

Facts

IHL Resource Centre

2. International Humanitarian Law and the Occupied Palestinian Territory

What is International Humanitarian Law (IHL)?

International humanitarian law (IHL) is part of public international law regulating relations between states and relations between states and individuals. IHL, also known as the laws of war, applies to situations of armed conflicts, whether they are international or internal armed conflicts, including situations of foreign occupation. IHL does not apply in cases of internal disturbances or tensions.

IHL has developed through treaties between states and has become so universal that many rules apply to all states (customary international law). Many important rules of IHL are found in the four Geneva Conventions of 1949 and the two Protocols from 1977. For situations of occupation, the Hague Regulations from 1907 set out the general legal framework.

Why do laws of war apply to an occupation?

Occupation is considered a means of warfare, due to its military nature and its purpose to control a foreign territory in the aftermath of an armed conflict. A territory is considered occupied when it is actually placed under the authority of a hostile army¹ (see Fact Sheet 1 on occupation). The purpose of IHL is to regulate the Occupying Power's administration of the occupied territory, balancing between the security of the occupying forces and the welfare of the local population.

How does IHL apply to Israel?

In 1967 the Israeli army gained effective control over the Palestinian Territory. Since then, the West Bank, including East Jerusalem, and the Gaza Strip have constituted the

occupied Palestinian territory (oPt). Therefore, the engagement of Israel through its armed forces in the oPt and its relationship with the Palestinian population there is governed by IHL.

Israel is a state party to the Fourth Geneva Convention. Further, it is generally recognised that the relevant provisions of the Hague Regulations apply to all states as customary international law. This is also the case for, at least, the humanitarian provisions in the Fourth Geneva Convention. The analysis that IHL applies to the oPt is shared by all significant actors of the international community, including the Security Council, the EU and the ICRC. Most importantly, the International Court of Justice reiterated this position in its Advisory Opinion in 2004. (For information on application of Human Rights Law to the oPt, see Fact Sheet 7).

What is the position of Israel?

Contrary to the international community, including the International Court of Justice, the Israeli government argues that the Palestinian Territory is “disputed”, pointing to what it

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Year of Supreme Court judgment holding that Geneva Convention is not customary international law.	1979
Year of ICJ Advisory Opinion confirming that Geneva Conventions constitute customary international law and that IHL applies to the oPt.	2004

¹ Art 42 of the Hague Regulations (1907).

² HCJ 337/71, Christian Society for the Holy Places v. Minister of Defense (Christian Society case).

considers as the absence of a sovereign power over the territory before 1967. Based on this argumentation, Israel concludes that it is not legally bound by any IHL rules applying to occupied territories.

Does the Israeli Supreme Court apply IHL to the oPt?

Since 1967, the Supreme Court of Israel has referred to certain rules of IHL in many rulings relating to the oPt. However such references have failed to lead to the genuine respect of IHL in the majority of circumstances, particularly those relating to demolitions, settlements and displacement.

It has also stated that Israeli law supersedes international law, even customary international law. Such rulings have often created a “lawful” justification to override basic prohibitions of international law. [For more information of the Israeli judiciary and IHL, see Fact Sheet 3].

What are the main rules of IHL applying to an occupation?

IHL, when regulating situations of occupation, sets out a very protective framework to ensure that the civilians under occupation do not suffer. The law of occupation outlines the primary responsibility of the occupying power to provide for the needs and ensure the welfare of the occupied population. The occupier must ensure public life and order, while respecting the laws of the country.³

IHL strictly prohibits the transfer of the occupying forces own population into

occupied territory, forcible transfer of the protected population, collective punishment, and demolition of private property outside of military operations. Such rules are in addition to the universal rules of IHL which demand that in all circumstances all persons are treated in a dignified manner.

Which local laws should remain in force in the oPt?

As a general rule Israel must respect the laws in force in the oPt at the time when occupation began.⁴ Local laws can only be changed in a limited number of situations:

- 1) If local law contradicts protections provided for under international law; or
- 2) If new law is needed to ensure security of the occupied forces.

Military Order 918 denied the Palestinian population representation in or ownership of the planning process in the West Bank. Israel has not claimed that this was done for security reasons and it is clearly not a step which benefited the local population, hence it can be deemed unlawful.

What laws apply to hostilities that arise during the occupation?

International law allows for states to defend themselves against armed attacks, including rockets fired at its towns and cities. However, any action taken by the parties during law enforcement or the conduct of hostilities must abide by rules of IHL applying to protection of civilians and means and methods of warfare. [For more information see Fact Sheet 9].

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³ Article 43, Hague Regulations (1907).

⁴ Article 42, Hague Regulations (1907), Article 64, Fourth Geneva Convention (1949).