International Humanitarian Law

Jane Munro
Australian Red Cross

- 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"

Henry Dunant

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.

A Vital Distinction

JUS AD BELLUM  JUS IN BELLO
The Geneva Conventions

I: Distinction
II: Military Necessity
III: Proportionality
IV: Unnecessary Suffering

The Additional Protocols

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

Over 90 IHL Treaties

- 1864: First Geneva Convention
- 1868: St. Petersburg Declaration
- 1899/1907: Hague Conventions
- 1929: Third Geneva Convention
- 1949: Fourth Geneva Convention
- 1954: Cultural Property Convention
- 1969: Biological Weapons Convention
- 1971: Environmental Modification Techniques
- 1987: Chemical Weapons Convention
- 1997: Ottawa (Landmines) Convention
- 1999: Montreux Document
- 2005: Third Additional Protocol to GCs

IHL – Main principles

- Distinction
- Military Necessity
- Proportionality
- Unnecessary Suffering
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

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 2012, 118 have ratified

Practical IHL: The Red Cross in Conflict
The RCRC Movement

**War**

- Medical work
- Civilian aid & protection
- Detention visits
- Tracing & messages
- Prevention &notification of IHL

**Disaster**

- National Societies
  - Health services
  - Youth
  - Blind support
  - Disaster & emergency relief
  - Tracing services

- Federation
  - Activities include
  - Relief in natural & human disasters
  - Development
  - Communication & coordination of National Societies

ICRC Activities During Conflict

- Activities include:
  - Negotiation, using IHL standards
  - Hands-on relief
  - Neutral intermediary
  - Negotiation, using IHL standards
  - Hands-on relief

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

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

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 ill-treatment
    - the prohibition of slavery
    - prohibition of retroactive criminal legislation or punishment.

Overview of main legal areas

<table>
<thead>
<tr>
<th>IHL</th>
<th>IHRL</th>
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<tbody>
<tr>
<td>Eg. of main source</td>
<td>The Geneva Conventions and Additional Protocols</td>
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<tr>
<td>Core ideas</td>
<td>The protection of non-combatants</td>
</tr>
<tr>
<td>Who has rights?</td>
<td>Non-combatants – eg. wounded/POWs, civilians</td>
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<tr>
<td>Who has responsibilities?</td>
<td>Individuals and warring parties</td>
</tr>
<tr>
<td>When do they apply?</td>
<td>Armed conflict only</td>
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Contemporary Challenges in IHL:

Health Care in Danger
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

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

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

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

An 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 include Orangetown game and other resources.
Even Wars Have Laws

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