

SESSION 3

# HUMAN INTERNATIONAL LAW

How are human rights implemented and enforced? – Global Mechanisms

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### How are human rights implemented and enforced? – Global Mechanisms

#### 'Humanity in War'

Introduction

Rights at Stake

International and Regional Instruments of Protection

Advocacy, Educational and Training Materials

#### **Introduction**

International humanitarian law is the law of armed conflict or law of war and their effects. The goal of international humanitarian law is to limit the effects of war on people and property and to protect particularly vulnerable persons.

States have always been limited in the ways in which they conduct armed conflicts, from the adherence to national laws and bilateral treaties, to the observance of time-honored customary rules. However, throughout history these limitations on warfare varied greatly among conflicts and were ultimately dependent on time, place, and the countries involved. Not until the 19th century was there a successful effort to create a set of internationally recognized laws

#### **Key terms**

**crimes against humanity**  
crime against humanity  
consists of acts  
or any large  
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**collateral damage**  
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**crimes against humanity**  
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**genocide** - the  
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**internal armed conflict**  
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governing the conduct and treatment of persons in warfare.

In the mid-1850s, Henri Dunant - founder of the International Red Cross - helped champion the first universally applicable codification of international humanitarian law: the Geneva Convention of 1864. From these roots, international humanitarian law evolved over the course of a century and a half. The Hague Conventions of 1899 and 1904 limited the means by which belligerent states could conduct warfare.

Many of the international treaties on armed conflict were made in response to the many new methods of warfare. World War I (1914-1918) witnessed the first large-scale use of poison, aerial bombardments and capture of prisoners of war. World War II (1939-1945) saw civilians and military personnel killed in equal numbers.

The [Charter of the United Nations](#) (1945) stipulates that the threat or use of force against other states is unlawful, except in the case of self-defense. Following World War II, the Geneva Conventions of 1949, as well as its two Additional Protocols of 1977, further limited the means of warfare and provided protections to non-combatants civilians, and prisoners of war. In the aftermath of the atrocities of the Holocaust, the Genocide Convention of 1948 outlawed acts that were carried out with the intention of destroying a particular group. In addition to these conventions, international humanitarian law has been developed and refined through several statutes and precedents laid down by international tribunals set up to try war criminals, as well as advisory opinions the [International Court of Justice](#).

### Rights at Stake

Humanitarian law is the branch of public international law

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accordingly  
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against mil  
objectives"**  
[ol Additional  
Geneva Conv  
of 12 August  
\(Protocol I\),  
48](#)

### Historic dates

**1959** - Henr  
the casualtie  
Italian Unific

**1863** - A fiv  
committee, i  
Dunant, four

that comprises the rules, which, in times of armed conflict, seek to (i) protect persons who are not or are no longer taking part in the hostilities, (ii) restrict the methods and means of warfare employed, and (iii) resolve matters of humanitarian concern resulting from war.

The term "humanitarian" is often used in everyday language in a very broad sense, and can be confused with the term "human rights." Although both are concerned with the protection of the individual, the two bodies of law apply to different circumstances and possess slightly different objectives. The main distinction between the two bodies of law is that humanitarian law applies to situations of armed conflict, while human rights protect the individual in times of both war and peace. Humanitarian law aims to limit the suffering caused by war by regulating the way in which military operations are conducted.

### *Fundamental principles of humanitarian law*

International humanitarian law aims to limit the suffering caused by war by forcing parties engaged in a conflict to:

- engage in limited methods and means of warfare;
  
- differentiate between civilian population and combatants, and work to spare civilian population and property;
  
- abstain from harming or killing an adversary who surrenders or who can no longer take part in the fighting;
  
- abstain from physically or mentally torturing or performing

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**1899** - Adop  
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**1914-1918**  
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**1925** - Gene  
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**1929** - Gene  
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*The first dra  
guide was de  
by Stephanie  
Carnes.*

**Copyright ©  
Human Righ  
Education  
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(HREA), 20  
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cruel punishments on adversaries.

### *Types of armed conflict*

*International armed conflicts* are conflicts between states. The four 1949 Geneva Conventions and Protocol I deal extensively with the humanitarian issues raised by such conflicts. The whole body of law on prisoners of war, their status and their treatment is geared to wars between States (Third Convention). The Fourth Convention states inter alia the rights and duties of an occupying power, i.e. a state whose armed forces control part or all of the territory of another state. Protocol I deals exclusively with international armed conflicts.

Under Protocol I of 8 June 1977, *wars of national liberation* must also be treated as conflicts of an international character. A war of national liberation is a conflict in which a people is fighting against a colonial power, in the exercise of its right of self-determination. Whereas the concept of the right of self-determination is today well accepted by the international community, the conclusions to be drawn from that right for the purposes of humanitarian law and, in particular, its application to specific conflict situations are still somewhat controversial.

The majority of today's armed conflicts take place within the territory of a state: they are conflicts of a non-international character. A common feature of many such internal armed conflicts is the intervention of armed forces of another state, supporting the government or the insurgents.

The substantive rules of humanitarian law governing *non-international armed conflicts* are much simpler than their counterparts governing international conflicts. They are derived from one main source, namely article 3 common to

the four Geneva Conventions of 1949, which obliges the parties to an internal conflict to respect some basic principles of humanitarian behaviour already mentioned above. Article 3 is binding not only on governments but also on insurgents, without, however, conferring any special status upon them.

Additional Protocol II of 1977 supplements Article 3 common to the Geneva Conventions with a number of more specific provisions. This is a welcome contribution to the strengthening of humanitarian protection in situations of internal armed conflict. Protocol II has, however, a narrower scope of application than common Article 3. It applies only if the insurgent party controls part of the national territory.

### **International and Regional Instruments for Protection**

International legal instruments take the form of a *treaty* (also called agreement, convention, protocol) which may be binding on the contracting states. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" to that effect by the representatives of states. There are various means by which a state expresses its consent to be bound by a treaty. The most common are ratification or accession. A new treaty is "ratified" by those states who have negotiated the instrument. A state which has not participated in the negotiations may, at a later stage, "accede" to the treaty. The treaty *enters into force* when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make *reservations* to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries,

international treaties take precedence over national law; in others, a specific law may be required to give an international treaty, although ratified or acceded to, the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective on the national territory.

Many international treaties have a mechanism to monitor the implementation of the treaty.

Many provisions of the four Geneva Conventions, the two Protocols, and the Hague Conventions of 1899 and 1907 are broadly accepted as restating customary international humanitarian law applicable to all countries. Humanitarian law applies specifically to armed conflict situations, which would ordinarily qualify as "public emergencies". (Weissbrodt)

Unlike human rights treaties, which often have a monitoring body to which individuals and states can submit complaints, humanitarian law relies much more on informal procedures.

The Geneva Conventions and the Additional Protocols require the States party to adopt a number of measures in order to assure compliance with these treaties. Some of these measures have to be taken in peacetime, others in the course of an armed conflict. In this short overview, only three such obligations will be mentioned, as examples:

- Instructions to and training of the armed forces: the complex set of obligations arising out of the Conventions and the Protocols must be translated into a language which is clearly understandable to those who have to comply with the rules, in particular the members of armed forces, according to their ranks and their functions. Good manuals on humanitarian law play a decisive part in effectively spreading knowledge of that law among military personnel. Rules which are not understood by or remain unknown to

those who have to respect them will not have much effect.

- Domestic legislation on implementation: Many provisions of the Geneva Conventions and of their Additional Protocols imperatively require each State Party to enact laws and issue other regulations to guarantee full implementation of its international obligations. This holds particularly true for the obligation to make grave breaches of international humanitarian law (commonly called "war crimes") crimes under domestic law. In the same way, misuse of the red cross or the red crescent distinctive emblem must be prosecuted under domestic law.

- Prosecution of persons who have committed grave breaches of international humanitarian law: Such persons must be prosecuted by any State party under whose authority they find themselves. That State may, however, extradite the suspect to another State Party which is willing to prosecute him. Individuals accused of violating humanitarian law may also be tried by an international criminal court. The United Nations Security Council has established two such courts: the Tribunals for the former Yugoslavia and for Rwanda. On 17 July 1998, a Diplomatic Conference convened by the United Nations in Rome adopted the Statute of the International Criminal Court.

Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (article 44, 70)

This treaty protects refugees during war. Refugees cannot be treated as "enemy aliens".

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977) (article 73)

"Persons who, before the beginning of hostilities, were considered as stateless persons or refugees ... shall be



protected persons..., in all circumstances and without any adverse distinction."

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## Timeline

1815 The Congress of Vienna expresses international concern for human rights. Freedom of religion is proclaimed, civil and political rights discussed, and slavery condemned.

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1864 The First Geneva Convention protects the wounded in battle and gives immunity to hospital staff and the Red Cross during war.

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1919 The League of Nations is established with the aim of guaranteeing and protecting the basic rights of members of minority groups.

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1945 The United Nations is formed to build peace, protect human rights, oversee international law and to promote social progress and better standards of life.

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1948 The Universal Declaration of Human Rights (UDHR)

outlines protection of rights for all people.

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1949 The Fourth Geneva Convention provides for the humane treatment and medical care of prisoners of war.

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1965 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) resolves to abolish racial discrimination and promote understanding between races.

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1966 The International Covenant on Civil and Political Rights (ICCPR) protects the individual from any misuse of government power and affirms the individual's right to participate in the political processes of their nation.

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1966 The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees access to the resources needed for an adequate livelihood, such as food, health care, clothing, shelter, education and personal safety, and ensures participation by all in the life of society, religion and culture.

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1979 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and sets up an agenda to end it.

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1984 The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines tortures and similar activities in order to prevent their use.

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1989 The Convention of the Rights of the Child (CRC) sets out the civil, political, economic, social and cultural rights of children, defined as those under 18 year of age.

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1993 The Vienna Declaration from the Second World Conference on Human Rights reaffirms the Universal Declaration on Human Rights, emphasising that human rights are universal and indivisible and rejecting arguments that some should be optional or subordinated to cultural practices and traditions.

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1995 The Beijing Declaration of The Fourth World Conference on Women declares "Women's rights are human rights".

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1999 The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour is adopted by the International Labour Organisation (ILO)

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2002 The International Criminal Court (ICC) is established. It is an independent, permanent court that tries persons accused of the most serious crimes of international concern,

namely genocide, crimes against humanity and war crimes.

civilian any person who is not a combatant

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civilian object any object that is not a military objective

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combatant member of armed forces, member of an armed group under the orders of a party to the conflict

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military objective object which by its nature, location, purpose or use makes an effective contribution to military action and whose destruction offers a definite military advantage

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hors de combat means "out of the fight" describes combatants who have been captured, wounded, sick, shipwrecked, and no longer in a position to fight

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principle of proportionality the expected number of deaths or injuries to civilians or damage to civilian objects must not be excessive compared to the anticipated military advantage

What is public international law? Rules that govern relationships involving states and international organizations. Covers a huge field involving war, human rights, refugee law, international trade, the law of the sea, environmental issues, global communications, outer space

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What is private international law? Concerned with the clash between laws from different jurisdictions and is sometimes referred to as the conflict of laws.

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What is the International Court of Justice and what does it do? Part of the UN and based in The Hague, Netherlands

Only hear cases relating to conflicts between states

Also gives legal advice to UN bodies

Doesn't follow a precedent system

NZ is one of the 60 nations that has accepted the IJC's compulsory jurisdiction

All UN members must comply with IJC decisions that apply to them

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What is the International Criminal Court and what does it do? It was established in July 2002

Jurisdiction of the ICC includes genocide, crimes against humanity and war crimes

Put individuals on trial not their states

ICC can only act when nations won't or are unwilling to

Can only hear cases from participating nations or the SC can call upon others

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What is the United Nations? Formed in 1945 after WWII

Charge with the task preventing a WWIII

Encourages cooperation and compromise among different nations

Constitutional document establishing the UN is called the Charter of the UN

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What is the Security Council? It is an executive body made up of the 5 most powerful members of the allied forces that defeated Nazi Germany and imperial Japan

Us, Russia, China UK and France permanently sit on the SC and each has the power to veto any SC decision

These are joined by 10 other nations each of which get a 2 year temporary membership

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What does Article 24 of the charter state? The SC has primary responsibility of the maintenance of international peace and security and acts on behalf of UN members nations

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What does article 42 of the charter state? The council can order military action to maintain or restore international peace and security

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What does article 43 of the charter state? It instructs member nations to make military service available for UN use if

necessary