

THE MAIN SOURCES OF INTERNATIONAL HUMANITARIAN LAW

TREATY LAW	CUSTOMARY LAW
<p>People protected by the four Geneva Conventions of 1949:</p> <ul style="list-style-type: none"> • the wounded and the sick on land (<i>First Geneva Convention</i>) • the wounded, the sick and the shipwrecked at sea (<i>Second Geneva Convention</i>) • prisoners of war (<i>Third Geneva Convention</i>) • civilians (<i>Fourth Geneva Convention</i>) <p>The four Geneva Conventions of 1949 are applicable in international armed conflict. One article – common Article 3 – specifically applies in non-international armed conflict. All 196 States are party to the four Geneva Conventions of 1949, making them universal.</p> <p>As a response to the development of new methods of combat, Additional Protocol I of 1977 confirmed the existing rules in international armed conflict and added further ones. Also, because most conflicts since the Second World War have been non-international, States decided to complement the rules of common Article 3 with a more developed framework of protection for people suffering the effects of non-international armed conflict by adopting Additional Protocol II of 1977.</p> <p>In 2005, a new additional instrument was adopted by States to remedy the problem of the recognized emblems (the red cross and the red crescent) being wrongly perceived in certain contexts as having religious, cultural or political connotations, and not being respected as neutral distinctive signs. Additional Protocol III introduced an additional emblem, the red crystal, which offers the same protection as the red cross and the red crescent emblems.</p> <p>In addition to the four Geneva Conventions of 1949 and their three Additional Protocols of 1977 and 2005, a large number of treaties and other legal instruments deal with issues relating to the conduct of hostilities and the protection of the civilian population. They contain rules applicable in international armed conflict, non-international armed conflict or both (the issues include the use of certain weapons, the protection of cultural property, the protection of children, and the prosecution and punishment of criminal offences).</p>	<p>Customary law is a body of rules that States regard as binding under international law. These rules are identified by looking at the practice of States (including official accounts of military operations and other official documents, military manuals, national legislation and case law). These rules (which are accepted as law) need to be distinguished from practices that States do not regard as obligatory (e.g. practices followed as a matter of policy rather than out of any sense of legal obligation).</p> <p>Customary law may fill certain gaps in the protection provided to victims of armed conflict by treaty law. These gaps result when</p> <ol style="list-style-type: none"> 1. certain States do not ratify certain treaties (e.g. the Additional Protocols or certain weapons conventions). (In the case of armed conflicts involving a coalition of States with different treaty-based obligations – because they have not all ratified the same treaties – customary law may represent those rules that are common to all members of the coalition. In this situation, customary law may serve as a base for drafting common rules of engagement.) <p>or when:</p> <ol style="list-style-type: none"> 2. treaty law lacks detailed rules on certain issues pertaining to non-international armed conflict. (This is the case with respect to the conduct of hostilities (military objectives, indiscriminate attacks, proportionality, precautions in attack), the protection of journalists, humanitarian assistance, and also in other areas such as the implementation of humanitarian law. Once again, customary law may fill the gap, because practice has created a substantial number of customary rules that are more detailed than the often rudimentary provisions in Additional Protocol II of 1977.)

THE BASIC PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law (IHL) can be defined as the branch of international law limiting the use of violence in armed conflicts by:

- a) sparing those who do not or no longer directly participate in hostilities;
- b) restricting it to the amount necessary to achieve the aim of the conflict, which – independently of the causes fought for – can only be to weaken the military potential of the enemy.

It is from this definition that the basic principles of IHL may already be drawn, namely:

- the distinction between civilians and combatants,
- the prohibition to attack those *hors de combat*,
- the prohibition to inflict unnecessary suffering,
- the principle of necessity, and
- the principle of proportionality.

This definition nevertheless also reveals the inherent limits of IHL:

- it does not prohibit the use of violence;
- it cannot protect all those affected by an armed conflict;
- it makes no distinction based on the purpose of the conflict; and
- it does not bar a party from overcoming the enemy; it presupposes that the parties to an armed conflict have rational aims and that those aims as such do not contradict IHL.