:

- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- Taking of hostages;
- The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international
- law of armed conflict;
- Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- Pillaging a town or place, even when taken by assault;
- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- Killing or wounding treacherously a combatant adversary;

- Declaring that no quarter will be given;
- Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

It should be noted that the International Criminal Tribunal for the former Yugoslavia has recognized that the notion of war crime under customary international law also covers serious violations committed during non-international armed conflicts. The Statute of the International Criminal Court and the Statute of the International Criminal Tribunal for Rwanda also include in their respective lists of war crimes those committed during internal armed conflicts.

On becoming party to the Geneva Conventions, States undertake to enact any legislation necessary to punish persons guilty of grave breaches of the Conventions. States are also bound to prosecute in their own courts any person suspected of having committed a grave breach of the Conventions, or to hand that person over for judgment to another State. In other words, perpetrators of grave breaches, i.e. war criminals, must be prosecuted at all times and in all places, and States are responsible for ensuring that this is done.

Generally speaking, a States criminal laws apply only to crimes committed on its territory or by its own nationals. International humanitarian law goes further in that it requires States to seek out and punish any person who has committed a grave breach, irrespective of his nationality or the place where the offence was committed. This principle of universal jurisdiction is essential to guarantee that grave breaches are effectively repressed.

Such prosecutions may be brought either by the national courts of the different States or by an international authority. In this connection, the International Criminal Tribunals for the former Yugoslavia and Rwanda were set up by the UN Security Council in 1993 and 1994, respectively, to try those accused of war crimes committed during the conflicts in those countries.

Lastly, in 2002 the international community has created a permanent International Criminal Court (ICC), which will be competent to try war crimes, crimes against humanity, and genocide.

#### 4.2.4 Crime of aggression

In other terms , a “crime of aggression” means an act committed by a State as defined by United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974 which by its characteristics, gravity and scale amounts to a war of aggression or constitutes a manifest violation of the prohibition of acts against the territorial integrity or the political independence of another State recognized in the Charter of the United Nations[31]. It is committed by a person who:

- Being in a position to exercise control over or direct effectively the political or military action of a State, intentionally orders or actively and knowingly participates in the planning, preparation, initiation or perpetration of an act of aggression;

Being in a position to contribute to or effectively cooperate in shaping in a fundamental manner political or military action by a State, actively participates by means of essential acts in the planning, preparation, initiation or perpetration of an act of aggression, knowing that the act of aggression in which he or she takes part constitutes or will constitute an act of aggression, provided that the act of aggression actually takes place or is executed.

An act could constitute aggression, whether proceeded by a declaration of war or not:

- the invasion or attack by an armed forces of a State of the Territory of another State, or any military occupation – however temporary – resulting from such invasion or attack, or any annexation by the use of force of the territory of another state or part thereof;
- bombardments by the armed forces of a State against the territory of another State, or use of weapons by a State against the territory of another State;
- the blockade of the costs or ports of a State by the armed forces of another states;
- an attack by the armed forces of a State on the land, or marine and air fleets of another State;
- the use of armed forces of one State which are within another State with the agreement of the receiving States in contravention to the conditions provided for in the agreement, or any extension of their presence in such territory beyond their termination of agreements;
- the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against third State;

31 See Preparatory Commission for the International Criminal Court Working Group on the Crime of Aggression, art. 2, New York 1-12 July 2002

- the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries with carry out acts of armed force against another State of such gravity as an amount to the acts blasted above or its substantial involvement therein.

As stated in Article 5 (2) of the Statute, the Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

#### 4.2.5 Crimes against United Nations and associated personnel

Concern for the safety of United Nations and associated personnel has escalated since the early 1990s, as peacekeepers, humanitarian workers and civilian staff of the United Nations and its agencies increasingly face threats and are targeted for kidnapping or murder.

On 9 December 1994, the United Nations General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel, which sets out the respective rights and duties of States parties, and of United Nations and associated personnel, and affirms individual criminal responsibility for attacks against such personnel. The Convention itself does not, however, provide any protection or guarantee that perpetrators will be brought to justice. There is, therefore, a need to include crimes against United Nations and associated personnel in the jurisdiction of the International Criminal Court.

#### 4.2.6 Other Crimes

##### 4.2.6.1 Terrorism

In the draft statute, the crime of terrorism is defined in three paragraphs:

- Undertaking, organizing, sponsoring, ordering, facilitating, financing, encouraging or tolerating acts of violence against another State directed at persons or property and of such a nature as to create terror, fear or insecurity in the minds of public figures, groups of persons, the general public or populations, for whatever considerations and purposes of a political, philosophical, ideological, racial, ethnic, religious or such other nature that may be invoked to justify them;
- Offences under six listed conventions, such as the Convention for the Suppression of Unlawful Seizure of Aircraft and the International Convention against the Taking of Hostages;
- An offence involving the use of firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or groups of persons or populations or serious damage to property.

##### 4.2.6.2 Crimes involving the illicit traffic in narcotic drugs and psychotropic substances

Some countries are interested in including the illicit traffic in narcotic drugs and psychotropic substances, for particularly serious offences. The consequences of such drug trafficking for the world population are quite serious. The proposed definition of these crimes contained in the draft statute is largely drawn from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 19 December 1988.

# APPENDIX

## 1. Main Treaties & Abbreviations

| **General and Land** | |
|---|---|
| **Convetions & Treaties** | **Abbreviation** |
| Convention respecting the laws and customs of war on land. The Hague, 18 October 1907, with: Annex: Regulations respecting the laws and Customs of war on land | H.IV H.IV R |
| Treaty on the Protection of artistic and scientific institutions and historic monuments (Roerich Pact). Washington, 15 April 1935 | Washington |
| Convention of the amelioration of the condition of the wounded and sick in armed forces in the Field. Geneva 12 August 1949 | GC I |
| Convention relative to the treatment of prisoners of war. Geneva 12 August 1949 | GC III |
| Convention relative to the protection of civilian persons in time of war. Geneva 12 August 1949 | GC IV |
| Convention for the protection of cultural property in the event of armed conflict. The Hague, 14 May 1954 with:<br>➢ Regulations for the execution of the Convention for the protection of cultural property in the vent of armed conflict<br>➢ Protocol for the protection of cultural property in the event of armed conflict<br>➢ Second Protocol to the Hague Convention on cultural property (The Hague, 26 March 1999) | H.CP.P |
| Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of victims on international armed conflicts (Protocol I). Geneva 8 June 1977 | GP I |
| Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of victims on international armed conflicts (Protocol II). Geneva 8 June 1977 | GP II |
| **Sea** | |
| Convention relating to the status of enemy merchant ships at the outbreak of hostilities. The Hague, 18 October 1907 | H.IV |
| Convention relating to the conversion of merchant ships into warships. The Hague, 18 October 1907 | H.VII |
| Convention concerning bombardment by naval forces in time of war. The Hague, 18 October 1907 | H.IX |
| Declaration concerning the laws of naval war. London, 26 February 1909 (not ratified by any signatory) | London Decl. |
| The Laws of naval war governing the relations between belligerents. Manual adopted by the Institute of International Law (Oxford Manual of Naval War). Oxford, 9 August 1913 | Oxford |
| Procès-Verbal relating to the rules of submarine warfare set forth in Part IV of the Treaty of London of 22 April 1930. London, 6 August 1949. | London PV |
| Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea. Geneva, 12 August 1949 | GC II |
| San Remo Manual on International Law applicable to Armed Conflicts at Sea. Sanremo, June 1994 (not a treaty) | San Remo |
| **Air** | |
| Rules of air warfare. Drafted by a Commission of Jurists at the Hague, December | H.AW |
| **Neutrality** | |
| Convention respecting the rights and duties of neutral powers and persons in case of war on land. The Hague, 18 October 1907 | H.V |
| Convention concerning the rights and duties of neutral powers in naval war. The Hague, 18 October 1907 | H.XII |
| Convention on maritime neutrality. Havana, 20 February 1928 | Havana |

| **Weapons** | |
|---|---|
| **Convetions & Treaties** | **Abbreviation** |
| Declaration renouncing the use – in time of war – of explosive projectiles under 400 grammes weight. St. Petersburg. 29 November – 11 December 1868 | St. Petersburg |
| Declaration concerning expanding bullets. The Hague, 29 July 1899 | H.Decl. |
| Convention relative to the laying of automatic submarine contact mines. The Hague, 18 October 1907 | H.VIII |
| Declaration prohibiting the discharge of projectiles and explosives from balloons. The Hague, 18 October 1907 | H.XIV |
| Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gas, and of bacteriological methods of warfare. Geneva, 17 June 1925 | G.BC |
| Convention on bacteriological (biological) weapons 1972 | CBW |
| Convention on the prohibition of military or any other hostile use of environmental modification techniques 1976 | ENMOD |
| 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 | G.CW |
| Protocol on non-detectable fragments (Protocol I) | G.CW.P.I |
| Protocol on prohibitions or restrictions and on the use of mines, booby traps, and other devises (Protocol II)<br><br>Amended Protocol II on prohibitions or restrictions on the use of mines, booby traps, and other devises | G.CW.P.II |
| Protocol on prohibitions or restrictions on the use of incendiary weapons (Protocol II) | G.CW.P.III |
| Protocol on Blinding Laser Weapons 1996 (Protocol IV) | G.CW.P.IV |
| Protocol on Explosive Remnants of War 2003 (Protocol V) | G.CW.P.V |
| Chemical Weapons Convention 1993 | CWC |
| Convention on the prohibition of the use , stockpiling, production and transfer of anti-personnel mines and their destruction. Ottawa, 18 September 1997 | Ottawa |

## 2. Basic Notions on IHL

Modern International Humanitarian Law developed on the basis of the gaps that happened in new conflicts, thus demonstrating the need for revision of existing treaties of the development of completely new ones

International Humanitarian Law treaties are generally called after the name of the place where they have been drafted and adopted in their final form.

The three main set of law treaties are those of

| THE HAGUE | GENEVA | NEW YORK |
|---|---|---|
| Mostly dealing with the hostilities as such, with conduct of operation and with neutrality | Aiming at protection or assistance to victims of Armed Conflicts | Guarantee fundamental rights and freedoms of individuals=human rights application: peacetime |
| Between the State and the citizens of its adversary | | Between State and its own citizens |

To summarise, the Intentional Humanitarian Law:

- is a branch of international law;
- governs relations between States during armed conflicts;
- also applies to fighting within the State;
- is intended to reduce as much as possible the suffering, loss and damaged caused by war;
- places obligations on persons in the States involved, primarily members of the armed forces;
- is not designed to impede military efficiency in any way

**The International Humanitarian Law protects you and is binding on you**

## 3. NATO Spelling

| | |
|---|---|
| **A** | Alpha |
| **B** | Beta |
| **C** | Charlie |
| **D** | Delta |
| **E** | Echo |
| **F** | Fox-trot |
| **G** | Golf |
| **H** | Hotel |
| **I** | India |
| **K** | Kilo |
| **J** | Juliet |
| **L** | Lima |
| **M** | Mike |
| **N** | November |
| **O** | Oscar |
| **P** | Papa |
| **Q** | Quebec |
| **R** | Roger |
| **S** | Sierra |
| **T** | Tango |
| **U** | Uniform |
| **V** | Victor |
| **W** | Whiskey |
| **Y** | Yankee |
| **Z** | Zulu |

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