

Fact Sheet

The Development of International Humanitarian Law



International
Services

Summary: International humanitarian law (IHL) is the branch of international law that encompasses humanitarian principles and international treaties that seek to save lives and alleviate suffering of both combatants and noncombatants during armed conflict. Its principal legal documents are the Geneva Conventions of 1949 and their Additional Protocols, which safeguard people who are not taking part in armed conflict, including combatants (members of armed forces) who are wounded, sick, or shipwrecked; prisoners of war; and civilians. Medical personnel, military chaplains, and civilian support workers for the armed forces are also protected.

Three principles underlie international humanitarian law: humanity, impartiality, and neutrality.

History: Throughout history, attempts have been made to establish humanitarian codes of conduct, including the Hammurabic Code (18th Century B.C.—Babylon), the Code of Justinian (6th Century—Byzantine Empire), English Common Law, and the United States Bill of Rights (1791). St. Augustine and St. Thomas Aquinas raised philosophical questions about war in early writings, and Rousseau and deVattel advocated limiting war to combatants and protecting civilians and civilian locations. Unwritten rules, known as “customary international law,” developed over the centuries to restrain conduct in time of war.

No fixed body of international humanitarian law came into being, however, until the 19th Century. In 1859, Henry Dunant, a Swiss businessman traveling through Solferino, Italy, witnessed the aftermath of a bloody battle between French and Austrian armies. As the soldiers departed, Dunant saw the suffering of thousands of wounded and dying men who lay unattended on the battlefield. Dunant enlisted nearby residents to provide what relief they could, but despite their efforts, thousands died.

Greatly moved by the experience, Dunant wrote *A Memory of Solferino*, which described the plight of the victims of war and proposed the establishment of civilian volunteer relief corps to care for the wounded. He wrote:

“Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted, and thoroughly qualified volunteers?”

The Geneva Conventions: Dunant’s call for an international conference to draft an agreement on the treatment of battlefield casualties was answered in 1863, when a Committee of Five was formed in Geneva to implement his recommendations. The Committee was the forerunner of what is now the International Committee of the Red Cross (ICRC).

Eight months later, in 1864, the Swiss government — at the suggestion of the ICRC—hosted a conference in Geneva attended by diplomats from a number of nations as well as representatives of military medical services and humanitarian societies. This marked an important date. The conference adopted the first Geneva Convention (treaty), containing 10 articles specifying that—

- Ambulances, military hospitals, and the personnel serving with them are to be recognized as neutral and protected by parties to a conflict.
- Citizens who assist the wounded are to be protected.
- Wounded or sick combatants are to be collected and cared for by either party.
- The symbol of a red cross on a white background (the reverse of the Swiss flag) will serve as a protective emblem to identify medical personnel, equipment, and facilities.

The first Geneva Convention showed that certain humanitarian rules could be imposed on combatants—even in wartime.

The founders of the Red Cross set themselves the task of fostering the creation of national societies. They set up 22 during the first 10 years. During the period following the signing of the first Geneva Convention, the Red Cross was frequently called on to act in the field. It also held regular conferences that brought together delegates from the national societies and the ICRC, and representatives of the powers party to the Geneva Convention. The purpose of the conferences was to propose, in light of new experiences, the adoption of new international rules. The first International Conference of the Red Cross was held in Paris in 1867; subsequent conferences took place in Berlin (1869), Geneva (1884), Karlsruhe (1887), Rome (1892), Vienna (1897), and St. Petersburg (1902).

Within four years of ratification of the first Geneva Convention, a diplomatic conference negotiated an adaptation of the original treaty covering maritime warfare. Its principles became the Xth Hague Convention

of 1907, which was ratified by 47 nations. Later, it formed the basis for what is today identified as the Second Geneva Convention of 1949. (The Hague Conventions are a related area of international law that limit the methods used in warfare.)

Even before World War I, support was developing for the concept that a prisoner of war is not a criminal but an individual no longer in combat who is entitled to humane treatment. The experiences of the ICRC between 1914–18, working on behalf of victims of war, led to the preparation of another international treaty to define the status of prisoners of war. A diplomatic conference convened in 1929 and adopted another Geneva Convention, specifically governing the treatment of prisoners of war. The red crescent and red lion and sun emblems were also recognized by nations at this conference, although the red lion and sun is no longer in use.

World War I had also revealed the urgent need to protect civilian internees. The ICRC drew up draft rules that were approved by the 15th International Conference of the Red Cross in Tokyo (1934). The Tokyo draft, which extended the protections of the 1929 Convention to civilian internees, was to have been submitted to a diplomatic conference scheduled for 1940. War broke out in 1939, however, and the conference never took place.

During World War II, heavy civilian casualties resulted from bombardment as well as policies of genocide. The deportations and mass murder of civilians, as well as the taking and killing of hostages, focused international attention on the need for civilian protection. Following World War II, an international effort was made to evaluate the wartime experience and update the existing rules. When hostilities ceased, the ICRC submitted a draft revision of the Geneva Conventions to governments.

In 1949, the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War ratified a fourth Geneva Convention on civilians and incorporated it and the previous treaties into the Geneva Conventions of August 12, 1949. In contrast with the 10 articles of the first Geneva Convention of 1864, the four 1949 Conventions contain 429 articles. The ICRC, supported by national societies, met with considerable success in convincing governments to accept the 1949 Geneva Conventions. As of 2006, the Geneva Conventions have been universally adopted by all 194 nations in the world.

The Additional Protocols: In the meantime, the appearance of new forms of conflict such as guerrilla warfare and widespread non-international conflicts, led the ICRC to propose further innovations to the law. In 1956, rules were drafted for the protection of the civilian population from the dangers of indiscriminate warfare. New impetus was given to increase the scope of interna-

tional humanitarian law by the 1968 United Nations Conference on Human Rights. As a result, the ICRC organized meetings of government legal advisers to pave the way for a diplomatic conference. In 1977, two Additional Protocols to the Geneva Conventions were adopted.

The Additional Protocols supplement the protections under the Geneva Conventions. Protocol I expands protection for the civilian population, and military and civilian medical workers in international armed conflicts. Protocol II extends similar protections during non-international armed conflicts. As of 2006, 166 nations have ratified Protocol I and 162 have ratified Protocol II.

In December 2005, governments adopted a Third Additional Protocol, creating an optional emblem, known as the red crystal, equal in status to the red cross and red crescent emblems. Although not in the Geneva Conventions, the red shield of David, used by Israel, is also a respected emblem.

Today, the four Geneva Conventions of August 12, 1949, and their Additional Protocols, represent the major thread in the evolution of international humanitarian law, safeguarding vulnerable groups in armed conflict.

The Development of IHL Continues: Following the development of the first two Additional Protocols in the seventies, the next two decades brought further updates in the field of international law applicable to armed conflict. A number of legal instruments were drafted specifically restricting or regulating the use of certain weapons including:

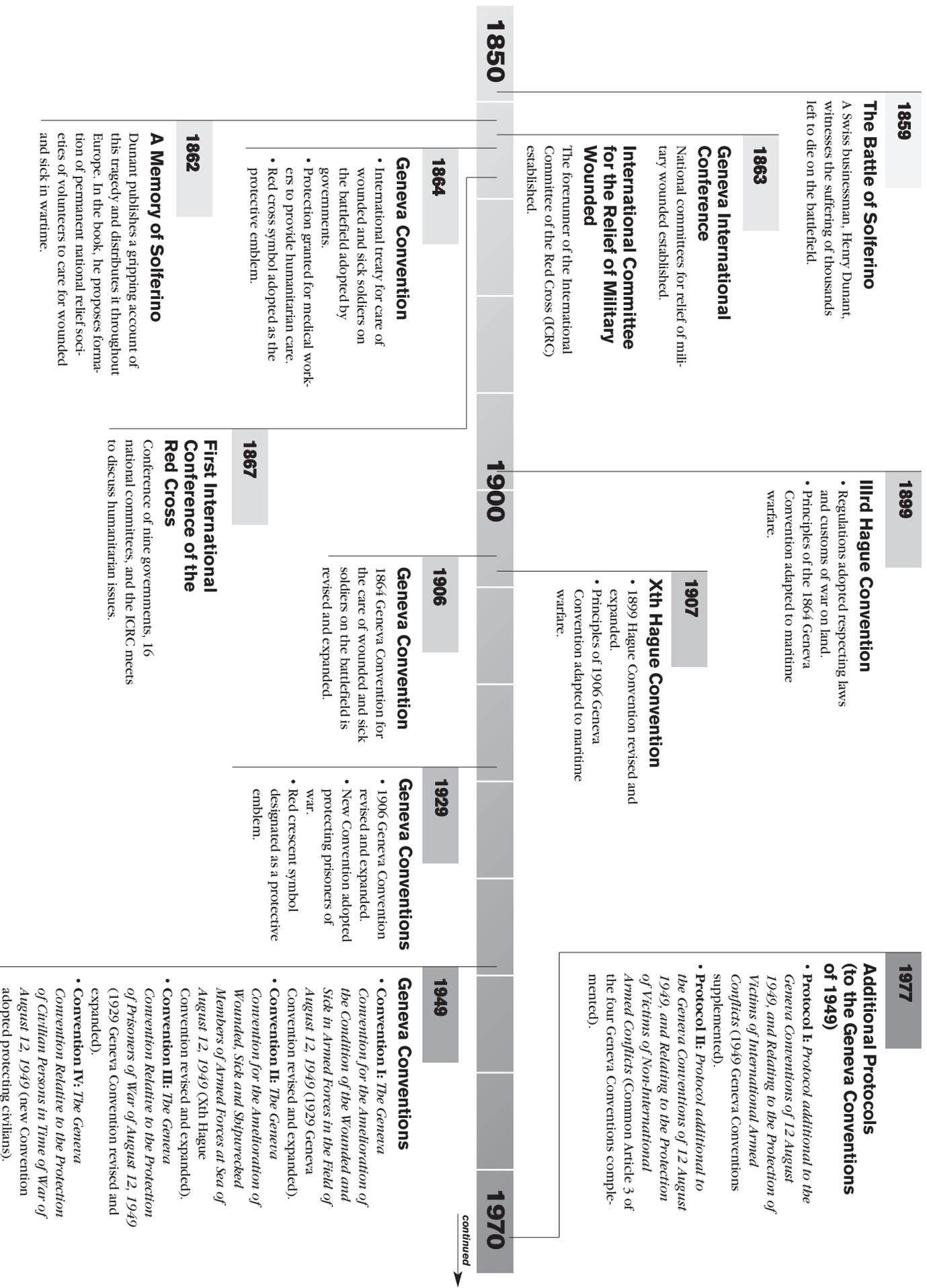
- 1980 Convention on Certain Conventional Weapons
- 1993 Convention on Chemical Weapons
- 1995 Protocol on Blinding Laser Weapons
- 1997 Convention on Anti-personnel Mines (Ottawa Treaty)

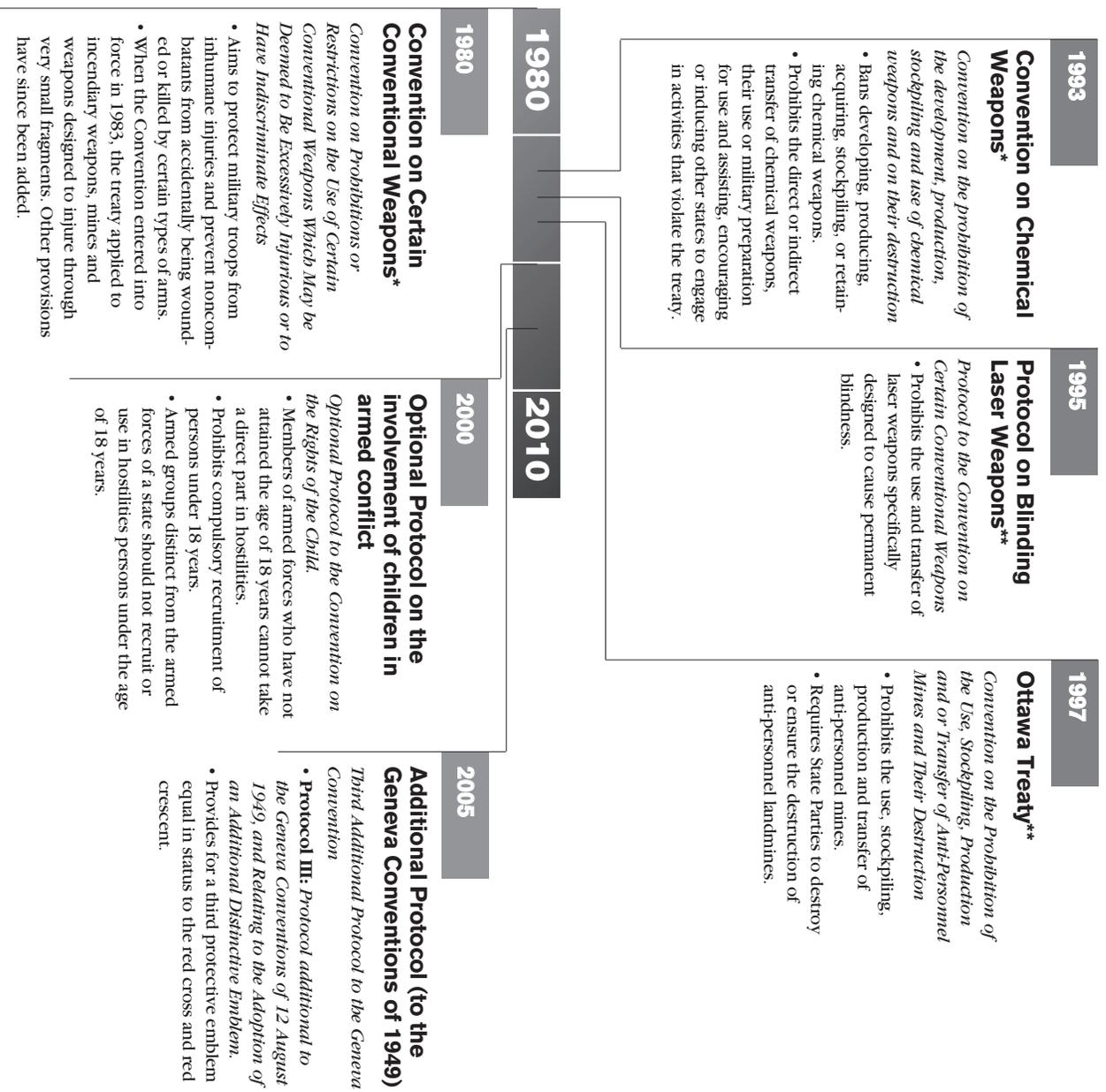
New developments also occurred in efforts to investigate and prosecute individuals for violations of IHL. In 1998 a prominent recent attempt by the world community to hold individuals responsible for more serious violations of international law resulted in the establishment of the permanent International Criminal Court.

With an estimated 300,000 children engaged in armed conflicts throughout the world, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted in 2000 to strengthen their legal protections and prevent their exploitation during hostilities. Some key provisions of the Optional Protocol include the prohibition of children under 18 years of age from taking direct part in armed conflict and being forcibly recruited into the armed forces of their countries.

All of these represent the continued evolution of the law as it reacts and responds to changes in the nature of today's conflicts.

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