



# EXPLORING HUMANITARIAN LAW

IHL Guide – A legal manual for EHL teachers



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# Exploring Humanitarian Law

## IHL Guide - A legal manual for EHL teachers

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# Foreword

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Exploring Humanitarian Law (EHL) is an education programme that introduces young people between 13 and 18 years of age to the basic rules and principles of international humanitarian law (IHL).

To work with the EHL materials teachers do not need to be experts in IHL, but some may wish to explore certain legal issues in greater depth. In other instances, teachers may be looking for answers to specific and sometimes difficult questions raised by their students.

This manual is primarily intended to support teachers as they use the EHL materials and give them greater confidence in working with IHL themes. It expands upon the IHL content included in the modules by clarifying particular details or raising related legal issues. It also supplements the Glossary, going beyond pure definitions to provide a more nuanced analysis of certain aspects of IHL. While some teachers may feel that they need this support in IHL, others may feel comfortable using the EHL materials without it.

Organized in a straightforward question and answer format, this manual addresses issues in the order in which they emerge from the modules. To facilitate the understanding of certain terms and acronyms, a list of abbreviations is provided at the end.

**NOTE** Although this manual is structured around the EHL Modules, it may also be useful for people not working with the EHL materials who wish to have concise answers to specific IHL questions.

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# The questions

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## 1. Is everything permitted during war?

No. War is governed by a set of international rules established by treaty or custom to ensure that the humanitarian problems that arise as a result of armed conflict are either prevented from occurring or responded to. These rules are collectively known as the 'law of armed conflict' or 'international humanitarian law' (IHL).

The purpose of IHL is to limit the suffering caused by war. It does so by restricting the methods and means of warfare employed and by protecting persons who are not, or who are no longer, taking part in fighting.

## 2. Who makes the rules?

The international community of States. It creates, recognizes and adopts the rules of IHL, by establishing treaties as well as customary norms.

## 3. Why not outlaw war instead of trying to design rules for its proper conduct? Doesn't the very existence of such rules legitimize war?

As a matter of fact, resorting to war is generally prohibited today.

In 1919, the Covenant of the League of Nations established a procedure for settling disputes between countries peacefully, in an effort to avoid war. The Kellogg Briand Pact of 1928 was the first international treaty to outlaw war. The adoption of the United Nations (UN) Charter in 1945 continued this trend. The Charter goes a step further by declaring that UN member States must refrain from using force or threatening to do so in their international relations. It outlines only two situations in which the use of force is permissible: when the UN Security Council decides to use force collectively to restore international peace and security and for individual or collective self-defence in case of an armed attack against a UN member State. The UN Charter does not address the use of force in non-international armed conflicts.

History shows that outlawing war does not prevent its occurrence. While efforts to promote dialogue, diplomacy and other peaceful means of resolving disagreements should continue, armed conflict is likely to remain a grim reality. That is why IHL sets out rules for conducting war: in order to limit the suffering and damage it inflicts on people, property and the environment.

Therefore, the fact that IHL provides rules for warfare does not mean that it either condones or legitimizes war; it means only that, for humanitarian reasons, IHL focuses on the effects of war and leaves the legality of wars to be determined in accordance with the UN Charter.

## 4. Are some wars more 'just' than others?

Humanitarian law does not address this question. IHL does not decide whether a war is legal or just; that is governed by a different set of rules, referred to as *jus ad bellum*, which is regulated by the UN Charter.

IHL was developed to deal with situations of armed conflict. It seeks, for humanitarian reasons, to limit the effects of armed conflict by setting out rules on the ways in which war may be waged, and is known also as *jus in bello*. IHL deals with the fact of war without concerning itself with the reasons for a particular conflict or its legality. Its provisions apply to all victims of war, regardless of which side they are on, the reasons for the conflict or its legality, or the justness of their cause.

## 5. Is there a difference between the terms 'war' and 'armed conflict'?

While these terms are often used interchangeably, it is important to note how IHL distinguishes the traditional idea of 'war' from the more recent concept of 'armed conflict'.

With the adoption of the four Geneva Conventions, the word 'war' was replaced by the term 'armed conflict'. The rationale for this deliberate substitution was to widen the humanitarian protection to situations other than those strictly defined, in a legal sense, as 'war'. This substitution makes it much more difficult for a State to deny the applicability of IHL to any hostile act it might commit by claiming that it did not amount to an act of war but was only, say, an act of self-defence or a police action. The term 'armed conflict' covers the use of armed force in any dispute between two States or between the armed forces of a State and an armed group or between armed groups within a State; and that makes implicit the applicability of IHL in all those circumstances, even if one of the parties to such a conflict were to claim that it was not 'at war'.

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## 6. When does IHL apply?

IHL applies in all situations of armed conflict. There are a number of different scenarios that can be defined as armed conflict. A number of factors have to be taken into account before characterizing a situation as an armed conflict and therefore subject to the rules of IHL.

It is a widely accepted principle that any difference between opposing parties that leads to the use of armed force results in armed conflict. An armed conflict may be either 'international' (between two or more States) or 'non-international' (between governmental authorities and organized armed groups or between such groups within a State). It is important to stress that one type of armed conflict can also develop into the other.

For IHL to apply, the *de facto* occurrence of hostilities is sufficient, even without a formal declaration of war and even if one of the parties denies the existence of a state of war.

IHL does not apply in situations of internal violence, such as demonstrations, disturbances, riots or internal tensions. However, it is often difficult to make a clear distinction between non-international armed conflicts and such situations.

## 7. Who is bound by IHL?

All parties to an armed conflict – whether they are States or non-State actors – are bound by the relevant rules of IHL. This is the case even though only States may become party to international treaties, and thus to the four Geneva Conventions and their Additional Protocols.

States Parties must not only 'respect' but also 'ensure respect' for IHL in all circumstances. While the obligations of non-State armed groups may differ from those of sovereign States, most of the customary rules of IHL apply to all parties to a conflict. Non-State armed groups are generally bound by the treaty IHL rules applicable in non-international armed conflicts as well.

Furthermore, States not party to an armed conflict are required neither to encourage a party to violate IHL nor to take such action as would assist in the commission of violations of IHL. This obligation is generally interpreted as requiring States not party to an armed conflict to take all appropriate measures to prevent or end violations of IHL committed by any party to the conflict.

## 8. Does IHL define 'human dignity'?

IHL does not set out to define the meaning of 'human dignity,' but its provisions ensure that human dignity is respected and protected during armed conflict.

## 9. What is the relationship between the International Committee of the Red Cross and National Red Cross and Red Crescent Societies? What are their roles and responsibilities within the International Red Cross and Red Crescent Movement?

The International Committee of the Red Cross (ICRC), National Red Cross and Red Crescent Societies (National Societies), and the International Federation of Red Cross and Red Crescent Societies (International Federation) together constitute the International Red Cross and Red Crescent Movement (Movement). Each has its own structure and working procedures and they complement one another in carrying out humanitarian action. The Movement's work is guided by seven Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality, which provide a universal standard of reference for all its members.

The ICRC, which was established in 1863, is the Movement's founding body. It has a specific mandate and a fund of experience in situations of armed conflict. Besides its operational activities to protect and assist victims of armed conflict, it also promotes IHL and serves as the custodian of this body of law.

The National Societies act as auxiliaries to the public authorities in the humanitarian field in their own countries; they provide a range of services that include disaster relief and health and social programmes. In wartime, National Societies provide assistance for affected civilians and, where appropriate, support the medical services of their countries' armies. The ICRC works with National Societies in their home countries and abroad, especially in regions that are, or are likely to be, affected by armed conflict. At the same time, the ICRC cooperates with National Societies in peacetime to strengthen their capacity to respond to local crises.

The International Federation directs and coordinates the international assistance provided by the Movement for victims of natural and technological disasters, for



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refugees, and during public health emergencies. When such assistance is required in a country affected by armed conflict, the International Federation works in particularly close cooperation with the ICRC.

The relationship between the three components of the Movement is governed by various detailed regulations, which ensures efficiency of action in assisting vulnerable people throughout the world.

## 10. If the ultimate goal of war is victory, doesn't the end justify the means?

War or armed violence is an instrument used by States and non-State armed groups to resolve differences and to achieve certain ambitions. Armed force is used with the ultimate goal of winning over an adverse party. However, such an end - the 'winning' of a war - does not justify the use of all available means, because humanitarian considerations must be taken into account even in war.

The Declaration of St Petersburg, which was adopted in 1868, states that the only legitimate objective of war is the weakening of an enemy's military forces. Furthermore, the Declaration confirmed the customary rule prohibiting the use of arms, projectiles and materials designed to cause unnecessary suffering. Since 1868, the scope of the rules governing warfare has been considerably widened. Modern IHL restricts, or prohibits, the use of a wide range of means and methods employed in warfare.

## 11. How do international armed conflicts differ from non-international armed conflicts?

An armed conflict can be international or non-international, or both, and IHL offers protection for people in such situations.

An *international armed conflict* is said to exist:

- when a declaration of war is made or when armed force is used between two or more States (even if one State does not acknowledge or declare the state of war); or
- when a part of or the entire territory of a State is occupied (even if that occupation meets with no armed resistance); or
- when people are fighting against colonial domination or alien occupation, or against racist regimes to exercise their right of self-determination.

In international armed conflicts, the applicable law is based on the four Geneva Conventions, Additional Protocol I of 1977 (Additional Protocol I), specific conventions on the use of certain weapons, and on customary IHL.

A *non-international armed conflict* is said to exist:

- when a State's armed forces are fighting an organized armed group; or
- when organized armed groups are fighting one another.

This can take place not only on the territory of one State but also across borders. The defining characteristic of a non-international armed conflict is that one of the parties to the conflict is a non-State armed group.

In non-international conflicts the applicable law may be based on Article 3 common to the four Geneva Conventions (common Article 3), Additional Protocol II of 1977 (Additional Protocol II), specific conventions on the use of certain weapons, and on customary IHL.

## 12. How can an armed conflict become 'internationalized'?

The term 'internationalized armed conflict' describes an armed conflict that began as a non-international armed conflict and developed into an international armed conflict because of the intervention of one or more foreign States.

Such a situation may develop in many, often complex, circumstances, which include the following:

- a war involving the military intervention of, or the overall control exercised by, a foreign State in support of an armed group fighting against a government;
- fighting between two or more armed groups within one State and a foreign State exercising overall control over each of them;
- a war between two foreign States that have militarily intervened in a non-international armed conflict in support of two opposing armed groups.

If the foreign State withdraws from the conflict or ceases to exercise overall control, the armed conflict reverts to its non-international status, provided that the situation still meets all the criteria for non-international armed conflict.

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## 13. What are the differences between 'signing' and 'ratifying' a treaty?

States can express their consent to be bound by a treaty in a variety of ways, such as by signing or ratifying it.

Following its adoption, a treaty is normally opened for signature for a certain period of time. Once a State has signed a treaty, it is obliged to refrain from doing anything that would defeat the object and the purpose of the treaty. If there is no indication in a treaty that further steps are required after signature, the act of signing is regarded as establishing the State's consent to be bound. However, States are often required to take another step after signing a treaty to establish their consent to be bound by it: this is called 'ratification.' If ratification is required, signing a treaty only reflects a State's commitment to pursue whatever measures are necessary to ratify that treaty. This extra step is often necessary because many States have constitutional stipulations that require legislative or parliamentary approval of a signed treaty before it becomes binding on the State.

## 14. What IHL rules bind States beyond accepted treaties of humanitarian law?

Customary international law is a recognized source of law and binding on all States, regardless of the treaties they have formally accepted. Unlike treaty law, customary IHL is not written and requires no formal acceptance; it derives from the general, widespread, representative and virtually uniform practice of States, which is accepted as law. In this context, 'practice' is related to official State practice and includes formal statements by States, as well as a variety of other official documents, such as accounts of military operations, military manuals, national legislation and case law. The requirement that this practice be 'accepted as law' sets customary law apart from practices followed as a matter of policy, for example. Therefore, customary IHL is binding on States that have not formally accepted IHL treaties.

Furthermore, most of the rules of customary IHL are applicable in both international and non-international armed conflicts. Customary IHL thus fills many gaps left by treaty law because treaty rules governing non-international armed conflicts are limited in scope and in number.

## 15. What are the main IHL treaties?

Contemporary IHL has evolved in stages to keep pace with developments in weaponry and with new types of conflict, and continues to do so. The following - listed chronologically, in the order of their adoption - are the main IHL treaties:

- 1864:** Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field
- 1868:** Declaration of St Petersburg (which prohibits the use of certain projectiles in wartime)
- 1899:** The Hague Conventions (which deal with the laws and customs of war on land and the adaptation to maritime warfare of the principles of the 1864 Geneva Convention)
- 1906:** Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (which reviews and develops the 1864 Geneva Convention)
- 1907:** Review of the 1899 Hague Conventions and adoption of new conventions
- 1925:** Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
- 1929:** Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (which reviews and develops the 1906 Geneva Convention)
- 1929:** Geneva Convention relating to the Treatment of Prisoners of War
- 1949:** Four Geneva Conventions (which review and develop the 1929 Geneva Conventions)
  - Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
  - Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
  - Treatment of Prisoners of War
  - Protection of Civilian Persons in Time of War

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**1954:** Hague Convention (and Protocol) 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

**1977:** Two Protocols additional to the 1949 Geneva Conventions (which develop the four Geneva Conventions of 1949):

- Additional Protocol I relating to the Protection of Victims of International Armed Conflicts
- Additional Protocol II relating to the Protection of Victims of Non-International 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 (1980 Convention on CCW), which 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

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

**1995:** Protocol IV to 1980 Convention on CCW on Blinding Laser Weapons

**1996:** Revision of Protocol II to 1980 Convention on CCW on the Use of Mines, Booby-Traps and Other Devices

**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 1954 Hague Convention 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 1 of 1980 Convention on CCW

**2003:** Protocol V to 1980 Convention on CCW on Explosive Remnants of War

**2005:** Protocol III additional to the 1949 Geneva Conventions relating to the Adoption of an Additional Distinctive Emblem

### 16. What are the main instruments of human rights law?

Instruments of human rights law are at the core of the international system for promoting and protecting human rights. This comprehensive legal system applies to every person in the world. A partial list of the human rights instruments that are particularly important in situations of violence follows below.

**1926:** Slavery Convention

**1930:** Convention concerning Forced or Compulsory Labour

**1948:** Universal Declaration of Human Rights

**1948:** Convention on the Prevention and Punishment of the Crime of Genocide

**1950:** European Convention for the Protection of Human Rights and Fundamental Freedoms

**1951:** Convention relating to the Status of Refugees

**1954:** Convention relating to the Status of Stateless Persons

**1966:** International Convention on the Elimination of All Forms of Racial Discrimination

**1966:** International Covenant on Civil and Political Rights

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- 1966:** International Covenant on Economic, Social and Cultural Rights
- 1966:** Protocol relating to the Status of Refugees
- 1969:** American Convention on Human Rights
- 1973:** International Convention on the Suppression and Punishment of the Crime of Apartheid
- 1979:** Convention on the Elimination of All Forms of Discrimination against Women
- 1981:** African Charter on Human and Peoples' Rights
- 1984:** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1987:** European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- 1989:** Convention on the Rights of the Child
- 1990:** African Charter on the Rights and Welfare of the Child
- 2000:** Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- 2006:** International Convention for the Protection of All Persons from Enforced Disappearance

### 17. What is the justification for detaining a combatant or fighter? A civilian?

Capturing or detaining combatants and fighters during armed conflict is lawful but strictly regulated by treaty and customary IHL rules governing the rights and the treatment of prisoners of war and of captured fighters, as well as by the relevant norms of human rights law.

The purpose of detaining combatants or fighters is to weaken the military force of an adversary. Capturing and detaining a combatant or a fighter means reducing the number of persons engaged in the conflict, getting information about the adversary, as well as using the release of the detainees as a negotiating tool during the armed conflict to achieve certain strategic objectives.

In principle, civilians may be captured and detained only in exceptional circumstances. They may be

interned for imperative security reasons. In situations of occupation, civilians may be detained for having committed offences against the occupying power. Civilians who take an active part in hostilities may be detained in order to reduce the number of fighters engaged in the conflict.

### 18. What is the difference between 'detainee,' 'internee' and 'prisoner of war'? How does IHL protect each?

All these terms refer to persons deprived of their freedom and have become interchangeable in common parlance. However, each has a specific legal meaning in the context of IHL.

The term 'detainee' can be used simply to describe a person who has been deprived of his or her freedom: a pre-trial detainee, a detainee after criminal conviction, or in wartime, a detained civilian or prisoner of war. It should be understood as a generic term signifying that the person has been deprived of his or her freedom without specifying the reasons for, or the form of, detention.

The term 'internee' is generally used to describe a civilian exceptionally deprived of his or her freedom during international or non-international armed conflict for imperative security reasons, for his or her own protection or for having committed an offence against the occupying power. An internee is protected by the provisions of the Fourth Geneva Convention and the relevant provisions of its Additional Protocols, as well as by the applicable rules of customary IHL and by human rights norms.

A 'prisoner of war' is any combatant who has fallen into the hands of an adverse party during an international armed conflict. Such combatants must be granted prisoner-of-war status and are entitled to receive the special protection provided by IHL under the Third Geneva Convention, the relevant provisions of Additional Protocol I, as well as by the applicable rules of customary IHL and human rights norms.

### 19. May a child be detained? What IHL rules apply?

Children may be detained. But, like any other persons detained in relation to an armed conflict, they receive the protection provided by IHL. In addition, they are entitled to special protection because of special needs related to their age.

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In international armed conflicts, children who take part in hostilities, if detained, benefit from the IHL treaty and customary law protections provided for prisoners of war. Those children, who do not take part in hostilities, if detained, are protected by the IHL treaty and customary law rules applicable for civilian internees.

In addition, during both international and non-international armed conflicts, under international treaty law and customary IHL special provisions are made for children who are thus deprived of their freedom. These provisions are related to lodging children with their interned parents, ensuring mandatory education for them during their period of internment, providing additional portions of food, sport and outdoor activities, and so on.

## **20. What is the difference between capturing people and taking hostages? What IHL rules apply?**

Capturing and detaining combatants is permitted under IHL and capturing and detaining civilians is permissible only in exceptional cases (i.e. for taking active part in hostilities, for imperative security reasons, for their own protection or for committing an offence against the occupying power.)

Hostage-taking covers capturing or detaining someone, and then threatening to kill, to injure or to continue to detain that person, unless a third party does or abstains from doing something as a condition of that hostage's release. It is prohibited by international law in general as well as by IHL.

IHL prohibits the taking of hostages in both international and non-international armed conflicts. Nonetheless, if they are taken, hostages are entitled to all the legal protection available to combatants and civilians, especially as set out in the Third and Fourth Geneva Conventions and their Additional Protocols, in customary IHL, and in human rights law.

## **21. What are the most important factors to consider when interpreting the principle of proportionality?**

The principle of proportionality seeks to balance humanitarian requirements with the necessities of war. However, it is much easier to formulate the principle of proportionality in general terms than to apply it.

The prohibition against 'disproportionate attack' stems from the principle of proportionality and is defined by Additional Protocol I as "an attack which may be

expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated." The phrase "concrete and direct military advantage" means that the anticipated advantage must be of a military nature, aimed at annihilating or weakening the enemy's armed forces. It should be substantial; any advantage that is barely discernible, or one that would take shape only in the long term, should be disregarded.

The principle of proportionality operates in scenarios in which an attack on a legitimate military target may also result in collateral damage. Therefore, the rule prohibiting disproportionate attacks requires that the extent of possible collateral damage be assessed before launching an attack. Any assessment has to take into account a number of factors: the location of the civilian population and of civilian objects (whether they share the same location as, or are in the vicinity of, a military objective), the terrain, the kind of weapons to be used (accuracy, scope of dispersion, ammunition used, etc.), weather conditions (visibility, wind, etc.), the specific nature of the military objectives (ammunition depots, fuel reservoirs, main roads of military importance that run through, or are near, inhabited areas, etc.).

When the civilian losses and damages that are foreseeable are out of proportion with the expected military advantage, the interests of the civilian population should always prevail. After all, IHL requires that care be taken constantly to spare civilians and civilian objects and it forbids attacking parties to inflict any injury or damage that can reasonably be avoided.

## **22. What are the main differences between the categories of 'civilian' and 'combatant'? What IHL rules apply when a civilian or a combatant is captured?**

In international armed conflict, combatants have the right to take direct part in hostilities. Consequently, they cannot be prosecuted for lawful acts of war. They may, however, be prosecuted for violations of IHL, particularly for war crimes. Combatants enjoy protection under IHL against some means and methods of warfare both during the fighting and if they are wounded, sick or shipwrecked. When they are captured, combatants – provided that they meet the relevant

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legal criteria - are entitled to prisoner-of-war status and protected by the Third Geneva Convention, Additional Protocol I and applicable customary IHL.

Any person who is not considered to be a combatant is a civilian. Civilians enjoy full protection against attacks and the effects of hostilities. If they take a direct part in hostilities though, and for as long as they do so, they lose their special protection as civilians and become lawful targets of attack. When they are captured, they are protected by the relevant provisions of the Fourth Geneva Convention, Additional Protocol I and applicable customary IHL.

In non-international armed conflict, where the status of 'combatant' does not exist, the distinction between a 'civilian' and a 'combatant' is not applicable. Members of organized armed groups are not entitled to any special status under the laws of non-international armed conflict and may be prosecuted under domestic criminal law if they have taken part in hostilities. However, the IHL rules applicable in non-international armed conflict - common Article 3, certain provisions of Additional Protocol II, and customary IHL - as well as human rights law, all provide for the rights of detainees in relation to their treatment and the conditions of their detention as well as the due process of law.

### **23. Do the red cross, red crescent and red crystal emblems differ in significance?**

No. The three legally recognized emblems have the same significance and afford the same kinds of protection; they differ only in the circumstances of their adoption.

The proposals put forward by Henry Dunant in 1863 - aimed at improving assistance for war victims - included an attempt to persuade countries to agree to protect aid workers and the wounded and sick on the battlefield. In order to realize this goal, it was suggested that a distinctive sign be adopted, one that would confer legal protection on army medical services and volunteer aid workers.

The first such emblem was adopted in August 1864. It was a red cross on a white background, the colours of the Swiss flag in reverse. However, during the war of 1876-1878 between Russia and Turkey, the Ottoman Empire declared that it would use a red crescent instead of a red cross as its emblem; it agreed to respect the red cross used by the other side. The red crescent thus became the second protective emblem.

Over time, cultural, religious or political connotations were sometimes read into the two emblems. This jeopardized the protection they conferred on victims of armed conflict, on the medical services of armed forces and on humanitarian personnel. Some States and National Societies did not wish to use either the red cross or red crescent, while others wanted to use both. The idea of an additional emblem, one that would be acceptable to all State and National Societies, was put forward. This idea, which was strongly supported by the Movement, was realized in December 2005 when a diplomatic conference recognized the red crystal as a distinctive emblem alongside the red cross and the red crescent.

Today the red cross, the red crescent and the red crystal emblems are all entitled to full respect under international law.

### **24. For what purposes may the red cross, red crescent and red crystal emblems be used? Who is authorized to use them?**

There are two categories of use for the distinctive emblems: indicative use and protective use.

Indicative use shows the link between a person, vehicle or an object and the Movement. The distinctive emblems may also be used, as an exceptional measure, by ambulances and first-aid stations exclusively assigned to provide free treatment to the wounded and sick. The emblems must be comparatively small in size and may not be placed on armbands or on the roofs of buildings, in order to avoid any confusion with emblems used as protective devices. The most common indicative use of the emblem is in the logos of National Societies, where the emblem is displayed together with the name or initials of the National Society.

Protective use of the emblems occurs primarily during armed conflicts. In these circumstances, an emblem is the visible sign of the protection conferred by the four Geneva Conventions and their Additional Protocols on the medical services and religious personnel of armed forces, on civilian hospitals authorized for the treatment of the wounded, sick and shipwrecked, as well as on persons, vehicles or objects linked to the Movement. When they are used as protective signs the emblems should be as large as possible and should be displayed by themselves, without any accompanying information.

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## **25. What constitutes 'misuse' of the distinctive emblems?**

Any misuse of the emblems might diminish their protective value and undermine the effectiveness of humanitarian assistance.

There are three clearly identifiable forms of misuse. First, the imitation of any of the three emblems by any sign that, owing to its shape and colour or both, may be confused with one of the three officially protected emblems. The second and most common form is the use of any distinctive emblem in a manner inconsistent with IHL. This includes the use of the emblems by unauthorized persons or bodies (commercial enterprises, pharmacists, private doctors, non-governmental organizations, or ordinary individuals, etc.) or for purposes that are inconsistent with the Movement's Fundamental Principles. Thirdly, the use of the distinctive emblems during an armed conflict in order to protect combatants and military equipment, with the intent to mislead an adversary. When this causes death or serious personal injury, it constitutes 'perfidy' and qualifies as a war crime.

In order to ensure universal respect for and protection of the emblems, every State party to the four Geneva Conventions is obliged to enact national legislation that regulates the use of the emblems and prevents and punishes their unauthorized use during armed conflict and in peacetime.

## **26. Is it permissible during armed conflict to deny people access to food or water, or other essential commodities as a military tactic?**

No. It is illegal to deny either civilians or captured combatants access to the basic necessities of life.

With regard to civilians, IHL emphasizes the principle of distinction by clearly stating that military targets are the only legitimate objects of attack. IHL also protects objects that are indispensable to the survival of the civilian population. It contains prohibitions on attacking, destroying, removing or rendering useless food supplies, water and sewer systems, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, as well as other similar essentials. The prohibitions under IHL cover such acts regardless of their motives, whether

they are undertaken in order to starve out civilians, to cause them to move away, or for any other reason. Forcible starvation of civilians is a war crime.

As for captured combatants and fighters, IHL requires that they be treated humanely, with respect for their lives and their human dignity. Torture, ill-treatment and abuse that violate their essential rights are forbidden, and the basic principles of humanity must be respected. Depriving captured combatants or fighters of the basic necessities of life violates humanitarian norms.

## **27. Adulthood is defined differently throughout the world: a person may be considered an adult in one country and a child in another. What does this mean for the rules of IHL?**

IHL is a body of law that was developed solely for situations of armed conflict. It provides no definition for what a 'child' is.

The 1989 UN Convention on the Rights of the Child (CRC) considers every person below the age of 18 to be a child unless, under the law applicable to the child, majority is attained earlier. The CRC does not suggest an age at which majority may be attained. It leaves that to the discretion of individual States. However, this discretion is not unlimited; when fixing the age of majority, the object of this Convention, to protect the best interests of children, must be taken into account. Therefore, the age of majority established by States must not be set 'unreasonably low'; the higher this age, the better children's interests are protected.

IHL rules for protecting children from the effects of armed conflict are based on the definition of 'child' provided by the CRC. This is one of the reasons why States decided - most recently, by the adoption of the Optional Protocol to CRC - to raise the age, below which a child may not take part in hostilities, from 15 to 18 years.

## **28. If a 14-year-old is holding a live grenade that would kill an entire group of enemy combatants, does IHL prohibit stopping that child by force?**

IHL governs the way force is used and provides rules for behaviour in war. In general, the use of force against a legitimate military target, be it a person or an object, is lawful, provided the principle of proportionality is respected.

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Depending on the circumstances, if a child takes a direct part in hostilities, regardless of his or her age, he or she loses the protection provided for civilians against attacks and becomes a legitimate military target. The opposing side therefore could legally use force in this case, but must respect the principle of proportionality.

## 29. Isn't all suffering caused by weapons 'unnecessary suffering'?

IHL is a body of law that recognizes the existence of armed conflict and attempts to prevent and minimize its effects. Under IHL, the only legitimate objective in war is to weaken the enemy; to employ weapons that create suffering out of proportion with legitimate military gain is therefore to create 'unnecessary suffering.' In other words, IHL does not prohibit the use of weapons, but tries to ensure that their use causes the least possible suffering. It therefore provides that combatants are not allowed to use weapons that are capable of inflicting suffering greater than that required to take their adversaries 'out of action.' Because during war unnecessary suffering may be inflicted as a result of either of the weapons that are used or of the way they are used, IHL contains rules for both eventualities.

## 30. Does damaging the environment during armed conflict violate IHL? How?

In recent decades, many armed conflicts have resulted in different forms of damage to the environment: long-lasting chemical pollution on land, maritime and atmospheric pollution, despoliation of land by mines and other remnants of war, and destruction of water supplies and other necessities of life.

The principle of proportionality sets important limits on warfare: the only acts of war permitted are those that are proportional to the lawful objective of a military operation and necessary to achieve that objective. Wanton destruction is prohibited. In addition, there are specific rules of IHL that require that precautions be taken against causing widespread, long-term and severe damage to the natural environment and that prohibit the use of methods and means of warfare that are intended or may be expected to cause such damage.

## 31. Can manufacturers of weapons violate IHL merely by producing weapons? What about industrialists who sell arms?

IHL aims to limit the damage and suffering caused by war. It not only protects the lives and the human dignity of people who are not, or who are no longer, taking part in fighting, but also sets limits on the conduct of hostilities by prohibiting or restricting the employment of certain methods and means of warfare. A variety of acts related to certain weapons, such as their manufacture or sale, are outlawed owing to the indiscriminate effects of such weapons or because their employment may cause unnecessary suffering, or severe, widespread, long-term damage to the natural environment. Chemical and biological weapons, as well as anti-personnel mines, typify those weapons whose use, production and sale are altogether prohibited.

However, many weapons, especially small arms and light weapons, are not prohibited by IHL and the law does not specifically restrict their use. Nevertheless, their widespread availability facilitates violations of IHL and increases civilian suffering; it adds to the injurious effects of conflicts and prolongs their duration, and it hampers the delivery of assistance to victims. The manufacture of these weapons is not unlawful, as they have certain legitimate uses, in law enforcement and national defence, for instance. However, the uncontrolled transfer of such weapons creates real problems and sustains insecurity in many parts of the world. In 2001, the UN adopted the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Programme of Action), which encourages governments to take measures to exert better control over small arms and light weapons, primarily at the national level. By adopting the Programme of Action, States have undertaken to establish adequate national controls on arms production and arms transfer, to draft legislation to regulate arms brokering activities, and to ensure both the effective management of national weapons stocks and their security.



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## 32. Does 'asymmetric warfare' change the responsibilities of the parties to an armed conflict and the risks they face?

The expression 'asymmetric warfare' describes a situation in which there is a significant inequality in force between the parties to a conflict, not only in their relative strength but also in the technological capabilities of their arms and weapons. Such disparity between belligerents is becoming increasingly common in contemporary armed conflict: on one hand, there are the rapidly developing military capacities of some countries; on the other, the rising involvement of armed groups.

In order to gain a comparative advantage, a weaker party, confronted by a militarily powerful adversary, may resort to instrumentalizing the principle of distinction and employing tactics that have long been outlawed by IHL, such as direct attacks against civilians, the use of human shields, hostage-taking and the misuse of protective emblems. At the same time, the militarily more powerful party, faced with such a systematic misuse of the principle of distinction, might eventually set aside the principle of proportionality and resort to tactics such as indiscriminate attacks, and illegal interrogation practices, as well as to the use of unlawful weapons.

The danger in such situations is that all parties to the conflict will view the application of IHL as detrimental to their interests, and this will result in comprehensive disregard for the law. It is therefore important to note that regardless of the asymmetric nature of the hostilities, the rules remain equally applicable to and binding on all parties involved in the armed conflict. Therefore, all parties to the conflict must avoid being drawn into the spiraling-down effect that asymmetric warfare can have.

## 33. Does IHL cover the 'war on terrorism'?

'Terrorism' is a phenomenon. In practice and under law, war cannot be waged against a phenomenon, but only against an identifiable party, a central element of the concept of armed conflict. The parties to an international armed conflict are two or more States (or States and national liberation movements). In non-international armed conflict the parties may be either States and armed groups or just armed groups. In either case, a party to an armed conflict has a military-like formation with a certain level of organization,

a command structure and, therefore, the ability to respect and ensure respect for IHL.

IHL is the body of international law that is applicable when armed violence reaches the level of armed conflict (when a difference between opposing parties leads to the use of armed force), whether international or non-international.

Provided that the level of armed violence amounts to armed conflict and involves identifiable parties, IHL is applicable. IHL unequivocally prohibits certain terrorist tactics that might be deployed during an armed conflict (e.g., attacks on civilians, 'perfidy', pretending to be a civilian while fighting) as well as 'measures of terrorism' and 'acts of terrorism.' The Fourth Geneva Convention states that "collective penalties and likewise all measures of intimidation or of terrorism are prohibited," while Additional Protocol II prohibits 'acts of terrorism' against persons who are not, or who are no longer, taking part in hostilities. Also, Additional Protocols I and II prohibit acts aimed at spreading terror among the civilian population (such as shelling campaigns in urban areas or sniper attacks).

If terrorist acts take place outside the context of armed conflict, they are governed not by IHL but by other international and national legal norms. They should be dealt with by the proper domestic or international authorities who have a number of means at their disposal: intelligence gathering, police and judicial cooperation, extradition, criminal sanctions, financial investigations, the freezing of assets and the exertion of diplomatic and economic pressure on States accused of aiding suspected terrorists.

## 34. If one side violates IHL in wartime, is the other side justified in doing the same?

Unlike other international norms, IHL was not designed to protect States' interests but to protect human beings from the devastation caused by war. To achieve this aim, IHL norms are imperative and unconditional in nature and must be respected by a party to a conflict regardless of whether its adversary does so. This obligation is expressed in Article 1 common to the four Geneva Conventions, which states that the four Geneva Conventions must be respected 'in all circumstances.' Therefore, violations of the law committed by one side cannot be used as justification by the other side to do the same.

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## 35. Are there any circumstances under which civilians and civilian objects may be attacked?

As a general rule, civilians (persons who are not combatants) are offered immunity from attacks by IHL. However, civilians who take a direct part in hostilities lose their protection against attacks for as long as they do so. International law does not prohibit civilians from taking direct part in hostilities. However, they may be prosecuted under domestic law for such acts. When a person's status is in doubt, he or she must be considered to be a civilian.

A civilian object is any object that is not a military objective; by its nature, location, purpose or use, it does not effectively contribute to military action and its total or partial destruction, capture or neutralization would not offer a definite military advantage. IHL prohibits attacks against civilian objects. However, when a civilian object is used for military purposes, it loses its protection against attacks and may be considered to be a military objective. In case of doubt, an object that is normally made use of for civilian purposes must be considered to be civilian and may not be attacked.

## 36. What constitutes "taking a direct part in hostilities"?

The idea of 'direct' or 'active' participation in hostilities can be found in numerous provisions of IHL, but neither the four Geneva Conventions nor their Additional Protocols define the nature of such participation. The growing involvement of civilians in both international and non-international armed conflicts as well as the shift in military operations from clearly identifiable battlefields to civilian population centres have heightened the importance of distinguishing between those directly participating in hostilities and uninvolved civilians.

In order to identify the scope of behaviour and activities that cause civilians to lose their immunity from attack, it is necessary to clarify the meaning of 'direct participation in hostilities.'

Experts continue to discuss the legal meaning of the phrase, and it is impossible to provide a precise, exhaustive list of the activities that might constitute 'taking a direct part in hostilities.' Rather, in order for a specific act carried out by a civilian to qualify as direct participation in hostilities, it must meet the following requirements:

- the act must be likely to cause harm (it must adversely affect the military operations or military capacity of the enemy, or it must inflict death, injury or destruction on persons or objects); and
- there must be a direct causal link between the act and the harm likely to result from it; and
- the act must be specifically intended to support one party to an armed conflict by harming another.

## 37. Does a combatant ever cease to be a legitimate military target?

Combatants are generally considered to be legitimate military targets, but, in certain circumstances, they receive protection under IHL against direct attack. Most importantly, when combatants are *hors de combat* (e.g., surrendering, wounded, sick, shipwrecked, detained), and for as long as they are in that state, they cease to be legitimate military targets and must be protected against direct attack. Combatants who are not *hors de combat* remain legitimate military targets even when they are not taking a direct part in the hostilities (e.g., off duty, on leave, sleeping, etc.). In other words, when combatants are not *hors de combat*, they remain subject to direct attack. This does not mean, however, that combatants may always be killed without further considerations.

Any attack on combatants must comply with the principles of distinction, precaution, and proportionality and the other restrictions imposed by IHL on the means and methods of warfare. Moreover, as stated in the St Petersburg Declaration of 1868, the only aim that can legitimately be pursued in the conduct of hostilities is to 'weaken' the military forces of the enemy, not necessarily to "render their death inevitable." Similarly, the Lieber Code of 1863, on which many modern military manuals are based, made it clear that the fundamental principle of military necessity underlying IHL as a whole justifies only "those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war."

Therefore, even where combatants are not *hors de combat*, the kind and the degree of force that is used to attack them should be limited to what is reasonably necessary to accomplish a legitimate military purpose. For example, where combatants are not in a position to fight and can be apprehended without risk,

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considerations of humanity require that they be taken prisoner rather than killed. In this way, the legitimate military purpose of weakening the military forces of the adversary can be accomplished without harming individual combatants, which is manifestly unnecessary in the circumstances.

### **38. Into what category do private military or security companies fall: 'civilian' or 'combatant'?**

If the staff of a private military company (PMC) or a private security company (PSC) forms part of the armed forces of a State, it would fall into the category of 'combatant' and as such would be a legitimate military target. However, reductions in a country's armed forces and related costs might lead to the outsourcing of activities formerly carried out by the armed forces. In such circumstances, most PMC and PSC staff do not form part of a State's armed forces and would fall within the 'civilian' category. As civilians, they may not be the objects of attack. Like all civilians, however, they lose their immunity from attack when their conduct amounts to taking part in hostilities, for as long as such conduct lasts.

When they are operating in situations of armed conflict, the staff of PMCs or PSCs must respect IHL. They will face criminal responsibility for any violations of IHL they commit. This remains the case whether they are hired by States, international organizations, non-governmental organizations or by private companies.

### **39. What can a soldier do if he or she is given an order that is in violation of IHL? Can he or she be held responsible for carrying out an act based on that order?**

Soldiers must know the basic rules of IHL so as to be able to distinguish between lawful and manifestly unlawful orders. Obeying orders is no excuse for committing war crimes or otherwise violating IHL. If a soldier is given an order that is manifestly unlawful, he or she must refuse to obey it; obeying it would make the soldier individually responsible for the resulting violation of IHL.

### **40. What must a commander do if his or her soldiers commit war crimes? Is he or she responsible for the soldiers' acts?**

If a commander knows, or is in a position to know, that his or her soldiers are committing or are about to commit war crimes, he or she must take all measures within his or her power to prevent or repress the commission of those crimes or submit the matter for investigation and prosecution. Failing to do so makes him or her individually responsible for the war crimes committed by his or her soldiers (together with the soldiers themselves, of course).

### **41. How can 'transitional justice' help in dealing with the legacy of war?**

'Transitional justice' refers to a variety of mechanisms that can be used in order to promote justice, peace and reconciliation in response to violations of IHL and human rights law. Such mechanisms are generally employed during a transitional period characterized by a shift from war to peace or from authoritarian to democratic rule.

The mechanisms of transitional justice may be judicial or non-judicial. They take on a number of different tasks, such as investigating and punishing war crimes and human rights abuses, repairing damage and promoting reconciliation between perpetrators and victims. Their aim is to contribute to social reconstruction and to prevent atrocities in the future.

The most frequently used mechanisms of transitional justice are domestic, hybrid and international criminal tribunals, truth and reconciliation commissions and different acts of reparation, such as restitution, financial compensation, rehabilitation and satisfaction.

### **42. What is the difference between amnesty and forgiveness?**

Amnesty is a legislative or executive act by which a State bars the criminal prosecution of a particular group of persons for actions that would usually have qualified as offences under domestic or international law. This legal mechanism aims to put an end to hatred in the interests of national reconciliation. An amnesty is more than a 'pardon' (which exempts criminals from serving all or part

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of their sentences without expunging their convictions); it does away with all the legal consequences of having committed the offences in question.

Forgiveness on the other hand is not a legal mechanism but a gesture or process that deals with offences from a social or moral standpoint.

### 43. Can amnesty be granted for all crimes?

No. The existence of amnesty must not prevent States from complying with their obligations under IHL and human rights law to prosecute and punish those who commit offences of a particular kind. International law explicitly excludes certain crimes from the scope of amnesty.

In the first place, States are obliged to suppress all violations of IHL. They are obliged also to prosecute or extradite those who have committed war crimes; persons who have committed grave breaches of the four Geneva Conventions (as required by treaty law) or any other serious violations of IHL (based on customary law) would fall into this category.

Also, States are obliged to prosecute or extradite persons accused of committing certain gross human rights violations that are set out in the relevant treaties, such as torture, genocide, forced labour, apartheid and the taking of hostages. In addition, the Rome Statute of the International Criminal Court (ICC) reminds all States to exercise their criminal jurisdiction over those responsible for international crimes, which include genocide, crimes against humanity and war crimes.

Consequently, States cannot grant amnesties to those who have committed such crimes without violating their commitments under IHL and human rights law. However, States may grant amnesties in certain other cases: for political crimes, which include treason, sedition or rebellion, and for direct participation by civilians in hostilities.

### 44. Can amnesty be revoked if it turns out that some portion of the truth, in a particular instance, was withheld?

Yes, amnesty can be revoked in certain circumstances. However, just as amnesty is not granted easily, it is not easily revoked. A decision to revoke amnesty must take into account the impact that the revocation will have on society and/or on the ongoing judicial or non-judicial processes.

### 45. Some people argue that when a court exercises universal jurisdiction over certain international crimes, it interferes in the internal affairs of other countries. Would this violate the golden rule of State sovereignty?

The international community has agreed that there are certain international crimes so serious and harmful to the entire community that it is every State's responsibility to bring those responsible to trial. The first crime over which States were entitled to exercise universal jurisdiction was piracy, in the seventeenth century. Basing their decision on customary international law, States agreed to fight together against this form of criminality that affected all of them. Today, the list of international crimes over which universal jurisdiction may be exercised also includes grave breaches of the four Geneva Conventions, torture (as required by the 1984 UN Convention against Torture), enforced disappearance (as laid down by the 2006 UN Convention against Enforced Disappearance), genocide and crimes against humanity (based on international customary law).

The principal rationale for universal jurisdiction with regard to such crimes is that there should be no safe haven for the perpetrators (not even in countries with the territorial or personal jurisdiction but without the will and the ability to prosecute the persons in question). By exercising universal jurisdiction, a foreign State may seem to be interfering in the internal affairs of the sovereign State on whose territory the crime was committed or to which the perpetrator or the victim of the crime is affiliated by nationality. However, persuaded by the gravity of these international crimes, the international community has largely agreed that all States should be ready to limit their sovereignty; the perceived interference of a prosecuting State should be regarded as an act undertaken on behalf of all States. Allowing States to step in like this is an additional deterrent and also serves as a preventive measure against these heinous crimes.

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## **46. Why is the principle of non-retroactivity important?**

The principle of non-retroactivity is one of the fundamental principles of international criminal law. It stipulates that no one may be held accountable for an unlawful act unless it was already criminalized at the time of its commission.

Such rules need not necessarily exist at the national level. Individuals may also incur criminal responsibility for their conduct under international treaty or customary law. At the Nuremberg Tribunal, for example, when the defence invoked the principle of non-retroactivity, the court argued that the alleged violations of the law of war qualified as such under international customary law; the fact that the acts in question were not prohibited by domestic law or international treaty law was no obstacle to bringing the defendants to court.

## **47. What is the relationship between the jurisdiction of the ICC and that of the ad hoc international criminal tribunals for the former Yugoslavia and for Rwanda?**

This issue has arisen as a result of the recent establishment of the ICC, particularly because it was created to deal with the most serious crimes, regardless of where they were committed.

The temporal scope of the jurisdiction of the International Criminal Tribunal for Rwanda (ICTR) covers certain crimes committed in the territory of Rwanda and by Rwandese in neighbouring States in 1994. The ICC is entitled to prosecute only those persons who are alleged to have committed the international crimes under its jurisdiction from the time its establishing treaty entered into force, namely from July 2002. There is thus no overlap between the jurisdiction of the ICC and that of the ICTR. The cases originally under the jurisdiction of the ICTR will be seen through to their end by that tribunal; they will not fall under the jurisdiction of the ICC.

The relationship between the ICC and the International Criminal Tribunal for the former Yugoslavia (ICTY) is more complex. The ICTY has an open-ended mandate, which entitles it to prosecute those accused of certain crimes committed in the territory of the

former Yugoslavia since 1991. In theory, its jurisdiction overlaps with that of the ICC for the period since July 2002, when the Rome Statute entered into force. In practice though, because of its territorial jurisdiction, the ICTY would be entitled to prosecute anyone responsible for committing international crimes in the territory of the former Yugoslavia.

However, because the work of the two ad hoc international criminal tribunals will soon be coming to an end, prosecutions for international crimes, if they were committed after July 2002 and were not dealt with by States, would be handled by the ICC.

## **48. Does the ICC have jurisdiction over acts of sexual violence? Over acts of terrorism?**

The ICC has jurisdiction over genocide, crimes against humanity and war crimes. Therefore, it may prosecute those who commit sexual violence or acts of terrorism if their offences fall into these categories (e.g., various forms of sexual violence are explicitly defined as war crimes and as crimes against humanity).

## **49. What is the difference between the ICC and the International Court of Justice?**

The ICC is a criminal court with the authority to prosecute and convict individual perpetrators whereas the International Court of Justice (ICJ) deals with disputes between States. The ICJ is the principal judicial organ of the United Nations; the ICC is independent of the UN.

## **50. Is a head of state who has committed international crimes in his or her official capacity immune from prosecution?**

The general rule, based on customary international law, is that a head of state is immune from any legal proceedings related to acts undertaken while in office.

However, there is an absolute exception to this rule with regard to international crimes (e.g., war crimes, genocide, crimes against humanity), which creates criminal responsibility for a head of state even if those crimes were committed in his or her official capacity. This criminal responsibility is enduring; it remains whether the legal proceedings in question take place during or after the head of state's term in office.

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## **51. What are the obstacles to prosecuting alleged war criminals?**

There are various obstacles that might impede the institution of criminal proceedings for international crimes. They include: lack of political will in States to prosecute directly or to facilitate prosecutions, national laws granting amnesty to certain groups of people even for international crimes, national statutes of limitations (a fixed period of time, after which persons who have committed certain offences may not be prosecuted, inadequate enforcement of the law at the international level, long procedures owing to gathering evidence and testimony, the costs of legal proceedings, and the scale of the crimes.

Because of these obstacles, some proceedings might seem to take longer and might have the appearance of being less successful than others. However, this should not lead anyone to conclude that they are futile. Even though it is not perfect, the system of legal proceedings is very important and contributes to bringing alleged war criminals to justice. It also helps societies to deal with the aftermath of war and to prevent atrocities in the future.

## **52. Can a truth commission established by a government that is reviewing IHL and human rights violations committed by its representatives be credible?**

Truth commissions are commonly set up after power has changed hands; they target offences committed by members of the previous regime and not those offences for which their successors might be responsible. Under such circumstances, a government would feel less threatened by the creation of such a body and be more likely to facilitate the commission's work with the object of securing its own position by ensuring peace and bringing about national reconciliation.

## **53. Who is entitled to receive ICRC visits while in detention?**

Persons who have been taken prisoner or who have been detained in relation to an armed conflict are regarded by their captors as enemies. They might require the services of an impartial, neutral and independent body to ensure that they are treated humanely, have acceptable living conditions, and also some way of exchanging news with their families. The ICRC follows up on these issues by visiting

prisoners, military and civilian. Based on the provisions of the Third and Fourth Geneva Conventions, and those of common Article 3, the ICRC is entitled to visit prisoners of war and civilian detainees captured in relation to international armed conflicts. It also has the right to offer its services to anyone captured in relation to non-international armed conflicts (so-called 'security' or 'political' detainees).

In addition, the Statutes of the Movement allow the ICRC to offer its services to persons deprived of their freedom in relation to situations of internal violence.

The ICRC has steadily broadened the scope of its activities over the years: criminal law offenders are included in its representations and visits if they are on the same premises as persons arrested in connection with situations of internal violence, or if they are suffering as a direct result of such situations. Each year, ICRC delegates visit about 440,000 detainees during armed conflicts or other situations of violence in approximately 2,000 places of detention in over 70 countries.

## **54. If someone is missing in connection with an armed conflict or some other situation of violence, isn't it logical to assume that he or she is dead?**

In armed conflicts and other situations of violence, there are many reasons why persons go missing. The disorder might be so great as to prevent people from contacting their families. People get lost, become displaced, are injured, hospitalized or detained. Some people who go missing are, in fact, victims of the practice of enforced disappearance. Death is, of course, the grimmest possibility of all.

Efforts should be made to locate the missing person, whether alive or dead. In the event that someone's mortal remains are found, efforts should be undertaken to identify them.

Most States have national laws that declare missing persons to be legally dead after the passage of a certain amount of time. From a psychological perspective, this is necessary for those who were close to the missing person. It also has a practical importance: by establishing the rights and obligations of surviving relatives, it gives effect to the missing person's last will or testament and allows those left behind to go on with their lives (the change in civil status of a partner might enable him or her to re-marry, this changed status might provide access to State-sponsored benefits, etc.).

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## 55. How does the ICRC ensure its independence?

As a private Swiss organization, the ICRC does not fall under the political authority of any State. Its highest governing body consists of Swiss nationals who act in their private capacities.

Its work is funded by contributions from governments, the European Commission, international organizations, supranational organizations, National Societies, as well as from other sources, public and private. All of these contributions are voluntary.

The ICRC receives funds from a variety of disclosed sources but is influenced by none. No contributor has the leverage to change its mandate. Money may be pledged towards a certain cause (for refugee children, women in war, etc.). However, such donations have no political influence at all on the work of the organization. The ICRC does not wait to receive funds to respond to those in urgent need; it counts on the goodwill of its contributors to provide the funds as quickly as possible.

To guarantee complete transparency on its use of funds, the ICRC makes its expenditures available to the public, in an annual report that includes exhaustive operational, statistical and financial information on its work.

## 56. What is the relationship between the Fundamental Principles of neutrality and impartiality?

'Neutrality' and 'impartiality' are two distinct Fundamental Principles, which are, for different reasons, essential in the work of the ICRC. The relationship between them is strong and self-evident: an organization that does not take sides and which refrains from participating in situations of conflict or in controversies (therefore neutral), is ready and well-placed to act impartially and to give its whole attention to the suffering individual and to help him or her in proportion to his or her suffering, without discrimination.

## 57. Are ICRC staff members allowed to carry weapons to protect themselves?

In order to avoid giving the impression that they are taking sides, and as a matter of principle, ICRC staff members may not carry weapons to protect themselves or to safeguard their mission. The first and most reliable means of protection for members of the ICRC's staff is to identify themselves by using the distinctive emblems of the red cross, red crescent or red crystal.

However, in extreme situations, when access to victims is jeopardized and the safety of ICRC staff members is endangered because the protective value of the emblem is no longer respected, the question of armed protection may be considered. In such instances, the primary consideration must be the preservation of the impartiality, neutrality and independence of the ICRC's work, which is essential for the organization's effectiveness in protecting and assisting victims of armed conflicts and other situations of violence. The dangers and the potential long-term adverse consequences of resorting to armed protection make it necessary to establish and respect strict internal principles and guidelines.

## 58. What are the dangers of the 'instrumentalization' of humanitarian action?

Every effort must be taken to ensure that humanitarian action is not 'instrumentalized' under any circumstances.

The term 'instrumentalization' refers to the practice of using humanitarian action to pursue political or military objectives. This results in blurring the lines between the roles and objectives of political and military actors on the one hand and of humanitarian actors on the other, which may create serious problems for organizations such as the ICRC: it affects public perceptions of them, makes their acceptance more difficult and puts their staff at risk. Describing military or political activities as 'humanitarian' in nature is misleading and might have a detrimental effect on the ICRC's impartial, neutral and independent humanitarian work. Such blurring of distinctions might endanger the lives of victims as well as those of ICRC staff members. 'Instrumentalizing' humanitarian action might ultimately prevent the provision of humanitarian protection and assistance without discrimination for all victims of armed conflicts and other situations of violence.

# The questions

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## 59. Why does the ICRC have a presence in some countries and not in others?

Operational and institutional needs determine the ICRC's presence in a country. The organization has delegations and missions in about 80 countries and employs a staff of over 12,000 people, most of them nationals of the countries in which the ICRC works. About 800 people work at the ICRC's headquarters in Geneva, Switzerland, providing vital support to and supervision of field delegations, and determining and implementing institutional policies and strategies. ICRC field delegations might cover one country or, as is the case with regional delegations, several countries. To obtain permission for its presence and to be able to do its work, the ICRC generally negotiates and concludes headquarters agreements with States. These agreements are especially important because the ICRC's work in a country is dependent on the acceptance and approval of that particular State. It is only by working in close cooperation with local authorities that the ICRC can fulfil its mandate. Such agreements also establish the framework of the ICRC's activities as well as the rights, immunity and safety of its personnel.

The ICRC's delegations carry out a range of activities, depending on the situation and the needs in a particular country:

- protecting and assisting the victims of existing, emerging or past armed conflicts and other situations of violence (civilians, people deprived of their freedom, dispersed families, the wounded and sick);
- promoting IHL, cooperation with National Societies, humanitarian coordination and diplomacy.

The ICRC's delegations also serve as important warning systems: this enables the organization to respond to needs quickly and effectively when armed violence or conflict erupts.

## 60. How does the ICRC operate?

How the ICRC decides to operate in a country depends on the situation, the problems the organization encounters and its objectives. The ICRC's activities are governed by operational strategies that combine different modes of action.

**Persuasion:** bilateral and confidential dialogue with the parties to the conflict aimed at convincing them to enhance respect for IHL and/or other fundamental rules protecting persons in armed conflicts and other situations of violence, and to take measures to improve the circumstances of people affected by such situations.

**Mobilization:** sharing its concern about violations of IHL with governments of third countries, with international or regional organizations, or with persons who are in a position to support its representations to influence the behaviour of parties to a conflict. The ICRC resorts to this mode of action only when it has every reason to believe that the third parties approached will respect the confidential nature of its representations to them.

**Support:** providing assistance to the authorities so that they are better able to carry out their functions and fulfil their responsibilities.

**Direct services/substitution:** providing services directly to people in need, often in place of authorities who are unable or unwilling to do so.

**Public denunciation** (resorted to by the ICRC only in exceptional circumstances and under strict conditions): public declarations regarding the recurrence of major violations of IHL during armed conflicts and other situations of violence, for the purpose of ending such violations or to prevent their occurrence in the future. A public denunciation can be made only if it is in the interests of the persons or populations affected or threatened. The ICRC resorts to it only when it has exhausted all other reasonable means of persuading the proper authorities, and when these means have not produced the desired result or when it is clear that the violations are part of a deliberate policy adopted by the party concerned.



# Abbreviations

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## **Additional Protocol I**

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted on 8 June 1977

## **Additional Protocol II**

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted on 8 June 1977

## **Additional Protocol III**

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), adopted on 8 December 2005

## **CRC**

Convention on the Rights of the Child, adopted on 20 November 1989

## **EHL**

Exploring Humanitarian Law

## **First Geneva Convention**

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted on 12 August 1949

## **Fourth Geneva Convention**

Convention (IV) relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949

## **ICRC**

International Committee of the Red Cross

## **IHL**

international humanitarian law

## **ICC**

International Criminal Court

## **ICTR**

International Criminal Tribunal for Rwanda

## **ICTY**

International Criminal Tribunal for the former Yugoslavia

## **International Federation**

International Federation of Red Cross and Red Crescent Societies

## **Movement**

International Red Cross and Red Crescent Movement

## **National Societies**

National Red Cross and Red Crescent Societies

## **Optional Protocol to CRC**

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted on 25 May 2000

## **PMC**

private military company

## **PSC**

private security company

## **Second Geneva Convention**

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted on 12 August 1949

## **Third Geneva Convention**

Convention (III) relative to the Treatment of Prisoners of War, adopted on 12 August 1949

## **UN**

United Nations

## **UN Convention against Torture**

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984

## **UN Convention against Enforced Disappearance**

International Convention for the Protection of All Persons from Enforced Disappearance

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# Mission

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

