International Humanitarian Law

International humanitarian law (IHL) is a part of public international law that addresses the limits of acceptable conduct in armed conflict (Crawford and Pert 2015; Clapham and Gaeta 2014). In its underlying assumptions and ideology, IHL is related to human rights as the individual is at the core of both, as opposed to states that form the primary subjects of international law. Both human rights and international humanitarian law aim to find different ways of protecting the individual. Yet their temporality and overall vision of human nature are fundamentally different. While human rights ideology is forward-looking and utopian, international humanitarian law keeps its gaze fixed on the past record of violence and warfare that has characterized much of human history. This record is treated as offering evidence of fundamental characteristics of human nature, namely that such acts are endemic and inevitable, and by extension seen as impossible to eradicate for good. Thus, the main purpose of IHL is to create tools and standards for governing this part of human nature and human conduct, so as to restrict harm and destruction in the inevitable case of violent outbreaks.

IHL can be classified under two distinct trajectories, namely the Hague Conventions and the Geneva Conventions. Each term refers to a cluster of treaties and declarations while also having distinct emphases: the Hague Conventions articulate acceptable methods of warfare, conduct of hostilities, and occupation, while the Geneva Conventions are directed at protecting the individual, civilians during warfare as well as injured combatants. Laws to govern warfare have long roots that date back centuries, if not millennia. The basis of current codification goes back to the 19th century and to agreements between states, in particular the Hague Conventions of 1899 and 1907. The major part of IHL is contained in the Geneva Conventions of 1949, complemented by the Additional Protocols of 1977 that relate to the protection of victims of armed conflicts. Both documents have broad international applicability. The two branches of law covered in the Hague and Geneva Conventions are further developed by the first two Protocols Additional to the Geneva Conventions on the protection of civilians (1977). These are referred to as Additional Protocol I (AP I), which governs international armed conflict, and Additional Protocol II (AP II), which governs non-international armed conflict.

Initially, IHL only applied to international armed conflict (IAC), and thus excluded internal tensions and disturbances. Yet Protocol II (adopted in 1977 and entered into force in 1978) of the Geneva Convention extended IHL to non-international armed conflict. The definition of IAC is found in Article Two,
which is common to the four Geneva Conventions: this states that the rules of IAC 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.” Thus, IAC can only be between two or more sovereign states (Dinstein 2016). A situation in which a foreign power sends troops into a territory to support a local movement is also considered an international armed conflict (GC Art. 2(2)). Additional Protocol I extends the field of application to “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” (API, Art. 1(4)).

IHL aims to address and restrict harm towards both participants in hostilities and civilians. At the core of IHL are two principles: that persons who are not, or are no longer, participating in hostilities must be protected; and that the right of parties in an armed conflict to choose methods and means of warfare is not unlimited. On these bases, IHL is further divided into two main branches. Jus ad bellum refers to the conditions under which a state may resort to the use of warfare, loosely referring to armed attack and aggression. Such acts are generally prohibited today, save for two exceptions: self-defense and United Nations authorization. Jus in bellum refers to rules applying in the case of armed conflicts, protecting persons who are not participating in the hostilities, as well as restricting the means and methods of warfare (Solis 2016).

The law goes into effect once armed conflict has commenced and applies to all sides of a conflict irrespective of who has initiated it. IHL includes regulations on the treatment of prisoners of war, combatant status, and rules regulating the conduct of hostilities and humanitarian access and assistance to certain categories of vulnerable persons. Vulnerable persons include wounded and sick in armed forces in the field (GC I); wounded, sick, and shipwrecked members of armed forces at sea (GC II); prisoners of war (GC III); and protected civilians (GC IV). The latter is particularly relevant to humanitarian protection and assistance, and was established to prevent in future conflicts the scale of civilian suffering experienced during the two World Wars.

Miia Halme-Tuomisaari

References

International Organizations

The term international organization is most frequently associated with intergovernmental organizations, such as the United Nations (UN), the World Trade Organization, or the International Labour Organization. International organizations are generally comprised of sovereign states, although other entities can also apply to become members. They are, by their nature, multilateral. The International Law Commission defines an international organization as an “organization established by a treaty or other instrument governed by international law and possessing its own international legal personality” (ILC 2011). It is important to distinguish between intergovernmental organizations, which are the focus of this entry, and international non-governmental organizations, which are not established by intergovernmental agreement, are non-profit in nature and must adhere to the principle of non-interference in the internal affairs of states (Willetts 2001). The International Committee of the Red Cross has a unique legal status, similar to that of intergovernmental organizations, such as the UN, while not being intergovernmental in nature.

International humanitarian organizations including the UN and the International Organization for Migration, which became a “Related Organization” of the UN in 2016, are generally well funded. This is largely because most donors continue to prefer to channel aid through these organizations, rather than giving it directly to other implementing organizations. This is because intergovernmental organizations are perceived as having greater capacity to manage large volumes of funds, and greater knowledge and expertise. In 2016, for example, 60 percent of all direct government humanitarian funding went to multilateral organizations. In contrast, non-governmental organizations received just 20 percent of direct government funding (Development Initiatives 2018).

International humanitarian organizations adopt different approaches to emergency and aid, and are subject to different mandates and restrictions. The UN is exempt from some key international legislation governing humanitarian