

# Human Rights in Armed Conflict



Federal Ministry  
for Foreign Affairs  
of Austria



**“(...) the following acts are and shall remain prohibited at any time and in any place whatsoever (...)**

**Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the wounded and sick shall be collected and cared for.”**

**Art. 3 (1) and (2),** common to the four Geneva Conventions, 1949.

- ▶ Situations of armed conflicts require rules based on the idea that **even wars have limits**.
- ▶ Human rights law only applies to a certain extent (**Art. 4 ICCPR**).
- ▶ International Humanitarian Law holds the principles and rules which set limitations to the use of violence during armed conflict.
- ▶ Even though codified, the rules of international humanitarian law enjoy the status of customary international law.

- ▶ Rules for the protection of certain groups during armed conflicts as early as 1000 BC.
- ▶ Until mid-19th century, rules were geographically limited.
- ▶ 1859: Shattered by the cruelty of the battle at Solferino, Henry Dunant writes about the horrors of wars and suggests measures to ameliorate the situation of the victims.
- ▶ **From 1864 on, IHL is codified** and becomes part of internationally recognized and applicable law.
- ▶ 1949 - Four Geneva Conventions, 1977 - Two Add. Protocols.

## In all circumstances...

### IHL

- Prohibition of hostage taking.
- Respect for judicial guarantees.
- Care for the sick and wounded; humane treatment of persons not (or no longer) taking part in the hostilities.
- Rules governing the conduct of hostilities.

### HR

- Right to life.
- Prohibition of torture and cruel, humiliating or degrading treatment.
- Prohibition of discrimination.
- Prohibition of slavery.
- Prohibition of retroactive application of penal provisions.
- Right to recognition as a person before the law.
- Right to freedom of conscience and religion.
- Prohibition of imprisonment for inability to fulfil a contractual obligation.

## **International** Armed conflicts.

- Two or more states have clashed using weapons.
- National liberation movements.

Apart from Human Rights, the full range of rules of International Humanitarian Law is applicable.

## **Internal** Armed conflicts.

- Applicable law is more limited.
- Common Art. 3 represents the minimum standards.
- Add. Protocol II elaborates on these minimum standards.
- Human Rights apply as well.

## Who and What is protected?

- ▶ Individuals who are not or no longer taking part in the hostilities such as civilians, the wounded, the sick, prisoners of war, medical and religious staff have to be provided with material assistance and to be treated humanely at all times and without adverse distinction.
- ▶ Civilian objects and places are protected and must not be used for military purposes.
- ▶ Environment.
- ▶ Goods necessary for the survival and subsistence of the civilian population.

- ▶ **Humanity.**
  - ▶ **Military Necessity:** actions necessary to overpower the opponent.
  - ▶ **Proportionality.**
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- ⇒ As states are the primary addressees of IHL, they have to respect these principles.
  - ⇒ IHL holds the status of customary international law and is binding for everyone.

## Who is bound by IHL?

- ▶ **States** as the parties to the treaties covering IHL.
- ▶ **All parties to an armed conflict**, both armed forces and dissident forces.
  
- ⇒ 1949 Geneva Conventions enjoy universal ratification.
- ⇒ Additional Protocol I covering international armed conflicts has **174 parties**.
- ⇒ Additional Protocol II covering non-international armed conflicts has **167 parties** (as of **August 2014**).

- ▶ **Preventive measures:** there is an obligation to spread the knowledge about IHL and to provide training and education.
- ▶ **Measures for monitoring compliance:** the International Committee of the Red Cross plays a major role.
- ▶ **Repressive measures:** states have to implement national laws to punish war crimes and to prosecute their perpetrators. There is also the possibility of international criminal justice (ICC, ICTY, ICTR).

# International Committee of the Red Cross (ICRC) Fundamental Principles

- ▶ Humanity.
- ▶ Impartiality.
- ▶ Neutrality.
- ▶ Independence.
- ▶ Voluntary Service.
- ▶ Unity.
- ▶ Universality.



- ▶ **Protection of Civilians:** special attention accorded to women and children.
- ▶ **Protection of Prisoners:** visiting them in prison provides for a certain monitoring.
- ▶ **Restoring Family links:** forwarding family news through, radio, internet and Red Cross messages; organising repatriation and family reunification, issuing travel documents, supporting families of missing persons...

- 1864 Geneva Convention for the amelioration of the condition of the wounded in armies in the field.
- 1868 Declaration of St. Petersburg (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.
- 1949 Geneva Conventions:
- I - On the Amelioration of the condition of the wounded and sick in armed forces in the field.
  - II - On the Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea.
  - III - On the Treatment of prisoners of war.
  - IV - On the Protection of civilian persons in time of war.

## Chronology 1950 to 1980

- 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 toxic weapons and on their destruction.
- 1977 Two Protocols additional to the four 1949 Geneva Conventions, which strengthen the protection of victims of international (Protocol I) and non- international (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), with its three protocols.

## Chronology 1980 up to now

- 1993 Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction.
- 1996 Revised Protocol on prohibitions or restrictions on the use of mines, booby traps and other devices (Protocol II [revised] to the 1980 Convention).
- 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.
- 2000 Optional Protocol to the Convention on the rights of the child, dealing with the involvement of children in armed conflict.
- 2003 Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention).
- 2008 Convention on Cluster Munitions.