



The World Today

International Humanitarian Law

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International Law is the law that governs relationships between and among States. This statement, though generally true, has to be modified to take into account the fact that increasingly International Law also governs some of the relationships between the State, on the one hand, and individuals on the other. This is especially true in regard to human rights law, where various international treaties and customary law specify rules of conduct on the part of the State.

International humanitarian law is that branch of International Law that addresses armed conflict. In essence, international humanitarian law seeks to influence the conduct of States during warfare, by laying down restrictions on what States may or may not do in the heat of the battle. It is concerned with the *jus in bello*.

Red Cross

Many, if not most, of today's rules on international humanitarian law can be traced back to the work of the Red Cross; for the International Committee of the Red Cross, and various Red Cross and Red Crescent entities have dedicated themselves to the dissemination and recognition of rules of international humanitarian law since Henri Dunant's time. Dunant had written the famous *Un Souvenir de Solferino* in 1862 after witnessing some of the atrocities of war in Italy, and this book, together with Dunant's activism, laid the foundation of the Red Cross in 1864.

Since that time, the work of the Red Cross, together with State cooperation, has prompted various treaties on humanitarian law. The Hague Rules of 1899, for example, have helped to set out some of the principles that should govern the use of weapons in warfare, and established the principle that weaponry should be limited to the extent required by military necessity. In the public mind, however, the main rules of humanitarian law are those that are now incorporated into the Geneva Conventions of 1949, and the Additional Protocols to the Geneva Conventions.

The Geneva Conventions are four treaties that go into considerable detail about various aspects of warfare. The names of the treaties provide a general idea of their spheres of influence. They are:

- The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
- The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
- The Geneva Convention Relative to the Treatment of Prisoners of War; and
- The Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

Each treaty, therefore, sets out rules concerning the treatment of persons who find themselves affected by warfare. Significantly, however, the Geneva Conventions – from 1949 – did not cover all forms of warfare, and so, in 1977, two Protocols were completed by States aimed at filling some of the gaps. These protocols are:

- Protocol I: Relating to the Protection of Victims of International Armed Conflicts. In essence, this protocol extends the protections of the Geneva Conventions to persons involved in wars against racist regimes or in wars of national liberation.
- Protocol II: Relating to the Victims of Non-International Armed Conflicts. This protocol is concerned mainly with conflicts in which the State's adversary controls particular areas of territory in a civil war or other intensely fought domestic conflict.

Significance

Naturally, there have been many debates about the significance and value of each these treaties. Clearly, international humanitarian law has helped to limit some of the worst atrocities in armed conflict, for each State recognizes that if it abuses its adversary in breach of the law, then soldiers of the offending State will also be vulnerable to reprisals and other countermeasures. But, despite this reality, skeptics remain.

Some critics go back to Cicero in his oration *Pro Milone: inter arma silent leges*, or, in other words, amidst the clash of arms the law is silent. The argument then is that military confrontation is beyond the territory of law; people must be left to act as brutally as they wish once war has broken out. This perspective has consistently been opposed by States, but presumably it forms the basic philosophy of terrorists of both ancient and recent vintage.

Another critical perspective is related to the terrorist threat in modern life. It is that if terrorists are prepared to disregard all rules of humanitarian law and humanitarianism to advance their cause, why should the State hold itself responsible to terrorists under International Law? Hence, this approach recommends disregarding, or at least modifying, international humanitarian standards to ensure that the victory is one.

Jamaica and almost all other Caribbean countries are party to the four Geneva Conventions and the two Protocols. We are, however, inclined to say that the main body of international humanitarian law is irrelevant to us, for we are not apt to enter into armed conflict of the type addressed by the Geneva scheme. But, to be sure, knowledge of the scheme is important, and for this reason, the Red Cross office in the Caribbean (located in Port of Spain, Trinidad & Tobago) has been active in promoting information about the law that prevails in armed conflict. *Stephen Vasciannie has recently been elected to the United Nations International Law Commission. This article is reprinted with the permission of the Gleaner company.*