

1.5 The Sources of International Humanitarian Law

Since IHL is an integral part of Public International Law, its sources correspond, logically enough, to those of the latter, as they are defined in Article 38 of the Statute of the International Court of Justice.

According to Art 38 (1) of the Statute of the International Court of Justice, which is regarded as an authoritative statement of the sources of international law, the Court shall apply:

- international conventions (please note convention is another word for treaty);
- international custom, as evidence of a general practice accepted as law;
- the general principles of law recognised by civilised nations; and
- judicial decisions and the teachings of the most highly qualified publicists, as subsidiary means for the determination of rules of law.

Treaties and custom are the main sources of international law. In respect to IHL, the most important treaties are the Geneva Conventions of 1949, the Additional Protocols of 1977, and the so-called Hague Conventions. While treaties are only binding upon parties to a treaty, States can also be bound by rules of customary international law. However, this requires that there is usage to be found in the practice of states and considered by those states as practice. There is wide consensus among scholars that the rules contained in the four Geneva Conventions of 1949 for the Protections of Victims of War and in The Hague Convention (IV) of 1907 on the Laws of War on Land (with the exception of administrative, technical and logistical regulations) reflect customary international law. There is also agreement that many provisions of Additional Protocol I and, to a lesser degree, that the rules contained in Additional Protocol II, reflect custom. When treaty rules are considered to reflect custom, they become binding for all States

States are also bound by general principles of law. In regard of IHL one may think of the fundamental principles of IHL such as the principle of distinction or the principle of proportionality.¹¹

However, as shown in the diagram below, some sources specific to IHL must also be taken into consideration.

¹¹ See *infra*, Lesson 2.

* E.g. Good faith; nonretroactivity; principle of legality (*Nullum crimen sine lege; nulla poena sine lege*; no crime without law; no penalty without law)

^Decisions made by both national and international Courts

**Resolutions adopted by International Conferences of the Red Cross and Red Crescent