



Master Programme in European and  
International Law

winter term 2004

## Public International Law (VAK 06-009)

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## International Humanitarian Law

### Definitions

“Humanitarian Law” applies to those rules of international law which aim to protect subjects from consequences of armed conflict.

“Human Rights Law” does usually apply only in time of peace.

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## International Humanitarian Law

### Use of Force

The use of force is prohibited under Art. 2 (4) of the UN Charter. States may resort to force only:

- In the exercise of their inherent right of individual or collective self-defence (Art. 51 UN Charter) OR
- As part of military sanctions authorized by the Security Council (Art. 43-48 UN Charter)

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## International Humanitarian Law

### ICRC

- 1863: Establishment of the Committee of Five
- 1876: Renaming to International Committee of the Red Cross
- 1919: League of Red Cross Societies
- [www.icrc.org](http://www.icrc.org)

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## International Humanitarian Law

### Development of IHL

- 1864: Geneva Convention (extended and improved in 1906)
- 1868: Declaration of St. Petersburg
- 1874: Brussels Declaration
- 1899 and 1907: Hague Peace Conferences
- 1907 Hague Conventions
- 1949: Four Geneva Conventions
- 1977: Two Protocols Additional to the Geneva Conventions

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## International Humanitarian Law

### Scope of Application: Armed Conflict

“if one party uses force of arms against another party as well as all cases of total or partial military occupation.”

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## International Humanitarian Law

### Scope of Application Acts of war

“All measures of force that, using military instruments of power, one party implements against another party in an armed conflict.”

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## International Humanitarian Law

### Scope of Application Area of war

“Military operations of the parties to a conflict shall only be carried out in the area of war:

- Territories of the parties to the conflict
- Exclusive Economic Zones
- High Seas.”

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## International Humanitarian Law

### Scope of Application Termination of hostilities

“A state of war will be ended only by a conclusion of peace unless it has already been expressly terminated.”

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## International Humanitarian Law

### Combatants and Non-Combatants

The armed forces of a party to a conflict consist of combatants and non-combatants.

- Combatants: persons who may take a direct part in the hostilities.
- Non-Combatants: all other persons (not being civilians).

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## International Humanitarian Law

### Combatants

Combatants may be:

- Men and Women
- Children (not under the age of 15 years)
- Paramilitary or armed law enforcement agency

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## International Humanitarian Law

### Non-Combatants

- Persons who are members of the armed forces but do not have any combat mission:
  - Judges
  - Government officials
  - Blue-collar workers
- Members of the medical service and religious personnel (chaplains)

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## International Humanitarian Law

### Limitation

The right of the parties to an armed conflict to **choose means and methods of warfare is not unlimited.**

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## International Humanitarian Law

### Methods and Means of Combat

It is particularly prohibited to employ means or methods which are intended or of a nature:

- To cause superfluous injury or unnecessary suffering;
- To cause widespread, long-term and severe damage to the natural environment; or
- To injure military objectives, civilians, or civilian objects without distinction.

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## International Humanitarian Law

### Protection of the civilian population

Civilians who do not take part in hostilities shall be respected and protected.

They are entitled to respect for:

- their persons,
- their honour,
- their family rights,
- their religious convictions, and
- their manners and customs.

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## International Humanitarian Law

### Protection of the wounded, sick and shipwrecked

The wounded, sick and shipwrecked shall be respected and protected in all circumstances.

The protection ceases if they do not refrain from any act of hostility.

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## International Humanitarian Law

### Protection of prisoners of war

The purpose of captivity is to exclude enemy soldiers from further military operations.

Since soldiers are permitted to take part in lawful military operations, prisoners of war shall NOT be considered as criminals.

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## International Humanitarian Law

### Treatment of prisoners of war

Fundamental rules for the treatment of prisoners of war are:

- It is prohibited to treat prisoners of war inhumanely or dishonourably.
- Any discrimination on the grounds of race, nationality, religious belief or political opinions or similar criteria is unlawful.
- Reprisals against prisoners of war are prohibited.

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## International Humanitarian Law

### Protection of cultural heritage

“irrespective of origin or ownership, movable or immovable objects of great importance to the cultural heritage of all peoples (e.g. monuments of architecture, art or history, be they of secular or religious nature, archaeological sites and collections).”

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## International Humanitarian Law

### Protection of cultural property

General protection shall be granted to all cultural objects and does not require any entry in a special register.

Cultural property placed under general protection shall neither be attacked nor otherwise damaged.

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## International Humanitarian Law

### Protection of the environment

“Widespread”, “long-term” and “severe” damage to the natural environment is a major interference with human life or natural resources which considerably exceeds the battlefield damage to be regularly expected in a war.

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## International Humanitarian Law

### Development of human rights law

- 1946: UN Charter
- 1948: Universal Declaration of Human Rights
- 1949: *Four Geneva Conventions*
- 1950: European Convention on Human Rights
- 1961: European Social Charter
- 1969: American Convention on Human Rights
- 1975: *OSCE Helsinki Declaration*
- 1981: African Charter on Human Rights and Peoples' Rights

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## International Humanitarian Law

### Definition of human rights law

- “first generation”: civil and political rights that derive from the natural rights philosophy (*Locke, Rousseau*, etc.).
- “second generation”: economic, social and cultural rights that attained recognition in the 20<sup>th</sup> century.
- “third generation”: collective, group rights (e.g. right to self-determination, right to development)

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## International Humanitarian Law

### Case Study: Guerrero vs. Colombia

- Read and understand the above case
- Determine the violated rights
- Explain the views of the Committee
- How do you interpret the “right to life”?

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**Further reading:**

A. Cassese, International Law,  
2001, pp. 296-374

**Further information:**

<https://elearning.uni-bremen.de>