



Electronic Resource Guide

International Humanitarian Law

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American Society
of International Law

This electronic resource guide, often called the ERG, has been published online by the American Society of International Law (ASIL) since 1997. Since then it has been systematically updated and continuously expanded. The chapter format of the ERG is designed to be used by students, teachers, practitioners and researchers as a self-guided tour of relevant, quality, up-to-date online resources covering important areas of international law. The ERG also serves as a ready-made teaching tool at graduate and undergraduate levels.

The narrative format of the ERG is complemented and augmented by EISIL (Electronic Information System for International Law), a free online database that organizes and provides links to, and useful information on, web resources from the full spectrum of international law. EISIL's subject-organized format and expert-provided content also enhances its potential as teaching tool.

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I. Introduction

This chapter will cover international humanitarian law (IHL), the binding rules and customs that govern armed conflict between nations, civil war combatants, and conflicts among states and non-state belligerents. Traditionally known *jus in bello*, the law of war, or law of armed conflict, the term international humanitarian law has gained currency since the early 1960s. The two principal branches of IHL are "Hague Law," involving the regulation of weaponry and the selection of military targets, and "Geneva Law," covering the treatment of POWs, detainees, civilians, and humanitarian aid workers. IHL sets limits on the use of force, providing special rules for land, aerial, and naval warfare. The justification for and legality of commencing hostilities is governed by *jus ad bellum* principles, which lie outside the scope of this chapter. IHL addresses both the conduct of armed forces military and the protection of non-combatants. Although historically restricted to international conflicts, since the end of World War II, IHL increasingly applies to non-international conflicts. Nonetheless, the classification of armed conflicts remains important because different rules apply to international and non-international conflicts. Despite being a discreet subject of public international law, IHL also intersects with human rights law and international criminal law. As the nature of warfare and weapons change, IHL will develop stronger ties to human rights law and other branches of international law.

The broad nature and long history of IHL mean that there are many sources and examples which cannot be covered by this chapter. Researching IHL involves multiple issues and it is important to keep in mind that the nature of IHL has changed over time and continues to evolve. This guide covers the basic materials and concepts, but the researcher is advised to look beyond the basics when researching IHL. Due to the complex nature of IHL, no one source is likely to provide all the information needed. For an introduction to IHL see:

International Committee of the Red Cross (ICRC). International Humanitarian Law: Answers to Your Questions.

(<http://www.icrc.org/eng/resources/documents/publication/p0703.htm>)

II. Getting Started Researching International Humanitarian Law

The primary sources for IHL are international conventions, customary law, judgments of international tribunals and domestic courts, and state practice. The primary sources constitute "Hague Law," regarding the conduct of hostilities, and "Geneva Law," which protects the victims of war. The following websites provide full-text access to the majority of IHL primary documents:

International Committee of the Red Cross International Humanitarian Law (<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/ihl?OpenDocument>) This is the single most important online site for IHL research,

The United Nations websites: Treaty Collection (<http://untreaty.un.org/>),

The University of Minnesota Human Rights Library (<http://www1.umn.edu/humanrts/>),

The Avalon Project at Yale University Law School (<http://avalon.law.yale.edu/>), and the

Multilateral Treaties Project at the Fletcher School at Tufts University (<http://fletcher.tufts.edu/multilaterals/>).

A. Bibliographic Databases and Online Catalogs

International Committee of the Red Cross Library

(<http://www.icrc.org/eng/resources/library-research-service/index.jsp>)

Online catalog available at (<http://www.cid.icrc.org/library/>)

How to research IHL using Library of Congress Subject Headings

Most online catalogs use standard Library of Congress Subject Headings (LCSH) (<http://www.loc.gov/catdir/cpsolcco/lcco.html>). Unlike Human Rights, there is no one standard term used for IHL. Other commonly used terms referring to IHL include, "law of armed conflict", "law of war" and "use of force."

For general information on IHL, use the subject heading HUMANITARIAN LAW, as this will produce the greatest results in most library catalogs. Use the subject headings HUMANITARIAN LAW, INTERNATIONAL for general or comparative books on IHL. Individual topics in IHL have their own subject headings which are discussed within the individual sections.

For example: WAR (International law), COMBATANTS AND NONCOMBATANTS (International law). The following are some of the most commonly used subject headings for locating information on IHL. War victims - legal status, laws, etc.; United Nations; International Court of Justice ; Crimes against humanity; War crimes; Human Rights; Humanitarian Law (International); Genocide.

B. Periodical Indexes

For a synopsis of major journal indexes see the Human Rights (<http://www.asil.org/humrts1.cfm#Section8>) chapter of this Guide, specifically the section on periodical indexes for descriptions of Current Law index, Index to Foreign Legal Periodicals, Index to Legal Periodicals, Peace Palace Library, and Public International Law Bibliography from the Max Planck Institute.

C. Free Database Collections of Treaties Online

International Committee of the Red Cross (<http://www.icrc.org/eng>). ICRC Treaty Page (<http://www.icrc.org/ihl>) For a more complete description see Primary Sources, Treaties (Section VI.A internal link).

Electronic Information System for International Law EISIL (<http://www.eisil.org/>) This online portal from ASIL includes authenticated international agreements and online resources for Humanitarian Law under the heading of "Human Rights," and also under the categories of "Use of Force" and "International Criminal Law."

The Avalon Project (<http://avalon.law.yale.edu/>): Documents in Law, History, and Diplomacy, Yale University Law School . The Avalon Project provides access to

documents in the fields of Law, History, Economics, Politics, Diplomacy and Government. It is divided by time period, beginning with ancient texts and is also searchable by collection. Relevant collections include **Laws of War : Hague and Geneva Conventions Nuremberg War Crimes Trial Papers Relating to the Foreign Relations of the United States and Peace Conference at the Hague 1899 : Correspondence, Instructions and Reports.**

United Nations Treaty Collection,

(<http://treaties.un.org/Pages/Home.aspx?lang=en>) available free online, provides access to the majority of 20th Century multilateral treaties. The site provides full-text access to treaties contained in the *United Nations Treaty Series* (UNTS). Recently revised, there are a variety of searching options (type of agreement, signature date, entry into force date, subject terms, popular name, title words, and registration number).

An important site for human rights treaties is the International Law page of the UN High Commissioner for Human Rights

(<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>).

The site provides full-text treaties, status of treaties, reservations, and declarations.

However, the section lacks complete citations and there is no search mechanism for the treaties separate from the rest of the website.

University of Minnesota Human Rights Library

(<http://www1.umn.edu/humanrts/>)

The University of Minnesota Human Rights Library is a vast collection of resources related to human rights, including IHL. It provides access to many important international IHL treaties and other instruments. These documents can be accessed by **subject matter (Law of Armed Conflict) (War Crimes and Crimes Against Humanity, Genocide, and Terrorism**

Multilaterals Project (<http://fletcher.tufts.edu/multilaterals/>)

There is a direct link to **Rules of Warfare, Arms Control** (<http://fletcher.archive.tusm-oit.org/multilaterals/warfare.html>), which provides a chronological list of all major IHL instruments.

D. IHL specific Websites

International Committee of the Red Cross (ICRC) (<http://www.cicr.org/eng>).

The ICRC is the principal international body devoted to developing, implementing, and promoting IHL. The ICRC is generally credited with beginning the development of modern IHL. The ICRC plays a very important role in IHL development and its implementation by states as discussed in Section VII. A (internal link). The ICRC website contains a section on international humanitarian law

(<http://www.cicr.org/web/eng/siteeng0.nsf/htmlall/ihl?OpenDocument>), which provides a wealth of primary and secondary IHL resources. The site provides full-text access to treaties, commentaries on the four Geneva Conventions of 1949 and their Additional Protocols, list of signatures, ratifications, and reservations

(<http://www.cicr.org/ihl>). There are also links to many publications which provide history and answers to questions regarding IHL. The site also features the **National Implementation Database** (<http://www.cicr.org/ihl-nat>) of national laws, regulations, and case law on the implementation of humanitarian law is quite valuable to the researcher. It is accessible by State or keyword. The site is available in English, French, Spanish, and Arabic. The ICRC website is the single most authoritative online resource for IHL research.

International Federation of Red Cross and Red Crescent Societies

(<http://www.ifrc.org/>).

Current information on humanitarian issues around the world. Contains links to other Red Cross/Red Crescent organizations on the Internet. Of special interest is the *World Disasters Report* and the *Code of Conduct*. The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world's largest humanitarian organization, with 186 member national societies. The work of the IFRC adheres to

seven **fundamental principles**; humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

International Humanitarian Law Research Initiative, Harvard University (<http://www.ihlresearch.org/>). This site's "E-Library" contains full-text documents on humanitarian law arranged by topic or region. Documents include government memoranda, reports and analysis, legal instruments, resolutions and directives, and judicial decisions.

University of Minnesota Human Rights Library -- Humanitarian Law of Armed Conflict (<http://www1.umn.edu/humanrts/instree/auoy.htm>). Contains the full text of all four 1949 Geneva conventions and the two 1977 protocols which are the most frequently cited IHL conventions, and many other related instruments. Many are available in French and English.

International and Humanitarian Law Library (<http://www.worldlii.org/int/special/ihl/>). from WorldLII. This database contains treaties, cases, and law journals.

International Legal Search Engine: Human Rights & Humanitarian Law (<http://www.whatconvention.org/index.php?page=rechercher>). Covers 200 human rights and humanitarian law treaties and allows searching by country, topic or theme, and date. A unique feature is the ability to search articles of treaties by topic.

World Legal Information Institute (<http://www.worldlii.org/>) a free database provides access to databases from over 100 countries and territories via the Free Access to Law Movement. **International & Humanitarian Law**, also see **International Courts & Tribunals Library** (WorldLII) (<http://www.worldlii.org/int/cases/>).

III. Historical Sources

In Europe, the earliest writers on international law discussed standards for armed conflicts. Examples of historically significant works include: Francisco de Vitoria's *Lectures* and *Reflecciones*, Hugo Grotius', *De Jure Belli at Pacis* (On the Law of War & Peace) particularly Book III, Emmerich de Vattel's *Le Droit de Gens*, and Alberico Gentili's *De Jure Belli*.

Prior to codification in the 19th Century, sources of IHL included domestic military codes, bilateral treaties, conflict-specific agreements, and customs and traditions. Sumerians, Hittites, Persians, and Greeks all had rules or laws concerning various aspects of war, such as treatment of prisoners, use of poisons, and respect for cultural objects. Religious proscriptions on the conduct and means of war go back to ancient times. The concept of 'chivalry' which was the basis for much early humanitarian law was part of the Christian tradition. For a general discussion of religious influences on IHL see Carolyn Evans. *The Double-Edged Sword: Religious Influences on International Humanitarian Law*.

(<http://www.austlii.edu.au/au/journals/MelbJIL/2005/1.html>)

Islam also addressed humanitarian needs, stipulating that women, children and old people should not be killed; did not allow for the destruction of houses, fields, or livestock. In the twelfth century, Sultan Saladin ordered equal treatment of wounded on both sides and allowed hospital services to be provided.

The following link provides more information: principles governing international law from an Islamic point of view.

(http://www.icrc.org/eng/assets/files/other/irrc_858_zuhili.pdf)

A good overview can be found in The Red Cross and Red Crescent's magazine article on Humanitarian Law and Islam.

(http://www.redcross.int/EN/mag/magazine2005_1/24-25.html)

Many of the seminal European texts, in translation and the vernacular, can be found online through HeinOnline's Legal Classics database (subscription required). Some of the authors and commentaries on the early works can also be read full-text on Gale's Eighteenth Century Collections Online and Making of Modern Law Legal Treaties database (subscriptions required). Many of these texts also appear on Google Books. (<http://books.google.com/>)

Peace Palace Grotius Collection provides links to full-text of Grotius' treatises. (http://www.ppl.nl/index.php?option=com_content&view=article&id=82)

ICRC. History of International Humanitarian Law. (<http://www.icrc.org/eng/resources/documents/misc/mouvement-date-011006.htm>)

IV. Protected Persons (Geneva Law)

The Geneva Conventions, often referred to as Geneva Law, protect the victims of war, requiring humane treatment of civilians and combatants who have laid down their arms. The four Geneva Conventions of 1949 and the two Additional Protocols of 1977, and the third Additional Protocol of 2005 are the bedrock of contemporary IHL. Individuals involved in armed conflicts are identified as belonging, or not belonging, to groups of protected persons. Categories of protected persons are: *hors de combat* (wounded, sick, and shipwrecked), prisoners of war (POWs), civilians, relief personnel, and medical and religious personnel. Since the end of the World War II, IHL has been greatly influenced by developments in human rights law.

The Geneva Conventions of 12 August 1949.

The IRRC links below provide full-text documents, list of articles, commentaries, and state signatory information.

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

(<http://www.icrc.org/ihl.nsf/FULL/365?OpenDocument>)

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.

(<http://www.icrc.org/ihl.nsf/FULL/370?OpenDocument>)

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. (<http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument>)

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. (<http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>)

Link to State Parties

(<http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>)

Resolutions of the Diplomatic Conference. Geneva, 12 August 1949.

(<http://www.icrc.org/ihl.nsf/FULL/385?OpenDocument>)

Decolonization struggles and developments in weaponry during the 1960's and 1970's demonstrated the need to update the original Geneva Conventions of 1949. The 1977 Protocols Additional to the 1949 Geneva Conventions addressed both the issues of the nature of warfare and the protection of victims. Protocol I addresses issues of international armed conflict, while Protocol II governs non-international (internal) armed conflict. The two Additional Protocols have not been ratified by as many countries as the original four Geneva Conventions.

Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

(<http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>)

Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.

(<http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>)

Protocol III Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005. (<http://www.icrc.org/ihl.nsf/FULL/615?OpenDocument>)

For the US position on Protocol II see A Message from the President of the United States regarding Protocol II Additional to the 1949 Geneva Conventions, and Relating to the Protection of Victims of Non-International Armed Conflicts, December 3, 1986. (http://www.loc.gov/rr/frd/Military_Law/pdf/protocol-II-100-2.pdf)

International Committee of the Red Cross. Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (<http://www.icrc.org/eng/resources/documents/article/review/review-872-p991.htm>)

Claude Pilloud, Yves Sandoz et. al. Commentary on the Additional Protocols. International Committee of the Red Cross. Martinus Nijhoff, 1987. (<http://www.icrc.org/ihl.nsf/COM/470-750001?OpenDocument>)

Case Law for issues related to the Geneva Conventions

The International Court of Justice (<http://www.icj-cij.org/docket/index.php?p1=3&p2=2>). Search under "contentious cases," listed by date of filing or by date of culmination. In addition to judgments, the ICJ site includes memorials submitted by the parties and transcripts of oral arguments. World Legal Information Institute (<http://www.worldlii.org/>) Choose "International decisions" or "International and Humanitarian Law" - "International Courts & Tribunals Library."

Examples of international criminal tribunals that have applied the Geneva Conventions in their judgments:

ICTY, the Prosecutor v. Tadic

(<http://www.worldlii.org/int/cases/ICTY/1997/2.html>).

ICTR, The Prosecutor v. Jean-Paul Akayesu

(<http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/eea9364f4188dcc0c12571b500379d39/081a423680ff730dc12571fe004fa3fd?OpenDocument>).

There are many issues related to the Geneva Conventions and the Additional Protocols which the researcher may be interested in investigating. Some of the major topics are:

1. Neutrality

While today there is some debate as to the ability of any state to be neutral, the concept of the Neutral State, and the Law of Neutrality have a long history. ICRC.

Law of Armed Conflict: Neutrality: (<http://lawofwar.org/Neutrality.htm>)

The concept of neutral powers is addressed in the first Geneva Convention in Art. 37 regarding the flights of medical transports. Medical and religious personnel are still accepted as protected neutral parties. See also, International Law of War Association, Chapter 9, Neutrality, (<http://lawofwar.org/Neutrality.htm>)

2. Command Responsibility

Command responsibility has been an issue since the Nuremberg and Tokyo International Military Tribunals. The Additional Protocols state that the commanding officer must ensure that his subordinates are aware of their duties and rights under international law, that they are obliged to prevent, and where necessary, to suppress or to report to competent authorities, any breaches of international law (Art. 87 API).

The support of a legal advisor is also required (Art. 82 API). Arts. 86(2) and 87(3) of Protocol I address participation in war crimes. See also Rome Statute of the ICC

(http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm) Article 28

Responsibility of commanders and other superiors.

3. Non-International Armed Conflicts

Common Article 3 of the Geneva Conventions of 12 August 1949 and the Second Additional Protocol of 8 June 1977, Relating to the Victims of Non-International Armed Conflict govern the conduct of belligerents in non-international armed conflict. Common Article 3 issues have been relevant to the US conflict against non-state terrorist groups.

4. War Crimes / Grave Breaches of IHL- Various articles in the four Geneva Conventions and Arts. 11(4), 85 and 86 of Protocol I, (<http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>) address the issue of grave breaches of IHL. Cases of note in this area are: *Prosecutor v. Tadic* (Final Judgment), ICTY (1997) (<http://www.worldlii.org/int/cases/ICTY/1997/2.html>) and *Prosecutor v. Blaskic* (1994) (<http://www.icty.org/x/cases/blaskic/acjug/en/bla-aj040729e.pdf>).

5. Crimes Against Humanity This is a twentieth century concept that evolved from the Charter of the International Military Tribunal of 8 August 1945 and whose legal definition is found in the Statute of the International Criminal Court, Part 2, Art. 7 (<http://untreaty.un.org/cod/icc/statute/romefra.htm>).

Cases of note in this area are: *Prosecutor v. Tadic* (Final Judgment), ICTY (1997) (http://www.icty.org/x/file/Legal%20Library/jud_supplement/supp28-e/tadic.htm) and *Prosecutor v. Akayesu*, ICTR (1998), (<http://www.unicttr.org/tabid/128/Default.aspx?id=18&mnid=4>).

6. Civilians v. Combatants

The definition of the civilian population is found in, Art. 50, Protocol I, (<http://www.icrc.org/ihl.nsf/WebART/470-750064?OpenDocument>).

Nils Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities. International Committee of the Red Cross, 2009.
(<http://www.icrc.org/eng/resources/documents/publication/p0990.htm>)

Navi Pillay, Open Debate on Protection of Civilians in Armed Conflict, United Nations Security Council, July , 2010.
(<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10197&LangID=e>)

Geneva Call (<http://www.genevacall.org/home.htm>) Promotes compliance with international humanitarian law among non-state actors.

Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict. A/HRC/12/48. September 15, 2009.

Richard Goldstone's report investigates Israel's blockade of Gaza, IDF military operations, and targeting of civilians by Palestinian armed groups during Israel's Operation Cast Lead (December 2008 - January 2009). Richard Goldstone. Report of the United Nations Fact Finding Mission on the Gaza Conflict, Human Rights Council. A/64/490. October 29, 2009.
(http://www.un.org/ga/search/view_doc.asp?symbol=A/64/490).

Richard Baxter. So Called 'Unprivileged Belligerency', Spies, Guerrillas and Saboteurs. 28 Brit. Y.B. Int'l L. 323 (1951).

7. Prisoners of War and Detainees (POWs)

Unprivileged Belligerents (<http://www.icrc.org/eng/resources/international-review/index.jsp>)

Bin Haji Mohamed Ali and Another v. Public Prosecutor, Judicial Committee of the Privy Council (U.K.), 29 July 1968, (<http://www.icrc.org/ihl->

nat.nsf/46707c419d6bdfa24125673e00508145/383128666c8ab799c1256a1e00366ad3!OpenDocument).

1959, Judge Advocate General, U.S. Army. A Treatise on the Juridical Basis of the Distinction Between Lawful Combatant and Unprivileged Belligerent. (http://www.loc.gov/rr/frd/Military_Law/pdf/treatise.pdf)

Targeting Versus Deprivation of Liberty Under the International Law of Armed Conflict. Ramin Mahnad. ASIL Insights, Nov. 1, 2011. (<http://www.asil.org/insights111101.cfm>)

Other sites:

Bruce Oswald and Thomas Winkler, Copenhagen Process Principles and Guidelines on the Handling of Detainees in International Military Operations, ASIL Insights, December 2012. (<http://www.asil.org/insights121226.cfm>)

United States Military Medicine in War on Terror Prisons. University of Minnesota Human Rights Library. (<http://www1.umn.edu/humanrts/OathBetrayed/index.html>)

Guantanamo Testimonials Project. (<http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project>)

International Justice Network. (<http://www.ijnetwork.org/>)
NGO involved in defending detainees at Guantanamo and Bagram, Afghanistan
Project to Enforce the Geneva Conventions.
(http://www.pegc.us/archive/Organizations/LCHR_AssessingtheNewNormal.pdf)

V. Conduct of War (Hague Law)

The scope of IHL includes the regulation of the use of force and the conduct of states and individuals in warfare. Hague Law encompasses the legality of target selection, the prohibition of certain classes of weapons, and the lawful deployment of specific munitions in the field of battle. IHL recognizes five fundamental principles of the conduct of hostilities: distinction, military necessity, proportionality, humanity, and respect for humanitarian aid agencies. These principles protect civilian targets from attack, prohibit indiscriminate attacks, and ensure that ICRC and UN insignia will be respected.

There are several excellent sources of links to the documents concerning the conduct of war. The International Committee of the Red Cross (<http://www.icrc.org/ihl>), the University of Minnesota (<http://www1.umn.edu/humanrts/>), and the Avalon Project at Yale University (<http://avalon.law.yale.edu/>), all provide links to these important codes, declarations and treaties. (Internal Link to Primary Documents, Treaties.)

Hague Law Treaties and Codes

19th Century

The 19th century saw the beginning of the codification of many customary principles of the conduct of war. Within IHL there are special rules for the conduct of war on land, at sea, and in the air. Examples of attempts to synthesize customary IHL include:

24 April 1863 - Instructions for the Government of the Armies of the United States in the Field, known as the Lieber Code. Written by Francis Lieber during the American Civil War, the Lieber Code was the first set of written field instructions. It covers many of the issues later covered by the Hague Conventions, addressing issues such as which enemies should/could be attacked, and stating that unarmed civilians and their property are to be respected, and prisoners and wounded are to be treated humanely.

(<http://www.icrc.org/ihl.nsf/0/a25aa5871a04919bc12563cd002d65c5?OpenDocument>)

29 November - 11 December 1868 Declaration Renouncing the use, in Time of War, of Explosive Projectiles under 400 Grammes Weight (The St. Petersburg Declaration). The St. Petersburg Declaration of 1868,

(<http://www.icrc.org/ihl.nsf/INTRO/130?OpenDocument>) codified the prohibition of the use of weapons which cause unnecessary suffering.

(<http://www.icrc.org/ihl.nsf/a/3c02baf088a50f61c12563cd002d663b?opendocument>)

The 29 July 1899 Convention banned the use of certain weapons and techniques of war. It also set up the Permanent Court of Arbitration (PCA). **Hague II Laws and Customs of War on Land : 29 July 1899**

(http://avalon.law.yale.edu/19th_century/hague02.asp)

20th Century

Many of the Hague law treaties were drafted over a century ago during the Hague Conferences of 1899 and 1907, yet they are still frequently cited. Among the Hague Conference conventions still referenced today are the following:

Hague II - Limitation of Employment of Force for Recovery of Contract Debts : October 18, 1907

Hague IV - Laws and Customs of War on Land : 18 October 1907

Hague V - Rights and Duties of Neutral Powers and Persons in Case of War on Land : 18 October 1907

Hague VIII - Laying of Automatic Submarine Contact Mines : 18 October 1907

Hague IX - Bombardment by Naval Forces in Time of War : 18 October 1907

The Martens Clause. The Hague II Convention of 1899 included a clause, known as the Martens Clause, that still plays an important role in IHL today. It reads: "Until a more complete code of the laws of war is issued, the High Contracting Parties think it

right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience."

The clause has since appeared in modified form in the 1907 Hague IV, in the Additional Protocol I to the Geneva Conventions of 1949, and was used by the International Court of Justice (ICJ) in the advisory opinion, *Legality of the Threat or Use of Nuclear Weapons* (8 July 1996). This clause is and has been the subject of debate regarding its meaning and application. The Martens Clause is used to address issues not directly addressed in existing treaties.

Rupert Ticehurst. The Martens Clause and the Laws of Armed Conflict. *International Review of the Red Cross* No. 317, April 30, 1997.

(<http://www.icrc.org/eng/resources/documents/article/other/57jnhy.htm>)

Other significant 20th Century Treaties Relating to the Conduct of War:

Outer Space Treaty (<http://www.unoosa.org/oosa/SpaceLaw/outerspt.html>) 27 January 1967.

Anti-Ballistic Missile Treaty (<http://www.fas.org/nuke/control/abmt/>) 26 May 1972.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (Inhumane Weapons Convention) 10 October 1980, Art. I amended on 20 December 2001,

[http://www.unog.ch/80256EE600585943/\(httpPages\)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument)) (I) Protocol on Non-detectable Fragments;(II) Protocol on Prohibitions or Restrictions on the use of Mines, Booby-traps and other Devices, revised on 3 May 1996; (III) Protocol on Prohibitions or Restrictions on the

Use of Incendiary Weapons; (IV) Protocol on Blinding Laser Weapons, adopted on 13 October 1995; (V) Protocol on Explosive Remnants of War, adopted on 28 November 2003.

Ottawa Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines and on their Destruction 3 December 1997. (http://www.un.org/Depts/mine/UNDocs/ban_trty.htm) (<http://www.icrc.org/web/eng/siteeng0.nsf/html/landmines-factsheet-150807>)

Convention on Cluster Munitions, 2008 (<http://www.stopclustermunitions.org/>). *Travaux préparatoires* of the convention is available at: Dublin Diplomatic Conference on Cluster Munitions (<http://www.clustermunitionsdublin.ie/>). The Convention on Cluster Munitions entered into force Aug. 1, 2010.

See Priya Pillai. Adoption of the Convention on Cluster Munitions. ASIL Insight, Oct. 1, 2008. (<http://www.asil.org/insights081001.cfm>)

International Campaign to Ban Landmines. (www.icbl.org)

The Chemical Weapons Convention After Ten Years: Successes and Future Challenges. David Fidler. ASIL Insights, April 27, 2007. (<http://www.asil.org/insights070427.cfm>)

Nuclear Weapons

Some useful sites for Nuclear Weapons research include: For an outline of Treaties, from the UN, (<http://www.un.org/events/npt2005/npttreaty.html>) and from the Arms Control Association, (<http://www.armscontrol.org/treaties>).

See also, 1963 Limited Test Ban Treaty (<http://www.state.gov/r/pa/ho/time/ea/104271.htm>) and Nuclear Non-Proliferation Treaty, 2005. (<http://www.un.org/events/npt2005/npttreaty.html>)

Regarding New Weapons see Art. 36, Additional Protocol I.

(<http://www.icrc.org/Web/eng/siteeng0.nsf/html/5PXET2>)

International Atomic Energy Agency. (<http://www.iaea.org/>)

The Treaty on the Non-Proliferation of Nuclear Weapons: Taking Stock after the May 2008 Preparatory Committee Meeting. ASIL Insights. Lisa Tabassi and Jacqueline Leahey. June 30, 2008. (<http://www.asil.org/insights080630.cfm>)

Secondary Resources

Laura A. Dickinson, Military Lawyers on the Battlefield: An Empirical Account of International Law Compliance. 104 *American Journal of American Law* 1 (2010)

(<http://www.asil.org/ajil/Jan2010selectedpiece.pdf>)

ICRC. Weapons and International Humanitarian Law

(http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_ihl_weapons?OpenDocument)

The State of Israel. Gaza Operation Investigations: An Update, July 2010.

(<http://www.mfa.gov.il/MFA/Terrorism->

[+Obstacle+to+Peace/Hamas+war+against+Israel/Gaza_Operation_Investigations_Second_Update_July_2010.htm](http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Gaza_Operation_Investigations_Second_Update_July_2010.htm))

Alan Vick, *Aerospace Operations in Urban Environments: Exploring New Concepts*. Arlington, VA: RAND, 2000.

(http://www.rand.org/pubs/monograph_reports/MR1187/)

VI. Primary Sources of IHL

The primary sources of IHL are treaties, customary law (*jus cogens*, state practice, and *opinio juris*), case law, and military doctrine contained in field manuals and other military publications and regulations.

A. Treaties

The ICRC 's Treaty Database (1865 - current) (<http://www.icrc.org/ihl>) provides full-text of IHL agreements searchable by date. The ICRC website offers a variety of access points for treaty research.

(<http://www.icrc.org/ihl.nsf/INTRO?OpenView>), by country

(<http://www.icrc.org/ihl.nsf/Pays?ReadForm>) , and by topic

(<http://www.icrc.org/ihl.nsf/TOPICS?OpenView>). Topics include prosecution of war crimes, cultural property, methods of warfare, naval and air warfare, victims of armed conflict and miscellaneous.

In addition to full-text of documents, the ICRC Treaty database includes state parties, dates of signature and ratification, declarations and reservations, and commentaries. The introductory materials to each treaty list the institution responsible for drafting the agreement, indicate whether it is still in force, provide the date of entry into force, and cite to a print source for the document. ICRC Treaty Database does not provide citations for the treaties. The Geneva Conventions and their Additional Protocols have their own page:

(<http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>)

Electronic Information System for International Law (EISIL). This ASIL Web portal provides authenticated, full-text access to treaties arranged by subject matter, and also provides descriptions of the agreements.

(http://www.eisil.org/index.php?cat=705&t=sub_pages)

EISIL - Use of Force Category

(http://www.eisil.org/index.php?sid=894839248&t=sub_pages&cat=23)

EISIL - Law of Armed Conflict

(http://www.eisil.org/index.php?sid=141902395&cat=75&t=sub_pages)

The United Nations Treaty Series, (<http://treaties.un.org>.) is available free online and in print. It is also available through HeinOnline (subscription required).

Multilateral Project - Rules of Warfare, Armed Conflict (<http://fletcher.archive.tusm-oit.org/multilaterals/warfare.html>)

It contains a variety of full-text treaties and documents, including many United Nations instruments and a chronological list of all major IHL instruments beginning with the Lieber Code of 1863.

University of Minnesota Human Rights Library

(<http://www1.umn.edu/humanrts/>). The University of Minnesota Human Rights Library is a vast collection of resources on human rights, including IHL. It provides access to many important international IHL treaties. These documents can be accessed by **subject matter (Law of Armed Conflict) (War Crimes and Crimes Against Humanity, Genocide, and Terrorism)**

(<http://www1.umn.edu/humanrts/instreet/ainstls2.htm>), **instrument list** (use the titles given in subject matter

(<http://www1.umn.edu/humanrts/instreet/ainstls1.htm>), or one can search the site using the link on the **search mechanisms** page

(<http://www1.umn.edu/humanrts/searchdevices.htm>). The site provides full-text of documents, citations, ratification information, and date of entry into force.

The Avalon Project: Documents in Law, History, and Diplomacy Yale University Law School (<http://avalon.law.yale.edu/>) See specifically, Avalon Laws of War (1856 - 1975) (http://avalon.law.yale.edu/subject_menus/lawwar.asp). Full-text of selected treaties. No citations, entry into force or state party information. The Avalon Project provides access to documents in the fields of Law, History, Economics, Politics, Diplomacy and Government. It is divided by time period, beginning with ancient texts and is also searchable by Collection. Relevant collections include **Laws of War : Hague and Geneva Conventions Nuremberg War Crimes Trial Papers Relating to the Foreign Relations of the United States and Peace Conference at the Hague 1899 : Correspondence, Instructions and Reports**. The site is easily searched. In addition to primary documents, the site also contains documents referred to in the body of texts or ones that are considered by the editors to be a supporting document.

Text and Status of the United Nations Conventions on Terrorism
(http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSG) Multilateral and regional treaties related to terrorism deposited with the United Nations Secretary General and regional inter-governmental organizations.

Core Human Rights Instruments

United Nations Office of the High Commissioner for Human Rights
(<http://www2.ohchr.org/english/law/index.htm#instruments>)

Effects of Armed Conflicts on Treaties. International Law Commission
http://untreaty.un.org/ilc/guide/1_10.htm

Netherlands Institute of Human Rights (SIM).

(<http://sim.law.uu.nl/SIM/Dochome.nsf?Open>)

This is a good collection of primary treaties and instruments from several human rights systems, including the UN. SIM offers "Library" and "Case Law" options. Under "case law," one can search by topic, author, jurisdiction, or date. The "instruments" link in the Library database provides a list of treaties from specific organizations. There is also a 'search full text' option.

United States Institute of Peace, **Peace Agreements Digital Collection**

(<http://www.usip.org/library/pa.html>). This site contains a collection of the full text of peace agreements related to worldwide state conflicts since 1989.

International Legal Materials (ILM), an ASIL publication, is available electronically through HeinOnline (subscription required), LEXIS and WESTLAW, and in print. Each issue contains the full text of important treaties and agreements, judicial and arbitral decision, international organizations resolutions and other documents.

Researching international humanitarian law involves looking at recently concluded treaties as well as agreements signed over a century ago, and useful information about IHL, both historical and current, can also be found on the websites of non-governmental organizations.

Secondary Sources of IHL Treaties

Jean Pictet, Commentaries on the Geneva Conventions of 12 August 1949.
(<http://www.icrc.org/ihl.nsf/CONVPRES?OpenView>)

B. Case Law

International courts, ad hoc tribunals and commissions, and domestic courts all enforce and interpret IHL. The International Court of Justice has addressed IHL in a few of its judgments. After the end of the Cold War, various ad hoc tribunals, most notably the International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), have tried individuals for violations of IHL. Judgments of the International Court of Justice are available on its website (<http://www.icj-cij.org/>) and on WESTLAW (INT-ICJ) and LEXIS (ALLICJ).

1. Sources for Case Law from International Courts and Tribunals

International Criminal Court (<http://www.icc-cpi.int/>). For a more complete discussion of the ICC, see the International Criminal Law chapter of this Guide.
(<http://www.asil.org/crim1.cfm>)

International Criminal Tribunal for the Former Yugoslavia,
(<http://www.un.org/icty/>), also available on WESTLAW (INT-ICTY).

International Criminal Tribunal for Rwanda, (<http://www.unictr.org/>) , also available on WESTLAW (INT-ITCR).

Special Court for Sierra Leone, (<http://www.sc-sl.org/>).

Khmer Rouge Trial Task Force & Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, (<http://www.eccc.gov.kh/>) (Cambodian official site).

Annotated Leading Cases of International Criminal Tribunals. Subscription required. (<http://annotatedleadingcases.com/>)

2. Regional Tribunals

African Court of Human and Peoples Rights, (<http://www.african-court.org/>).

European Court of Human Rights,
(<http://www.echr.coe.int/Pages/home.aspx?p=home>). Full text search capability.

Inter-American Commission on Human Rights,
(<http://www.cidh.oas.org/defaulte.htm>)

Inter-American Court of Human Rights.
(<http://www.corteidh.or.cr/index.cfm?CFID=488606&CFTOKEN=49180030>)

International Enforcement Law Reporter (subscription required)
(<http://www.ielr.com/>)

The following three commissions represent examples of civil liability for IHL transgressions and compensating civilian victims of war.

Eritrea-Ethiopia Claims Commission. (http://www.pca-cpa.org/showpage.asp?pag_id=1151)

United Nations Compensation Commission Iraq and Kuwait
(<http://www.uncc.ch/start.htm>)

3. Domestic Enforcement of IHL

Individual countries have incorporated IHL into their domestic legislation, such as passing war crimes statutes. Search the World Legal Information Institute (<http://www.worldlii.org/>) for legislation and judgments, some of which are available in full text.

ICRC National Implementation Database. (<http://www.icrc.org/ihl-nat>) Includes legislation and case law organized by country. Also searchable by keyword. Provides citations and summaries, with some full-text materials.

For application of IHL in national courts, see Oxford University Press. Oxford Reports on International Law, International Law in Domestic Courts database. (<http://www.oxfordlawreports.com/About>) (subscription required). An online subscription database, which includes modules on International Courts of General Jurisdiction, International Law in Domestic Courts (<http://www.oup.com/online/ildc/>), International Criminal Law, and International Human Rights Law.

United States Military Commissions (<http://www.mc.mil/>)
Military courts set up under the U.S. Military Commissions Act of 2009 to try Al-Qaeda affiliated detainees. Dockets from individual cases available at (<http://www.mc.mil/CASES/MilitaryCommissions.aspx>)

Rule of Law in Armed Conflicts Project (RULAC). <http://www.adh-geneva.ch/RULAC/index.php>. Website of the Geneva Academy of International Humanitarian Law and Human Rights that arranges national legislation and case law, UN documents, and treaties by country.

For coverage of detainee cases involving the US visit Prof. Bobby Chesney's National Security Law blog (<http://jnslp.wordpress.com/>).

4. World War II Military Tribunals

Trial of the Major War Criminals Before the International Military Tribunal
Nuremberg 1945-1946.

Full-text of all 42 volumes. (http://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html)

Also available on HeinOnline's World Trials Library database (subscription required).

Famous World Trials. Nuremberg Trials 1945 - 1949.

(<http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/nuremberg.htm>)

Nuremberg Trials and Their Legacy. United States Memorial Holocaust Museum.

(http://www.ushmm.org/museum/exhibit/focus/warcrimetrials/comment_post.php)

Nuremberg Trials Project. Harvard Law School Library.

(http://nuremberg.law.harvard.edu/php/docs_swi.php?DI=1&text=overview)

London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal, 8 August 1945. (<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=47fdfb34d>)

International Military Tribunal for the Far East. Tokyo Tribunal Charter.

(<http://www.iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/charter.htm>)

The International Military Tribunal for the Far East, From TRIAL.

(<http://www.trial-ch.org/index.php?id=899&L=5>)

5. Online Guides and Treatises

ASIL - International Criminal Law. (<http://www.asil.org/crim1.cfm>)

Amy Burchfield, International Criminal Courts for the Former Yugoslavia, Rwanda and Sierra Leone: A Guide to Online and Print Resources, GlobaLex, July 9, 2011. (http://www.nyulawglobal.org/globalex/International_Criminal_Courts1.htm)

EISIL - International Criminal Law.

(http://www.eisil.org/index.php?sid=141902395&t=sub_pages&cat=21)

Marko Milanovic, ICC Prosecutor Charges the President of Sudan with Genocide, Crimes Against Humanity and War Crimes in Darfur. ASIL Insights. July 28, 2008. (<http://www.asil.org/insights080728.cfm>)

LLRX. Update to International Criminal Law: A Selective Resource Guide. (http://www.llrx.com/features/int_crim3.htm)

C. Customary Law

Developments in customary law play an important part in the evolving and expanding reach of IHL. Section 102(2) of the *Restatement of the Law, Third, Foreign Relations Law of the United States* describes it as follows: "Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation." (American Law Institute, 1987).

IHL recognizes a number of *jus cogens* norms, also known as peremptory norms. *Jus cogens* is defined as principles of international law so fundamental that no nation may ignore them or attempt to contract out of them through treaties. For example, genocide, torture, and participating in a slave trade are generally recognized as *jus cogens* norms. For information on contemporary developments see Juscogens.Net. Security Council Compendium No. 20. (<http://juscogens.typepad.com/>)

Determining which norms have attained peremptory norm status can be problematic. Evidence for *jus cogens* is generally derived from the preponderance of states which have signed treaties, state practice, and the writing of distinguished jurists.

For an example of how *jus cogens* is applied see International Law Commission Report, A/56/10 August 2001 - Draft Articles on Responsibility of State for internationally wrongful acts...Chapter III - Serious breaches of obligations under peremptory norms of general international law
untreaty.un.org/ilc/reports/2001/english/content.pdf. (paste this link into your browser.)

The most authoritative and wide-ranging compilation of customary IHL is Jean-Marie Henckaerts' and Louise Doswald-Beck's, Customary International Humanitarian Law (Cambridge University Press, 2005), Vol. 1, Rules and Vol 2, Practice.

(<http://www.icrc.org/customary-ihl/eng/docs/home>) This is the online version of the Study on Customary International Humanitarian Law, conducted by the International Committee of the Red Cross (ICRC) and published by Cambridge University Press in 2005. It is divided in two parts:

Part 1. Rules. Offers a comprehensive analysis of the customary rules of international humanitarian law identified by the Study and considered to be applicable in international and non-international armed conflicts. Nevertheless, the Study does not purport to offer an exhaustive assessment of all customary rules in this field.

Part 2. Practice. Contains the underlying practice. For each aspect of international humanitarian law covered, it provides a summary of relevant state practice including military manuals, legislation, case-law and official statements, as well as practice of international organizations, conferences and judicial and quasi-judicial bodies.

Part I of the database will be updated on a regular basis by the ICRC. To date, Part 2, Practice, has been updated with practice from the United Nations and international and mixed judicial and quasi-judicial bodies up until the end of 2007. Subsequent updates will include material from national sources of practice.

Also see, Study of Customary International Humanitarian Law sponsored by the ICRC. (<http://www.icrc.org/eng/customary-law>)

List of Customary Rules of International Humanitarian Law - Annex to J.- M. Henckaerts, Study on customary international humanitarian law. (<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/customary-law-rules-291008>)

United Nations Law Commission, (<http://www.un.org/law/ilc/>) The purpose of International Law Commission is to develop and codify customary international law.

For a general overview of the rules of Customary International Humanitarian Law (CIHL). (<http://www.cambridge.org/uk/law/cihl/overview.htm>).

Office of the Legal Advisor of the U.S. Department of State, Digest of the United States Practice in International Law. (<http://www.state.gov/s/l/c8183.htm>) Excellent source of state practice and *opinio juris* of the US. See chapters on human rights, arms control and use of force.

Anthea Elizabeth Roberts, *Traditional and Customary International Law: A Reconciliation* (<http://www.asil.org/ajil/roberts.pdf>)

Subject Guides

Columbia Law School Library, Researching Customary International Law, State Practice and the Pronouncements of States regarding International Law. (http://www.nyulawglobal.org/globalex/Customary_International_Law.htm)

D. Military Manuals

Military field manuals provide evidence of state practice and the implementation of IHL by the armed forces of individual states. By providing written instructions to military personnel, the manuals govern the conduct of hostilities and the treatment of injured and detained combatants. Jean-Marie Henckaerts and Louise Doswald-Beck's **Customary International Humanitarian Law** (Cambridge University Press, 2005)

contains citations to field manuals from a wide number of countries.) Full-text available online. (<http://www.icrc.org/customary-ihl/eng/docs/home>)

1. US Military Manuals

United States Department of the Army Field Manual 27-10, The Law of Land Warfare (July 1956).

(<http://www.globalsecurity.org/military/library/policy/army/fm/27-10/>) covers treatment of POWs, means of warfare, occupation, and treatment of civilians.

Global Security. (<http://www.globalsecurity.org/military/library/policy/army/fm/>)

Links: Army field manuals.

United States, Basic Field Manual, Volume VII - Military Law, Part Two, 1934. (http://www.loc.gov/rr/frd/Military_Law/pdf/rules_warfare-1934.pdf)

United States Marine Corps, War Crimes. Reference Publication 4.11.8B, 2005. (<https://www.fas.org/irp/doddir/usmc/mcrp4-11-8b.pdf>) Provides specific examples of actions taken by members of military organizations that have been considered violations of the Law of War.

2. Foreign Military Manuals

Oxford Manual on the Laws of War on Land, 1880.

(<http://www.icrc.org/ihl.nsf/FULL/140?OpenDocument>)

British Manual of Military Law, 1907.

(<http://www.archive.org/details/manualofmilitary00greauoft>)

Oxford Manual of the Laws of Naval War 1913.

(<http://www.icrc.org/ihl.nsf/FULL/265?OpenDocument>)

San Remo Manual on International Law Applicable to Armed Conflicts at Sea.
(<http://www.icrc.org/eng/resources/documents/misc/57jmsu.htm>)

VII. Leading Institutions

The leading international institutions involved in IHL are: the International Committee of the Red Cross (ICRC), and the United Nations (UN), and its judicial components, the International Court of Justice (ICJ) and the International Criminal Court. There are also many UN agencies and non-governmental organizations involved in specialized areas of IHL.

A. International Committee of the Red Cross

The primary institution for International Humanitarian Law in modern times is the International Committee of the Red Cross and Red Crescent (<http://www.icrc.org/>), headquartered in Geneva. Founded in 1863, the efforts of the ICRC led to the modern formation of IHL . See Henry Dunant's "A Memory of Solferino" (<http://www.icrc.org/eng/resources/documents/publication/p0361.htm>) for essential background on the creation of the ICRC and the need for universal, permanent, written rules on the conduct of war. The ICRC is a private association, not an intergovernmental organization, incorporated under the laws of Switzerland. All ICRC members are Swiss citizens, but the ICRC is not an instrumentality of the Swiss government. In addition to providing humanitarian relief, the ICRC also monitors compliance with IHL by issuing reports and visiting POWs and other detainees.

Today, the National Red Cross and Red Crescent Societies promote the implementation of IHL in specific countries and conflicts. Their actions span a range of issues from discussing adherence to IHL with national governments to being legal advisers for the training of armed forces and other necessary personnel. Statutes of the Red Cross and Red Crescent Movement .
(<http://www.icrc.org/eng/resources/documents/misc/statutes-movement-220506.htm>)

For an overview of the ICRC and a discussion of its role as promoter and guardian of IHL, see (<http://www.icrc.org/ihl>)

Agreement of the Organisation of the International Activities of the Components of the International Red Cross and the Red Crescent Movement (The Seville Agreement). (<http://www.redcross.int/EN/HISTORY/sevillepreamble.asp>)

International Federation of the Red Cross and the Red Crescent Societies Code of Conduct.

(<http://www.icrc.org/eng/resources/documents/publication/p1067.htm>)

Pre-United Nations and the International Court of Justice

The history of IHL is one of continually addressing the evolving nature of warfare and technology used in battle. The unprecedented destruction and mutilation of life during World War I demonstrated the inadequacies of existing rules for the conduct of war. The Spanish Civil War (1936-1939) and the Second World War (1939-1945) again demonstrated the need to expand the protections of IHL to meet the changing nature of modern warfare. In the aftermath of the new horrors, The United Nations (UN) and International Court of Justice (ICJ) were developed and took their place in 1946. The ICJ interprets IHL through judgments in contentious cases and advisory proceedings. (<http://www.icj-cij.org/>)

B. The United Nations

Under Chapter VII of the UN Charter, The UN Security Council may authorize the use of force (UN Charter, Chapter VII), and permit UN troops to serve as peacekeepers in areas of armed conflict that threaten international peace and security. The UN also places a significant role in documenting IHL. Numerous UN agencies and bodies produce documents on IHL and the relationship of IHL with human rights, humanitarian relief, refugee law, and environmental protection.

The United Nations (<http://www.un.org/>) plays a significant role in IHL development. Because the UN site is vast and the symbols used can be confusing, this is not always an easy site to search. For a good introduction to the United Nations see ASIL's research guide on the United Nations (<http://www.asil.org/un1.cfm>). Also useful is Selected U.N. Resources & Research Tools: Overview and Search Tips for Legal Research (September/October 2007) (http://www.nyulawglobal.org/globalex/UN_Resources_Research_Tools.pdf)

Use these free sites to help locate UN documents:

ODS Official Document System of the United Nations (<http://www.un.org/en/documents/ods/>). ODS includes official United Nations documentation beginning in 1993. Older UN documents are systematically being added to the system. ODS also provides access to the resolutions of the General Assembly, Security Council, Economic and Social Council and the Trusteeship Council from 1946 onwards."

UNBISnet UN Bibliographic Information System. (<http://unbisnet.un.org/>) Catalogue of UN publications and documentation indexed by the United Nations Dag Hammarskjöld Library and the Library of the UN Office at Geneva. Provides access to Bibliographic Records, Voting Records, Index to Speeches. Also has a Thesaurus and Research Guide. Some full-text documents are available.

UN-I-QUE: United Nations Info Quest. (<http://lib-unique.un.org/lib/unique.nsf>). "a ready-reference file created by the Dag Hammarskjöld Library to respond to frequently asked questions, is designed to provide quick access to document symbols/sales numbers for UN materials (1946 onwards). It does not give full bibliographic details nor does it replace existing bibliographic databases."

Office of the High Commissioner of Human Rights (<http://www.ohchr.org/>) Access to human rights conventions, documents, and reports from human rights bodies.

UN Humanitarian Affairs Portal (<http://www.un.org/ha/>) Links to sites related to refugees, landmines, children and armed conflict, and humanitarian aid.

UN International Law Portal. (<http://www.un.org/law/>) Links to the UN Treaty Collection, International Tribunals and Codification of International Law portal.

UN International Law Commission. (<http://www.un.org/law/ilc/>) See section on "international criminal law and topic "effects of armed conflict on treaties."

UN Legal Publications Global Search

(http://untreaty.un.org/cod/globalsearch/dtSearch/Search_Forms/dtSearch.html) Search ICJ judgments, International Law Commission, yearbooks and proceedings of diplomatic conferences.

United Nations Electronic Mine Action Network

(<http://www.mineaction.org>) Includes links to treaties, laws and projects to remove landmines supported by the UN.

C. International Court of Justice (ICJ)

Successor to the Permanent Court of International Justice (PCIJ), the ICJ sits at the Peace Palace in the Hague. (<http://www.icj-cij.org/homepage/index.php?lang=en>)

The ICJ is the principle judicial organ of the United Nations and was established by the UN Charter. The ICJ settles legal disputes submitted to it by States and gives advisory opinions when requested by authorized UN organs and special agencies in accordance with international law. ICJ website and HeinOnline (subscription required) include decisions from the Permanent Court of International Justice (1922-1940). ICJ decisions are also available on WESTLAW (INT-ICJ) and LexisNexis (ALLICJ).

ICJ Cases that address issues of IHL: Legality or Threat of Use of Nuclear Weapons or Nicaragua v. United States (Military and Paramilitary Activities in and against Nicaragua) (<http://www.icj-cij.org/docket/index.php?p1=3>)

World Court Digest

(<http://www.mpil.de/ww/en/pub/research/details/publications/institute/wcd.cfm>). A compendium of the jurisdiction of the International Court of Justice, 1986-2000.

Claire Germain, Cornell Law School. Germain's International Court of Justice Research Guide.

(<http://www.lawschool.cornell.edu/library/whatwedo/researchguides/icj.cfm>)

D. International Criminal Court (ICC) (<http://www.icc-cpi.int/>)

In 1998, the Rome statute was adopted which created the International Criminal Court (ICC). The ICC prosecutes cases involving war crimes, crimes against humanity, and genocide. Initially, criminal cases were handled through *ad hoc* tribunals such as the Nuremberg and Tokyo Tribunals, the ICTY and ICTR, etc., and those cases can be found on the tribunal sites. (Link to tribunals section)

VIII. Protection of Cultural Property

The mid-nineteenth century saw the formalization of the protection of cultural property. The Lieber code (http://avalon.law.yale.edu/19th_century/lieber.asp) and the Brussels Declaration of 1874 (<http://www.icrc.org/ihl.nsf/INTRO/135>) and the Oxford Manual of 1880 (<http://www.icrc.org/ihl.nsf/INTRO/140?OpenDocument>) all addressed the issue. The Regulations respecting the laws and Customs of War on Land, Annex to the 1907 Hague Convention IV is specifically directed to the protection of cultural property.

Convention for the Protection of Cultural Property in the Event of Armed Conflict; and Regulations for the Execution of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.

(<http://www.icrc.org/ihl.nsf/FULL/400?OpenDocument>)

Cultural objects protected by Protocol I, Art. 53 include cultural institutions, schools, and places of worship. (see the 1977 Protocols I and II additional to the 1949 Geneva conventions for the protection of war victims)

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 26 May 1999

(<http://www.icrc.org/ihl.nsf/INTRO/590>)

(http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/section_ihl_cultural_property)

Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments 15 April 1935. (Roerich Pact)

(<http://www1.umn.edu/humanrts//instree/1935a.htm>)

Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972. (<http://whc.unesco.org/en/conventiontext/>)

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970.

(<http://portal.unesco.org/en/ev.php->

[URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html))

UNESCO Protection of Cultural Property in the Event of Armed Conflict

(<http://portal.unesco.org/culture/en/ev.php->

[URL_ID=35261&URL_DO=DO_TOPIC&URL_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=35261&URL_DO=DO_TOPIC&URL_SECTION=201.html))

IX. Occupation

The occupation of territory by armed forces is covered by Articles 42-56 of the 1907 Hague Regulations, common Articles 2, 27-34 & 47-78 of the fourth Geneva Conventions of 1949, as well as in certain provisions of Additional Protocol I and customary international humanitarian law. Military manuals and judgments of

international and domestic courts also define the rights and obligations of occupying powers. Agreements concluded between the occupying power and the local authorities cannot deprive the population of occupied territory of the protection afforded by international humanitarian law (GC IV, art. 47) and protected persons themselves can in no circumstances renounce their rights (GC IV, art. 8).

ICRC, Occupation and International Humanitarian Law.
(<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/634KFC>)

International Committee of the Red Cross, Occupation and Other Forms of Administration of Foreign Territory: expert meeting, November 6, 2012.
(<http://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>)
Report from the ICRC Legal Division, edited by Tristan Ferraro.

Program on Humanitarian Policy and Conflict Research. IHL in Israel and the Occupied Palestinian Territory. (<http://opt.ihlresearch.org/>)

X. Military Sites

Compliance with IHL relies on the practice of state militaries. Evidence of such practice can be found on military websites and in military manuals. In the United States, members of the Judge Advocate General's Corps (JAG) advise military commanders of their rights and responsibilities under IHL. JAG officers assist with decisions on target selection, weaponing, and interrogation techniques. See also this chapter's section on Military Field Manuals (Primary Sources, Part D)

A. United States Military Information

Air War College Military Law and Legal Links.
(<http://www.au.af.mil/au/awc/awcgate/awc-law.htm>)

Army Publishing Directorate (<http://www.apd.army.mil/>)

Army Field Manuals (Unofficial)

(<http://www.globalsecurity.org/military/library/policy/army/fm/>)

Combating Terrorism Center At West Point Publications

(<http://www.ctc.usma.edu/publications>)

Combatant Status Review Tribunals (2006-current)

(www.defenselink.mil/news/Combatant_Tribunals.html) Orders and decisions regarding detainees held by the U.S. at Guantánamo Bay. Includes written transcripts and audio recordings of hearings.

Department of Defense Directives & Orders. (<http://www.dtic.mil/whs/directives/>)

Dictionary of Military and Associated Terms. United States Department of Defense.

(http://www.dtic.mil/doctrine/dod_dictionary/)

International Law Studies from the US Naval War College. Available online through HeinOnline (subscription required)

Joint Chiefs of Staff, Detainee Operations, Joint Publications 3-63. May 30, 2008.

(http://www.dtic.mil/doctrine/new_pubs/jp3_63.pdf)

Judge Advocate Corps: Center for Law & Military Operations.

(http://www.loc.gov/rr/frd/Military_Law/CLAMO.html)

Military Commander and the Law. Muir S. Fairchild Research Center.

(<http://www.au.af.mil/au/aul/lane.htm>) Excellent collection of bibliographies, reports and links

Pentagon Military Commissions

(<http://www.defenselink.mil/news/commissions.html>) cases, court rules, regulations, and commissions manual.

Rule of Law Handbook: A Practitioner's Guide for Judge Advocates. Judge Advocate General Charlottesville, VA, 2008. (http://www.loc.gov/rr/frd/Military_Law/pdf/rule-of-law_2011.pdf)

Secretary of the Army Official Publications. (<http://www.army.mil/usapa/>)

B. Foreign Military Web Sites

Australian Military Law and Peacekeeping Library □“ AustLII
(<http://austlii.edu.au/au/special/mlpl/>) treaties, case law, regulations, and statutes

Canada. Office of the Judge Advocate General. (<http://www.forces.gc.ca/en/caf-community-legal-services/index.page?>)

German International Criminal Code.
(<http://www.iuscomp.org/gla/statutes/VoeStGB.pdf>)

Swiss Military Penal Code, Federal Law of 13 June 1927 (as of June 1, 2004)
(http://www.admin.ch/ch/d/sr/c321_0.html)

XI. Secondary Sources

A. Texts and Treatises

Cherif M. Bassiouni, A Manual on International Humanitarian Law and Arms Control. Martinus Nijhoff Publishers, Leiden, 2000.
(http://www.worldcat.org/oclc/44750674&referer=brief_results)

Geoffrey S. Corn , Victor Hansen , M. Christopher Jenks , Richard Jackson , Eric Talbot Jensen & James A. Schoettler, The Law of Armed Conflict: An Operational

Approach. Wolters Kluwer Law & Business, 2012.
(<http://www.worldcat.org/oclc/779607396>)

Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict*, 2nd Edition. Cambridge University Press, 2010.
(http://www.worldcat.org/oclc/495475458&referer=brief_results)

Jean-Marie Henckaerts, Louise Doswald-Beck, **Customary International Humanitarian Law (Vols.1 & 2)** Cambridge University Press, 2005.
(<http://www.icrc.org/customary-ihl/eng/docs/home>)

Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law* 4th ed. Cambridge University Press, 2011. (<http://www.worldcat.org/oclc/707477853?referer=di&ht=edition>)

Marco Sassòli, Antoine Bouvier and Anne Quintin, *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* 3rd ed. ICRC, 2011.

(<http://www.icrc.org/eng/resources/documents/publication/p0739.htm>)

Excellent resource for case law and documents. Also, may be used as a textbook.

Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*. Cambridge University Press, 2010.

(http://www.worldcat.org/oclc/423389334&referer=brief_results).

One of the leading textbooks used in law of armed conflict and IHL courses.

B. Bibliographies

ICRC Library and Public Archives, *International Humanitarian Law Bibliography*

(<http://www.icrc.org/eng/resources/documents/misc/icrc-ihl-bibliography.htm>)

Includes French and English references - updated quarterly.

Peace Palace Library (The Hague), Bibliography on International Humanitarian Law, Peace Palace Library. (<http://www.peacepalacelibrary.nl/research-guides/war-and-peace/international-humanitarian-law/>) Organized by topic and continuously updated. Includes treatises, journal articles and online resources.

Peace Palace Library (The Hague), Bibliography on International Criminal Law. (<http://www.peacepalacelibrary.nl/research-guides/international-criminal-law/international-criminal-law/>) Searchable by topic, individual tribunal or country.

Max Plank Institute for Comparative Public Law and International Law, Bibliography of Public International Law. (http://www.mpil.de/ww/en/pub/library/catalogues_databases/doc_of_articles/pil.cfm)

IHL related articles from U.S. and foreign law journals are listed under the classification heading VR32 War, Armed Conflict, Neutrality.

U.S. Naval War College, International Law Department Information Paper Series. (<http://www.usnwc.edu/Research---Gaming/International-Law/Recent-Publications/Information-Paper-Series.aspx>) Short articles on emerging issues in IHL.

C. Journals and Yearbooks

Genocide Studies and Prevention (<http://www.utpjournals.com/Genocide-Studies-and-Prevention.html>)

Hague Academy Collected Courses on International Law (Recueil des cours) Index. Peace Palace Library. Searchable by author or keyword. (<http://www.peacepalacelibrary.nl/collection/e-resources/recueil-des-cours/>)

Journal of International Humanitarian Legal Studies (<http://www.brill.nl/ihls>) Volume 1 published in 2010.

International Review of the Red Cross, (<http://www.icrc.org/eng/review>) Selected online article from 2002.

Israel Defense Force Law Review. Available through HeinOnline. (subscription required) (<http://heinonline.org>)

Journal of Conflict and Security Law. Oxford University Press. (<http://jcsf.oxfordjournals.org/>)

Military Law Review. Published by the Judge Advocate General's Legal Center & School. (http://www.loc.gov/rr/frd/Military_Law/Military-Law-Review-home.html)

Naval War College Review. (<http://www.usnwc.edu/Publications/Naval-War-College-Review.aspx>)

Social Science Research Network (<http://www.ssrn.com>) hosts numerous articles on all aspects of IHL.

Max Planck Encyclopedia of Public International Law. (<http://www.mpepil.com/>) (subscription required). A well respected reference work on public international law with 1,000 topics, including coverage of IHL, international criminal law, international dispute settlement and environmental law. Also available in print 1991-2003.

The Military Law and Law of War Review. (<http://www.mllwr.org/>) Published by the International Society for Military Law and Law of War.

Yearbook of International Humanitarian Law. T.M.C. Asser Press and Cambridge University Press. (<http://journals.cambridge.org/action/displayJournal?jid=YHL>)

Year Book of International Humanitarian and Refugee Law
(<http://www.worldlii.org/int/journals/ISILYBIHRL/2001/4.html>)

Yearbook of the International Law Commission
(<http://untreaty.un.org/ilc/publications/yearbooks/yearbooks.htm>)
Many international yearbooks are available on HeinOnline (subscription required).
(<http://heinonline.org>)

XII. Reference and Current Awareness

A. Research Guides

Exploring Humanitarian Law: A Practical guide for Teachers. American Red Cross
For secondary students, includes videos. (<http://pearsonfoundation-rc.org/redcross-ehl/>)

Human Rights & Humanitarian Law. American Society of International
Law. (<http://www.asil.org/human-rights-humanitarian-law.cfm>)

International Committee of the Red Cross, Integrating the Law.
(<http://www.icrc.org/eng/resources/documents/publication/p0900.htm>)

International Criminal Law Research Guide. Dana Neacsu. Columbia Law Library.
http://library.law.columbia.edu/guides/International_criminal_law)

International Humanitarian Law Research Initiative. (<http://ihl.ihlresearch.org/>)
Harvard University's Program on Humanitarian Policy and Conflict Research
International Humanitarian Law.

International Humanitarian Law: Study Guide. Human Rights Education Associates
HREA. (http://www.hrea.org/index.php?base_id=151)

International Women's Human Rights and Humanitarian Law, University of Toronto Bora Laskin Law Library. (<http://www.law-lib.utoronto.ca/Resguide/women2.htm>)

Law of Armed Conflict in Air and Space Operations. Joan T. Philips, June 2009. (<http://www.au.af.mil/au/aul/bibs/loac09.htm>)

Military Education and Research Library Network (MERLN). (<http://merln.ndu.edu/>)

Naval War College Library Resources. (<http://www.usnwc.edu/Academics/Library/LibGuides.aspx>)

United Nations Audio Visual Library of International Law. (<http://www.un.org/law/avl/>) see "Law of Armed Conflict."

Reference Guide to the Geneva Conventions. Society for Professional Journalists. (<http://www.spj.org/gc.asp>)

Research Guide to International Humanitarian and Human Rights Law: Children and Armed Conflict, Rachel Harvey. International Bureau of Children's Rights, (2003-2006). (http://www.essex.ac.uk/armedcon/story_id/000044.pdf)

Stockton – US Naval War College International Law Department's Law of Armed Conflict/ IHL research E-Portal from the US Naval War College's International Law Department.

(<http://usnwc.libguides.com/LOAC-IHL>)

Named after Admiral Charles H. Stockton , former Naval War College President and author of the US Navy's first LOAC manual.

U.S. Army Judge Advocate General's Legal Center & School Library.
(http://www.loc.gov/rr/frd/Military_Law/military-legal-resources-home.html)

War Crimes Research Guide, Georgetown University Law Library.
(<http://www.ll.georgetown.edu/guides/WarCrimes.cfm>)

War Crimes Research Portal. Frederick Cox International Law Center, Case School of Law. (<http://www.law.case.edu/War-Crimes-Research-Portal/>)

B. Institutes, Think Tanks and Links

Armed Conflict Database

(<http://acd.iiss.org/armedconflict/>)

From the International Institute for Strategic Studies.

Campaign for Innocent Victims in Conflict (<http://www.civicworldwide.org/>)

Center for Civilians in Conflict (<http://civiliansinconflict.org>)

Center for Human Rights and Humanitarian Law.

(<http://www.wcl.american.edu/humright/center/>)

Coalition for an International Criminal Court (<http://www.iccnw.org/>). The Coalition for the International Criminal Court is a network of over 2,000 non-governmental organizations (NGOs) advocating for a fair, effective and independent International Criminal Court (ICC). It provides access to documents, reports, and current information regarding the ICC.

Concours Pictet. (http://www.concourspictet.org/index_en.htm) Week long training workshop on IHL designed for graduate and undergraduate students.

Crimes of War Project (<http://www.crimesofwar.org/>) Online book, news, bibliography, information arranged by region and country, and links.

Geneva Academy of International Humanitarian Law and Human Rights. (<http://www.adh-geneva.ch/>) Visit the Rule of Law in Armed Conflict Project (<http://www.adh-geneva.ch/RULAC/index.php>) for information on international humanitarian law, international criminal law, human rights law, and international refugee law arranged by country, including treaties, legislation, case law, and IGO documents.

Hague Justice Portal. (<http://www.haguejusticeportal.net/>) Ceased operation in January 2013.

Henry Dunant Centre for Humanitarian Dialogue. (formerly the Henry Dunant Institute) (<http://www.hdcentre.org/>)

Humanitarian Law and Policy Forum. (<http://ihlforum.ning.com/>)

Human Security Report, Simon Fraser University of Australia (<http://www.hsrgroup.org/>)

Impunity Watch, Syracuse University Law School. (<http://www.impunitywatch.net/>)

Institute for International Law of Peace and Armed Conflict. (<http://www.ifhv.rub.de/>)

Internal Displacement Monitoring Centre. (<http://www.internal-displacement.org/>)

International Association for Humanitarian Policy (HPCR).
(<http://www.isn.ethz.ch/isn/Digital-Library/IR-Directory/Detail/?id=112963>)
Organization devoted to advancing IHL. Information and links to various policy projects, including the Alabama Process that explores new areas to apply IHL in contemporary combat situations.

International Humanitarian Law Research Initiative. (<http://ihl.ihlresearch.org/>)
Harvard University's Program on Humanitarian Policy and Conflict Research.

International Humanitarian Law Workshop
(<http://law.scu.edu/international/international-humanitarian-law-workshop.cfm>)
Annual workshop organized by the ICRC and the Santa Clara University School of Law. 2009 PowerPoint slides are posted on the slides.

International Institute of Humanitarian Law, San Remo Italy.
(<http://www.iihl.org/Default.aspx?pageid=page1>)

Military Legal Resources from the library of Congress
(http://www.loc.gov/rr/frd/Military_Law/)

International Law of War Association. (<http://lawofwar.org>)

International Society of Military Law and Law of War.
(<http://www.ismlw.org/index.htm>)

Lieber Society. (<http://www.asil.org/interest-groups-view.cfm?groupid=27>)
Interest group of the American Society of International Law focusing on IHL. Awards two annual prizes for papers on the law of armed conflict.

Médicins Sans Frontières (Doctors without Borders). (<http://www.msf.org/>)

Professionals in Humanitarian Assistance and Protection.
(<http://www.phapinternational.org/>)

Project to Enforce the Geneva Conventions. (<http://www.pegc.us>)

United States Institute of Peace. (<http://www.usip.org/>) Great source for peace agreements and truth commission reports.

University Centre for International Humanitarian Law. (<http://www.ucihl.org/>)

Uppsala Conflict Data Program and International Research Institute.
(<http://www.pcr.uu.se/>) The research tab provides links to publications, online resources, and other datasets.

Uppsala Conflict Data Program UCDP/PRIO Armed Conflict Database.
(<http://www.pcr.uu.se/research/ucdp/database/>)

War Crimes Prosecution Watch .
(<http://publicinternationallawandpolicygroup.org/library/watches/war-crimes-prosecution-watch/>)

War Crimes Studies Center (<http://socrates.berkeley.edu/~warcrime/>)

The U.C. Berkeley War Crimes Studies Center maintains an archive of World War II war crimes trials and other materials related to international and national war crimes tribunals. The website includes regular reports from Sierra Leone, East Timor, and Indonesia.

C. Blogs

Armed Groups and International Law Blog (<http://armedgroups-internationallaw.org/>)

Georgetown University International Law Blog.
(<http://blogs.georgetown.edu/?blogID=2>)

Intercross. (<http://intercrossblog.icrc.org/>) Blog from the ICRC.

International Law Reporter. (<http://ilreports.blogspot.com/>) A review of new and forthcoming journal articles and treatises.

International Law Prof Blog.
(http://lawprofessors.typepad.com/international_law/)

Justia's list of International Law Blogs. (<http://www.justia.com/international-law/law-blogs.html>)

LawFare Blog (<http://www.lawfareblog.com/>)

Kenneth Anderson's Law of War and Just War Theory Blog.
(<http://kennethandersonlawofwar.blogspot.com/>)

OpinioJuris. (<http://opiniojuris.org/>)

XIII. Related Topics

The issues which have historically been of primary concern to international humanitarian law are discussed above, however, as the nature of warfare changes, customary international law evolves, and new treaties are written. Since the drafting of the Geneva Conventions, a wide range of topics have come under the rubric of IHL. The related topics included here are: environment, human rights, refugees, child soldiers, private military companies, humanitarian intervention, and drones and cyberwarfare.

A. Environment

See the **International Environmental Law** (<http://www.asil.org/env1.cfm>) chapter of this Guide for a thorough treatment of research methods in this area of law.

Concern for the environment in times of war goes back historically to the 7th and 8th centuries and Islamic rules of war, with rules against poisoning wells and other types of damage. In the 20th century protection of the natural environment itself became the subject of treaties. Customary law supports environmental protection as it prohibits attacks that damage the environment. Military manuals also address the protection of the environment during armed conflicts (internal link to Field Manuals, link to Military sites).

The natural environment is considered a protected object under IHL Arts. 35 (3) and 55 of Protocol I, Protection of the natural environment, requiring that care be taken to protect the natural environment against widespread, long-term, and severe damage. It also prohibits reprisals against the natural environment. For other conventions addressing environmental issues see also, EISIL, on Armed Conflict & Protection of the Environment.

(http://www.eisil.org/index.php?sid=141902395&t=sub_pages&cat=429)

B. Human Rights and IHL

The relationship between IHL and human rights law is one that is not well defined. While both bodies of law deal with protection of the individual, there are differences. IHL is a *lex specialis* limited to situations of armed conflict, whereas human rights law applies at all times. As recent events have shown, it is not always possible to separate these issues. Currently, human rights treaties are also being applied during times of war. See Roberta Arnold and Noëlle Quénivet (eds.) *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* for essays on this topic. Refer to the Human Rights (<http://www.asil.org/humrts1.cfm>) chapter of this Guide for complete information on researching human rights issues. The University of Minnesota Human Rights Library (<http://www1.umn.edu/humanrts/>) is also an excellent resource.

Human Rights Watch. Civilian Protection Initiative Group Statement, 2009.
(<http://www.hrw.org/en/news/2009/08/21/civilian-protection-initiative-group-statement?print>)

United Nations, International Legal Protection of Human Rights in Armed Conflict.
United Nations Press, 2011.
(http://www.ohchr.org/documents/publications/hr_in_armed_conflict.pdf)

C. Refugees

Armed conflict often forces refugees to cross international borders or become internally displaced persons. International law applies to refugees, parties to the conflict, and third-party states that receive refugees. A new category, Internally Displaced Persons (IDPs) are persons fleeing from conflict inside their own country. These persons have fewer protections under IHL than do refugees. IDPs are protected by Common Article 3 of the Geneva Conventions of 1949, and Protocol II which expands on the rules provided in Common Article 3.

Convention Relating to the Status of Refugees 28 July 1951 and Protocol Relating to the Status of Refugees 31 January 1967,
(<http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>).

The concept of Non-refoulement is addressed in Art. 45 (4) of Convention IV and the Convention Relating to the Status of Refugees Art. 14. The first paragraph of this article states that: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

The Cartagena Declaration on Refugees
(<http://www1.umn.edu/humanrts/instree/cartagena1984.html>)

See also EISIL - Refugees, Asylum, Nationality, Displaced, & Freedom of Movement

(http://www.eisil.org/index.php?sid=141902395&t=sub_pages&cat=205)

Guide to International Refugee Law Resources on the Web. Elisa Mason. LLRX.

(<http://www.llrx.com/features/refugee.htm>)

University of Minnesota Human Rights Library - Refugee and Aid Links

(<http://www1.umn.edu/humanrts/links/aidlinks.html>)

United Nations Humanitarian Affairs, Landmines, Refugees and Children and Armed Conflict. (<http://www.un.org/ha/>)

While International Law has long recognized the need to deal with refugee issues, only recently has the issue of internally displaced persons (IDPs) come to be of concern to the world community. An important document is Report of the Representative of the Secretary-General on Internally Displaced persons: Guidelines of Principles, UN Doc. E/CN.4/1998/53/Add.2(May 1998)

(<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e>)

D. Children in Armed Conflicts

The generally accepted international nomenclature for child soldiers is “children associated with armed forces or armed groups.”

Committee on the Rights of the Child (CRC). **Committee Homepage**

(<http://www2.ohchr.org/english/bodies/crc/index.htm>); **The United Nations**

Human Rights Treaties

(<http://www.bayefsky.com/bytheme.php/index/article>); **University of Minnesota**

Human Rights Library (<http://www1.umn.edu/humanrts/crc/crc-page.html>).

International views on protection of children and their rights have evolved significantly in the last half of the 20th century with many conventions addressing their specific needs. See Convention on the Rights of the Child .

(<http://www2.ohchr.org/english/law/crc.htm>)

See also, http://www.eisil.org/index.php?sid=141902395&t=sub_pages&cat=196 and, the **Amendment to article 43 (2) of the Convention on the Rights of the Child** , and **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**.

(<http://www.icrc.org/web/eng/siteeng0.nsf/html/57JP4U>)

Other sources are: Article 77.2 of the Additional **Protocol I** to the Geneva Conventions of **12 August 1949**, which addresses the participation of children in armed conflict; Article 4.3.c of **Protocol II**, additional to the Geneva Conventions of **12 August 1949**, and relating to the Protection of Victims of Non-International Armed Conflicts, states "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities".

The Paris Principles - February 2007 Principles and Guidelines on Children Associated with Armed Forces and Armed Groups.

(<http://www.un.org/children/conflict/english/parisprinciples.html>)

UNICEF (1997), Cape Town Principles and Best Practice on the Prevention of Recruitment of Children into the Armed Forces and Demobilisation and Social Reintegration of Children in Africa.

(http://www.unicef.org/emergencies/files/Cape_Town_Principles%281%29.pdf)

Sierra Leone, Special court Ruling on the Recruitment of Children, Prosecutor v. Sam Hinga Norman; Decision on Preliminary Motion based on lack of jurisdiction, 31 May 2004. (<http://www.sc-sl.org>)

Other protection of children in times of war includes Article 8.2b(xxvi) of the Rome Statute (http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm) of the **International Criminal Court (ICC)**, "Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities" is a war crime, and Forced or compulsory recruitment of anyone under the age of 18 for use in armed conflict, is a form of slavery, under the **International Labour Organisation's Worst Forms of Child Labour Convention, 1999**, adopted in 1999.

Children in War Portal (ICRC). (<http://www.icrc.org/eng/children>)

Human Rights Watch. Legal Standards Governing Child Soldiers. (<http://www.hrw.org/en/publications/reports/819/related>)

Office of the Special Representative of the Secretary General for Children and Armed Conflict. (<http://www.un.org/children/conflict/english/index.html>)

Watch list on Children and Armed Conflict. (<http://www.watchlist.org/>)

Subject Headings

Use the term CHILD SOLDIERS to search for information in this area. You may add a geographic location CHILD SOLDIERS - AFRICA, other relevant searches include CHILD Slavery -- legal status, laws, etc.; CONVENTION ON THE RIGHTS OF THE CHILD; CHILD SOLDIERS - LEGAL STATUS, LAWS, ETC. ; CHILDREN AND WAR .

E. Mercenaries and Private Military Companies

The use of private hired combatants is not new, however, the last few decades have witnessed an increased interest in regulating mercenaries. Recent conflicts in the Middle East have highlighted the relevance of this subject. While private military

companies (PMCs, also Private Security Companies, PSCs) are not currently addressed by IHL, the topic of mercenaries is addressed in several places: Art. 47, Protocol I (1) "A mercenary shall not have a right to be a combatant or a prisoner of war."

Also, International Convention of 4 December 1989 Against the Recruitment, use, Financing and Training of Mercenaries

(<http://www2.ohchr.org/english/law/mercenaries.htm>) and the Convention of the OAU for the Elimination of Mercenarism in Africa. Libreville, 3rd July 1977.

(<http://www.icrc.org/ihl.nsf/FULL/485?OpenDocument>)

European Journal of International Law. Volume 19, Number 5 is a symposium issue on private military contractors and International Law. (<http://www.ejil.org/>)

International Code of Conduct for Private Security Service Providers, Directorate of Political Affairs DP, Switzerland.

(<http://www.state.gov/documents/organization/150711.pdf>)

Private Military. (<http://www.privatemilitary.org/home.html>) Includes definition of private military companies.

Private Military Companies Options for Regulation in the UK. 12 February 2002 UK Government Green Paper.

(<http://www.globalsecurity.org/military/library/report/2002/mercenaries.pdf>)

Private Military and Security Companies, Research Bibliography. Institute for International Law and Justice.

(<http://www.iilj.org/research/BibliographyPMC.asp>)

Private Security Monitor, University of Denver

(http://psm.du.edu/national_regulation/index.html)

National laws governing the use and operations of private military and security companies

Diana Simpson, Bibliography on Private Military Companies (March 2008) Muir S. Fairchild Research Information Center, Maxwell AFB, AL
(<http://www.au.af.mil/au/aul/bibs/pmc08.htm>)

Sourcewatch Encyclopedia entry on Private Military Corporations
(http://www.sourcewatch.org/index.php?title=Private_Military_Corporations)

United Nations. Search for reports issued by the M.E. Bernales Ballesteros, Special Rapporteur on the Question of the Use of Mercenaries at the UN Charter Based Document Search database (<http://ap.ohchr.org/documents/gmainec.aspx>) Click on "Add a Mandate" and then select "Special Rapporteur on the Question of the Use of Mercenaries."

UN Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination
(<http://www2.ohchr.org/english/issues/mercenaries/index.htm>)

United Nations, The UN Working Group's Draft of a Possible Convention on Private Military and Security Companies (2010)
(<http://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf>)

F. Humanitarian Intervention (Responsibility to Protect)

One of the emerging doctrines of IHL is the internationally sanctioned use of force to protect civilians from harm, known as Humanitarian Intervention or the Responsibility to Protect. While the previous agreements and conventions have been framed in terms of rights, this new obligation addresses the affirmative responsibility of States to protect victims. The United Nations has taken the lead in efforts on behalf of the concept of the Responsibility to Protect. This responsibility is a corollary to the concept of human rights. By the beginning of the 21st century it is apparent that while the concept of sovereignty is loosening the hold it has had on international

relations since the Treaty of Westphalia, the existing international legal system of human and humanitarian law is still insufficient to prevent occurrences of abuse such as Darfur, Rwanda, Zimbabwe, and other situations in the world. The responsibility to protect is an attempt to address this deficiency. In 2011, the United Nations Security Council reacted to attacks against civilians in the armed conflict in Libya, by passing a Security Council resolution, based on responsibility to protect principles, that established no-fly zones and authorized “all necessary measures” to protect civilians.

United Nations Security Council Resolution 1973 (2011). Situation in Libya (<http://www.un.org/en/sc/documents/resolutions/2011.shtml>).

Humanitarian Charter and Minimum Standards for Disaster Relief. Sphere Project, 2004. (<http://www.sphereproject.org/>)

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(<http://www.phapinternational.org/>)

Sarah Sewell, Mass Atrocity Response Operations: A Military Planning Handbook.
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G. Drones, Robots and Cyberwarfare

The use of drones in Yemen, Afghanistan, and Pakistan, and the Stuxnet malware release in Iran, have led to increased analysis of the use of robots and software in warfare. Cyberwarfare raises IHL issues of disproportionate responses, and the distinction between civilian and military targets. Robots and automated weapons also raise important IHL questions if the software controlling these weapons cannot easily distinguish legitimate targets from protected persons and structures. In January 24, 2013, Ben Emmerson, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, launched an inquiry into the civilian impact of the use of drones. Below is a selection of online sources that serve as introductions to the legal and moral implications of robotic armed conflict and cyberwarfare.

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David Fidler, Recent Developments and Revelations Concerning Cybersecurity and Cyberspace: implications for International Law. ASIL Insights, June 20, 2012.

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Thomas Haine, A Legal Framework for Drone Attacks in Pakistan; The Witherspoon Institute. January 26, 2010. (<http://www.thepublicdiscourse.com/2010/01/1126>)

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Mary Ellen O'Connell, Lawful Use of Combat Drones. Congress of the United States House of Representatives Subcommittee on National Security and Foreign Affairs, Hearing: Rise of the Drones II: Examining the Legality of Unmanned Targeting, Washington, D.C., 2010, April 28, 2010.
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Mary Ellen O'Connell, International Law of Drones. ASIL Insights, Nov 12, 2010.
(<http://www.asil.org/insights101112.cfm>)

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(<http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-barack-obama>)

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<http://www.icrc.org/eng/resources/international-review/index.jsp>)

Talinn Manual on the International Law Applicable to Cyber Warfare
(<https://www.ccdcoe.org/249.html>)
Unofficial compilation of opinions of a group of independent IHL experts.

Jeffrey S. Thurnher, The Law That Applies to Autonomous Weapon Systems, ASIL Insights, January 18, 2013. (<http://www.asil.org/insights130118.cfm>)

US Naval War College 2010 Conference: International Law and the Changing
Character of Law
(<http://www.usnwc.edu/Events/International-Law-Conference-2010.aspx>)
video of sessions on the law of armed conflict. Includes a panel on war in cyberspace.

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