

# **International Humanitarian Law**

Introductory lecture, Dr. Gabija Grigaitė  
2015

1. Introduction to international humanitarian law
  1. International law
  2. *Jus ad bellum* and *jus in bello*
  3. Main sources of IHL
  4. Scope of application
  
2. Qualification of conflicts
  1. International armed conflicts and occupation
  2. Non-international armed conflicts

**Structure of the lecture**

- Treaties: <http://www.icrc.org/ihl>
  
- Commentaries:  
<http://www.icrc.org/ihl.nsf/CONVPRES?OpenView>
  
- Other useful links:
  - ICRC Review: <http://www.icrc.org/eng/review>
  - ICRC databases on IHL:  
<http://www.icrc.org/eng/resources/ihl-databases/index.jsp>
  - Harvard IHL Research initiative: <http://ihl.ihlresearch.org>
  - Introduction to Public International Law research:  
[http://www.nyulawglobal.org/Globalex/Public International Law Research1.htm](http://www.nyulawglobal.org/Globalex/Public_International_Law_Research1.htm)
  - Central Human Rights Sources on the Internet:  
<http://www.jus.uio.no/smr/tjenester/bibliotek/veiledning/human-rights-sources.pdf>

**Useful websites**

- Terminology and related areas of international law:
- International Humanitarian Law (IHL)
- Law of Armed Conflict (LOAC)
- Jus in bello
  
- *International Human Rights Law*
- *International Refugee Law*
- *International Criminal Law*

## **Introduction to IHL**

- Traditionally: International law regulates the relationship between States
- States are the core subjects of international law; states have rights and obligations
- But individuals can to a certain extent be subjects (duty-bearers and rights-holders) under international law
  - International humanitarian law is a good example
- International humanitarian law is a part of international law
  - Sources, methods, implementation, enforcement
  - But with some special characteristics
  - Students without previous knowledge of international law are encouraged to familiarise themselves with textbooks on international

## International humanitarian law as a part of international law

## Statute of the International Court of Justice, Art. 38:

- (a) **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
- (b) **international custom**, as evidence of a general practice accepted as law;
- (c) the **general principles of law** recognized by civilized nations;
- (d) **judicial decisions** and the **teachings of the most highly qualified publicists** of the various nations, as subsidiary means for the determination of rules of law.

**Sources of international law**

## Jus ad bellum

- *Jus ad bellum* are the international rules pertaining to to which extent the use of military force against another state is allowed.
  - Not a key issue in this course

## Jus in bello

- *Jus in bello* are the international rules pertaining to how armed conflict must be conducted
- Protection of civilians and individuals *hors de combat*
- Protection of combatants
- Means and methods of warfare
- Relationship to neutral states

**Jus ad bellum / Jus in bello**

## The prohibition against use of force:

- UN Charter Article 2 (4): The use or threat of use of force against states is prohibited
- ICC Statute: Crime of aggression

## The only exceptions:

- UN Security Council resolution (UN Charter Articles 39 – 42)
- The right of self defence (UN Charter Article 51)
- Humanitarian intervention/responsibility to protect (R2P)?

**Jus ad bellum**



- Violations of *jus ad bellum* does not **justify** violations of *jus in bello*
- Violations of *jus ad bellum* does not **entail** violations of *jus in bello*

**No direct link!**

- HUMANITY
- PROPORTIONALITY
- DISTINCTION
- MILITARY NECESSITY

**Core principles of IHL**

- “Geneva law”

Conventions

- “Hague law”

- International customary law

**Main sources of IHL**

- The four Geneva Conventions (1949):
  1. Wounded and sick soldiers on land
  2. Wounded and sick soldiers on sea
  3. Prisoners of war
  4. Protection of civilians and occupation
  
- The two Additional Protocols (1977):  
*Additional rules on means and protection*
  1. In international armed conflicts
  2. In non-international armed conflict

**Geneva Law**

- The St. Petersburg Declaration 1868
- Hague Regulations of 1899 and 1907
- Gas protocol of 1925
- NPT (non-proliferation of nuclear weapons) 1968
- Biological weapons 1972
- Convention on inhuman weapons (CCW) 1980
- Chemical weapons 1993
- Anti Personnel Mines 1997
- Cluster Munitions 2008

**Hague Law**

- **PERSONAL** scope of application (to which subjects does IHL apply?)
- **MATERIAL and TEMPORAL** scope of application (in which situations does IHL apply?)
  - Material: To which situations?
  - Temporal: When does the applicability start and end?

## Scope of application

- To which subjects do IHL apply?
  - Who is *bound* by IHL?
  - Who is *protected* by IHL?
    - States (parties to the conflict and to IHL instruments)
    - Non-state armed groups (parties to the conflict)
    - Individuals (belonging to parties to the conflict):
      - Civilians and other protected persons (soldiers *hors de combat*) (have rights and obligations)
      - Combatants (have rights and obligations)
        - Distinction between combatants and non-combatants to be discussed later
    - International organisations

**Personal scope of application**

- When does the applicability of IHL begin?
  - The moment of the first hostile act that puts at stake a provision in IHL
- When does the applicability of IHL end?
  - The end of military operations
    - But when is this?

**Temporal scope of application**



# Qualification of conflicts

- IHL applies in **international armed conflict** or during **occupation**
- What is an **international armed conflict**?
  - When the armed forces of one state uses armed force against another state?
- What is **occupation**?
  - When the armed forces of one state occupies territory outside its own territory
  - Hague Convention IV, annex, art. 42: "Territory is considered occupied when it is actually placed under the authority of the hostile army."

**International conflicts and occupation**

- In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

**Common Article 2, GC**

- IHL applies, to a certain extent, in **non-international armed conflicts**
  - When there is a situation in a state that amounts to an armed conflict, IHL applies
- What is a **non-international armed conflict**?

**Non-international armed conflict**

- Additional Protocol 1 to the Geneva Conventions makes IHL applicable to certain non-international armed conflicts
- Article 1(3) and (4):

(3) This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

(4) The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

## Wars of national liberation

- Civil war is an armed conflict between the state authorities of a state and an organised armed group with control over parts of the state territory
- Additional Protocol II applies

**Civil war**

- In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

**Common Article 3, GC**

- **“Until a more complete code of the laws of war has been issued**, the High Contracting Parties .. declare that, in cases not included in the Regulations adopted by them, the inhabitants ... remain under the protection and the rule of the principles of the law of nations, as they result from the **usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience”**.
- Hague Convention IV: **“Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land”**. The Hague, 18 October 1907.

## The Martens Clause



- IHL does not apply.
- Article 1, AP II:
- 2. This Protocol shall **not** apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.
- What is the threshold?

**Internal disturbances**

- IHL does not apply
- With certain exceptions regarding the use of the Red Cross/Red Crescent emblem, placement of military buildings etc.

**Peace**

- Never assume that any substantive IHL rule applies before having made the determination of what kind of situation you are dealing with.
- If in doubt about how to categorize the situation, always assume that the regime giving the most protection is applicable (and explain why you do this).

## Qualification of situations