Legal Studies Association
Australian Red Cross Presentation

International Humanitarian Law
Henry Dunant

- The Battle of Solferino, 1859
  - “Memory of Solferino”
    - The Geneva Convention, 1864
      - Care for the wounded and dying on the battlefield by “neutral relief societies”

International Humanitarian Law is the body of rules which, in wartime, protect persons who are not, or who no longer, participating in the hostilities, and which limit the methods and means of warfare.
The Geneva Conventions

I

II

III

IV

The Additional Protocols

• AP I: 170
• AP II: 165
• AP III: 56
Over 90 IHL Treaties

- 1864 First Geneva Convention
- 1868 St Petersburg Declaration
- 1899/1907 Hague Conventions
- 1925/1972 Poisonous Gases/Bacteriological Weapons
- 1929 Third Geneva Convention
- 1948 Genocide Convention
- 1949 Fourth Geneva Convention
- 1954 Cultural Property Convention
- 1975 Biological Weapons Convention
- 1976 Environmental Modification Techniques
- 1977 Two Additional Protocols to GCs
- 1993 Chemical Weapons Convention
- 1997 Ottawa (Landmines) Convention
- 1998 Statute of the International Criminal Court
- 2003 Protocol on Explosive Remnants of War
- 2005 Third Additional Protocol to GCs
- 2008 Convention on Cluster Munitions
- 2008 Montreux Document

IHL – Main principles

I: Distinction
II: Proportionality
III: Precaution
IHL and Human Rights Law

- IHL predates both Refugee Law and International Human Rights Law
- IHRL has a broader scope
- IHRL supplemented and modified by IHL during armed conflict
IHL and Human Rights Law

- IHL only applies during armed conflict
- **Non derogable human rights:**
  - arbitrary deprivation of life
  - the prohibition of torture and other inhuman treatment
  - the prohibition of slavery
  - prohibition of retroactive criminal legislation or punishment.

First and foremost a national responsibility

- Domestic/civil courts
- Military courts: courts-martial

Examples of Australian enforcement of IHL
- Geneva Conventions Act (1957)
- Geneva Conventions Amendment Act (1991)
- Defence Force Discipline Act (1982)
- International Criminal Court (Consequential Amendments) Act (2002)
Enforcing IHL – IMTs and ICTs

- Post World War 2 - Nuremberg Trials and Far Eastern Military (Tokyo) trials
- International Criminal Tribunal for the former Yugoslavia (ICTY)
- International Criminal Tribunal for Rwanda (ICTR)
- Special Court for Sierra Leone
- Supreme Iraqi Criminal Tribunal
- Extraordinary Chambers in the Courts of Cambodia

2002: A permanent ICC

- 60 ratifications needed to establish the International Criminal Court under the Rome Statute (1998)

- 17 July 1998: Vote of States:
  - YES 120
  - NO 7
  - ABSTAINED 21

- July 1 2002 – ICC comes into force
- Australia accepts the ICC
- By March 2011, 114 have ratified
IHL Enforcement – legal challenges

- Political will / ratification
- “Victors’ Justice”?
- Speed of indictments
- Scope of investigations
- Securing an arrest
- “Impunity Gap”

IHL – Humanitarian Organisations

- Public complaint
- Denunciation
- Lobbying/letters
  eg Amnesty, Human Rights Watch

- Negotiate settlements
- Sometimes military forces must enforce/keep peace
- Neutral intermediary
- Negotiation, using IHL standards
- Hands-on relief

ICRC
Challenges to Humanitarian Orgs

- “Threshold of Armed Conflict” – state sovereignty
- Neutrality
- The Militarisation of Aid
- Vulnerability of humanitarian workers

“Even Wars Have Laws”

- IHL e-newsletter
- “High School Speaking Series”
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