

# Legal Studies Association

Australian Red Cross  
Presentation

CRISIS CARE COMMITMENT

# International Humanitarian Law



CRISIS CARE COMMITMENT

## 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”



CRISIS CARE COMMITMENT

## IHL

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.



CRISIS CARE COMMITMENT

## The Geneva Conventions

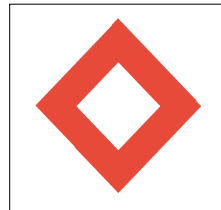


CRISIS CARE COMMITMENT

## The Additional Protocols



- AP I: 170
- AP II: 165
- AP III: 56



CRISIS CARE COMMITMENT

## 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
•1980/1995/96	Conventional Weapons Convention
•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



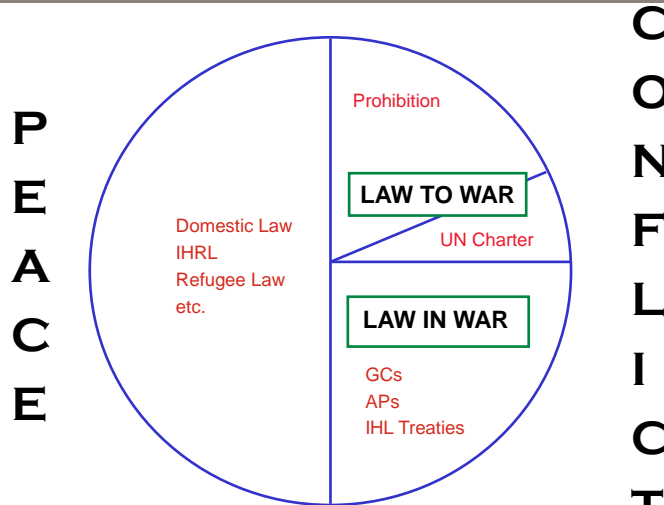
CRISIS CARE COMMITMENT

## IHL – Main principles



CRISIS CARE COMMITMENT

## IHL and Human Rights Law



CRISIS CARE COMMITMENT

## 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



CRISIS CARE COMMITMENT

## IHL and Human Rights Law

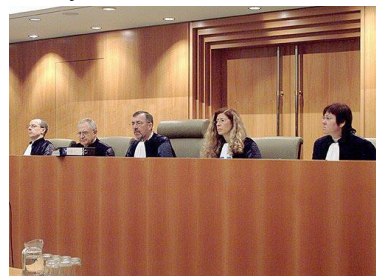
- IHL only applies during armed conflict
- **Non derogable human rights :**
  - arbitrary deprivation of life
  - the prohibition of torture and other inhuman treatment
  - the prohibition of slavery
  - prohibition of retroactive criminal legislation or punishment.



CRISIS CARE COMMITMENT

## Enforcing IHL – legal measures

- First and foremost a national responsibility
  - Domestic/civil courts
  - Military courts: courts-martial
- Examples of Australian enforcement of IHL
  - Geneva Conventions Act (1957)
  - Criminal Code Act (1995)
  - Geneva Conventions Amendment Act (1991)
  - Defence Force Discipline Act (1982)
  - International Criminal Court (Consequential Amendments) Act (2002)



CRISIS CARE COMMITMENT

## 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



CRISIS CARE COMMITMENT

## 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



CRISIS CARE COMMITMENT

## IHL Enforcement – legal challenges

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



CRISIS CARE COMMITMENT

## 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



CRISIS CARE COMMITMENT



## Challenges to Humanitarian Orgs

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



CRISIS CARE COMMITMENT

## “Even Wars Have Laws”



- IHL e-newsletter
- “High School Speaking Series”
- [pgiugni@redcross.org.au](mailto:pgiugni@redcross.org.au)

CRISIS CARE COMMITMENT