

# Overview of International Humanitarian Law

## Key Elements

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Imagine a world where war doesn't simply mean destruction and blind violence. A world where civilians, the wounded, and prisoners are protected by a set of universal rules. This world exists thanks to international humanitarian law (IHL), also known as the Law of War.

IHL acts as an essential shield against the horrors of war. Its aim is to limit the suffering of armed conflicts and protect those who are not taking part in the fighting. Yet, this shield is fragile and faces new challenges today.

One of these major challenges lies in the respect for IHL by parties in conflict. Indeed, every day serious violations occur, such as attacks on civilians, the use of indiscriminate weapons, and sexual violence. Moreover, IHL struggles to adapt to the changing nature of conflicts, particularly with the rise of conflicts involving the use of advanced warfare technologies. Furthermore, mechanisms for monitoring and sanctioning violations of IHL often prove ineffective. The International Criminal Court, for example, can only prosecute the most serious crimes, making it difficult to hold perpetrators accountable.

Despite these obstacles, IHL remains an essential tool for protecting vulnerable individuals during armed conflicts. It is imperative to continue strengthening it and ensuring its respect to minimize the human suffering caused by war. As armed conflicts continue to ravage the world, it is therefore more important than ever to understand IHL and defend its fundamental values.

### Definition and objectives

International humanitarian law (IHL), also known as the law of war, consists of a set of rules aimed at restricting the impacts of armed conflicts and ensuring the protection of individuals who are not participating in or are no longer involved in combat<sup>1</sup>. Fundamentally, its overarching goal is to reduce the human suffering caused by war. Its main objectives are<sup>2</sup> :

#### **1. To limit the means and methods of warfare<sup>3</sup>, including:**

<sup>1</sup> ICRC, Advisory service on international humanitarian law, What is International Humanitarian Law ? 2004, available on : [https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf); European Commission, International Humanitarian Law : What is it ?, available on: [https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law\\_en](https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/international-humanitarian-law_en) ; Federal Department of Foreign Affairs FDFA, International humanitarian law, available on: <https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law.html>; United Nations, Fact Sheet No.13, International Humanitarian Law and Human Rights : Introduction, available on: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet13en.pdf>; N. MELZER, E. KUSTER, Droit international humanitaire : introduction détaillée, CICR, 2018, available on: <https://library.icrc.org/library/docs/DOC/icrc-001-4231.pdf>.

<sup>2</sup> ICRC, Advisory service on international humanitarian law, *op.cit.*; European Commission, *op.cit.*; FDFA, *op.cit.*; United Nations, *op.cit.*

<sup>3</sup> Amnesty International, Le droit international humanitaire, available on : <https://www.amnesty.ch/fr/themes/droits-humains/droit-humanitaire#:~:text=Le%20DIH%20part%20donc%20de,principes%20de%20base%20du%20DIH> ; CICR, Méthodes et moyens de guerre, 29 october 2010, available on : <https://www.icrc.org/fr/document/methodes-moyens-de-guerre>.

### *1.1. Prohibiting cruel or inhumane weapons and practices*

IHL prohibits the use of certain particularly cruel or inhumane weapons and practices. For example, the following weapons are prohibited<sup>4</sup>:

- Chemical and biological weapons
- Weapons ensuring a fatal outcome
- Weapons likely to cause unnecessary suffering
- Cluster munitions
- Weapons capable of causing serious and lasting damage to the environment

### *1.2. Respecting fundamental principles such as the principles of distinction, precaution, and proportionality*

Respecting the fundamental principles of international humanitarian law, such as the principles of distinction and proportionality, is obviously essential to limit the means and methods of warfare<sup>5</sup>.

The principle of distinction requires distinguishing at all times between civilians and combatants, in order to protect non-combatants and objects essential for their survival. IHL also mandates that attacks be directed only against military objectives. This is further affirmed by Article 51 of Additional Protocol I, which prohibits attacks that do not distinguish between military objectives and civilian objects<sup>6</sup>. By adhering to this principle, conflicting parties reduce the harm inflicted on civilian populations and thereby avoid unnecessary suffering.

The principle of precaution requires that parties to the conflict take all possible precautions to avoid or minimize harm to civilians and civilian objects. This is also confirmed in Article 57 of Additional Protocol I, which prohibits attacks directed against objects of a civilian nature<sup>7</sup>.

The principle of proportionality, on the other hand, demands that collateral damage to civilians and civilian objects does not exceed the direct military advantage expected from the attack. This is also confirmed by Article 52 of Additional Protocol I, which prohibits attacks causing excessive collateral damage<sup>8</sup>. By adhering to this principle, it contributes to limiting violence and preserving human dignity during armed conflicts.

It is important to note that adhering to fundamental principles such as the principles of distinction, precaution, and proportionality is also a rule applicable to parties to an armed conflict during the planning and execution of attacks<sup>9</sup>. Nevertheless, it is important to note that

<sup>4</sup> Département fédéral des affaires étrangères DFAE, Interdiction et limitation de certaines armes, available on : <https://www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droit-international-public/droit-international-humanitaire/interdiction-limitation-armes-classiques.html>.

<sup>5</sup> *Ibid.*

<sup>6</sup> Protocole additionnel aux conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (protocole I), du 8 juin 1977 (V), available on : <https://ihl-databases.icrc.org/assets/treaties/470-PA-I-FR.pdf>.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Médecins sans frontières, The practical Guide to Humanitarian law : Attacks, n.d., available on : <https://guide-humanitarian-law.org/content/article/3/attacks/#:~:text=The%20basic%20rule%20governing,operations%20only%20against%20military%20objects.>

there may be exceptions to these rules in certain circumstances<sup>10</sup>. Adherence to the rules applicable to attacks is therefore essential to minimize human suffering in armed conflicts.

## 2. To protect individuals :

The protection of individuals and the prohibition of attacks against them are also rules applicable to parties in an armed conflict during the planning and execution of attacks. These rules aim to minimize harm to individuals and civilian property and to protect individuals who are not participating in or are no longer involved in combat. The rules applicable to attacks notably include the protection of individuals through the prohibition of certain attacks. Indeed, certain attacks are prohibited by IHL, including<sup>11</sup> attacks against civilian persons, by prohibiting direct attacks and limiting indirect attacks<sup>12</sup>; attacks against the wounded and sick, by guaranteeing the right to medical care for all the wounded and sick without distinction of affiliation<sup>13</sup>; attacks against civilian objects, places of worship, hospitals, or medical units; attacks against personnel, who are other non-combatants not participating in hostilities, such as medical, religious, journalistic, observer, or humanitarian personnel; as well as attacks against prisoners of war, by establishing minimum rules of treatment for them<sup>14</sup>. These categories will be analyzed in point V.

## 3. To promote human dignity<sup>15</sup>, notably:

### 3.1. *By respecting fundamental rights*

IHL emphasizes that the fundamental rights of the human person, such as the right to life, freedom, and dignity, must be respected even in times of war. It is indeed crucial to promote human dignity through the respect for fundamental rights. By ensuring that individuals are treated with humanity and respect, the aim is to protect civilian populations from unnecessary violence and to ensure that the principles of distinction and proportionality are respected, even in the most difficult circumstances. In this sense, respect for fundamental rights promotes a culture of respect, compassion, and solidarity, which is fundamental for the promotion of human dignity in all conflict contexts<sup>16</sup>.

<sup>10</sup> ICRC, Inter-Parliamentary Union, International Humanitarian Law, N°25, 2016, available on : [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjA98T2tduEAxUigv0HHYdHAs8QFnoECBsQAQ&url=https%3A%2F%2Fwww.icrc.org%2Fen%2Fdownload%2Ffile%2F40569%2Fen\\_-\\_handbook\\_humanitarian\\_law\\_-\\_web.pdf&usq=AOvVaw0Zs5wU7jWr9iW59Qu3UGN6&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjA98T2tduEAxUigv0HHYdHAs8QFnoECBsQAQ&url=https%3A%2F%2Fwww.icrc.org%2Fen%2Fdownload%2Ffile%2F40569%2Fen_-_handbook_humanitarian_law_-_web.pdf&usq=AOvVaw0Zs5wU7jWr9iW59Qu3UGN6&opi=89978449).

<sup>11</sup> CRS, Le droit humanitaire, available on : <https://www.redcross.ch/fr/a-propos-de-nous/mouvement-international-de-la-croix-rouge-et-du-croissant-rouge/le-droit-international-humanitaire>; CICR, Les personnes protégées, 29 octobre 2010, available on : <https://www.icrc.org/fr/document/personnes-protgees-dih>; Médecins sans frontières, Dictionnaire pratique du droit humanitaire, available on : <https://dictionnaire-droit-humanitaire.org/content/article/2/personnes-protgees/>.

<sup>12</sup> Convention de Genève relative à la protection des personnes civiles en temps de guerre (IV), du 12 août 1949, available on : <https://ihl-databases.icrc.org/fr/ihl-treaties/gciv-1949>.

<sup>13</sup> Convention de Genève et protocoles additionnels I (A) : Convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, du 12 août 1949, art. 12-18, available on : <https://ihl-databases.icrc.org/fr/ihl-treaties/gci-1949/article-8/commentary/2016>.

<sup>14</sup> *Ibid*, art. 12-18.

<sup>15</sup> Amnesty International, *op.cit.*; United Nations, Principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international des droits de l'homme et de violations graves du droit international humanitaire, available on : <https://www.ohchr.org/fr/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>, préambule.

<sup>16</sup> CICR, Droit international humanitaire et droits de l'homme, 29 octobre 2010, available on : <https://www.icrc.org/fr/document/dih-droits-homme>.

### 3.2. *By preventing war crimes and crimes against humanity*

IHL contributes to preventing war crimes and crimes against humanity by establishing clear rules and punishing violations of these rules. Preventing war crimes and crimes against humanity is indeed essential for promoting human dignity within the framework of IHL, as by preventing these atrocities, IHL aims to protect civilian populations, limit unnecessary suffering, and ensure that even in times of armed conflict, individuals retain their dignity. Consequently, by preventing war crimes, IHL actively contributes to the preservation of human dignity and the promotion of a world where peace, justice, and respect for human rights prevail.

#### **Sources of IHL**

The sources of IHL are varied and complementary. They provide an essential legal framework that governs the behavior of states and parties to armed conflicts<sup>17</sup>.

##### International treaties:

- The four Geneva Conventions of 1949 and their Additional Protocols of 1977 constitute the primary sources of IHL<sup>18</sup>.
- Other treaties, such as the Convention on Cluster Munitions and the Arms Trade Treaty<sup>19</sup>, also contribute to IHL.

##### Rules derived from international custom:

- Some rules of IHL are considered to be part of international custom, meaning rules derived from the consistent and uniform practice of states, and are therefore binding on all states. The principles of precaution and distinction are among them<sup>20</sup>.
- The jurisprudence of international courts, such as the International Criminal Court (ICC)<sup>21</sup>, can also contribute to the formation of international custom.

##### Fundamental principles:

- Fundamental principles of IHL, such as the principles of distinction, proportionality, and military necessity, are also binding rules.
  - Distinction<sup>22</sup>: This principle states that a distinction must be made between combatants and civilians, and between military objectives and civilian objects.

<sup>17</sup> FDFA, *op.cit.* ; N. MELZER, E. KUSTER, p.25 ss ; Amnesty International, *op.cit.* ; DFAE, Questions et réponses concernant le droit international humanitaire, 14 July 2022, available on :

<https://www.eda.admin.ch/eda/fr/dfae/dfae/aktuell/newsuebersicht/2022/07/humanitaeres-voelkerrecht-fragen-antworten.html>.

<sup>18</sup> CICR, Les Conventions de Genève de 1949 et leurs Protocoles additionnels, 29 october 2010, available on :

<https://www.icrc.org/fr/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

<sup>19</sup> United Nations, Convention sur les armes à sous-munitions, 30 mai 2008, available on : <https://ihl-databases.icrc.org/assets/treaties/620-103.pdf>.

<sup>20</sup> Croix-rouge française, Annexe : liste des règles coutumières en droit international humanitaire, Revue internationale de la Croix-Rouge, Volume 87, 2005, available on : <https://www.icrc.org/fr/doc/assets/files/other/customary-law-rules-fre.pdf>.

<sup>21</sup> International Criminal Court (ICC), available on : <https://www.icc-cpi.int/fr>.

<sup>22</sup> Croix-rouge française, *op.cit.* ; CICR, Règle 1. Le principe de la distinction entre civils et combattants, available on : <https://ihl-databases.icrc.org/fr/customary-ihl/v1/rule1>.

- Proportionality<sup>23</sup>: This principle states that attacks must not cause excessive harm to civilians and civilian objects in relation to the concrete military advantage expected.
- Military necessity<sup>24</sup>: This principle states that the use of force must be limited to what is strictly necessary to achieve a legitimate military objective. According to the ICRC, "the principle of military necessity is the guiding principle for the interpretation of all rules of IHL"<sup>25</sup>.
- Humanity<sup>26</sup>: This principle emphasizes the prohibition of causing unnecessary suffering to individuals, as well as the obligation to respect human dignity.
- Other important principles exist, such as neutrality, impartiality, and independence<sup>27</sup>.

There are also several additional sources, for example:

- Resolutions of the United Nations Security Council. It can adopt resolutions that clarify and strengthen IHL.
- Reports from international organizations. The ICRC, the United Nations, and other international organizations regularly publish reports on IHL.
- Jurisprudence of national courts. National courts may also contribute to the interpretation and application of IHL.

<sup>23</sup> ICRC, Règle 14. La proportionnalité dans l'attaque, available on : <https://ihl-databases.icrc.org/fr/customary-ihl/v1/rule14>.

<sup>24</sup> DFAE, ABC du droit international humanitaire, available on :

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewih8\\_mE7suEAXVph\\_0HHeXzAW0QFnoECCgQAQ&url=https%3A%2F%2Fwww.eda.admin.ch%2Fdam%2Feda%2Ffr%2Fdocuments%2Fpublications%2FGlossarezurAussenpolitik%2FABC-Humanitaeren-Voelkerrechts\\_fr.pdf&usq=AOvVaw2wV3aoJKsFloQa7JHI2kwd&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewih8_mE7suEAXVph_0HHeXzAW0QFnoECCgQAQ&url=https%3A%2F%2Fwww.eda.admin.ch%2Fdam%2Feda%2Ffr%2Fdocuments%2Fpublications%2FGlossarezurAussenpolitik%2FABC-Humanitaeren-Voelkerrechts_fr.pdf&usq=AOvVaw2wV3aoJKsFloQa7JHI2kwd&opi=89978449), p.40.

<sup>25</sup> ICRC, The Principles of Humanity and necessity, 2023, available on : [https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02\\_humanity\\_and\\_necessity-0.pdf](https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02_humanity_and_necessity-0.pdf).

<sup>26</sup> Croix-rouge française, Droit international humanitaire, available on : <https://www.croix-rouge.fr/droit-international-humanitaire#:~:text=Guidé%20par%20ce%20principe%2C%20le,les%20effets%20des%20conflits%20armés>.

<sup>27</sup> European Commission, Humanitarian Principles, available on : [https://civil-protection-humanitarian-aid.ec.europa.eu/who/humanitarian-principles\\_en](https://civil-protection-humanitarian-aid.ec.europa.eu/who/humanitarian-principles_en); FDFA, *op.cit.* ; ICRC, The Fundamental Principles of the International Red Cross and red crescent movement, 2015, available on : [https://www.icrc.org/sites/default/files/topic/file\\_plus\\_list/4046-the\\_fundamental\\_principles\\_of\\_the\\_international\\_red\\_cross\\_and\\_red\\_crescent\\_movement.pdf](https://www.icrc.org/sites/default/files/topic/file_plus_list/4046-the_fundamental_principles_of_the_international_red_cross_and_red_crescent_movement.pdf) ; ICRC, How does law protect in war : Fundamental principles of IHL, available on : [https://casebook.icrc.org/a\\_to\\_z/glossary/fundamental-principles-ihl](https://casebook.icrc.org/a_to_z/glossary/fundamental-principles-ihl).

### Binding Nature of IHL

IHL is a set of rules that are binding on states and non-state armed groups.

Indeed, states have an obligation to respect and ensure respect for IHL. They must establish national mechanisms to ensure compliance with IHL and punish violations committed. This is notably achieved through the implementation of IHL at the national level<sup>28</sup>.

Non-state armed groups are also required to respect IHL, even if they are not parties to the Geneva Conventions. They must refrain from committing violations and take measures to protect civilians and civilian property under their control<sup>29</sup>.

Failure to comply with IHL can result in criminal sanctions, as well as civil and international liability<sup>30</sup>.

### Scope of Application of IHL

The rules of IHL apply to armed conflicts, whether international or non-international. Furthermore, it is essential to understand that IHL does not concern situations of internal disturbances or internal tensions. Indeed, its objective is to specifically regulate situations of armed conflict, not situations of internal violence. Thus, riots and protests, for example, are not governed by IHL.

- International Armed Conflicts

IHL applies automatically to international armed conflicts between two or more states party to the Geneva Conventions. This means that the rules of IHL are automatically applicable from the beginning of an international armed conflict, without the need for additional measures<sup>31</sup>.

For example, Syria is engaged in several armed conflicts, some of which are also non-international. However, there exists an international armed conflict according to IHL between Syria and members of the international coalition led by the United States and Turkey<sup>32</sup>.

- Non-International Armed Conflicts

IHL applies partially to non-international armed conflicts, i.e., armed conflicts that take place within the territory of a single state. The 1977 Additional Protocols specify the rules of IHL

<sup>28</sup> J.K. KLEFFNER, L'applicabilité du droit international humanitaire aux groupes armés organisés, *Revue internationale de la Croix-Rouge*, Volume 93, 2011, available on : [https://international-review.icrc.org/sites/default/files/irrc-882-kleffner\\_1.pdf](https://international-review.icrc.org/sites/default/files/irrc-882-kleffner_1.pdf), p.141 ; CICR, *Droit international humanitaire coutumier : questions & réponses*, 15.08.2005, available on :

<https://www.icrc.org/fr/doc/resources/documents/misc/customary-law-q-and-a-150805.htm>; CICR, *Droit international humanitaire coutumier : questions & réponses*, *op.cit.* ; DFAE, *ABC du droit international humanitaire*, *op.cit.*, available on :

[https://www.eda.admin.ch/dam/eda/fr/documents/publications/publications/GlossarezurAussenpolitik/ABC-Humanitaeren-Voelkerrechts\\_fr.pdf](https://www.eda.admin.ch/dam/eda/fr/documents/publications/GlossarezurAussenpolitik/ABC-Humanitaeren-Voelkerrechts_fr.pdf), p.8.

<sup>29</sup> *Ibid*, p.8.

<sup>30</sup> Cf. part 7.

<sup>31</sup> N. MELZER, E. KUSTER, *op.cit.*, p.65 ss.

<sup>32</sup> Geneva graduate institute, Syria, Rulac, 2018, available on : <https://www.rulac.org/browse/countries/syria>.

applicable to non-international armed conflicts. For a non-international armed conflict to be considered as an armed conflict under IHL, it must meet three cumulative criteria<sup>33</sup>:

- **Intensity:** The conflict must reach a certain level of intensity. This means there must be armed confrontations of significant nature and scale.
- **Organization:** The parties to the conflict must be organized and have some control over their armed forces.
- **Duration:** The conflict must last for a certain period of time.

For example, the civil war in Rwanda is considered a non-international armed conflict according to IHL. This conflict primarily involved the Rwandan government, then led by the Rwandan Patriotic Front (RPF), against various rebel groups and Hutu militias, including the Rwandan Armed Forces (FAR). As a non-international armed conflict, IHL applies to the civil war in Rwanda, and the parties to the conflict were subject to certain obligations and restrictions under international humanitarian law. Despite this, the Rwandan genocide is widely recognized as one of the darkest periods in recent history, marked by massive and systematic violations of human rights and international humanitarian law<sup>34</sup>.

### **Protection of Individuals and Property**

IHL protects individuals who are not participating in or are no longer able to participate in combat, as well as civilian property. In essence, IHL aims to protect individuals and property that are unable to defend themselves<sup>35</sup>.

IHL protects individuals who are not participating in or are no longer able to participate in combat, including:

- **Civilians<sup>36</sup>** : individuals who are not members of the armed forces and do not directly participate in hostilities.
- **The wounded and sick<sup>37</sup>**: members of the armed forces who are incapacitated due to injury or illness.

<sup>33</sup> N. MELZER, E. KUSTER, *op.cit.*, p.78ss ; Geneva graduate institute, Non-international armed conflict in Somalia, available on : <https://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-somalia#collapse2accord>.

<sup>34</sup> Wikipédia, Génocide des Tutsis au Rwanda, available on : [https://fr.wikipedia.org/wiki/Génocide\\_des\\_Tutsis\\_au\\_Rwanda](https://fr.wikipedia.org/wiki/Génocide_des_Tutsis_au_Rwanda); Geneva graduate institute, Rwanda, available on : <https://www.rulac.org/browse/countries/rwanda#collapse1accord>.

<sup>35</sup> ICRC, Advisory service on international humanitarian law, *op.cit.* ; European Commission, *op.cit.* ; DFPA, *op.cit.* ; United Nations, Fact Sheet No.13, International Humanitarian Law and Human Rights : Introduction, *op.cit.*

<sup>36</sup> Convention de Genève relative à la protection des personnes civiles en temps de guerre (IV), du 12 août 1949, *op.cit.*

<sup>37</sup> Convention de Genève et protocoles additionnels I (A) : Convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, du 12 août 1949, art. 12-18, *op.cit.*, art. 12-18.

- Shipwrecked individuals<sup>38</sup>: members of the armed forces who are at sea and are no longer capable of fighting.
- Prisoners of war<sup>39</sup>: members of the armed forces who have been captured by the enemy.

IHL also protects individuals who, although they participate in hostilities, are incapacitated at a given time<sup>40</sup>, such as:

- Medical and religious personnel: individuals who care for the wounded and sick.
- Humanitarian personnel: individuals who work for humanitarian organizations and strive to provide assistance to victims of armed conflicts.

IHL also protects civilian property<sup>41</sup>, such as:

- Hospitals
- Places of worship
- Schools
- Cultural property
- Property essential for the survival of the civilian population: these are goods necessary to ensure the survival of the civilian population, such as drinking water and electricity facilities<sup>42</sup>.

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<sup>38</sup> Convention de Genève pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer, du 12 août 1949, available on : <https://ihl-databases.icrc.org/assets/treaties/370-CG-II-FR.pdf>.

<sup>39</sup> Convention de Genève relative au traitement des prisonniers de guerre, du 12 août 1949, available on : <https://ihl-databases.icrc.org/assets/treaties/375-CG-III-FR.pdf>.

<sup>40</sup> Conventions de Genève et protocoles additionnels I : convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, du 12 août 1949, art. 46-48, available on : <https://ihl-databases.icrc.org/fr/ihl-treaties/gci-1949/article-8/commentary/2016> ; Convention de Genève pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer, *op.cit.*, art. 77, available on : <https://ihl-databases.icrc.org/assets/treaties/370-CG-II-FR.pdf>.

<sup>41</sup> Conventions de Genève et protocoles additionnels I : convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, *op.cit.*, art. 44-45, art. 49, available on : <https://ihl-databases.icrc.org/fr/ihl-treaties/gci-1949/article-8/commentary/2016>.

<sup>42</sup> Médecins sans frontières, Dictionnaire pratique du droit humanitaire, *op.cit.*

### International Organizations and IHL

The International Committee of the Red Cross (ICRC) is considered the "guardian of IHL." Its objective is to promote and ensure respect for IHL by all actors involved in armed conflicts<sup>43</sup>. Its missions include protecting individuals and property protected by IHL, as well as promoting and developing IHL, notably by drafting new rules of IHL<sup>44</sup>.

Other international organizations, such as the United Nations, also play an important role in promoting and respecting IHL<sup>45</sup>. For example, the United Nations General Assembly has adopted a number of resolutions on IHL<sup>46</sup>. Additionally, the United Nations Security Council can take measures to enforce IHL<sup>47</sup>.

Cooperation between international organizations is essential to ensure respect for IHL. They play an indispensable role in promoting and implementing IHL.

### Responsibility in Case of IHL Violations

Responsibility can be established in case of violations of IHL. This can involve both individual responsibility and state responsibility.

#### **a. Individual Responsibility**

In cases of individual responsibility, individuals responsible for serious violations of IHL can be prosecuted before national or international courts. Serious violations of IHL include<sup>48</sup> :

- War crimes: These are grave violations of IHL committed intentionally, such as the murder of civilians, rape, torture, and cruel, inhuman, or degrading treatment. Some of these are also considered crimes against humanity. War crimes are notably defined in Article 8 of the Rome Statute<sup>49</sup>.

<sup>43</sup> CICR, Le Comité international de la Croix-Rouge : gardien du droit international humanitaire, n.d., available on : <https://www.icrc.org/fr/doc/resources/documents/misc/about-the-icrc-311298.htm> ; CICR, Comité international de la Croix-Rouge : notre mandat et notre mission, n.d., available on : <https://www.icrc.org/fr/qui-nous-sommes#:~:text=La%20Mission%20du%20CICR,et%20de%20leur%20porter%20assistance.>

<sup>44</sup> *Ibid.*

<sup>45</sup> A.RYNIKER, Respect du droit international humanitaire par les forces des Nations Unies, VOLUME 81, N°836, 1999, available on : <https://international-review.icrc.org/sites/default/files/S1560775500103724a.pdf>, p.805.

<sup>46</sup> United Nations, L'assemblée adopte 75 résolutions dont un protocole facultatif à la convention contre la torture, 18 december 2022, available on : <https://www.ohchr.org/fr/press-releases/2009/10/default-title-537#:~:text=Au%20total%2C%20l%27Assemblée%20générale,votes%20enregistrés%20ont%20été%20organisés.>

<sup>47</sup> Conseil de sécurité des Nations Unies, Groupes de travail, n.d., available : <https://www.un.org/securitycouncil/fr/content/repertoire/working-groups>.

<sup>48</sup> T. GRADITZKY, La responsabilité pénale individuelle pour violation du droit international humanitaire applicable en situation de conflit armé non international, Revue internationale de la Croix-Rouge, N° 829, 31 March 1998, available on : <https://www.icrc.org/fr/doc/resources/documents/misc/5fzgbw.htm>; United Nations, La protection juridique internationale des droits de l'homme dans les conflits armés, 2011, available on : [https://www.ohchr.org/sites/default/files/Documents/Publications/HR\\_in\\_armed\\_conflict\\_FR.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict_FR.pdf), p.78 ss.

<sup>49</sup> DFAE, Droit international humanitaire, n.d., available on : <https://www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droit-international-public/droit-international-humanitaire.html#:~:text=Les%20infractions%20graves%20au%20droit,traitements%20inhumains%20infligés%20aux%20détenus> ; United Nations, Crimes de guerre, n.d., available on : <https://www.un.org/fr/genocideprevention/war-crimes.shtml>.

- Crimes against humanity: These are grave acts committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack," such as murder, extermination, enslavement, deportation, or persecution<sup>50</sup>.
- Genocide: Genocide is defined in the Convention on the Prevention and Punishment of the Crime of Genocide, which stipulates that "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group"<sup>51</sup>.

Individuals responsible for these crimes can be prosecuted before<sup>52</sup> :

- National courts: Many countries have laws allowing prosecution for war crimes and crimes against humanity committed by their nationals or on their territory.

For example, Canada has adopted the Crimes Against Humanity and War Crimes Act<sup>53</sup>, which allows prosecution for war crimes, crimes against humanity, and genocide, regardless of where they were committed or the nationality of the perpetrator. The same applies to Belgium<sup>54</sup>, and many other states.

- International courts: There are several international tribunals that can prosecute war crimes, crimes against humanity, and genocide, such as the International Criminal Court (ICC).

## b. State Responsibility

In cases of state responsibility, states can be held accountable for violations of IHL<sup>55</sup>. If held responsible, states may be required to remedy the damages caused by violations of IHL, including compensating victims<sup>56</sup>. State responsibility can be established in several ways<sup>57</sup>:

<sup>50</sup> CICR, Article 7 – Crimes contre l'humanité, Bases de données de DIH, n.d., available on : <https://ihl-databases.icrc.org/fr/ihl-treaties/icc-statute-1998/article-7>.

<sup>51</sup> Convention pour la prévention et la répression du crime de génocide, 9 décembre 1948, available on : <https://ihl-databases.icrc.org/assets/treaties/357-DIH-51-FR.pdf> ; CICR, Le génocide, « un crime grave » : la Convention de 1948, 29 March 2004, available on : <https://www.icrc.org/fr/doc/resources/documents/misc/5xfp34.htm#:~:text=Le%20génocide%20est%20un%20crime,Assemblée%20générale%20des%20Nations%20Unies>.

<sup>52</sup> T. GRADITZKY, La responsabilité pénale individuelle pour violation du droit international humanitaire applicable en situation de conflit armé non international, CICR, 31 March 1998, available on : <https://www.icrc.org/fr/doc/resources/documents/misc/5fzgbw.htm>.

<sup>53</sup> Gouvernement du Canada, Site de la législation (Justice), n.d., available on : <https://laws-lois.justice.gc.ca/fra/lois/c-45.9/>.

<sup>54</sup> Trial International, Open society justice initiative, Analyse : Droit et pratique de la compétence universelle en Belgique, mai 2022, available on : <https://trialinternational.org/wp-content/uploads/2022/05/UJ-Belgium-FR-1.pdf>.

<sup>55</sup> United Nations, La protection juridique international des droits de l'homme dans les conflits armés, *op.cit.*, p.76.

<sup>56</sup> *Ibid.*, p.77.

<sup>57</sup> *Ibid.*, p.76.

- Direct responsibility: The state is directly responsible for violations of IHL committed by its organs or agents, such as its armed forces.
- Responsibility for the acts of others: The state is responsible for violations of IHL committed by individuals who are not its organs but whom it has the power to control, such as militias or non-state armed groups. It can also be held accountable for violations "committed by persons or groups acting in fact on the instructions or under the direction or control of that state"<sup>58</sup>.
- Responsibility for failure to prevent or suppress violations: The state is responsible for violations of IHL that it has failed to prevent or suppress, even if they were not committed by its organs or agents. Indeed: "a state may also be responsible for lack of due diligence if it fails to prevent or sanction violations of international human rights law and international humanitarian law committed by private actors"<sup>59</sup>.

### Conclusion

International humanitarian law serves as a true shield in protecting vulnerable individuals during armed conflicts. This set of universal rules aims to limit suffering and preserve human dignity in situations where violence and destruction are all too common.

However, IHL faces major challenges in the contemporary context of armed conflicts. For example, conflicting parties, whether states or non-state armed groups, do not always adhere to these rules. Nevertheless, it is important to note that despite these challenges, the legal framework established by the Geneva Conventions and their Additional Protocols, as well as other legal instruments, provide a solid basis for regulating armed conflicts. The fundamental principles of IHL, such as the principle of distinction, proportionality, and military necessity, set clear standards for limiting suffering and protecting vulnerable individuals. Furthermore, individual and state responsibility in case of IHL violations reinforce the enforcement of these rules and contribute to ensuring justice for the victims as much as possible. Thus, while improvements are needed to address current challenges, the existing legal framework already provides a solid foundation for mitigating the devastating effects of armed conflicts and protecting human dignity.

As armed conflicts continue to ravage the world, it is imperative that the international community redoubles its efforts to understand, strengthen, and enforce IHL. Only by promoting a culture of respect for the laws of war can we hope for a world where human suffering is reduced and the dignity of every individual is preserved, even in the most difficult situations.

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<sup>58</sup> *Ibid.*, p.76.

<sup>59</sup> *Ibid.*, p.77.

To learn more, consult the following resources :

- International Committee of the Red Cross (ICRC), available on : <https://www.icrc.org/en>.
- International Criminal Court (ICC), available on : <https://www.icc-cpi.int/en>.
- United Nations (UN), available on : <https://www.un.org/en/>.
- Institute of International Humanitarian Law (IIHL), available on : <https://iihl.org>.
- ICRC website on IHL, available on : <https://ihl-in-action.icrc.org/en>.
- Droit international humanitaire : réponse à vos questions (CICR), 2015, available on : <https://www.icrc.org/fr/doc/assets/files/other/icrc-001-0703.pdf>.
- La protection juridique internationale des droits de l’homme dans les conflits armés, Haut-commissariat des Nations Unies, 2011, available on : [https://www.ohchr.org/sites/default/files/Documents/Publications/HR\\_in\\_armed\\_conflict\\_FR.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict_FR.pdf).
- N. MELZER, E. KUSTER, Droit international humanitaire : une introduction détaillée, CICR, 2018, available on : <https://library.icrc.org/library/docs/DOC/icrc-001-4231.pdf>.

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