

Slide 2- Agenda

We're going to cover a lot of topics in a short amount of time. The important concepts in IHL are all interdependent, so learning the material well can involve a lot of circling back around to concepts introduced earlier. It's also important to understand the history surrounding the development of the law – after all the law developed in response to humanitarian crises caused by armed conflicts.

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But before we get into any of those characters, let's start with a couple of very real historical figures. The first one is Henri Dunant.

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In 1859 the Swiss businessman Henri Dunant arrived on the scene of the Battle of Solferino, Italy. In this battle, Dunant witnessed firsthand the suffering of war. Over 30,000 men were killed or wounded with hardly any access to medical care. What he experienced that day and in the days and weeks that followed convinced him that a corps of trained volunteers was needed to supplement military medicine and aide the wounded soldiers during armed conflicts. His idea took root and inspired the founding of the International Committee of the Red Cross (ICRC) and the global Red Cross and Red Crescent Movement.

At almost the same time that Dunant was taking action in Solferino, another humanitarian activist was also witnessing the suffering caused by war. With the outbreak of the U.S. Civil War in 1861, Clara Barton realized she could not stand by when wounded soldiers and military medical personnel needed help. During the four years of the war she tended to wounded soldiers, treated their wounds, wrote letters to their families, and comforted them, sometimes in the last hours of their lives. She also helped identify and locate the dead and missing in action.

So both Dunant and Barton started off as volunteer medics, something that is at the roots of the Red Cross and Red Crescent Movement. Clara Barton's work in locating the dead and missing in action is also still carried out by the Red Cross in the Restoring Family Links program.

With this background in mind, what do you think Henri Dunant's goals were in starting the Red Cross and Red Crescent Movement?

His two main ideas were for a treaty that would oblige armies to care of all wounded soldiers and for the creation of national societies that would help the military medical services.

Optional:

The National Societies stressed the fact that they could not recruit, train, and, in particular, maintain the motivation of their volunteers solely with a view to being ready to act in case of a war that no one really wanted to take place. The National Societies therefore wanted to develop peacetime activities, especially in the area of training hospital staff, caring for the sick, and fighting epidemics and other disasters that may occur in peacetime.

The Geneva Committee was concerned that peacetime activities might obfuscate the initial objectives of the Red Cross: absorbed by such activities, the National Societies would quickly forget their primary mission of providing assistance for wounded soldiers on the battlefield.

During the Third International Red Cross conference in 1884, the societies passed a motion for an expansion of the mission of national societies to include relief for victims of natural disasters.

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So national societies thrived, but didn't have a means of coordinating efforts. The International Federation of Red Cross and Red Crescent Societies (IFRC) was founded in 1919 in Paris in the aftermath of World War I. The war had revealed a need for close cooperation between different Red Cross and Red Crescent National Societies, which, through their humanitarian activities on behalf of prisoners of war and combatants, had attracted millions of volunteers and built a large body of expertise. A devastated Europe could not afford to lose such a resource.

It was Henry Davison, president of the American Red Cross War Committee, who proposed forming a federation of these National Societies. An international medical conference initiated by Davison resulted in the birth of the League of Red Cross Societies. There were five founding member societies: Great Britain, France, Italy, Japan, and the United States. This number has grown over the years and there are now over 190 recognized national societies – one for almost every country in the world. The League of Red Cross Societies was renamed to the International Federation of Red Cross and Red Crescent Societies in 1991.

The IFRC acts before, during and after disasters and health emergencies to meet the needs and improve the lives of vulnerable people. It acts with impartiality as to nationality, race, gender, religious beliefs, class and political opinions. In addition to coordinating of relief operations in the wake of natural disasters and health emergencies, the league's mission is to assist National Societies in their founding and development, especially in peacetime.

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Henri Dunant's idea to care for sick and wounded soldiers in battle grew into the largest humanitarian organization in the world.

The International Committee of the Red Cross and Red Crescent (ICRC) remains true to its origins of providing assistance in armed conflicts.

The National Societies, of which the American Red Cross is one, execute the Red Cross and Red Crescent mission in their respective countries.

The International Federation of the Red Cross and Red Crescent (IFRC) focuses on disaster response, disaster preparedness, and community health as well as serving as a clearing house to coordinate the efforts of the National Societies.

Together, the ICRC, National Societies, and the IFRC form the Red Cross and Red Crescent Movement. All of the organizations are independent bodies, bound together by a common set of unifying humanitarian principles. There is a lot more to learn about these organizations and their principles, but today's focus is on International Humanitarian Law, a body of law that is inseparably tied to the Red Cross and Red Crescent Movement.

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Although comprised of independent organizations, the International Red Cross and Red Crescent Movement is united by a set of seven fundamental principles. Together these principles guide the Movement along a common path. It's important to note that while these principles drive a lot of the impetus behind IHL, these are not the same as the fundamental principles of IHL, which we'll discuss later. The principles of the Red Cross and Red Crescent Movement are:

Humanity – prevent human suffering wherever it is found.

Impartiality – relieve suffering based on need, without discrimination.

Neutrality – take no sides in hostilities and controversies.

Universality – Red Cross and Red Crescent societies operate worldwide, and all societies are equal.

Voluntary Service – true to Dunant's vision of a corps of trained volunteers, the Movement is grounded in voluntary participation, not for personal gain.

Independence – maintain autonomy from governments.

Unity – only one Red Cross or Red Crescent society in each country, that is open to all.

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Henri Dunant and Clara Barton are examples of civilians on the battlefield. People like them who put themselves in harm's way to reduce the suffering caused by war are greatly affected by International Humanitarian Law. Another category of person that is deeply affected by International Humanitarian Law is the combatants who fight the wars. We'll go into more depth in defining who qualifies as a combatant, and who qualifies as a civilian later in the course.

In an attempt to do this all in an accessible and engaging way, we're going to introduce three characters that we'll follow through different scenarios. They are service members in the US military through different generations – one from the US Civil War, one from WWII, and one from the War on Terrorism.

We could have chosen characters from other times and places - a French Soldier from the Napoleonic wars, or a British Airmen from WWII, for example. But because our primary audience is American, we thought you'd probably be most familiar with the U.S. historical context. Plus, America has played a unique role in the development of IHL and this gives us the opportunity to highlight that.

The characters are Patterson Wallace, a Union Army soldier from the US Civil War, Robert Stone, a US Army soldier from World War II, and Jaden Parkins, a US Army Soldier from the Global War on Terrorism.

Slide 8 – Main Sources of IHL

There are three main sources of IHL. During Clara Barton, Henri Dunant, and Patterson Wallace's time, there was really one main source: Customary International Law.

To understand what customary international law is, picture the last time you were in an elevator that had only one set of doors. Which way did you face? Why? How did you learn this rule? Did you ever read it anywhere?

Interactive Option: Instead of having people picture getting in an elevator call down three volunteers and tell two of them to get in an imaginary elevator normally, and then tell one of them to get in and face the “wrong” direction. Then ask the class who was violating the custom, and discuss how they knew this.

Of course, this isn't a legal norm, it's a social norm; but it demonstrates the principle at work. Just like people may feel socially obligated to face the right way in an elevator, states may feel legally obligated to give their citizens the right to vote.

Customary international Law is formed when states follow a norm out of a sense of legal obligation. If states follow a norm only because it is convenient or desirable, and do not feel a sense of obligation to follow it, then it's not customary international law. For example, most states send competitors to the Olympic Games. They do so because they want to, not out of sense of legal obligation. So sending participants to the Olympic Games is not required under customary international law.

We'll talk more about Customary International Law during the Civil War in a moment. For now, we'll just note Customary International Law was pretty much the only source of IHL during the Civil War, and the wars happening in Europe at that time.

The next big source of IHL is Treaty Law. The most famous IHL treaties are the Geneva Conventions. The effort to enact the first Geneva Convention was spearheaded by Henri Dunant, and was adopted in 1864. While its scope was narrow and it was signed by only 12 countries, it laid the groundwork for the later conventions that were universally adopted in 1949. The United States had not played a role in the conflicts that preceded this first Geneva Convention, so it was not a part of this initial group – it was all European countries.

So, unlike Patterson, our Civil War Soldier, Robert, our WWII Soldier would have been operating under some treaty law in addition to Customary International Law. One thing that treaties tend to do is hasten the recognition of certain rules as customary international law, so even the customary international law that Robert operated under may have developed significantly since Patterson's time.

The last source IHL is judicial decisions. These decisions come from international tribunals such as the Nuremberg trials following World War II and the International Criminal Tribunal for Rwanda. While these decisions are not binding, they do have strong influence on the interpretation of IHL and can also help solidify customary IHL.

Jaden, our modern US Soldier would be the only one of the three whose experiences with IHL would have been influenced by judicial decisions.

Slide 9 – Lieber Code

*Has anyone here heard of General Order 100 that was issued by Lincoln During the Civil War?
(if not)....*

General Order 100 was also known as the Lieber Code. Does anyone know what that is?

During the U.S. Civil War, the U.S. military grew from just a few thousand soldiers and sailors in 1861 to over a million men in uniform by the end of the war in 1865.

With such rapid growth of untrained soldiers, President Lincoln and his senior general recognized the need to have written guidance that captured both American values and the international customary laws of war. In 1862 they asked Francis Lieber, a Prussian immigrant and law school professor, to write the guidance.

Issued in the spring of 1863, Francis Lieber created one of the first written documents in IHL. The concepts written in the Lieber Code have stood the test of time. Much of the language from the original Lieber Code is contained in the modern Geneva Conventions and their Additional Protocols.

Would a lowly private like Patterson have read the Lieber Code? Who thinks yes? Who thinks no?

Patterson probably didn't receive a copy of the Lieber code directly, but the orders issued to him by his commanding officers would have been shaped by it.

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It's November of 1864, and the guns have gone silent on the battlefield of Cold Harbor. The sun has gone down, and a cold rain is falling. Almost three hundred wounded soldiers, north and south, lie on the ground. The only standing structure is a small farmhouse in the middle of the battlefield. A small corps of nurse volunteers begin moving the wounded into the farmhouse so they don't die of exposure in their weakened state.

Patterson is placed in charge of a detail of stretcher bearers, and quickly realizes that there is not room in the farmhouse for even half of the badly wounded. As he brings a dozen wounded northern troops to the front door of the farmhouse, a nurse informs him that there's no more room. Patterson asks how many of the wounded inside are rebels. She responds that there are at least twenty wounded confederate soldiers inside. Patterson's men prepare to march into the farmhouse to remove the enemy wounded.

Do you think this would be legal under the Lieber code? Do you think this would be morally right to do?

Article 79 of the Lieber Code states "Every captured wounded enemy shall be medically treated, according to the ability of the medical staff." This rule probably did not require medical treatment based solely on need, without consideration to whose side the patient is on, as modern IHL requires. So Patterson's actions in removing the enemy wounded from the farmhouse were probably not in violation of the Lieber code, though they would be in violation of modern IHL.

Slide 11 – Geneva Conventions

This is a good segue into talking about the Geneva Conventions. I mentioned earlier, the first Geneva Convention came into effect after the US Civil War and the Crimean and the later Napoleonic Wars in Europe. Other the Geneva Conventions and other IHL Instruments such as Hague Conventions were drafted between the adoption of the first Geneva Convention and WWII. We'll talk about the evolution of the Geneva Conventions in the context of the conflicts that prompted their adoption and re-writing. Today there are four Geneva Conventions and three Additional Protocols.

Slide 12 – 1864 Geneva Convention

In the US Civil War, as in the wars in Europe at this time, there were very few medical personnel with the armies and treating or failing to treat sick and wounded soldiers was a major source of suffering caused by war. So this is what the initial Geneva Convention addressed.

Patterson's plan to remove the confederate soldiers from the farmhouse may have been legal under the Lieber Code, but it would not be allowed under the first Geneva Convention.

Another issue that created significant suffering during the wars in the 1800s was the treatment of prisoners of war. In the US civil war, approximately 56,000 soldiers died in prison camps, accounting for almost 10% of the fatalities of that war.

So, treaties that were negotiated before WWII addressed the treatment of Prisoners of War.

Did these treaties dramatically change the experience of Soldiers on the ground. Did Robert, fighting in WWII face very different norms and restraints than Patterson fighting in the Civil War?

It's hard to say what, exactly, the effect was because the nature of the wars was so different. In the wars in the 1860s, combatants generally fought at relatively close range in tight formations. This made accidental shootings of civilians rare compared to later wars. Whereas in WWII long range weapons made it less practicable to distinguish civilians from combatants. 70 million people were killed in WWII, 60% of whom were civilians. In the US Civil War approximately 5% of the war dead were civilians.

Slide 13

In early 1945, PVT Robert Stone was being detained as a Prisoner of War in an unused slaughterhouse in the German city of Dresden. Robert's battle buddy, PFC Kurt Vonnegut later wrote a letter from a Red Cross club in France describing their treatment:

"We were refused medical attention and clothing: We were given long hours at extremely hard labor. Our food ration was two-hundred-and-fifty grams of black bread and one pint of unseasoned potato soup each day."

On the morning of February 13th, air-ride sirens started to whine.

Thousands of pounds of high explosives fell over the area. Once the explosions seemed to die down, the American POWs, including Robert and Kurt were marched out into the city center and ordered to pull people from the wreckage. As soon as they got started, the sirens started up again, and another rain of bombs started to fall. They were marched back to their bunker.

After two more days of raids, British and American bombers had dropped almost four thousand tons of high-explosive and incendiary bombs on Dresden, destroying two and a half square miles of the city center, and killing at least 35,000 people, likely many more. Kurt and Robert's bunker held up, and when they were finally marched out again on the evening of February 15th to clean the rubble, Kurt remarked that downtown Dresden looked like the surface of the moon. As he wrote later,

"Nobody talked much as the expedition crossed the moon. There was nothing appropriate to say. One thing was clear: absolutely everybody in the city was supposed to be dead, regardless of what they were, and that anybody that moved in it represented a flaw in the design. There were to be no moon men at all."

(Kurt Vonnegut, Slaughterhouse Five)

Do you think the treatment of PVT Robert Stone and his battle buddy PFC Kurt Vonnegut was legal under IHL at the time?

Let's take a show of hands for each thing:

Was the denial of medical attention legal?

No, it was not legal.

Was the denial of clothing legal?

Presumably not. The POWs should be entitled to the same level provisions as the troops detaining them.

Were the rations of 250grams (about a quarter pound) of bread, and a pint of potato soup sufficient under the law?

Presumably not. The POWs should be entitled to the same level provisions as the troops detaining them

Was it legal to put them to work?

Yes, junior enlisted soldiers could be put to work, however there are limitations and requirements that come with this.

Were the conditions under which they were put to work legal?

No. The type of work, clearing rubble was legal so long as the POWs were physically fit enough to undertake the work. However, the POWs should have been compensated, and their hours should have been reasonable.

(These answers are based on the 1929 Geneva convention Relative to the treatment of Prisoners of War, which was updated in 1949 and became GC III)

There are also other possible IHL violations in this scenario. Can anyone spot now what they are?

We will discuss the harm done to civilians and civilian objects by the bombing campaign when we talk about the fundamental principles of IHL.

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After WWII, the international community acknowledged there was more work to be done, and set about creating a stronger set of IHL treaties. The earlier drafts of the Geneva Conventions that addressed the treatment of sick and wounded soldiers both on land, and at sea, as well as the treatment of prisoners of war were updated. And an entirely new convention on the protection of civilians was devised. Each war brought with it new humanitarian issues, and the

laws responded accordingly. So the laws governing warfare, much like the Red Cross and Red Crescent Movement itself, were born on the battlefield.

Slide 15

What about the Additional Protocols of 1977? What was going on historically in that era?

It was largely a time of decolonization and wars of independence that prompted these additional protocols. So they address issues such as colonial domination, alien occupation, and racist regimes. Additional protocol II also addressed for the first time obligations in armed conflicts involving non-state actors.

Does anyone know why the Red Crystal is on this slide?

The additional Protocol of 2005 created this distinctive emblem in an attempt to produce something that no one would think had any religious or other possibly objectionable affiliation. This is obviously not a very substantial update to the Geneva conventions, so it's safe to say that the conventions have not undergone a significant update since our current era of post 9/11 conflicts began. If a new convention were to be put forward today, what kinds of things do you think it might address?

Slide 16 – Interactive Activity

Presenter Notes: One reason IHL is interesting is that it comes up a lot in current events and discussions, and yet most people have only a vague idea of what it is (and what's in the Geneva Conventions).

Having the class talk about their current understanding of the GCs is good way to (a) let the instructor know more about their audience (b) re-focus the audience, let them stretch their legs, and engage those who learn best through interaction. Try and get the class to write down a list of their understanding (preconceptions) of the GCs.

After they've done this, go through these slides, and have them vote and discuss which of these are in the 1949 Geneva Conventions? If the class needs a little wake up, have walk to one side of the room to vote "yes" and the opposite side to vote "no."

Requirement that POW camps have a "canteen" in which POWs can buy sundries with tokens issued by the guards - YES

Requirement that medical care be distributed regardless of which side the patient was fighting on - YES

Procedures for establishing agreed-upon medical evacuation corridors - YES

Requirement that soldiers in the field be provided with vegetarian or religious food options - NO

Establishment of the official Red Cross, Red Crescent, and Red Diamond insignia. - YES

Prohibition of the use of nuclear weapons - NO

Prohibition of the use of chemical weapons - NO

Special protected status for non-combatant medical and religious personnel - YES

Guidelines on legal requirements for occupying powers - YES

Slide 17 –

Presenter Notes: This slide is a very brief overview of conflict classification. The slide builds to separate and clarify the types of conflicts.

In IHL, armed conflicts can be categorized into different classifications. The type of classification for a conflict is important as it determines what rules in IHL apply, or if IHL applies at all.

(Click to build the slide) *An International Armed Conflict (IAC) is when two or more nations engage in an armed conflict. International Armed Conflicts are what most people think of when they hear the term “war.” IHL for International Armed Conflicts is very robust and includes all four Geneva Conventions and Additional Protocol I. In total there are over 600 articles that apply to International Armed Conflicts.*

(If questioned about other situations for International Armed Conflicts, here are some additional examples. However, we recommend trying to stay away from this topic as it is a very complicated area of IHL)

There are a few other situations that are considered to be International Armed Conflicts even though there may not be two countries fighting each other.

- 1. The first situation is when one country occupies another, even if there is no resistance to the occupation. While there may not be a fight occurring in occupied country B, the rules from Geneva Convention IV and Additional Protocol I still apply.*
- 2. The second situation is during national liberation wars. In Article 1 to Additional Protocol I, the definition of International Armed Conflicts include conflicts in which people are fighting against colonial domination and racist regimes. This applies even though the fighting is all taking place inside just one country. (This is one of the articles in AP I that the U.S. objects to as it doesn't define the conflict based on geography, but rather motive to fight.)*

(Click to build the slide) *Non-International Armed Conflicts (NIACs) occur when there is an armed conflict between a country and a non-State armed group or between multiple non-State armed groups and the fighting is contained within the borders of one country. During Non-International Armed Conflicts only Common Article 3 (called a common article because it is*

found (or common to) all four of the 1949 Geneva Conventions) and Additional Protocol II apply. In total, there are just 29 articles that apply to Non-International Armed Conflicts.

(Click to build the slide) *Internal tensions or disturbances are acts of violence that occur within a country that do not rise to the level of an armed conflict. In these situations, domestic criminal law and law enforcement handle the issue. (Click to build the slide) It is important to note that in these situations, IHL does not apply.*

Slide 18

Interactive activity. Classify the Armed Conflict:

- 1. Patterson fought in the U.S. Civil War. Was this an international armed conflict, or a non-international armed conflict? Why? (It was a non-international armed conflict, because the Confederacy was not an officially recognized government. Though the Confederacy would have classified it differently, saying that it was a sovereign nation.)**
- 2. Robert fought in WWII. Was this an international armed conflict, or a non-international armed conflict? Why? (WWII is a clear example of an International Armed Conflict. It was a war of nations against nations.)**
- 3. Jaden deployed multiple times in the Global War on Terrorism. Let's go through each one:**
 - a. Afghanistan in early 2002 – the U.S. classified this as a Non-International Armed conflict, even though it was against both Al-Qaeda and the Taliban. The fight against Al-Qaeda would be uncontroversially classified as a non-international armed conflict because Al-Qaeda is not recognized by anyone as an official government. However, at the time, the Taliban had some limited recognition as the official government of Afghanistan. So on what basis did the U.S. assert that it was not in an international armed conflict? The U.S. said that the Taliban was not the official government of Afghanistan, and instead recognized the Northern Alliance as the legitimate, but exiled government. The Northern Alliance consented to U.S. presence and assistance in Afghanistan, and therefore the U.S. view was that it was fighting a non-state actor when it was fighting the Taliban. There was some controversy over this determination.**
 - b. Iraq in May 2003. This was an International Armed Conflict. The conflict was against Saddam Hussein's Baathist regime, which was indisputably the official government of Iraq at the time.**
 - c. Iraq again in late 2006. By this time the conflict in Iraq had transitioned to a non-international armed conflict. The U.S. stayed in Iraq at the invitation of the newly formed government of Iraq; the conflict was not against non-state actors such as insurgent fighters.**

Slide 19

Presenter Notes: This slide is to introduce the basic idea of what is an armed conflict. In order to keep your presentation on time, you will need to cover this broadly and take any questions on it after the presentation.

What is an armed conflict and why do we call it armed conflict, rather than war? War is a political declaration. Armed conflict is determined by the facts of the situation. This is why you can have a war on drugs, but can't have an armed conflict on drugs. Despite many years of armed conflict, the last declared war the U.S. fought was World War II.

When an incident moves from being a domestic police action or border dispute to being an armed conflict depends on two factors. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum level of organization. If the minimum level of intensity and the minimum level of organization are not met, the incident is not an armed conflict.