



**BRIEFING PAPER**

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# International Humanitarian Law: a primer

By Arabella Lang

**Inside:**

1. What does IHL do?
2. When and where does IHL apply?
3. What are the basic rules of IHL?
4. What are the sources of IHL?
5. What are the current challenges for IHL?



# Contents

<b>Summary</b>	<b>3</b>
<b>1. What does IHL do?</b>	<b>5</b>
<b>2. When and where does IHL apply?</b>	<b>6</b>
<b>3. What are the basic rules of IHL?</b>	<b>7</b>
3.1 Protected persons	7
3.2 Distinction	7
3.3 Proportionality	7
3.4 Precaution	7
3.5 Indiscriminate weapons	7
3.6 Protected emblems	8
<b>4. What are the sources of IHL?</b>	<b>9</b>
4.1 Treaties	9
4.2 Customary law	10
<b>5. What are the current challenges for IHL?</b>	<b>11</b>
5.1 Contemporary armed conflict	11
Asymmetric conflicts	11
Who counts as a civilian?	12
IACs and NIACs	12
5.2 New technologies	13
Cyber attacks	13
Drones	14
5.3 Sexual violence in conflict	14
5.4 Relationship with human rights law	15
5.5 Enforcement	16
International Committee of the Red Cross: 'guardian and promoter'	17
States: primary responsibility for enforcement	17
The EU	18
International criminal courts and tribunals	18
<b>Appendix: main IHL treaties</b>	<b>19</b>

## Summary

This Commons Library briefing paper is an introductory guide to International Humanitarian Law (IHL).

### What does IHL do?

IHL is the body of international rules that seeks to limit the damage caused by armed conflict through regulating its conduct.

Instead of trying to prevent armed conflict, it seeks a compromise between two basic underlying principles of humanity and military necessity. It does this by:

- requiring protection of people who do not or can no longer participate in hostilities, such as civilians, the sick or wounded and prisoners of war; and
- restricting the means and methods of warfare to prohibit attacks on civilians and indiscriminate or inhumane weapons.

IHL does not determine the circumstances in which a state may resort to using force.

### When and where does IHL apply?

IHL applies in any armed conflict between states, however it began, and regardless of how it is categorised by the parties. This is called International Armed Conflict (IAC).

It also applies in armed conflicts involving non-state actors. However, if the armed conflict is within a state, only a basic set of rules applies, and even then only if the armed conflict is sufficiently intense. This is called Non-International Armed Conflict (NIAC).

### What are the basic rules of IHL?

The basic rules of IHL include:

- **Protected persons:** people who do not or can no longer take part in hostilities must always be protected and treated with humanity, whichever side they are on.
- **Distinction:** parties to a conflict must distinguish between the civilian population and combatants (and between civilian objects and military objectives), in order to spare the civilian population and civilian property.
- **Proportionality:** a combatant or military objective may be attacked only after an assessment concluding that civilian losses are not expected to outweigh the military advantage foreseen.
- **Precaution:** parties to an armed conflict must take constant precautions to spare civilians or civilian property when choosing targets, means and methods of attack, and when deciding where to place their own military sites.

### What are the sources of IHL?

IHL is made up of treaties (including the four Geneva Conventions of 1949 and their additional protocols) and customary law.

Every state in the world has agreed to be bound by the Geneva Conventions, and many have also agreed to their additional protocols and to other IHL treaties.

Many of the rules set out in those treaties are also considered to be part of customary international law, which binds all states and other participants in armed conflict. There are further rules of customary international law which are not found in treaties.

Both treaties and customary law have evolved over the years. Many aspects have also been interpreted by judges in both domestic and international courts and tribunals, although not all of these interpretations are binding.

## What are the current challenges for IHL?

Current challenges for IHL include:

- the complex nature of contemporary armed conflict and how appropriate the IAC/NIAC classification remains;
- applicability of IHL to new technologies such as cyber attacks and drones;
- how to tackle sexual violence in conflict;
- the relationship with human rights law; and
- enforcement (there is no specific court or enforcement mechanism for IHL, so it is primarily up to states to enforce).

## Sources

Much of this note is taken from the International Committee of the Red Cross (ICRC) guide, [International Humanitarian Law: Answers to your questions](#) (2015 edition), or from elsewhere on the ICRC [War and Law](#) web pages.

# 1. What does IHL do?

International Humanitarian Law (IHL) – also known as the law of armed conflict, the law of war or *jus in bello* – is the body of international rules that seeks to limit the damage caused by armed conflict.

It recognises that injury, death and destruction are inevitable in armed conflict. Instead of trying to prevent this, IHL seeks to regulate the way armed conflict is conducted. Its two main approaches are to:

- require the protection of people who do not or can no longer participate in hostilities, such as civilians, the sick, wounded or shipwrecked and prisoners of war, regardless of allegiance or neutrality; and
- restrict the means and methods of warfare to prohibit attacks on civilians, reprisals, perfidy and indiscriminate or inhumane weapons or use of weapons.

IHL is a compromise between two basic principles that underlie the whole body of law:

- humanity (an undefined principle that is usually understood as promoting the humane treatment of people); and
- military necessity (only the degree and kind of force required to weaken the military capacity of the other party/parties to the conflict is permitted).

This compromise can also be seen as one between protecting persons and protecting the interests of states.

IHL does not determine the circumstances in which a state may resort to using force, or whether an armed conflict is legal. These are governed by the international law on the use of force, also known as *jus ad bellum*.

## 2. When and where does IHL apply?

IHL applies in any armed conflict between states, however it began, and regardless of how it is categorised by the parties. There is no need for a declaration of war.

It also applies in armed conflicts involving 'non-state actors'. However, if the armed conflict is within a state, only a basic set of rules applies, and even then only if the armed conflict is of a certain level of intensity.

There are two classifications of armed conflict in IHL:

- **International Armed Conflict (IAC):** whenever one or more states resort to the use of armed force against another state. An armed conflict between a state and an international organisation such as the UN is also classified as an IAC, and 'wars of national liberation' against colonial domination can also sometimes be classified as IACs. No threshold of violence needs to be passed to classify hostilities as an IAC.
- **Non-International Armed Conflict (NIAC):** sufficiently intense hostilities between the armed forces of a state and organised non-state armed groups, such as ISIS/Daesh, or between such groups. Most armed conflicts today are considered to be NIACs.

More provisions of IHL apply in IACs than in NIACs. For instance, there is no combatant or prisoner-of-war status in the rules governing NIACs.<sup>1</sup> That is because states have not been willing to grant members of organised non-state armed groups immunity from prosecution under domestic law for taking up arms. Some of the gaps are gradually being filled by customary law rules, which are often the same for all types of armed conflict, but there is still for instance no detailed legal framework on detention conditions and procedural safeguards for detention in NIACs.

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<sup>1</sup> See Common Article 3 Geneva Conventions, and Additional Protocol II, 1977

## 3. What are the basic rules of IHL?

At the heart of IHL are some basic rules, including:

- treating protected persons humanely;
- distinguishing between civilians and the military;
- attacking only when proportionate
- taking constant precautions to spare civilians

These give rise to more specific rules, such as the rules against indiscriminate weapons or methods of attack.

### 3.1 Protected persons

People who do not or can no longer take part in hostilities – such as civilians, the sick, wounded or shipwrecked, and prisoners of war – must always be protected and treated with humanity. They are entitled to respect for their lives and their wellbeing, whatever their allegiance or neutrality. An enemy who surrenders or who can no longer take part in the fighting must not be killed or wounded.

### 3.2 Distinction

All parties to a conflict must at all times distinguish between the civilian population and combatants (and between civilian objects and military objectives), in order to spare the civilian population and civilian property.

Neither the civilian population as a whole nor individual civilians may be attacked (unless they are taking a direct part in hostilities), either by targeting or by using reckless or indiscriminate weapons or methods of attack.

### 3.3 Proportionality

A combatant or military objective may be attacked only after an assessment concluding that civilian losses are not expected to outweigh the military advantage foreseen.

### 3.4 Precaution

Parties to an armed conflict must take constant precautions to spare civilians or civilian property when choosing targets, means and methods of attack, and when deciding where to place their own military sites.

### 3.5 Indiscriminate weapons

IHL prohibits using methods or means of attack that are indiscriminate or that are likely to cause superfluous injury or unnecessary suffering.

This means that some weapons are completely prohibited, for example anti-personnel mines, cluster munitions and chemical weapons.

Other weapons are restricted in their use. For example incendiary rockets and bombs cannot be delivered by air against a military objective in an area with a concentration of civilians.

There is no comprehensive or universal ban on using nuclear weapons: the International Court of Justice considers that their use would generally be contrary to IHL, but it could not categorically state whether the use or the threat of use of nuclear weapons was illegal under international law in case of an extreme threat to the existence of the state.<sup>2</sup>

### 3.6 Protected emblems

IHL also protects the neutral emblem of the red cross, and its siblings including the red crescent and red crystal, which are used for marking medical personnel and equipment.

Any use of a protected emblem, either during armed conflict or in peacetime, that is not expressly authorised by IHL constitutes misuse and is prohibited.

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<sup>2</sup> International Court of Justice, [\*Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons\*](#), 8 July 1996, paras 56, 86, 97

## 4. What are the sources of IHL?

### 4.1 Treaties

The core IHL treaties are the 1949 Geneva Conventions, adopted in the wake of the Second World War and now universally ratified.

The [ICRC](#) gives this summary of the four Geneva Conventions and their two Additional Protocols:

The four Geneva Conventions

The First Geneva Convention of 1949 covers the protection and care for the wounded and sick of armed conflict on land.

The Second Geneva Convention concerns the protection and care for the wounded, sick and shipwrecked of armed conflict at sea.

The Third Geneva Convention relates to the treatment of prisoners of war.

The Fourth Geneva Convention concerns the protection of civilians in time of war.

Since 1949 three Protocols have been added to the Geneva Conventions. Additional Protocol I of 1977 relates to the protection of victims of international armed conflicts. Additional Protocol II of the same year covers the protection of victims of non-international armed conflicts.

Additional Protocol III of 2005 created a new protective emblem, the red crystal, alongside the existing red cross and red crescent.

It also mentions some of the other main IHL treaties:

IHL also includes a series of other treaties relating to specific weapons, tactics or protected persons and objects such as the 1954 Convention on the Protection of Cultural Property during armed conflict, the 1972 Biological Weapons Convention, the 1980 Convention on Conventional Weapons, the 1993 Convention on Chemical Weapons and the 1997 Ottawa Convention on anti-personnel mines.

Until the 19<sup>th</sup> century, limits on the way warfare could be conducted were for the most part unwritten customs. But in 1864 the first Geneva Convention was adopted, with the aim that all soldiers wounded on the battlefield – whatever side they were on – would be taken care of without distinction. It also established the neutrality of medical personnel and adopted the ‘red cross’ emblem to protect medical personnel and facilities. Subsequently, governments revised and recast this Convention, and also began to introduce international rules (the Hague Conventions) governing the way wars were conducted, as well as a series of specific treaties on aspects of warfare.

Earlier treaties

The four Geneva Conventions of 1949 became the first to achieve universal ratification, with South Sudan becoming party to the Conventions in August 2013, and Palestine becoming party in 2014.

Additional Protocols I and II (1977) also enjoy high ratification records, with 174 ratifications of Additional Protocol I and 168 ratifications of Additional Protocol II (as of June 2015).

Some of the weapons conventions also have similarly high ratification records, with the Chemical Weapons Convention, Ottawa Convention, and Biological Weapons Convention all with ratification numbers over 150.<sup>3</sup>

A list of the main IHL treaties, taken from [ICRC website](#), is reproduced as an Appendix to this briefing paper.

## 4.2 Customary law

Customary law is an important aspect of IHL.

Customary law is formed when state practice is (a) sufficiently widespread, representative, frequent and uniform, and (b) accompanied by a belief among states that they are legally bound to act – or prohibited from acting – in certain ways. It is binding on all states except those that have persistently objected to the practice or rule in question since its inception.

Many IHL treaty provisions either reflect customary law (for example the principle of distinction between civilian and military personnel and objectives), or have since come to be accepted as a new rule of customary law (for example the definition of combatants).

There are also other provisions of customary law that are not covered by IHL treaties, for instance the duty to disobey a manifestly unlawful order.

The ICRC has a detailed [database of customary IHL](#) which gives both an analysis of the rules and a description of the practice of individual states, including the UK.

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<sup>3</sup> Emily Crawford, '[Armed Conflict, International](#)', *Max Planck Encyclopedia of Public International Law*, June 2015

## 5. What are the current challenges for IHL?

IHL has evolved considerably, adapting to new circumstances, societal norms and technologies. Yet it takes time for treaties and custom to catch up.

Some of the main challenges to IHL at the moment include:

- the complex nature of contemporary armed conflict;
- applicability to new technologies;
- sexual violence in conflict;
- the relationship with human rights law; and
- enforcement.

These are addressed in turn below.

### 5.1 Contemporary armed conflict

Since the adoption of the 1949 Geneva Conventions, there has been a sharp rise in the number of civilians who participate in armed conflict. This has several causes, including:

- conflicts being conducted increasingly in urban areas;
- the rise in conflicts involving non-state armed groups; and
- the increased use of private military and security companies.

IHL has responded by, for instance, introducing new categories of combatants and expanding the law on NIACs.<sup>4</sup>

But the asymmetry of contemporary armed conflict – with well-equipped state forces on one side and insurgents, guerrillas or armed terrorists on the other – means that civilians are not always being adequately protected.

There are also questions about whether the distinction between IAC and NIAC remains relevant or helpful in an era when most conflicts are within rather than between states, or involve armed groups acting from a 'host' state such as Syria.

The armed conflicts in Iraq, Afghanistan and Syria have highlighted particular issues, including the difficulty in determining exactly when civilians can be considered to be taking direct part in hostilities, and the connected issue of the legality of so-called targeted killing where suspected terrorists are killed outside active hostilities.

#### Asymmetric conflicts

Where state forces are fighting non-state armed groups, the well-equipped state forces tend to make an effort to comply with IHL, whereas the insurgents, guerrillas or armed terrorists, with fewer resources, often camouflage themselves among the civilian population.

Non-state armed groups have little incentive to respect IHL, not least because states (the US in particular but increasingly other states

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<sup>4</sup> Additional Protocols I and II, 1977

including the UK) assert the right to target them anywhere, and to detain them without trial (most notoriously Guantanamo Bay). Nor do non-state armed groups tend to enforce IHL with courts martial for trying serious violations of IHL by their own combatants or those of their enemy.

Moreover, this asymmetry can result in state forces killing civilians when returning fire from insurgents. For example a NATO air strike in Afghanistan in 2012, in response to Taliban attacks on Afghan and coalition troops, killed 18 civilians.<sup>5</sup>

### Who counts as a civilian?

The ICRC considers that there are two circumstances when civilians lose their protected status:

- during periods when they directly participate in hostilities by committing specific hostile acts (protected status then returns as soon as they stop perpetrating the hostile act); and
- if they are members of organised non-state armed groups who have a 'continuous combat function', even at times when they are not actively engaged in the commission of a hostile act.<sup>6</sup>

It maintains that civilians who 'spontaneously, sporadically, or in an unorganised manner ... directly participate in hostilities' should however continue to be considered civilians under international law.

These requirements could be very difficult to apply in practice. How is a soldier confronted with a civilian who has been directly participating in hostilities to know whether he has now regained his protected status or has a 'continuous combat function'? As an ICRC blog argues, 'To make such speculations the basis for decisions over life or death is dangerous, including for the great majority of harmless civilians'.<sup>7</sup>

### IACs and NIACs

Nearly all the major IHL treaties have been directed towards regulating IACs. However, since the end of the Second World War, most armed conflicts have been NIACs, which are much more lightly regulated.

The ICRC considers that there are no armed conflicts that are not either IACs or NIACs, and therefore nobody is without some protection under IHL:

The increasing complexity of armed conflicts has given rise to discussions over the notion and typology of armed conflicts, including whether the IHL classification of conflicts into international (IAC) and non-international (NIAC) is sufficient to encompass the types of armed conflicts taking place today. The ICRC believes that to be the case, while recognizing that there is an increasing number of different factual scenarios that may be classified as NIAC.<sup>8</sup>

<sup>5</sup> ['Nato apologises for Afghan civilian deaths in Logar'](#), *BBC news online*, 8 June 2012

<sup>6</sup> ICRC, [Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law](#), 2009

<sup>7</sup> Marco Sassòli, ['Direct participation in hostilities: what are the issues and where are the controversies?'](#), *ICRC Intercross blog*, 8 September 2015

<sup>8</sup> ICRC, ['Contemporary challenges for IHL'](#), 2 May 2013

Common Art. 3 Geneva Conventions I–IV and Additional Protocol II do offer some protections in NIACs, but these come nowhere near the comprehensive protections of the Geneva Conventions and Additional Protocol I. Customary international law has filled in some of the gaps, but many remain.

Emily Crawford, Director of the Sydney Centre for International Law, suggests that a new IHL treaty extending protections to all types of armed conflict is unlikely at the moment:

Given the current political climate, it seems unlikely that States will draft, let alone adopt, a new treaty or expand the Geneva protections to all types of armed conflict.<sup>9</sup>

## 5.2 New technologies

The development of new technologies such as cyber attacks and drones poses challenges for IHL, even though IHL applies regardless of the means of attack:

A wide array of new technologies has entered the modern battlefield. Cyberspace has opened up a potentially new war-fighting domain. Remote controlled weapons systems such as drones are increasingly being used by the parties to armed conflicts. Automated weapons systems are also on the rise, and certain autonomous systems such as combat robots are being considered for future use on the battlefield. There can be no doubt that IHL applies to these new weapons and the employment of new technology in warfare. However, these new means and methods of warfare pose legal and practical challenges in terms of ensuring their use complies with existing IHL norms, and also that due regard is given to the foreseeable humanitarian impact of their use.<sup>10</sup>

### Cyber attacks

In 2013 an international group of experts published [The Tallinn Manual on the International Law Applicable to Cyber Warfare](#). It found that IHL applies to cyber warfare as it would to any other operations in the context of both IACs and NIACs, despite the absence of any specific provisions.

But the challenges included how to define a cyber attack under Additional Protocol I, the related issue of whether cyber operations that did not injure civilians or damage civilian property were permissible, and when to attribute a cyber operation to a state.

The group concluded that it is up to individual states to shape the evolution of the law through state practice, especially where there is disagreement over interpretation.

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<sup>9</sup> Emily Crawford, '[Armed Conflict, International](#)', *Max Planck Encyclopedia of Public International Law*, June 2015

<sup>10</sup> ICRC, '[Contemporary challenges for IHL](#)', 2 May 2013

## Drones

The use of drones, increasingly to attack non-state targets in another state's territory, is a particularly current issue for IHL:

Drones

According to [one] school of thought ... when a State uses force in the territory of a host State – including by means of drones – which is directed not at the latter per se but at an organized non-State armed group operating from its territory, such use of force would constitute a non-international armed conflict (NIAC) between the attacking State and the non-State armed group, but not an IAC between the two States themselves. This approach risks standing a well-established IHL precept on its head: that any use of force by one State in the territory of another without the latter's consent constitutes an international armed conflict.<sup>11</sup>

The UK's recent drone attack in Syria, in which two British citizens were killed, raised complex questions of IHL as well as human rights law and the law on resorting to force (*jus ad bellum*). A Library briefing paper, [UK drone attack in Syria: legal questions](#),<sup>12</sup> analyses these issues; and the [Joint Committee on Human Rights](#) is conducting an inquiry into the use of drones for targeted killing.

Autonomous drones, which make their own targeting 'decisions', are not yet an option, either practically or politically, but they potentially raise very challenging questions of how they assess the identity of their targets and the proportionality of their attack, as well as about responsibility for breaches of IHL.

## 5.3 Sexual violence in conflict

Rape was not at first considered a 'grave breach' of the Geneva Conventions. But jurisprudence from the 1990s onwards, from tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), established that rape is a war crime and can amount to a crime against humanity if it is part of a widespread or systematic attack directed against a civilian population.

Rape and other forms of sexual violence are now included in the lists of war crimes and crimes against humanity in the [1998 Rome Statute of the International Criminal Court](#) (ICC), and the ICC's '[Elements of Crimes](#)' give further detail. They are also prohibited by various human rights treaties.<sup>13</sup>

<sup>11</sup> Jelena Pejic, '[Extraterritorial targeting by means of armed drones: Some legal implications](#)', *International Review of the Red Cross*, 7 May 2015, p10

<sup>12</sup> CBP 7332, 20 October 2015

<sup>13</sup> There is an old but still useful summary of international law relating to sexual violence on page 37 onwards of the [1995 UNHCR Guidelines on Preventing and Responding to Violence Against Refugees](#). A 2015 ICRC legal factsheet on [Prevention and Criminal Repression of Rape and Other forms of Sexual Violence during Armed Conflicts](#) gives a more detailed but less wide-ranging description. And pages 16 to 17 of a publication from Office of the UN Special Representative for Children and Armed Conflict, [The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation](#) (November 2013) also goes through the relevant international law. The [International Committee of the Red Cross \(ICRC\) website page on sexual violence](#) has lots of other useful links too.

The UK has taken a particular interest in tackling sexual violence in conflict, launching the [Preventing Sexual Violence in Conflict Initiative](#) in 2012:

The Preventing Sexual Violence in Conflict Initiative (PSVI) aims to address the culture of impunity, ensure more perpetrators are brought to justice and ensure better support for survivors. We're campaigning to raise awareness, rally global action, promote international coherence and increase the political will and capacity of states to do more.

At a conference in London in 2014 the UK introduced an [International protocol on documentation and investigation of sexual violence in conflict](#) to try to increase prosecutions. This is one of many non-binding guidelines and declarations on the subject. There are also lots of UN Security Council Resolutions relating to it.

## 5.4 Relationship with human rights law

IHL and human rights law are complementary – yet sometimes conflicting – bodies of law.

International human rights law (IHRL) is normally considered to apply even during an armed conflict,<sup>14</sup> and some of the rules of the two bodies of law are similar (for instance the prevention of torture or cruel treatment, basic fair trial rights and no discrimination).

But they also differ in important ways, as the examples in the following table show:

	<b>Humanitarian law</b>	<b>Human rights law</b>
When?	Applies only in armed conflict	Applies at all times, albeit with some derogations allowed during wartime
Where?	Necessarily applies extraterritorially (ie outside the territory of the state concerned)	Circumstances in which human rights law apply extraterritorially are not yet settled (see below)
Who?	Binds all parties to a conflict	Applies only to states
Lethal force	Recognises that the use of lethal force is inherent to waging war, so does not protect combatants from attack, as long as precautions are taken to avoid civilian casualties	Provides that 'the intentional use of lethal force may not exceed what is strictly or absolutely necessary to protect life'. <sup>15</sup> However, the <a href="#">European Convention on Human Rights</a> (ECHR), for example, permits some

<sup>14</sup> See for example UN Human Rights Committee GC 31, 2004, para 10

<sup>15</sup> International Committee of the Red Cross, [International Humanitarian Law and the challenges of contemporary armed conflicts – Report](#), October 2011, p19. See also *International Covenant on Civil and Political Rights*, Article 6(1)

		derogations from the right to life during war. <sup>16</sup>
Detention	Internment is not prohibited during armed conflict and, in general, a judicial review of the lawfulness of the detention is not required	Anyone who has been detained has the right to judicial review of the lawfulness of his or her detention.

During armed conflict, if IHL and human rights law clash, it is usually accepted that IHL should take precedence.

Customary IHRL and many international human rights treaties have universal (or near-universal) scope, and can apply to everyone under the effective control of the acting state. But, like the Geneva Conventions, most human rights treaties do not have their own courts; and most have not been incorporated into UK law so their principles do not automatically bind UK courts as a matter of domestic law.

The European Convention on Human Rights, on the other hand, is directly enforceable in the UK: it has the European Court of Human Rights (ECtHR) to interpret and apply it, and is also applied in the UK through the *Human Rights Act 1998*. And although as a general principle the Convention does not apply outside the jurisdiction of its Member States,<sup>17</sup> during the last decade or so the ECtHR has progressively extended the extra-territorial application of the Convention. In the 2011 case of *Al-Skeini*, the ECtHR said that it will apply extra-territorially where state agents exercise 'authority and control', or where the state exercises 'effective control' over an area as a consequence of (lawful or unlawful) military action.<sup>18</sup>

Extra-territorial  
application

The ICRC guide, [International Humanitarian Law: Answers to your questions](#), gives much more detail on the relationship between the two bodies of law (see 'Question 9: What is the difference between IHL and human rights law?').

## 5.5 Enforcement

Serious violations of IHL continue.<sup>19</sup> A September 2015 ICRC blog article argues that enforcement is one of the biggest difficulties for IHL:

Contemporary armed conflicts – like those in Syria, South Sudan or Ukraine, to name but a few – illustrate how lack of respect for the law has become one of the biggest challenges facing IHL today.<sup>20</sup>

<sup>16</sup> Article 15

<sup>17</sup> Article 1 ECHR: 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention'.

<sup>18</sup> *Al-Skeini and Others v United Kingdom*, 7 July 2011 para 130ff

<sup>19</sup> For instance the [Lawfare](#) blog suggests that 'if initial reports are confirmed, [October 2015] may go down as one of the gravest in recent memory for hospitals in war':

<sup>20</sup> Knut Dörmann & Jose Serralvo, '[The obligation to prevent violations of International Humanitarian Law](#)', ICRC 'Intercross' blog, 24 September 2015

There is no specific court or enforcement mechanism for IHL: prosecution is a matter for states and, more recently, international criminal tribunals.

### **International Committee of the Red Cross: 'guardian and promoter'**

The ICRC is the 'guardian and promoter' of IHL, as well as protecting and assisting victims of armed conflict and other violent situations.

It encourages governments to implement IHL, teaches its provisions (for example to the armed forces), and works with governments and national Red Cross and Red Crescent societies to promote knowledge of the law. It also makes confidential representations to the relevant authorities in the event of violations of IHL, and reserves the right to issue a public denunciation of specific violations of IHL in certain circumstances.<sup>21</sup>

But the ICRC is not a court, and its interpretation of the Geneva Conventions is not final.

The ICRC's view is that continuing violations and gaps in prosecution are an issue for any area of law, and not a reason for giving up. Instead it sees this as a reason for continuing its efforts to promote IHL, encourage compliance and respond to violations.

### **States: primary responsibility for enforcement**

States have the primary responsibility for ensuring that IHL is applied, and for prosecuting breaches of it.

They have an obligation to 'respect and ensure respect' for IHL in all circumstances, under Common Article 1 to the 1949 Geneva Conventions, Article 1 of the 1977 Additional Protocol, and to some extent customary IHL. This means not only that they must do everything they can to guarantee that their own agencies abide by the rules of the Geneva Conventions, but also that their citizens, as well as parties to armed conflicts that they are not involved in, respect the Geneva Conventions.<sup>22</sup>

The Geneva Conventions also oblige states parties to 'provide effective penal sanctions' for grave breaches of the Conventions, and extradite or prosecute suspects irrespective of their nationality or where the crime was committed. Prosecuting people responsible for perpetrating grave breaches is considered in the universal interest of all states, as these offences are perceived as attacks on the international order. The UK has created a series of domestic criminal offences under various [Geneva Conventions Acts](#), although these are rarely applied extraterritorially.

Enforcement is an issue for all international law, but states generally see it as being in their own interests to comply with international laws which they have agreed to. International law is founded on consensus and the consent of states to assume obligations that limit their

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<sup>21</sup> See ICRC guide, [International Humanitarian Law: Answers to your questions](#) (2015 edition), p91

<sup>22</sup> Knut Dörmann & Jose Serralvo, '[The obligation to prevent violations of International Humanitarian Law](#)', *ICRC 'Intercross' blog*, 24 September 2015

behaviour. And there can be consequences for breaches. For example, the UN Security Council can authorise diplomatic and economic sanctions, or even the use of force. Public opinion can also be an effective sanction.

## The EU

The EU has not itself ratified the Geneva Conventions, though all the EU member states have.

The EU nevertheless considers itself bound by international humanitarian law. It has published [guidelines on promoting compliance with IHL](#), which include identifying situations where international humanitarian law is applicable by the responsible EU bodies, as well as a Council Common Position on the ICC and the EU guidelines and policies on [human rights dialogues](#), [torture](#), [children and armed conflict](#) and defenders of human rights.

## International criminal courts and tribunals

The development of international criminal tribunals in recent decades has made a huge contribution to the enforcement of IHL.

Tribunals for Rwanda and the former Yugoslavia applied IHL and other international law to convict people for serious violations during those conflicts. Their rulings have not only resulted in many convictions which would probably not have happened otherwise, but have also provided a rich store of jurisprudence on how IHL should be interpreted.

And now the [International Criminal Court](#) has jurisdiction to prosecute serious violations of IHL in some circumstances when domestic courts are unable or unwilling to do so.

However, the ICC has however been slow to bring results, with its first conviction handed down only in 2012. It has also been vociferously criticised for an anti-African bias. Another general criticism is that it could hinder alternative solutions to end violence, because its member states have an obligation to surrender to the ICC anyone with an ICC arrest warrant outstanding. The obverse of this is that dependency on the cooperation of its member states can seriously impede the ICC's effectiveness: twelve arrest warrants, including notoriously that for President Al Bashir of Sudan, remain unexecuted.

## Appendix: main IHL treaties

[Taken from the ICRC guide [\*International Humanitarian Law: Answers to your questions\*](#), 22 January 2015]

1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field

1868 St. Petersburg Declaration (prohibiting the use of certain projectiles in wartime)

1899 The Hague Conventions respecting the Laws and Customs of War on Land, and the adaptation to maritime warfare of the principles of the 1864 Geneva Convention

1906 Review and development of the 1864 Geneva Convention

1907 Review of The Hague Conventions of 1899 and adoption of new Conventions

1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

1929 Two Geneva Conventions:

- Review and development of the 1906 Geneva Convention
- Geneva Convention relative to the Treatment of Prisoners of War

1949 Four Geneva Conventions:

I. Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

II. Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

III. Treatment of Prisoners of War

IV. Protection of Civilian Persons in Time of War

1954 The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction

1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

1977 Two Protocols additional to the four 1949 Geneva Conventions, strengthening protection for victims of international (Additional Protocol I) and non-international (Additional Protocol II) armed conflicts

1980 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 (CCW). The CCW includes:

- Protocol (I) on Non-Detectable Fragments
- Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices
- Protocol (III) on Prohibitions or Restrictions on the Use of Incendiary Weapons

1989 Convention on the Rights of the Child (Article 38)

1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

1995 Protocol (IV) on Blinding Laser Weapons (added to the CCW of 1980)

1996 Revised Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II [revised] to the CCW of 1980)

1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

1998 Rome Statute of the International Criminal Court

1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict

2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

2001 Amendment to Article I of the CCW of 1980

2003 Protocol (V) on Explosive Remnants of War (added to the CCW of 1980)

2005 Protocol additional to the Geneva Conventions, and relating to the Adoption of an Additional Distinctive Emblem (Additional Protocol III)

2006 International Convention for the Protection of All Persons from Enforced Disappearance

2008 Convention on Cluster Munitions

2013 Arms Trade Treaty

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