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TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N°4: INTERNATIONAL HUMANITARIAN LAW

➤ *What is international humanitarian law?*

International humanitarian law (IHL) forms a part of international law which governs relations between States. IHL is a set of rules which, for humanitarian reasons, seek to *limit the effects of armed conflicts, and protect the victims of these conflicts*. It protects persons who are not or who are no longer involved in the fighting and restricts the means and methods of war. IHL is also called « *law of war* » or « *law of armed conflict* ».

➤ *In which situations does IHL apply?*

It applies in situations of armed conflict, whether international or non-international. It does not determine whether or not a State has the right to resort to force. This question is governed by another branch of international law, contained in the United Nations Charter.

➤ *What is the difference between International Human Rights Law and International Humanitarian Law?*

The law relating to human rights, as opposed to IHL, applies in peace time, and the majority of its provisions may be suspended during an armed conflict.

➤ *What are the instruments of IHL?*

IHL is essentially contained in the four **Geneva Conventions of 1949**. Almost all States are bound by them today.

The 1949 Conventions are supplemented by two treaties: the two **Additional Protocols of 1977 relating to the protection of victims of armed conflicts**.

Other laws prohibit the use of certain weapons and military tactics, or protect certain categories of persons or property ; in particular : the Hague Convention of 1954 for the protection of cultural property in the event of armed conflict and its two Protocols ; the Convention of 1972 on biological weapons ; the Convention of 1980 on certain conventional weapons and its four Protocols ; the Convention of 1993 on chemical weapons ; the



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Ottawa Convention of 1997 on anti-personnel mines ; the Optional Protocol of 2000 relating to the Convention on the rights of children, concerning the involvement of children in armed conflicts.

Many IHL rules are now considered as belonging to customary law, i.e. as general rules which are applicable to all States.

➤ **What is understood by situations of armed conflict ?**

IHL applies only to armed conflicts and does not cover situations of internal tension or internal disorder, such as isolated acts of violence.

It applies only when a conflict has erupted, and in the same manner for all parties, whichever has initiated the hostilities. The provisions of IHL are distinct, depending on whether it concerns an international armed conflict or a non-international armed conflict.

International armed conflicts are those in which at least two States are involved. These conflicts are governed by a wide range of rules, including those contained on the Geneva Conventions and in Additional Protocol I.

Non-international armed conflicts relate to conflicts on the territory of one State, involving the regular armed forces with dissident armed groups, or armed groups fighting each other. A more limited set of rules is applicable to this type of conflict. These are defined in article 3 common to the four Geneva Conventions and in Additional Protocol II.

➤ **What are the essential rules of IHL?**

IHL covers two areas:

- **Protection of persons who do not take part in or no longer take part in the fighting**

It protects civilians as well as medical or religious personnel. It also protects those who have ceased to take part in the fighting, such as injured or ill combatants, shipwreck victims and prisoners of war. These persons have the right to respect of life, as well as their physical and mental integrity, and they benefit from legal guarantees. They must, in all circumstances, be protected and treated humanely, without any distinction of an unfavourable character.

Detailed rules governing detention conditions for prisoners of war and the treatment of civilians who find themselves under the authority of the opposing party, which includes in particular their sustenance, provision of medical care and the right to exchange news with their families.

IHL provides for certain distinctive signs which may be employed to identify protected persons, property and places (emblems of the Red Cross and the Red Crescent, as well as distinctive signs for cultural property and civilian protection).

- **Restrictions on methods of war, weapons and military tactics**

- IHL prohibits military means and methods which do not make it possible to distinguish between the civilian population and combatants, in such a way that spares the population and civilian property.

- The parties to the conflict and the members of their armed forces do not have an unrestricted right as to the methods and means of warfare. It is prohibited to use weapons or methods of warfare which are likely to cause unnecessary loss or excessive suffering.

- It is also prohibited to use weapons which cause serious and lasting damage to the environment.

In consequence, IHL prohibits the use of numerous weapons (explosive bullets, chemical and biological weapons, blinding laser weapons, anti-personnel mines).

Sources:

- Website of the CICR <http://www.cicr.org/>
- Eric DAVID, *Principes de droit des conflits armés*, Bruylant, 1994.
- Michel DEYRA, *Droit international humanitaire*, Gualino, 1998.