



PHAP Credentialing Program Certification in International Legal Frameworks for Humanitarian Action

Study Guide

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Version 0.8

This guide will be continuously updated to reflect new developments and new resources published. If you have any comments or suggestions, please provide them using the online form at <https://phap.org/credentialing-program/study-guide/contribute>

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Introduction

Responding to long-standing concerns about capacity issues across the humanitarian sector, the PHAP Credentialing Program combines the established and rigorous international standard for professional credentials with solutions that meet the specific needs of the humanitarian sector, structuring the program around a number of narrower certifications in specific competency areas. Certifications can provide a robust means for humanitarian practitioners to demonstrate competencies and for employers to know whether staff members or job candidates possess specific knowledge or skills, while reinforcing high standards of commitment and competence at the individual level. The three certifications launched in 2017 are in the areas of *Understanding the Humanitarian Ecosystem*, *International Legal Frameworks for Humanitarian Action*, and *Applying Humanitarian Principles in Practice*.

This Study Guide is designed to help you, as a PHAP Credentialing Program certification candidate for *International Legal Frameworks for Humanitarian Action*, prepare for the certification assessment. It contains information and advice to help you maximize the value of the time that you are putting in to prepare.

Take note that this guide is not meant to serve as a comprehensive textbook. The focus is on highlighting the areas you should learn about if you are interested in applying for certification, as well as pointing you to recommended resources in order to do so.

The Study Guide has been developed independently from the PHAP Credentialing Program. No preparatory resource is endorsed by the Certification Commission nor is a prerequisite to earn PHAP Credentialing Program certifications. Nor, conversely, is there any guarantee that everything in the certification assessment is also covered in this Study Guide.

The Study Guide contains two main sections: an overview and guide for how to approach your preparations and a section with resources for each of the domains of the body of knowledge. We recommend all candidates to read the first section before proceeding to the domain-specific content.

What is Certification?

The three credentials offered by the PHAP Credentialing Program are *certifications*. PHAP follows the usage in the leading international standard for certifying individuals.¹ The term certification is used for *voluntary* programs for recognition of *individuals* through an *independent assessment* (not requiring participation in any particular course) against a body of knowledge that is based in *confirmed actual practice* in a clearly defined area.

Certification is a form of *credentialing*. Other credentialing types you may have heard of that are distinct from certification include *licensure* (required for practicing in certain jobs, such as medicine) and *certificate programs* (based on assessment linked to participation in specific training or courses). You may have also heard the term *accreditation*, which under standard credentialing usage applies to organizations, not individuals.

¹ ISO 17024 *Conformity assessment — General requirements for bodies operating certification of persons*

While many certifications are full professional role certifications, others are for specific competency areas. The certifications currently offered by PHAP certify specific sets of competencies which are relevant to many humanitarian practitioners across the sector. But as they do not cover *all* the competencies needed in humanitarian work, they do not certify in themselves that a person is a fully competent humanitarian practitioner.

Competencies include knowledge, skills, and abilities. The certifications currently available focus primarily on knowledge, and also on skills of applying that knowledge in different scenarios that require interpretation and problem solving skills.

The certification in *International Legal Frameworks for Humanitarian Action* is designed for humanitarian practitioners for whom having an understanding of the fundamentals of international legal frameworks for humanitarian action is one of the required competencies in their work.

Reasons for Earning PHAP credentials

Individuals surveyed or involved in the development of the PHAP Credentialing Program have expressed interest in certification for a variety of reasons. Chief among them is a personal commitment to their own accountability and that of the humanitarian sector. As a certificant, you commit yourself to a high professional standard in your work and an ongoing pursuit of knowledge and proficiency in your work.

While only awarded to individuals, PHAP Credentialing Program certifications can have an impact on the different stakeholders in humanitarian action, including:

For people affected by crisis

- A robust way to improve accountability to crisis-affected people
- Provides a tool for building capacity across the humanitarian sector
- Reduces waste of limited resources

For practitioners

- A robust method of demonstrating professionalism, commitment, knowledge, and skill
- Flexible choice of learning methods, including capturing on-the-job learning
- Possibility to have existing skills and knowledge recognized

For organizations and agencies

- A flexible set of tools for recruitment and staff development
- Identify gaps and focus staff development resources where most needed
- A way to demonstrate organizational readiness and live up to commitments

For training and education providers

- Relevant, up-to-date, practice-based body of knowledge for curriculum development
- Increase value of existing training and education offerings by adding trusted and robust assessments

- Provide motivation and recognition to course and training participants

What is Required for Certification?

Before you begin preparing for the certification, it is important to ensure that you meet the qualifications.

In order to be eligible for a PHAP Credentialing Program certification, you must:

- Commit to abide by the PHAP Code of Ethics and Professional Conduct²
- Agree to participate in the continuing education program for maintaining the certification or to otherwise undertake a re-assessment at the end of the certification period, in order to maintain the credential
- Achieve a passing score in the proctored (invigilated) certification assessment

The certification assessment consists of 60 multiple-choice questions (MCQs). The MCQs are designed to measure candidate ability with regard to a specific area in the certification body of knowledge, and are of three main different types: *recall*, *interpretation*, and *problem solving*. Depending on the nature of the area in the body of knowledge, the mix of MCQs and level of difficulty will vary – for example, areas that ask for knowledge of facts are more likely to use recall questions, while areas that require judging a situation according to certain criteria would more likely use interpretation questions. It is important to note that the certification questions do not cover *all* of the knowledge in the domain, but are rather a sampling of the possible questions that could be asked. However, as you do not know which specific questions will be asked, you should prepare for each area in its entirety.

Each domain of the certification body of knowledge a certain percentage of the assessment, divided according to the relative importance determined for them in the certification job task analysis.

The assessments are delivered through a secure online system, which gives you the possibility to take the assessment at any time and from any place where you have a computer, an Internet connection, and a webcam. The assessments are proctored (invigilated).

It does **NOT** require participation in any particular preparatory course, nor does it require membership in PHAP.

Earning the certification requires making a firm commitment to dedicate the time required to achieve it and maintain it. Once you have confirmed that you are eligible and interested in seeking the certification, the next step should be self-assessment and planning. This is the topic of the next section.

For More Information

- For more information about the PHAP Credentialing Program, visit phap.org/credentialing-program

² The PHAP Code of Ethics and Professional Conduct is available in the appendix and at phap.org/code-of-ethics

- For detailed information about the certification requirements, assessment registration, policies, fees, and the entire certification process, refer to the [Candidate Handbook](#) on the PHAP website
- For other questions, email the PHAP secretariat at certification@phap.org

Creating and Executing Your Study Plan

Planning Your Certification Assessment Study Path

Your existing experience and knowledge as well as your learning preferences and available time will influence how to best prepare for the certification assessment. There is more than one path to follow – and as the certification does not require any particular course, it is up to you to decide how you would like to prepare.

You may of course already have the knowledge required to pass the assessment. However, in most cases, candidates will benefit from refreshing their understanding of the area – it will give you the opportunity to solidify your long-term ability to recall information when needed, and also to deepen your knowledge on topics that you may only have dealt with cursorily in the past.

This section is designed to help you approach your preparation in a purposeful and planned manner. Take a few minutes with this section to discover the different resources that are available to you and how they can be used.

What are Your Learning Preferences?

How do you prefer to learn new things? If you become interested in a new area of knowledge or skill – for example digital video editing – how do you approach it?

- a) Do an online search or get the latest book on video editing?
- b) Sign up for a course or workshop?
- c) Get in touch with a friend or colleague who you know is an expert in the area?
- d) Seek out other friends or colleagues who want to learn about video editing?
- e) Get the necessary software to start experimenting directly with video editing?

The one you are likely to gravitate towards is connected to your preferred way of learning:

- If *a)*, you are likely to prefer reading new material and reflect on how you relate to it before try it out in practice.
- If *b)*, this might indicate a preference for learning through organized and guided instruction from those already skilled in the area.
- If *c)*, you might prefer learning through observing best practice.
- If *d)*, your preference is likely for learning through an informal or formal study group.
- If *e)*, you are likely to prefer getting started and figuring out as you go.

None of these options are necessarily better than the other, nor are they mutually exclusive. It is, however, important to note that you are likely to have a preference for one or two of them – keep this in mind when planning your studying.

Consider how this applies to you...

Which of the options above did you choose and why? Do you think this is generally applicable to your learning preferences? (*Write down your response, to include in your study plan*)

What We Know About How We Learn

How we best learn is a complex topic, and important new discoveries have been made in this area in the past decade. A few points are worth mentioning in this overview:

- It is clear that **last-minute cramming does NOT work**. While it might in some cases help you pass an assessment, but it will not help you with longer term understanding or retention.
- If you want to strengthen your long-term memory, and be able to recall information when needed, add new information gradually, and **repeat it at regular intervals**.
- Research also indicates that it is important *how* you repeat the material. Just repeating key points, while useful for initial learning, is of questionable value. Instead, **regularly recalling information is shown to be effective**. This can be through emulating a test environment and quizzing yourself (or having others quiz you), applying your knowledge through study questions, or thinking through the applicability of concepts in more complex real-world scenarios.

When preparing your study plan, try to include time for the gradual introduction of new information as well as opportunity for quizzing and discussion. Next we will be looking at resources to help you do so.

Consider how this applies to you...

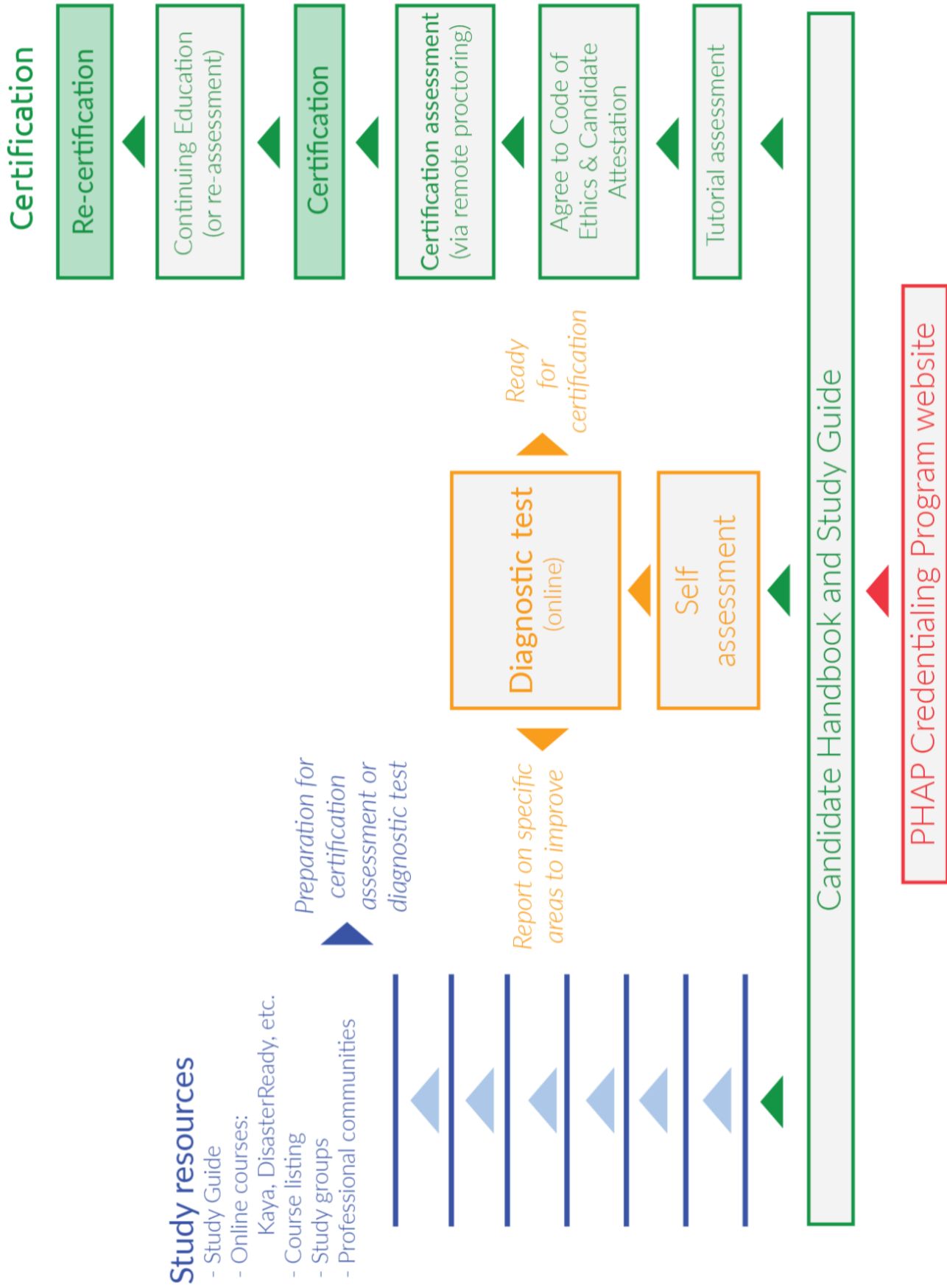
What do you think of the value of repeating material regularly? When planning your study schedule, how can you allocate sufficient time to practice recalling information? What methods will you use? (*Write down your response, to include in your study plan*)

Study Resources

In order to help candidates prepare for the certification assessment, PHAP has made available a range of resources, which together with resources from partner organizations provide support for different ways of learning. It is important to note that none of these resources are required in order to qualify for the certification, nor are any of the certification assessment questions taken from any of these resources.

Overview of resources available

A diagram showing the different resources available to you in your preparations is shown in *Figure 1*. It is recommended for all new candidates to first complete the self-assessment, followed by the online Diagnostic Tests, as described in more detail below. This will allow you to get an idea of whether you are ready to sit for the certification assessment or whether (and in what areas) you would need to strengthen your knowledge. However, this is not required – you can also access the study resources directly, or even attempt the assessment directly if you are convinced that you already have the necessary knowledge.



Certification Body of Knowledge

At the center of the certification is the body of knowledge, based on a methodical and comprehensive practice analysis that investigated the competencies required in the specific area of the certification, in this case *International Legal Frameworks for Humanitarian Action*. The body of knowledge is divided into four domains, each with between two and eight statements. Start by reading through the body of knowledge to familiarize yourself with the areas that will be assessed. You will find the body of knowledge in the self-assessment as well as at the beginning of Section 3.

Resources to evaluate your starting point

Self-assessment

The recommended starting point is to assess your existing knowledge in each of the areas of the certification body of knowledge. Use the tool in *Exhibit 1* to rate your own level of knowledge in each area, to the best of your ability. This self-assessment exercise is particularly valuable in combination with the Diagnostic Test (introduced in the next section), as the Diagnostic then provides an objective check on your own perceptions of your starting point. Moreover, the Diagnostic Test is not able to test all aspects of each area – your own perceptions are important for determining where you should focus your study.

Diagnostic Test

It is essential for you to compare your own existing knowledge against what is contained in the certification body of knowledge. PHAP has developed online Diagnostic Tests for all certifications under the PHAP Credentialing Program. The Diagnostic Tests can help diagnose how well you know the relevant body of knowledge, as well as help refresh your test-taking skills in general.

You have 75 minutes to complete the 50 questions of the Diagnostic Test (the official certification has 60 questions and allows 90 minutes). Upon completing the Diagnostic Test, you will be sent a customized report detailing your performance in each the four domains of the certification body of knowledge.

It is recommended to take this Diagnostic Test in an environment that simulates that of the invigilated/proctored official certification assessment.

- Try to find a private, calm environment where you will not be disturbed for the duration of the test.
- Do not look up answers to the questions or ask others for help during the test. In the official certification assessment, the online proctor (invigilator) will be monitoring to ensure that you do not have access to any unauthorized resources or assistance.
- The questions on both this Diagnostic Test and the official certification assessment have been carefully designed so that the incorrect answer options may sound plausible but there is only one best answer. For each question, select the best answer option available, to the best of your understanding.

The Diagnostic Test questions are drawn from a bank of questions, which will be further expanded over time. This means that you can re-take the Diagnostic Test after studying in your identified weak areas to get an indication of how your knowledge has improved.

Exhibit 1: Self-Assessment

	Pre-existing knowledge				Diagnostic Test results: Area of particular focus?
	None	Some, but with gaps	Ok, but need refresher	Good	
Domain 1: What is International Law and Why is it Relevant to Humanitarian Action?					___%
1.1 Identify the key sources of international law and how it is formed.					
1.2 Recognize that there are four main bodies of public international law that are relevant for international humanitarian action, as well as efforts to develop an additional body of international law specifically addressing responses to natural disasters.					
1.3 Recognize the distinction between hard law and soft law.					
1.4 Identify the ways in which international law binds States, intergovernmental organizations, non-State armed groups, and individuals.					
1.5 Identify the ways in which international law binds or does not bind UN agencies, NGOs, and their staff.					
1.6 Recognize the existence of key areas of domestic law that may be relevant to humanitarian actors in their work and that they normally continue to apply even in armed conflicts and natural disasters.					
1.7 Distinguish between laws and policy or principles.					
Domain 2: International Human Rights Law					___%
2.1 Identify the main international and regional treaties and other sources of IHRL.					
2.2 Identify the key aspects of IHRL applicability in crisis situations.					
2.3 Identify key provisions of IHRL relating to the right to life, freedom from torture and other inhumane and degrading treatment or punishment, arbitrary detention, and freedom of movement, as well as State obligations to investigate and hold violators accountable.					
2.4 Identify key provisions of IHRL related to economic, social, and cultural rights that obligate States to provide or secure access to goods and services.					
Domain 3: International Humanitarian Law (Law of Armed Conflict)					___%
3.1 Identify the main treaties and other sources of international humanitarian law (IHL).					
3.2 Recognize the fundamental purpose of IHL, to limit the effects of armed conflict, for humanitarian reasons, by protecting persons who are not or are no longer participating in the hostilities and restricting the means and methods of warfare.					

3.3 Distinguish between the laws that regulate the resort to the use of force (<i>jus ad bellum</i>) and the laws that regulate situations of armed conflict (<i>jus in bello</i>).					
3.4 Determine the applicability of IHL and the information necessary to determine whether IHL applies and what rules bind parties to armed conflict.					
3.5 Recognize the principles of IHL related to the conduct of hostilities and how these rules both regulate the use of lethal force and also serve to protect civilians and those no longer participating in hostilities (<i>hors de combat</i>).					
3.6 Identify key types of weapons restricted and prohibited by international law.					
3.7 Identify key rules of IHL relevant to humanitarian assistance and access in international and non-international armed conflicts.					
Domain 4: International Refugee Law and Laws Protecting Internally Displaced Persons					____%
4.1 Identify the rules determining who is a refugee under international refugee law.					
4.2 Recognize the process by which refugee status is determined, including the roles of States, key State institutions, and the United Nations High Commissioner for Refugees (UNHCR).					
4.3 Recognize the principle of non-refoulement and its applicability to refugees and others.					
4.4 Identify other key obligations of States related to refugees under international law.					
4.5 Recognize the relevance of IHRL, IHL, the Guiding Principles on Internally Displaced Persons, and the Kampala Convention, in preventing arbitrary displacement and protecting individuals who are displaced within the territory of their own State.					
Domain 5: Implementation and Enforcement of International Law					____%
5.1 Recognize that respect for international law applicable to humanitarian action relies primarily on voluntary respect, persuasion, preventative measures, and incorporation into domestic law.					
5.2 Identify key UN and regional bodies and mechanisms, including inquiries and fact-finding mechanisms, to monitor for and respond to serious violations of IHRL and IHL).					
5.3 Recognize that international law relevant to humanitarian action may give rise to State responsibility for violations of international law as well as individual criminal responsibility for international crimes.					
5.4 Define war crimes, crimes against humanity, and genocide, and identify the roles of the International Criminal Court (ICC) and ad-hoc tribunals.					
5.5 Identify key concepts regarding the roles of domestic and international mechanisms to pursue violations of international law by individuals.					
Domain 6: Utilizing Legal Frameworks in Humanitarian Action					____%
6.1 Identify examples of humanitarian actors contributing to procedures related to monitoring compliance or investigating alleged breaches of international law, as well as the potential risks involved.					
6.2 Identify ways in which international law is employed by humanitarian actors outside of courts and other formal legal institutions.					

Note that relying only on simulated assessments is not the best way to increase knowledge and understanding. Use the Diagnostic Test to provide insight into the areas in which you should engage in additional study, and then use other methods to strengthen your capacities in those areas.

You can access the Diagnostic Test at <https://diagnostics.phap.org/s3/ilfha>

The left screenshot shows the PHAP Diagnostic Test interface. It features the PHAP logo and the title 'International Legal Frameworks for Humanitarian Action Diagnostic Test'. A question is displayed: 'When is the conduct of a humanitarian non-governmental organisation regulated by domestic law in an armed conflict?'. Below the question are four radio button options: A) Always, even if the State's domestic law violates international law; B) On all issues where the State's domestic law does not contradict international law; C) Only on issues such as rents, work contracts, etc. which are not governed by international law; D) Only conduct of national staff is covered by domestic law. At the bottom, there are 'Back' and 'Next' buttons and a progress indicator showing 12% completion.

The right screenshot shows the 'OVERVIEW' results page. It displays the user's name 'Liz Armanz' and the diagnostic date '20 March 2017'. A circular progress indicator shows a total score of 70% (35 of 50). A bar chart shows scores for six domains: Domain 1: International Law and its Relevance (91%), Domain 2: International Human Rights Law (71%), Domain 3: International Humanitarian Law (64%), Domain 4: International Refugee Law and Laws Protecting IDPs (56%), Domain 5: Implementation and Enforcement of International Law (75%), and Domain 6: Utilizing Legal Frameworks in Humanitarian Action (75%). Below the chart are three icons: 'Practice' (leaf), 'Study' (book), and 'Register' (checklist), each with a brief description. At the bottom, a URL is provided: <https://phap.org/credentialing-program/ILF>.

Self-study resources

Study Guide

The Study Guide you are currently reading provides you with guidance for each of the domains and statements of the certification body of knowledge. For each statement, you are presented with key points and recommended resources, as well as study questions and scenarios.

With a few exceptions where motivated, all recommended resources in the Study Guide are freely available online.

Note that the Study Guide has been developed independently from the PHAP Credentialing Program and it neither is a required resource for certification nor guarantees to provide you with all information needed for the certification assessment.

Humanitarian Leadership Academy: Kaya

Kaya (kayaconnect.org) is a free online learning platform of the Humanitarian Leadership Academy, providing self-guided and blended learning opportunities to over 60,000 humanitarian volunteers and professionals worldwide. The Humanitarian Leadership Academy is a global learning initiative set up to facilitate partnerships and collaborative opportunities to enable people to prepare for and respond to crises in their own countries. The Academy supports the

needs of individuals, organisations and communities by facilitating access to learning resources, platforms and tools.

Resources available on Kaya are also marked in this guide with **k**

DisasterReady

DisasterReady provides an open online library of more than 600 training resources as well as social learning communities. Specific resources in DisasterReady are also mentioned throughout this Study Guide, when relevant for specific domains and statements.

Courses and training

A number of humanitarian agencies, training providers, colleges, universities, and private companies offer study courses and materials that may be of use to candidates when preparing for PHAP Credentialing Program certification examinations. Some of these are freely available and others are paid. In order to facilitate for candidates to select a course, PHAP publishes a mapping of existing courses to the certification body of knowledge at <https://phap.org/credentialing-program/uhe>

Please note that the mapping is self-reported by the training providers. PHAP neither endorses the providers shown on the online list nor evaluates the providers or the providers’ materials for consistency with certification body of knowledge.

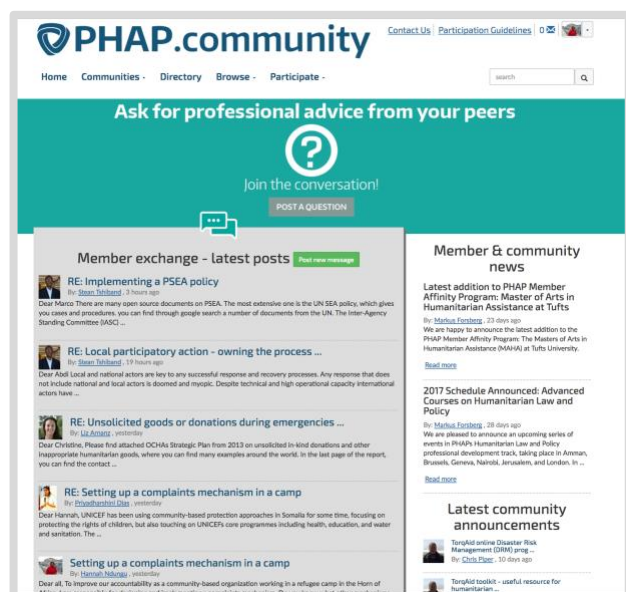
Candidates must contact these other providers directly about materials, course schedules, fees, or matters related to satisfaction with their offerings.

Professional communities

When preparing for certification assessment, you are likely to come across issues that would benefit from discussion with other practitioners. If your local network does not provide you with the advice and expertise you need, there are dedicated online professional communities that you can turn to.

If you are a PHAP member, The **PHAP Member Exchange** community is focused on the exchange of targeted professional advice among peers, following best practice in professional community management to provide a practical and dynamic information resource relevant to the day-to-day needs of humanitarian practitioners.

For less actively managed groups, there are several options on Facebook and LinkedIn. Some organizations focusing on specific technical specializations also have their own dedicated online communities.



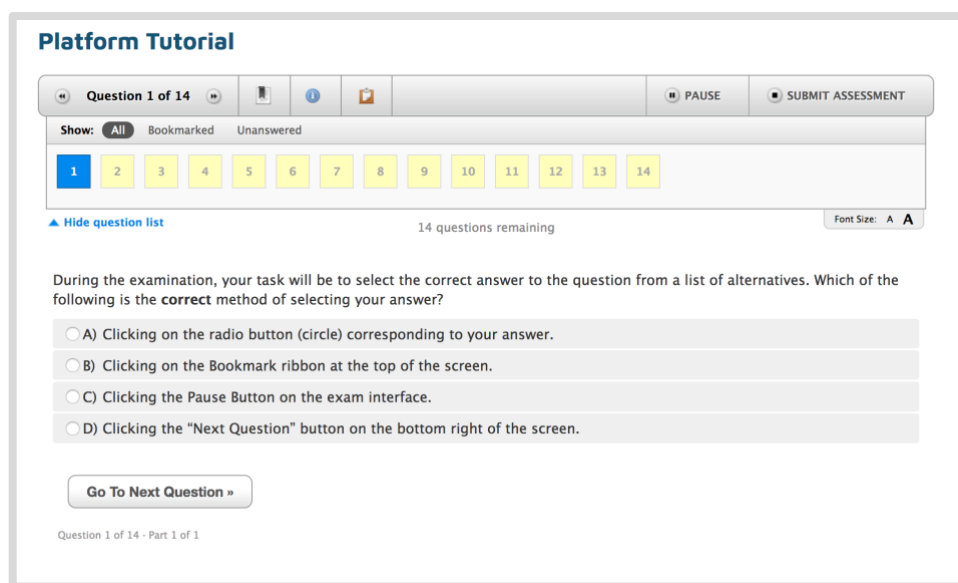
Understanding the certification and assessment process

PHAP Credentialing Program Candidate Handbook

If you think you are ready for the certification assessment, or would like to learn more about the specifics of the PHAP Credentialing Program certifications, PHAP provides a comprehensive Candidate Handbook, available at <https://phap.org/credentialing-program>

Tutorial assessment

In order for you to be able to acquaint yourself with the testing platform used for the certification assessments, PHAP offers a tutorial assessment that you are able to take for free. This is available at the PHAP Certification Assessment Center after you create an account. (Note that the previously mentioned Diagnostic Tests are not delivered through the PHAP Certification Assessment Center, but through a different platform.)



Consider how this applies to you...

Having had a quick overview of the available resources and tools, which are you planning to use, and at what stages of your preparations? (*Write down your response, to include in your study plan*)

Creating a Personalized Study Schedule

The decision to pursue a PHAP Credentialing Program certification is a major commitment, made more difficult by conflicting priorities for how to allocate your time. To give yourself the best chance for success, your personal study plan should take into account a number of factors, in particular:

- How much you already know and how much you need to learn (based on the self-assessment and Diagnostic Test)
- Your learning preferences
- Your work commitments and schedule
- Your personal and family commitments

- Any eventual work or personal travel

Considering all the relevant factors, decide on the amount of time you can dedicate to preparations – whether through self-study, in a course, or in a study group. Allow more time than you expect you will need. If your calendar currently is packed, allow for a longer time period to prepare with fewer hours per week. Make sure that you focus most of your efforts on the areas that you have identified in the self-assessment, in the Diagnostic Test, or both.

Establish good study habits based on knowledge of your own preferences and history. Identify how you study, how much time you need to read and go through study questions, etc., and then decide on which resources to focus on and how much time you will need to spend. Try to commit the same amount of time every week to make it habitual. Build review time into your study schedule.

Keep track of your progress in writing. Writing things down helps us keep commitments to ourselves. Exactly how you do it is up to you, but some form of planning and tracking system is strongly recommended. We provide you with a starting point in Exhibit 2 – use this as it is or modify it to suit your needs. We have allowed for 10 weeks of preparation in the template– you may need more, or less.

Exhibit 2: Certification Preparation Schedule Planner

Weeks left	Calendar dates	Domain and statements	Resources	Available study time	Date completed
10			Complete Self-Assessment Complete Diagnostic Test		
9					
8					
7					
6					
5					
4			Re-take Diagnostic Test to check on progress		
3					
2					
1			Re-read the Candidate Handbook Take the Tutorial Assessment		
0			Book and sit for your assessment		

Participating in a Study Group

Although it is possible to study on your own for the assessment, many find that a combination of individual and group study helps them prepare more effectively. Self-study is critical, but a study group can help keep you on track, give you insights into areas you might not fully understand, and potentially lighten your study load when it is possible to distribute responsibilities among group members.

What makes a study group successful? Organizing a group can be challenging, but very rewarding if done well. Consider some of these tips when joining or establishing your group.

- A study group is generally small, but if well-organized can also be beneficial with larger numbers.
- Make an initial study group plan so everyone knows what to expect. You may not want to go through the topics in numerical order. A starting point is provided in Exhibit 3.
- Seek diversity among the group members – you will learn the most from having different perspectives on the studies topics. Consider whether you need the face-to-face interaction of a local group or whether you can organize your group virtually.
- Assign specific detailed readings to each person and have them share a content summary and insights with the rest of the group as basis for discussion. Assign areas to group members where they are relatively weak.
- Make sure to include enough time to discuss the study questions and scenarios in the guide. Ask group members to think of further scenarios from their professional experience to discuss in the group.
- Build in regular recall into the group sessions. Prepare questions on what you discussed in the last session and quiz each other.

Exhibit 3: Certification Study Group Schedule Planner

Weeks left	Date	Domain and statements	Resources	Study leader	Notes
10					
9					
8					
7					
6					
5					
4					
3					
2					
1					
0			Book and sit for your assessment		

Approaches to the Domain Content

As you work your way through the Study Guide and the recommended material and other resources, consider the following tips:

- Start with examining each domain as a whole, looking at the overview of statements, and revisiting your self-assessment and Diagnostic Test results. Look at the recommended resources for the domain as a whole – are there any that would be relevant for you as a starting point?
- Next, focus on each domain in turn and consider each statement in that domain. Look through the key terms and concepts to re-evaluate where you may have gaps. Select resources to study accordingly. Keep in mind that the Study Guide is developed independently from the assessment – there is no guarantee that everything you need to know for the assessment is mentioned in the guide. Use your judgment – if something seems to be missing from the guide, consider finding additional resources on the topic.
- Don't use the study questions as the guide to what you should know, but rather as tools to help you practice recalling the knowledge you have already gained. Attempt the study and scenario questions after you have gone through your selected resources.
- For each resource, improve your comprehension by asking yourself first what you already know about the topic and what you want to find out. After finishing, ask yourself what you learned. Think actively about examples and real-world applications from your own experience. See if you can apply this learning to some aspect of your current work.
- Read purposefully. Ensure you fully understand the concepts being covered; memorizing is not sufficient for most content.
- Periodically quiz yourself on the content – return to the study questions of previous sections and use the Diagnostic Test again.

Resource categories

In the statement chapters, the resources are divided into three categories.

- **Recommended resources:** Resources that will help you gain a fundamental understanding of the key points and concepts.
- **Primary sources:** Relevant source texts for the key points and concepts.
- **Further exploration:** Additional recommended resources that will help you gain a deeper understanding of selected key points and concepts.

Symbols used for resources



Webpage



Report or other standalone document



Journal article or book chapter



News article



Brief focusing on statistics



Brief outline of main points



Video or other recording



Course



Book



Resource available on Kaya (kayaconnect.org)



Resource available on DisasterReady.org

Domain 1: What is International Law and Why is it Relevant to Humanitarian Action?

The key elements of how international law is created, whom it binds, and its relevance to humanitarian action; the relevance of both international law and domestic law for humanitarian action; and the further self-regulation of humanitarian actors by mandate or sectoral/ organizational policies.

This domain constitutes 23% of the certification assessment.

Domain Outline

Humanitarian practitioners must be able to:

- 1.1 Identify the key sources of international law and how it is formed.
- 1.2 Recognize that there are four main bodies of public international law that are relevant for international humanitarian action, as well as efforts to develop an additional body of international law specifically addressing responses to natural disasters.
- 1.3 Recognize the distinction between hard law and soft law.
- 1.4 Identify the ways in which international law binds States, intergovernmental organizations, non-State armed groups, and individuals.
- 1.5 Identify the ways in which international law binds or does not bind UN agencies, NGOs, and their staff.
- 1.6 Recognize the existence of key areas of domestic law that may be relevant to humanitarian actors in their work and that they normally continue to apply even in armed conflicts and natural disasters.
- 1.7 Distinguish between laws and policy or principles.

General recommended reading and resources

For lectures on public international law and its different bodies:



Lecture series on international law

United Nations Audiovisual Library of International Law

phap.org/ilfha-HBCT

For an introduction to international law and its different bodies and rules applicable to humanitarian action:



International Legal Frameworks for Humanitarian Action

Huma Haider (2013)

Topic Guide, GSDRC

phap.org/ilfha-HT86

For an introduction to international law and the specific branches applicable to humanitarian action:



International Humanitarian Norms & Principles, Guidance Materials

Inter-Agency Standing Committee (2010)

Workshop for Humanitarian Actors

phap.org/ilfha-C7GK

On the branches of international law governing humanitarian access in situations of armed conflict:



Humanitarian Access in Situations of Armed Conflict, Handbook on the International Normative Framework (version 2)

Swiss Confederation, Federal Department of Foreign Affairs (2014)

<https://phap.org/ilfha-EP26phap.org/ilfha-EP26>

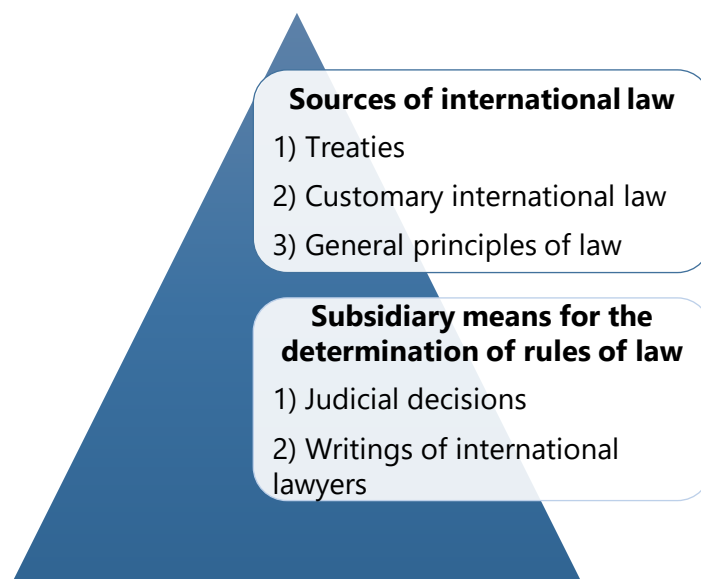
1.1 Sources of international law

Identify the key sources of international law and how it is formed.

Key Points and Concepts

Art 38, ICJ Statute The key sources of international law are listed in Article 38 of the Statute of the International Court of Justice, although the list is not exhaustive.

Three main sources There are three main sources of international law (treaty law, international customary law, and general principles of law) supplemented by subsidiary means for the determination of rules of law (judicial decisions and writings of international lawyers). See illustration below.



Treaties “Treaty law” refers to the hard-law rules set out in any type of agreement that meets the definition of a treaty under international law (whether they are called treaties, conventions, protocols, or any other name). They are binding on States and/or international organizations that have adhered to them (normally by signature and ratification or by accession). The Vienna Convention on the Law of Treaties specifies that a treaty needs to be in written form. In contrast, customary law provisions continue to apply regardless of whether they are codified or not.

Customary law Customary international law is a set of unwritten rules binding upon all States and which is formed by general practice and the belief that this practice is legally binding (*opinio juris*).

Jus cogens While there is no hierarchy between treaty law and customary international law, some customary rules are considered as *jus cogens* or

peremptory norms from which no derogation is ever permitted (e.g. prohibition of aggression, genocide, torture, or slavery).

General principles of law

General principles of law are principles common to all legal systems, including such principles as that of good faith, *pacta sunt servanda* (agreements must be respected), or *res judicata* (a matter judged on the merits cannot be re-litigated).

Judicial decisions

Judicial decisions of international and – to some extent – national courts as well as the writings of international lawyers are not a primary source of international law but can be used a subsidiary means to determine rules of international law.

Recommended resources

For a very short presentation of the sources of international law (see especially ‘Question 1: What are the sources of international law, p. 2):



Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the Context of Armed Conflicts

IASC Task Force on Humanitarian Action and Human Rights (2004)

Inter-Agency Standing Committee

phap.org/ilfha-HYKY

For an overview of the sources of international law (see pp. 9-12):



International Humanitarian Norms & Principles, Guidance Materials

Inter-Agency Standing Committee (2010)

Workshop for Humanitarian Actors

phap.org/ilfha-C7GK

For an overview of the sources of international law (see “Section 2.1 Classical sources of international law,” pp. 10-15):



Law of Treaties, Study Guide

Malgosia Fitzmaurice & Anneliese Quast (2007)

University of London, ‘

phap.org/ilfha-78WQ

For a more detailed account of the sources of international law:



Sources of International Law: An Introduction

Christopher Greenwood (2008)

UN Office of Legal Affairs

phap.org/ilfha-H47C

For a brief account of the different sources of international law, their relevance to humanitarian assistance and the importance of international law for humanitarian actors (see “Introduction to International Law,” pp. 12-14):



International Legal Frameworks for Humanitarian Action

Huma Haider (2013)

Topic Guide, GSDRC

phap.org/ilfha-HT86

On the sources of international law, especially treaty law and customary international law. See in particular sections

- “International Law” (introduction, first and second sections on “Sources” and “Hierarchy of Norms”)
- “International Conventions” (introduction, first, second and third sections on “Ratification,” “Legal Status of International Conventions,” and “Reciprocity”)
- “Customary International Law” (first and second sections on “Customary International Law” and “Customary Law is a Law of Action”):



The Practical Guide to Humanitarian Law

Médecins sans Frontières (undated)

phap.org/ilfha-B39W

For a lecture on public international law and its different sources:



What is General International Law?

Christian Tomuschat (undated)

Audiovisual Library of International Law Lecture Series, United Nations, video (35”)

phap.org/ilfha-7SWB

Primary sources

For the list of sources derived from the Statute of the International Court of Justice (see Art. 38):



Statute of the International Court of Justice

United Nations (1945)

phap.org/ilfha-BG39

Further exploration

For an introduction to international law and its development:



“International Law”

Rüdiger Wolfrum (2006)

Max Planck Encyclopedia of International Law

phap.org/ilfha-D58S

For a more in-depth lecture on the sources of international law:



Sources of International Law

Anthony D'Amato (undated)

Audiovisual Library of International Law Lecture Series, United Nations, video 'Part 1: General Sources' (28'') & 'Part 2: Customary International Law' (31'')

Part 1: phap.org/ilfha-QKHP Part 2: phap.org/ilfha-VKRY

For a lecture on customary international law:



International Law

Maurice Mendelson (undated)

Audiovisual Library of International Law Lecture Series, United Nations, video (90'')

phap.org/ilfha-KY4W

For a lecture on the jus cogens nature of certain rules of international law:



Jus Cogens in Contemporary International Law

Antonio Augusto Cançado Trindade (undated)

Audiovisual Library of International Law Lecture Series, United Nations, video (40'')

phap.org/ilfha-BRAS

Study questions

1. What are the key sources of international law?
2. How would you define treaty law?
3. How is customary international law formed?
4. What are *jus cogens*/peremptory norms?
5. How would you define general principles of law?
6. What is the role of judicial decisions and writings of international lawyers?

Scenario

On the basis of your experience, identify in your field of expertise the key binding rules governing humanitarian action and then classify them among the key sources of international law, that is, treaty law and customary international law.

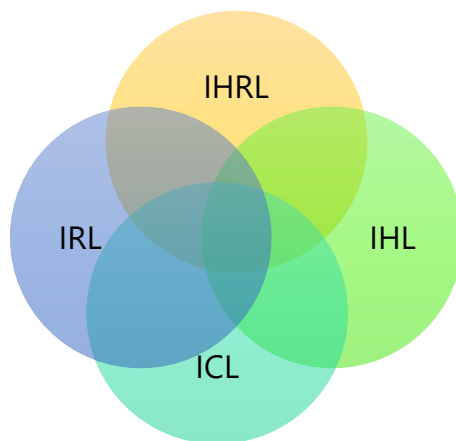
1.2 Relevant bodies of law

Recognize that there are four main bodies of public international law that are relevant for international humanitarian action, as well as efforts to develop an additional body of international law specifically addressing responses to natural disasters.

Key points and concepts

Four main bodies

Four main bodies of public international law are of complementary application in the framework of humanitarian action: international human rights law (IHRL), international humanitarian law (IHL), international refugee law (IRL), and international criminal law (ICL). (See illustration below).



Sources

These four main bodies of public international law are primarily based on treaty law and customary international law.

Applicability

IHRL, ICL and IRL are applicable in times of peace and armed conflict, while IHL is generally only applicable in international or non-international armed conflicts.

IHRL

IHRL protects the rights of all individuals under the jurisdiction of a State, be it in times of peace or armed conflict, although derogations are allowed to certain rights under strict conditions in case of war and emergency.

IHL

IHL applies only in times of international or non-international armed conflict as it aims to regulate the behaviour of belligerents and minimize the harmful effects of armed conflicts on civilians and combatants. Different rules are applicable depending on the type of armed conflict: international or non-international.

IRL

IRL protects refugees in host countries, that is, individuals outside their country of origin who have a well-founded fear of persecution for one or more particular discriminatory reason(s).

ICL ICL regulates individual criminal responsibility in case of international crimes, particularly genocide, crimes against humanity, war crimes, and aggression.

IDRL Although based on diverse sources and soft-law instruments, international disaster response law, rules, and principles are progressively emerging as a new body of public international law to regulate humanitarian assistance in case of disasters.

Recommended resources

On the legal frameworks relevant to humanitarian action in times of armed conflict and situations of violence (see pp. 59-61):



Professional Standards for Protection Work Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence

International Committee of the Red Cross (ICRC) (2013)

phap.org/ilfha-57ET

On the bodies of international law applicable in situations of armed conflict (see “Question 1: What is the international legal framework applicable in armed conflicts?” p. 1):



Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the Context of Armed Conflicts

IASC Task Force on Humanitarian Action and Human Rights (2004)

phap.org/ilfha-HYKY

On the applicability of IHRL and IHL during armed conflict (see pp. 15-17):



Manual on Human Rights Monitoring

United Nations Office of the High Commissioner for Human Rights (2011)

No. 7/rev. 1

phap.org/ilfha-8GVZ

On IHL and its relationship with IHRL and IRL:



Humanitarian Law, Human Rights Law and Refugee Law – Three Pillars

Emanuela-Chiara Gillard (2005)

Statement by ICRC Legal Adviser

phap.org/ilfha-ESWM

For a diagram of the law applicable in time of peace, non-international armed conflicts, and international armed conflicts (see table in Annex I, p. 58):



Humanitarian Access in Situations of Armed Conflict, Handbook on the International Normative Framework, version 2

Swiss Confederation, Federal Department of Foreign Affairs (2014)

phap.org/ilfha-EP26

On the interplay between different bodies of international law regulating humanitarian action and the emergence of IDRL (see especially

- “Introduction to International Law,” pp. 12-14
- “Overlapping Areas of Law – Toward a Comprehensive Legal Framework,” pp. 19-23
- “The Emergence of ‘International Disaster Response Laws, Rules and Principles’,” pp. 37-41):



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International Legal Frameworks for Humanitarian Action

Huma Haider (2013)

Topic Guide, GSDRC

phap.org/ilfha-HT86

Concerning IDRL (see pp. 90-93):



International Humanitarian Norms & Principles, Guidance Materials

Inter-Agency Standing Committee (2010)

Workshop for Humanitarian Actors

phap.org/ilfha-C7GK

Further exploration

For a free online course on the basics of IHL:



Basic Rules and Principles of IHL

International Committee of the Red Cross (ICRC) (undated)

Module 2: ‘IHL and Human Rights Law’

phap.org/ilfha-7TUM

On the differences between IHL and IHRL:



What Is the Difference between IHL and Human Rights Law?

International Committee of the Red Cross (ICRC) (2015)

phap.org/ilfha-WG8F

On the relationship between IHL and IHRL:



International Humanitarian Law and International Human Rights Law: Similarities and Differences

International Committee of the Red Cross (ICRC) (2003)

Advisory Service on International Humanitarian Law

phap.org/ilfha-DLYP

On the convergence and divergence between IHL and IHRL:



“The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?”

Alexander Orakhelashvili (2008)

European Journal of International Law, Vol. 19, No. 1, pp. 161-182

phap.org/ilfha-MFN3

For a more in-depth discussion on the differences between IHL and IHRL:



Understanding Core Differences between Human Rights and International Humanitarian Law in Armed Conflict

Dustin Lewis (2012)

Program on Humanitarian Policy and Conflict Research, Harvard T.H. Chan School of Public Health

phap.org/ilfha-FZKR

For an advanced reading on the relationship between IHL, IHRL, and IRL (see pp. 700-734):



“Armed Conflict and Forced Migration: A Systematic Approach to International Humanitarian Law, Refugee Law and Human Rights Law”

Vincent Chetail (2014)

In Andrew Clapham & Paola Gaeta (eds.), The Oxford Handbook of International Law in Armed Conflict, Oxford, Oxford University Press

phap.org/ilfha-8L54

For a focus on how IHRL and IHL respectively protect the right to life and the right to liberty:



“The Relationship between International Humanitarian Law and Human Rights Law Where It Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts”

M. Sassòli & L. Olson (2008)

International Review of the Red Cross, Vol. 90, No. 871, pp. 599-627

phap.org/ilfha-UJLE

Study questions

1. How would you describe the relationship between the four main bodies of public international law relevant for humanitarian action?

2. Which bodies of public international law are applicable in times of peace?
3. What are the main differences between international human rights law and international humanitarian law?
4. What is the objective of international refugee law?
5. How would you define international criminal law?
6. How would you describe the status of development of international disaster response law?

Scenario

The international NGO you are working for wants to launch a relief operation to the benefit of the civilian population of a country where two armed groups are violently confronting one another. However, the authorities of the country have refused to grant access to its territory for any humanitarian actors.

While you know that, under international law, States have to facilitate humanitarian assistance, you need first to determine the applicable international legal framework. Which bodies of international law would be applicable in this situation and, if IHL is applicable, which set of IHL rules would apply?

1.3 Hard and soft law

Recognize the distinction between hard law and soft law.

Key points and concepts

<i>Binding vs. non-binding</i>	The distinction between hard law and soft law was traditionally framed to distinguish between non-binding and binding law, such as the key sources of international law listed in Article 38 of the Statute of the International Court of Justice.
<i>Soft law</i>	While there exists no commonly agreed definition, the traditional conception of soft law refers to non-binding – aspirational – normative standards and/or political commitments enshrined in resolutions (such as those of the UN General Assembly or certain resolutions of the Security Council), declarations, decisions, guiding principles, or plans of action adopted at the multilateral level, including by international organizations.
<i>Soft law as a driver</i>	Soft law can be a driver of “hard law” as soft law standards can be later codified in international treaties or can be – or can become – reflective of new rules of customary international law or general principles of law.
<i>Distinction</i>	The binary distinction between hard law and soft law is increasingly questioned in certain areas and for certain purposes, as soft law norms can have a high authoritative value despite not being strictly legally binding. Soft law is also increasingly valued by certain actors, as it can be a quicker and more participatory means of norm formation, with the involvement of a broader range of stakeholders, including non-State actors.

Recommended resources

For an introductory lecture on hard law and soft law (see Module 4 on “Making International Law” (Part 2)):



International Law

Université catholique de Louvain

phap.org/ilfha-37ZT [see website for next start date]

For an overview of soft law (see pp. 15-17):



Law of Treaties, Study Guide

Malgosia Fitzmaurice & Anneliese Quast (2007)

University of London

phap.org/ilfha-78WQ

On the definition of soft law and an overview of soft law instruments:



“Soft Law”

Médecins sans frontières (undated)
The Practical Guide to Humanitarian Law
phap.org/ilfha-V9ND

For a more advanced discussion on the legal nature of soft law instruments:



Soft Law

Dinah L. Shelton (2008)
The George Washington University Law School, Public Law and Legal Theory Working Paper No. 322
phap.org/ilfha-98X6

Further exploration

For a more in-depth discussion on hard law and soft law:



“Hard and Soft Law in International Governance”

Kenneth W. Abbott & Duncan Snidal (2000)
International Organization, Vol. 54, No. 3, pp. 421-456
phap.org/ilfha-EU5J

Study questions

1. How would you define soft law?
2. What is the role of soft law for international law making?

Scenario

The NGO you are working for has consultative status with the UN Economic and Social Council (ECOSOC) and is accredited to participate in the sessions of the UN Human Rights Council as observer. During the last session, a resolution has been adopted on the protection of civilians in armed conflicts and other situations of violence, which provides that:

“The Human Rights Council, [...]

3. *Requests* States to protect civilians against forced displacement in accordance with their obligations under the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, the first and second Additional Protocols to the Geneva Convention relating to the Protection of Victims of International Armed Conflicts and Non-International Armed Conflict of 8 June 1977, customary international humanitarian law and Principle 6 of the 1998 Guiding Principles on Internal Displacement. [...]

In your opinion, should this resolution be considered as hard law or soft law? And are the instruments referred to in this extract hard law or soft law?

1.4 Law binding States, non-State actors, and individuals

Identify the ways in which international law binds States, intergovernmental organizations, non-State armed groups, and individuals.

Key points and concepts

<i>Subjects of international law</i>	The concept of “subjects of international law” possessing international legal personality has traditionally been used to determine which entities are bound by international law.
<i>States</i>	Recognized as the traditional and full subjects of international law, States are bound by the international treaties they have ratified by virtue of their consent to be bound and the principle of <i>pacta sunt servanda</i> (agreements must be respected) and they are bound by customary international law.
<i>Partial subjects</i>	Other entities have been progressively recognized as partial subjects of international law, to a greater or lesser extent, including intergovernmental organizations, non-State actors and individuals, but it is still controversial how they are bound by treaty law adopted by States and customary international law, which is formed on the basis of State practice.
<i>IGOs</i>	Intergovernmental organizations are bound by their constituent treaty (e.g. the UN Charter for the United Nations), by any international treaties they have ratified with States and/or other intergovernmental organizations, and by customary international law.
<i>NSAGs and IHL</i>	It is commonly recognized that non-State armed groups are bound by international humanitarian law although different rationales are used to justify the binding nature of the law.
<i>NSAGs and IHRL</i>	While it has been more controversial whether non-State armed groups are bound by international human rights law, it is increasingly recognized that they are bound to comply with international human rights law when they exercise control over part of a State’s territory and its population. It is also widely accepted that, in all circumstances, non-State armed groups are constrained by <i>jus cogens</i> norms (such as the prohibition of slavery, extrajudicial executions, and torture).
<i>Individuals as subjects</i>	In international law, individuals have traditionally been treated as objects of international law but they are now also recognized as subjects of international law: they may submit complaints when their rights are violated at the international level and they are also bound by some rules of international law as they incur individual criminal responsibility for international crimes under international criminal law.

Recommended resources

For an introduction to the subjects of international law (see Module 5 on “Applying International Law”, point 5.1)):



International Law

Université catholique de Louvain

phap.org/ilfha-37ZT [see website for next start date]

On the notion of international legal personality and the question of non-state actors as subjects of international law:



Human Rights Concepts, Ideas and Fora

Iceland Human Rights Centre (undated)

Iceland Human Rights Centre, ‘The Role of Non-State Entities’

“The Role of Non-State Entities” phap.org/ilfha-EE6R

“International Legal Personality” phap.org/ilfha-5DT6

For an overview of how IHL binds different actors (see questions 5, 6, and 7):



Customary International Humanitarian Law: Questions & Answers

International Committee of the Red Cross (ICRC) (2005)

phap.org/ilfha-E2CH

On the actors bound by the rules of IHRL and IHL (see pp. 21-27):



International Legal Protection of Human Rights in Armed Conflict

United Nations Office of the High Commissioner for Human Rights (OHCHR) (2011)

phap.org/ilfha-Z6JD

For an online lecture on the role of non-state actors in international law:



Rethinking the Role of Non-State Actors under International Law

Andrew Clapham (undated)

Audiovisual Library of International Law Lecture Series, United Nations, video (50”)

phap.org/ilfha-TEG3

Further exploration

Concerning the binding nature of IHL on armed groups (see pp. 1-12):



“Taking Armed Groups Seriously: Ways to Improve Their Compliance with International Humanitarian Law”

Marco Sassòli (2010)

Journal of International Humanitarian Legal Studies, Vol. 1, No. 1

phap.org/ilfha-LMUZ

For a discussion on how and why international organizations are bound by international law:



“How and Why International Law Binds International Organizations”

Kristina Daugirdas (2016)

Harvard International Law Journal, Vol. 57, No. 2, pp. 325-381

phap.org/ilfha-AZF8

Study questions

1. Which concept of international law is traditionally used to determine which entities are bound by international law and to what extent?
2. What are the main ways in which States are bound by international law?
3. Which entities today can be considered as partial subjects of international law?
4. Why is it controversial how partial subjects of international law are bound by international law?
5. What is the main factor indicating that individuals are bound by international law?

Scenario

There is a non-international armed conflict in State X between the government and an organized non-State armed group which has, over the last year, succeeded in taking control of the eastern part of the State's territory. The hostilities have recently escalated and both the governmental armed forces and the armed group have directly targeted civilians and hospitals in the territory under the control of the other party.

You know that direct attacks against civilians not directly participating in hostilities and against hospitals are contrary to international humanitarian law by virtue of the second Additional Protocol to the 1949 Geneva Conventions relating to the Protection of Civilians in Non-International Armed Conflict and customary international humanitarian law. You are also aware that such violations constitute war crimes under the Statute of the International Criminal Court (ICC). The State is a party to the Rome Statute. Your organization would like to put pressure on both parties to the conflict for them to comply with their obligations. However, it has first to make sure that both the State and the armed group, including its individual members, are bound by these obligations and, if so, in which manner. What would be your response on these issues?

1.5 Law binding UN agencies, NGOs, and their staff

Identify the ways in which international law binds or does not bind UN agencies, NGOs, and their staff.

Key points and concepts

<i>UN agencies</i>	As the UN is an intergovernmental organization being a partial subject of international law, UN agencies and bodies are bound by international law by virtue of treaty law adopted by the organization and customary international law.
<i>NGOs</i>	Given the increasing role played by NGOs on the international scene, NGOs are progressively being recognized as partial subjects of international law. It is clear today that NGOs and their staff possess rights under international law but the extent and manner to which they are bound by international law is controversial.
<i>NGO staff</i>	Under international law, NGO staff are individuals who are not only objects but also partial subjects of international law with the right to complaint for the violation of their rights at the international level and the possibility to incur individual criminal responsibility for international crimes under international criminal law.

Recommended resources

For an overview of actors bound by international law beyond States (see pp. 13-14):



International Humanitarian Norms & Principles, Guidance Materials

Inter-Agency Standing Committee (2010)

Workshop for Humanitarian Actors

phap.org/ilfha-C7GK

Concerning how UN actors are bound by IHL (see paras. 1-28):



“United Nations and International Humanitarian Law”

Marten Zwanenburg (2015)

Max Planck Encyclopedia of Public International Law

phap.org/ilfha-VHQK

Concerning the application of IHL for UN actors:



“Perspective on the Applicability and Application of International Humanitarian Law: The UN Context”

Katarina Grenfell (2013)

International Review of the Red Cross, Vol. 95, Nos. 891/892, pp. 645-652

phap.org/ilfha-WBQH

On whether and how non-governmental organizations are bound by international law:



“Nongovernmental Organizations”

Médecins sans frontières (undated)

The Practical Guide to Humanitarian Law

phap.org/ilfha-ZYCM

Further exploration

On how multinational forces are bound by IHL:



“The Applicability and Application of International Humanitarian Law to Multinational Forces”

Tristan Ferraro (2013)

International Review of the Red Cross, Vol. 95, Nos. 891/892, pp. 561-612

phap.org/ilfha-6AMX

Study questions

1. How would you explain that UN agencies are bound by international law?
2. How would you define the legal personality of NGOs under international law?
3. What is the position of NGO staff under international law?

Scenario

You are working for an international NGO in an African country where you deliver basic humanitarian items to the population in the western part of the State, which has been isolated from the rest of the country because of sectarian violence. A young girl of 15 years comes to you and asks for your help claiming that she has been sexually abused by soldiers from the UN peacekeeping operation mandated to restore peace and security in the area.

While you know that rape and sexual violence are prohibited under the major international human rights treaties and customary international law, do you think that the UN peacekeeping operation and/or its staff is/are bound by these obligations and, if so, in which ways?

1.6 Domestic law

Recognize the existence of key areas of domestic law that may be relevant to humanitarian actors in their work and that they normally continue to apply even in armed conflicts and natural disasters.

Key points and concepts

<i>Overall relevance</i>	Domestic law is relevant to humanitarian action because, in their work, humanitarian actors are subject to and protected by the law of the State in which they operate and which regulates aspects relevant to humanitarian action not covered in international law.
<i>Organizational status</i>	While humanitarian actors are subject to the domestic law of the State in which they operate, some of their rights and obligations depend on the legal status of each organization: intergovernmental organizations benefit from some privileges and immunities by virtue of their international personality; NGOs can acquire domestic legal personality through national registration with the concomitant right to enter into contracts and the possibility in certain countries to acquire some benefits such as tax-exemption.
<i>Immigration law</i>	In each State, immigration law sets out the conditions to obtain, renew and terminate visas of foreigners to enter and work in the country and may place restrictions on their freedom of movement within the territory and conditions on the exercise of some qualified professions, especially in the medical sector.
<i>Customs and tax law</i>	While a number of international instruments strive for the facilitation of customs clearance in case of relief assistance, the importation and the purchase of goods within a State remains primarily regulated by each State's customs and tax law.
<i>Labor law</i>	Employment of local/national staff by international humanitarian actors is governed by the labor law of the territorial State.
<i>Criminal and counter-terrorism law</i>	Criminal and counter-terrorism law have had an increasing impact on humanitarian action by criminalizing the transfer and provision of financial and/or material support to certain groups or individuals.

Recommended resources

Concerning domestic law relevant to humanitarian action (see pp. 355-365):



“Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis”

David Fisher (2007)

International Review of the Red Cross, Vol. 89, No. 866, pp. 345-372

phap.org/ilfha-PGYD

On domestic registration of disaster relief organizations under national law:



Domestic Registration of International Disaster Relief Organizations

International Federation of Red Cross and Red Crescent Societies (2006)

Background Information Sheet

phap.org/ilfha-RFY5

On domestic law governing the importation of goods and equipment, the entry of personnel and their respective transport and movement within States (see pp. 8-15):



The Impact of Regulatory Problems and the Gains from Legal Preparedness in Recent Response Operations

HERE-Geneva (2015)

Expert Meeting, Commissioned by the International Federation of Red Cross and Red Crescent Societies

phap.org/ilfha-GD8K

For various documents relating to customs rules of diverse countries governing relief consignments:



Natural Disaster Relief

World Customs Organization (undated)

phap.org/ilfha-M89T

On domestic law relating to counter-terrorism and its impact on humanitarian action:



Counter-Terrorism and Humanitarian Action

Kate Mackintosh & Ingrid Macdonald (2013)

Humanitarian Practice Network

phap.org/ilfha-LN7K

Primary sources

Recommendation of the World Customs Organization concerning disaster consignments:



Recommendation of the Customs Co-Operation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters

World Customs Organization (1970)

phap.org/ilfha-SUKK

Further exploration

On the interaction between anti-terrorist legislation and humanitarian action:



Humanitarian Action under Scrutiny: Criminalizing Humanitarian Engagement

Harvard University, Program on Humanitarian Policy and Conflict Research (2011)

HPCR Working Paper

phap.org/ilfha-EBU7

For a discussion on how anti-terrorism legislation impacts on humanitarian action:



Criminalising the Enemy and its Impact on Humanitarian Action

Fabrice Weissman (2011)

The Journal of Humanitarian Assistance

phap.org/ilfha-SJWP

For a more in-depth analysis of the impact of counter-terrorism legislation on humanitarian action:



Counter-Terrorism and Humanitarian Action: Tensions, Impact and Ways Forward

Sara Pantuliano, Kate Mackintosh & Samir Elhawary (2011)

Humanitarian Policy Group, Policy Brief 43

phap.org/ilfha-7DVC

Study questions

1. Why is domestic law relevant for humanitarian action in addition to international law?
2. What are the legal consequences of the international/national legal personality of an organization?
3. Which areas of domestic law are usually seen as important for humanitarian action?
4. How do counter-terrorism laws impact on humanitarian action?

Scenario

The NGO you are working for sends medical equipment and personnel to assist victims of natural disasters all over the world. It is preparing an important mission in a State where a powerful earthquake has very recently devastated the southern part of the country. While your NGO has received the State's approval to deliver humanitarian assistance, you now have to plan the more technical and operational aspects of the mission.

Based on your experience in humanitarian action, identify which issues might arise for carrying out this mission in the given country and then determine to which areas of domestic law they relate.

1.7 Law, policy, and principles

Distinguish between laws and policy or principles.

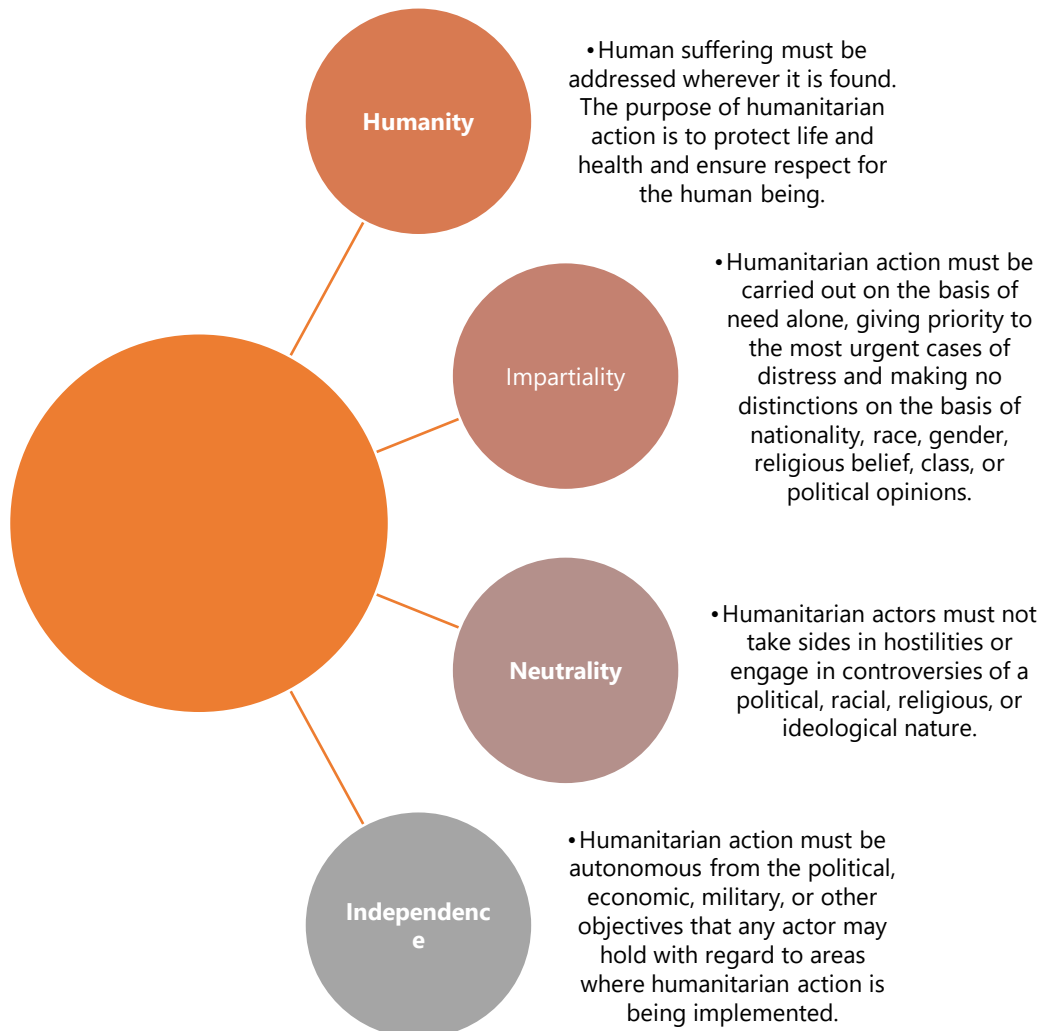
Key points and concepts

Self-regulation through policy

In parallel to the international and domestic frameworks relevant to humanitarian action, policy and principles may self-regulate the work of humanitarian actors. The work of humanitarian actors may be regulated by their mandate or sectoral/organizational policies, which determine the objectives of the organization, its specialist field, and target group.

Humanitarian principles

The work of humanitarian actors is guided by the humanitarian principles of humanity, impartiality, neutrality, and independence. See illustration below.



Recommended resources

For an overview of humanitarian principles (see pp. 15-17):



International Humanitarian Norms & Principles, Guidance Materials

Inter-Agency Standing Committee (2010)

Workshop for Humanitarian Actors, part 3.1: 'Humanitarian Principles'

phap.org/ilfha-C7GK

For a more detailed presentation of the humanitarian principles (see pp. 22-29):



Professional Standards for Protection Work Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence

International Committee of the Red Cross (ICRC) (2013)

phap.org/ilfha-57ET

For a discussion on the applicability of humanitarian principles by multi-mandate organizations in armed conflicts (see pp. 5-6):



Principles Humanitarian Action & Ethical Tensions in Multi-Mandate Organizations in Armed Conflict

Hugo Slim & Miriam Bradley (2013)

World Vision

phap.org/ilfha-SQGQ

Primary sources

For UN guiding principles on humanitarian action (see Annex, paras. 1 and 2):



Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations

UN General Assembly (1991)

UN Doc A/RES/46/182

phap.org/ilfha-48HX

For a reaffirmation of the centrality of humanitarian principles and the addition of the principle of independence (see para. 5 of the Preamble):



Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations

UN General Assembly (2004)

UN Doc A/RES/58/114

phap.org/ilfha-33W6

Further exploration

For an online course on humanitarian action, including on the humanitarian principles:



Humanitarian Response to Conflict and Disaster

Harvard University (Harvard Humanitarian Initiative and HarvardX)

phap.org/ilfha-QY6D

On the application of the humanitarian principles by humanitarian actors in war zones:



“Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity”

Hugo Slim (1997)

Development in Practice, Vol. 7, No. 4, pp. 342-352

phap.org/ilfha-PCYD

Concerning organizational mandates of NGOs:



The Role of ‘Mandates’ in Humanitarian Priority Settings for International Non-Governmental Organisations in Situations of Armed Conflict

Karin Wendt & Heleen Hiemstra (2016)

HERE-Geneva

phap.org/ilfha-U9V8

Study questions

1. How may humanitarian actors be self-regulated in their work?
2. What is meant by an organization’s “mandate”?
3. What is the role of the humanitarian principles for the work of humanitarian actors?

Scenario

Given your solid expertise and experience in humanitarian action, you decide to create your own humanitarian NGO. For that purpose, you have to elaborate its mandate, which will describe and define its every-day work and relief operations abroad.

What type of information would you include in the mandate of your NGO and how would you translate the humanitarian principles into concrete and practical rules to guide its work?

Domain 2: International Human Rights Law

The fundamental principles of international human rights law (IHRL), how it binds States, how it creates rights claims for individuals, and how it is relevant to humanitarian action in situations of armed conflict or disaster.

This domain constitutes 13% of the certification assessment.

Domain outline

Humanitarian practitioners must be able to:

- 2.1 Identify the main international and regional treaties and other sources of IHRL
- 2.2 Identify the key aspects of IHRL applicability in crisis situations.
- 2.3 Identify key provisions of IHRL relating to the right to life, freedom from torture and other inhumane and degrading treatment or punishment, arbitrary detention, and freedom of movement, as well as State obligations to investigate and hold violators accountable.
- 2.4 Identify key provisions of IHRL related to economic, social, and cultural rights that obligate States to provide or secure access to goods and services.

General recommended reading and resources

For an introductory lecture on IHRL:



Lecture Series on Human Rights

United Nations Audiovisual Library of International Law

phap.org/ilfha-HBCT

On IHRL rules relevant to humanitarian action:



Humanitarian Access in Situations of Armed Conflict

Swiss Confederation, Federal Department of Foreign Affairs (2014)

Handbook on the International Normative Framework, version 2, Section 4, pp. 37-48

phap.org/ilfha-EP26

2.1 Sources of IHRL

Identify the main international and regional treaties and other sources of IHRL.

Key points and concepts

Universal Declaration of Human Rights Although not a legally binding treaty, the 1948 Universal Declaration of Human Rights was the first instrument adopted at the international level laying down fundamental human rights to be universally protected.

ICCPR and ICESCR The 1948 Universal Declaration of Human Rights was complemented in 1966 by two major human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which all together form the so-called International Bill of Human Rights.

Core IHRL treaties At the international level, there are today 9 core international human rights treaties each monitored by a committee of experts and sometimes supplemented by optional protocols, the most notable included below.

	Name of Treaty	Name of Treaty Body
1	1965 International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination
2	1966 International Covenant on Civil and Political Rights and its 1989 Second Optional Protocol aiming at the abolition of the death penalty	Human Rights Committee
3	1966 International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights
4	1979 Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women
5	1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its 2002 Optional Protocol (establishing the Sub-CAT)	Committee against Torture & Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

6	1989 Convention on the Rights of the Child and its 2000 Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography	Committee on the Rights of the Child
7	1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
8	2006 International Convention for the Protection of All Persons from Enforced Disappearance	Committee on Enforced Disappearances
9	2006 Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities

General Comments/General Recommendations

Each committee has clarified the scope of the rights embodied in their instrument most notably through the adoption of general comments or general recommendations which are not legally binding but have normative value.

Regional Treaties

International human rights treaties are complemented by regional human rights treaties which have been adopted by different regional organizations, the most notable included below.

African Union	1981 African Charter on Human and Peoples' Rights
Arab League	2004 Arab Charter on Human Rights
Council of Europe	1950 European Convention on Human Rights
European Union	2000 Charter of Fundamental Rights
Organization of American States	1969 American Convention on Human Rights
Organization of the Islamic Conference	2005 Covenant on the Rights of the Child in Islam

Customary Law

In addition to international and/or regional treaties they have ratified, States are bound by customary rules of IHRL. For instance, the 1948 Universal Declaration of Human Rights is often described as part of customary international law.

Soft Law

Soft law instruments also play an important role in IHRL, be they in the form of declarations or basic/guiding principles for instance.

Recommended resources

For an account of the drafting of the Universal Declaration and its impact, especially as evidence of customary international law:



“Universal Declaration of Human Rights”

Hilary Charlesworth (2008)

Max Planck Encyclopedia of Public International Law

phap.org/ilfha-W2WG

Of particular interest for sections on “Global Human Rights Instruments” and “Regional Human Rights Instruments”:



Human Rights Instruments

Iceland Human Rights Centre

Human Rights Education Project

phap.org/ilfha-FXUK

Concerning the Universal Declaration, the core international human rights treaties (see pp. 20-24) and regional human rights treaties (see p. 27):



International Humanitarian Norms & Principles, Guidance Materials

Inter-Agency Standing Committee (2010)

Workshop for Humanitarian Actors

phap.org/ilfha-C7GK

For a presentation of hard law and soft law instruments in IHRL (see pp. 11-18):



Human Rights Standards: Learning from Experience

International Council on Human Rights Policy (2006)

Published with the International Commission of Jurists & International Service for Human Rights

phap.org/ilfha-JWAC

On the sources of IHRL (see pp. 8-12):



International Legal Protection of Human Rights in Armed Conflict

OHCHR (2011)

Geneva and New York, OHCHR

phap.org/ilfha-Z6JD

On the scope and content of major African, American and European human rights treaties (see pp. 71-111):



Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Chapter 3 “The Major Regional Human Rights Instruments and the Mechanisms for their Implementation

OHCHR (2003)

Professional Training Series No. 9

phap.org/ilfha-9NN2

Primary sources

European Convention on Human Rights



European Convention for the Protection of Human Rights and Fundamental Freedoms

Council of Europe (1950)

As amended by Protocols Nos. 11 and 14, 4 November 1950

phap.org/ilfha-Q462

Charter of Fundamental Rights of the European Union



Charter of Fundamental Rights of the European Union

European Union (2000)

OJ C 326/391

phap.org/ilfha-46MF

Arab Charter on Human Rights



Arab Charter on Human Rights

League of Arab States (22 May 2004)

phap.org/ilfha-3HLB

For a list of major universal instruments in IHRL (including soft-law) categorized by thematic areas:



Universal Human Rights Instruments

OHCHR (undated)

phap.org/ilfha-AHXR

For the 9 core UN human rights treaties:



The Core International Human Rights Instruments and Their Monitoring Bodies

OHCHR (undated)

phap.org/ilfha-6457

African Charter on Human and People's Rights



African Charter on Human and Peoples' Rights ('Banjul Charter')

Organization of African Unity (27 June 1981)

CAB/LEG/67/3 rev. 5

phap.org/ilfha-MTTC

American Convention on Human Rights



American Convention on Human Rights

Organization of American States (22 November 1969)

phap.org/ilfha-HUQL

The Universal Declaration of Human Rights



The Universal Declaration of Human Rights 1948

United Nations (1948)

Adopted by UN General Assembly resolution 217 A (III) of 10 December 1948

phap.org/ilfha-9ZQT

Further exploration

For a brief historical overview of IHRL through charter-based and treaty-based systems, with a focus on civil and political rights:



A Brief History of International Human Rights Law

Buergenthal, T.

Audiovisual Library of International Law Lecture Series, United Nations, video (33")

phap.org/ilfha-HBCT

For a critical discussion on the sources of IHRL and their formation, especially customary law:



“Human Rights as Part of Customary International Law: A Plea for Change of Paradigms”

D'Amato, A (1996)

Georgia Journal of International & Comparative Law, Vol. 25, pp. 47-98

phap.org/ilfha-BRKS

Reference work on customary law as a source of IHRL:



Human Rights and Humanitarian Norms as Customary Law

Meron, T. (1991)

Clarendon, Part II: 'Human Rights Instruments and Customary Law'

[Not freely available online]

For a free online course focusing on the situation in Europe:



Human Rights in Europe

Human Rights Education Associates

phap.org/ilfha-E6C5

For another online course on the EU's work on human rights:



The EU and Human Rights

KU Leuven at edX

phap.org/ilfha-YR78

Study questions

1. What are the main sources of IHRL?
2. What is the legal status of the 1948 Universal Declaration of Human Rights?
3. What is the normative value of general comments adopted by the committees of the 9 core international human rights treaties?
4. What are the major regional human rights treaties?
5. Which illustrations of soft law instruments in the field of IHRL can you think of?

Scenario

You are working for an international organization specialized in food relief in countries plagued by armed conflicts and disasters. You are preparing a new relief operation in a country which has recently experienced a severe drought and you need for this purpose to clarify the IHRL framework applicable in this country. You know that the country has ratified the ICCPR and the African Charter on Human and Peoples' Rights.

In your opinion, which are the sources of IHRL, instruments, rules, and standards potentially binding on and/or applicable to this country?

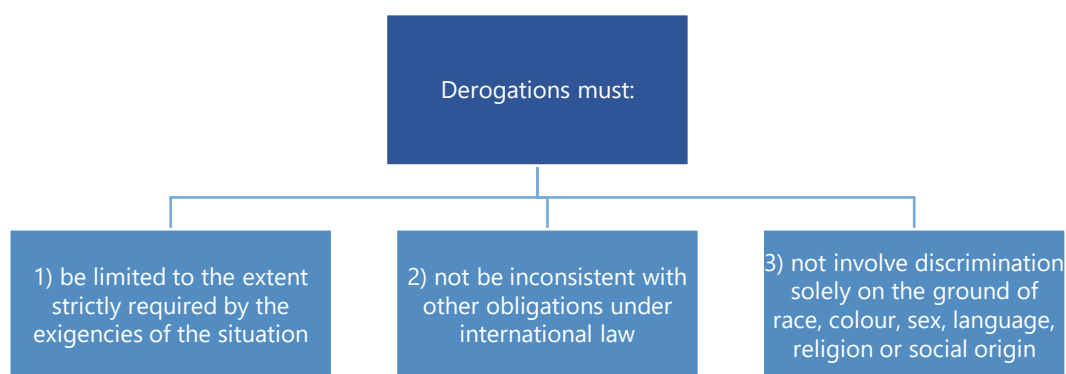
2.2 IHRL applicability in crisis situations

Identify the key aspects of IHRL applicability in crisis situations.

Key points and concepts

Overall applicability IHRL applies both in times of peace and emergency, including in armed conflict and other crisis situations, and sets out both negative and positive obligations for States to respect and ensure respect of human rights.

Derogations In some human rights treaties such as the ICCPR (Article 4(1)), States have the possibility to temporarily derogate from some rights in situations of public emergency threatening the life of the nation, including in times of armed conflict, provided that such derogations fulfill the following three cumulative conditions. (See flow chart below).



Non-derogable rights Even when a human rights treaty provides for the possibility of derogation, derogations from some specific human rights are prohibited, the so-called “non-derogable rights” listed in each relevant treaty. (See table below).

List of non-derogable rights in Article 4(2) ICCPR	
Right to life	Article 6
Prohibition of torture or cruel, inhuman or degrading treatment or punishment, including of medical or scientific experimentation without consent	Article 7
Prohibition of slavery, slave trade and servitude	Article 8(1) and (2)
Prohibition of imprisonment for inability to fulfil a contractual obligation	Article 11

Prohibition to be held guilty of a criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed (principle of legality in criminal law)	Article 15
Recognition everywhere as a person before the law	Article 16
Right to freedom of thought, conscience and religion	Article 18

Minimum essential levels of rights

As the ICESCR does not contain a derogation clause, States are bound at all times by its core obligations to ensure the satisfaction of minimum essential levels of rights.

Limitations/restrictions

In parallel to derogations, limitations/restrictions to certain rights can be made under human rights treaties subject to the conditions laid down in these treaties. Most notably, these conditions require the limitation/restriction to be necessary and proportionate to a legitimate objective such as in the interests of national security, public order/safety, or for the protection of the rights of others.

Recommended resources

On the different conditions to lawfully limit/restrict the right to freedom of opinion and expression in light of the jurisprudence of regional courts and views of UN committees:



Permissible Limitations

Iceland Human Rights Centre
Human Rights Education Project
phap.org/ilfha-SERA

On non-derogable rights in the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights:



Core Human Rights in the Two Covenants

OHCHR (2013)
phap.org/ilfha-BCMD

On the conditions for derogations in international and regional human rights treaties and non-derogable rights (see pp. 814-816, 821-856 and 877-883):



“Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers”

OHCHR (2003)
Professional Training Series No. 9, Chapter 16
phap.org/ilfha-7Y8Q

Primary sources

On the conditions for derogating from some rights under Article 4 of the International Covenant on Civil and Political Rights:



General Comment No. 29: States of Emergency (Article 4)

UN Human Rights Committee (2001)

UN Doc. CCPR/C/21/Rev.1/Add.11

phap.org/ilfha-KUTX

Concerning States parties' core obligation to ensure the satisfaction of minimum essential levels of rights:



General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)

UN Committee on Economic, Social and Cultural Rights (1990)

UN Doc. E/1991/23, para. 10

phap.org/ilfha-YZF9

Further exploration

For an in-depth discussion on derogations in human rights treaties in the more specific context of natural or man-made disasters (see pp. 323-352):



“Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters”

Emanuele Sommario (2012)

In Andrea de Guttry, Marco Gestri & Gabriella Venturini (eds.), International Disaster Response Law, Springer

[Not freely accessible online]

In-depth analysis of the different conditions for derogating from rights in the European Convention on Human Rights in light of States' practice:



“Derogation of Human Rights in Situations of Public Emergency: The Experience of the European Convention on Human Rights”

Christoph Schreuer (1982)

Yale Journal of International Law, Vol. 9, No. 1, pp. 113-132

phap.org/ilfha-WR6T

Study questions

1. How does IHRL apply in public emergencies?
2. What are the main conditions to lawfully derogate from human rights?

3. How would you define non-derogable rights?
4. Can States derogate from the rights enshrined in the ICESCR in times of emergency?
5. What are the main conditions to lawfully limit some human rights?

Scenario

You are working for an NGO mandated to visit places of detention in various countries in order to ensure that detainees are treated humanely, in full respect of their dignity. You have been working in the country of Armada for the past four months, where there have recently been demonstrations against the ruling government in the larger cities. The authorities have thus decided to prohibit any demonstration against the government by limiting the right to peaceful assembly in the country under Article 21 ICCPR. All individuals caught participating in public demonstrations are directly imprisoned and subjected to tough interrogations involving beatings and waterboarding in order to obtain information on other “political opponents.” Before starting these activities, the authorities claimed to have derogated from the prohibition of torture or cruel or inhuman or degrading treatment or punishment under Article 7 ICCPR.

In your opinion, are the limitations to the right to peaceful assembly and the derogation from the freedom from torture and other inhumane or degrading treatment or punishment lawful under the ICCPR?

2.3 Key provisions on civil and political rights

Identify key provisions of IHRL relating to the right to life, freedom from torture and other inhumane and degrading treatment or punishment, arbitrary detention, and freedom of movement, as well as State obligations to investigate and hold violators accountable.

Key points and concepts

	<p>As a non-derogable right enshrined in Article 6 ICCPR, the right to life has to be respected and protected in times of peace and emergency, including during disasters or in armed conflicts where IHL also applies.</p>
<i>Right to life</i>	<p>The right to life entails a positive duty on the State to ensure that the population benefits from the necessary goods and services for its survival and, if unable to do so, to allow access to humanitarian relief. Conversely, the international community has a right to offer humanitarian assistance.</p>
	<p>Freedom from torture and other inhuman treatment or punishment is a non-derogable right enshrined, for instance, in Article 7 ICCPR and in the 1984 Convention against Torture, which aims to protect the dignity and the physical and mental integrity of individuals.</p>
<i>Freedom from torture and other inhuman treatment or punishment</i>	<p>Torture is defined in the 1984 Convention against Torture as a particularly severe intentional treatment inflicted for a particular reason, while the distinction with other inhuman treatment or punishment depends on the intensity of the suffering and its consequences for the victim (See illustration below).</p> <p>A State's denial of basic necessities to its population and/or of access to humanitarian relief may reach the minimum severity threshold to be considered as an inhumane or degrading treatment or punishment.</p>
	<p>Whether undertaken for security reasons in times of crisis (such as armed conflict) or on other grounds, the prohibition of arbitrary detention most notably enshrined in Article 9 ICCPR entails that for any deprivation of liberty:</p>
<i>Arbitrary detention</i>	<ul style="list-style-type: none">❖ it has to be based on the law;❖ it must not be inflicted on a basis of discrimination;❖ it has to be undertaken for a legitimate reason;❖ the individual has to be informed promptly on the reasons of his/her detention;❖ it has to be subject to judicial review of the lawfulness of detention; and detention must cease where the reasons for detention are no longer justified.

IHRL, such as Article 12 ICCPR, provides for everyone lawfully in the territory of a State the right to liberty of movement within that territory.

Obligation to investigate and hold violators accountable

In times of crisis, restrictions on freedom of movement may impair access of humanitarian actors to populations in need, but any restriction must be in accordance with the conditions for lawful limitations set out in IHRL.

States' positive obligations entail the obligation to investigate any alleged violation of human rights by State or non-State actors and to hold violators accountable.

Recommended resources

On the prohibition of indefinite/arbitrary detention in IHRL (see pp. 16-20 on IHRL and pp. 22-23 on regional human rights law):



“Human Rights and Indefinite Detention”

Alfred De Zayas (2005)

International Review of the Red Cross, Vol. 87, No. 857

phap.org/ilfha-LA8S

On the relevance of the right to life (see pp. 517-518) to allow access to populations in need and to offer humanitarian assistance (see pp. 533-534):



“Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps”

Ruth Abril Stoffels (2004)

International Review of the Red Cross, Vol. 86, No. 855

phap.org/ilfha-MWPZ

On the application of the right to life (see pp. 42-43) and the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment in times of peace and armed conflicts (see pp. 43-44):



Humanitarian Access in Situations of Armed Conflict, Handbook on the International Normative Framework, version 2

Swiss Confederation, Federal Department of Foreign Affairs (2014)

phap.org/ilfha-4TQ2

Primary sources

See especially Article 6 on the right to life and Article 7 on freedom from torture or cruel, inhuman or degrading treatment or punishment, Article 9 on the right to liberty and security of person and Article 12 on the right to freedom of movement:



International Covenant on Civil and Political Rights

UN General Assembly (16 December 1966)

phap.org/ilfha-U5QB

See especially Article 1 for the definition of torture, Article 2 for the scope of obligations and Article 16 on cruel, inhuman or degrading treatment or punishment:



Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UN General Assembly (10 December 1984)

phap.org/ilfha-VPCT

For the main standards applicable in deprivation of liberty, including Principle 29 on visits of places of detention by qualified, experienced, and independent persons:



Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

UN General Assembly (1988)

UN General Assembly Resolution 43/173

phap.org/ilfha-UE8H

On the positive obligations under Article 2 ICCPR, including that of investigation, effective remedies, and prosecution of violators (see paragraphs 6-8 and 15-19):



General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant

UN Human Rights Committee (2004)

UN Doc. CCPR/C/21/Rev.1/Add.13

phap.org/ilfha-6AQT

See more specifically paras. 4-6 on freedom of movement and paras. 11-18 for the conditions to limit such freedom:



General Comment No. 27: Freedom of Movement (Article 12)

UN Human Rights Committee (1999)

UN Doc. CCPR/C/21/Rev.1/Add.9

phap.org/ilfha-9LTB

On Article 7 ICCPR (see paras. 2 and 4):



General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)

UN Human Rights Committee (1992)

phap.org/ilfha-L3YT

Concerning the conditions for deprivation of liberty not to be arbitrary, including for public reasons:



General Comment No. 8: Article 9 (Right to Liberty and Security of Persons)

UN Human Rights Committee (1982)

phap.org/ilfha-CKBP

Further exploration

On detention specifically in non-international armed conflict:



The Legal Dilemma of Detention in Non-International Armed Conflict

PHAP (15 November 2016)

Series on Humanitarian Law and Policy

phap.org/ilfha-NZ7V

In-depth discussion on the applicability of IHRL and IHL to regulate detention in non-international armed conflicts (see pp. 616-627):



“The Relationship between International Humanitarian Law and Human Rights Law Where It Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts”

Marco Sassòli & Laura M. Olson (2008)

International Review of the Red Cross, Vol. 90, No. 871

phap.org/ilfha-UJLE

Study questions

1. How would you describe the relevance of the right to life for humanitarian action?
2. What is the relevance of the prohibition of torture or other inhumane or degrading treatment or punishment in the context of humanitarian action?
3. How would you distinguish between torture and other inhuman treatment or punishment?
4. What are the main conditions for deprivation of liberty to be lawful?

5. What is the significance of the right to freedom of movement for humanitarian actors and how can it be lawfully limited?

6. What is the legal basis of States' obligation to investigate any alleged violation of human rights and hold violators accountable?

Scenario

The State of Utopia has been fighting against an organized non-State armed group for the last year, which has increasingly attracted support among the population. In order to curtail such support, Utopia started five months ago to prohibit relief agencies lawfully working in the country to access the population in certain parts of the State's territory where the support of the armed group is the strongest. While inhabitants of these areas were already suffering from food shortages because of the conflict, they now have even less access to assistance. Malnutrition has become widespread and children and elderly persons have been the worst-affected victims with significantly increased mortality rates.

Beyond any potential violations of IHL, which violations of IHRL have been – in your opinion – allegedly committed by the State in this case? Note that Utopia is party to the ICCPR.

2.4 Key provisions on economic, social, and cultural rights

Identify key provisions of IHRL related to economic, social, and cultural rights that obligate States to provide or secure access to goods and services.

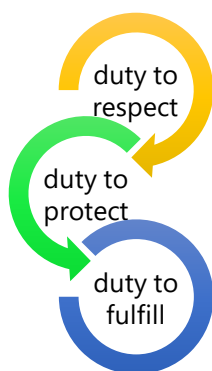
Key points and concepts

Progressive realization

While the ICESCR provides for the progressive realization of economic, social and cultural rights in light of States' available resources, States are at the very least bound by their minimum core obligations, including in times of crisis, to ensure minimum essential food and water, primary health care, and basic shelter to their populations.

ICESCR and humanitarian access

Although States have no explicit obligation under the ICESCR to accept international assistance in times of disaster or armed conflict, States have the threefold duty to respect, protect and fulfill these rights (see illustration of duties below).



Not to arbitrarily deny access to humanitarian assistance

To prevent third parties from impairing access to goods and services, including through humanitarian assistance

To provide access to goods and services and, if unable, to actively seek and facilitate access to humanitarian assistance

Right to adequate food

Concerning the right to adequate food (e.g. Article 11 ICESCR), States' minimum core obligations involve taking the necessary steps to ensure availability and accessibility of food without discrimination and in sufficient quantity and quality to satisfy the dietary needs of individuals, such as victims of disasters, including by seeking support from the international community.

Right to water

Flowing from the rights to everyone to an adequate standard of living (Article 11 ICESCR) and to health (Article 12 ICESCR), the right to water entails as minimum core obligations ensuring access, without discrimination, to the minimum essential amount of water that is sufficient and safe for personal and domestic use to prevent disease and to water facilities.

Right to health

The minimum core obligations with respect to the right to health (Article 12 ICESCR) include most notably to ensure the right of access, without discrimination, to health facilities, goods, and services

and to provide essential drugs, including through international assistance and cooperation.

Adequate housing

The right to adequate housing (Article 12 ICESCR) entails the minimum core obligation for States to ensure access to basic shelter and housing, in priority for vulnerable individuals, including victims of natural disasters, and through international assistance and cooperation if necessary.

Recommended resources

On the obligations of States concerning the right to adequate food and humanitarian assistance (see pp. 22-43):



The Right to Adequate Food in Emergencies

Lorenzo Cotula & Margaret Vidar (2002)

FAO Legislative Study 77

phap.org/ilfha-MXVR

Concerning States' obligations in the ICESCR (see pp. 9-21):



Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions

OHCHR (2005)

United Nations

phap.org/ilfha-TMMB

On the human rights obligations with regard to humanitarian access (see pp. 1003-1004):



“The Legal Framework of Humanitarian Access in Armed Conflict”

Felix Schwendimann (2011)

International Review of the Red Cross, Vol. 93, No. 884

phap.org/ilfha-MMDT

On the relevance of economic, social, and cultural rights for humanitarian access, including the rights to food, water, health, and housing (see pp. 44-48 on the right to life and pp. 43-44 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment):



Humanitarian Access in Situations of Armed Conflict

Swiss Confederation, Federal Department of Foreign Affairs (2014)

Handbook on the International Normative Framework, version 2

phap.org/ilfha-EP26

Primary sources



International Covenant on Economic, Social and Cultural Rights

UN General Assembly 16 December 1966)

UN General Assembly resolution 2200A (XXI)

phap.org/ilfha-WBQR

See especially para. 34 on international cooperation for the realization of the right to water, and paras. 37 and 38 on the minimum core obligations:



General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic Social and Cultural Rights)

UN Committee on Economic, Social and Cultural Rights (2003)

UN Doc. E/C.12/2002/11

phap.org/ilfha-YUA8

Paras. 43-45 on the minimum core obligations for the realization of the right to health, water and housing, paras. 63-65 on the obligations of actors other than States parties, including humanitarian actors:



General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)

UN Committee on Economic, Social and Cultural Rights (2000)

UN Doc. E/C.12/2000/4

phap.org/ilfha-F7YJ

See especially paras. 8-13 on the minimum core obligations, paras. 15-20 for the threefold duty to respect, protect, and fulfill the right to adequate food and violations thereof, and paras. 36-41 on international cooperation for disaster relief and humanitarian assistance in times of emergency:



General Comment No. 12: The Right to Adequate Food (Art. 11)

UN Committee on Economic, Social and Cultural Rights (1999)

UN Doc. E/C.12/1999/5

phap.org/ilfha-AB8S

See especially para. 8 on the obligation to ensure access to housing and para. 19 on international cooperation:



General Comment No. 4: The Right to Adequate Housing (Article 11(1) of the Covenant)

UN Committee on Economic, Social and Cultural Rights (1991)

UN Doc. E/1992/23

phap.org/ilfha-9L7B

Concerning the progressive realization of economic, social, and cultural rights and States' minimum core obligations:



General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)

UN Committee on Economic, Social and Cultural Rights (1990)

UN Doc. E/1991/23

phap.org/ilfha-YZF9

Further exploration

On the extent to which the ICESCR is applicable extraterritorially on States and the international community to secure economic, social, and cultural rights through international assistance and cooperation (see pp. 16-29):



“The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights”

Fons Coomans (2011)

Human Rights Law Review, Vol. 11, No. 1

phap.org/ilfha-UQZC

See more specifically principles 33-35 on the obligation to provide and seek international assistance and respond to a request thereof:



Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

Maastricht University & International Commission of Jurists (2012)

phap.org/ilfha-95CJ

On the duty to respect, protect and fulfill, States' minimum core obligations and violations of economic, social, and cultural rights:



Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

Maastricht University, International Commission of Jurists & Urban Morgan Institute on Human Rights (1997)

phap.org/ilfha-BQSU

In-depth discussion of the relevance of economic, social, and cultural rights for humanitarian access in comparison with IHL (see pp. 3-6):



“Mitigating Humanitarian Crisis During Non-International Armed Conflicts – The Role of Human Rights and Ceasefire Agreements”

Lottie Lane (2016)

Journal of International Humanitarian Action, Vol. 1, No. 2, Sections on ‘Applicability of international human rights law’, ‘Economic, social and cultural rights’, and ‘Limited application of economic, social and cultural rights’

phap.org/ilfha-25Y9

Study questions

1. How would you explain the scope of economic, social, and cultural rights applicable in times of crisis given that these rights are subject to progressive realization?
2. In which circumstances can a State be in violation of its obligations related to economic, social, and cultural rights in the context of humanitarian action?
3. What are the key components of States’ minimum core obligations for the right to food?
4. How would you define States’ minimum core obligations with respect to the right to water?
5. What are the key features of States’ minimum core obligations with regard to the right to health?
6. How would you define States’ minimum core obligations in the context of the right to housing?

Scenario

Over the last six months, the State of Nirvo has been fighting a violent conflict against the neighboring State, Mana. All of Nirvo’s financial and human resources have been devoted to the conflict to the detriment of the well-being of its population. With a drought having exacerbated the situation, the humanitarian situation in the eastern part of Nirvo is now alarming. As a result, its inhabitants do not have sufficient access to water and food, leading also to serious sanitation and health problems. The international community has tried to put pressure on Nirvo to assist its own population. However, the authorities of Nirvo have claimed to be unable to provide for any basic goods and services because of the international conflict. They have also categorically refused access of international relief and assistance to their territory, which they perceive as an illegitimate intervention within their own domestic affairs.

As Nirvo is a State party to the ICESCR, which issues potentially arise in this case and what arguments can you find to bring Nirvo back in compliance with its obligations under the ICESCR?

Domain 3: International Humanitarian Law (Law of Armed Conflict)

The fundamental principles of international humanitarian law (IHL) (also called the Law of Armed Conflict (LOAC), when it applies, how it binds States and non-State actors, how it protects those not or no longer taking part in hostilities, how it regulates the means and methods of warfare, and key elements of the law specifically relevant to humanitarian action in situations of armed conflict.

This domain constitutes 23% of the certification assessment.

Domain outline

Humanitarian practitioners must be able to:

- 3.1 Identify the main treaties and other sources of international humanitarian law (IHL).
- 3.2 Recognize the fundamental purpose of IHL, to limit the effects of armed conflict, for humanitarian reasons, by protecting persons who are not or are no longer participating in the hostilities and restricting the means and methods of warfare.
- 3.3 Distinguish between the laws that regulate the resort to the use of force (*jus ad bellum*) and the laws that regulate situations of armed conflict (*jus in bello*).
- 3.4 Determine the applicability of IHL and the information necessary to determine whether IHL applies and what rules bind parties to armed conflict.
- 3.5 Recognize the principles of IHL related to the conduct of hostilities and how these rules both regulate the use of lethal force and also serve to protect civilians and those no longer participating in hostilities (*hors de combat*).
- 3.6 Identify key types of weapons restricted and prohibited by international law.
- 3.7 Identify key rules of IHL relevant to humanitarian assistance and access in international and non-international armed conflicts.

General recommended reading and resources

For an online course offering brief introductory modules related to different aspects of IHL:



ICRC e-learning modules on International Humanitarian Law

International Committee of the Red Cross (ICRC)

phap.org/ilfha-WP2A

For an online course offering an introduction to IHL (self-paced):



International Humanitarian Law Distance Learning Series

Harvard Humanitarian Initiative

phap.org/ilfha-B44T

For an online course providing a comprehensive introduction to IHL by subject (self-paced and free access to members):



Essentials of International Humanitarian Law

PHAP online course

phap.org/ilfha-QEW5

For an online course on the basic norms of IHL (self-paced, starting from 21 March 2017):



International Humanitarian Law

Université catholique de Louvain online course at EdX

phap.org/ilfha-AFE2

For online lectures on IHL:



Law of Armed Conflict Lecture Series

UN Audiovisual Library of International Law

phap.org/ilfha-HBCT

For an overview of the scope of application, main principles, and rules of IHL:



International Humanitarian Law: Answers to your Questions

International Committee of the Red Cross (ICRC) (2015)

phap.org/ilfha-42LL

For definitions and analyses of the key concepts and thematic areas related to IHL:



The Practical Guide to Humanitarian Law

Médecins sans frontières (2013)

phap.org/ilfha-BZZD

For a didactic introduction to IHL, providing also abstracts of key documents and references to doctrinal comments:



How Does the Law Protect in War?

Marco Sassòli, Antoine A. Bouvier, & Anne Quintin (2011)

International Committee of the Red Cross (ICRC), Volume I

phap.org/ilfha-PHA8

For a more comprehensive introduction to all major aspects of IHL:



International Humanitarian Law: A Comprehensive Introduction

Melzer, N. (2016)

International Committee of the Red Cross (ICRC)

phap.org/ilfha-X4SX

For a concise approach to IHL from a military perspective:



Handbook on International Rules Governing Military Operations

International Committee of the Red Cross (ICRC) (2013)

ICRC Reference

phap.org/ilfha-E3BG

To access the text of the four 1949 Geneva Conventions, their Additional Protocols and their commentaries:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-KK3W

To access the ICRC database on customary IHL and search by rule or chapter:



Customary IHL database

International Committee of the Red Cross (ICRC)

Cambridge University Press, Cambridge & New York

phap.org/ilfha-9V32

3.1 Sources of IHL

Identify the main treaties and other sources of international humanitarian law (IHL).

Key points and concepts

Treaties A number of treaties govern IHL, one of the most codified branches of international law. The most notable sources are the four Geneva Conventions of 1949, which are almost universally ratified and the two Additional Protocols I and II of 1977. The brief Additional Protocol III of 2005 adds the “Red Crystal” as a complementary emblem.

Geneva Conventions The four 1949 Geneva Conventions complement one another – each convention has a different scope of application. The Additional Protocols supplement the 1949 Geneva Conventions. (see table below)

Geneva Convention I	Amelioration of the condition of the wounded and sick in armed forces in the field
Geneva Convention II	Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea
Geneva Convention III	Treatment of prisoners of war
Geneva Convention IV	Protection of civilian persons in time of war
Additional Protocol I	Protection of victims of international armed conflicts
Additional Protocol II	Protection of victims of non-international armed conflicts
Additional Protocol III	Adoption of a distinctive emblem

Other treaties Other IHL treaties address more specific issues by, for instance, prohibiting, restricting, or regulating the use of certain types of weapons or methods of warfare or protecting cultural property in times of armed conflict.

Customary law Customary international humanitarian law plays an important role in filling the gaps of treaty law. This is particularly true for non-international armed conflict, which is comparatively less regulated in treaties than international armed conflicts. The role of customary international humanitarian law has been subject of a detailed study by the International Committee of the Red Cross (ICRC), which identifies 161 customary IHL rules.

Martens clause

The so-called Martens clause is a customary rule of IHL, which provides that, in the absence of treaty or customary rules, “civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.” There are different views on what this clause means today.

International criminal courts and tribunals

Judgments of international criminal courts and tribunals have played an important role in clarifying treaty and customary IHL rules and principles, especially the International Court of Justice, the International Criminal Court, and the two International Criminal Tribunals for the former Yugoslavia and Rwanda.

Commentaries

The meaning of IHL rules has also been clarified by the writings of international lawyers, such as the Commentaries by the ICRC of the 1949 Geneva Conventions and their Additional Protocols.

Recommended resources

For an online course on the evolution of sources of IHL:



What Are the Sources of IHL?

International Committee of the Red Cross (ICRC)

phap.org/ilfha-UVPD

For a detailed list of the main IHL treaties, an explanation of the notion of customary IHL, and a description of the scope and content of the 1949 Geneva Conventions and their 1977 Additional Protocols (see pp. 14-17 and pp. 22-25):



International Humanitarian Law: Answers to your Questions

International Committee of the Red Cross (ICRC) (2015)

ICRC Focus

phap.org/ilfha-42LL

Concerning the historical development of IHL and contemporary sources of IHL (see chapter 3, pp. 1-10 and chapter 4, pp. 1-13):



How Does the Law Protect in War?

Marco Sassòli, Antoine A. Bouvier, & Anne Quintin (2011)

International Committee of the Red Cross (ICRC), Volume I

phap.org/ilfha-PHA8

On the sources of IHL, including treaties, customary IHL, general principles, soft-law, judgments, and doctrinal comments (see pp. 21-26):



International Humanitarian Law: A Comprehensive Introduction

Nils Melzer (2016)

International Committee of the Red Cross (ICRC)

phap.org/ilfha-X4SX

For a lecture on the contribution of the International Criminal Tribunal for the Former Yugoslavia to the development of IHL:



Contribution of the International and Criminal Tribunal for the former Yugoslavia to the Development of International Humanitarian Law

Fausto Pocar

UN Audiovisual Library of International Law, Lectures Series, 'Law of Armed Conflict', video (61')

phap.org/ilfha-B2FS

On the role played by the International Court of Justice in clarifying IHL rules:



“The Contribution of the International Court of Justice to International Humanitarian Law”

Vincent Chetail (2003)

International Review of the Red Cross, Vol. 85, No. 850, pp. 235-269

phap.org/ilfha-YKHU

For an online course providing an introduction to IHL, including its sources (self-paced and free access for members):



“Introduction to International Humanitarian Law”

PHAP

Online course on Essentials of International Humanitarian Law

phap.org/ilfha-3HSW

Primary sources

For direct links to all IHL treaties and the ICRC Commentaries:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-YJGD

To search the ICRC customary IHL database by chapter or rule:



Customary IHL database

International Committee of the Red Cross (ICRC)

Cambridge University Press, Cambridge & New York

phap.org/ilfha-9V32

Further exploration

For a detailed explanation on the objectives and methodology of the ICRC Study on customary IHL:



“Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict”

Jean-Marie Henckaerts (2005)

International Review of the Red Cross, Vol. 87, No. 857, pp. 175-212

phap.org/ilfha-H9LT

On the role of the international criminal tribunals for determining the existence of IHL rules and clarifying their scope and meaning:



“The Relationship between International Humanitarian Law and the International Criminal Tribunals Appendix”

Hortensia D.T. Gutierrez Posse (2006)

International Review of the Red Cross, Vol. 88, No. 861, pp. 65-86

phap.org/ilfha-QP4B

On the role of the International Criminal Tribunal for the former Yugoslavia for the development of IHL:



“The Development of International Humanitarian Law by the International Criminal Tribunal for the Former Yugoslavia”

Christopher Greenwood (1998)

In Jochen Abraham Frowein & Rüdiger Wolfrum (eds.), Max Planck Yearbook of United Nations Law, Kluwer Law International, Vol. 2, pp. 97-140

phap.org/ilfha-QHCU

Study questions

1. What are the main treaties in IHL?
2. What is the scope of each of the four 1949 Geneva Conventions and their Additional Protocols?
3. In which situations is customary IHL particularly relevant?
4. How would you define the Martens clause?
5. What has been the contribution of international criminal courts and tribunals to IHL?
6. What is the legal status of writings of legal scholars, such as the ICRC Commentaries?

Scenario

For the past year, the State of Galum has been fighting the Rebel Forces, an organized armed group. The State of Galum is a party to all major IHL treaties.

Which IHL treaties and other sources of IHL are applicable in this conflict?

3.2 Purpose of IHL

Recognize the fundamental purpose of IHL, to limit the effects of armed conflict, for humanitarian reasons, by protecting persons who are not or are no longer participating in the hostilities and restricting the means and methods of warfare.

Key points and concepts

Military necessity and humanitarian objective

Starting from the premise that war is a reality, IHL aims to strike a balance between military necessity in armed conflict and the humanitarian objective of reducing human suffering.

Limit harmful effects

IHL does not prohibit armed conflicts; its fundamental purpose is to limit their harmful effects by regulating the behavior of belligerents.

Protection

IHL protects certain categories of persons, particularly those who are not or are no longer participating in hostilities, which cover most notably civilians not participating in hostilities and combatants who are *hors de combat* being sick, wounded, or prisoners of war.

Means and methods of warfare

Recognizing that the only legitimate objective of war is to weaken the armed forces of the enemy, IHL restricts the means and methods of warfare to avoid superfluous injury and unnecessary suffering.

Recommended resources

For a learning module on an introduction to IHL and its objectives:



What is IHL?

International Committee of the Red Cross (ICRC)
phap.org/ilfha-8NNU

For a short video of the fundamental purposes and objectives of IHL:



Rules of War (in a Nutshell)

International Committee of the Red Cross (ICRC) (2014)
Video (4:43')
phap.org/ilfha-DS79

On the concept and purposes of IHL (see pp. 1-18):



How Does the Law Protect in War?

Marco Sassòli, Antoine A. Bouvier & Anne Quintin (2011)
International Committee of the Red Cross (ICRC), Volume I, Chapter 1
phap.org/ilfha-PHA8

Primary sources

For direct links to all IHL treaties and the ICRC Commentaries:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-X7GD

Further exploration

For a summary on how IHL restricts the means and methods of warfare:



“Methods (and Means) of Warfare”

Médecins sans frontières (2013)

The Practical Guide to Humanitarian Law

phap.org/ilfha-UCWF

Study questions

1. What is the fundamental purpose of IHL?
2. How does IHL aim to achieve its fundamental purpose?
3. Which individuals are normally protected under IHL?
4. Why is it important to restrict the means and methods of warfare?

Scenario

An international armed conflict has broken out between two neighboring States: Vatim and Maloz. However, Vatim refuses to apply the rules of IHL, arguing that IHL prohibits such a war and restricts its scope of flexibility in carrying out hostilities against Maloz.

You have been mandated to contact the government of Vatim and explain why their arguments are not correct in light of the fundamental purpose of IHL. What would be your main arguments?

3.3 Jus ad bellum and jus in bello

Distinguish between the laws that regulate the resort to the use of force (jus ad bellum) and the laws that regulate situations of armed conflict (jus in bello).

Key points and concepts

<i>Jus ad bellum</i>	Resort to the use of force (<i>jus ad bellum</i>) is prohibited under the Charter of the United Nations (Article 2(4) and customary international law as a peremptory (<i>jus cogens</i>) norm). The only exceptions to this prohibition are individual and collective self-defense (Article 51) or upon decision of the UN Security Council in case of a threat to the peace, breach of the peace, or act of aggression under Chapter VII of the UN Charter (Articles 39 and 42).
<i>Jus in bello</i>	<i>Jus in bello</i> , also known as international humanitarian law (IHL) or law of armed conflict (LOAC), regulates the conduct of parties engaged in an armed conflict.
<i>Important distinction</i>	The distinction between <i>jus ad bellum</i> and <i>jus in bello</i> (IHL) is fundamental because IHL applies independently from the legality of the use of force under <i>jus ad bellum</i> . IHL applies equally to all parties to the conflict, irrespective of whether they have resorted to force lawfully or not and irrespective of the justness of their cause.

Recommended resources

For brief definitions of jus ad bellum and jus in bello:



IHL and Other Legal Regimes – Jus Ad Bellum and Jus in Bello

International Committee of the Red Cross (ICRC) (2010)

phap.org/ilfha-GFXK

On the fundamental distinction between jus ad bellum and jus in bello (see pp. 14-21):



How Does the Law Protect in War?

Marco Sassòli, Antoine A. Bouvier & Anne Quintin (2011)

International Committee of the Red Cross (ICRC), Volume I, Chapter 2

phap.org/ilfha-PHA8

On the notion of “just wars” and the relationship between jus ad bellum and jus in bello, especially after 9/11:



“Just Wars, Wars of Aggression and International Humanitarian Law”

François Bugnion (2002)

International Review of the Red Cross, Vol. 84, No. 847, pp. 523-546

phap.org/ilfha-TLEH

Primary sources

On the legal basis of the prohibition of the use of force and its exceptions:



Charter of the United Nations

United Nations (26 June 1945)

phap.org/ilfha-PKS9

For more details on the prohibition of the use of force (see the first principles in para. 1):



Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations

UN General Assembly (24 October 1970)

Resolution 2625

phap.org/ilfha-Q6HE

Further exploration

For an in-depth discussion on the necessity to distinguish between *jus ad bellum* and *jus in bello* and illustrations of practical challenges:



“The Cost of Conflation: Preserving the Dualism of *Jus ad Bellum* and *Jus in Bello* in the Contemporary Law of War”

Robert D. Sloane (2009)

The Yale Journal of International Law, Vol. 34, pp. 47-112

phap.org/ilfha-KQZQ

On the challenges to the distinction between *jus ad bellum* and *jus in bello* and the equal application of IHL:



“The Equal Application of the Laws of War: A Principle under Pressure”

Adam Roberts (2008)

International Review of the Red Cross, Vol. 90, No. 872, pp. 931-962

phap.org/ilfha-5JX5

Study questions

1. What are the key components of *jus ad bellum*?
2. What is the difference between *jus ad bellum* and *jus in bello*?
3. Why is it fundamentally important to distinguish between *jus ad bellum* and *jus in bello*?

Scenario

The State of Farub is known to be a violent dictatorship and is allegedly carrying out genocide against part of its population of Christian confession. In order to help the Christian minority and stop this massive slaughter, the State of Narva sends 200 of its soldiers to Farub to fight the Farubian State armed forces. However, Narva refuses to apply any rules of IHL, claiming to wage a just war against Farub, necessary to stop the ongoing genocide.

In your opinion, are the arguments of Narva correct for not applying IHL and, if not, why?

3.4 Applicability of IHL

Determine the applicability of IHL and the information necessary to determine whether IHL applies and what rules bind parties to armed conflict.

Key points and concepts

IAC and NIAC

IHL applies in two types of armed conflicts, international armed conflicts (IAC) and non-international armed conflicts (NIAC), with a different set of rules applicable in each situation (see IHL rules below).

IHL rules applicable in IACs

- The four 1949 Geneva Conventions
- The 1977 Additional Protocol I if ratified by States parties to the conflict
- Customary IHL rules applicable in IACs

IHL rules applicable in NIACs

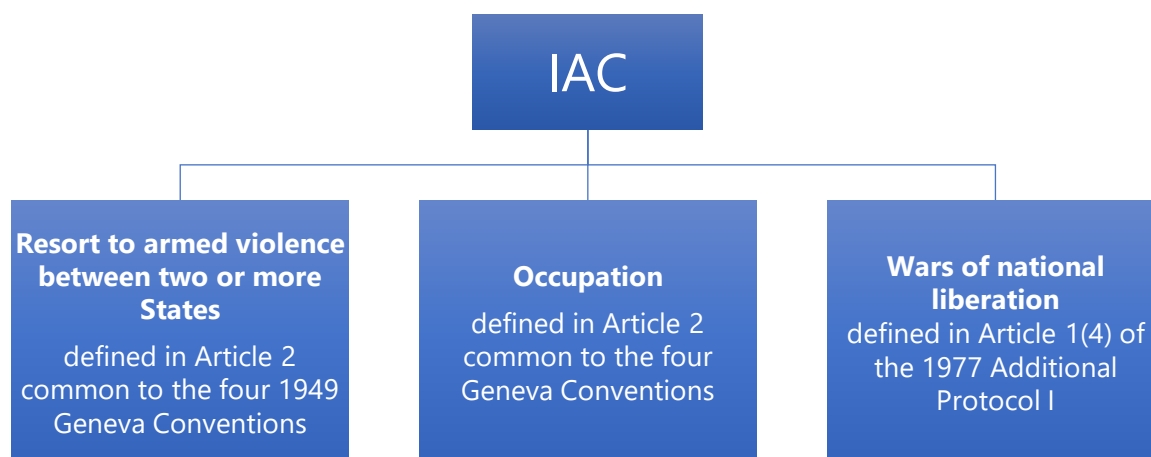
- Article 3 common to the four 1949 Geneva Conventions
- The 1977 Additional Protocol II if ratified by the State party to the conflict
- Customary IHL rules applicable in NIACs

Initial qualification

In order to know which IHL rules bind the parties to an armed conflict, the first step is to classify the armed conflict as either an IAC or a NIAC (i.e. the “qualification” or “classification” of armed conflict). These two categories are mutually exclusive.

Types of IAC

There are three main types of IAC referenced in treaty law that trigger the application of IHL rules of IAC as soon as they exist, even if one party denies the existence of the armed conflict (see types of IAC below).



*“Internationalized”
armed conflict*

“Internationalized non-international armed conflict” (or simply “internationalized armed conflict”) is not a legal term for a category of armed conflict but is commonly used to describe situations of non-international armed conflict that has an international dimension, such as when a State supports an armed group in an armed conflict against another State.

Threshold for an IAC

The minimum threshold for the existence of an IAC is generally considered to be quite low. According to this view, an IAC between two or more States exists as soon as there is a first shot fired, a first combatant captured, or a first protected person affected by the conflict.

Occupation

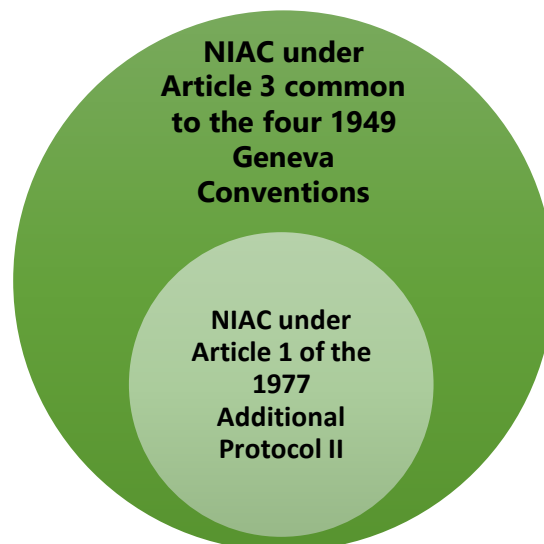
A situation of occupation exists as soon as a State without consent exercises effective control over part of the territory of another State, even if such an occupation is not met with armed resistance.

*Wars of national
liberation*

Wars of national liberation refer to armed conflict in which peoples are fighting against colonial domination and “alien occupation” or against racist regimes in the exercise of their right to self-determination, provided that the authority representing such peoples undertakes to apply the IHL rules of IAC by means of a unilateral declaration and that the State concerned has ratified the Protocol. See Article 1(4) and 96(3) of Additional Protocol I. In practice, situations rarely meet the criteria found in Article 1(4).

Types of NIAC

There are two different types of NIAC in IHL (see below).



*NIAC conditions by the
ICTY*

While Article 3 common to the four Geneva Conventions does not provide a detailed definition of NIAC, the International Criminal Tribunal for the former Yugoslavia clarified the definition of NIAC under Common Article 3 as either a conflict between one State and

one or more armed groups or a conflict between two or more armed groups. In either case, two cumulative conditions must be satisfied:

1. The armed violence has to be of a minimum threshold of intensity; and
2. The parties to the conflict have to display a minimum level of organization.

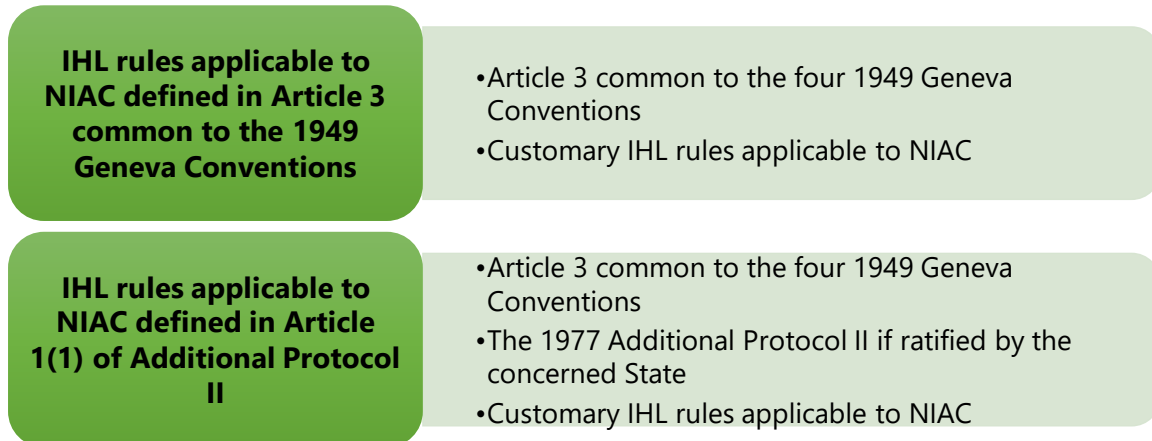
NIAC is more restrictively defined under Article 1(1) of Additional Protocol II on the basis of three main conditions:

NIAC conditions in APII

1. The conflict has to be fought between a State and one or more armed groups;
2. The armed groups have to be under responsible command; and
3. The armed groups have to exercise control over part of the State territory so as to enable them to carry out sustained and concerted military operations and to implement the Protocol.

CA3

Given the more restrictive definition in Additional Protocol II, any NIAC that meets the conditions under Additional Protocol II will also be considered a NIAC under Article 3 common to the four Geneva Conventions, with the following consequences in terms of applicable rules (see illustration below):



Situations below the threshold

Situations falling below the threshold of NIACs, such as internal disturbances, tensions, or riots, are not armed conflicts and are thus not regulated by IHL.

Internationalized armed conflict

IHL rules of IAC can apply in a NIAC if the latter has been “internationalized” by the intervention of a third State that exercises effective control over an armed group fighting the State armed forces within the territory of the latter.

Complex qualification

In practice, the qualification of the armed conflict may be a delicate exercise. It is generally agreed that several armed conflicts can exist at the same time on the same territory. This could include the parallel

existence of NIAC and IAC in a same context and/or conflicts having mixed elements of both IAC and NIAC, such as NIAC spilling over to neighboring territories or third States intervening in NIAC in support to one or the other party to the conflict.

Recommended resources

For an online course providing an overview of the typology of armed conflict in IHL:



When Does IHL Apply?

International Committee of the Red Cross (ICRC)

phap.org/ilfha-8NMW

For a lecture on the qualification of armed conflict, the applicable law, and convergence of rules of IAC and NIAC:



The Field of Application of International Humanitarian Law: International and Non-International Armed Conflicts

Marco Sassòli

UN Audiovisual Library of International Law, Lectures Series on 'Law of Armed Conflict', video (53')

phap.org/ilfha-G2K4

On the scope of application of IHL, including the qualification of the armed conflict, and the relations governed by IHL (see chapter 2, pp. 21-32 and pp. 34-38):



How Does the Law Protect in War?

Marco Sassòli, Antoine A. Bouvier & Anne Quintin (2011)

International Committee of the Red Cross (ICRC), Volume I

phap.org/ilfha-PHA8

For the definition of IACs and NIACs (see pp. 49-75):



International Humanitarian Law: A Comprehensive Introduction

Nils Melzer (2016)

International Committee of the Red Cross (ICRC)

phap.org/ilfha-X4SX

Concerning the definition of IAC and internationalized armed conflict:



International Armed Conflict (IAC)

Médecins sans frontières (2013)

The Practical Guide to Humanitarian Law

phap.org/ilfha-KASC

On the definition of occupation in IHL:



“Determining the Beginning and End of an Occupation under International Humanitarian Law”

T. Ferraro (2012)

International Review of the Red Cross, Vol. 94, No. 885, pp. 133-163

phap.org/ilfha-YUT6

On the definition of wars of national liberation:



“The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements”

Noelle Higgins (2009)

Human Rights Brief, Vol. 17, No. 1, pp. 12-18

phap.org/ilfha-RMZA

Concerning the definition of NIAC:



“Non-International Armed Conflict (NIAC)”

Médecins sans frontières (2013)

The Practical Guide to Humanitarian Law

phap.org/ilfha-KD5J

On internal disturbances and tensions falling below the threshold of NIAC:



“Internal Disturbances and Tensions”

Médecins sans frontières (2013)

The Practical Guide to Humanitarian Law

phap.org/ilfha-S6RA

For an online course on the qualification of armed conflict:



Essentials of International Humanitarian Law

PHAP

Module on ‘Qualification of Armed Conflict’

phap.org/ilfha-5E9K

For an online course on the qualification of armed conflict, their definitions, relevance, and consequences:



Qualification of Armed Conflict and Determining the Applicable Law

PHAP online learning session (9 July 2015)

Series on Humanitarian Law and Policy

phap.org/ilfha-R3FY

For case studies on the qualification of armed conflict and its practical relevance:



Qualification of Situations: Case Studies from Recent Practice

PHAP online learning session (2015)

Series on Humanitarian Law and Policy

phap.org/ilfha-KWUY

On internationalized armed conflicts and other mixed conflicts:



“Between Law and Reality: “New Wars” and Internationalised Armed Conflict”

Jed Odermatt (2013)

Amsterdam Law Forum, Vol. 5, No. 3, pp. 19-32

phap.org/ilfha-7BVL

On the definition of IAC and NIAC and qualification of controversial situations (see pp. 69-94):



“Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations”

Sylvain Vité (2009)

International Review of the Red Cross, Vol. 91, No. 873

phap.org/ilfha-GCB2

Primary sources

For direct links to the Geneva Convention, their Additional Protocols and the ICRC

Commentaries:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-5CLS

To search the ICRC customary IHL database by chapter or rule:



Customary IHL database

International Committee of the Red Cross (ICRC)

Cambridge University Press, Cambridge & New York

phap.org/ilfha-9V32

For the definition of IAC under Article 2 common and NIAC under Article 3 common to the four 1949 Geneva Conventions:



Prosecutor v. Dusko Tadic

International Criminal Tribunal for the former Yugoslavia (1995)

Appeal Chamber, Decision on the defence motion for interlocutory appeal on jurisdiction, IT-94-1, para. 70

phap.org/ilfha-5DJB

On the two conditions for the existence of a NIAC under Article 3 common to the four 1949 Geneva Conventions (see paras. 37-49 concerning the intensity of the armed violence and paras. 50-60 on the minimum level of organization of the armed group):



Prosecutor v. Ramush Haradinaj et al

International Criminal Tribunal for the former Yugoslavia (2008)

Trial Chamber I, Judgment, IT-04-84-T

phap.org/ilfha-636N

Further exploration

Reference work on the typology of armed conflicts, including IAC, occupation, and NIAC (restricted access, can be purchased online):



“The Different Types of Armed Conflicts according to the Geneva Conventions and Protocols”

Dietrich Schindler (1979)

Collected Courses of The Hague Academy of International Law, Vol. 163, pp. 117-164

phap.org/ilfha-375T

Concerning the historical evolution and continuing relevance of the dichotomy between IAC and NIAC (see pp. 35-67):



“Timelines, Borderlines and Conflicts: The Historical Evolution of the Legal Divide between International and Non-International Armed Conflicts”

Rogier Bartels (2009)

International Review of the Red Cross, Vol. 91, No. 873

phap.org/ilfha-Q9VK

Reference work on wars of national liberation for purchase (see pp. 366-398 on the legal status and definition of wars of national liberation):



“Wars of National Liberation in the Geneva Conventions and Protocols”

Georges Abi-Saab (1979)

Collected Courses of the Hague Academy of International Law, Vol. 165

phap.org/ilfha-BLKT

For a detailed discussion on the IHL challenges raised by new forms of NIAC:



“The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors”

Cherif Bassiouni (2008)

Journal of Criminal Law and Criminology, Vol. 98, No. 3, pp. 711-810

phap.org/ilfha-KRHK

Concerning the position of the ICRC on third State intervention in an armed conflict:



“The ICRC’s Legal Position on the Notion of Armed Conflict Involving Foreign Intervention and on Determining the IHL Applicable to this Type of Conflict”

Dr. Tristan Ferraro (2015)

International Review of the Red Cross, Vol. 97, No. 900, pp. 1227-1252

phap.org/ilfha-3HYM

For a practical discussion on the qualification of armed conflict from the perspective of the military (see pp. 143-161):



“Classifying the Conflict: A Soldier’s Dilemma”

Andrew Carswell (2009)

International Review of the Red Cross, Vol. 91, No. 873, pp. 143-161

phap.org/ilfha-EJYU

Study questions

1. Why is it important to qualify/classify the armed conflict?
2. What are the main types of IAC?
3. How would you define the minimum threshold for an IAC?
4. What are the main features determining the existence of a situation of occupation in IHL?
5. Which IHL rules are applicable in wars of national liberation?
6. How would you define wars of national liberation?
7. What are the main differences between the two types of NIAC?
8. What are the conditions to determine the existence of a NIAC under Article 3 common to the four 1949 Geneva Conventions?
9. What are the conditions for a NIAC to exist under the terms of Article 1(1) of the 1977 Additional Protocol II?
10. What is the distinction between the two types of NIAC?
11. Which IHL rules are applicable to each type of NIAC?

12. How would you define the lower threshold of NIAC?

13. In which circumstances can IHL rules of IAC be applicable in a NIAC?

Scenario

Armada has been a peaceful State until 2011 when part of its population started to oppose the government in power. Demonstrations were organized in the streets of the capital city with people asking for the government to resign. However, the situation soon escalated into more violent incidents between opponents to the government and law enforcement officers. In the last quarter of 2011, ten individuals were killed by police officers during such demonstrations and three police officers were seriously injured.

As a result, opponents to the government created the Liberation Soldiers in 2012 on the initiative of Bob Daman, who is now commander of the group. The Liberation Soldiers started to confront directly the armed forces of Armada, using mainly guerilla tactics. The losses on the government's side were heavy as the Liberation Soldiers managed to steal weapons from the government and organize hit-and-run operations. As a result, by the end of 2012, the Liberation Soldiers controlled the southern part of Armada's territory.

Getting weaker day after day, Armada called on its neighboring country, Macheta, for support. In January 2013, Macheta sent its first troops in Armada to fight the Liberation Soldiers. However, at the same time, an international coalition of three States obtained the authorization of the UN Security Council to intervene militarily in Armada to restore peace and security. As of February 2013, the international coalition started to send troops to Armada, which resulted in clashes with the government forces.

How would you qualify the situation in Armada in 2011, 2012, and 2013?

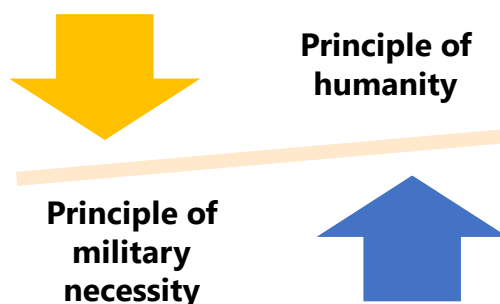
3.5 Conduct of hostilities

Recognize the principles of IHL related to the conduct of hostilities and how these rules both regulate the use of lethal force and also serve to protect civilians and those no longer participating in hostilities (*hors de combat*).

Key points and concepts

Fundamental principles IHL relies on a number of fundamental principles that are applicable both in IAC and in NIAC by virtue of IHL treaties and customary IHL.

Military necessity and humanitarian objective IHL aims to strike a balance between military necessity in armed conflict and the principle of humanity. The principle of military necessity states that the only legitimate purpose in war is to weaken the military capacity of the other party or parties to the conflict. The principle of humanity prohibits death, injury, and destruction, which is not actually necessary to achieve the legitimate military objective. (See illustration below).



Principle of distinction The principle of distinction requires the parties to a conflict to distinguish between civilians and combatants/fighters and between civilian objects and military objectives, as only military objectives can be attacked.

Military objectives Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Protected status of civilians Civilians are protected against attacks under IHL – be they direct attacks, acts of terror, or indiscriminate attacks – unless and for such time they directly participate in hostilities.

Hors de combat Combatants/fighters are protected against attacks when they are *hors de combat*, that is, when wounded, sick, shipwrecked, when surrendering, or made prisoners of war.

Principle of proportionality

The principle of proportionality prohibits attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Principle of precaution

The principle of precaution applies during all phases of an attack and requires care to be taken in the conduct of military operations to spare the civilian population, civilians, and civilian objects and all feasible precaution to be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians, and damage to civilian objects.

Prohibition of unnecessary suffering

The prohibition of superfluous injury or unnecessary suffering in IHL holds that parties to the conflict may not employ weapons, projectiles, and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

Recommended resources

For an online course on the basic principles of IHL:



The Basic Principles of International Humanitarian Law

International Committee of the Red Cross (ICRC)

phap.org/ilfha-LDML

For an online course on the core principles of IHL (self-paced, free access to members):



Essentials of International Humanitarian Law

PHAP

Module on 'Core Principles of International Humanitarian Law'

phap.org/ilfha-LNRV

For an online course on the principles of IHL and their impact of the conduct of hostilities:



International Humanitarian Law Distance Learning Series

Harvard Humanitarian Initiative

Module 1.2 'Key Principles of International Humanitarian Law'

phap.org/ilfha-B44T

For an online course on the principles regulating the conduct of hostilities in IHL (free access to members):



Essentials of International Humanitarian Law

PHAP

Module on 'Principles of Conduct of Hostilities'

phap.org/ilfha-PCZJ

For an online course on the fundamental principles of IHL regulating the conduct of hostilities:



The Fundamental Principles of IHL Regulating Hostilities: Military Necessity, Distinction, and Proportionality

PHAP online learning session (2015)

Series on Humanitarian Law and Policy

phap.org/ilfha-G5R7

On the balance between the principles of military necessity and humanity:



“Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance”

Michael N. Schmitt (2010)

Virginia Journal of International Law, Vol. 50, No. 4, pp. 795-816

phap.org/ilfha-Z8UR

On the fundamental principle of IHL, the notion of civilians and combatants, the protection of prisoners of war, and those wounded, sick, and shipwrecked, and rules on the conduct of hostilities (see Chapter 4, pp. 10-14, Chapter 5, pp. 1-9, Chapter 6, pp. 1-9, Chapter 7, pp. 1-3, and Chapter 9, pp. 1-46):



How Does the Law Protect in War?

Marco Sassòli, Antoine A. Bouvier & Anne Quintin (2011)

International Committee of the Red Cross (ICRC), Volume I

phap.org/ilfha-PHA8

For an online course on the notions of protected persons and objects in IHL:



Protected Persons and Objects

International Committee of the Red Cross (ICRC)

phap.org/ilfha-SVUE

For an online course on the protection of civilians under IHL (self-paced and free access for members):



Essentials of International Humanitarian Law

PHAP

Module on ‘Protection of Civilians’

phap.org/ilfha-A4XP

On the notion of “civilians” in IHL:



“Civilians”

Médecins sans frontières (2013)

The Practical Guide to Humanitarian Law

phap.org/ilfha-RCY8

For an online course on the notion of direct participation in hostilities and loss of protection against attacks (self-paced and free access for members):



Essentials of International Humanitarian Law

PHAP

Module on 'Civilian Direct Participation'

phap.org/ilfha-8GFC

On the notion and status of combatants and of civilians taking part in hostilities:



“Combatants”

Médecins sans frontières (2013)

The Practical Guide to Humanitarian Law

phap.org/ilfha-QPA9

For an online course on the means and methods of warfare and the principles of IHL:



Means and Methods of Warfare

International Committee of the Red Cross (ICRC)

phap.org/ilfha-AUJD

On the protection of the civilian population, the notion of direct participation in hostilities, civilian objects, the principles of proportionality, precaution, and presumption, and the means and methods of warfare (see pp. 77-111 and pp. 125-127):



International Humanitarian Law: A Comprehensive Introduction

Nils Melzer (2016)

International Committee of the Red Cross (ICRC)

phap.org/ilfha-X4SX

Primary sources

For direct links to the Geneva Convention, their Additional Protocols, and the ICRC Commentaries:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-JSRR

Further exploration

For a discussion on humanity and its influence over international law:



“Humanity: What is it and How Does it Influence International Law?”

Robin Coupland (2001)

International Review of the Red Cross, Vol. 83, No. 844, pp. 969-989

phap.org/ilfha-B7RL

On the definition of civilians “directly participating in hostilities”:



Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law

Nils Melzer (2009)

International Committee of the Red Cross (ICRC)

phap.org/ilfha-C2PN

On the evolution of the concept of “direct participation in hostilities” in IHL (see pp. 853-881):



“The Past as Prologue: The development of the ‘Direct Participation’ Exception to Civilian Immunity”

Emily Camins (2008)

International Review of the Red Cross, Vol. 90, No. 872

phap.org/ilfha-WS24

On the principle of proportionality in IHL and collateral damages in light of U.S. practice (see pp. 819-854):



“‘Excessive’ Ambiguity: Analysing and Refining the Proportionality Standard”

Jason D. Wright (2012)

International Review of the Red Cross, Vol. 94, No. 886

phap.org/ilfha-NU4L

Study questions

1. To which types of armed conflicts would the fundamental principles of IHL apply?
2. How would you define the relationship between the principles of military necessity and of humanity?
3. What does the principle of distinction mean in IHL?
4. What are the consequences of direct participation in hostilities for civilians?
5. What are some situations in which a combatant is protected under IHL against attacks?

6. What does the principle of proportionality impact on the conduct of hostilities?
7. Describe the principle of precaution in IHL.
8. What does the prohibition of superfluous injury or unnecessary suffering entail?

Scenario

The State of Utopia has been engaged in a NIAC against an organized armed group for the past three years. In the last year, the hostilities have been particularly violent. Two specific operations launched by Utopia resulted in extensive loss of life. The first operation was the bombing of the armed group's headquarters, which killed and injured some 50 civilians. The headquarters were located next to a local market, but were considered by the Utopian armed forces as a crucial military objective to be destroyed in order to win the conflict in the long term. The second operation was the bombing of a bridge used by the civilian population, but also by the armed group for arms supplies. While the operation was successful in cutting off the armed group's weapons supplies, it also killed 15 civilians who were at that moment crossing the river on the bridge.

Do you consider these two operations lawful in light of the IHL principles?

3.6 Weapons law

Identify key types of weapons restricted and prohibited by international law.

Key points and concepts

Underlying concepts Some specific types of weapons are restricted and prohibited in international treaties and, to some extent, by customary international law due to their indiscriminate nature in contravention to the principle of distinction and/or because they cause superfluous injury or unnecessary suffering.

Prohibited weapons International law prohibits the use of certain weapons (see illustration below).



Incendiary weapons The use of incendiary weapons is restricted to situations where the objects of the attack are military objectives clearly separated from concentrations of civilians and when all feasible precautions have been taken to limit their effects to such objectives.

Explosive remnants of war The risks and effects of explosive remnants of war (unexploded ordnance and abandoned explosive ordnance) have to be minimized during armed conflict by taking all feasible precautions to protect the

civilian population, civilians, and civilian objects and be removed at the end of the hostilities.

Nuclear weapons

Nuclear weapons were comprehensively prohibited by a United Nations treaty that was adopted on 7 July 2017. The treaty will enter into force once 50 states have signed and ratified it.

New weapons

All new weapons have to be subject to a legal review for determining whether their use would be prohibited or restricted by international law, especially in light of the fundamental principles of IHL. See Article 36 of Additional Protocol I of 1977.

Arms Trade Treaty

The Arms Trade Treaty (ATT) is the first legally-binding instrument ever negotiated in the United Nations to establish common standards for the international transfer of conventional weapons. Conventional weapons covered by the ATT are *inter alia* battle tanks, armored combat vehicles, combat aircrafts, attack helicopters, warships, and small arms and light weapons.

Recommended resources

For an online course on the means and methods of warfare, including the legality of certain weapons in armed conflicts:



Means and Methods of Warfare

International Committee of the Red Cross (ICRC)

phap.org/ilfha-AUJD

For an overview of the types of weapons prohibited or restricted under international law (see pp. 50-53):



International Humanitarian Law: Answers to your Questions

International Committee of the Red Cross (ICRC) (2015)

ICRC Focus

phap.org/ilfha-42LL

For a detailed account of the types of weapons prohibited or restricted under international law (see pp. 109-124):



International Humanitarian Law: A Comprehensive Introduction

Nils Melzer (2016)

International Committee of the Red Cross (ICRC)

phap.org/ilfha-X4SX

For a list with definitions of diverse types of weapons and related treaties:



Weapons Law Encyclopedia

Geneva Academy of International Humanitarian Law and Human Rights (undated)

phap.org/ilfha-BATW

For a lecture on the use of weapons under IHL:



The Use of Weapons

Kevin Riordan

UN Audiovisual Library of International Law, Lectures Series on 'Law of Armed Conflict', video (37')

phap.org/ilfha-87PP

On the legal review of new weapons and the challenges raised by new technologies:



“New Capabilities in Warfare: An Overview of Contemporary Technological Developments and the Associated Legal and Engineering Issues in Article 36 Weapons Reviews”

Alan Backstrom & Ian Henderson (2012)

International Committee of the Red Cross (ICRC), Vol. 94, No. 886, pp. 483-514

phap.org/ilfha-PFV7

For a categorization of autonomous and remote weapons systems and their legality under IHL:



“Categorization and Legality of Autonomous and Remote Weapons Systems”

Hin-Yan Liu (2012)

International Review of the Red Cross, Vol. 94, No. 886, pp. 627-652

phap.org/ilfha-C6NJ

Primary sources

For direct links to the Geneva Conventions, their Additional Protocols, and the ICRC Commentaries:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-BNVK

For direct links to the major international treaties prohibiting and/or restricting the use of certain weapons (treaties listed by topic):



Methods and Means of Warfare

International Committee of the Red Cross (ICRC)

phap.org/ilfha-68H6

Concerning the judgment of the International Court of Justice on the legality of the use of nuclear weapons (see paras. 90-97):



Legality of the Threat or Use of Nuclear Weapons

International Court of Justice (8 July 1996)

Advisory Opinion, ICJ Reports

phap.org/ilfha-DGM7

Further exploration

Reference work on weapons in armed conflict (available for purchase):



Weapons and the Law of Armed Conflict

William H. Boothby (2016)

2nd edition, Oxford University Press

phap.org/ilfha-MYAQ

For a detailed analysis of the legality of the use of nuclear weapons under international humanitarian law and the Nuclear Non-Proliferation Treaty:



“Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty”

Charles J. Moxley, John Burroughs & Jonathan Granoff (2011)

Fordham International Law Journal, Vol. 34, No. 4, pp. 595-696

phap.org/ilfha-C4WL

Concerning remote attacks through for instance unmanned armed vehicles and the issues they raise under IHL:



Some Legal Challenges Posed by Remote Attacks

William H. Boothby (2012)

International Review of the Red Cross, Vol. 94, No. 886, pp. 579-595

phap.org/ilfha-S7K7

On the legal review of new weapons, its legal framework, and aspects to be taken into consideration:



A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977

International Committee of the Red Cross (ICRC) (2006)

phap.org/ilfha-WGQB

For an overview and history of the Arms Trade Treaty:



Arms Trade Treaty

Peter Woolcott (2013)

UN Audiovisual Library of International Law

phap.org/ilfha-42LF

Study questions

1. What are the main reasons for the prohibition and restriction of the use of certain weapons in international law?
2. What types of weapons are prohibited under international law?
3. In which circumstances can booby-traps and remote controlled-devices be used under IHL?
4. How does international law restrict the use of incendiary weapons?
5. What action must a party to an armed conflict take if weapons that it has used during the conflict become unexploded ordnance?
6. Why should there be a legal review of new weapons?

Scenario

A State claims to have developed a new weapon, which takes the form of an unmanned combat air vehicle (a “drone”) and drops bombs. On impact, the bombs disperse sub-munitions in the area around the target. Its added value is allegedly to avoid any losses on the side of the State armed forces while maximizing death, injury, and destruction of enemy targets.

Do you think such a weapon to be lawful or not under international law and on which grounds? How does its lawfulness depend on how the weapon is used?

3.7 IHL and humanitarian access and assistance

Identify key rules of IHL relevant to humanitarian assistance and access in international and non-international armed conflicts.

Key points and concepts

<i>Conditions</i>	Humanitarian access is always made conditional on the consent of the parties concerned and the nature of IHL rules on humanitarian assistance, which differ depending on the type of the armed conflict.
<i>IAC</i>	<p>In situations of IAC other than in times of occupation, there is an obligation, subject to the consent of the concerned party, to undertake relief actions of humanitarian and impartial character if the civilian population under the control of the other party to the conflict is not adequately provided with food and medical supplies and allow and facilitate the rapid and unimpeded passage of all relief supplies, equipment, and personnel even when destined to the civilian population of the enemy party. See Article 23 of Geneva Convention IV; and Articles 70 and 71 of Additional Protocol I.</p> <p>In situations of occupation, the Occupying Power has the obligation to provide food, medical supplies, clothing, beddings, means of shelter, and other essential supplies for the survival of the civilian population to the fullest extent of the means available to it. If failing to do so, the Occupying Power has a duty to agree to relief operations, to facilitate them by all means at its disposal, to grant them free passage, and not to divert them from their intended purposes. See most notably Articles 55, 56, 59 and 60-63 of Geneva Convention IV of 1949; and Articles 69 and 71 of Additional Protocol I.</p>
<i>Occupation</i>	
<i>NIAC: CA3</i>	In NIACs falling under Article 3 common to the four Geneva Conventions, parties to the conflict have an obligation to treat civilians humanely, which arguably entails an obligation not to deny access to essential goods and services on arbitrary grounds.
<i>NIAC: APII</i>	In NIACs falling under Article 1 of Additional Protocol II, IHL provides for an obligation, subject to the consent of the concerned party, to undertake relief actions of humanitarian and impartial character if the civilian population suffers from undue hardship because of a lack of supplies essential for its survival. See Article 18(1) and (2) of Additional Protocol II.
<i>Right to offer services</i>	In any type of conflict, humanitarian organizations have a right to offer their services to the parties to the conflict and are to be respected and protected at all times.

Recommended resources

For an online course on humanitarian access, including the conditions for such access and the type and forms of humanitarian relief under IHL (self-paced and free for members):



Essentials of International Humanitarian Law

PHAP

Module on 'Humanitarian Access'

phap.org/ilfha-JQMR

On any explicit right to humanitarian assistance in IHL:



“Is There a Right to Humanitarian Assistance?”

Harvard Humanitarian Initiative (2015)

Law in Context Series

phap.org/ilfha-EE6B

For an overview of the IHL rules on humanitarian assistance (see Chapter 9, pp. 46-52):



How Does the Law Protect in War?

Marco Sassòli, Antoine A. Bouvier & Anne Quintin (2011)

International Committee of the Red Cross (ICRC), Volume I

phap.org/ilfha-PHA8

Concerning IHL rules on humanitarian assistance and access in situations of IAC, occupation, and NIAC (see pp. 21-35):



Humanitarian Access in Situations of Armed Conflict, Handbook on the International Normative Framework

Swiss Confederation, Federal Department of Foreign Affairs (2014)

Version 2, pp. 21-35

phap.org/ilfha-EP26

On consent to humanitarian assistance in IHL:



“Humanitarian Assistance and Conundrum of Consent: A Legal Perspective”

Cedric Ryngaert (2013)

Amsterdam Law Forum, pp. 5-19

phap.org/ilfha-39S8

For an analysis of the IHL framework applicable to humanitarian assistance (see pp. 993-1002):



“The Legal Framework of Humanitarian Access in Armed Conflict”

Felix Schwendimann (2011)

International Review of the Red Cross, Vol. 93, No. 884, pp. 993-1002

phap.org/ilfha-MMDT

On the legal framework and implementation of humanitarian assistance in armed conflict (see pp. 518-523 and 528-545):



“Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps”

Ruth-Abril Stoffels (2004)

International Review of the Red Cross, Vol. 86, No. 855, pp. 518-523 and 528-545

phap.org/ilfha-MWPZ

On ensuring the right to food of the civilian population in armed conflict, including through international humanitarian assistance:



“The Right to Food in Situations of Armed Conflict: The Legal Framework”

Jelena Pejic (2001)

International Review of the Red Cross, Vol. 83, No. 844, pp. 1097-1109

phap.org/ilfha-F398

Primary sources

For the links to the four 1949 Geneva Conventions and the two 1977 Additional Protocols:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-3A3U

Concerning the customary IHL rule on the prohibition of starvation as a method of warfare (rule 53) and on the protection of medical and humanitarian relief personnel, activities and objects (rules 25, 26, 31 and 32):



Customary IHL database

International Committee of the Red Cross (ICRC)

Cambridge University Press, Cambridge & New York

phap.org/ilfha-9V32

Further exploration

For a more detailed analysis on the right to give and receive humanitarian assistance under IHL (see pp. 7-16):



“The Right to Give and Receive Humanitarian Assistance”

Heike Spieker

International Law and Humanitarian Assistance: A Crosscut through Legal Issues Pertaining to Humanitarianism

phap.org/ilfha-JK4R

For a critical discussion on the right to and imposition of humanitarian assistance:



“The Right to Humanitarian Assistance”

Yoram Dinstein (2000)

Naval War College Review, pp. 77-91

phap.org/ilfha-VCN5

On practical challenges to provide and implement humanitarian assistance in NIAC:



“A Right to Humanitarian Assistance in Internal Armed Conflict Respecting Sovereignty, Neutrality and Legitimacy: Practical Proposals to Practical Problems”

Joakim Dungal (2004)

The Journal of Humanitarian Assistance

phap.org/ilfha-7VAJ

Study questions

1. What are the main features of IHL rules on humanitarian assistance and access thereto?
2. How does IHL regulate humanitarian assistance in IAC other than occupation?
3. What are the main IHL rules relating to humanitarian assistance in times of occupation?
4. What is the relevance of Article 3 common to the four Geneva Conventions with respect to humanitarian assistance?
5. How does Additional Protocol II of 1977 regulate humanitarian assistance in NIAC?
6. What are the rights of humanitarian actors in armed conflicts?

Scenario

The State of Mana is currently fighting the Opposing Forces of Mana (OFM), an organized armed group that gained control of the eastern part of the State territory one year ago. The armed conflict has had devastating consequences for the population, which does not have access to sufficient food or to necessary medical treatment and emergency surgery as a result of being caught in the crossfire. In addition, in order to weaken the OFM, the government of Mana has stopped any food supplies to the population living on the territory controlled by the OFM.

Together with four different organizations, the NGO you are working for is setting up a medical and relief operation for the entire civilian population living in Mana, be it under the control of the State or that of the OFM. Your NGO is going to contact the parties to the conflict to secure the establishment and functioning of this operation.

In your opinion, what are the IHL obligations related to humanitarian assistance incumbent upon the parties to this NIAC and what are the rights that can be claimed by your NGO under IHL?

Domain 4: International Refugee Law and Laws Protecting Internally Displaced Persons

The fundamental rules of international refugee law, how international refugee law relates to national refugee and asylum laws, and when refugee law and status may be relevant to humanitarian operations (including protection activities); and how internally displaced persons (IDPs), while not covered by international refugee law, are protected by IHRL and, when applicable, IHL.

This domain constitutes 17% of the certification assessment.

Domain outline

Humanitarian practitioners must be able to:

- 4.1 Identify the rules determining who is a refugee under international refugee law.
- 4.2 Recognize the process by which refugee status is determined, including the roles of States, key State institutions, and the United Nations High Commissioner for Refugees (UNHCR).
- 4.3 Recognize the principle of *non-refoulement* and its applicability to refugees and others.
- 4.4 Identify other key obligations of States related to refugees under international law.
- 4.5 Recognize the relevance of IHRL, IHL, the Guiding Principles on Internally Displaced Persons, and the Kampala Convention, in preventing arbitrary displacement and protecting individuals who are displaced within the territory of their own State.

General recommended reading and resources

For self-study modules on international refugee law with self-study assessments/exercises:



UNCHR self-study modules

UN High Commissioner for Refugees (UNHCR)

phap.org/ilfha-3F92

For an online curriculum on international refugee law with references to further resources:



The Refugee Law Reader, Cases, Documents and Materials

Hungarian Helsinki Committee & UN High Commissioner for Refugees (UNHCR)

phap.org/ilfha-V5SD

Reference work on international refugee law (available for purchase):



The Law of Refugee Status

James C. Hathaway & Michelle Foster (2014)

2nd edition, Cambridge University Press

phap.org/ilfha-PY8C

Reference work on international refugee law:



The Refugee in International Law

Guy S. Goodwin-Gill & Jane McAdam (2007)

3rd edition, Oxford University Press

phap.org/ilfha-ESNQ

On the refugee status and rights entitled to any migrants, including refugees:



Migration and International Human Rights Law, A Practitioners' Guide

International Commission of Jurists (2014)

phap.org/ilfha-5KUN

For the text of the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol:



Convention and Protocol relating to the Status of Refugees

phap.org/ilfha-257T

For the text of the Guiding Principles on Internal Displacement:



Guiding Principles on Internal Displacement

UN General Assembly resolution 60/L.1 (132, UN Doc. A/60/L.1)

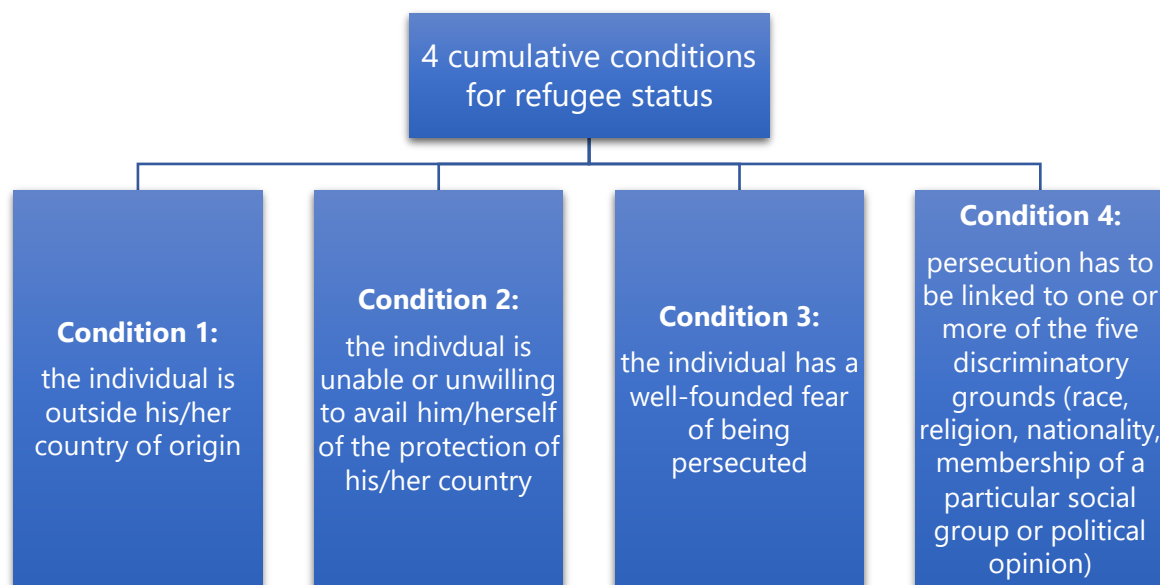
phap.org/ilfha-V5CB

4.1 Rules of status determination

Identify the rules determining who is a refugee under international refugee law.

Key points and concepts

<i>1951 Geneva Convention and 1967 Protocol</i>	While the 1951 Geneva Convention relating to the Status of Refugees is limited to refugees who fled events occurring (in Europe) before 1 January 1951, these limitations have been surpassed by the 1967 Protocol for the States, which have ratified it, as well as customary law relating to refugees.
<i>Regional instruments</i>	The 1951 Geneva Convention and its 1967 Protocol are complemented by regional instruments, such as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1984 Cartagena Declaration on Refugees and the European Union Qualification Directives of 2004 and 2011.
<i>Status determination</i>	Eligibility for refugee status is determined by the 1951 Convention and its 1967 Protocol on the basis of inclusion clauses (Article 1A) and exclusion clauses (Articles 1D, E and F).
<i>Status ceasing</i>	<p>Refugee status may cease under three conditions:</p> <ul style="list-style-type: none">❖ If the refugee has (re-) acquired the protection of a third country;❖ If the refugee has (re-) acquired the protection of his/her country of origin; or❖ When the circumstances in the country of origin have fundamentally changed so that s/he cannot refuse to avail him/herself of the protection of his/her country (Article 1C).
<i>Inclusion clauses</i>	The inclusion clauses can be found in Article 1A(2) of the 1951 Convention as amended by the 1967 Protocol. This article defines a refugee on the basis of four cumulative conditions (see illustration below).



International border

The first condition requires the individual to have crossed an international border so as to be outside his/her country of nationality or, if stateless, his/her country of former habitual residence. Internally displaced persons are not covered.

Surrogate form of protection

The second condition stipulates that refugee status is a surrogate form of protection. It arises only in the absence of protection from the country of origin. In practice, it is interpreted as not granted when the individual can be reasonably expected to relocate to another part of his/her country where s/he would not face persecution and could enjoy protection (internal flight alternative).

Risk of persecution

The third condition calls for a prospective examination to determine if the individual faces any real risk of persecution upon return, be it from the State, its agents or non-State actors. The 1951 Convention does not provide a definition of persecution. However, persecution is commonly recognized as a severe violation of human rights with serious consequences for the individual either because of the severe nature of the act (e.g. violation of non-derogable rights) or the accumulation of various (discriminatory) acts (persecution on cumulative grounds).

Discrimination

The fourth condition provides an exhaustive list of five grounds for discrimination. These grounds are to be interpreted broadly. They can be imputed by the actor of persecution (e.g. a political opinion not actually held by the individual him/herself). Membership of a particular social group refers to individuals sharing a common and innate characteristic that cannot be changed because it is fundamental to their human dignity (e.g. sexual orientation or gender) or to individuals who are perceived as a distinct group by society.

Exclusion clauses

The exclusion clauses of the 1951 Geneva Convention provide that a person is excluded from the refugee status in two main circumstances (see illustration below):

Exclusion of individuals already receiving some form of protection	Exclusion of individuals not deserving the refugee status
<ul style="list-style-type: none">• from a UN agency other than UNHCR, such as UNRWA for Palestinian refugees (Article 1D)• from another State of residence granting the rights and obligations attached to the possession of nationality of that country (Article 1E)	<ul style="list-style-type: none">• for the commission of an international crime (crime against peace, war crime, crime against humanity, including genocide) (Article 1F(a))• for the commission of a serious non-political crime outside the country of refuge prior to admission as a refugee (Article 1F(b))• for having been guilty of acts contrary to the purposes and principles of the UN (Article 1F(c))

Recommended resources

For an overview of the eligibility conditions for refugee status (see pp. 54-70):



Migration and International Human Rights Law, A Practitioner's Guide

Commission of Jurists (2014)

phap.org/ilfha-5KUN

On the different conditions of the refugee definition (see 37-105 for inclusion clauses and paras. 111-139 for cessation clauses):



Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees

United Nations High Commissioner for Refugees (UNHCR) (2011)

phap.org/ilfha-JGQE

For a self-study module with exercises on refugee status determination, including inclusion (see Chapter 2, pp. 27-68), exclusion (see Chapter 3, pp. 69-98), and cessation clauses (see Chapter 4, pp. 99-110):



Refugee Status Determination: Identifying Who Is a Refugee

UN High Commissioner for Refugees (UNHCR) (2005)

UNHCR self-study module 2

phap.org/ilfha-C2ML

For a definition of membership of a particular social group (see paras. 10-13):



Guidelines on International Protection No. 2: ‘Membership of a Particular Social Group’ within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees

UN High Commissioner for Refugees (UNHCR) (2002)

UN Doc. HCR/GIP/02/02

phap.org/ilfha-LJ24

Primary sources

For the refugee definition in the 1951 Convention and 1967 Protocol:



Convention and Protocol relating to the Status of Refugees

phap.org/ilfha-257T

For the text of the Convention Governing the Specific Aspects of Refugee Problems in Africa:



Convention Governing the Specific Aspects of Refugee Problems in Africa

Organization of African Unity (now African Union) (1969)

phap.org/ilfha-YZ2F

For the text of the Cartagena Declaration on Refugees:



Cartagena Declaration on Refugees

Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (1984)

phap.org/ilfha-89RQ

For the text of the 2011 EU Qualification Directive (binding on all EU Member States except the UK and Ireland, which are bound by the 2004 Directive, and Denmark, which is not bound by any such directive):



Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

European Union (2011)

OJ L 337/9

phap.org/ilfha-S32E

Further exploration

For a reference work on eligibility for refugee status and exclusion therefrom (see especially Chapter 3, pp. 51-134 and Chapter 4, part 4, on exclusion, pp. 163-200):



The Refugee in International Law

Guy S. Goodwin-Gill & Jane McAdam (2007)

3rd edition, Oxford University Press

phap.org/ilfha-MA5L [not freely available]

On the notion of membership of a particular social group (see pp. 263-311):



“Protected Characteristics and Social Perceptions: An Analysis of the Meaning of ‘Membership of a Particular Social Group’”

T.Alexander Aleinikoff (2003)

In Erika Feller, Volker Türk & Frances Nicholson (eds.), Refugee Protection in International Law, UNHCR’s Global Consultations in International Protection, UN High Commissioner for Refugees (UNHCR), Cambridge University Press

phap.org/ilfha-CG83

Concerning the internal flight alternative (see pp. 357-417):



“Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination”

James C. Hathaway & Michelle Foster (2003)

In Erika Feller, Volker Türk & Frances Nicholson (eds.), Refugee Protection in International Law, UNHCR’s Global Consultations in International Protection, UN High Commissioner for Refugees (UNHCR), Cambridge University Press

phap.org/ilfha-CG83

Concerning the exclusion clauses (see pp. 425-478):



“Current Issues in the Application of the Exclusion Clauses”

Geoff Gilbert (2003)

In Erika Feller, Volker Türk & Frances Nicholson (eds.), Refugee Protection in International Law, UNHCR’s Global Consultations in International Protection, UN High Commissioner for Refugees (UNHCR), Cambridge University Press

phap.org/ilfha-CG83

Study questions

1. What is the relationship between the 1951 Geneva Convention and its 1967 Protocol?
2. What are the main regional instruments complementing the 1951 Geneva Convention and/or its 1967 Protocol?
3. What are the main aspects of eligibility for refugee status under the 1951 Geneva Convention and its 1967 Protocol?

4. What are the four cumulative conditions of the refugee definition in the 1951 Geneva Convention and 1967 Protocol?
5. What are the factors to consider when determining whether an individual is outside his/her country of origin?
6. Why do we refer to refugee status as a surrogate form of protection?
7. What are the factors to consider when determining whether the individual has a well-founded fear of being persecuted?
8. How would you define persecution?
9. What are the main factors to consider when assessing the existence of a discriminatory ground of persecution?
10. What are the main features in the notion of membership in a particular social group?
11. What are the key components of the exclusion clauses of the 1951 Geneva Convention?

Scenario

Bob is a national of Grana where he was born and raised. At the age of 16, he fell deeply in love with another man, Steve. As homosexuality is prohibited in his country, Bob and Steve kept their relation secret. However, one day when Bob was approximately 17, they got caught by Bob's father while kissing. Coming from a very religious family, Bob's father threatened to kill them. Bob thus left his home and found refuge at a cousin's place. A couple of days later, however, he learned that his father had gathered all the men of the family and that they were looking for him to kill him as he had been declared a shame for the entire family. Bob could not ask for the protection of the authorities because he risked being severely beaten, tortured and imprisoned for being homosexual. Fearing for his life, he decided to leave his country and claimed refugee status in the neighboring country.

In your opinion, is Bob a refugee under the terms of the 1951 Geneva Convention and/or 1967 Protocol Relating to the Status of Refugees?

4.2 Status determination process

Recognize the process by which refugee status is determined, including the roles of States, key State institutions, and the United Nations High Commissioner for Refugees (UNHCR).

Key points and concepts

Recognition Under international law, recognition as a refugee is declarative but not constitutive of refugee status. An individual is a refugee as soon as he/she meets in fact the conditions set out in the 1951 Convention and/or its 1967 Protocol.

Asylum seekers and RSD According to State practice, refugee status is conditional upon the formal recognition as a refugee after a refugee status determination (RSD). It entails the distinction, at the national level, between an asylum-seeker (an individual who has applied for refugee status) and a refugee (an individual who has been granted refugee status).

Duties in RSD process The RSD process, while not covered in the 1951 Convention and/or its Protocol, commonly entails duties for both the asylum-seeker and the determining authority (see table below):

Duties of the asylum-seeker	Duties of the determining authority
<ul style="list-style-type: none"> • To submit all elements and documentation at his/her disposal to substantiate his/her claim 	<ul style="list-style-type: none"> • to gather any additional information, such as country of origin information • to assess the credibility of the asylum-seeker and give the asylum-seeker the benefit of the doubt if elements of doubt remain • to undertake a thorough and objective assessment of each individual claim to determine whether the asylum-seeker fulfils the conditions to be recognized as a refugee

State duties States have to ensure that their RSD procedures are fair and efficient and they have to offer adequate safeguards to asylum-seekers in line with IHRL. This entails, most notably, the duty to undertake a personal interview with the asylum-seeker, to provide an interpreter, to respect the confidentiality of the claim, to issue decisions in written form and to give asylum-seekers the possibility to appeal a negative decision with the concomitant right to remain for the duration of the appeal proceedings.

RSD authorities RSDs vary among countries. They are, however, usually undertaken by specialized administrative authorities for decisions at first instance. Appeal decisions are usually taken by a body, which is independent

from the determining authority of first instance, such as courts or quasi-judicial bodies.

Prima facie recognition

Individual RSD is sometimes not feasible given the substantial number of asylum-seekers in some States. In those cases, it is undertaken on a group basis (i.e. *prima facie* recognition of refugee status).

State and UNHCR responsibility

States have the primary responsibility to undertake RSDs. The United Nations High Commissioner for Human Rights (UNHCR), however, may conduct RSDs in a given country if the country is unable or unwilling to do so (e.g. for States not parties to the 1951 Convention and/or its Protocol) and subject to that State's consent.

Recommended resources

For an overview of RSD procedures (see pp. 71-75):



Migration and International Human Rights Law, A Practitioners' Guide

International Commission of Jurists (2014)

phap.org/ilfha-5KUN

For a self-study module with exercises on RSD procedures (see Chapter 5, pp. 111-131):



Refugee Status Determination: Identifying Who Is a Refugee

UN High Commissioner for Refugees (UNHCR) (2005)

UNHCR self-study module 2

phap.org/ilfha-C2ML

On prima facie recognition of refugee status (see Introduction, paras. 1-12):



Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status

UN High Commissioner for Refugees (UNHCR) (2015)

UN Doc. HCR/GIP/15/11

phap.org/ilfha-ZZ7E

On RSD undertaken by UNHCR (see Unit 1, pp. 1-7):



Procedural Standards for Refugee Status Determination under UNHCR's Mandate

UN High Commissioner for Refugees (UNHCR) (2003)

phap.org/ilfha-DFAP

Primary sources

For the mandate of UNHCR (see especially paras. 7-9):



Statute of the Office of the United Nations High Commissioner for Refugees

United Nations (1950)

Annex to General Assembly Resolution 428 (V)

phap.org/ilfha-6RVD

Further exploration

For detailed and multidisciplinary training manuals on credibility assessment in RSD processes:



Credibility Assessment in Asylum Procedures, A Multidisciplinary Training Manual

Gábor Gyulai et al. (2013)

The Hungarian Helsinki Committee & Credo Initiative Vol. 1 & Vol. 2

phap.org/ilfha-784F – Vol. 1 & phap.org/ilfha-RHCF – Vol. 2

For a detailed analysis of the legal foundations of prima facie recognition of refugee status (see especially pp. 9-18 for the definition):



Prima Facie Determination of Refugee Status: An Overview and its Legal Foundations

Matthew Albert (2010)

Refugee Studies Centre, Working Paper Series No. 55

phap.org/ilfha-ZKMS

On prima facie recognition of refugee status, especially in Africa:



Prima Facie Status and Refugee Protection

Bonaventure Rutinwa (2002)

UNHCR New Issues in Refugee Research, Working Paper No. 69, pp. 1-29

phap.org/ilfha-37NG

For a more detailed account of UNHCR's mandate in light of its supervisory role under the 1951 Convention:



“UNHCR's Supervisory Responsibility”

Volker Türk (2002)

Revue Québécoise de droit international, Vol. 14, No. 1, pp. 135-158

phap.org/ilfha-E79B

Study questions

1. What is the role of recognition of refugee status under international law?
2. Which duties are commonly recognized for the asylum-seeker and for the determining authority during the RSD procedure?

3. What are the main obligations of States with respect to RSD procedures?
4. What are the key State institutions usually involved in RSD?
5. How would you define *prima facie* recognition of refugee status?
6. What are the main conditions for UNHCR to undertake RSD?

Scenario

Panir is a relatively quiet country, despite the violent armed conflict, which has been going on for years in the neighboring State, Mynomia. Given a recent escalation of the violence Mynomia, applications for refugee status have dramatically increased in Panir. While willing to fulfil its obligation towards refugees by virtue of the 1951 Geneva Convention and its 1967 Protocol, the authorities of Panir are overwhelmed and do not know how to proceed to undertake refugee status determination.

In your opinion, what potential options exist for the Panirian authorities?

4.3 Non-refoulement

Recognize the principle of non-refoulement and its applicability to refugees and others.

Key points and concepts

Article 33(1)

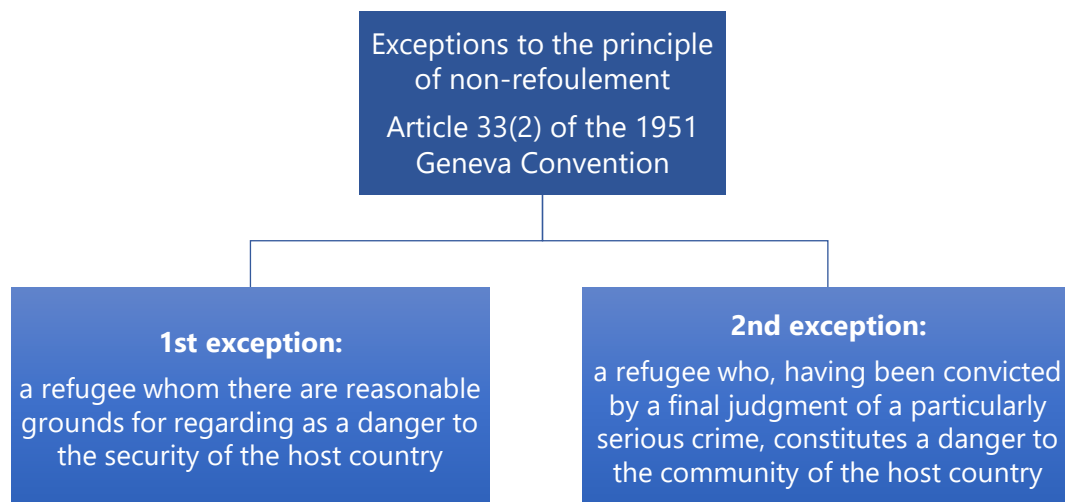
The principle of *non-refoulement* is enshrined in Article 33(1) of the 1951 Convention Relating to the Status of Refugees and prohibits the return or expulsion of any refugee in any manner whatsoever to countries where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.

Applicability

The principle of *non-refoulement* applies as soon as an individual de facto qualifies as a refugee and irrespective of whether s/he has already been recognized as a refugee by the State: it also applies to asylum-seekers during the determination of their claim.

Exceptions

Protection from *refoulement* is not absolute. Article 33(2) of the 1951 Convention provides for two exceptions, which are however to be restrictively interpreted given the serious consequences of sending someone back to persecution (see illustration below).



IHRL

In parallel to international refugee law, another principle of *non-refoulement* has progressively developed in IHRL treaties and in jurisprudence of human rights treaty bodies. This principle prohibits sending someone to a country where s/he would face a real risk of irreparable harm, such as torture or inhuman or degrading treatment or punishment.

Contrary to international refugee law, the IHRL principle of *non-refoulement* is absolute and applies to any individual irrespective of whether they are refugees or of the danger they pose to the host country or the crimes they may have committed.

Chain refoulement

The principle of *non-refoulement* in international refugee law and IHRL prohibit indirect or chain *refoulement*. This occurs if a State deports an individual to a third State when it ought to have known that this third State will further expel the individual to another State where there is a real risk to his life or freedom.

Recommended resources

On the principle of non-refoulement in international refugee law and human rights law (see pp. 2-20):



The Principle of Non-Refoulement

International Organization for Migration (2014)

International Migration Law Information Note, International Migration Law Unit

phap.org/ilfha-6WLY

For a detailed analysis of the principle of non-refoulement in international refugee law and human rights law (see pp. 108-140):



Migration and International Human Rights Law, A Practitioners' Guide

International Commission of Jurists (2014)

phap.org/ilfha-5KUN

Primary sources

For the principle of non-refoulement in the 1951 Geneva Convention Relating to the Status of Refugees:



Convention relating to the Status of Refugees (as amended)

UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1951)

Article 33

phap.org/ilfha-67GT

For the principle of *non-refoulement* in the 1984 Convention against Torture:



Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

United Nations (1984)

Article 3

phap.org/ilfha-VPCT

Further exploration

For an in-depth analysis of the principle of non-refoulement under Article 33 of the 1951 Geneva Convention (see pp. 87-177):



“The Scope and Content of the Principle of *Non-Refoulement*: Opinion”

Elihu Lauterpacht & Daniel Bethlehem (2003)

In Erika Feller, Volker Türk & Frances Nicholson (eds.), Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, Cambridge University Press

phap.org/ilfha-ZPYA

For a reference work on the principle of non-refoulement in international refugee law and IHRL, including regional instruments (see especially pp. 33-186 on Article 33 of the 1951 Geneva Convention, pp. 359-424 on the principle in the ICCPR, and pp. 425-524 on the principle in the 1984 Convention against Torture):



International Legal Standards for the Protection from Refoulement

Cornelius Wouters (2009)

Hart Publishing

phap.org/ilfha-QLRA

Study questions

1. What are the main features of the principle of *non-refoulement* under Article 33(1) of the 1951 Geneva Convention?
2. To who does Article 33(1) of the 1951 Geneva Convention apply?
3. What are the exceptions to the principle of *non-refoulement* under the 1951 Geneva Convention?
4. How would you define the IHRL principle of *non-refoulement*?
5. What is the main difference between the principle of *non-refoulement* under international refugee law and IHRL?
6. How would you define indirect or chain *refoulement*?

Scenario

Dave was granted refugee status three years ago because of a real risk of being tortured by the authorities of his country of origin on account of his religion. He has since been living in a refugee camp in his host State. The intelligence services of the host State have however recently received information from diverse sources which converge on his affiliation with the Islamic State in Iraq and Syria (ISIS). However, they do not have sufficient evidence of such

membership to prosecute Dave. Given the high risk of terrorist attacks already prevalent in the country, the authorities thus decide to deport Dave to his country of origin.

In your opinion, is Dave's deportation to his country of origin lawful in light of the principle of *non-refoulement* in international refugee law and IHRL?

4.4 State obligations

Identify other key obligations of States related to refugees under international law.

Key points and concepts

IRL, IHL & IHRL

The 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol lay down a set of rights to be granted to all refugees or to refugees lawfully in the territory of host States. These rights are complemented by IHL, which protects refugees especially as civilians not participating in hostilities. More fundamentally, these rights are also complemented by IHRL, which applies to all individuals, including refugees.

Liberty of movement

States have the obligation to respect and ensure respect of the right to liberty of movement of refugees lawfully in their territory, including of those living in refugee camps, except for lawful restrictions under IHRL. See Article 26 of the 1951 Geneva Convention and Articles 12(1) and (3) ICCPR.

Expulsions

States have the obligation not to expel refugees who are lawfully in their territory. The exceptions are on grounds of national security or public order and following an individual decision reached in accordance with law. Collective expulsions are prohibited. See Article 32 of the 1951 Geneva Convention and Article 13 ICCPR.

Detention

Reflecting the obligation of States not to penalize refugees for their illegal entry and stay under the 1951 Geneva Convention, States have the obligation under IHRL not to arbitrarily detain refugees (or any other individuals). States may only detain refugees for reasons prescribed by law (e.g. a likelihood of absconding and/or lack of cooperation pending determination of their status) and as long as such deprivation of liberty is necessary and proportionate. Indefinite detention is prohibited. See Article 31 of the 1951 Geneva Convention, Article 9 ICCPR and domain 2, statement 2.3.

Basic goods and services

Under the 1951 Geneva Convention and its 1967 Protocol and IHRL, States have the obligation to provide and secure access to basic goods and services to refugees as to any other individuals on their territory, including in refugee camps. Examples of basic goods and services include rationing, housing, public education, and public relief and assistance. See Articles 20-23 of the 1951 Geneva Convention and domain 2, statement 2.4.

Family reunification

Under IHRL, States have the obligation to reunite refugees with, at least, their “nuclear family” in the host country (i.e. family reunification of husband and wife, parents and children, and

unaccompanied minors and their parents and siblings). See Article 23 ICCPR.

Recommended resources

On the protection of refugees under IHL:



“Flight in Times of War”

Walter Kälin (2001)

International Review of the Red Cross, Vol. 83, No. 843, pp. 629-635

phap.org/ilfha-6JFC

For an overview of the rights granted to refugees under the 1951 Geneva Convention and IHRL:



The Obligations of States towards Refugees under International Law: Some Reflections on the Situation in Lebanon

Norwegian Refugee Council (2016)

phap.org/ilfha-XF6K

On the prohibition of expulsion, detention, access to basic goods and services, and the right to family reunification (see pp. 141-174 on expulsion, pp. 175-225 on detention, pp. 226-261 on basic goods and services, and pp. 84-95 on family reunification):



Migration and International Human Rights Law, A Practitioners’ Guide

International Commission of Jurists (2014)

phap.org/ilfha-5KUN

On the prohibition of penalization of illegal entry and/or stay under the 1951 Geneva Convention and detention of refugees in IHRL (see pp. 11-28):



Back to Basics: The Right to Liberty and Security of Person and ‘Alternative to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants

Alice Edwards (2011)

UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.01

phap.org/ilfha-DTPN

On the right to family reunification of refugees (see paras. 1-5):



Guidelines on Reunification of Refugee Families

UN High Commissioner for Refugees (UNHCR) (1983)

phap.org/ilfha-42UD

Primary sources

For the Text of the 1951 Geneva Convention:



Convention relating to the Status of Refugees (as amended)

UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1951)

phap.org/ilfha-257T

For the text of the ICCPR:



International Covenant on Civil and Political Rights

United Nations (1966)

phap.org/ilfha-U5QB

For the text of the International Covenant on Economic, Social and Cultural Rights:



International Covenant on Economic, Social and Cultural Rights

United Nations (1966)

phap.org/ilfha-WBQR

Further exploration

On the relevance of IHRL, IHL, and international refugee law for the protection of refugees in and from armed conflict:



“Armed Conflict and Forced Migration: A Systemic Approach to International Humanitarian Law, Refugee Law and Human Rights Law”

Vincent Chetail (2014)

In Andrew Clapham & Paola Gaeta (eds.), The Oxford Handbook of International Law in Armed Conflict, Oxford University Press, pp. 700-734

phap.org/ilfha-8ZD2

For an in-depth analysis of refugees’ rights under international refugee law and IHRL (see especially pp. 39-61):



“The Relations between Refugee Law and Human Rights Law”

Vincent Chetail (2014)

In Ruth Rubio-Marín (ed.), Human Rights and Immigration, Oxford University Press, pp. 19-72

phap.org/ilfha-PK7A

For a detailed account of detention of refugees under international law:



“International Law and the Detention of Refugees and Asylum Seekers”

Guy S. Goodwin-Gill (1986)

The International Migration Review, Vol. 20, No. 2, pp. 193-219

phap.org/ilfha-8DLN

On the relevance of IHL for the protection of refugees:



Refugee from Inhumanity? War Refugees at the Intersection of IHL and Refugee Law

Refugee Law Initiative (2015)

International Law Programme Meeting Summary, Chatham House

phap.org/ilfha-MUSG

Study questions

1. Which bodies of international law are relevant to determine States' obligations related to refugees?
2. What is refugees' right to liberty of movement within the territory of host States?
3. What are the main features of the prohibition of expulsion in international refugee law and IHRL?
4. What are the main factors to consider when assessing the legality of detention of refugees under international refugee law and IHRL?
5. How would you define States' obligation to provide and secure access to basic goods and services to refugees?
6. What are the main features of the principle of family reunification?

Scenario

A group of 20 individuals fleeing persecution on religious ground in their country has recently come to the State of Novora and asked for refugee status. They have first been put in administrative detention pending determination of their claim. The six women in the group were all quickly recognized as refugees and relocated to the largest refugee camp of the country. These women have, however, since complained that their situation in the refugee camp is deplorable. They do not have sufficient access to food, they have no right to leave the camp to search for food, and they live in precarious shelters that are not suitable for the very cold temperature in wintertime. The other 14 individuals, all men, were kept in administrative detention for eight months until the authorities of Novora decided to expel them all to a third country without any individual determination of their claim.

Which issues arise in this case in light of States' obligations towards refugees under international law?

4.5 Internally displaced persons

Recognize the relevance of IHRL, IHL, the Guiding Principles on Internally Displaced Persons, and the Kampala Convention, in preventing arbitrary displacement and protecting individuals who are displaced within the territory of their own State.

Key points and concepts

IHRL

IDPs are protected under IHRL in the same way as any other individual. The prohibition of arbitrary displacement is reflected in the right for any person lawfully in the territory of a State to the liberty of movement and freedom to choose his/her residence. This right can only be restricted when provided for by law, necessary to protect national security, public order, public health or morals, or the rights and freedoms of others and when consistent with other human rights. See Article 12(1) and (3) ICCPR.

IHL

IDPs are protected under IHL in the same way as any other civilian as long as they do not directly participate in hostilities. The deportation and transfer of the civilian population is prohibited for reasons related to an IAC or a NIAC, including deportation across international borders, except when justified for civilians' own security or for imperative military reasons and if undertaken in satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Violations of this prohibition constitute a war crime both in IAC and NIAC.

See Article 49 of the 1949 Geneva Convention IV, Article 85(4)(a) of Additional Protocol I, Article 17 of Additional Protocol II, and ICRC Customary IHL rule 129.

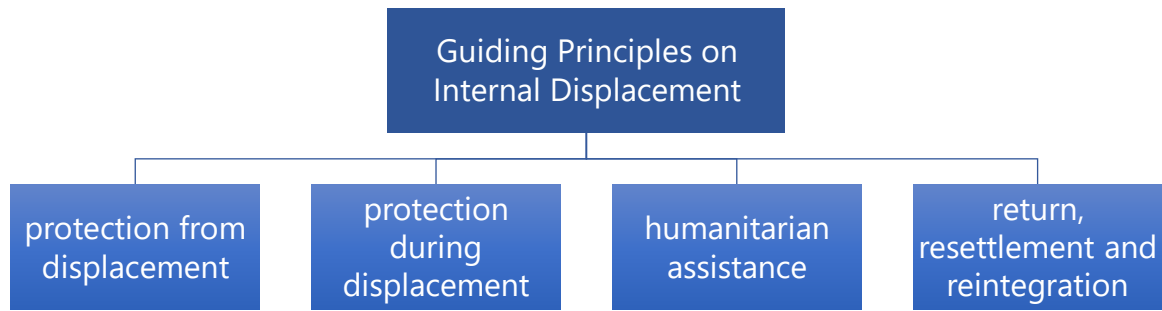
Two main instruments governing internal displacement currently exist:

Specific instruments on internal displacement

- 1) At the universal level, the 1998 Guiding Principles on Internal Displacement;
- 2) At the regional level, the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which is the first legally binding treaty on IDPs' protection.

Guiding Principles on Internal Displacement

The 1998 Guiding Principles on Internal Displacement are not per se binding. They do, however, build on and go beyond States' existing obligations under international law, especially under IHRL and IHL. See the four main areas below.



Protection from displacement

Concerning protection from displacement, the Guiding Principles reflect States’ obligations to respect and ensure respect of their international obligations (especially in IHRL such as Article 2(1) of the International Covenant on Civil and Political Rights, and IHL, namely Common Article 1 of the Geneva Conventions) to avoid conditions leading to displacement and the prohibitions of arbitrary displacement in international law. See principles 5 and 6 and 7-9.

Protection during displacement

Concerning protection during displacement, the Guiding Principles detail the rights relevant to the specific situation of IDPs under IHRL and IHL (see list below).

- | | |
|--|---|
| ✓ right to life under IHRL and prohibition of arbitrary deprivation of life (principle 10); | ✓ right to respect of family life (principle 17); |
| ✓ right to dignity and physical, mental, and moral integrity (principle 11); | ✓ right to an adequate standard of living (principle 18); |
| ✓ right to liberty and security (principle 12); | ✓ right to medical care without discrimination (principle 19); |
| ✓ prohibition of forcible recruitment (principle 13); | ✓ right to recognition as a person before the law (principle 20); |
| ✓ right to liberty of movement and freedom to choose one’s residence (principle 14); | ✓ prohibition of arbitrary deprivation of property and possessions (principle 21); |
| ✓ right to seek safety in part of the country, leave their country, seek asylum in another country and be protected against <i>refoulement</i> (principle 15); | ✓ non-discrimination in the enjoyment of the right to freedom of thought, conscience, religion or belief, opinion or expression, employment, liberty of association, right to vote and to communicate in a language they understand (principle 22); |
| ✓ right to know the fate and whereabouts of missing relatives (principle 16); | ✓ right to education (principle 23). |

Humanitarian assistance

Concerning humanitarian assistance, the Guiding Principles recall that the primary duty of national authorities is to provide humanitarian assistance. They also recall the right of international

humanitarian organization to offer their services, which shall not be arbitrarily refused, shall be granted and facilitated free passage, and to be respected and protected. See principles 24-27.

Voluntary return

The Guiding Principles provide for the primary duties of authorities to establish conditions and provide the means allowing IDPS to return voluntarily, in safety and dignity to their homes, or resettle voluntarily in another part of the country, while assisting them in recovering their possessions and properties. See principles 28-30.

Kampala Convention

While covering the same four areas of obligations as the Guiding Principles, the 2009 Kampala Convention addresses more specifically the accountability of non-State actors (including armed groups, multinational companies, and private military or security companies) for arbitrary displacement and the exploration and exploitation of economic and natural resources leading to displacement.

Recommended resources

For a lecture on IDPs' protection under international law:



Treatment of Internally Displaced Persons in International Law

Walter Kälin

UN Audiovisual Library of International Law, Lecture Series on Human Rights, video (40')

phap.org/ilfha-39EQ

On the protection of IDPs under IHRL (see pp. 20-26) and IHL (see pp. 28-31) and the Guiding Principles (see pp. 32-35):



Handbook for the Protection of Internally Displaced Persons

Global Protection Cluster Working Group (2010)

phap.org/ilfha-FKPK

For an overview of the protection of IDPs under IHL:



Internally Displaced Persons and International Humanitarian Law

International Committee of the Red Cross (ICRC) (2010)

Advisory Service on International Humanitarian Law

phap.org/ilfha-9LVD

On the protection of IDPs in IHL and by the Guiding Principles (see pp. 635-637 and pp. 643-648):



“Flight in Times of War”

Walter Kälin (2001)

International Review of the Red Cross, Vol. 83, No. 843

phap.org/ilfha-6JFC

For a more detailed account of IHL protection of IDPs (see pp. 1404-1409):



“Refugees, Internally Displaced Persons, and International Humanitarian Law”

Francois Bugnion (2004)

Fordham International Law Journal, Vol. 28, No. 5

phap.org/ilfha-BSCZ

For an overview of the Kampala Convention:



The Kampala Convention and Protection from Arbitrary Displacement

Maria Stavropoulou (2010)

Forced Migration Review, Vol. 36, pp. 62-63

phap.org/ilfha-5QQA

Primary sources

For the text of the ICCPR:



International Covenant on Civil and Political Rights

United Nations (1966)

phap.org/ilfha-U5QB

For direct links to the four 1949 Geneva Conventions and the two 1977 Additional Protocols:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-ND64

Concerning the customary IHL rule prohibiting the forcible transfer or deportation of the civilian population:



Customary IHL database

International Committee of the Red Cross (ICRC)

Cambridge University Press, Cambridge & New York

phap.org/ilfha-9V32

For the text of the Guiding Principles:



Guiding Principles on Internal Displacement

UN High Commissioner for Refugees (UNHCR) (1998)

Adopted in UN General Assembly resolution 60/L.1 (132, UN Doc. A/60/L.1)

phap.org/ilfha-V5CB

For the text of the Kampala Convention:



African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)

African Union (2009)

phap.org/ilfha-GFE5

Further exploration

For an in-depth analysis of the prohibition of arbitrary displacement in armed conflicts under the diverse bodies of international law:



“The Transfer and Deportation of Civilians”

Vincent Chetail (2015)

In Andrew Clapham, Paola Gaeta & Marco Sassòli (eds.), The Geneva Conventions: A Commentary, Oxford University Press, pp. 1185-1213

phap.org/ilfha-UHHW

For a commentary of the Guiding Principles from a practical perspective (see pp. 43-47 and pp. 63-240):



Protecting Internally Displaced Persons: A Manual for Law and Policymakers

Brookings-Bern Project (2008)

Brookings & University of Bern

phap.org/ilfha-VPFJ

Study questions

1. How is the prohibition of arbitrary displacement reflected in IHRL?
2. What are the main features of the prohibition of arbitrary displacement under IHL?
3. What are the key components of the 1998 Guiding Principles on Internal Displacement?
4. What are the main features of the Guiding Principles concerning protection from displacement?
5. Which rights relevant to the protection of IDPs during displacement are covered in the Guiding Principles?
6. How do the Guiding Principles address humanitarian assistance?

7. What are the main features of return, resettlement, and reintegration under the Guiding Principles?
8. What is the 2009 Kampala Convention?
9. What are the main differences of the 2009 Kampala Convention compared to the 1998 Guiding Principles?

Scenario

A violent armed conflict is currently taking place in the State of Bilum between the State armed forces and an armed group, the Liberation Force of Bilum (LFB). The capital city has most notably been the theatre of violent confrontations, including indiscriminate bombings from both sides. A great part of the civilian population has thus fled the capital city and found shelter in more peaceful areas of the State. Those who have fled to areas under State control have been relocated to camps by the authorities of Bilum. They are, however, left without any assistance or support, living in deplorable conditions. Some are in a state of severe stress and anguish, as they have no information about their family members who have not managed to flee the capital city. The fate of those who fled to areas controlled by the LFB has not been any better. The FLB indeed refuses to give access to humanitarian assistance and relief and has attacked humanitarian organizations, which have tried to reach the civilian population. Suffering from severe malnutrition, children have been the prime victims of this situation. They are also forcibly enrolled within the FLB armed forces.

In this particular case, what is the relevance of IHRL, IHL, and the 1998 Guiding Principles on Internal Displacement in preventing displacement and protecting IDPs?

Domain 5: Implementation and Enforcement of International Law

The variety of mechanisms for preventing violations and enhancing respect for international law; how rules of international humanitarian law and international human rights law (where relevant) are enforced in situations of alleged violations relevant to humanitarian action and protection of civilians; and the multiple layers of enforcement may be involved (domestic, regional, international).

This domain constitutes 16% of the certification assessment.

Domain outline

Humanitarian practitioners must be able to:

- 5.1 Recognize that respect for international law applicable to humanitarian action relies primarily on voluntary respect, persuasion, preventative measures, and incorporation into domestic law.
- 5.2 Identify key UN and regional bodies and mechanisms, including inquiries and fact-finding mechanisms, to monitor for and respond to serious violations of IHRL and IHL.
- 5.3 Recognize that international law relevant to humanitarian action may give rise to State responsibility for violations of international law as well as individual criminal responsibility for international crimes.
- 5.4 Define war crimes, crimes against humanity, and genocide, and identify the roles of the International Criminal Court (ICC) and ad-hoc tribunals.
- 5.5 Identify key concepts regarding the roles of domestic and international mechanisms to pursue violations of international law by individuals.

General recommended reading and resources

On respect for IHRL and human rights mechanisms:



Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers

OHCHR (2003)

Professional Training Series No. 9

phap.org/ilfha-6XAU

For online lectures on human rights mechanisms, State responsibility, individual criminal responsibility, and international crimes:



Lecture Series on “Human Rights,” “States,” “Criminal laws and procedures”

UN Audiovisual Library of International Law

phap.org/ilfha-U7AF – “Human Rights,” phap.org/ilfha-KJ5T – “States,”

phap.org/ilgha/DNB9 – “Criminal law and procedure”

For the text of the articles on State responsibility:



Responsibility of States for Internationally Wrongful Acts

International Law Commission (2001)

First commended by the UN General Assembly Resolution 56/83

phap.org/ilfha-VERE

For online lectures on individual criminal responsibility (8 videos):



Investigating and Prosecuting International Crimes

University of Leiden

International Law in Action 2, Module 1

phap.org/ilfha-4BWK

For a reference work on international criminal law (available for purchase):



Cassese's International Criminal Law

Antoine Cassese & Paola Gaeta (2013)

3rd edition, Oxford University Press

phap.org/ilfha-X5MG

For the text of the Statute of the International Criminal Court:



Rome Statute of the International Criminal Court

International Criminal Court (ICC) (1998)

phap.org/ilfha-MENT

5.1 Implementation of international law

Recognize that respect for international law applicable to humanitarian action relies primarily on voluntary respect, persuasion, preventative measures, and incorporation into domestic law.

Key points and concepts

<i>Voluntary respect</i>	While international law applicable to humanitarian action relies on both legally binding rules and soft law standards, respect remains in practice primarily voluntary in the absence of a strong enforcement system in international law.
<i>Persuasion</i>	Persuasion through dialogue and/or advocacy activities aims to confront States and other relevant actors with their obligations and responsibilities under international law and to highlight the benefits of respecting international legal rules.
<i>Preventative measures</i>	Preventative measures to strengthen respect for international law applicable to humanitarian action include dissemination and training of relevant national actors before a situation of crisis or emergency materializes.
<i>Incorporation into domestic law</i>	States are bound to respect and ensure respect of their international law obligations. Consequently, they must ensure that their domestic legal order is in accordance with their international legal obligations. This can be done most notably by incorporating international law into their domestic law systems. They also must ensure that rights owed to individuals are justiciable before national courts. Given the lack of a strong enforcement system in international law, this latter aspect is essential.

Recommended resources

On respect for international law by States generally (see Chapter 2, pp. 5-10):



How Nations Behave: Law and Foreign Policy

Lois Henkin (1979)

Columbia University Press, 2nd edition, abstract in Marco Sassòli, Antoine A. Bouvier & Anne Quintin (2011), How Does the Law Protect in War?, International Committee of the Red Cross (ICRC), Volume I

phap.org/ilfha-PHA8

On the role of persuasion for increasing respect for IHL and preventative measures, including through legal tools (see pp. 15-31):



Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts

International Committee of the Red Cross (ICRC) (2008)

phap.org/ilfha-RJ6N

On the obligation to respect and ensure respect for IHL and national implementing measures, including dissemination and training (see pp. 280-284):



“Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims”

Toni Pfanner (2009)

International Review of the Red Cross, Vol. 91, No. 874

phap.org/ilfha-KA7G

Concerning implementation of IHRL obligations into domestic law (see pp. 20-22):



Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers

OHCHR (2003)

Professional Training Series No. 9, Chapter 1 ‘International Human Rights Law and the Role of the Legal Profession: A General Introduction’

phap.org/ilfha-U9NN

Primary sources

For the obligation of States to respect and ensure respect of IHRL, see for instance Article 2(1) ICCPR:



International Covenant on Civil and Political Rights

United Nations (1966)

phap.org/ilfha-U5QB

For the obligation of States to respect and ensure respect of IHL, see Article 1 common to the four 1949 Geneva Conventions and Article 1(1) of the 1977 Additional Protocol I:



Geneva Conventions of 1949 and Additional Protocols, and their Commentaries

International Committee of the Red Cross (ICRC)

phap.org/ilfha-LBGS

Further exploration

For a critical perspective on the factors strengthening States' respect for IHL, including the role of persuasion:



“Behaviour in War: The Place of Law, Moral Inquiry and Self-Identity”

Dr. Dale Stephens (2014)

International Review of the Red Cross, Vol. 96, Nos. 895/896, pp. 751-773

phap.org/ilfha-WA36

On States' obligation to respect and ensure respect of IHL:



“Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations”

Knut Dörmann & Jose Serralvo (2014)

International Review of the Red Cross, Vol. 96, Nos. 895/896, pp. 707-736

phap.org/ilfha-72XS

On the role of national authorities in sanctioning IHL violations (see pp. 362-365):



“Sanctions for Violations of International Humanitarian Law: The Problem of the Division of Competences between National and International Authorities”

Xavier Philippe (2008)

International Review of the Red Cross, Vol. 90, No. 879

phap.org/ilfha-SU8S

On strengthening respect for IHL through national courts:



“Building Respect for IHL through National Courts”

Sharon Weill (2014)

International Review of the Red Cross, Vol. 96, Nos. 895/896, pp. 859-879

phap.org/ilfha-9UUE

Study questions

1. How would you explain the fact that international law applicable to humanitarian action remains subject to voluntary respect in practice?
2. How can persuasion influence respect for international law applicable to humanitarian action?
3. What is the importance of preventative measures to strengthen respect for international law applicable to humanitarian action?
4. What is the role of domestic law to secure respect for international law applicable to humanitarian action?

Scenario

A major flood has recently devastated the northern part of the State of Niaman. Houses, buildings, and State infrastructure have been destroyed or seriously damaged, leaving inhabitants in the streets without access to medical care, food, or water. The authorities of Niaman have been taken by surprise and are totally unprepared to address such a major natural disaster and assist the population. However, they have so far refused the assistance of any humanitarian organization.

In your opinion, which arguments could be presented to the authorities of Niaman in order for them to respect their international legal obligations?

5.2 Monitoring and fact-finding

Identify key UN and regional bodies and mechanisms, including inquiries and fact-finding mechanisms, to monitor for and respond to serious violations of IHRL and IHL.

Key points and concepts

<i>UN Charter Chapter VII</i>	While both the UN General Assembly and Security Council can adopt resolutions calling for respect of IHRL and IHL in particular situations, the Security Council has in practice come to consider serious violations of IHRL and IHL as a threat to the peace under Chapter VII of the UN Charter, with the possibility to adopt a wide range of legally binding measures such as the establishment of peacekeeping operations or creation of ad-hoc criminal tribunals.
<i>Fact-finding missions and CoI</i>	International commissions of inquiry and fact-finding missions have been established by the UN Security Council, the General Assembly, the Human Rights Council, the UN Secretary-General and the UN High Commissioner for Human Rights to monitor and assess situations with serious violations of IHRL and IHL, to promote accountability and to counter impunity.
<i>UNSG</i>	The UN Secretary General has the power to bring to the attention of the Security Council any matter, which may threaten international peace and security. In addition, s/he plays a key role in promoting respect and accountability for IHRL and IHL, through measures such as the Rights Up Front Initiative. This initiative aims to strengthen prevention of and responses to serious IHRL and IHL violations through, most notably, a more active involvement and increased responsibility of all UN staff and entities.
<i>UN Human Rights Council</i>	The UN Human Rights Council is responsible for the promotion and protection of human rights. It has three main mechanisms to monitor for and respond to serious violations of IHRL and IHL: 1) a confidential complaint procedure; 2) country and thematic special procedures; and 3) the Universal Periodic Review.
<i>IHRL treaty bodies</i>	The Subcommittee on Torture includes in its mandate to visit places where individuals are deprived of their liberty. In addition, each of the 9 core IHRL treaties sets up a human rights treaty body (committee) mandated to review States' reports on respect for and progress under the concerned treaty. Although they do not deliver binding judgments, most can consider inter-State and/or individual complaints on human rights violations.
<i>Monitoring by regional organizations</i>	Regional organizations such as the Organization of American States (OAS), the African Union (AU), the European Union (EU), the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) monitor for and respond to violations

of IHRL and IHL. For some, this includes sending onsite observers, establishing fact-finding missions or peacekeeping operations, or supervising ceasefire agreements.

Regional judicial bodies

At the regional level, inter-State and individual complaints for violations of the 1981 African Charter on Human and Peoples' Rights, the 1950 European Convention on Human Rights, and the 1969 American Convention on Human Rights are examined by judicial bodies (courts/commissions) which issue judgments binding on States parties.

In 1999, the first resolution on children and armed conflict adopted by the United Nations Security Council identified and condemned six grave violations affecting children in times of war:

The six grave violations against children in armed conflict

- ❖ Killing and maiming of children
- ❖ Recruitment or use of children as soldiers
- ❖ Sexual violence against children
- ❖ Abduction of children
- ❖ Attacks against schools or hospitals
- ❖ Denial of humanitarian access for children

Subsequent Security Council resolutions called for the creation of a monitoring mechanism for these violations, which has been implemented as the “Monitoring and Reporting Mechanism on Grave Violations against Children and Armed Conflict”.

Recommended resources

For an overview of the different mechanisms for ensuring compliance and enforcement of IHL, including human rights bodies (see pp. 49-53):



International Legal Frameworks for Humanitarian Action, Topic Guide

Huma Haider (2013)

University of Birmingham, GSDRC

phap.org/ilfha-KMY5

For a lecture on the role of the UN human rights mechanisms and human rights treaty bodies:



United Nations Treaty and Charter-Based Human Rights Bodies: Competitive or Complementary?

Sir Nigel Rodley (undated)

UN Audiovisual Library of International Law, video (60')

phap.org/ilfha-HAXL

On international commissions of inquiry and fact-finding missions established by the UN (see pp. 1-16):



Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law

OHCHR (2015)

phap.org/ilfha-H85F

For an online lecture on the Universal Periodic Review:



The Universal Periodic Review of the Human Rights Council and its Interaction with Other Human Rights Procedures

Markus Schmidt (undated)

UN Audiovisual Library of International Law, video (29')

phap.org/ilfha-FZED

For an online lecture on human rights treaty bodies:



The United Nations Human Rights Treaty Body System

Jane Connors (undated)

UN Audiovisual Library of International Law, video (31')

phap.org/ilfha-3AUW

For an online lecture on UN and regional human rights bodies:



Human Rights Bodies: The United Nations High Commissioner for Human Rights, the Human Rights Council and Regional Human Rights Bodies

Ruth Wedgwood (undated)

UN Audiovisual Library of International Law, video (37')

phap.org/ilfha-PDCL

Concerning regional human rights courts (see pp. 71-111):



“Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers”

OHCHR (2003)

Professional Training Series No. 9, Chapter 3 ‘The Major Regional Human Rights Instruments and the Mechanisms for their Implementation’

phap.org/ilfha-9NN2

Primary sources

On fact-finding missions within the UN:



Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security

UN General Assembly (1991)

Annexed to UN General Assembly Resolution 46/59

phap.org/ilfha-RVR6

For direct links to the 9 core IHRL treaties and their human rights treaty bodies:



The Core International Human Rights Instruments and Their Monitoring Bodies

OHCHR (undated)

phap.org/ilfha-6457

Further exploration

On fact-findings mechanisms under IHL treaties, the role of UN bodies, human rights treaty bodies, and regional organizations (see pp. 285-286 and 310-326):



“Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims”

Toni Pfanner (2009)

International Review of the Red Cross, Vol. 91, No. 874, pp. 285-286 and 310-326

phap.org/ilfha-KA7G

For an overview of the Secretary-General’s Human Rights Up Front Initiative (see pp. 3-4 and 9):



“Three Pillars of Action: The United Nations’ Human Rights Up Front Initiative”

Jan Eliasson (2015)

Academic Council on the United Nations System Quarterly Newsletter, No. 1

phap.org/ilfha-C4KF

On the role of the UN High Commissioner for Human Rights to address both violations of IHRL and IHL (see pp. 20-31):



The United High Commissioner for Human Rights and International Humanitarian Law

Bertrand Ramcharan (2005)

Program on Humanitarian Policy and Conflict Research, Harvard University, Occasional Paper Series No. 3

phap.org/ilfha-JC88

Concerning the role of international and regional human rights treaty bodies/courts for monitoring and responding to IHL violations (see pp. 798-812):



“On the Relationship between Human Rights Law Protection and Humanitarian Law”

Hans-Joachim Heintze (2004)

International Review of the Red Cross, Vol. 86, No. 856

phap.org/ilfha-47VK

Study questions

1. How can the UN General Assembly and Security Council monitor for and respond to serious violations of IHRL and IHL?

2. What is the role of international commissions of inquiry and fact-finding missions?
3. What is the role of the UN Secretary-General in monitoring for and responding to serious violations of IHRL and IHL?
4. What are the main mechanisms of the UN Human Rights Council?
5. How would you define the role of UN human rights treaty bodies?
6. Which are the main regional organizations involved in monitoring IHRL and IHL violations?
7. What is the role of regional human rights judicial bodies?

Scenario

Tamanu is a country in Africa and is a member of the United Nations and the African Union. The population in the northern part of Tamanu has unilaterally declared its independence from the State of Tamanu in order to create the new State of North Tamanu. This unilateral declaration has been firmly rejected by the government of Tamanu, which sent its armed forces to the northern part of the country in order to quash the independence movement. However, since then, diverse reports of international and local NGOs account for grave human rights violations committed by the soldiers of Tamanu, including rape of women and girls and torture and ill-treatments.

In your opinion, which UN and regional bodies and mechanisms could be potentially competent here to monitor for and respond to the grave violations committed in the northern part of Tamanu?

5.3 Responsibility for violations

Recognize that international law relevant to humanitarian action may give rise to State responsibility for violations of international law as well as individual criminal responsibility for international crimes.

Key points and concepts

<i>State responsibility</i>	Under customary international law and as laid down in the articles on <i>Responsibility of States for Internationally Wrongful Acts</i> , a State engages its international responsibility for an internationally wrongful act when its conduct – i.e. an action or omission – is attributable to the State under international law and constitutes a violation of an international obligation binding on it at the time the act occurs by virtue of treaty law or customary law. See Articles 1-3 and 12-13 on State responsibility.
<i>Invocations by States</i>	In case of violations of IHRL and IHL which are owed to the international community as a whole, State responsibility can be invoked by any State (especially those parties to the same treaty). The injured State may claim the cessation of the internationally wrongful act and assurances and guarantees of non-repetition as well as reparation in the interests of individual victims. See especially Article 48 on State responsibility.
<i>Individual criminal responsibility</i>	Violations of international legal rules relevant to humanitarian action may engage individual criminal responsibility if such violations amount to an international crime, and more specifically a war crime, a crime against humanity, or a crime of genocide.
<i>War crimes, crimes against humanity, genocide</i>	Violations of international law relevant to humanitarian action may for instance amount to war crimes (e.g. starvation of civilians as a method of warfare, forcible displacement of civilians, direct attacks against personnel, installations, material, units, or vehicles involved in humanitarian assistance), a crime against humanity (e.g. through forcible deportation) or a genocide (e.g. through deliberate infliction of conditions on life calculated to bring about a group's physical destruction in whole or in part). See e.g. Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court.

Recommended resources

For a detailed lecture on State responsibility:



Responsibility in International Law: An Introduction

Alain Pellet

UN Audiovisual Library of International Law, video (69')

phap.org/ilfha-N58L

On State responsibility for violations of IHL and the articles of the International Law Commission:



“State Responsibility for Violations of International Humanitarian Law”

Marco Sassòli (2002)

International Review of the Red Cross, Vol. 84, No. 846, pp. 401-433

phap.org/ilfha-SE8Z

For an online lecture on individual criminal responsibility:



Investigating and Prosecuting International Crimes

University of Leyde

International Law in Action 2, Module 1, video 6 'Individual Criminal Responsibility' (6:59')

phap.org/ilfha-RSX3

For an online lecture on the development of individual criminal responsibility:



The Rise of Individual Criminal Responsibility under International Law

Roger O’Keefe

UN Audiovisual Library of International Law, video (43')

phap.org/ilfha-KRLX

Primary sources

For the text of the articles on State responsibility:



Responsibility of States for Internationally Wrongful Acts

International Law Commission (2001)

First commended by the UN General Assembly Resolution 56/83

phap.org/ilfha-VERE

For the text of the Statute of the International Criminal Court:



Rome Statute of the International Criminal Court

International Criminal Court (ICC) (1998)

phap.org/ilfha-MENT

Further exploration

Concerning State responsibility and the articles of the International Law Commission:



State Responsibility

J.R. Crawford (2006)

Max Planck Encyclopedia of Public International Law

phap.org/ilfha-XE7T

Concerning the influence of IHRL on State responsibility and the articles of the International Law Commission:



“The Impact of International Human Rights Law on State Responsibility”

Robert McCorquodale (2009)

In Menno Kamminga & Martin Scheinin (eds.), The Impact of Human Rights on General International Law, Oxford University Press, pp. 235-254

phap.org/ilfha-3DP5

On individual criminal responsibility for war crimes in NIAC:



Individual Criminal Responsibility for Violations of International Humanitarian Law in Non-International Armed Conflicts

Thomas Graditzky (1998)

International Review of the Red Cross, No. 322

phap.org/ilfha-UPJZ

Study questions

1. What are the main conditions for State responsibility under international law?
2. What are the main consequences of State responsibility under international law?
3. Under which circumstances can violations of international law relevant to humanitarian action give rise to individual criminal responsibility?
4. Which international crimes may exist in case of violations of international law relevant to humanitarian action?

Scenario

A non-international armed conflict has recently broken out in the State of Furia with the government facing two different armed groups. After four months of intense hostilities, the government and the military commander of the Furian armed forces decided to launch operation “Clean State” to cut any support of the civilian population to the two armed groups. This operation aimed to displace civilians suspected to support any armed group to an isolated and desert region in Furia. After three months, a total of 20,000 civilians, including women and children, have been forcibly displaced, without being provided shelter and water in the area where they have been relocated.

Furia is party to the four 1949 Geneva Conventions and the two 1977 Additional Protocols.

In your opinion, whose responsibility arises in this case with respect to the forcible displacement of part of Furia’s population?

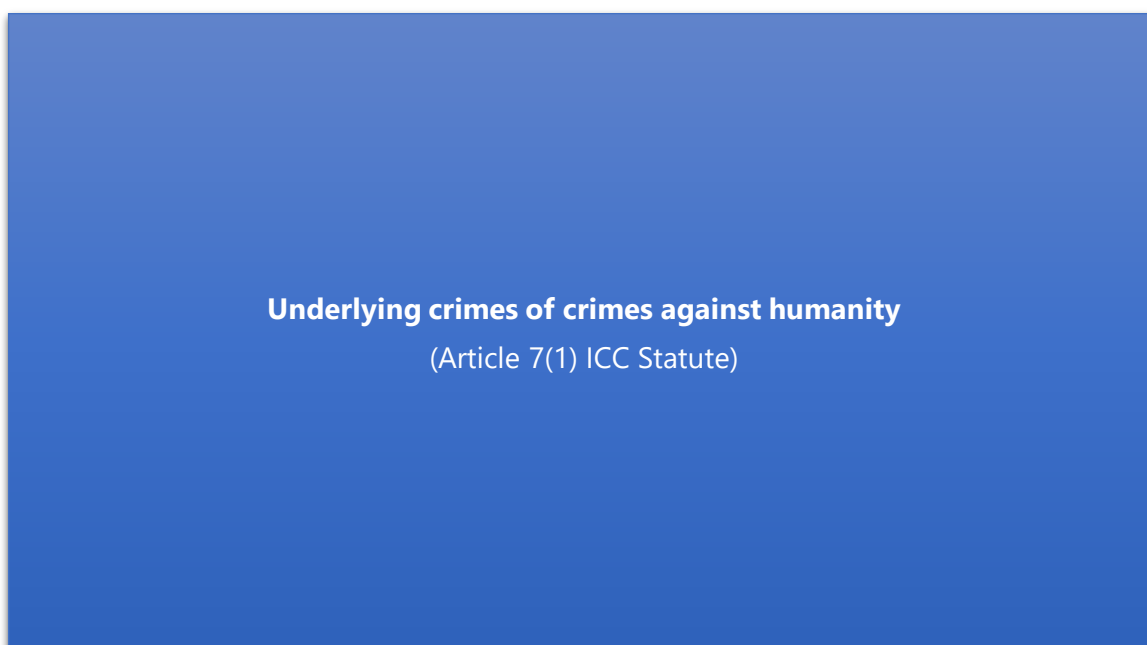
5.4 War crimes, crimes against humanity, and genocide

Define war crimes, crimes against humanity, and genocide, and identify the roles of the International Criminal Court (ICC) and ad-hoc tribunals.

Key points and concepts

War crimes War crimes are serious violations of customary IHL or IHL treaty rules perpetrated in an IAC or NIAC. See e.g., Article 8 of the ICC Statute and rule 156 customary IHL.

Crimes against humanity Crimes against humanity consist of the following underlying crimes when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, be it in times of peace or armed conflict (see table below).



•Murder;

Genocide Genocide consists of any of the following crimes committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such in times of peace or armed conflict (see table below).

Underlying crimes of genocide

(Article 6 ICC Statute)

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

ICC

Established in 1998 with the adoption of the Rome Statute, the International Criminal Court (ICC) is a permanent international court that aims to investigate and prosecute individuals accused of committing international crimes when the competent State is unable or unwilling to prosecute.

ICC jurisdiction

The ICC has jurisdiction over international crimes committed on the territory of a State party or by nationals of States parties. The court may exercise its jurisdiction upon referral of a situation by a State party, referral by the UN Security Council or by the initiation of an investigation by the ICC Prosecutor.

ICTY and ICTR

The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda were both established by the UN Security Council under Chapter VII of the UN Charter. The tribunals aimed to investigate, prosecute, and try individuals for the perpetration of international crimes respectively in the territory of the former Yugoslavia since 1991 and in the territory of Rwanda or in the territory of neighboring States by Rwandan citizens in 1994.

Recommended resources

For an online lecture on international crimes (see videos 1-5):



Investigating and Prosecuting International Crimes

University of Leiden

International Law in Action 2, Module 1

phap.org/ilfha-4BWK

For an online course on the international crimes:



International Crimes

International Committee of the Red Cross (ICRC)

phap.org/ilfha-56GD

For the definition of war crimes, crimes against humanity, and genocide (see pp. 61-75):



International Law and the Fight against Impunity

International Commission of Jurists (2015)

Practitioners' Guide No. 7, pp. 61-75

phap.org/ilfha-B7FK

For an online lecture on crimes against humanity:



Crimes against Humanity

Sean D. Murphy (undated)

UN Audiovisual Library of International Law, video (59')

phap.org/ilfha-U8LF

For an online lecture on genocide:



Genocide and International Law

William A. Schabas (undated)

UN Audiovisual Library of International Law, video (23')

phap.org/ilfha-9XGC

For an overview of the objectives and jurisdiction of the ICC, including the international crimes, and its functioning (see Part I, pp. 3-6; Part III, pp. 13-15; Part IV, pp. 17-34):



Understanding the International Criminal Court

International Criminal Court (ICC) (undated)

phap.org/ilfha-WGDT

For an overview of the different international criminal courts and tribunals:



International Criminal Justice: The Institutions

International Committee of the Red Cross (ICRC) (2013)

Factsheet, Advisory Service on International Humanitarian Law, pp. 1-2

phap.org/ilfha-PPTB

Primary sources

For the definition of war crimes in the ICRC customary IHL database:



Customary IHL database

International Committee of the Red Cross (ICRC)
Cambridge University Press, Cambridge & New York

phap.org/ilfha-9V32

For the ICC Statute:



Rome Statute of the International Criminal Court

International Criminal Court (ICC) (1998)

phap.org/ilfha-KY93

For the definition of the international crimes in the ICC Statute:



Elements of Crimes

International Criminal Court (ICC) (2010)
Revised version, originally adopted in 2002

phap.org/ilfha-DA4A

For the Statute of the International Criminal Tribunal for the former Yugoslavia:



Updated Statute of the International Criminal Tribunal for the former Yugoslavia

United Nations (2009)
Initially adopted on 25 May 1993 by UN Security Council Resolution 827

phap.org/ilfha-3ZRV

For the Statute of the International Criminal Tribunal for Rwanda (see pp. 59-82):



Statute of the International Criminal Tribunal for Rwanda, as adopted and amended

United Nations (2010)
Originally adopted on 8 November 1994 by UN Security Council Resolution 955

phap.org/ilfha-KNHH

Further exploration

On war crimes:



War Crimes

Steven R. Ratner (undated)
Crimes of War Education Project database

phap.org/ilfha-ZWXL

On crimes against humanity:



Crimes against Humanity

Cherif Bassiouni (undated)

Crimes of War Education Project database

phap.org/ilfha-6ZMP

Concerning genocide:



Genocide

Diane F. Orentlicher (undated)

Crimes of War Education Project database

phap.org/ilfha-G2D2

For a reference work on international criminal law, including the definition of international crimes and the international criminal courts and tribunals (see pp. 63-130 and pp. 253-270):



Cassese's International Criminal Law

Antonio Cassese & Paola Gaeta (2013)

3rd edition, Oxford University Press

phap.org/ilfha-92R2 [available for purchase]

On the work of the ICC (documentary available for purchase):



The Reckoning: The Battle for the International Criminal Court

Paco de Onís, Peter Kinoy, and Pamela Yates

phap.org/ilfha-93HW

For a detailed analysis of the effectiveness of the two ad hoc tribunals:



“How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR”

Lilian A. Barria & Steven D. Roper (2005)

The International Journal of Human Rights, Vol. 9, No. 3, pp. 349-368

phap.org/ilfha-ZKZ2

Study questions

1. How would you define war crimes?
2. What are the main definitional components of crimes against humanity?
3. What are the main definitional components of genocide?
4. What is the objective of the ICC?

5. What are the factors to consider for the ICC to have jurisdiction?
6. What is the difference between the two ad hoc criminal tribunals?

Scenario

During colonization, two States with ethnically homogenous populations, Infamia and Ferano, were united to become the single State of Inferano. Decolonization did not impact on the geographic location of the two ethnic groups. The Infamia constitute the numerical majority.

Following a *coup d'état* six months ago, the government has come under control of military commanders of Infamia ethnicity whose objective is to establish an ethnically homogenous State. In order to achieve this, they have undertaken a systematic and forcible deportation of adult individuals of Ferano ethnicity to the neighboring country and a transferal of Ferano children to territories inhabited by individuals of Infamia ethnicity. Within two months, they have succeeded in deporting almost 80 percent of all adults of Ferano ethnicity and transferring 90 percent of children.

As Inferano ratified the Rome Statute of the ICC three years ago, do you think that the ICC would have the jurisdiction to prosecute the military commanders and, if so, for which international crimes?

5.5 Domestic and international mechanisms

Identify key concepts regarding the roles of domestic and international mechanisms to pursue violations of international law by individuals.

Key points and concepts

<i>Underlying objective</i>	The fight against impunity for violations of international law by individuals is the underlying objective of both domestic and international mechanisms.
<i>Universal jurisdiction</i>	In addition to having jurisdiction over crimes committed by any individuals on the State territory (territorial jurisdiction) and by their nationals abroad (personal jurisdiction), domestic courts allegedly have universal jurisdiction over international crimes and some serious violations of IHRL, allowing them to prosecute any individuals irrespective of their nationality and the place where the crime has been committed.
<i>Complementarity</i>	The relationship between domestic and international mechanisms is regulated by the principle of complementarity, whereby international prosecution can only arise if the competent State is unwilling and/or unable to prosecute at the domestic level.
<i>Legality, non-retroactivity, double jeopardy</i>	When pursuing violations of international law by individuals, both domestic and international mechanisms are constrained by the principles of legality (<i>nullum crimen sine lege</i>) and non-retroactivity, providing that individuals cannot be prosecuted for acts that were not criminalized at the time of their commission, and the principle of double jeopardy (<i>ne bis in idem</i>), which prohibits trying and/or punishing a person twice for the same offence.

Recommended Resources

For an online lecture on the role of international and domestic courts in pursuing violations of international law by individuals:



International Criminal Law and Domestic Courts

Larissa van den Herik (undated)

UN Audiovisual Library of International Law, video (29')

phap.org/ilfha-S988

On universal jurisdiction:



Universal Jurisdiction

Françoise Hampson (undated)

Crimes of War Education Project database

phap.org/ilfha-QBGY

Concerning the complementary role of domestic courts and the ICC:



“The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity”

Markus Benzing (2003)

In Armin von Bogdandy & Rüdiger Wolfrum (eds.), Max Planck Yearbook of United Nations Law, Vol. 7, pp. 591-632

phap.org/ilfha-ZDCT

On the principles of legality, non-retroactivity (see pp. 392-406), and double jeopardy (see pp. 429-438):



International Law and the Fight against Impunity

International Commission of Jurists (2015)

Practitioners’ Guide No. 7

phap.org/ilfha-B7FK

Primary sources

For the principle of complementarity and double jeopardy in the ICC Statute (see Articles 17 and 20):



Rome Statute of the International Criminal Court

International Criminal Court (ICC) (1998)

phap.org/ilfha-KY93

Further exploration

For an overview of all concepts covered in this statement:



Brussels Principles against Impunity and for International Justice

Brussels Group for International Justice (2002)

Adopted following the international conference on ‘The Fight against Impunity: Stakes and Perspectives’

phap.org/ilfha-3JZC

For a detailed analysis of the concept of universal jurisdiction in light of the jurisprudence of the International Court of Justice (see especially pp. 735-747):



“Universal Jurisdiction: Clarifying the Basic Concept”

Roger O’Keefe (2004)

Journal of International Criminal Justice, Vol. 2

phap.org/ilfha-ZM6G

Concerning the principle of double jeopardy:



“Ne Bis in Idem in International law”

G. Conway (2003)

International Criminal Law Review, Vol. 3, pp. 217-244

phap.org/ilfha-JECK

Study questions

1. What is the common objective of domestic and international mechanisms?
2. In which situations do domestic courts normally have jurisdiction over violations of international law by individuals?
3. What is the relationship between domestic and international mechanisms?
4. Which principles constrain domestic and international courts when pursuing violations of international law by individuals?

Scenario

After two years of a violent armed conflict in the State of Primo, a peace agreement has finally been adopted between the different warring parties. A new government has been established. One important condition for the adoption of the peace agreement was, however, the prosecution of all war criminals, as many war crimes were allegedly committed during the conflict. While Primo wishes to open trials, the ICC Prosecutor has just initiated its own investigations on the war crimes committed therein during the conflict on the basis of Articles 13(c) and 15 of the ICC Statute.

As Primo has ratified the Rome Statute of the ICC in 1999, how would you explain here the roles and competences of Primo’s courts and the ICC to pursue the war crimes committed during the conflict?

Domain 6: Utilizing Legal Frameworks in Humanitarian Action

The ways that humanitarian actors can and do utilize legal frameworks to further humanitarian aims.

This domain constitutes 7% of the certification assessment.

Domain outline

Humanitarian practitioners must be able to:

6.1 Identify examples of humanitarian actors contributing to procedures related to monitoring compliance or investigating alleged breaches of international law, as well as the potential risks involved.

6.2 Identify ways in which international law is employed by humanitarian actors *outside* of courts and other formal legal institutions.

6.1 Monitoring and investigations

Identify examples of humanitarian actors contributing to procedures related to monitoring compliance or investigating alleged breaches of international law, as well as the potential risks involved.

Key points and concepts

<i>Monitoring and investigations</i>	Humanitarian actors can contribute to UN and regional bodies and mechanisms monitoring compliance for human rights or investigating breaches of international law through advocacy, lobbying, reporting or submitting a petition to human rights treaty bodies or courts on behalf of victims.
<i>Serving as witnesses</i>	Humanitarian actors can (be called to) act as witnesses in criminal proceedings, including before international criminal courts or tribunals such as the ICC, as they are often the best placed to provide evidence on what happens on the ground.
<i>Humanitarian principles</i>	When contributing to procedures to monitor compliance or investigate breaches of international law, humanitarian actors may compromise perceptions of their neutrality and/or independence, with the risk of being then denied access to or within a State's territory or of being at risk of reprisal.

Recommended resources

On the role of NGOs in human rights treaty bodies (see pp. 367-383):



“The Role of Non-Governmental Organisations in Individual Communication Procedures before the UN Human Rights Treaty Bodies”

Katarzyna Sekowska-Kozłowska (2014)
Czech Yearbook of International Law, Vol. V
phap.org/ilfha-TCV4

On advocacy at the United Nations and the regional human rights mechanisms (see pp. 201-244 and 245-302):



Human Rights Tools for a Changing World, A Step-by-Step Guide to Human Rights Fact-Finding, Documentation, and Advocacy

The Advocates for Human Rights (2015)
phap.org/ilfha-4B8T

On the role of humanitarian actors in international criminal proceedings and related challenges for humanitarian action:



“Humanitarian Organizations and International Criminal Tribunals, or Trying to Square the Circle”

Anne-Marie La Rosa (2006)

International Review of the Red Cross, Vol. 88, No. 861, pp. 169-186

phap.org/ilfha-UQ9M

On cooperation of humanitarian actors with international tribunals:



“Note for Humanitarian Organizations on Cooperation with International Tribunals”

Kate Mackintosh (2004)

International Review of the Red Cross, Vol. 86, No. 853, pp. 131-146

phap.org/ilfha-HJE8

Further exploration

On humanitarian actors’ management of sensitive protection information (see Chapter 6, pp. 78-100):



Professional Standards for Protection Work Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence

International Committee of the Red Cross (ICRC) (2013)

phap.org/ilfha-57ET

On ICRC’s testimonial immunity in courts:



“The ICRC Privilege Not to Testify: Confidentiality in Action”

Gabor Rona (2004)

International Committee of the Red Cross (ICRC)

phap.org/ilfha-UGRB

On ICRC’s absolute right of non-disclosure of confidential information before the ICC:



Testimony of ICRC Delegates before the International Criminal Court

Stephane Jeannet (2000)

International Review of the Red Cross, No. 840

phap.org/ilfha-R4CS

Concerning more particularly the role of the ICRC in truth commissions:



Cooperation between Truth Commissions and the International Committee of the Red Cross

Toni Pfanner (2006)

International Review of the Red Cross, Vol. 88, No. 862, pp. 363-373

phap.org/ilfha-QAP3

Study questions

1. What are the key tools for humanitarian actors to contribute to UN and regional bodies and mechanisms?
2. What can be the role of humanitarian actors in criminal proceedings?
3. What are the main risks for humanitarian organizations when contributing to procedures to monitor compliance or investigate breaches of international law?

Scenario

For two years, massive human rights violations have been committed by the authorities of the State of Panir against a minority ethnic group. Described as genocide, the UN Security Council has quickly reacted and referred the situation to the ICC.

As you are working for a humanitarian organization in Panir, the ICC Prosecutor asks you to act as a witness in the case against the former Prime Minister of Panir. The Prosecutor knows you were providing assistance in one of the areas where violations were allegedly committed upon order of the former Prime Minister and would like you to testify.

In your opinion, could you be forced to testify before the ICC and what issues could it raise for you and your organization?

6.2 Using the law outside of formal legal institutions

Identify ways in which international law is employed by humanitarian actors outside of courts and other formal legal institutions.

Key points and concepts

<i>Advocacy</i>	Humanitarian actors can promote international law through advocacy campaigns raising awareness on particular issues or situations.
<i>Dialogue</i>	Humanitarian actors can strengthen respect for international law by engaging in dialogue with States and other concerned stakeholders – including through confidential means or by persuasion or lobbying – and/or by providing trainings.
<i>Denunciation</i>	When concerned about potential violations of international law, humanitarian actors can raise awareness through public statements, reports, condemnations, or denunciations calling on States or other stakeholders to respect their obligations.

Recommended resources

On the role of humanitarian actors to promote IHL (see pp. 3-4):



“How Can NGOs Help Promote International Humanitarian Law?”

Carlo von Flüe & Jean-Philippe Lavoyer (1997)

Relief and Rehabilitation Network Newsletter, No. 9, Humanitarian Practice Network

phap.org/ilfha-L3HE

On accountability of humanitarian actors as potential witnesses of crimes:



What is Humanitarian Accountability?

Fabien Dubuet (2002)

Médecins sans frontières, pp. 3-5

phap.org/ilfha-XT7Q

On denunciation of violations by humanitarian actors, especially the ICRC:



“Speaking Out or Remaining Silent in Humanitarian Work”

Jakob Kellenberger (2004)

International Review of the Red Cross, Vol. 86, No. 855, pp. 593-608

phap.org/ilfha-6V5K

On actions taken by the ICRC in the event of violations of IHL or IHRL:



“Action by the International Committee of the Red Cross in the Event of Violations of International Humanitarian Law or of Other Fundamental Rules Protecting Persons in Situations of Violence”

International Committee of the Red Cross (ICRC) (2005)
International Review of the Red Cross, Vol. 87, No. 858, pp. 393-400
phap.org/ilfha-LMVS

On the role of humanitarian actors, especially the ICRC, in advertising IHL violations and their relationship with the media:



“Can Public Communication Protect Victims?”

Roland Huguening-Benjamin (2005)
International Review of the Red Cross, Vol. 87, No. 860, pp. 661-672
phap.org/ilfha-3J6T

Further exploration

On the role of humanitarian actors in humanitarian persuasion:



Marketing Humanitarian Space: Argument and Method in Humanitarian Persuasion

Hugo Slim (2003)
Centre for Humanitarian Dialogue
phap.org/ilfha-PFW3

On public communication strategies of humanitarian actors:



“Public Communication Strategies of International Humanitarian Organizations”

Dennis Dijkzeul & Markus Moke (2005)
International Review of the Red Cross, Vol. 87, No. 860, pp. 673-691
phap.org/ilfha-DGYE

For guidelines to humanitarian actors when using international law (see Chapter 4, pp. 57-64):



Professional Standards for Protection Work Carried Out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence

International Committee of the Red Cross (ICRC) (2013)
phap.org/ilfha-57ET

Study questions

1. How can humanitarian actors promote international law?
2. What are the main tools that can be used by humanitarian actors to strengthen respect for international law?

3. How can humanitarian actors use international law when faced with potential violations?

Scenario

The State of Marsi has recently experienced one of the deadliest floods that have ever occurred in the country. In addition to a dramatic death toll, the flood has left some 30 000 people without homes and means of subsistence. Your organization is among the ones that has reacted most quickly to the situation and has set up humanitarian relief operations. You have been sent to the southern part of Marsi, which has been the most affected by the flood. While working there, you have, however, soon realized that the Marsian authorities were reluctant to provide assistance to the population in the southern part of the country, which is almost exclusively composed of a minority religious community. The government has set up vast relief operations to the benefit of all its population except those living in southern Marsi.

What steps would you progressively take to improve the situation in southern Marsi by using your knowledge of international law?

Appendix A: PHAP Code of Ethics and Professional Conduct

Approved by the PHAP Board of Directors on 2 March 2017

Preamble

The ethical framework of the International Association of Professionals in Humanitarian Assistance and Protection (PHAP) begins with recognition of the value of all human life. During crisis situations in which normal systems are not functioning, there is a need for humanitarian action to protect and uphold human life and dignity. It is for the sake of all crisis-affected people, now and in the future, that we uphold this Code.

In addition to myriad practical challenges, humanitarian action continually faces obstacles resulting from other powerful interests. Achieving humanitarian aims in this complex world depends on the credibility and reputation of humanitarian work, which is shaped by the collective conduct of the individuals involved in it. This provides the incentive for us to attain and maintain the highest possible degree of consistent ethical conduct.

Humanitarian action is inherently confronted with ethical considerations and dilemmas at every turn – often with life or death implications. Furthermore, even with the best of intentions, humanitarian action has the potential to cause harm if assistance and protection are misused, politicized, or coopted by other interests, or if dependencies are inadvertently created. This Code does not aim to provide specific guidance for all, or even most, of these issues, but it provides a common basis for ethical deliberation. Questions related to ethical dilemmas are best answered by thoughtful consideration of fundamental principles, rather than reliance on detailed regulations.

This Code of Ethics and Professional Conduct must be embraced and upheld by all members of the Association, as well as those applying for or holding certifications issued by the Association, whether they are practitioners, supporters, facilitators, or partners of humanitarian action. Members and certificants promise to uphold this Code and act ethically and professionally above and beyond the baseline requirements of law.

Without violating the Code, each member and certificant also supplements the values and rules specified in the Code based on guidance drawn from personal values, culture, and experience.

Shared understanding of humanitarian action

Members and certificants have and promote a shared understanding of the core principles, central focus, limits, and duties of humanitarian action.

Core principles

Members and certificants recognize that the practice of humanitarian action is rooted in a set of core principles, which form the foundation of the unique role and value of humanitarian action and distinguish it from other forms of assistance and protection. These principles define and guide, but must also be balanced within the context and complexity of the human experience.

Humanity: Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for the human being.

Impartiality: Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class, or political opinions.

Neutrality: Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious, or ideological nature.

Independence: Humanitarian action must be autonomous from the political, economic, military, or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

Central focus

Members and certificants recognize that the principle of humanity, which defines the purpose of humanitarian action, underscores that people are at the heart of humanitarian action and that respect for the dignity of crisis-affected people underpins all humanitarian activities. They recognize that upholding human dignity requires supporting the agency of crisis-affected people in all respects.

Limits

Members and certificants recognize the limits of humanitarian action as an extraordinary activity in situations when the authorities responsible for addressing identified needs are unable to do so.

Duties

Members and certificants recognize the duty of humanitarian action to avoid jeopardizing lasting improvements of a situation or bringing about any other negative effects. Humanitarian action should avoid creating dependencies and other impediments to recovery and development efforts, and should where possible facilitate such efforts.

Furthermore, while a commitment to neutrality endeavors to ensure that humanitarian action is not driven by positions of a political, racial, religious, or ideological nature, this does not mean that humanitarian actors should be disengaged from policy discussions in general. On the contrary, members and certificants recognize the duty of humanitarian actors to understand and engage in the discussion and formation of policies that affect their ability to pursue humanitarian aims, and through doing so seek to maintain and expand space for humanitarian action to be carried out.

Shared standards of professional conduct

Regardless of whether they are themselves directly engaged in humanitarian activities as defined above, members and certificants adhere to the following general standards of professional conduct:

- **Handling power responsibly**
I am conscious of the power I have and use it responsibly.

- **Supporting the agency of others**
I recognize the fundamental equality of all people.

I strive to support the agency of others in all aspects of my work.

I do not unnecessarily or inappropriately impose my will on others.

- **Having high standards for myself and others**

I adhere to the highest possible standards according to the situation, whether I am engaged in a volunteer or paid capacity.

- **Being conscious of the commitments I make**

I recognize the limitations of my expertise and, to the extent possible, only undertake tasks that I am confident I can adequately fulfil.

I accept responsibility for my work.

I follow through on my commitments.

- **Improving my own capacities and those of people around me**

I take responsibility for continually acquiring needed knowledge, skills, and abilities for the local and international contexts of my work.

I assist colleagues to strengthen their capacities when needed.

I strive to use all appropriate resources available, including consultation with peers.

- **Respecting others and promoting ethical behavior**

I take measures to discourage, prevent, and correct any unethical conduct of colleagues.

I value the diversity of actors within and supporting the humanitarian sector and show respect for others in the professional community even when I disagree.

I strive to be collegial, but I do not allow collegiality to outweigh shared responsibility for ethical behavior.

- **Avoiding conflicts of interest**

I avoid having my professional judgment compromised by conflicts of interest.

- **Avoiding bias**

I strive to be aware of my own biases and work to overcome them.

I strive to make judgments based on evidence and objective analysis rather than assumptions.

- **Promoting awareness and understanding of principled humanitarian action**

Whether or not I am engaged in humanitarian work myself, I promote public awareness and understanding of principled humanitarian action.