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Ten-minute briefing - Laws of war



What exactly is a war crime? Who decides what is legal during a conflict? How are suspects brought to justice? This short briefing cannot give full answers. But it is a useful start to understanding the principles of what are sometimes called the laws of war or armed conflict, and sometimes international humanitarian law.

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Who says what is or isn't legal in war?

Modern-day laws mostly date back to the middle of the 19th century, with significant developments and additions throughout the 20th century. They are described more fully below. But it would be wrong to think that having rules about war is a modern invention.

Ancient civilisations had codes of war. The Roman republic thought about what was and wasn't a "just war". The chivalric codes of medieval Europe may have been romanticised by later writers, yet they clearly indicate that medieval knights had a sense of the ethics of fighting. Ideas about the correct treatment of prisoners, and behaviour during siege warfare, for example, were discussed and formulated.

Do the laws identify who is guilty of starting any particular war?

It is good to separate out two important ideas. The first covers what happens once a conflict has started, and looks at actions of the combatants, treatment of prisoners, help for the wounded and so on. This is known by the legal Latin phrase *jus in bello*. It is what soldiers mean by the "laws of armed conflict," and what lawyers and humanitarians tend to call "international humanitarian law".

Another phrase, *jus ad bellum*, covers the "who started it and why?" questions. This briefing will not deal much with this area of the law. It can be summed up as wars are illegal – which is what the United Nations charter more or less says. But it adds that every nation has the right to self-defence. The UN Security Council can authorise military action to restore international peace and security. How this works out in practice can be highly political and far from easy to resolve. The international community hopes to agree a definition of the crime of aggression – which is a quick way of getting to the heart of the "who started it?" question. But at the moment, there is no agreement, and

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discussions may take many more years.

What is the point of laws about war?

Quite simply, to save lives and reduce suffering. Wars are terrible. Avoiding them at all costs is best. But when they happen, the actions of the combatants can make a big difference to the lives of those involved. If prisoners are taken, treated humanely and allowed to send messages to their families, the suffering is reduced. The same applies if weapons inflict no more injury than is militarily necessary. Likewise, if medical help can be brought to the wounded without interference, and if civilians are protected. These are all covered by international humanitarian law, as the laws of war are known.

Is the Geneva Convention part of international humanitarian law?

Yes, that familiar phrase that comes to many people's mind is very much central. But it is not the full story. There is more than one Geneva Convention – and there are other laws, such as the laws of The Hague and various international treaties that are all part of international humanitarian law.

A quick summary of the legal agreements about how wars are fought would go like this:

The first international treaty to protect military victims of warfare on land was drawn up and signed in 1864 in Geneva. It was the result of action by Henry Dunant, a Swiss businessman who founded the International Committee of the Red Cross, which still plays a unique role in international humanitarian law.

Most European states that were around at the time signed it. Then at a conference in 1899, international protection was extended to wounded, sick and shipwrecked members of armed forces at sea. In 1929 a further convention was adopted specifically to help protect prisoners of war.

In 1949, these Conventions were updated and a fourth was added. They are known as the Geneva Conventions and all four are still in force today. Each deals with the protection and humane treatment of different categories of people who are no longer taking part in hostilities, or who never were. They are injured soldiers, injured members of the armed forces at sea, prisoners of war, and civilians.

What other significant treaties are there?

The Hague Conventions, significant ones dating from 1899 and 1907, tend to cover military tactics and the weapons that can be used. Another Hague convention from 1954 gave protection under law to cultural property – making it a crime to attack significant art works, museums, libraries, historical monuments and similar cultural artefacts.

More recently, there have been three "additional protocols" to the 1949 Geneva Conventions. In 1977 Protocol I gave additional protection to victims of international armed conflicts and Protocol II gave protection to victims of non-international armed conflicts. Then in 2005 the third additional Protocol provided for an additional protective emblem – the red crystal, alongside the red cross and red crescent.

But that's not all. There have also been protocols or conventions prohibiting the production and use of chemical weapons, anti-personnel mines and laser blinding weapons, among others.

Why have these laws evolved over such a long period?

Partly because they are complicated and take a lot of negotiating and clarification to reach agreement. Even now, countries can "opt out" of specific aspects of the agreement they do not agree with.

Laws also need to develop to keep up with changes in weapons and military tactics. One of the early conventions prohibited the "launching of projectiles and explosives from balloons". That was in 1899 and balloons were important then. Similarly, after World War I agreements were reached prohibiting the use of "asphyxiating, poisonous or other gases".

There was no law specifically against genocide during the first half of the

twentieth century. It was only after the World War II that lawyers came together to define it and prohibit it as one of the gravest of all crimes.

More recently, it can be seen that laws have also had to respond to the changing nature of warfare. The great emphasis in the early days of international humanitarian law was on conflicts between nations, fought by soldiers on battlefields. But many of today's armed conflicts are within states. They are not necessarily fought by identifiable armies, but by groups variously labelled guerrillas, rebels, or insurgents. It is not always easy to see how rules devised about, say, prisoners of war fit modern circumstances.

Are all breaches of international humanitarian law regarded as war crimes?

No. The phrase "war crime" is generally used to mean "a grave breach" or serious violation of the Geneva Conventions or other laws and customs of war. That can include wilful killing, torture or inhumane treatment, taking hostages, killing prisoners, attacks on undefended towns which are not military objectives, or attacks on civilians or on those who are providing humanitarian assistance.

So attacking a hospital marked with a red cross is likely to be a war crime. Refusing to allow the International Committee of the Red Cross access to prisoners may be a technical breach of the laws of armed conflict, but probably would not constitute a war crime.

Do those suspected of breaches of international humanitarian law ever go on trial?

Yes. The judicial process is broadly the same as for any other criminal trial – starting with an indictment, presentation of evidence, examination and cross examination of witnesses. National courts can try alleged breaches, and often such cases are heard by a court martial. In recent years special tribunals have been set up, such as those following conflicts in Rwanda and in the former republic of Yugoslavia.

There is now an International Criminal Court at The Hague which can and does prosecute if for any reason a country is unable or unwilling to investigate and try people suspected of war crimes in their own national courts.

Listen to our expert, Charles Garraway explain the principles and practice of international humanitarian law.

Areas for exploration with students

- Invite students to find examples of how the laws of war have reduced suffering. Challenge them to research particular areas, such as protection of civilians, care of prisoners, or medical assistance. How did the law help people? How much worse might things have been if there were no laws?
- Recently, some politicians and commentators have said that the Geneva Conventions are outdated and need a complete overhaul to suit modern conflicts. Talk about why people might say this. What kinds of wars are they thinking about? Discuss differences between wars now and those of the 19th or early 20th century. Are civilians affected differently? Look at whether combatants are recognisable or not, whether they wear uniforms and act under orders. Do students think that entirely new rules are needed?
- Not enough people are aware of what the laws of armed conflict are. Soldiers in a regular army are likely to be instructed and drilled in the basics, and commanded by officers who have access to legal advisers. But those instructions may not be available in poorer countries of the world, or to young people who have been forcibly recruited into a militia. Invite students to think through the problems. How might the laws of war be better known?

This ten-minute briefing was written by PJ White and produced in May 2007. It is one of a series of briefings on aspects of international humanitarian law. Others already available cover the