AN EASY GUIDE TO INTERNATIONAL HUMANITARIAN LAW

IHL Resource Centre
2015
Cover Picture: Nasser Najadah sits next to his destroyed home in Dkaika. Today, nearly all of the structures in the community, including schools, are slated for demolition by Israel.

© EAPPI, 2011.

Designed by: Marwan Hamad,
InterTech, Ramallah
Our Partners

Diakonia works together with partners from the civil society in both Israel and the occupied Palestinian territory:

Al Haq, Law in service of the man, www.alhaq.org
Al Mezan Centre for Human Rights, www.mezan.org
The Association for Civil Rights in Israel, (ACRI) www.acri.org
BADIL Resource Center for Palestinian Residency and Refugee Rights www.badil.org
B’Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, www.btselem.org
Kerem Navot, an Israeli civil society organization
# Table of Contents

What is international law? ..................................... 1  
What is treaty law? ................................................ 1  
What is customary international law? .................... 3  
When does IHL apply? ........................................... 5  
What is international human rights law? ............... 6  
What is the relation between IHL and IHRL? .......... 9  
What are the sources of IHL? ............................... 10  
What is a belligerent occupation? ......................... 12  
What is the law of belligerent occupation? .......... 13  
Who are the protected persons under IHL? .......... 17  

## The basic principles of IHL

Principle of Distinction ....................................... 18  
Principle of Proportionality ................................. 19  
Precautions in attack .......................................... 20  
What is military necessity? ................................. 23  
What does the obligation to protect mean? .......... 24  
Who are combatants? ......................................... 26  
Who are civilians? ............................................. 27  
What are the responsibilities of a State under IHL? 28  
What are responsibilities of third States? .......... 31  
What are offenses in international criminal law?... 35  

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACRI</td>
<td>Association for Civil Rights in Israel</td>
</tr>
<tr>
<td>AP I</td>
<td>First Additional Protocol</td>
</tr>
<tr>
<td>AP II</td>
<td>Second Additional Protocol</td>
</tr>
<tr>
<td>GC IV</td>
<td>Fourth Geneva Convention</td>
</tr>
<tr>
<td>ICA</td>
<td>Israeli Civil Administration</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
</tr>
<tr>
<td>IDF</td>
<td>Israeli Defence Forces</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
</tr>
<tr>
<td>OCHA</td>
<td>Office for the Coordination of Humanitarian Affairs</td>
</tr>
<tr>
<td>oPt</td>
<td>occupied Palestinian territory</td>
</tr>
<tr>
<td>PA</td>
<td>Palestinian Authority</td>
</tr>
<tr>
<td>PLO</td>
<td>Palestinian Liberation Organisation</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
</tbody>
</table>
Last October, Ahmad Tawfeeq Abu Hasseh, 17 years old, was shot in the leg when collecting gravel for construction 600 meters from the perimeter fence in the north of the Gaza Strip. The bones in Ahmad’s leg were smashed and he had to stay immobilized for a month following surgery. Nevertheless, Ahmad says he will return to collect gravel as he needs to support his family of 17, of which few are employed. © Anne Paq / Active stills
Easy guide to the basics of IHL

What is international law?

International law is a combination of rules and principles governing the relations between States and, sometimes, with non-State actors, in various fields such as: the protection of human rights, international humanitarian law, law of the United Nations (UN) Charter, the law of the sea and diplomatic relations. The primary sources of international law are treaty law and customary international law.

What is treaty law?

Treaty law is composed of written agreements that States willingly sign, ratify and are bound to follow. Agreements between States govern their mutual relations and may be called treaties, conventions, charters, statutes or protocols. Agreements are only legally binding on States that have signed and also ratified them. The basis of treaty law is the principle of pacta sunt servanda (“agreements must be respected”).
Palestinians near the Abu Dis Checkpoint.
What is customary international law?

Customary international law consists of “general practice accepted as law”.\(^1\) It includes the “rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way”.

Customary international law can be discerned by a widespread repetition by States of similar international acts over time (State practice), which have occurred out of sense of obligation (opinion juris). As such, these acts must be taken by a significant number of States and not be rejected by a significant number of States. Customary international law is binding upon all States in the world.

What is international humanitarian law?

International humanitarian law (IHL), also referred to as the laws of war or the law of armed conflict, defines the conduct and responsibilities of belligerent States, neutral States, armed groups and individuals engaged in warfare, in relation to each other and to the ‘protected persons’ – namely, combatants hors de combat (prisoners of war, sick, wounded and shipwrecked) and civilians.
The fundamental purpose is to alleviate human suffering and regulate the use of means and weapons of warfare in armed conflicts. In IHL, a constant balance is maintained between the military needs and the needs of persons affected by hostilities (combatants and civilians).
When does IHL apply?

IHL applies to international armed conflicts (including situations of occupation) and non-international armed conflicts. Thus, IHL does not apply in internal disturbances or tensions such as riots, demonstrations, and isolated or sporadic acts of violence.

Armed conflicts between two or more States are called international armed conflicts. Armed conflicts within the territory of one State, i.e. between the State’s regular armed forces and one or more armed groups or between several such armed groups, are called non-international armed conflicts (or internal armed conflicts).

The rules governing international armed conflicts are more extensive and more detailed than those covering non-international armed conflicts. IHL applies equally to all parties regardless of the reason for the conflict.
What is international human rights law?

International human rights law (IHRL) codifies human rights in various international treaties. Fundamental human rights include, but are not limited to: the right to life, the right to food and water, the freedom of thought and expression, the right to health and the right to adequate housing.

IHRL is applicable to the territory of a State but also extends to any territory that is under its effective control, even outside its borders. Effective control refers to the *de facto* level of control of one State over another territory or people, for example during an occupation.
The Qalandia checkpoint separating Ramallah and Jerusalem. According to OCHA, Israel has placed over 500 permanent checkpoints and obstacles to movement throughout the West Bank.

© EAPPI, 2010.
What is the relation between IHL and IHRL?

In its Advisory Opinion on the Wall, the International Court of Justice (ICJ) considered the relationship between the two bodies of law – IHL and IHRL. It concluded that when dealing with a situation of armed conflict, IHL is lex specialis (governs a specific subject matter) in armed conflicts, while IHRL governs the applicability of rights generally, both in times of armed conflict and in times of peace. The Court elaborated three possible interrelations between the two bodies of law:

(i) situations in which only IHL applies;  
(ii) situations in which only IHRL applies and;  
(iii) situations where the legality of the actions needs to be examined under both branches of law, for example during armed conflict. Therefore, each action needs to be examined under IHL, IHRL or both, depending on the circumstances.
What are the sources of IHL?

A major part of IHL is found in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. It also includes the Hague Regulations adopted during the Peace Conferences in The Hague (The Netherlands) in 1899 and in 1907.

The Conventions represent the long accepted means and methods of warfare. They are binding on all States as customary international law. The four Geneva Conventions of 1949 are the core of IHL. The Conventions, which are today universally ratified, were adopted after the atrocities perpetrated during the First and Second World Wars to alleviate human suffering in times of armed conflict. The Fourth Geneva Convention, in particular, focuses on the protection of civilians in times of armed conflict and occupation.

As of April 2015, 196 states – almost all States in the world – have ratified the four Geneva Conventions. According to many scholars, the Fourth Geneva Convention is considered to reflect customary international law, which all States should abide by regardless of their status as a High Contracting Party to the convention.
The **First Additional Protocol** of 1977 extends the protection of civilians and includes rules on the conduct of hostilities that define the type of weapons and methods of warfare that can be used in times of armed conflict. The protocol generally applies in international armed conflicts and is obligatory for the States that have ratified it.

Among others, Article 75 provides for the fundamental guarantees granted to all persons and reflects international customary law. Thus, it binds all States, regardless of its signatories.

The **Second Additional Protocol** of 1977 provides for additional protection in non-international armed conflicts and is only binding on States that have ratified it. Some of its articles are also regarded as customary international law. For example, Article 4, which provides for the fundamental guarantees for all persons who do not, or no longer, take a direct participation to hostilities, is regarded customary international law.

The First Additional Protocol has been ratified by 174 States, and the Second Additional Protocol by 168 States. Israel has not ratified either of the Additional Protocols of 1977 and is therefore only bound by the customary rules within these treaties. **Customary international law** is a source of IHL.
What is a belligerent occupation?

A “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised”.2

Occupation does not give the Occupying Power sovereignty over the territory. Annexation of the occupied territory is unlawful. Occupation is only temporary and permanent occupation may result in unlawful de facto annexation. The notion of military control is a factual issue. The Occupying Power can have effective military control even if it is not physically present in the territory itself. If the Occupying Power is in a position to take military control over the whole area, effective military control persists.

Occupation ends when there is no effective military control over a territory, commonly seen when the Occupying Power no longer performs the functions of a government. The Occupying Power cannot unilaterally decide that occupation has ended.

A consensus concerning the status of a territory among the High Contracting Parties
to the four Geneva Conventions may reflect the most accurate legal interpretation about the existence of effective control. Sources of interpretations are, among others, UN Security Council resolutions, jurisprudence of international tribunals, and precedents such as World War II and the situations of Lebanon and Iraq.

What is the law of belligerent occupation?

The law of belligerent occupation mainly consists of the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949. The law of occupation applies when, during an international armed conflict, a territory comes under the effective control of a foreign power.
Bedouin children from the village of Jahalin near Jerusalem. Israel is planning to forcefully transfer the entire village to a site near the municipal garbage dump. © EAPPI, 2010.
Rubble of a Gazan home demolished during the Israel's Operation Cast Lead in the Gaza Strip. During the 22 day offensive on the Gaza Strip, approximately 1,400 Palestinians, including 300 children, lost their lives. In addition, the homes of roughly 60,000 Palestinian families were demolished or suffered major damages.

© Palestina Gruppa, 2009
Who are the protected persons under IHL?

Protected persons are those who find themselves, at any moment or under any circumstance, in the hands of a Party to the conflict or Occupying Power, of which they are not nationals. The sick and wounded, civilians and combatants hors de combat all fall within the category of protected persons. Specifically, protected persons are medical and religious personnel, humanitarian relief personnel, civilian journalists and personnel involved in peacekeeping operations.
What are the basic principles of IHL?

Distinction

The principle of distinction prohibits all means and methods that cannot make a distinction between: those who do take part in hostilities – i.e. combatants; and those who do not – i.e. civilians and, protected persons.

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between civilians and combatants on one hand, and between civilian objects and military objectives on the other.

Accordingly, they shall direct their operations only against military objectives.\textsuperscript{4} The principle of distinction is part of customary international law.
Proportionality

The principle of proportionality states that even if there is a clear military target, it is not possible to attack it if the incidental risk for civilians or civilian property is excessive in relation to the concrete and direct military advantage sought.5

The principle of proportionality is part of customary international law. Some measures taken by an Occupying Power outside the combat zone should also be proportional, such as destruction of civilian property in occupied territory.6

A military objective is an object that effectively contributes to the military operation. This definition is difficult to apply in practice, especially when it comes to dual-use facilities. These are objects that may be used both for civilian and combat purposes. For example, a TV or a radio station can be a legitimate military target if used also by the military command or as a communication centre. However, if it is used for civilian purposes only, it cannot be targeted.

It is unlawful to target a dual use object if the expected damage to the civilian use of the object is excessive to the concrete and direct military advantage sought.
Precautions in attack

As part of the principle of distinction, the conflicting Parties are obliged to respect the principle of precautions in attack, which supplements the general obligation to distinguish at all times between civilians and combatants, and between civilian and military objects. Accordingly, whenever civilians are present, the Parties to an armed conflict must:

- take precautionary measures during military operations to spare the civilian population and civilian objects;\(^7\) and

- take precautionary measures to protect the civilian population and civilian objects that are under their control against the effects of military operations.\(^8\)

The principle of precaution is part of customary international law.
Karmel settlement in the West Bank. Today over 500,000 Israeli settlers are living illegally in 221 settlements throughout the West Bank. © Diakonia, 2004.
What is military necessity?

Military necessity has been defined as “those measures which are indispensable for securing the ends of the war and are lawful according to the modern laws and usages of war”. It is a principle whereby a belligerent has the right to apply any measure that is required to bring about the successful conclusion of a military operation and that is not forbidden by the laws of war.⁹

Military necessity is not a carte blanche to achieve the military goal at any price. It balances between military victory and humanity stemming from the need to minimize human suffering during armed conflicts. Some prohibitions under IHL can never be justified under military necessity. For example, the prohibition against confiscation of private property is absolute.¹⁰
What does the obligation to protect mean?

The concept of protection of civilians and civilian objects derives from the principle of distinction but is extended beyond the conduct of hostilities. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices and their manners and customs.11

Private property must be respected and not confiscated.12 Parties to the conflict must respect and protect cultural property,13 humanitarian relief objects14 and medical units and transports15 They must protect relief objects and facilitate relief actions16. Discriminatory measures are forbidden.17

Protection is enhanced during military occupations; i.e. the Occupying Power must facilitate the work of all institutions devoted to the care and education of children,18 the work of relief organizations19 and civilian civil defence organizations.20

Protection is also provided for the civilian population as a whole: collective punishment is prohibited;21 forced transfer and deportations are prohibited;22 the Occupying Power must ensure adequate food and medical supplies and requisition of civilian objects is permitted
only when population needs are taken into account.\textsuperscript{23}

Objects essential for the survival of the population should not be attacked, destroyed, removed or rendered useless\textsuperscript{24} and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, amounts to war crimes. \textsuperscript{25}
Who are combatants?

Combatants are members of regular armed forces or armed groups who are clearly distinguished from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. They may be considered ‘prisoners of war’ if captured, and are therefore entitled to special protection defined by the Third Geneva Convention relative to the Treatment of Prisoners of War.

Members of armed groups that are not part of regular armed forces need to follow four conditions:

- be commanded by a person responsible for his subordinates;
- have a fixed distinctive emblem recognizable at a distance; \(^{26}\)
- carry arms openly; and
- conduct their operations in accordance with the laws and customs of war.\(^{27}\)

In case of doubt whether a person falls under one of the above-mentioned categories, she/he should be presumed to be a prisoner of war until a competent court has decided otherwise.
Members of groups that do not follow these conditions, and individuals that are not part of armed groups who take direct part in the hostilities (violent resistance) are not regarded as combatants and do not enjoy the status of prisoners of war. They are therefore protected civilians and lose their immunity only for such time as they take direct part in hostilities.

Who are civilians?

IHL defines a ‘civilian’ as anyone who is not a combatant. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. ²⁸
What are the responsibilities of a State under IHL?

The basic principle of ‘State responsibility’ in international law provides that any State that violates its international obligations must be held accountable for its acts. More concretely, the notion of State responsibility means that States that do not respect their international duties are responsible for immediately ceasing their illegal actions, offering appropriate assurances and guarantees of non-repetition if required and making reparations to the injured in the form of restitution, compensation or satisfaction.

States have legal responsibilities both towards States and individuals according to different sources of international law.
The wall near the Jerusalem periphery. Israel is still in the process of constructing a 723 km Wall along a border that is less than half of this length. The Wall swings in and out of the West Bank, annexing land and separating Palestinians from Palestinians. © Diakonia, 2004.
What are responsibilities of third States?

The general principle of State responsibility not only refers to what the violating State has to do, but also includes rules on the responsibility of third States – the international community – on how they must react to violations of international law.

Article 1 common to the four Geneva Conventions places an obligation on third States who are not involved in the conflict “to respect and ensure respect” for IHL in all circumstances. This means that, by having ratified the Geneva Conventions, third States are bound to ensure the respect of IHL by those who violate it. Third States should not do anything to encourage a Party to a conflict to violate IHL. States should also not take action that would assist in violations, such as arms transfer and sale of weapons. Article 1 should not be considered to be an illegal interference in the internal affairs of a sovereign State.

The ICRC commentary to Article 1 mentions that “the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally”. 
In case of grave breaches of the Geneva Conventions, all High Contracting Parties are under the obligation to search for suspected war criminals and bring them to trial or extradite them to another State or an international tribunal where they would be tried for their actions.  

A State is responsible to cease the violation, provide guarantees for non-repetition and offer reparations if: (i) it aids or assists; (ii) it directs and controls the commission of a violation of international law; (iii) or it coerces another State to do so.

In case there is a serious breach of a peremptory norm of international law (jus cogens) there are additional responsibilities on all States also to cooperate to end the breach and not to recognize as lawful the situation created by the breach as well as not to aid or assist in the maintenance of that situation.
Remnants of Qassam rockets stored at the police station in Sderot. In recent years, the southern Israeli town of Sderot has lived under the constant threat of Qassam rocket attacks from the Gaza Strip. These attacks indiscriminately target the civilian population and have resulted in the deaths of 19 people between June 2004 and September 2011. © Diakonia, 2007
What are offenses in international criminal law?

War crimes / Grave breaches of the Geneva Conventions

War crimes are serious violations of IHL that give rise to individual criminal responsibility. For example, war crimes include serious violations of Article 3 common to the four Geneva Conventions, which is also applicable in non-international armed conflicts, i.e. wilful killing, or extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

In addition, acts described as ‘grave breaches’ in the four Geneva Conventions such as torture, wilful killing or the taking of hostages may also qualify as war crimes. Grave breaches are defined in Article 147 of the Fourth Geneva Conventions.32

War crimes can be committed both in international and non-international armed conflicts. This was affirmed by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda and it has subsequently been upheld in the Rome Statute of the International Criminal Court.
An Israeli watchtower, along the Wall between the Gaza Strip and Israel, adjacent to the Erez crossing point, in the northeastern Gaza Strip. In the foreground are rubble remnants from “Operation Cast Lead”. © Diakonia IHL Programme
The IHL Resource Centre

We believe that addressing violations of IHL and international human rights law is a means of improving the humanitarian situation in the occupied territory and would go a long way towards resolving the protection crisis that continues to exist for much of the protected Palestinian population.

By raising awareness of IHL within Israeli and Palestinian societies and the international community and by advancing IHL’s implementation in this conflict, Diakonia also hopes to address some of the root causes that have contributed to the prolongation of the occupation of the oPt.

Furthermore, the principle accountability, which is a central component of IHL, promotes adherence to international law and ensure a form of redress for victims. In addition to discouraging future violations, accountability and justice – and international law in general – are crucial elements of any genuine and long-lasting peaceful solution.
In short, Diakonia has chosen to address the occupation through the prism of IHL for the following rationale:

- By addressing IHL violations it is possible to tackle the root cause of the humanitarian crisis and the conflict in the oPt;

- Increased respect for IHL would contribute to peace in the region;

- IHL provides an objective tool for advocacy beyond moral, political and religious argumentation;

- IHL is unique and clear in setting out that there are strong and direct legal obligations for third states with regard to a situation of armed conflict and occupation;

- It is not a political decision to address or to not address IHL. There is a legal requirement to do so. This commitment was established following the atrocities of the Second World War. It would, in most cases, be more political to ignore IHL violations than to act to bring them to an end.
Demolished School in Dkaika.
“On the morning of January 12, children of Dkaika were in school and the families were going through their morning routines. Suddenly, the army appeared and the demolitions began,” According to UN reports, on that day alone, twelve other civilian structures, including 9 homes, were demolished in the village, displacing 20 adults and 30 children. © EAPPI, 2011
Increasing awareness and understanding of IHL

The absence of knowledge and a shortage of political will are usually the major contributing factors that allow violations of IHL to continue with impunity. Our work promotes understanding amongst decision makers and the international community of their obligations under IHL in the hope that policies and practices will be amended to reflect the principles of international law.

Diakonia’s programme seeks to increase awareness of IHL among:

- The international community present in the oPt – international NGOs, international agencies such as United Nations and European Union bodies, international media and diplomatic missions as well as decision makers visiting the area;
- Israeli and Palestinian civil society, media, lawyers and the general public in Israel and Palestine;
- EU and UN bodies based in Brussels and Geneva;
- International corporate actors active in the oPt.
Where possible, the disseminated IHL information and work with partner organisations also includes a gender perspective.

How we work

The IHL program consists of four interlinked components:

- Legal research and briefings to civil society and the international community;
- Education and information, including through the creation of an IHL Helpdesk and work with local partners;
- Monitoring of and reporting on IHL violations;
- Advocacy from Diakonia’s Head Office in Stockholm.
Endnotes

1 Art 38(1)(b) of the Statute of the International Court of Justice
2 Art 42 of the Hague Regulations
3 Art 4 of GCIV
4 Art 48 of API
5 Art 51(5)(b) of API
6 Art 53 of GCVI
7 Art 57 of API
8 Art 58 of API
9 Lieber Code, Art 14
10 As stipulated in Art 46 of the Hague Regulations (1907)
11 Art 27 of GCIV
12 Art 46 of the Hague Regulations (1907)
13 Rules 38, 39 and 40 of the ICRC Customary IHL Rules
14 Ibid: Rule 32
15 Ibid: Rules 28 and 29
16 Art 70 of API
17 Art 27 of GCIV
18 Art 50 of GCIV
19 Art 59 of GCIV
20 Art 63(1) of API
21 Arts 33 of GCIV, and Art 50 of the Hague Regulations
22 Art 49 of GCIV
23 Art 55 of GCIV and Art 69 of API
24 Art 54 of API
25 Art 147 of GCIV
26 Art 44(3) of API sets an exception to this rule when the nature of the hostilities prevents the combatant from distinguishing himself or herself. There is an ongoing legal debate about the scope of a distinctive sign that combatants of non-regular armed forces need to wear
27 Art 4 of GCIII
28 Art 50(1) of API
29 Arts 146, 147 of GCIV
31 Ibid: Art 41
32 Also: Art 50 GCI, Art 51 GCII, Art 130 GCIII, and Art 85 of API
Palestinian women run as they are being targeted by Israeli gunfire. In the background, wearing fluorescent yellow jackets, are some members of the International Solidarity Movement who act voluntarily as a protective presence when farmers collect wheat in the “buffer zone”, 15 June 2010.
© Pauline Beugnies
Diakonia is a Swedish development organisation working with local partners to make a sustainable change in the lives of the world’s most vulnerable people.