



General Assembly Third Committee Topic Background Guide  
***Topic 2: Strengthening International Humanitarian Law<sup>1</sup>***

8 September 2014

International humanitarian law (IHL) draws from the international human rights expressed in the UN General Assembly's 1948 Universal Declaration of Human Rights (UDHR)<sup>2</sup> to limit the effects of war on wounded and sick soldiers, prisoners of war, and civilians. Most of the limitations states have agreed to are expressed in the four Geneva Conventions of 1949:

- First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- Second Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- Third Geneva Convention relative to the Treatment of Prisoners of War
- Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War<sup>3</sup>

Before these agreements entered into force in 1950, wounded and sick soldiers, prisoners of war (POWs), and civilians were often at the mercy the opposing sides on a battlefield. Since 1950, state parties to the Geneva Conventions have declared that even in war, soldiers and civilians have basic human rights. Violations of these laws are considered war crimes.<sup>4</sup>

The International Committee of the Red Cross (ICRC) was instrumental in drafting the Geneva Conventions and is essential to implementing its provisions. The ICRC is a non-governmental organization based in Geneva. It was founded in 1863 to take "direct action... to ensure protection and assistance for victims of armed conflict and strife" and to encourage "the development of international humanitarian law (IHL) and promoting respect for it by governments and all weapon bearers."<sup>5</sup>

States that promise to uphold the Geneva Conventions agree that when they are at war they will protect the rights of wounded and sick soldiers, POWs, and civilians and allow a neutral state or an "impartial humanitarian organization" such as the ICRC to visit and treat them. In addition, state parties agree that the medical facilities and personnel of their armed forces and the medical facilities and personnel of relief organizations should be marked with the symbol of a red cross, red crescent, red lion, red sun, or red crystal so soldiers know not to target them.<sup>6</sup>

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<sup>1</sup> This guide was written by Karen Ruth Adams, Montana Model UN faculty advisor, with contributions from Kelsi N. Steele (2009), Jessica McCutcheon (2012), and Eric H. Hines (2014). Copyright 2014 by Karen Ruth Adams.

<sup>2</sup> UN General Assembly, "The Universal Declaration of Human Rights," 10 December 1948, <http://www.un.org/en/documents/udhr/index.shtml>

<sup>3</sup> For the conventions, see International Committee of the Red Cross (ICRC), "The Geneva Conventions of 1949 and their Additional Protocols," <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/>.

<sup>4</sup> Karen A. Mingst and Margaret P. Karns, *The United Nations in the 21<sup>st</sup> Century*, 3<sup>rd</sup> edition (Boulder: Westview, 2007), p. 199.

<sup>5</sup> ICRC, "History of the ICRC," 29 October 2010, <http://www.icrc.org/eng/who-we-are/history/overview-section-history-icrc.htm>.

<sup>6</sup> "Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949," Articles 10 and 38, <http://www.icrc.org/ihl.nsf/FULL/365?OpenDocument>. The other conventions have similar provisions. The red crystal was recognized in the Additional Protocol III (2005). "Protocol

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Every four years, the ICRC and the states that have agreed to uphold the Geneva Conventions meet to review and improve IHL. At the most recent conference, in November 2011, participants recognized “the primary role of States” in developing IHL and invited states and international organizations to recommend ways to “i) ensure that international humanitarian law remains practical and relevant in providing legal protection to all persons deprived of their liberty in relation to armed conflict; and ii) enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law.”<sup>7</sup>

The purpose of the General Assembly Third Committee is to oversee and improve international human rights. What can the GA-3 do to improve the definition, implementation, and enforcement of IHL in contemporary conflicts — like the civil war in Syria and “the war on terror”? — and in response to new technological developments like unmanned aerial vehicles (drones)?

### ***History and Current Events***

The Geneva Conventions of 1949 updated and extended earlier international agreements on the laws of war. The First Convention dates back to 1864, when 14 European states reacted to the violence of the 1859 Battle of Solferino between France and Italy. This convention permitted the newly formed ICRC access to battlefields to care for the wounded. The Second Convention updated the 1907 Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, and the Third Convention expanded the Prisoners of War Convention of 1929. Only the Fourth Convention (on the protection of civilians) was completely new in 1949.<sup>8</sup> According to Philip Spoerri, ICRC Director of International Law, “there can ... be no doubt that the decision to draft the Geneva Conventions of 1949 was sealed by the tragedy of the Second World War and that the conventions were intended to fill the gaps in international humanitarian law exposed by the conflict.”<sup>9</sup>

To draft the new conventions, the ICRC convened the Diplomatic Conference of Geneva from April 21 to August 12, 1949. The conference included “representatives from 64 countries, covering almost every State in the world at that time... It took almost four months to complete... much longer than anticipated.”<sup>10</sup>

In writing the Conventions, the delegates were strongly influenced by Article Five of the UDHR, which states that “no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”<sup>11</sup> Moreover, the UDHR’s “provision on the right to life... helped to shape ... their elaboration of humanitarian law dealing with sick and wounded combatants, the treatment of prisoners of war, and most innovatively, the protection of civilian populations in times of war.”<sup>12</sup>

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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>.

<sup>7</sup> ICRC, “31st International Conference 2011: Resolution 1 - Strengthening legal protection for victims of armed conflicts,” 1 December 2011, <http://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-1-2011.htm>

<sup>8</sup> ICRC, “The Geneva Conventions: The Core of International Humanitarian Law.”

<sup>9</sup> Philip Spoerri, “The Geneva Conventions of 1949: Origins and Current Significance,” Ceremony to celebrate the 60th anniversary of the Geneva Conventions, 12 August 2009, International Committee of the Red Cross website, <http://www.icrc.org/eng/resources/documents/statement/geneva-conventions-statement-120809.htm>.

<sup>10</sup> Spoerri, “The Geneva Conventions of 1949.”

<sup>11</sup> “Universal Declaration of Human Rights,” Article 5, <http://www.un.org/en/documents/udhr/>

<sup>12</sup> Paul Gordon Lauren, *Visions Seen: The Evolution of International Human Rights*, 2<sup>nd</sup> edition (Philadelphia: University of Pennsylvania Press, 2003), p. 236.

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The four Conventions are considered one treaty and therefore require one ratification per state. The first two states to ratify the Conventions were Switzerland and Monaco. Once they had done so, the treaty came into effect. Today, 196 states are party to the Geneva Conventions. These states agree:

- The sick, wounded, and shipwrecked of a conflict must be adequately cared for. Medical equipment, facilities (including hospital ships), and vehicles must not be intentionally attacked.
- Those who care for the sick or wounded such as nurses and doctors, including chaplains, shall be respected and protected if they are carrying out those duties and not deemed prisoners of war.
- Noncombatants and combatants who have surrendered, are sick or wounded or are prisoners of war should be treated humanely and not be subjected to violence, cruelty, or torture.
- Prisoners of war must be treated humanely, provided clothing, food, medical care, and shelter. They must be quickly released and repatriated when hostilities cease.
- Persons not taking active part in hostilities are protected from being taken as hostages, from outrages of personal dignity, and shall be protected against acts of violence.
- Civilians shall be permitted to practice their own religion and continue normal life whenever possible.
- Children under 15, expectant mothers, and mothers of young children shall be specially protected and women must not be raped, assaulted, or forced into prostitution.<sup>13</sup>

Like other international treaties, the Conventions are the law of the land only in states that have ratified them. Moreover, each state party has the prerogative to make declarations or express reservations explaining how it interprets certain parts of the agreement.<sup>14</sup> According to the ICRC, however, proper treatment of soldiers, POWs, and civilians are also matters of “customary law,” thus even states and non-state actors that have not agreed to the Geneva Conventions must uphold them.<sup>15</sup>

In 1977, states negotiated two additional protocols to the Geneva Conventions that “strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts and place limits on the way wars are fought.” Protocol II was the first international treaty devoted solely to situations of non-international armed conflicts.<sup>16</sup>

### Successes and Challenges in Recent Conflicts

The Geneva Conventions have been effective in improving conditions for soldiers and civilians in many international conflicts. For example, in 2000, when Ethiopia and Eritrea were fighting a brutal war, representatives from the ICRC were able to visit 1,000 Ethiopian POWs and 4,300 civilian internees, exchange 16,326 messages between Ethiopian and Eritrean POWs and their families, organize safe passage across the front lines for 12,493 civilians of Ethiopian origin, and distribute aid to over 150,000 civilians affected by the conflict.<sup>17</sup>

Protecting soldiers, POWs, and civilians has been more difficult in other conflicts. During the 1994 civil war and genocide in Rwanda, the ICRC was able to save just 10,000 civilians – 1% of the 800,000 to 1 million people who were killed.<sup>18</sup> The violence, which lasted about 100 days, was organized by an interim government of

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<sup>13</sup> “The Geneva Conventions of 1949 and their Additional Protocols” *International Committee of the Red Cross* available at <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>.

<sup>14</sup> For a list of state parties to the Geneva Conventions and their declarations and reservations, see International Committee of the Red Cross, “Geneva Conventions of 12 August 1949,” <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>

<sup>15</sup> ICRC, “Customary international humanitarian law,” 29 October 2010, available at <http://www.icrc.org/eng/war-and-law/treaties-customary-law/customary-law/overview-customary-law.htm>

<sup>16</sup> ICRC, “The Geneva Conventions: The Core of International Humanitarian Law.”

<sup>17</sup> Spoerri, “The Geneva Conventions of 1949.”

<sup>18</sup> Philippe Gaillard, “Rwanda 1994: “In situations like that, it is vital not to let on that you are dead scared,” speech at the International Museum of the Red Cross and Red Crescent, Geneva, 18 October 1994, <http://www.icrc.org/eng/resources/documents/misc/5xkca5.htm>

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extremist members of the Hutu ethnic group and carried out by about 200,000 ethnic Hutu. The interim government simply ignored Rwanda's promises under the Geneva Conventions. According to *Encyclopedia Britannica*:

Radio broadcasts ... fueled the genocide by encouraging Hutu civilians to kill their Tutsi neighbors, who were referred to as "cockroaches" who needed to be exterminated. It is estimated that some 200,000 Hutu participated in the genocide, although some were unwilling and consequently were forced to do so by the army and Hutu militia groups. The methods for killing were typically quite brutal, with crude instruments often employed to pummel or hack away at victims. Machetes were commonly used. Rape was also a weapon and included the deliberate use of perpetrators infected with HIV/AIDS to carry out sexual assaults; as a result, many Tutsi women were intentionally infected with HIV/AIDS.<sup>19</sup>

The fact that the ICRC remained in the country during this time and was able to protect 10,000 people was a kind of success. Other international actors, including the UN, did little to stop or shield people from the violence – despite advance warning from Canadian Gen. Romeo Dallaire, the head of the UN peacekeeping operation in Rwanda, who told the UN Department of Peacekeeping Operations in January 1994 that extremist Hutu had a plan to assassinate moderate Hutu leaders and murder large numbers of Tutsi civilians.<sup>20</sup>

According to Dallaire, with 5,000 troops authorized to fight the Hutu, the UN could have stopped the violence. But when the Rwandan prime minister and 10 Belgian peacekeepers guarding her were killed in April 1994, UN member states evacuated their diplomats and other citizens, and US President Bill Clinton urged the UN Security Council to recall all of the 2,500 UN peacekeeping forces stationed in the country. When Gen. Dallaire refused to leave, the Council compromised, leaving a force of 270 peacekeepers under his control. Those peacekeepers were able to protect about 20,000 Rwandans.<sup>21</sup>

In May, after hundreds of thousands of deaths, the Security Council authorized a new peacekeeping force of 5,500 troops that did not arrive until after most of the violence was over. In June, the Security Council endorsed a French invasion of Rwanda to establish a safe zone. By that time, the tide in the civil war had turned. Extremist Hutu fled the country, and in July 1994, a new government of Tutsi and moderate Hutu came to power.<sup>22</sup>

The genocide in Rwanda is an example of many of the challenges states face in implementing the Geneva Conventions. Among those challenges are receiving early warning of the conflict (which was not a problem in Rwanda), acting on that warning by sending diplomats to mediate a conflict before it escalates to violence or armed forces to stop violence before it spreads, and providing resources and protection to the ICRC and other humanitarian organizations so they can visit and provide medical care and other protection to individuals covered by IHL.

### Current Events: Syria

Today, many of these challenges are apparent in the civil war in Syria, where international efforts to mediate between the Syrian government and opposition have failed to prevent violence from engulfing the country. In August 2012, an independent international commission of inquiry organized by the UN Human Rights Council "found reasonable grounds to believe that Government forces and the Shabbiha [a militia affiliated with the Syrian government] had committed ... crimes against humanity of murder and of torture, war crimes and gross violations of

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<sup>19</sup> Rwanda genocide of 1994," *Encyclopedia Britannica*, <http://www.britannica.com/EBchecked/topic/1762747/Rwanda-genocide-of-1994>, accessed 21 August 2012.

<sup>20</sup> "Facsimile from Maj. Gen. Romeo Dallaire, Force Commander, United Nations Assistance Mission for Rwanda, to Maj. Gen. Maurice Baril, United Nations Department of Peacekeeping Operations," January 11, 1994 available at The National Security Archive, "The US and the Genocide in Rwanda 1994: Evidence of Inaction," edited by William Ferroggiaro, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.html>

<sup>21</sup> Terry Allen, "The General and the Genocide," Amnesty International NOW magazine, Winter 2002, [http://www.thirdworldtraveler.com/Heroes/Gen\\_Romeo\\_Dallaire.html](http://www.thirdworldtraveler.com/Heroes/Gen_Romeo_Dallaire.html)

<sup>22</sup> "Rwanda genocide of 1994," *Encyclopedia Britannica*.

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international human rights law and international humanitarian law.<sup>23</sup> The Commission also “found reasonable grounds to believe that war crimes, including murder, extrajudicial execution and torture, had been perpetrated by organized anti-Government armed groups”<sup>24</sup>

Despite international awareness of these violations, the conflict continued to escalate and remains unresolved. In August 2013, several opposition-controlled suburbs of Damascus were struck by rockets containing the chemical agent sarin.<sup>25</sup> Although the government denied responsibility, Syria agreed under international pressure to join the Chemical Weapons Convention and destroy all of its chemical weapons and chemical weapons production facilities. In June 2014, the Organisation for the Prohibition of Chemical Weapons declared that Syria has met its obligations.<sup>26</sup> Despite this, there are continuing reports that the regime continues to use chlorine gas against civilians, which is a violation of IHL but not the Chemical Weapons Convention.

The civil war in Syria demonstrates the overlap between IHL and the newer and broader concept of the “responsibility” of states “to protect” their citizens (R2P). This responsibility was first articulated by the GA in September 2009.<sup>27</sup> The doctrine of R2P holds that the international community is prepared to take action to protect civilians from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement by force when national governments fail to do so.<sup>28</sup> The Security Council acted on this principle when it authorized states to protect civilians in Libya in March 2011.<sup>29</sup> However, the Security Council has rejected several efforts to intervene in the situation due to Chinese and Russian vetoes.<sup>30</sup> R2P advocates fear that the lack of enforcement of international law in Syria will undermine the case for using R2P in future conflicts.<sup>31</sup>

### Current Events: The War on Terrorism

The US “war on terrorism” since 2001 has also posed challenges to IHL, in three ways. First, international humanitarian law (IHL) applies only during times of war. But what counts as war? Does it refer only to formally declared armed conflicts among states? Or does it apply to any use of force, both between and within states? There are vast differences in the number of wars one arrives at using these definitions. This has been an important issue ever since the First Geneva Convention was negotiated in 1864. The states that negotiated the 1949 Conventions tried to address this by inserting into each of the four conventions a Common Article Three, which lists several

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<sup>23</sup> “Report of the independent international commission of inquiry on the Syrian Arab Republic,” UN Human Rights Council, A/HRC/21/50, 10 August 2012, p. 1, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf)

<sup>24</sup> “Report of the independent international commission of inquiry on the Syrian Arab Republic,” p. 2.

<sup>25</sup> Louis Charbonneau and Michelle Nichols, “U.N. Confirms Sarin Used in Syria Attack; U.S., UK, France Blame Assad,” Reuters (September 16, 2013), <http://www.reuters.com/article/2013/09/16/us-syria-crisis-un-idUSBRE98F0ED20130916>.

<sup>26</sup> BBC News, “Last of Syrian Chemical Arms Removed.” 23 June 2014. <http://www.bbc.com/news/world-middle-east-27974379>.

<sup>27</sup> “General Assembly agrees to hold more talks on responsibility to protect,” UN News Centre, 14 September 2009, <http://www.un.org/apps/news/story.asp?NewsID=32047>

<sup>28</sup> For a legal definition of R2P, see United Nations, “Responsibility to Protect,” <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>

<sup>29</sup> Jayshree Bajoria, “Libya and the Responsibility to Protect,” *Council on Foreign Relations* (March 24, 2011), <http://www.cfr.org/libya/libya-responsibility-protect/p24480>.

<sup>30</sup> For the text of vetoed Security Council draft resolutions, scroll to the bottom of Security Council Report, “UN Documents for Syria,” <http://www.securitycouncilreport.org/un-documents/syria/>

<sup>31</sup> Jon Western and Joshua S. Goldstein, “R2P After Syria,” *Foreign Affairs* (March 26, 2013), <http://www.foreignaffairs.com/articles/139080/jon-western-and-joshua-s-goldstein/r2p-after-syria>.

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protections that individuals “in enemy hands” should have in any conflict. In 1977, a number of states negotiated more detailed provisions of this nature in Additional Protocols I and II.<sup>32</sup> But some states, including the United States, have never ratified the additional protocols.<sup>33</sup>

Second, the war on terror is the first major conflict fought in the age of information technology. The emergence of new technologies and new kinds of weapons like unmanned aerial vehicles (UAVs), or drones, has always been a challenge for the effective enforcement of IHL. Former ICRC President Jakob Kellenberger warns:

International humanitarian law was designed to be flexible enough to adapt to technological developments, including those that could never have been anticipated at the time. There can be no doubt that international humanitarian law applies to new weaponry and to all new technology used in warfare ... Nonetheless, applying pre-existing legal rules to a new technology raises the question of whether the rules are sufficiently clear in light of the technology's specific — and perhaps unprecedented — characteristics, as well as with regard to the foreseeable humanitarian impact it may have.<sup>34</sup>

UAVs have become an attractive option for states engaging in a variety of military and intelligence tasks including air strikes against targets in locations seen as inaccessible to conventional forces.<sup>35</sup> However, the increasing use of UAVs away from “hot battlefields” has led to clash of words between governments and international organizations over the legality of their use. U.S. President Barack Obama defended his country's use of drones in the war on terror in a May 2013 speech at the National Defense University, “Simply put, these strikes have saved lives. Moreover, America’s actions are legal. ... [T]his is a just war — a war waged proportionally, in last resort, and in self-defense.”<sup>36</sup> In contrast, Amnesty International released a report in Oct 2013 that “raise[d] serious concerns that the USA has unlawfully killed people in drone strikes, and that such killings may amount in some cases to extrajudicial executions or war crimes and other violations of international humanitarian law.”<sup>37</sup>

This disagreement reflects how contemporary conflicts such as the “war on terror” present challenges to the Geneva conventions. As Kellenberger explained in August 2009, IHL “stipulates that those involved in fighting must make a... distinction between combatants on the one hand, who may lawfully be attacked, and civilians on the other hand, who are protected against attack unless... they directly participate in hostilities.” One of the main dilemmas in applying IHL is “that neither the Geneva Conventions nor their Additional Protocols spell out what precisely constitutes ‘direct participation in hostilities.’” As Kellenberger explains, this difficulty has been compounded by the fact that civilians have become more and more involved in support operations related to combat and are even used by combatants as “human shields.” In addition, “combatants do not always clearly distinguish themselves from civilians, neither wearing uniforms nor openly carrying arms.”<sup>38</sup>

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<sup>32</sup> ICRC, “The Geneva Conventions: The Core of International Humanitarian Law.”

<sup>33</sup> State parties to Protocol I and Protocol II are listed on the International Committee of the Red Cross Website at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P> and <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=475&ps=P>

<sup>34</sup> Jakob Kellenberger, “International Humanitarian Law and New Weapon Technologies,” 34th Round Table on Current Issues of International Humanitarian Law, San Remo, 8-10 September 2011, available at <http://www.icrc.org/eng/resources/documents/statement/new-weapon-technologies-statement-2011-09-08.htm>.

<sup>35</sup> Stimson Center, “Recommendations and Report of the Task Force on US Drone Policy,” June 2014, available at [http://www.stimson.org/images/uploads/research-pdfs/task\\_force\\_report\\_FINAL\\_WEB\\_062414.pdf](http://www.stimson.org/images/uploads/research-pdfs/task_force_report_FINAL_WEB_062414.pdf)

<sup>36</sup> Barack Obama, “Remarks by the President at the National Defense University,” Remarks presented at the National Defense University, Fort McNair, Washington, DC, May 2013, Available at <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

<sup>37</sup> Amnesty International, “USA must be held to account for drone killings in Pakistan,” October 22, 2013, <http://www.amnesty.org/en/news/usa-must-be-held-account-drone-killings-pakistan-2013-10-22>

<sup>38</sup> Jakob Kellenberger, “Sixty years of the Geneva Conventions: learning from the past to better face the future,” Ceremony to celebrate the 60th anniversary of the Geneva Conventions, 12 August 2009, International Committee

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This problem with distinction is reflected in the wide disagreement and uncertainty about the number of individuals killed or wounded by UAVs and whether casualties were militants or civilians, a problem that can only be resolved with more transparency by the United States and other states as they began to use drones more regularly.<sup>39</sup> In his interim report on drone strikes and targeted killings, UN Special Rapporteur on Human Rights and Countering Terrorism Ben Emmerson, identified this uncertainty as the main barrier to upholding the principles of IHL when using UAVs. He urged the US “to declassify, to the maximum extent possible, information relevant to its lethal extraterritorial counter-terrorism operations; and to release its own data on the level of civilian casualties inflicted ... together with information on the evaluation methodology used.”<sup>40</sup>

A third and related challenge is that compliance with IHL is often seen as an asset to one side and a disadvantage to another. Often the concern is that a militarily weak party faced with a more powerful opponent might disregard fundamental rules of IHL in an effort to even out the imbalance. For example, although terrorism (deliberate attacks on civilians) is illegal under the Fourth Geneva Convention, groups such as al Qaeda carry out terrorist attacks because they are too weak to confront their adversaries on a battlefield. But it is not just weak groups that ignore the laws of war when it is to their advantage. During the “war on terror,” the US has argued that despite its overall military strength, the willingness of terrorists to take the lives of innocent civilians means that it is justifiable to use all means necessary, including torture, to obtain information from prisoners who may have information about terrorist activities. As Kellenberger explains, regardless of which actors first violate IHL, there is a risk that others will follow suit, leading to a free-for-all in which all of the rules of war are ignored and the situation becomes worse for everyone.<sup>41</sup>

Since 2006, the US government’s use of “enhanced interrogation techniques,” secret prisons, and other controversial tactics in the US’s “war on terror” has been well known. In 2012, the US announced that it would not prosecute any of the CIA agents charged with waterboarding prisoners in Afghanistan or Iraq.<sup>42</sup> Instead, the Obama administration has expressed a desire to “look forward” by more clearly delineating acceptable and unacceptable treatment of POWs.<sup>43</sup>

### Emerging Challenges and the ICRC’s Four-Year Action Plan

IHL has only recently begun to deal with infrastructure, the environment, and cultural artifacts. Yet attacks on infrastructure such as bridges and electrical and water treatment facilities imperil the health and safety of civilians, as do the environmental effects of war in general. Similarly, attacks on cultural artifacts can be part of a systematic campaign against certain cultural groups. These aspects of war are not treated by the Geneva Conventions but have been addressed to some extent in the Additional Protocols.<sup>44</sup>

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of the Red Cross, <http://www.icrc.org/web/eng/siteeng0.nsf/html/geneva-conventions-statement-president-120809?opendocument>

<sup>39</sup> Columbia Law School Human Right Clinic, “Counting Drone Strike Deaths,” available at <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/COLUMBIACounting%20Drone%20Strike%20DeathsSUMMARY.pdf>

<sup>40</sup> United Nations, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” A/68/389, September 18, 2013, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A%20/68/389](http://www.un.org/en/ga/search/view_doc.asp?symbol=A%20/68/389).

<sup>41</sup> Kellenberger, “Sixty years of the Geneva Conventions.”

<sup>42</sup> “Times Topic: CIA Interrogations,” *New York Times*, 6 September 2012. For the text of declassified US documents authorizing techniques such as waterboarding, see “The Torture Archive,” *The National Security Archive*, George Washington University, <http://www.gwu.edu/~nsarchiv/news/20120403/>

<sup>43</sup> “Closing the book on CIA torture,” *Los Angeles Times*, 14 September 2012, <http://www.latimes.com/news/opinion/editorials/la-ed-torture-20120914,0,6615797.story>

<sup>44</sup> Additional Protocol I, Article 48. See also Additional Protocol II, Article 13. International Committee of the Red Cross, “What are the essential rules of international humanitarian law?,” 31 October 2002,

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In December 2011, the 31<sup>st</sup> ICRC International Conference established a “Four Year Action Plan for the Implementation of International Humanitarian Law.” One of the main goals of the Plan is to enhance protection of noncombatants, including women, children, individuals with disabilities, and journalists. At the conference, states were reminded that journalists make important contributions to public knowledge that aid in the fight against violations of IHL and were urged to train their armed forces to recognize and protect the rights of journalists.<sup>45</sup> Thus far this year, 39 journalists have been killed in conflicts around the world; of those, 18 were killed in Syria.<sup>46</sup>

Another goal enumerated in the Four-Year Action Plan is to address, “[i]nsecurity of health care,” which according to the ICRC “is likely one of the biggest humanitarian problems today in terms of numbers of people affected. Yet it is largely under-recognised.” A third goal of the Plan, and perhaps the most fundamental of all, is to increase compliance with and implementation of the rights already enumerated in IHL.<sup>47</sup>

### Enforcing IHL

Although the Geneva Conventions have been widely ratified, if a state chooses not to adhere to the Conventions, at present there is little the international community can do. Even among states that agreed to uphold IHL it is difficult to obtain compliance because it is primarily up to states themselves to “impartially investigate whether serious violations occurred [by members of their forces or other persons under their jurisdiction], and impose punishments on individuals found guilty that are commensurate with their deeds.”<sup>48</sup>

When self-monitoring is insufficient, states and individuals may be tried in the courts of states that have “universal jurisdiction.”<sup>49</sup> This rarely happens, however, because states are reluctant to set a precedent that might one day be turned against their own citizens. Alternatively, individuals who perpetrate war crimes may be tried in *ad hoc* (one-time) tribunals such as the Nuremberg Trials (established and run in 1945 and 1946 by the victorious World War II allies), the ongoing tribunals for Rwanda and the former Yugoslavia (established by the UN Security Council), and the 2006 trial and execution of former Iraqi President Saddam Hussein (carried out by the US-supported interim Iraqi government). *Ad hoc* tribunals are often seen as “victor’s justice,” however. States that win wars have not historically been held accountable for violations of IHL.

In 1998, to make enforcement of IHL more impartial, a number of states agreed to establish a permanent court to try individuals for war crimes and other crimes against humanity. The International Criminal Court (ICC), came into force in 2002 when the Rome Treaty was ratified by 60 countries.<sup>50</sup> There are several important things to know about the ICC. First, individuals, not states, are tried by the ICC. Second, individuals such as military commanders, soldiers, and civilian heads of government can be tried only if they are citizens of a state party or if the crime occurred in the territory of a state party. Third, individuals can be tried by the ICC only if there is evidence

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<sup>45</sup> “Resolution 2- 4 Year Action Plan for the Implementation of International Humanitarian Law,” <http://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-2-2011.htm>

<sup>46</sup> Committee to Protect Journalists, “39 Journalists Killed in 2012/Motive Confirmed,” accessed 14 September 2012, <http://cpj.org/killed/2012/>

<sup>47</sup> Knut Dormann, “Preparation of international humanitarian law topics for the 31<sup>st</sup> International Conference,” March 3, 2011, <http://www.icrc.org/eng/resources/documents/statement/31-international-conference-ihl-statement-2011-11-03.htm#3.FourYearActionPlan>.

<sup>48</sup> Human Rights Watch, “Q & A on Accountability for Violations of International Humanitarian Law in Sri Lanka,” 27 April 2009, <http://www.hrw.org/node/82756>

<sup>49</sup> For a discussion of universal jurisdiction, see Henry Kissinger, “The Pitfalls of Universal Jurisdiction,” *Foreign Affairs* (July/August 2001), <https://www.globalpolicy.org/component/content/article/163/28174.html> and Kenneth Roth, “The Case for Universal Jurisdiction,” *Foreign Affairs* (September/October 2001), pp. 150, <https://www.globalpolicy.org/component/content/article/163/28202.html>.

<sup>50</sup> International Criminal Court, “About the Court,” [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx), accessed August 6, 2014.

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that they recklessly or intentionally committed war crimes, and domestic courts in the states in question have ignored the issue. Fourth, ICC cases are either selected by ICC judges or referred by the UN Security Council. The involvement of the Security Council has raised questions about whether citizens of the Permanent Five members of the Security Council would ever be held accountable for war crimes that their governments did not want to prosecute. Fifth, like other treaties, participation is voluntary. The US, for example, has not ratified the Rome Treaty and does not participate in the ICC.

As of July 2014, the ICC has 122 member states and is reviewing 21 cases in 8 situations. Uganda, the Democratic Republic of the Congo, the Central African Republic and Mali, all members of the Rome Statute, have referred situations in their territory to the Court. The Côte d'Ivoire, who formally joined the Court in 2013, asked the Court to review the situation there back in 2002. Additionally, the Security Council has referred situations in Sudan and Libya. The Court is also beginning preliminary examinations in Afghanistan, Georgia, Guinea, Colombia, Honduras, Korea, Iraq, Ukraine and Nigeria. Absent from the Court's examinations are conflicts in the Middle East including Syria, Bahrain, and Gaza.<sup>51</sup>

### *Previous Committee Work on This Topic*

The GA-3 often has a difficult task in encouraging Member States to agree that IHL is important enough both to impose and to further develop, but has found success in reporting resolutions to the General Assembly condemning human rights abuses in the context of the war on terror. In 2008, two resolutions were passed in the General Assembly (GA) based on recommendations made by the GA-3 dealing with this issue. GA Resolution 148 (March 4, 2008) emphasized “that acts of torture in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes.” GA Resolution 159 (March 11, 2008) urged “States, while countering terrorism, to ensure due process guarantees, consistent with all relevant provisions of the Universal Declaration of Human Rights...and the Geneva Conventions of 1949.”<sup>52</sup> In 2012, GA Resolution 77 (January 12, 2012) also reaffirmed the Geneva Convention's applicability to the Occupied Palestinian Territory.<sup>53</sup> GA Resolution 165 highlights the necessity of applying IHL to protect internally displaced persons within their jurisdiction.<sup>54</sup>

During the 68<sup>th</sup> Session of the General Assembly, the GA approved Resolution 178, “Protection of human rights and fundamental freedoms while countering terrorism,” on the report of the GA-3. It urges states to, “To ensure that any measures taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights law and international humanitarian law, in particular the principles of distinction and proportionality.”<sup>55</sup> It also reaffirmed in GA Resolution 81 (December 11, 2013), the applicability of the Geneva Convention to the Occupied Palestinian Territory. In GA Resolution 182 (December 18, 2013), the GA condemned human rights and IHL violations in Syria.

### *Conclusion*

This year (2014) marks the 65<sup>rd</sup> anniversary of the Geneva Conventions. Although the Conventions have served as the foundation of international humanitarian law since 1949, they leave many issues about non-compliance and enforcement unresolved. What can and should the GA-3 do to address these challenges?

In developing your country's position on this issue, consider the following questions:

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<sup>51</sup> “Structure of the Court” and “Situations and Cases” International Criminal Court available at [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx)

<sup>52</sup> These resolutions are available at <http://www.un.org/en/ga/68/resolutions.shtml>.

<sup>53</sup> This resolution is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/463/44/PDF/N1146344.pdf?OpenElement>.

<sup>54</sup> This resolution is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/468/72/PDF/N1146872.pdf?OpenElement>

<sup>55</sup> This resolution is available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/178](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/178) .

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- Has your country signed and ratified the 1949 Geneva Conventions and/or Additional Protocols? If so, has it made any declarations about how it interprets them?
- Is your country a member of the International Criminal Court? Why or why not?
- Is your country currently involved in a conflict in which the Geneva Conventions might apply? Has it been involved in such a conflict in the past? Did it abide by the Conventions? Why or why not?
- What are your country's capabilities for the use of force? Is IHL an asset or obstacle for your country?
- What is your country's position on and role in the civil war in Syria, the "war on terror," and other recent and current IHL violations?
- Should the Geneva Conventions be strengthened to increase compliance and enforcement? If so, how? If not, why not?

### ***Recommended Reading***

Human Rights Watch. "Human Rights in Syria." Available at <http://www.hrw.org/middle-eastn-africa/syria>.

This site provides a historical and ongoing overview of violations of human rights and IHL in Syria. On the HRW site, you can also find out if your country has been accused of IHL violations.

International Committee of the Red Cross (ICRC). "The Geneva Conventions: The Core of International Humanitarian Law." Website. Available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>.

This site provides an overview of IHL, as well as links to the text of all of the Geneva Convention treaties and protocols, and lists of member states and their reservations and declarations. In addition, you can search the site to find out whether your country or countries in your region are accused of IHL violations.

International Committee of the Red Cross (ICRC). "Contemporary Challenges for IHL." Available at <http://www.icrc.org/eng/war-and-law/contemporary-challenges-for-ihl/index.jsp>.

This site provides an overview of the challenges confronting IHL as a result of changes in conflict including civil war and terrorism.

International Committee of the Red Cross (ICRC). "The 31st International Conference of the Red Cross and Red Crescent." 2 December 2011. <http://www.icrc.org/eng/who-we-are/movement/international-conference/overview-31-international-conference-of-the-red-cross-and-red-crescent.htm>.

This site provides access to the 2011 ICRC conference report and details of the Four-Year Plan, which could be the basis of resolutions.

Spoerri, Philip. "The Geneva Conventions of 1949: origins and current significance." Ceremony to celebrate the 60th anniversary of the Geneva Conventions. 12 August 2009. International Committee of the Red Cross website. Available at <http://www.icrc.org/eng/resources/documents/statement/geneva-conventions-statement-120809.htm>.

In this speech, the ICRC's Director of International Law discusses current challenges to IHL.

Lawand, Kathleen. 2006. "Reviewing the legality of new weapons, means and methods of warfare." *International Review of the Red Cross* (December). [http://www.icrc.org/eng/assets/files/other/irrc\\_864\\_lawand.pdf](http://www.icrc.org/eng/assets/files/other/irrc_864_lawand.pdf).

This review article for the ICRC reviews the legal obligations states have to review new technologies before using them for war and the criteria they must use to evaluate them.