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ABC of International Humanitarian Law



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Introduction

International humanitarian law – also known as the Law of Armed Conflict or the Law of War (*ius in bello*) – applies to armed conflicts and has a two-fold purpose: to regulate the conduct of hostilities and to protect the victims of armed conflicts. It does not, however, answer the question of whether or not a particular war is lawful (*ius ad bellum*). This is dealt with by the Charter of the United Nations (UN). International humanitarian law applies to all types of armed conflicts, whether lawful or not, and must be respected by all parties to the conflict.

A substantial part of international humanitarian law, notably concerning the conduct of hostilities, was elaborated at the international peace conferences of 1899 and 1907 in The Hague (“Hague Law”). The participants adopted a number of declarations and agreements intended to impose limits on the means and methods of warfare, such as the Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land, the various agreements on the conduct of war at sea of 1907 and the declarations of 1899 banning the use of poison gas and “dumdum” bullets.

Provisions for the protection of victims of armed conflicts (“Geneva Law”) are contained in the four Geneva Conventions of 1949, which protect the following:

- wounded and sick in armed forces in the field (First Convention)
- wounded, sick and shipwrecked armed forces at sea (Second Convention)
- prisoners of war (Third Convention)
- civilians in time of war (Fourth Convention)

The Geneva Conventions of 1949 were supplemented in 1977 by two Additional Protocols on the protection of victims of international armed conflicts and on the protection of victims of non-international armed conflicts. In 2005, a third Additional Protocol on the adoption of an additional emblem was adopted.

Since the adoption of the two Additional Protocols of 1977, which have updated the rules governing the conduct of hostilities, this strict differentiation between “Hague Law” and “Geneva Law” is no longer pertinent.

International humanitarian law applies only to armed conflicts, whether international or non-international, although there are far more rules that apply to international armed conflicts than to non-international armed conflicts. In addition, there is another area of international law, known as customary international law, which is applicable not only to international armed conflict, for which it was originally developed, but also to non-international armed conflicts.

Although international humanitarian law is intended mainly for States and parties to a conflict (e.g. armed groups), many of its provisions must also be respected by individuals. States are obliged to respect the norms, to suppress any violations, and either themselves prosecute persons responsible for grave breaches, in particular of war crimes, or extradite such persons. If a State is either unwilling or unable to undertake prosecutions then, as appropriate, the responsibility passes to the International Criminal Court in The Hague. Furthermore, the international community has set up international ad hoc tribunals for the prosecution of crimes committed in the context of specific conflicts (e.g. the International Criminal Tribunals for the former Yugoslavia and for Rwanda).

The parties to a conflict must respect international humanitarian law in all circumstances and regardless of the behaviour of the other side. A State Party cannot evade its own obligations arguing that the other Party is failing to uphold international humanitarian law. Thus a State Party accused of a violation cannot justify its actions on the grounds that the other Party committed a similar violation. The suspension clause that generally applies in treaty law has no validity here. Furthermore, States remain bound by the Conventions even if the enemy has not acceded to them.

The purpose of this “ABC” is to explain the key concepts of international humanitarian law and to allow the reader to become familiar with this particular branch of international law. It makes no pretence to being an exhaustive lexicon on the subject.



People on War

How do combatants and civilians experience war? Why in times of war are the fundamental values of humanity ignored? Through the “People on War” project, the International Committee of the Red Cross (ICRC) interviewed more than 12,000 people on different aspects of war. The interviews were carried out in 12 war-affected countries*. The results were published in the year 2000.

www.icrc.org/Web/Eng/siteeng0.nsf/html/p0758

* Afghanistan, Bosnia and Herzegovina, Cambodia, Colombia, El Salvador, Georgia/Abkhazia, Israel, the Occupied Palestinian Territory, Lebanon, Nigeria, the Philippines, Somalia, South Africa

Glossary

A

Additional Protocols

Two Additional Protocols to the > *Geneva Conventions* of 1949 were adopted on 8 June 1977 in Geneva. The first concerns the protection of victims of international > *Armed conflicts* and the second, the protection of the victims of non-international armed conflicts. A third Additional Protocol came into force on 14 January 2007, making the Red Crystal an additional official > *Emblem*.

Ad hoc tribunals

Following the conflicts in Rwanda and the former Yugoslavia, the Security Council of the > *United Nations (UN)* established two ad hoc international criminal tribunals to prosecute > *War crimes*, > *Genocide* and > *Crimes against humanity*. The jurisdiction of these tribunals – unlike that of the > *International Criminal Court* – is limited in duration and to the specific conflict.

There are other mixed courts, made up of local and international members of staff, which prosecute crimes committed in particular conflicts or under specific regimes. Examples: the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

Aggression

Aggression is the use of armed force by one State against the sovereignty, territorial integrity, or political independence of another State. Although international law prohibits in principle the use of military force it allows two exceptions: military self-defence in well-defined circum-

stances or that in the context of measures to maintain or restore international peace and security on the basis of a decision of the United Nations Security Council taken under Chapter VII of the Charter.

The concept of aggression in international law involving two or more States is not to be confused with the International Criminal law concept of aggression. The latter concerns the criminal responsibility of individuals and is not yet based on an internationally recognised definition.

Applicability

International humanitarian law is applicable both to international and non-international > *Armed conflict*. It takes effect from the beginning of an armed conflict and remains in force until the general close of military operations or the end of occupation. Certain provisions remain in force for as long as the de facto situation continues. Thus, for example, the Third Geneva Convention protects > *Prisoners of war* even after the cessation of hostilities.

Armed conflict

International humanitarian law applies to all armed conflicts. Although none of the relevant conventions contains a definition of armed conflict, it has been described as follows in jurisprudence: “an armed conflict exists whenever there is a resort to armed forces between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.” Thus conflicts can be international or non-international. A non-international conflict must reach a certain intensity to qualify as such. Internal tensions, > *Internal disturbances* such as riots, isolated or sporadic acts of violence and similar events are not covered by international humanitarian law.

Asymmetric warfare

Today's wars are no longer exclusively conducted by conventional armies, but also involve non-state armed groups. They are becoming increasingly "asymmetric", i.e. there is a considerable difference between the military capabilities of the belligerents. International humanitarian law also applies to this kind of conflict, regardless of whether or not the (State or non-State) parties to the conflict recognise this body of law. Asymmetry nonetheless leads to many problems when it comes to observing the rules, for instance when a party sees itself at a disadvantage if it respects the provisions of international humanitarian law, or when the party which is technically weaker adopts > *Means and methods* that are in violation of international humanitarian law such as > *Perfidy* or the use of civilians as human shields, or when the dominant party fails to respect the principles of > *Distinction* and of > *Proportionality* in reaction to violations by the enemy.

Ban on torture

Torture and other cruel, inhuman or degrading treatment or punishment are at all times and in all circumstances prohibited by > *Customary international law* as well as by various international treaties such as the Convention against Torture. The Additional Protocol to the Convention against Torture of 2002 strengthens efforts to prevent torture through visits and controls by international and national bodies of prisons and other detention facilities. Torture and cruel treatment are also expressly prohibited by the > *Geneva Conventions* and their > *Additional Protocols*.

Torture carried out in the course of armed conflicts is treated as a > *War crime*, and in the context of widespread or systematic attacks against civilian populations as a > *Crime against humanity*.

Biological weapons

Biological > *Weapons* are also known as bacteriological weapons. These are designed to cause disease and death. Biological weapons contain living organisms that reproduce and release toxins dangerous to humans, animals and plants. As well as endangering health they cause damage to the environment. The use of biological weapons has been prohibited since 1925. The Biological Weapons Convention of 1972 prohibits the development, production or stockpiling of weapons that contain microbiological and bacteriological agents and toxins, as well as their means of delivery. It also recommends the destruction of such weapons.

Ceasefire

A ceasefire is an immediate halt or end to hostilities. This military concept refers to both agreements negotiated between the parties to a conflict and the unilateral termination of all military activity by one of the parties, possibly for a specified period of time or in a specified area.

Central Tracing Agency

The Central Tracing Agency, created under the auspices of the > *International Committee of the Red Cross (ICRC)*, is based in Geneva. It is the successor of the Central Prisoners of War Agency which during World Wars I and II defended the rights of > *Prisoners of war* and the right of their families to know what had become of them. The Agency works with the national authorities' official information services, ICRC delegates and other institutions active in the field. It coordinates the search for missing persons, passes on information about prisoners of war and other detainees, carries out prisoner transfers and repatriations, conveys messages and helps to reunite families.

Chemical weapons

Chemical > *Weapons* contain chemical substances that are a danger to health, can cause death to humans and animals, or render them temporarily incapable of resistance (hors de combat) or cause lasting damage. These substances can also contaminate foodstuffs, drinks and other materials. As a result of the terrible consequences of chemical weapons in the First World War, the use of asphyxiating, poisonous and similar gases was prohibited in 1925. In 1993 an international convention went further, prohibiting the development, production, stockpiling or use of chemical weapons and recommending their destruction.

Children

International humanitarian law offers special protection to children. Parties to a conflict are under an obligation to provide all the care and assistance that they need due to their young age or for any other reason. Food and medical aid must be provided to children before others. International humanitarian law also contains special guarantees for detained children, the inviolability of their nationality and civil status and for reunification with their families. Children orphaned by war or separated from their parents have the right to education in accordance with their own religion and culture.

Child soldiers

It is estimated that there are around 300,000 child soldiers in the world today. Some are recruited by force while others are volunteers, in some cases for ideological reasons and in others just as a way of obtaining food. The Optional Protocol of 2000 to the UN Convention on the Rights of the Child provides for measures to ensure the reintegration in society of children who have served as combatants. The Protocol completes and strengthens the provisions of the two > *Additional Protocols*, prohibiting compulsory recruitment and direct participation in hostilities

before the age of 18. Furthermore, it calls on the States Parties to adopt measures to prevent armed groups from recruiting persons below the age of 18 and from deploying them in combat operations. The recruitment of children below the age of 15 in armed forces or other armed groups is regarded as a > *War crime*.

Civil defence

Civil defence is the organisation of assistance and relief in situations of conflict and major disasters to protect and ensure the survival of civilian populations and to limit damage to > *Civilian objects* as much as possible. It is prohibited to attack members of the civil defence service, who are identified by a blue triangle on an orange ground.



How combatants experience war*

In war-torn regions 29 per cent of the combatants were wounded, 18 per cent were taken prisoner, and almost 20 per cent of prisoners were tortured. 43 per cent of the prisoners disclosed that a member of their family had been killed.

* Results from the worldwide ICRC consultation, "People on War"

Civilian objects

International humanitarian law distinguishes between Civilian objects and > *Military objectives*, prohibiting acts of violence against the former. Other provisions provide special protection for certain specific civilian objects, some of which are expected to bear distinctive signs: medical units and means of transport, places of worship, cultural property, civil defence installations, goods indispensable for the survival of the population, the natural environment, and works and installations containing dangerous forces (e.g. nuclear power stations and dams). Civilian objects are all objects which are not military objectives.

Civilians

Up to 1949, international humanitarian law protected the wounded, sick, shipwrecked and imprisoned members of the armed forces. The > *Geneva Conventions* of 1949 extended protection in time of war to the civilian population. The > *Additional Protocols* of 1977 increased the degree of protection and extended it by means of special regulations to specific categories of civilians (> *Women*, > *Children*, > *Refugees*, > *Journalists*).

Civil war

A non-international > *Armed conflict*. A civil war may take place within the sovereign territory of a State between its armed forces and rebel forces or non-state armed groups which conduct on-going and coordinated combat. > *Internal disturbances* and tensions are not considered armed conflict.

Cluster munitions

Cluster munitions were used regularly and on a large scale during the Vietnam War as well as in other > *Armed conflicts*. They consist of a

hollow shell containing from a dozen to many hundreds of bomblets (submunitions) which are released over a wide area. Cluster munitions can have grave humanitarian effects since their impact is indiscriminate. Moreover, many submunitions do not explode, lie on the ground and are thus a long-term threat to the civilian population. In May 2008, in Dublin, an international convention was adopted prohibiting the manufacture, stockpiling, transfer and deployment of cluster munitions. The convention also provides for obligations on stockpile destruction, clearance and victim assistance. Cluster munitions are also a subject of negotiation in the framework of the 1980 Convention on Conventional Weapons, which involves major military powers not present at the adoption of the Convention on Cluster Munitions.

Combatants

In an international > *Armed conflict* all members of the armed forces of a party to the conflict are considered combatants, with the exception of medical and religious personnel. Combatants may take part in licit acts of war, for which they may not be subjected to criminal prosecution or brought to court (“combatants’ privileges”). In certain circumstances persons who participate in an uprising to defend their national territory are also accorded the status of combatants, as are militia fighters, volunteers and members of resistance movements. Combatants who are captured have a right to the status and guarantees accorded to > *Prisoners of war*.

Conduct of hostilities

Not all > *Means and methods of warfare* are allowed in an > *Armed conflict*. International humanitarian law stipulates the military operations, tactics and weapons that are permissible. The two generally accepted principles of > *Distinction* and > *Proportionality* are the basis for a number of specific rules such as the prohibition of direct attacks on

the civilian population or on > *Civilian objects*, the prohibition of indiscriminate attacks and the obligation to adopt precautionary measures (> *Precaution*) so as to avoid or limit casualties among > *Civilians* and damage to civilian objects to the greatest possible extent.

Crimes against humanity

Acts intended to cause major suffering or serious impairment of physical or mental health qualify as crimes against humanity when these are committed as part of a widespread or systematic attack directed against a civilian population. In particular this includes murder, extermination, enslavement, deportation, deprivation of freedom in violation of the basic principles of international law, > *Torture*, rape, sexual enslavement, enforced prostitution, enforced pregnancy, enforced sterilisation and similar forms of serious sexual violence, persecution on political, racial, nationalist, ethnic, cultural, religious or gender specific grounds, apartheid as well as the > *Enforced disappearance of persons*.

Cultural property

Cultural property includes movable and immovable objects that are important to the cultural heritage of humanity, and the buildings in which they are stored or displayed. In the event of an > *Armed conflict* cultural property is accorded special protection under international law. Not only are hostile acts against cultural property prohibited, but it is also forbidden to make use of such property in support of military operations or as a target of > *Reprisals*. An exception is only foreseen for cases of imperative military necessity. Protected items are marked by a distinctive sign. The way cultural property is to be treated is regulated in the > *Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict* of 1954 and its two Additional Protocols. The First Protocol concerns the protection of cultural property during an occupation (> *Occupied territory*), while the second strengthens the protection,

extending it to non-international > *Armed conflicts*, and also defines individual criminal responsibility.

Customary international law

Along with international treaties, custom is one of the two main sources of the rights and obligations of States. Customary international law is referred to when States adopt certain attitudes, believing that they are acting in conformity with an obligation. For customary law to develop, two elements are required: the systematic recurrence of the same pattern of behaviour of States and the conviction of these States that they are acting in conformity with a rule of international law.

Most of the provisions of international humanitarian law and in particular those concerning the > *Conduct of hostilities* are now also covered by customary international law and are thus binding on both State and > *Non-state actors*.



How the civilian population experiences war*

War destroys family life. This is the most widespread experience of war among the civilian population. 40 per cent of those interviewed had lost contact with a close relative. More than 34 per cent had been forced to leave their homes. 31 per cent of the people interviewed said that someone from their immediate family had died in the war.

* Results from the worldwide ICRC consultation, "People on War"

Depositary

The depositary of an international treaty is a State or an international organisation whose duties are primarily those of a notary and include the safekeeping of documents, certification of documents, the acceptance, safekeeping and transmission of messages, reservations and declarations. Switzerland is the depositary for a number of international conventions including the four > *Geneva Conventions* of 1949, > *Additional Protocols* I and II of 1977 and Additional Protocol III of 2005.

Direct participation in hostilities

Only combatants are authorised to take a direct part in hostilities, that is to say, in combat. A civilian who takes a direct part in hostilities loses his immunity from attacks for the time of this participation. Civilians are more and more involved in activities related to the conduct of hostilities. Moreover, the distinction between civilian and military functions is getting increasingly difficult. It is for this reason that the > *International Committee of the Red Cross* has started numerous consultations to clarify the notion.

Displaced persons

Internally displaced persons differ from > *Refugees* in that they are displaced within their own country. They are entitled to the protection accorded to all > *Civilians*. International humanitarian law expressly prohibits the forcible transfer of civilians in both international and non-international conflicts, defining it as a > *War crime*.

Dissemination

Respecting and ensuring respect for international humanitarian law is one of the most important obligations of the States Parties to the > *Geneva Conventions* of 1949. The States Parties are also required to

incorporate the provisions of the Geneva Conventions into their own national legislation and to work for the dissemination of international humanitarian law in peacetime as well as during > *Armed conflict*.

Distinction

International humanitarian law protects the civilian population and prohibits attacks against > *Civilians* and > *Civilian objects*. One of its ground rules is the principle of distinction: the parties to a conflict are obliged to conduct military operations exclusively against > *Military objectives* and must therefore always distinguish between > *Civilians* and > *Combatants* as well as between > *Civilian objects* and > *Military objectives*. The principle of distinction imposes limits on means and methods of warfare: any > *Weapon* or strategy that cannot be directed exclusively at a specific military objective is prohibited.



Women in war*

Women are almost as frequently victims of expulsion, family dispersion and destruction of property as men. The probability of the loss of a close family member is almost as high for women as for men. A total of 40 per cent of women lost contact with members of their families and 32 per cent were forced to leave their homes. 9 per cent knew someone who had been raped and another 9 per cent had been tortured.

* Results from the worldwide ICRC consultation, "People on War"

Dumdum bullets

Dumdum bullets were first used as ammunition for firearms at the end of the 19th century. On entering the body the bullet loses velocity, and unlike a conventional bullet the dumdum tears the body tissue and fragments bone.

At the first international peace conference in The Hague (1899) the use of dumdum bullets in > *Armed conflict* was prohibited on the grounds of cruelty and inhumanity. The bullet is named after a suburb of Kolkata (Calcutta), where it was invented.

Dunant, Henry

Swiss businessman, who in 1859 happened to witness the battle of Solferino in Lombardy. Shocked by what he saw, Henry Dunant published the book “A Memory of Solferino” in 1862, in which he proposed the creation in each European country of a voluntary aid organisation to relieve and support military medical staff. Each State would officially undertake to recognise the neutrality of military hospitals and medical staff, thus ensuring their protection. Already by 1863 the International Committee for Relief to the Wounded had been founded, which in 1876 was renamed the > *International Committee of the Red Cross (ICRC)*. The first international Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field was adopted in 1864 in Geneva.

Emblems (distinctive sign)

In > *Armed conflicts* recognisable emblems serve above all to protect military and civilian medical installations as well as the buildings of national relief organisations and their personnel from attack (protective function). This protection is guaranteed not by the emblems themselves but is based directly in international law.

In peacetime, the national Red Cross, Red Crescent and Red Crystal societies are allowed to use these emblems for activities that are compatible with their founding principles (indicative function).

The > *Geneva Conventions* of 1949 recognise the Red Cross, the Red Crescent and the the Red Lion and Sun (abandoned in 1980) as emblems. The Red Crystal was recognised as an additional emblem in 2005 for use by all States that for religious or other reasons do not wish to make use of the original emblems.

Other emblems with a protective function include the white flag for > *Combatants* who wish to parley or surrender, and a blue triangle on an orange ground, as the emblem of > *Civil defence*. Improper use of these emblems is prohibited by law.

Enforced disappearances and arbitrary detention

The concept of “enforced disappearance” refers to cases in which people are apprehended or abducted by agents of the State, their detention is not acknowledged and the fate and/or the place of detention of persons who have been abducted is kept secret. The persons concerned thus lose all legal protection.

Enforced disappearances violate International humanitarian law and > *Human rights*. No conflict and no national security considerations can justify such disappearances. The Convention for the Protection of All Persons from Enforced Disappearance was adopted in 2006 but has not yet come into force (status 2008). International humanitarian law nonetheless contains provisions on the enforced disappearance of persons following an armed conflict. In particular, their next of kin have the right to know what has happened to them.

Environment

Attacks and combat methods that can cause widespread, long-term and severe damage to the natural environment are expressly prohibited by the First > *Additional Protocol* to the > *Geneva Conventions*. The general principles of > *Customary international law* such as the principles of > *Distinction* and > *Proportionality* ensure protection of the environment.

Explosive remnants of war

Explosive remnants of war is the term for devices and munitions that lie in the ground unexploded and thus remain a serious threat to the civilian population. The Protocol on Explosive Remnants of War of 2003 annexed to the 1980 Convention on Certain Conventional Weapons stipulates that all States Parties mark and remove or destroy such remnants in areas under their control once hostilities have ended, or to provide the necessary information and support for clearance of the areas in question. The Protocol does not however limit the deployment of > *Weapons* that leave explosive remnants behind.

Fundamental guarantees

International humanitarian law provides fundamental guarantees to persons who do not benefit from more favourable treatment on the basis of the > *Geneva Conventions* of 1949. This minimal protection includes for example the > *Ban on torture* and other cruel, inhuman or degrading treatment, certain minimum standards with regard to the conditions of detention and a number of judicial guarantees.

Geneva Conventions

At the end of the Second World War the rules for the protection of non-combatants and individuals who are not, or no longer, participating in armed conflicts were strengthened. These rules apply mainly to > *Civilians*, the > *Wounded, the sick, the shipwrecked*, and to > *Prisoners of war*. The four Geneva Conventions of 1949 and the two > *Additional Protocols* of 1977 form the core of international humanitarian law. As both a State Party to and > *Depositary* of the Geneva Conventions and its Additional Protocols, Switzerland exercises special duties.

Genocide

Actions which aim at the complete or partial annihilation of a national, ethnic, racial or religious group qualify as genocide. These actions include notably:

- Killing
- Inflicting serious physical or mental injuries
- Measures designed to prevent births, or physically eliminate a particular group
- Enforced transfer of > *Children* to another group.

In 1948, the United Nations adopted a convention to prevent and punish genocide.

Good offices

General term used to describe the efforts of a third party to find a peaceful solution to a conflict between two or more States. The aim of good offices is to open a dialogue between the parties concerned. Good offices range from support of a technical or organisational nature (e.g. provision of a conference venue for the conflicting parties), to mediation, to participation in international > *Peacekeeping operations*. States

as well as the > *International Committee of the Red Cross (ICRC)* or the > *International Humanitarian Fact-Finding Commission* can use their good offices to help bring conflicts to an end.

Hague Conventions

At the two peace conferences in The Hague in 1899 and 1907, several conventions were adopted for the purpose of regulating the conduct of war. One notable achievement was a ban on the use of > *Weapons* which are of a nature to cause unnecessary suffering. To these was added the Hague Convention on the Protection of Cultural Property in the Event of > *Armed conflict* and its two > *Additional Protocols* of 1954 and 1999.

Hostage taking

Hostage taking is the unlawful capture of a person resulting in the detention and holding of this person for the purpose of forcing a third party to take a given course of action, failing which the hostage will not be released and will be in danger of loss of life or physical integrity. Hostage taking is considered a > *War crime* and is absolutely prohibited.

Humanitarian access

If the civilian population is not adequately provided with food supplies, international humanitarian law provides that relief actions which are humanitarian, impartial and non-discriminatory shall be undertaken, subject to the consent of the parties concerned. It also requires States to allow and facilitate rapid and unimpeded access of relief consignments. > *Civilians* have the right to turn to any organisation that could come to their aid. Despite this, humanitarian organisations often have no access to > *Civilians* in need of assistance and protection in > *Armed conflicts*, either because the parties to the conflict refuse permission, or because

of geographical or logistical difficulties, bureaucratic obstacles or security considerations.

Human rights

Human rights are the freedoms to which all individuals are entitled as human beings. Human rights are protected through a system of agreements, conventions, resolutions and declarations at the international level as well as through > *Customary international law*.

The international system for the protection of human rights is closely associated with international humanitarian law and international refugee law. But although closely related, these three branches are quite distinct in their field of application. Thus international humanitarian law (i.e. the four > *Geneva Conventions* of 1949 together with the > *Additional Protocols* of 1977) applies in principle only to > *Armed conflict*. Interna-



Limits to war*

For the large majority of people interviewed the principle of non-aggression against civilians is absolute. 64 per cent demand that combatants only be allowed to carry out attacks to weaken the enemy and that civilians must be spared. Only three per cent of those interviewed accepted the term total war in which both combatants and civilians may be attacked indiscriminately.

* Results from the worldwide ICRC consultation, "People on War"

tional refugee law (e.g. the Geneva Convention relating to the Status of Refugees of 1951 and the Additional Protocol of 1967) applies only to persons with recognised > *Refugee* status, and, to a limited extent, to asylum seekers. Nowadays, however, human rights apply to all people at all times, although international humanitarian law takes precedence in armed conflicts as *lex specialis*.

Implementation

The term implementation refers to the measures necessary to ensure that international humanitarian law is respected. States are the first ones to be responsible for implementation. They must in all cases respect and ensure respect for international humanitarian law, by incorporating its provisions in national legislation including in criminal law to ensure that > *War crimes* are punishable. Furthermore, governments must take all necessary measures to suppress violations. In the case of grave breaches, the States must themselves prosecute the perpetrators, or hand them over to another contracting party for prosecution. States are also responsible for disseminating international humanitarian law. At the international level the > *International Humanitarian Fact-Finding Commission*, the > *Ad Hoc Tribunals* and the > *International Criminal Court* are responsible for implementation.

Initials, signature and ratification

In the negotiation of an international treaty, the negotiators initial the bottom of every page of the agreement as authentication. The signature of the plenipotentiaries (country representatives with full negotiating powers) is affixed at the end of a treaty.

The signing ceremony marks the end of the treaty negotiations and obliges the signatory States to act in good faith in accordance with a treaty. Unless the treaty provides otherwise, the signature does not yet make the State a party to the treaty.

Ratification is the act which commits the State to respect the treaty at the international level. In Switzerland, the Federal Assembly (both chambers of Parliament) approves the ratification of treaties, with the exception of those which the Federal Council is allowed, by virtue of a law or a treaty, to sign and ratify alone.

Inquiry

An inquiry takes place when a serious violation or a grave breach of international humanitarian law is suspected. In this context, the distinction has to be made between a bilateral inquiry and an institutional inquiry, for which the > *International Humanitarian Fact-Finding Commission* was created by the First > *Additional Protocol* to the Geneva Conventions.

Internal disturbances

Internal disturbances and internal tensions lack the intensity of an > *Armed conflict*. In such cases it is human rights that apply rather than international humanitarian law.

International Committee of the Red Cross (ICRC)

The Geneva-based International Committee of the Red Cross (ICRC) was founded in 1876 as a successor to the International Committee for Relief to the Wounded. It is established under Swiss law as a neutral organisation independent of the government, and has a proper international personality based on the > *Geneva Conventions*. The ICRC plays a decisive role in the codification of international law.

The role and duties of the ICRC in an > *Armed conflict* are defined in the > *Geneva Conventions* of 1949 and their > *Additional Protocols*. The ICRC's most important tasks include visiting prisoners, searching for missing persons, humanitarian activities such as the provision of medi-

cal assistance and the supply of food, checking to ensure compliance with and dissemination of international humanitarian law.

International Conference of Red Cross and Red Crescent Societies

The International Conference of Red Cross and Red Crescent Societies is the highest consultative organ of the > *International Red Cross and Red Crescent Movement*. It generally meets once every four years. Its first meeting was in 1867 in Paris. Representatives of the Movement's member organisations as well as of the States Parties to the > *Geneva Conventions* come together to discuss humanitarian questions and take decisions in the form of resolutions.

International Criminal Court (ICC)

The International Criminal Court in The Hague prosecutes individuals for the most serious crimes of international concern: > *Genocide*, > *Crimes against humanity* and > *War crimes*. It will also have jurisdiction over the crime of > *Aggression*, once the international community has agreed on a definition of the concept of aggression. The ICC plays a complementary role, i.e. it only steps in once it becomes clear that the national authorities primarily responsible for prosecution are either unwilling or unable genuinely to carry out the necessary investigation and prosecution.

The legal basis for the ICC is the "Rome Statute" which came into force in 2002. To date (2008) 108 countries have acceded to the treaty, including Switzerland.

International Humanitarian Fact-Finding Commission

The International Humanitarian Fact-Finding Commission (IHFFC), which has its headquarter in Bern, is a permanent institution avail-

able to the international community to investigate allegations of serious violations of international humanitarian law. Its remit includes both international conflicts and conflicts within a single State. The IHFFC's 15 experts cannot initiate an investigation however until all the parties to a conflict have given their consent. The IHFFC differs from a law court in that it cannot deliver a verdict. Its role is limited to establishing the facts. It communicates its findings and recommendations to the parties to the conflict. The Commission can also offer its > *Good offices* in support of the application of international humanitarian law. The International Humanitarian Fact-Finding Commission is based on Article 90 of the First > *Additional Protocol* to the > *Geneva Conventions* of 1949. To date (2008) it has been recognised by 70 States.



Human dignity*

When is an act of war inadmissible? When does an act of war violate all conventions? In situations where such acts violate fundamental human dignity, say 48 per cent of the people interviewed in war zones. 37 per cent consider certain acts of war based on religious conviction to be wrong.

* Results from the worldwide ICRC consultation, "People on War"

International Red Cross and Red Crescent Movement

The International Red Cross and Red Crescent Movement includes the > *International Committee of the Red Cross (ICRC)*, the Red Cross and Red Crescent national societies and the International Federation of Red Cross and Red Crescent Societies.

The aim of the Movement is primarily to protect the lives, health and human dignity of people caught up in emergency situations, and particularly in an > *Armed conflict*. In this context its action follows > *Seven principles*. The Movement's members together with the States Parties to the > *Geneva Conventions* meet every four years for the > *International Conference of Red Cross and Red Crescent Societies*.

Internment

Detention ordered by the executive branch rather than by due process of law, without formal criminal charges being made. The internment of > *Prisoners of war* in the course of an international > *Armed conflict* comes under the provisions of the Third > *Geneva Convention*. The detailed provisions of international humanitarian law relate in particular to the place of detention, the physical and mental welfare of detainees, the possibility of work, the living conditions and the termination of imprisonment. In exceptional cases > *Civilians* may also be interned. The Fourth > *Geneva Convention* allows the parties to the conflict to adopt control and security measures in relation to > *Protected persons*. Such measures are subject to strict conditions and must be reviewed at least twice yearly by a tribunal or an authority appointed for that purpose.

Ius ad bellum, ius in bello

Ius ad bellum concerns the legality of the threat or use of military force. It is regulated by the Charter of the > *United Nations (UN)*.

Ius in bello only applies to an > *Armed conflict*, regardless of the legality of such a conflict. It regulates both the conduct of war and the

protection of victims. International humanitarian law and *ius in bello* are synonyms.

Journalists

With the exception of war correspondents accompanying armed forces, journalists are considered as > *Civilians* and are protected as such. The First > *Additional Protocol* to the > *Geneva Conventions* of 1949 gives specific protection to journalists and provides that they can obtain an identity card.

Lieber, Francis

During the American War of Independence, at the request of President Abraham Lincoln in 1863, a New York Professor Francis Lieber drafted a code of conduct for the army of the northern states (the Union Army). Known as the “Lieber Code” it is considered the first attempt to codify laws and customs in times of war. Lieber brought together in a single document most of the known codes and customs, creating through it the basis for the > *Hague Conventions* of 1899 and 1907.

Means and methods of warfare

Even in war not everything is allowed. Various means and methods are prohibited, including > *Perfidy*, spreading terror, starvation, pillage > *Hostage taking*, > *Reprisals* against the civilian population or against non-military objectives, deportation, enforced recruitment of > *Prisoners of war* or of > *Protected persons*, indiscriminate attacks, and denying protection to persons who are hors de combat. Weapons that cause > *Unnecessary suffering* are expressly prohibited. There are a number of conventions that limit the choice of > *Weapons* and prohibit the manufacture, stockpiling, transfer and deployment of specific weapons.

Mercenaries

Mercenaries participate in > *Armed conflicts* without belonging to the armed forces and without sharing the nationality of any of the parties to the conflict. Nor are they residents of areas occupied by any of the parties to the conflict. Mercenaries operate purely for their own material benefit. The First > *Additional Protocol* to the > *Geneva Conventions* (1977) denies mercenaries both the status of > *Combatants* and of > *Prisoners of war*.

Military necessity

The principle of military necessity is a general principle of the conduct of hostilities. It must at all times be demonstrable that military force is necessary, proportionate (> *Proportionality*), and lawful. The fundamental concern of international humanitarian law is to ensure that a balance is struck between military necessity and humanitarian considerations.

Military objectives

International humanitarian law distinguishes between > *Civilian objects* and military objectives. Military objectives are those whose nature, location, purpose or use make an effective contribution to military actions, and whose total or partial destruction, capture or neutralisation would provide a definite military advantage. Under international humanitarian law military personnel must at all times give full consideration to the nature of a potential target and opt exclusively for those that qualify as genuine military objectives.

Mines

Mines are weapons that explode in direct or indirect contact with people (or animals) or vehicles (anti-personnel mines/anti-vehicle mines). They can be deployed on top of the ground, below ground or near the ground surface or on a different type of surface. The Second Protocol to the 1980 Convention on Certain Conventional Weapons regulates the deployment and transfer of all types of land mines. The so-called “Ottawa Convention” of 1997 prohibits the use, stockpiling, manufacture, production and transfer of anti-personnel mines. It also addresses such issues as mine clearance and destruction, as well as measures to help the victims of mines. The Ottawa Convention has yet to be ratified however by some of the most important military powers.

Multinational forces

A multinational or international force is a coalition of several States that intervene militarily under the same mandate. An example of such a multinational force is the International Security Assistance Force (ISAF) that operates in Afghanistan. The ISAF is a NATO-led operation acting under a UN Security Council mandate. Multinational forces must respect international humanitarian law.

Neutral territory/zone

Neutral territory is the territory of a State that is not party to a conflict and has chosen to remain neutral, either permanently or in relation to a given conflict.

Neutral territories are to be distinguished from neutral zones (neutralised zones, hospital and safety zones, and demilitarised zones) set aside within the territory of one or more parties to the conflict, for example to receive > *Wounded and sick* as well as > *Civilians* and non-combatants.

Non-state actors

Non-state actors – including armed groups – are playing an ever greater role today in > *Armed conflicts*. Although they are not parties to international law treaties, non-state actors are obliged to respect the rules of > *Customary international law*. It follows that international humanitarian law is also legally binding on non-state actors.

Nuclear weapons

This category of weapon includes atomic bombs, hydrogen bombs (thermonuclear) and neutron bombs. While atomic bombs such as those dropped on Hiroshima and Nagasaki in 1945 are not banned as such by international law, they are affected by other bans – on testing, manufacture, stockpiling, etc. According to a 1996 advisory opinion of the International Court of Justice (ICJ), the use of nuclear weapons is usually a violation of international humanitarian law due to the scale of their impact, even though there is no comprehensive ban in > *Customary international law*, nor indeed in international treaty law.

Occupied territory

An occupied territory is one that is actually placed under the authority of a foreign armed force even if the occupation meets with no armed resistance.

International humanitarian law applies in all such situations regardless of whether or not the occupation is lawful. It governs the rights of the local population and the obligations of an occupying force. The latter is responsible for ensuring public order and security while respecting, unless absolutely prevented, the laws in force. Furthermore, the occupying force must ensure that the local population has access to food and medical care.

P

Peacekeeping operations

International peacekeeping operations are an instrument of the international community for conflict resolution and crisis management. Both civilian and military means may be employed to create stable and peaceful relations. Since the end of the Cold War such operations have further developed and today often involve a much wider variety of tasks, including peacekeeping and peace enforcement, conflict prevention, peace building and consolidation, as well as humanitarian operations. In peacekeeping and peace enforcement operations mandated by or under the auspices of the > *United Nations (UN)*, the troops involved must respect the provisions of international humanitarian law whenever actively involved in armed conflict with any of the parties.



The Geneva Conventions*

39 per cent of the people interviewed in crisis regions have already heard of the Geneva Conventions. Knowledge of the Conventions influences humanitarian attitudes: willingness to assist a wounded member of the enemy or one who has surrendered is higher. 38 per cent of those who know the Conventions would help. Among those who do not know about the Conventions, only 31 per cent would help. 56 per cent of all those interviewed believe that the Conventions prevent wars getting worse.

* Results from the worldwide ICRC consultation, "People on War"

Perfidy

International humanitarian law prohibits killing, injuring or capturing an adversary by resorting to perfidy. Acts of perfidy include any form of deception designed to win the confidence of an adversary and lead him to believe that he is entitled or obliged to accord protection under the rules of international humanitarian law, with the intention of betraying that confidence. An example of perfidy is to falsely lay claim to protected status through the misuse of signs or emblems and feigning incapacitation on the grounds of injuries or sickness.

Precaution

Although military operations can be legitimately carried out against > *Military objectives* only, this does not prevent civilians or civilian objects from being harmed. In order to protect them, international humanitarian law requires that, in the conduct of military operations, constant care shall be taken to spare civilians and civilian objects. This is what is called the principle of precaution.

Prisoners of war

Prisoners of war are > *Combatants* who have been captured by the enemy in an international > *Armed conflict*. The crews of merchant navy ships and commercial airlines as well as other persons who accompany armed forces without directly being a part of them are entitled to prisoner of war status.

The conditions of detention, and use as a workforce, are regulated by the Third > *Geneva Convention*. Prisoners of war have the right to be visited by delegates of the > *International Committee of the Red Cross (ICRC)*. Criminal charges may not be brought against them for acts of war that are lawful under international humanitarian law. Prisoners of war are not free to renounce their prisoners of war status.

The medical and religious personnel who administer to prisoners must

not be considered prisoners of war, although they have the right to the same treatment. > *Mercenaries* and > *Spies* on the other hand are not normally granted prisoner of war status.

Private military and security companies

There is a trend for States in conflict situations to pass on an increasing number of tasks to private military and security companies. These tasks include the protection not only of > *Civilians* and civilian infrastructure but even of army personnel and military infrastructure, the training of soldiers and police, and services in the areas of consultancy, logistics, the operation of weapons systems as well as intelligence gathering and in some cases combat support. These private actors are regularly in contact with persons who are protected by international humanitarian law, and sometimes even participate directly in hostilities. The employees of these companies are obliged to respect international humanitarian law, and the States concerned must ensure that they do so.

In 2006, Switzerland in collaboration with the > *International Committee of the Red Cross (ICRC)* launched an international initiative to ensure that private military and security companies operating in conflict zones respect international humanitarian law and > *Human rights*. In 2008 the initiative resulted in the release of the so-called Montreux Document.

Promotion of international humanitarian law

The global fight against > *Terrorism*, the growing phenomena of the > *Direct participation in hostilities* of civilians, the increase in the number of > *Non-state actors* involved in conflicts as well as technological developments are only some of the challenges that international humanitarian law has currently to face. Although the existing rules of international humanitarian law are sufficient to respond to these challenges, the implementation of these rules is still incomplete. It is therefore important that the actors concerned ensure a higher degree of respect for and

implementation of international humanitarian law, in particular through the reaffirmation and the dissemination of the existing rules as well as through the further clarification of some of them.

Proportionality

The principle of proportionality applies to every aspect of the conduct of hostilities. It is prohibited for example to carry out attacks against a > *Military objective* that would cause a disproportionate amount of harm to the civilian population, and against > *Civilian objectives*. Before launching an attack there is an obligation to assess whether or not the impact on the civilian population is excessive in relation to the concrete and direct military advantage anticipated.

Protected persons

Persons who in accordance with the > *Geneva Conventions* of 1949 have a right to special protection are considered “protected persons”. They include the > *Wounded, sick and shipwrecked*; > *Prisoners of war*; > *Civilians* on the territory of the enemy and under its control; civilians in an > *Occupied territory*. The following are usually counted as protected persons: medical and religious personnel, aid and civil protection staff, foreigners, > *Refugees* and stateless persons on the territory of a party to the conflict, as well as > *Women* and > *Children*.

Protecting powers

International humanitarian law provides that each party to a conflict can appoint a neutral State as a protecting power. The purpose of the protecting power is to safeguard the interests of the parties to the conflict and to ensure that international humanitarian law is duly respected, particularly with regard to the treatment of persons who have fallen into the hands of the enemy. It may also offer its > *Good offices* in an effort

to bring the conflict to an end. Today, it is usually the > *International Committee of the Red Cross (ICRC)* that takes on the role of protecting power.

Refugees

Anyone forced to leave their home country out of a justified fear of persecution meets the official definition of a “refugee”, whether the cause is his or her race, religion, or nationality, membership of a particular social group, or political convictions. The 1951 Convention relating to the Status of Refugees, supplemented by the Protocol of 1967, regulates the status of refugees. In this context, the principle of non-refoulement is particularly important. This prohibits the repatriation of individuals to States where they are in danger of life or physical integrity. The Office of the United Nations High Commissioner for Refugees (UNHCR) monitors the world refugee situation, protects and supports refugees with the help of partner humanitarian organisations, and assists them at the time of return and/or when starting life in a temporary country of asylum or in a new host country. Refugees enjoy special guarantees for the duration of an armed conflict.

Reprisals

International humanitarian law does not include any general prohibition of reprisals. There are however numerous provisions that prohibit specific types of reprisal, in particular reprisals against > *Protected persons* such as > *Civilians*, the wounded and > *Prisoners of war*. Also prohibited are reprisals against certain specific objects such as cultural property and places of worship, the natural environment, and installations that may cause a dangerous situation to occur (e.g. nuclear power stations and dams).

Seven fundamental principles

The > *International Red Cross and Red Crescent Movement* upholds seven fundamental principles:

- Humanity: Human suffering is prevented or alleviated, life and health protected and human dignity respected.
- Impartiality: Discrimination of any kind is prohibited.
- Neutrality: The Movement is neutral with respect to the military situation, politics, ethnicity, ideology and religion.
- Independence: The Movement is independent with respect to the military situation, politics, ideology, religion and economic interests.
- Voluntary service: Relief is provided on a voluntary and disinterested basis.
- Unity: In each country there is only one Red Cross society.
- Universality: The Movement is present worldwide.

Solferino

At this village in the north of Italy on 24 June 1859, the combined forces of Piedmont-Sardinia and France fought the army of the Austrian Empire. The battle left 40,000 dead and wounded on the field with no one to provide care. Solferino is linked with the name of > *Henry Dunant*, whose reaction to the slaughter on the battle field was to lead to the foundation of a relief organisation (> *International Committee of the Red Cross*).

Spies

A spy is a person who secretly attempts to obtain information of military importance in enemy controlled territory. Spies operating in civilian clothes are not entitled to the status of > *Combatants* and if captured are not accorded the status of > *Prisoners of war*. Spies in uniform on the other hand do count as combatants and are to be accorded prisoner of war status if captured.

T

Terrorism

The concept of “terrorism” has not yet been defined in > *International law*. International law, > *Human rights* and international humanitarian law nonetheless do prohibit many terrorism related acts and activities.

In fact, according to international humanitarian law, acts generally considered as acts of terrorism, such as strikes against the civilian population or > *Civilian Objects*, indiscriminate attacks or hostage taking, are prohibited both in international and non-international armed conflict. Moreover, international humanitarian law explicitly prohibits acts or threats of violence the primary purpose of which is to spread terror among the civilian population.

The so-called “War on Terror” is a political concept, not a legal one. International humanitarian law applies exclusively to > *Armed conflicts*, for example in Afghanistan and Iraq. It does not apply to other situations associated with the “War on Terror”, such as the attacks in Madrid and London in the years 2004 and 2005. This is not to say that terrorist acts and efforts to combat them are not covered by law: > *Human rights*, the relevant national laws and various international law conventions that deal with combating terrorism apply in such situations.

U

United Nations (UN)

The UN is an international organisation of truly global reach. It has 192 member States (summer 2008) and provides a forum for the discussion of all topics of international significance. Switzerland became a full member of the United Nations in 2002. Before that date (since 1948) the Confederation only had observer status though it was a member of many specialised agencies.

International humanitarian law is constantly evolving through new conventions adopted by the United Nations, particularly with regard to > *Weapons*. The > *Geneva Conventions* and their First > *Additional Protocol* require States Parties to take measures against serious violations of the Conventions or the Protocol in collaboration with the United Nations and in accordance with the UN Charter.

Unnecessary suffering

The prohibition with regard to causing unnecessary suffering is one of the fundamental principles of international humanitarian law. It imposes limits on the > *Means and methods of warfare*. > *Combatants* should suffer only the force necessary to put them hors de combat.

War crimes

War crimes are grave breaches of the provisions of the > *Geneva Conventions* of 1949 protecting persons and objects as well as other serious violations of the laws and customs that apply to an international or non-international > *Armed conflict*. War crimes include notably: wilful killing, > *Torture*, deportation, ill treatment, unlawful detention, > *Hostage taking*, wilful attacks against > *Civilians* and against > *Civilian objectives*, the recruitment of children in armed forces, and pillage. States are under an obligation to prosecute or extradite persons suspected of having committed war crimes on their territory.

Weapons

International humanitarian law imposes limitations, in some cases a total ban, on the use of weapons whose impact goes beyond the permissible purpose of weakening the enemy. Weapons are prohibited on the basis of three fundamental criteria: if their use inevitably leads to death; if they cause disproportionate injury or > *Unnecessary suffering*; if they strike indiscriminately. On the basis of these three criteria a number of specific weapons have been explicitly prohibited by international conventions, including > *Anti-personnel mines*, > *Cluster munitions*, blinding laser weapons, > *Dumdum bullets* as well as > *Biological* and > *Chemical weapons*. Some of these bans are part of > *Customary international law*. Although not expressly prohibited, the use of > *Nuclear weapons* is in basic contradiction to international humanitarian law, in particular with regard to the principles of > *Distinction* and > *Proportionality*.

Weapons of mass destruction

The definition of weapons of mass destruction includes > *Nuclear weapons* as well as > *Biological* and > *Chemical weapons*. They differ from other > *Weapons* in their capability to injure and kill people and destroy property on a massive scale, as well as to cause extensive and lasting damage to the environment.



Protection organisations*

Which organisations play a central role in protecting civilians in times of war? 42 per cent of those interviewed named the ICRC, the Red Cross / Red Crescent, as the most important organisation. The United Nations took second place (32 per cent) ahead of international humanitarian organisations and non-governmental organisations. Religious leaders ranked fourth (18 per cent). 84 per cent of the people interviewed were able to identify the Red Cross or Red Crescent emblem correctly.

* Results from the worldwide ICRC consultation, "People on War"

Women

International humanitarian law calls for the special protection of women. As > *Civilians* they are protected against any assault on their honour and physical integrity. Pregnant women and mothers of small children enjoy the same status as the sick and > *Wounded*, being transferred to safety zones and are first in line for assistance. Other special provisions protect women who are members of the armed forces, for example in the case of women who are > *Prisoners of war*, who are to be housed separately from men and are to be placed under the direct supervision of other women.

Wounded, sick and shipwrecked

Wounded and sick are defined as members of the armed forces or > *Civilians*, who are in need of medical attention and who renounce all acts of hostility. According to this definition, a wounded combatant who continues to make use of a weapon does not qualify.

International humanitarian law calls on all parties to a conflict to treat the wounded and sick in a humane way, i.e. to shelter, rescue and protect them and to provide medical care. No distinction is to be made, except of a medical nature, and > *Women* are given special consideration. The same rules apply to shipwrecked persons, i.e. to all members of the armed forces and civilians in danger at sea or in any other body of water. Wounded, sick and shipwrecked > *Combatants* are to be accorded > *Prisoner of war* status.



War crimes*

76 per cent of those interviewed believe that war criminals should face trial. 16 percent want to put the events behind them and forget them rather than proceed with judgement and punishment.

56 per cent believe that the punishment of war criminals should be carried out by their own government, courts, military or political authorities. 36 per cent are of the view, however, that a international criminal court should deal with such cases.

* Results from the worldwide ICRC consultation, "People on War"

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