



Ministerie van Buitenlandse Zaken



Everything you always wanted to know about International Humanitarian Law (IHL)

Tuesday 15 April | 14:00 – 17:00 | The Hague

Summary report

International humanitarian law plays a crucial role in guiding humanitarian action. It is often invoked in reaction to attacks on civilians, critical infrastructure such as hospitals, and aid workers. IHL – also known as ‘the law of armed conflict’ – provides rules and protections that apply (mostly exclusively) during armed conflicts. Ensuring compliance with and enforcement of this body of law is no easy task, especially considering that violations occur regularly. Another significant challenge faced by aid workers, lawyers, and other actors is that the application of IHL is often open to interpretation and susceptible to manipulation. As a result, IHL can be a sensitive topic for humanitarian actors, leading to frustration when expectations diverge.

On April 15, 2025 KUNO co-organised a knowledge session with the Ministry of Foreign Affairs and the Netherlands Red Cross on international humanitarian law. Two speakers presented the fundamentals of IHL, after which the floor was opened for reflection and discussion under Chatham House Rule. **Jeroen van den Boogaard**, lawyer at the Ministry of Foreign Affairs and lecturer in IHL at the University of Amsterdam spoke about the general rules and scope of IHL. **Jan Tijmen Ninck Blok**, lawyer at the Netherlands Red Cross, discussed the work of the Red Cross specifically.

IHL in general

The origin of IHL can be traced back to 1859, when Henry Dunant saw the suffering of people after the Battle of Solferino and decided that rules needed to be created to protect people and restrict conflict. Then, in 1864 the first Geneva Convention was developed. In general, IHL provides rules that apply during armed conflict aimed at protecting those (no longer) participating in hostilities, as well as rules relating to the conduct of hostilities, which restricts the way conflict is fought. The foundation of IHL lies in the notions of humanity and military necessity.

Sources of IHL

- **The 1949 Geneva Conventions I – IV and their Additional Protocols I – III**

The Geneva Conventions¹ provide the most important rules of IHL, many of which are aimed at protecting those who are not (or no longer) fighting, including civilians, medics, aid workers, wounded, and prisoners of war. It contains restrictions of which means and methods of warfare are allowed. These are based on the notions of protecting those who fight from unnecessary suffering or superfluous injury, and restricting means and methods that do not make a sufficient distinction between military objectives and civilian objects. The Geneva Conventions have been universally ratified, meaning that all nation states are bound by them.

- **Weapons Conventions**

Various weapon conventions exist which prohibit or regulate different types of weapons during armed conflict. For example, the Chemical Weapons Convention or the Convention on Certain Conventional Weapons, banning non-detectable anti-personnel mines, laser weapons which can cause permanent blindness, and more.

- **Customary Law**

Rules that are customary in nature apply regardless of nation states having ratified them or not. These rules are applicable to international armed conflicts, non-international armed conflicts, or both. Customary law is defined as a general practice accepted as law. The formation of such rules requires two elements: state practice and opinio juris (the belief that the practice is legally required, prohibited or allowed). The ICRC has made a study determining which rules in IHL are customary in nature.²

Main principles of IHL

- **Principle of distinction**

This principle, found in article 48 of Additional Protocol I, determines that parties to the conflict 'shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.' The principle is also customary in nature.

¹ These are: Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field; Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea; Geneva Convention (III) on Prisoners of War; Geneva Convention (IV) on Civilians.

² <https://ihl-databases.icrc.org/en/customary-ihl/rules>

- **Principle of precaution**

When attacking a military objective, the party to the conflict needs to take feasible precautions when it is expected that there will be civilian collateral damage in order to limit or reduce such damage. These can include postponing an attack, using different weapons, warning populations to leave the area, and more. They also need to take precautions 'against the effect of attack', meaning taking measures in a state's own territory to protect civilians, such as not placing military headquarters in the middle of a densely populated city.

- **Principle of proportionality**

This principle, codified in article 51(5)(b) of Additional Protocol I prohibits attacks 'which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.' Assessing whether an attack was proportionate can be challenging, as the evaluation must be based on the information available to the attacker at the time the attack was carried out.

- **Prohibition of causing superfluous injury or unnecessary suffering**

IHL prohibits means and methods of warfare that cause unnecessary suffering or superfluous injury to civilians and combatants. It must be determined whether the injury and suffering are excessive to the military advantage that the attack will give.

- **Principle of protection**

The Geneva Conventions and their Additional protocols contain numerous detailed protective rules for civilians and civilian objectives. Therefore, protection is a core aspect of IHL.

- **Principle of humane treatment**

This principle, found in multiple articles, requires that the wounded and sick, prisoners of war, civilians and other persons protected by IHL are treated humanely at all times. This principle gives rise to numerous explicit rules, such as the prohibition of rape, torture, execution without regular trial, and more.

Accountability for violations of IHL

The main principle is that states are responsible for the accountability of violations of IHL themselves through domestic means, such as criminal prosecution. However, states can also be held accountable on the basis of rules in the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).

What are the legal responsibilities of third states which are not party to the conflict?

- **Common Article 1 to the Geneva Conventions** - States must not only comply with IHL themselves, but also ensure respect for the law by others, which has been interpreted as informing others on their obligations to comply with IHL.
- **Arms Trade Treaty** - States must assess the risk that arms exports could be used to commit serious violations of IHL or International Human Rights Law (IHRL). If there is a clear risk, they are obliged to deny or revoke export licenses.
- **Genocide Convention** - States have an obligation to prevent genocide and to punish those responsible. This includes taking action when there is a plausible risk of genocide, even if the state is not directly involved in the conflict.
- **ARSIWA** – States may be held accountable if they knowingly aid or assist another state in the commission of an internationally wrongful act, including serious violations of IHL.

The work of the Red Cross and Red Crescent Movement

The Red Cross is a neutral and independent humanitarian organisation, which aims to enjoy the confidence of all. Important aspects of the work of the Red Cross are to support victims by providing protection and humanitarian aid, visiting Prisoners of War and detainees, restoring family links, and holding confidential dialogue with parties to the conflict.

As soon as there is an armed conflict, a *note verbale* is sent to all the parties to the conflict on the general rules applicable during the conflict and the ICRC enters into confidential dialogue with the parties to the conflict relating to respect for IHL, humanitarian access, and more. The ICRC's confidentiality is not unconditional. It is linked to a commitment from the parties to put an end to - or preventing recurrence of - violations the ICRC noted. Only in highly exceptional cases does the ICRC officially publicly condemn a party to the conflict. This has only happened seven times in the history of the organisation.

There are three specific situations which currently raise concern for humanitarian organisations, including for the Red Cross:

- Several nations states have expressed intentions to withdraw from the Anti-Personnel Mine Ban Convention. This is concerning considering that these mines can do indiscriminate harm to civilians during armed conflict and after. This treaty withdrawal could thus erode protection to civilians and undermine the purpose of IHL.
- Attacks on hospitals are increasing. Under IHL medical units, transportation and personnel are all protected, as long as their function is exclusively humanitarian in nature.

- Increased attacks on aid workers. In March 15 medical aid workers of the Palestine Red Crescent Society were killed after a convoy of PRCS ambulances came under fire. This event highlights the broader concern of a shrinking humanitarian space.

Discussion and reflection

The complexity of the topic naturally led to challenging discussions during the meeting.

One major point of the discussion in the room was the relationship between International Humanitarian Law and the safety of humanitarian workers. While there are commendable initiatives aimed at safeguarding frontline staff—such as the NGO International NGO Safety Organisation (INSO)—these efforts are not sufficient on their own. The protection of aid workers remains a critical concern for both the humanitarian sector and policymakers. This raises key questions: Who bears responsibility? What actions can and should states take?

A significant challenge in addressing these issues is the lack of accountability for violations of IHL. This accountability gap must be understood within the broader context of shifting geopolitical dynamics. States are increasingly withdrawing from international treaties and disengaging from multilateral institutions, thereby weakening the global framework for IHL enforcement. One participant emphasized that national interests too often take precedence over adherence to IHL—this imbalance urgently needs to be addressed.

Participants also highlighted what they perceived to be double standards. Government officials may condemn violations of IHL in one context while remaining silent in others. Although the legal determination of an IHL violation is ultimately the role of a judge, public condemnation of the same act in one context, but not in the other, can set a precedent.

A recurring theme in the discussion was the politicisation of IHL. Its use as a political tool hampers meaningful dialogue and progress. Some participants noted that they are increasingly being asked about the ongoing relevance of IHL. In response, they emphasized the importance of remembering its successes. The principles and condemnations embedded in IHL remain as vital as ever.

We live in a paradoxical time: never before has there been so much extended law, yet never before has IHL had to work so hard to justify its relevance.