

Course manual  
Joint Master's Programme in  
International Humanitarian Action

University of  
Warsaw

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# Protection of civilians in armed conflicts

Semester 2

**Module coordinator:****Dr. Elżbieta Mikos-Skuza**e-mail: [e.mikos-skuza@uw.edu.pl](mailto:e.mikos-skuza@uw.edu.pl)

office location: Main UW Campus at Krakowskie Przedmiescie 26/28, CIUW building, room 5

**Credits awarded:** 4 ECTS, equivalent to 100 work hours (1 ECTS = 25 hours)**Period:** Second semester**Venue & hours:** University of Warsaw, Collegium Iuridicum III, Oboźna Street nr 6, room 3.12, Tuesdays, 13.15 – 16.30**Guest lecturers**

Rafał Kostrzynski – UNHCR

Monika Kacprzak – UNICEF

Bob Ghosn – Belgian Red Cross, former ICRC delegate

**1. Introduction**

The module is a requirement for obtaining the NOHA Master's degree.

The aim of this course is that students learn and understand the concept of protection of civilians in armed conflicts, and the dilemmas involved, particularly from legal perspectives. It provides the students with tools to analyse and evaluate the protection needs of civilians with special emphasis on women, children, refugees and IDPs. Specific case studies are discussed extensively.

**2. Learning outcomes**

In conformity with the learning outcomes set out by the NOHA network, students should achieve the following learning outcomes by the end of this module:

Knowledge:

- Identifies main threats to civilian population as the whole and some specific categories of civilians and civilian objects during armed conflicts.
- Knows basic notions, concepts and principles relating to the protection of civilians in armed conflicts under International Humanitarian Law.
- Identifies challenges to practical application of International Humanitarian Law in armed conflicts and ways of overcoming such challenges.

Skills:

- Has proven the ability to apply key legal instruments in practice in the context of contemporary political developments.
- Has proven the ability to solve the legal cases taking into account multidimensional and multi-layered character of international legal regulations relating to the civilian status in armed conflicts.

Social competences:

- Is firmly convinced that “even wars have limits” and that there is no justification for excessive violence.
- Is ready to advocate for the strict allegiance to the rule of law in international relations.

- Understands that indifference towards human suffering is a driving force behind further violence.

### 3. Course material

*[Provide over here a bibliography of the books/reader used in the course with price estimates and (if necessary) advice where to buy it, as well as a listing of all other types of material that will be used in the module. Please specify explicitly which readings are obligatory and which should be considered suggested readings. Alternatively, you can keep the information general over here and specify the obligatory and suggested readings by page numbers in the programme schedule. If you put obligatory or suggested course material on NOHA Blackboard (e.g. videos), alert the students on this over here.]*

#### **Required reading:**

##### **International multilateral treaties:**

- The Hague Regulations Respecting the Laws and Customs of War on Land, of 18 October 1907
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977
- The Hague Convention for the Protection of Cultural Property in the event of Armed Conflict, of 14 May 1954
- International Covenant on Civil and Political Rights, of 16 December 1966
- Rome Statute of the International Criminal Court, of 17 July 1998

**Further required reading** will be provided to students via blackboard a week before each lecture.

Particularly interesting and useful are the following publications (available at the libraries of the Law Faculty and of the University of Warsaw as well as at the website of the International Committee of the Red Cross: [www.icrc.org](http://www.icrc.org)):

- M. Sassoli, A. Bouvier, „How Does Law Protect In War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law”, ICRC, Geneva 2011;
- J.-M. Henckaerts, L. Doswald-Beck, „Customary International Humanitarian Law”, Vol. I : Rules, ICRC, Cambridge 2005.
- N. Melzer, “International Humanitarian Law. A Comprehensive Introduction”, ICRC, Geneva 2016.

**Optional reading** (IRRC = “International Review of the Red Cross”):

*Afshar H., Eade D. (ed.)*, Development, women and war: feminist perspective, Oxford 2004;

*Ando N.*, Surrender, Occupation and Private Property in International Law, Oxford 1991;

*Arai-Takahashi Y.*, The Law of Occupation. Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law, Leiden – Boston 2009;

*Best G.*, Humanity in Warfare: the Modern History of the International Law of Armed Conflicts, London 1980;

*Best G.*, War and Law since 1945, Oxford 1994;

*Blank L. R., Guiora, A. N.*, Teaching an Old Dog New Tricks: Operationalizing the Law of Armed Conflicts in New Warfare, Harvard National Security Journal, Vol 1, 2010;

*Boyd S.*, The Applicability of International Law to the Occupied Territories, Israel Yearbook on Human Rights, vol. 1, 1971;

*Bruderlein C.*, People's security as a new measure of global stability, IRRC, VI. 2001;

*Chinkin C.*, A Gendered Perspective to the International Use of Force, Australian Yearbook of International Law, 1988-1989;

Current Challenges to the Law of Occupation, Collegium, College of Europe, No. 34, Autumn 2006

*Detter de Lupis I.*, The Law of War, Cambridge 1987;

*Dinstein Y.*, Legislation under Article 43 of the Hague Regulations: Belligerent Occupation and Peacebuilding, Program on Humanitarian Policy and Conflict Research, Harvard University, Occasional Paper Series, No. 1, Fall 2004

*Draper G.I.A.D.*, The Reunion of Families in Time of Armed Conflict, IRRC, II. 1977;

*Durham H.*, Women, Armed Conflict and International Law, IRRC, IX 2002;

*Ferraro T. (ed.)*, Occupation and other forms of administration of foreign territory: expert meeting report, ICRC Geneva, March 2012;

*G.H.Fox*, Humanitarian Occupation, Cambridge 2008;

*Gardam J.*, Women and the Law of Armed Conflict: Why the Silence?, International and Comparative Law Quarterly, vol. 46, 1997;

*Gardam J.*, Women, Human Rights and International Humanitarian Law, IRRC, IX. 1998;

*Gasser H.-P.*, From Military Intervention to Occupation of Territory: New Relevance of International Law of Occupation (in:) *Fischer H., Froissart U., Heintschel von Heinegg W., Raap Ch. (eds.)*, Crisis Management and Humanitarian Protection: in Honour of Dieter Fleck, Berlin 2004;

*Green L.C.*, Essays on the Modern Law of War, New York 1985;

*Green L.C.*, Is There a “New” Law of Intervention and Occupation?, Israel Yearbook on Human Rights, vol. 35, 2005;

*Henckaerts J.-M., Doswald-Beck L.*, Customary International Humanitarian Law, Cambridge 2005, Vol. I, Chapters: 1, 8, 10, 12, 32, 39.

*Kaikobad K.H.*, Problems of Belligerent Occupation: The Scope of Powers Exercised by the Coalition Provisional Authority in Iraq, April/May 2003 – June 2004, International and Comparative Law Quarterly, vol. 54/1, 2005;

*Krill F.*, The Protection of Women in International Humanitarian Law, IRRC, XI. – XII.1985;

*Kwakwa E.K.*, The International Law of Armed Conflict: Personal and Material Fields of Application, Dordrecht – Boston- London 1992;

*Lavoyer J.-Ph. [et al.]*, Jus in bello: occupation law and the war in Iraq, Proceedings of the 98<sup>th</sup> annual meeting of ASIL, 2004;

*Lijnzaad L.*, How Not to Be an Occupying Power: Some Reflections on UN Security Council Resolution 1483 and the Contemporary Law of Occupation (in:) *Lijnzaad L., van Sambeek J., Tahzieb-Lie B. (eds.)*, Making the Voice of Humanity Heard, Leiden – Boston, 2004;

*Lindsey Ch.*, Women and War – an Overview, IRRC, IX. 2000;

*Lindsey-Curtet Ch., Holst-Roness F.T., Anderson L.*, Addressing the needs of women affected by armed conflict: an ICRC guidance document, Geneva 2004;

*Meron T.*, Rape as a Crime under International Humanitarian Law”, American Journal of International Law, vol. 87 (3) 1993;

*Mini F.*, Liberation and Occupation: a Commander’s Perspective, Israel Yearbook on Human Rights, vol. 35, 2005;

*Murphy S. D.*, Coalition Laws and Transitional Arrangements During Occupation of Iraq, American Journal of International Law, vol. 98, 2004;

*Pictet J.*, Development and Principles of International Humanitarian Law, Dordrecht – Boston – Lancaster – Geneva, 1985;

*Plattner D.*, Protection of Children in International Humanitarian Law, IRRC, V. – VI. 1984;

*Plattner D.*, Assistance to Civilian Population in International Humanitarian Law, IRRC, V. - VI. 1992;

*Playfair E. (ed.)*, International Law and the Administration of Occupied Territories – Two Decades of Israeli Occupation of the West Bank and the Gaza Strip, Oxford 1992;

*de Preux J.*, Special Protection of Women and Children, IRRC, IX. – X. 1985;

*Roberts A.*, What is Military Occupation?, British Yearbook of International Law, vol. 55, 1984;

*Roberts A.*, Prolonged Military Occupation: The Israeli-Occupied Territories since 1967, *American Journal of International Law*, vol. 84 (1), 1990;

*Roberts A.*, Transformative Military Occupation: Applying the laws of War and Human Rights (in:) *M. Schmitt, J. Pejic (eds)*, *International Law and Armed Conflict: Exploring the Faultlines. Essays in Honour of Yoram Dinstein*, Leiden – Boston 2007;

*Salinas Burgos H.*, The Taking of Hostages and International Humanitarian Law, *IRRC*, V. – VI. 1989;

*Sandoz Y., Swinarski Ch., Zimmermann B. (eds.)*, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva 1987;

*Sassòli M.*, Occupation and Peacebuilding, *International Humanitarian Law Research Initiative*, <http://www.ihlresearch.org> ;

*Scheffer D.*, Beyond Occupation Law, *American Journal of International Law*, vol. 97 (4), 2003;

*Shamgar M.*, The Observance of International Law in the Administered Territories, *Israel Yearbook on Human Rights*, vol. 1, 1971;

*Singer S.*, The Protection of Children during Armed Conflict Situations, *IRRC*, V. – VI. 1986;

*Stoffels A.*, Legal regulation of humanitarian assistance in armed conflict: achievements and gaps, *IRRC*, IX 2004;

*Swinarski Ch. (ed.)*, *Studies and Essays on International Humanitarian Law and on the Red Cross Principles in Honour of Jean Pictet*, Geneva – The Hague 1984;

*Urbina J. J.*, Protection of civilian persons in the power of the enemy and the establishment of an international criminal jurisdiction, *IRRC*, XII 2000 (Abstract in English, text in French);

*Vigny J.-D., Thompson C.*, What future for fundamental standards of humanity?, *IRRC*, XII 2000 (Abstract in English, text in French);

*Vité S.*, Applicability of the international law of military occupation to the activities of international organizations, *IRRC*, III 2004;

*Wenger A., Mason S. J. A.*, The civilianization of armed conflict: trends and implications, *IRRC*, XII 2008;

*R. Wolfrum*, The Adequacy of International Humanitarian Law Rules on Belligerent Occupation: To What extent May Security Council Resolution 1483 Be Considered a Model for Adjustment? (in:) *M. Schmitt, J. Pejic (eds)*, *International Law and Armed Conflict: Exploring the Faultlines. Essays in Honour of Yoram Dinstein*, Leiden – Boston 2007;

*Zwanenburg M.*, Existentialism in Iraq: Security Council Resolution 1483 and the law of occupation, *IRRC*, XII 2004.

#### 4. Teaching and learning methodology

The course is a combination of different methods of work - lectures followed by individual work on cases and then group discussions. Case studies will relate to a fictional armed conflict in a fictional region of the world. However, all facts will be based on real life events that occurred in different armed conflicts in the 20th and 21st centuries.

#### 5. Programme and training activities

*[Over here a (detailed) programme can be outlined, including planned lectures, tutorials, assignments, deadlines, etc.]*

##### Week 1 - 21.02.2023; 13.15 – 16.30

1. Introduction to the organization of the course
2. International Humanitarian Law of Armed Conflicts (IHL) as a main legal framework for the protection of civilians in armed conflicts
  - a) definition,
  - b) historical developments,
  - c) relations with other branches of public international law.
3. Material scope of application of IHL:
  - a) international armed conflicts,
  - b) non-international armed conflicts,
  - c) other situations.

##### Week 2, 28.02.2023; 13.15 – 16.30

1. Personal scope of application of IHL:
  - a) combatants,
  - b) civilians,
  - c) protected persons
2. Main principles of IHL.

##### Week 3 - 21.03.2023

1. Notion of protection in armed conflicts – civilians as persons protected against the effects of hostilities:
  - a) challenges to the principles of distinction and proportionality
  - b) problem of civilians taking a direct part in hostilities

- c) precautionary measures
- d) problem of human shields
- 2. Protection of civilian objects:
  - a) notion of civilian objects
  - b) rules regarding civilian objects
  - c) specially protected objects and zones
- 3. Protection of cultural property in armed conflicts:
  - a) historical perspective
  - b) legal regime of the Hague Convention of 1954 and its Protocols
  - c) practical problems of the restitution of cultural property

**Week 4 , 28.03.2023; 13.15 – 16.30**

- 1. Notion of protection in armed conflicts - civilians as persons protected in the power of the enemy:
  - a) on occupied territory – changing notion of occupation
  - b) as aliens on the territory of a party to the conflict
  - c) detained as internees or under criminal charges
- 2. Migrants and refugees, stories behind statistics – Rafał Kostrzyński, UNHCR

**Week 5 , 4.04.2023; 13.15 – 16.30**

- 1. Protection of children in armed conflicts - Monika Kacprzak, UNICEF
- 2. Protection of women in armed conflicts:
  - a) specific problems of women in armed conflicts, including women - combatants
  - b) protection of women as civilians
  - c) protection of women as mothers
  - d) protection of women against sexual violence

**Week 6 – 18.04.2023; 13.15 – 16.30**

- 1. Access of civilians to humanitarian aid in armed conflicts:
  - a) no absolute right to humanitarian assistance
  - b) different regulations depending on a factual situation
  - c) the problem of a state consent
- 2. The legal status of humanitarian workers

**Week 7 – 16.05.2023; 15.00 – 16.30**

Open books written exam - case study and two open theoretical questions.



**Week 8 - 23.05.2023; 13.15 – 16.30**

1. Implementation of IHL. Role of monitoring missions and fact finding mechanisms in ensuring better compliance with the rules on the protection of civilians:
  - a) ad hoc missions established by the UN Human Rights Council
  - b) ad hoc missions established by other United Nations organs and bodies
  - c) permanent International Humanitarian Fact Finding Commission
2. Joint evaluation of the exam's results. Summing-up of the course

**6. Workload**

Total workload of one student - 100 hours:

- a) organized work = 30 hours
- b) individual preparation to classes (reading materials, case studies) - 4 hours in a week = 60 hours
- c) preparation to a final exam - 10 hours

**7. Assessment methods**

10% - student's regular participation in classes and in group discussions (as the course is relatively short and quite intensive, attendance at each of the classes is highly recommended)

30 % - homeworks (cases, essays)

60 % - written exam composed of two questions testing theoretical knowledge and one fictional case based on facts known from the 'evolving case' discussed during classes. Using notes and other materials is allowed.

*Please be aware that in order to be able to take a second chance exam if you need to, you should come to the first chance exam and attempt to answer the exam questions. In the event you are not able to attend the first chance exam you need to demonstrate a valid reason for non-attendance, such as a certificate from a medical doctor. No-show without a valid reason forfeits the possibility of taking the second chance exam and you will have to redo the course.*

**8. Assessment criteria**

The purpose of homeworks and of the exam is to assess the knowledge of the contents of the course and student's ability to apply this knowledge in real life situations.