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International Humanitarian Law

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Australian Red Cross





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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"

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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.




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A Vital Distinction



JUS AD BELLUM



JUS IN BELLO

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The Geneva Conventions










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The Additional Protocols

- AP I: 171
- AP II: 166
- AP III: 59



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Over 90 IHL Treaties

<ul style="list-style-type: none"> • 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 	 
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IHL – Main principles



I: Distinction



II: Military Necessity




III: Proportionality




IV: Unnecessary Suffering

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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*




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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




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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 2012, 118 have ratified



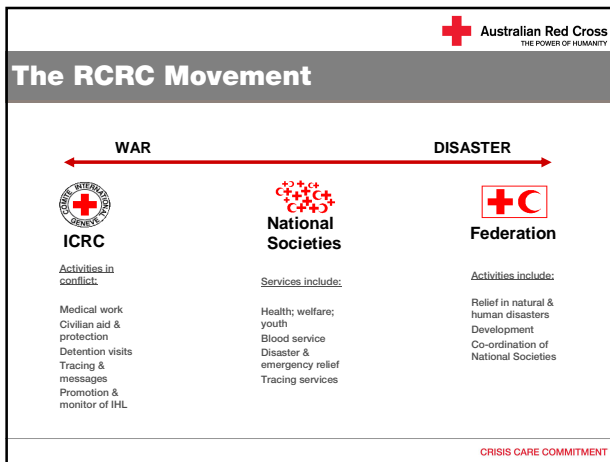
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Practical IHL: The Red Cross in Conflict



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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



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IHL and International Human Rights Law (IHRL) : A Comparison



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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 is *lex specialis*)



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IHL and Human Rights Law

- IHL only applies during armed conflict, whereas IHRL applies at all times.
- Exception is in a state of emergency, where only non derogable rights apply.
- **Non derogable human rights:**
 - arbitrary deprivation of life
 - the prohibition of torture and other ir
 - the prohibition of slavery
 - prohibition of retroactive criminal legislation or punishment.



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Overview of main legal areas

	IHL	IHRL
Eg. of main source	The Geneva Conventions and Additional Protocols	Universal Declaration of Human Rights
Core ideas	The protection of non-combatants	The right to life with dignity
Who has rights?	Non-combatants – eg. wounded/PoWs, combatants and civilians	All people
Who has responsibilities?	Individuals and warring parties	States (legally) but everyone (morally)
When do they apply?	Armed conflict only	Most apply always; some are suspended during state of emergency


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Contemporary Challenges in IHL:

Health Care in Danger



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Humanitarian Space


- Increase in attacks on Aid Workers
- Medical Mission
- Blurred lines between those providing Neutral Impartial Humanitarian Action (NIHA) and military construction task forces

Aid Worker Security Database: summary statistics as of October 2010

Incidents of major violence against aid workers	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009*
Total incidents	35	27	32	42	29	46	63	63	75	106	139	161	139
Total aid worker victims	73	69	65	91	90	85	143	125	122	239	268	274	228
Total killed	39	36	30	57	27	38	87	54	54	86	78	127	102
Total wounded	6	15	15	23	20	23	49	46	95	87	84	87	84
Total kidnapped	28	18	20	11	43	24	7	23	23	66	48	60	92
Total national staff victims	40	52	40	70	62	68	116	101	157	213	173	227	305
Total international staff victims	33	17	25	21	28	17	27	24	35	26	35	47	73


* Provisional figures

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Safeguarding Healthcare

- *"Members of the armed forces and other persons who are wounded and sick shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria"*
- **GC 1 Article 12**



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Strategy

- Operational Track
 - Practical measures to improve access and safety of health care workers, patients and facilities
- Diplomatic Track
 - Humanitarian diplomacy effort to shape policy and attitudes around this issue



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IHL and YOU

- **IHL for High Schools Program**
 - Designed to compliment HSC outcomes for year 11 legal studies students
 - For terms 3 and 4
 - Introduction to IHL
 - Use of weapons as case studies
- **Resources**
 - Orangetown game
 - Other resources

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Even Wars Have Laws



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