UNDERSTANDING INTERNATIONAL HUMANITARIAN LAW

An Introduction to the Law of Armed Conflict
About this document
This document provides an overview of the laws that regulate international and non-international armed conflicts. It was developed to serve as a practical resource for professionals working in conflict or crisis settings to help them better understand how international law can support their work. The document explains the concepts, elements, and the terminology of public international law, international humanitarian law, international human rights law, and the law of state responsibility.

About the Diakonia International Humanitarian Law Centre
The Diakonia International Humanitarian Law Centre is a global legal centre of excellence set up to share knowledge about and promote the laws of war. We are driven by the belief that law is a tool to increase protection in armed conflict and improve lives. The Centre serves the humanitarian community as a knowledge hub and independent advisory group on the laws of war. We provide practical legal and policy advice to the humanitarian sector, and carry out training and advocacy to raise awareness with the aim of creating lasting change in the behaviour of armed actors.
# Introduction: We believe that greater knowledge of the law leads to more humanity in conflict

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Hundreds of millions of people across the globe live in regions affected by conflict. They experience bombardments, sieges, and sexual violence; they suffer from shortages of water, food, and other essentials; and they live with the constant fear of harm and death.

Even in those situations of disorder and peril, however, international laws apply that seek to limit the harmful impact of conflict. International humanitarian law (IHL) is a set of rules that regulate how wars should be fought and how people should be protected.

Respect and implementation of this body of law directly results in less harm to civilians. We at the Diakonia International Humanitarian Law Centre believe that the law is a tool to increase protection in armed conflict and to improve lives.

Respect for the law begins with knowledge. This document gives the reader an understanding of the central elements of the laws of war and the meaning of commonly used terminology. It was written for practitioners in governments, militaries, and humanitarian organisations to help them apply international humanitarian law in their work.

This document also comes in an Easy Read version and in various languages, which can be found on our website: www.diakonia.se/ihl.

International humanitarian law is a crucial tool for everyone working in regions affected by war. Greater knowledge of the law will save lives and lead to more humanity in conflict.
1. What is public international law?

Public international law is a set of rules that bind states and governs the relations between them. It defines what responsibilities states have and how they should act. Public international law regulates the conduct between states, but also sets out rules on how states should treat individuals. It also imposes certain responsibilities on non-state actors, such as armed groups and business enterprises.

2. Public international law regulates a wide range of issues, such as telecommunications, trade, and the environment. International humanitarian law (IHL), international human rights law (IHRL), international criminal law (ICL), and international refugee law are four branches of public international law.

3. Public international law is made up of written rules and unwritten principles. Its sources are international treaties, customary international law, and general principles of law.

1.2 Who must follow international law?

4. International law is binding on different actors – so-called duty bearers – who must follow and implement the law, and who can be held to account when they fail to do so. States are the primary duty bearers under international law.

5. Non-state actors, such as armed groups, business enterprises, and international organisations also have certain duties under international law. IHL, for example, not only regulates the behaviour of states in an armed conflict, but also applies to armed groups (see 2.3 ‘When does international humanitarian law apply?’). Individuals, such as members of a states’ military or members of armed groups, also have obligations under international law and can be held personally accountable for certain acts, including war crimes (see 2.13 ‘What are war crimes?’).
2.1 What is international humanitarian law?

6. International humanitarian law (IHL) regulates situations of armed conflict. It is also commonly referred to as the law of war, law of armed conflict, or jus in bello. IHL protects persons who are not, or no longer, participating in the fighting, and regulates the means and methods that may be used during a conflict. IHL does not prohibit all violence, but it tries to minimise the harm caused during situations of conflict.

7. IHL puts limits on what is allowed in an armed conflict to prevent unnecessary human suffering, respect human dignity, and increase the prospect of lasting peace. It does so by imposing rules on the warring parties. These rules regulate both how the parties must conduct the fighting, and how persons affected by the conflict, for example civilians, must be treated (see 2.7 ‘Who and what is protected under international humanitarian law?’). The rules of IHL apply to all parties involved in an armed conflict. Some of the rules are also binding on other actors, such as neutral states, states through which humanitarian relief is transiting, and relief organisations.

8. The purpose of IHL is not to make war illegal or to end war. Rather, IHL accepts that armed conflicts exist and regulates behaviour within them. IHL applies to all armed conflicts – it does not matter why the parties are fighting, who is involved, or if the war is legal.
What is customary international law?
When states and individuals behave in a certain way, these practices can over time become a rule of international law. These rules are called customary international law. They are binding on all states and individuals because they reflect a general practice accepted as law.

Customary international law is binding because, when a certain behaviour is widespread and consistent, it is seen as a general practice and becomes a legal rule.

Some of the rules of customary international law are included in a treaty, while others remain unwritten – but equally binding – rules. Sometimes an obligation under customary international law can also be broader or narrower than what is included in a treaty.

The International Committee of the Red Cross (ICRC) has identified 161 rules of IHL that have achieved customary international law status. This means that these rules are at all times binding on all parties to a conflict. These include the obligation to treat persons who are not fighting humanely (see 2.7.1 ‘The obligation of humane treatment’); to not discriminate on certain criteria (see 2.7.2 ‘The prohibition on adverse distinction’); to make a distinction between civilians and combatants (see 2.8.1 ‘Distinction’); to take precautions in an attack (see 2.8.4 ‘Precautions in attack’); to not launch a disproportionate or indiscriminate attack (see 2.8.3 ‘Proportionality’ and 2.8.2 ‘The prohibition on indiscriminate attacks’). The 161 rules of customary IHL can be found in the ICRC Customary IHL database.
10. The four Geneva Conventions of 1949, as well as the first Additional Protocol of 1977 apply during international armed conflicts. The four Geneva Conventions are universally ratified. The first and the second convention focus on the protection of members of the armed forces who are wounded and sick. While the First Convention protects wounded and sick soldiers on land, the Second Convention covers persons at sea. The Third Geneva Convention includes rules that are specific to the treatment of prisoners of war. The Fourth Geneva Convention covers the protection of civilians, including those in occupied territory.

11. All four Geneva Conventions have one article in common: Article 3 (known as Common Article 3), which contains minimum standards that all parties to a conflict must follow, such as treating civilians humanely. While all other provisions of the Geneva Conventions apply only to international armed conflicts, Common Article 3 also applies to non-international armed conflicts. Since most armed conflicts today are non-international, Common Article 3 is one of the most important articles of the Geneva Conventions.

12. In 1977, two protocols were added to the Geneva Conventions: The First Additional Protocol (API) expands the group of civilians that are protected in international armed conflicts. It also contains rules on the means and methods of warfare that are allowed. The Second Additional Protocol (APII) expands the scope of Common Article 3 and gives additional protections in situations of non-international armed conflicts. While Common Article 3 applies to all non-international armed conflicts, API only applies when a state that has ratified the Protocol is involved in the conflict. Furthermore, APII is only binding on armed groups that meet certain criteria: the group must be operating under a responsible command structure, exercise control over part of the state’s territory enabling it to carry out ‘sustained and concerted’ military operations, and be able to implement the provisions of the Protocol.

13. While the Additional Protocols are widely but not universally ratified, many of their provisions are regarded as customary international law (see ‘What is customary international law?’). They are therefore binding on everyone. In practice, this means that the provisions of APII, which have been recognised as customary, are applicable in all situations of non-international armed conflict. Meeting APII’s higher threshold of application is not necessary.

2.3 When does international humanitarian law apply?

14. International humanitarian law (IHL) applies during armed conflicts. There are two types of armed conflicts: international (including situations of occupation, see 2.10 ‘What is a belligerent occupation?’) and non-international armed conflicts. IHL does not apply to other situations of violence, such as internal disturbances, riots, demonstrations, or isolated or sporadic acts of violence. It does also not apply to humanitarian crises if no armed conflict is occurring at the same time.

15. Many fundamental rules of IHL apply in all armed conflicts, for example when force can be used and how civilians and wounded or sick soldiers must be treated. Other rules are specific to certain types of conflict: which rules apply depends on whether the situation is an international armed conflict or a non-international armed conflict. Therefore, it is essential to identify the type of conflict that is occurring.

16. IHL applies for as long as an armed conflict takes place, until a general peaceful settlement has been achieved. Even after the end of the fighting, persons who have been detained during the conflict continue to enjoy the protection of IHL until their final release and return to their home country (known as ‘repatriation’).

17. Even in times of peace, IHL creates obligations: for example, states must ensure that its armed forces receive training and information on IHL and that new weapons comply with IHL.
2.3.1 International armed conflicts
An international armed conflict is a conflict between two or more states. This includes situations in which state armed forces fight against each other, and when a state controls a non-state armed group that is fighting on its behalf. Such a conflict is often called a ‘proxy war’. The intensity or duration of the fighting does not matter.

For states that are party to Additional Protocol I, three other forms also fall under the definition of an international armed conflict: conflicts in which people are fighting against ‘colonial domination, alien occupation or racist regimes in the exercise of their right of self-determination.’

2.3.2 Non-international armed conflicts
A non-international armed conflict is a conflict between the military of a state and at least one organised armed group, or between two or more organised armed groups. However, not all situations of violence qualify as a non-international armed conflict. Only when the armed group(s) involved in the fighting are sufficiently organised and the violence reaches a certain level of intensity, will a situation qualify as a non-international armed conflict.

IHL treaties do not provide a clear definition of these terms, but international tribunals have clarified what is meant by organisation and level of intensity. The judges ruled that factors such as the internal structure of a group, its capacity to recruit people, the duration and spread of the clashes, the number of casualties, and the types of weapons used should be analysed when assessing whether a group is sufficiently organised and violence reaches a certain level of intensity.

International humanitarian law (IHL) is binding on the parties to the conflict. This includes states and, in situations of non-international armed conflict, non-state armed groups. Most obligations are directed at the armed forces of the state and, where applicable, the armed wing of a non-state armed group. Individuals who actively participate in hostilities are also bound by IHL rules.
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2.5 What is the difference between combatants and fighters?

19. The term combatants describes members of the armed forces of a state. Fighters are persons that belong to a non-state armed group and are engaged in a non-international armed conflict.

2.5.1 Combatants

20. Combatants are the members of the armed forces of a state. The term is used in both international and non-international armed conflicts. However, ‘combatant status’, which is a specific term and means that a person has certain rights, only applies in international armed conflicts. Persons who have ‘combatant status’ have the right to directly take part in the fighting and enjoy certain protections if they are captured by the enemy.

21. Classification as a combatant is important for several reasons. First, the right to participate directly in hostilities means that combatants cannot be prosecuted for acts during the conflict that would otherwise be unlawful, such as killing others. Second, they have the right to conduct attacks and can be attacked, unless they become hors de combat (meaning they are out of the fight), in which case they enjoy protection from attacks. Third, combatants are considered prisoners of war when they are captured. As prisoner of war they are entitled to special treatment.
22. In situations of non-international armed conflict, combatant status does not exist.

2.5.2 Fighters or members of non-state armed groups

23. In non-international armed conflict, persons in the armed wing of a non-state armed group are usually referred to as fighters, members that have adopted a 'continuous combat function', or persons who are 'actively participating in hostilities' on behalf of the non-state armed group.

24. Fighters are parties to an armed conflict and can be targeted by the opposing party. They are also bound by IHL and can be held accountable in court for violations of the law.

2.6 What is a non-state armed group?

25. Non-state armed groups, such as rebel groups, are one of the parties to a non-international armed conflict.

26. To qualify as a party to a non-international armed conflict, the non-state armed groups must have some form of command structure; a common leadership with the ability to exercise control and enforce decisions, and to ensure compliance with IHL; the ability to plan and conduct military operations; and a common purpose.

27. Persons who have adopted an ongoing role as a fighter (also known as a 'continuous combat function') are regarded as members of that non-state armed group. Such persons incur IHL obligations and may be targeted by the opposing party. Persons who participate in the fighting in a spontaneous or irregular manner can only be targeted as long as they take direct part in hostilities.
2.7 Who and what is protected under international humanitarian law?

28. International humanitarian law (IHL) seeks to protect all persons during conflict, but not everyone enjoys the same protection. Persons involved in the fighting can be lawfully targeted but are protected from certain weapons being used against them, such as blinding laser weapons. Civilians and civilian objects receive the strongest protections: they can never be targeted during the fighting (see 2.8.1 'Distinction'). Prisoners of war, wounded and sick soldiers, and humanitarian workers also receive specific protections.

29. Some rules always apply and provide protection to everyone: parties to a conflict have the obligation to treat persons humanely and to not discriminate. These protections apply always and in all conflicts. They are especially relevant to persons who find themselves in enemy hands.

2.7.1 The obligation of humane treatment

30. IHL protects persons who are not or are no longer involved in the fighting. This includes fighters hors de combat (persons who are out of the fight); persons in detention; medical, religious, and humanitarian relief personnel; journalists; and other civilians. All such persons must always be treated humanely, without adverse distinction, and with respect for their dignity, honour, and religious convictions. All acts of violence, torture, and degrading treatment are always prohibited. Each of these acts is a war crime for which individuals can be held responsible (see 2.13 'What are war crimes?).

31. The obligation of humane treatment applies in all circumstances, is absolute and knows no exceptions. Military necessity cannot be used to justify deviating from this obligation.

32. How the obligation of humane treatment is put into practice varies from context to context and depends on
the circumstances. For example, the obligation of humane treatment requires the effective treatment of the wounded, sick, and shipwrecked; the provision of adequate food, drinking water, and clothing, as well as the provision of health, hygiene, and medical care of all persons in detention. It also includes the responsibility to meet the essential needs of the civilian population under the effective control of the relevant party to the conflict. However, not all of these aspects are equally relevant in all situations.

2.7.2 The prohibition on adverse distinction
33. Persons who are not or no longer participating in the fighting must be treated ‘without adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any similar criteria’ in accordance with Common Article 3. This means that ‘adverse’ or ‘unfavourable’ treatment of a person based on these criteria is forbidden. The prohibition includes ‘any similar criteria’, which means that other forms of discrimination – for example on the basis of gender, disability status, age, or political affiliation – is also prohibited. The prohibition on adverse distinction is similar to the principle of non-discrimination under human rights law and affirms that persons may not be denied the protections of IHL based on their personal identity.

34. Only ‘adverse distinction’ is prohibited. In some cases, different treatment of individuals and groups is allowed or even required to address specific needs. For example, the Third Geneva Convention allows for ‘privileged treatment’ of prisoners of war because of their health or age.

2.7.3 The protection of persons in detention
35. Detention is a widespread practice in conflict. It is one of the most vulnerable situations persons can find themselves in. IHL sets out clear rules that regulate when a person can be detained and how persons in detention must be treated.

36. IHL regulates two types of detention: criminal detention and internment. Criminal detention means that persons are detained
In an international armed conflict, states can place a person in criminal detention if they reasonably suspect that the person has committed a crime. For internment, all members of the opposing armed forces may be interned at any time and for any reason. As combatants they are entitled to prisoner of war status and combatant immunity, which means that they cannot be prosecuted for participating in the fighting. The grounds for internment of prisoners of war are valid until the end of the hostilities, at which point they must be released without delay. Unjustifiable delay in repatriation is a war crime.

Civilians may only be interned by their own state if the security of the Detaining Power makes it absolutely necessary. In situations of occupation, civilians may only be detained by the occupying power for ‘imperative reasons of security’ (Article 78, Fourth Geneva Convention). The internment of civilians must only be used as a last resort and must be periodically reviewed by a court or administrative body.

When individuals are detained without a legal basis the detention is considered arbitrary. Arbitrary detention violates the obligation of humane treatment and is therefore prohibited under IHL.

1 Grounds for detention in international armed conflict
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Grounds for detention in non-international armed conflict

In non-international armed conflicts, the parties do not have a clear right to detain. However, it is largely accepted that detention for ‘imperative reasons of security’ (internment) and for the purposes of running criminal trials (criminal detention) is allowed.

The implied authority to detain in non-international armed conflict is based on the following reasoning:

**Internment** is a measure of last resort to respond to an imperative security threat.
- Since both treaty and customary IHL applicable in non-international armed conflict regulate the modalities of internment, it can be logically assumed that internment itself is allowed.
- In practice, internment is seen as an alternative to the use of lethal force. Internment therefore strikes an appropriate balance between military necessity and humanitarian principles.

**Criminal detention** is a necessary means of detaining persons who are reasonably suspected of having committed a crime while they await trial.
- Both treaty and customary IHL regulate criminal detention and the fair trial guarantees that the accused is entitled to.
- Non-state armed groups must apply the principle of command responsibility, which means that alleged violations of IHL must be investigated and prosecuted. This process can make criminal detention necessary.
- For non-state armed groups that control a territory, criminal detention is necessary to maintain public order and the safety of the civilian population, and to fulfil their obligations of humane treatment under IHL.

Even though they are not explicitly mentioned in the law, these aspects indicate that states and non-state armed groups can use internment and criminal detention. It should be noted that such detention is strictly regulated under IHL and can in some circumstances still be illegal.
38. In both international and non-international armed conflict, persons in criminal detention have the right to certain procedural guarantees, such as the right to be informed of the charges against them. They also have the right to legal representation to mount a defence. They must be given a fair trial by an independent, impartial, and regularly constituted court that ensures basic fair trial standards. Failing to comply with these obligations is a war crime (see 2.13 ‘What are war crimes?’).

39. Both criminal detention and internment are ‘arbitrary’ and violate IHL in cases where:
   (a) there is no lawful justification for the detention under IHL; or
   (b) the procedural guarantees protected under IHL are not respected.

Material conditions of detention

In both international and non-international armed conflict, all detainees must be treated humanely. The obligation of humane treatment for persons in detention includes appropriate medical care; adequate food, water, and clothing; respect for religious convictions; and the prohibition of certain types of forced labour or being forced to fight for the detaining authority. All forms of torture, violence, and ill-treatment of detainees is explicitly prohibited as a war crime (see 2.13 ‘What are war crimes?’).

The Third Geneva Convention, which applies to international armed conflicts, contains a detailed list of rights and protections for prisoners of war. Article 76 of the Fourth Geneva Convention details specific requirements for the treatment of civilians detained by an occupying power.
2.8 What are the basic principles governing the use of force in situations of armed conflict?

40. International humanitarian law (IHL) regulates the use of force in armed conflict. The law seeks to strike a balance between military necessity and humanity. The principle of military necessity allows parties to a conflict to take measures that are necessary to accomplish a legitimate military purpose, provided that such measures are not otherwise prohibited under IHL.

41. To limit human suffering, IHL restricts what force can be used during the fighting (often referred to as the ‘conduct of hostilities’). Three principles are fundamental to the conduct of hostilities: distinction, proportionality, and precautions. These principles are part of customary international law and apply in both international and non-international armed conflicts (see ‘What is customary international law?’).

Caution: The use of force in a conflict and the use of force during law enforcement, for example during an arrest operation by the police, are not the same. They are regulated by different bodies of law. The use of force during the conduct of hostilities is regulated by IHL. Law enforcement operations, on the other hand, are regulated by international human rights law. Even during an armed conflict, the use of force by law enforcement agencies toward the civilian population remains governed by human rights law and the domestic laws of the relevant state (see 3.5 ‘Rules governing law enforcement operations’).

2.8.1 Distinction

42. The principle of distinction protects civilians from attack and is the cardinal rule of IHL. It is applicable in both international and non-international armed conflicts. The principle asserts that the parties to a conflict must always distinguish between civilians and combatants, and between civilian objects and military objectives. Attacks can only be directed against combatants and other military objectives. It is prohibited to target civilians. If no distinction is made, such an attack is considered an indiscriminate attack. Indiscriminate attacks are against the law and may amount to a war crime.

43. Civilians can lose their protection against attacks only when they take a direct part in the fighting. In case of doubt whether a person is a civilian or not, that person shall be presumed to be a civilian.

44. IHL also protects all civilian objects from attack, such as schools. ‘Civilian objects’ are all objects that are not a military objective. In case of doubt whether an object which is normally a civilian object is a military objective, that object shall be presumed to be a civilian object. Certain civilian objects are also afforded additional special protection, such as hospitals, and cultural and religious monuments, as well as objects indispensable to the survival of the civilian population (for instance drinking water installations). In limited circumstances, a civilian object may lose its protection if it is used in manner that qualifies it as a military objective (see 2.9 ‘What are military objectives?’).

2.8.2 The prohibition on indiscriminate attacks

45. The principle of distinction prohibits the launch of indiscriminate attacks in international and non-international armed conflicts. Indiscriminate attacks are defined as attacks that: (a) are not directed at a specific military objective; (b) employ a method or means of combat that cannot be directed at a specific military objective; and (c) employ a method or means of combat where the effects cannot be limited, as required by IHL.

46. The prohibition on indiscriminate attacks means that certain weapons or modes of warfare are not allowed. For example, carpet bombing an area where there are multiple military sites would constitute an indiscriminate attack as it fails to distinguish between civilians and military objectives. A number of weapons are also widely considered to be by nature indiscriminate, including chemical, biological, and nuclear weapons, cluster bombs and anti-personnel mines (see Rule 71 of the ICRC Customary IHL Study).
2.8.3 Proportionality

47. The principle of proportionality states that, even when there is a clear military objective, not all methods and means of warfare can be used. It is prohibited to launch an attack if it can be expected to cause excessive incidental loss of civilian life, injury to civilians, damage to civilian objects (or a combination of these) compared to the concrete and direct military advantage anticipated. Parties to a conflict, therefore, must assess what military advantage they are likely to achieve with an attack and what the consequences for civilians will be. If the loss of civilian life, injury, and damage outweighs the anticipated military advantage, it would be unlawful to carry out the attack.

48. A proportionality assessment should be made at all stages of the targeting process. Those who are planning an attack must consider the expected impact when they select a target, choose the methods and weaponry for the attack, and plan the overall execution of attack, for example the time of day. An attack should be abandoned if it becomes apparent in this process that the incidental impact on civilian life and civilian objects would be excessive in relation to the concrete and direct military advantage anticipated.

2.8.4 Precautions in attack

49. When launching an attack, parties to a conflict must take precautionary measures to minimise civilian casualties and damages. This includes, for example, the obligation to:

- take all feasible precautions when choosing the means and methods of attack. For example, the most precise weapons at the disposal of those seeking to carry out an attack should be used;
- give effective warning to civilians that an attack is imminent (unless circumstances do not permit);
- cancel or suspend an attack if it becomes apparent that the objective is not a military objective or that the attack will be disproportionate in its impact on civilians.

Targeting: Attacks can only be directed against military objectives.
2.8.5 Precautions against the effects of attacks

50. The parties to the conflict must also take precautions to protect the civilian population and civilian objects from future attacks. For example, they must remove civilians and civilian objects from the vicinity of military objectives and avoid locating military objectives in or near densely populated areas in the first place.

2.9 What are military objectives?

51. Only military objects may be targeted during the fighting. Military objectives are strictly defined as objects which are part of military action and whose total or partial destruction or capture would create a military advantage. Both parts of the definition must be fulfilled for an object to qualify as a military objective: this means that even a purely military object, such as military barracks, cannot be lawfully targeted if there is no military advantage to the destruction of the barracks.

52. In practice, the definition can be difficult to apply, especially when objects can be used for both civilian and military purposes. For example, a civilian TV or a radio station that is also used by the military for military communications can be a military objective. The status of an object can change during an armed conflict, but it can never be a civilian object and military objective at the same time: even a so-called ‘dual-use object’, which is used for civilian and military purposes, is in fact either a military objective or a civilian object, depending on how it is being used at a particular moment. In case of doubt the object should be considered civilian.

2.10 What is a belligerent occupation?

53. Belligerent occupation is a situation where an armed force takes effective control over foreign territory without consent. Even if the foreign armed forces do not meet any armed resistance during the invasion, this situation will be classified as a belligerent occupation once any territory – no matter the size – comes under the effective control of a foreign armed force. In such a situation, the laws of occupation apply.

54. Invasion is different from occupation. Enemy forces may invade the territory of another state, but a situation of occupation only occurs when the enemy forces have ‘effective control’. Effective control means:

i. foreign forces are present without the consent of the local government;
ii. these foreign forces are capable of exercising authority over the territory; and
iii. the local government is incapable of exercising authority.

55. According to this three-pronged test, the capacity of enemy forces to exert control over a territory is sufficient – such control does not have to be realised in practice. Nonetheless, there is disagreement about the level of control required to satisfy this test.

2.10.1 The law of occupation

56. The law of occupation, which is part of international humanitarian law (IHL), only applies to situations of occupation. It seeks to ensure respect for the displaced sovereign and the maintenance of the status quo, as occupation is a temporary administration of the occupied territory and the Occupying Power is not the sovereign of this territory.

57. When the Geneva Conventions were drafted, a highly protective framework was developed to prevent harm to persons living under enemy occupation. As such, the law of occupation places obligations on the Occupying Power to ensure public order and the civilian population’s basic needs and well-being. In its administration of the occupied territory, the Occupying Power is required to respect the status quo ante (the situation before the occupation), and balance between its own security and the interests of the local population and the displaced sovereign.
Occupying Power has positive obligations, such as ensuring food and medical supplies, maintaining health services and education institutions, ensuring access to essential supplies, and facilitating religious services. A failure by the Occupying Power to comply with its obligations constitutes a violation of international law.

58. During occupation, the Occupying Power must follow all rules of IHL, not only those relating to the occupation.

2.11 What is annexation?

59. Annexation refers to a situation where a state unilaterally proclaims its sovereignty over territory of another state – either in reality or through a legal proclamation. Annexation usually means taking territory by force. Annexation amounts to an act of aggression under international law, which is prohibited.

60. Annexation can occur where an Occupying Power incorporates all or part of the occupied territory into its own territory. Annexation of occupied territory is null and void under IHL. This means that the territory should still be seen as occupied territory and that the Occupying Power remains bound by all of its obligations under the law of occupation.

2.12 How is humanitarian assistance protected during armed conflict?

61. Millions of people who live in situations of armed conflict are dependent on humanitarian assistance to meet their basic needs, such as food, water, medicines, medical equipment, clothing, and shelter. In many conflicts, however, humanitarian access to affected populations is a constant challenge, for example because infrastructure is destroyed or parties to the conflict (unlawfully) block access. The IHL rules that protect humanitarian relief are therefore extremely important.
62. All parties to a conflict must allow and facilitate the rapid and unhindered delivery of humanitarian relief for civilians in need. This rule applies to all conflicts and includes passage of humanitarian relief to civilians of the enemy that are in need. Significantly, this means that parties to a conflict may not arbitrarily block or interfere with such humanitarian relief supplies. ‘Wilfully impeding relief’ may amount to the war crime of starvation for which the perpetrators can be prosecuted.

63. Aid workers and humanitarian objects enjoy special protections in all conflicts. Parties to the conflict should ensure the free movement of humanitarian relief personnel to allow them to provide humanitarian assistance to all civilians in need. Only in cases of ‘imperative military necessity’ can their movement be temporarily restricted. Aid workers also have obligations. They must do their work in an impartial manner and without discriminating against certain groups. They must prioritise the delivery of aid on the basis of need.

64. In practice, humanitarian organisations need the consent of the parties to the conflict to deliver humanitarian relief. Consent cannot be arbitrarily withheld. To do so would be contrary to IHL. In situations of occupation, the Occupying Power has the primary duty to ensure that the civilian population receives food, medical, and other supplies. If the Occupying Power is unable to provide the necessary supplies, it must allow and facilitate the passage of relief.

2.13 What are war crimes?

65. War crimes are serious violations of international humanitarian law (IHL). Individuals can be tried by a court and found personally responsible for these crimes.

66. War crimes can be prosecuted by the courts of the state where they occur, but also by international courts and tribunals or by the courts of third states. War crimes are one type of international crimes. Other international crimes include the crime of genocide, crimes against humanity, and the crime of aggression.
War crimes can be committed in international and non-international armed conflicts. In treaties and customary international law, the following acts are defined as war crimes:

- intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- intentionally attacking peacekeepers or humanitarian personnel;
- intentionally launching an attack that will lead to a disproportionate incidental loss of civilian life or injury, damage to civilian objects, or long-term and severe damage to the natural environment;
- intentionally attacking religious, cultural, historical, educational monuments or buildings, hospitals, or places where the wounded and sick are cared for;
- pillaging;
- committing rape, sexual slavery, enforced prostitution, forced pregnancy, or any other crime of sexual violence;
- depriving a person of the right to a fair trial;
- unlawful deprivation of liberty;
- committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- the taking of hostages;
- conscripting or enlisting children under the age of 15 into the national armed forces or using them to participate actively in hostilities.

Some violations of IHL are particularly serious. They are called grave breaches and are a sub-set of war crimes. The following acts are grave breaches when they are committed in an international armed conflict:

- wilful killing;
- torture or inhuman treatment;
- wilfully causing great suffering or serious injury to body or health;
- unlawful deportation or transfer or unlawful confinement of a protected person;
- compelling a protected person to serve in the forces of a hostile Power;
- wilfully depriving a protected person of the rights of fair and regular trial;
- taking of hostages; and
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

All states must criminalise grave breaches of IHL in their domestic law and search for, investigate, and prosecute persons suspected of committing them.

How can states and individuals be held accountable for violations of IHL?

Accountability for violations of international humanitarian law (IHL) can occur on two levels: both states and individuals can be held responsible for violations. State responsibility applies to states that are parties to an armed conflict, as well as third states pursuant to the obligation of all states to respect and ensure respect for IHL.

States that are involved in an armed conflict have positive obligations to end ongoing violations of IHL and prevent future violations. All states must suppress all breaches of IHL. They are also required to search for, prosecute, or extradite the persons who committed grave breaches.

Under IHL, states that are not involved in the conflict (so-called third states) also have the duty to take steps to ensure that those who are fighting respect IHL. There is wide acceptance that third states must not knowingly aid or assist another state in the commission of an IHL violation; must not instruct, direct, or control private persons in the commission of breaches; and must not encourage violations of IHL. Third states can – and
arguably should – take all reasonable measures to make sure other states comply with IHL. They may take measures themselves or in collaboration with other states (see 4. ‘The Law of State Responsibility’).

72. Individuals can be held criminally responsible when they commit war crimes. If the crimes are committed by a person acting on behalf of the state, such as soldiers, that state has the primary duty to investigate and prosecute the person.

73. National courts have the main responsibility to investigate war crimes and prosecute the perpetrators. However, if a state is unwilling or unable to carry out an investigation or prosecution, the International Criminal Court (ICC) can under certain circumstances step in. The ICC can only prosecute the most serious crimes, namely genocide, crimes against humanity, war crimes, and the crime of aggression (see Article 5 of the ICC Statute). Because they are so serious, these crimes can also be prosecuted by any other state, even when the crime was committed abroad, and perpetrators or victims have another nationality. This so-called principle of universal jurisdiction is based on the notion that certain crimes are so grave that they affect the international community as a whole and that those responsible should not be able to find a safe haven anywhere in the world.

74. Where a person is accused of a war crime, the judges of a court or tribunal must be sure ‘beyond reasonable doubt’ that the person is indeed responsible for the alleged crime. This means that there must be sufficient evidence that the crime occurred, that the accused had the requisite mental state or ‘guilty mind’, and that the person played a certain role in the commission of the crime.

75. Of particular relevance to the prosecution of war crimes is the doctrine of command responsibility. Under command responsibility, commanders or persons with authority are responsible for crimes committed by their subordinates. To find a commander guilty, there must be evidence that, first,
the commander either knew, or should have known, that subordinates were committing a crime; and second, that the commander did not take all reasonable measures to prevent, repress, or punish the commission of the crimes even though he or she had authority over the persons who committed the crimes.
3. What is international human rights law?

76. Human rights are rights and freedoms that all human beings have. All human rights are universal, inalienable, indivisible, interdependent and interrelated. This means that they cannot be taken away, that they are all equally important, and that one right can only be fully enjoyed when other rights are fulfilled as well. At the heart of international human rights law (IHRL) are the principles of human dignity and equality.

77. IHRL is the branch of international law that imposes obligations on states to respect, protect, and fulfil human rights. Human rights standards and norms also establish an expectation for non-state actors, such as armed groups or business enterprises, to respect human rights. When armed groups have a sufficient level of control over a territory and certain other conditions are met, they have additional responsibilities to protect and fulfil human rights.

78. Human rights law creates three responsibilities: Respecting human rights means that there is no interference with or limit to the enjoyment of human rights. Protecting human rights means that states must protect people from human rights abuses by third parties, such as armed groups, business enterprises, or private individuals. Fulfilling human rights requires taking action to ensure people can enjoy their human rights.

3.2 When and where does international human rights law apply?

79. IHRL applies always – in peacetime and during armed conflict.

80. States must comply with human rights obligations within their own territory. Human rights obligations also apply beyond a state’s borders, either when the state exercises effective control over another territory or when persons acting on behalf of a state exercise control over other persons. This occurs, for example, during occupation or where persons are detained by state authorities in a foreign country.
What are the main sources of international human rights law?

81. There are nine core international human rights treaties which, together with the 1948 Universal Declaration of Human Rights, are the main sources of international human rights law. The International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) contain the most fundamental rights, including the rights to life, privacy, freedom of expression, healthy environment, and to an adequate standard of living. Some of the human rights treaties focus on certain groups, such as persons with disabilities, and women and girls. Others cover specific human rights violations, namely racial discrimination, torture and other inhuman or degrading treatment, and enforced disappearance.

82. Many treaties also include monitoring mechanisms, so called treaty bodies. They consist of independent experts who monitor and guide the implementation of these treaties. Some human rights instruments are supplemented by optional protocols. Some of them give individuals the possibility to file a complaint when a state fails to meet its legal obligations.


How do international humanitarian law and international human rights law interact?

84. International humanitarian law (IHL) regulates behaviour only during armed conflict, whereas international human rights law (IHRL) applies at all times. This raises questions of how these two bodies of law interact during situations of armed conflict, particularly where it concerns issues that both bodies of law regulate.

85. IHL and IHRL were both developed to protect people. Some of their rules may overlap and complement each other. They complement each other when they both contain rules on the same issue, without contradicting each other. In such a case, they influence and reinforce one another. For example, IHRL has more robust rules on the guarantees a person must receive during a trial and in detention. Therefore, it can complement IHL rules relating to detainees.

86. Sometimes there can be a conflict between IHL and IHRL. In case of conflict, the more specific rule prevails over the more general rule – this is called the principle of lex specialis. Since IHL specifically regulates armed conflict, it will often be regarded as the lex specialis, and its rules will therefore take precedence over conflicting rules of IHRL. However, this is not always the case: sometimes, even in armed conflict, IHRL provides the more specific rule – the lex specialis – which prevails over a conflicting rule of IHL. Such instances are especially likely to occur in situations of occupation. For example, when the Occupying Power holds effective control and performs governmental functions, such as law enforcement, IHRL provides more detailed and specific rules. Where in doubt, the conduct should be assessed under both IHL and IHRL. Consideration should be given to the framework which offers the greatest protection and the one with the newer norm.

Rules governing law enforcement operations under international human rights law

In armed conflict, and particularly during occupation, the use of force in law enforcement operations can create vulnerable situations for people. Sometimes there is confusion if international humanitarian law (IHL) or international human rights law (IHRL) applies in these situations because it can be difficult to establish whether certain action is part of
It is important to determine which framework is applicable since IHRL has more restrictive rules on the use of force than IHL. The following IHRL principles limit the use of force in law enforcement operations:

87. Necessity
   - The use of force must be strictly necessary. Lethal force is allowed only when strictly unavoidable to protect life.
   - **Note:** The concept of necessity in IHRL is different from the concept of ‘military necessity’ found in IHL.

88. Proportionality
   - The use of force must be strictly proportionate to the threat posed. Restraint should be exercised in the use of force to keep the harm inflicted to the minimum degree absolutely necessary, to minimise damage and injury, and respect and preserve human life.
   - **Note:** Proportionality is a term used in both IHL and IHRL, but the term means different things under the two bodies of law. Therefore, care should be taken that the two different uses of the term are not confused.

89. Last resort
   - In general, precautions should be taken to avoid the use of force as much as possible. This means that force should only be used as a last resort if there are no other means to repel a threat. Non-violent means should be applied before force and firearms are used.

3.6 How does international human rights law overlap with the protection of detained persons under international humanitarian law?

90. International humanitarian law (IHL) protects detainees from the moment they are deprived of their liberty during the conflict until their final release and repatriation (even if this takes place after the end of the conflict). International human rights law (IHRL), in contrast, protects detainees at all times. Arbitrary deprivation of liberty – the detention of persons without a legal basis – is prohibited under both IHL and IHRL.

91. During international armed conflicts, IHL allows for the internment (or administrative detention) of protected civilians only if necessary for imperative reasons of security, or where the security of the Detaining Power makes it absolutely necessary. Administrative detention is a measure of last resort and requires a present, direct, and imperative threat. There are procedural requirements such as prompt notification of the reasons for arrest and detention, and right of appeal and periodic review of the decision on internment. Under the law of non-international armed conflict, there is a widely recognised implied right to intern on the basis that IHL treaties explicitly regulate situations of internment (see 2.7.3 ‘Protection of persons in detention’).

92. IHL also addresses the situation of criminal detainees and affords them several judicial guarantees. These rules are complemented by IHRL rules, notably the right to fair trial, which provide more specific content and help to interpret IHL rules. Regarding treatment while in detention, IHL rules protect the physical and mental integrity and well-being of detainees and regulate the conditions of the detention. IHL includes certain fundamental guarantees such as humane treatment and protections against violence to life and person, including outrages upon personal dignity. Furthermore, in relation to internees, the detaining authorities must comply with certain standards. Under these rules, the authorities must provide sufficient food, drinking water, and necessary clothing; they...
If a terrorist act takes place outside of an armed conflict, the law enforcement response is governed by international human rights law, not international humanitarian law.

3.7 The interaction between international humanitarian law and counter-terrorism

93. There is no universally accepted definition of terrorism in international law. However, IHL prohibits most acts that could be considered terrorist attacks, such as attacking civilians and taking hostages. In addition to IHL, which only applies in armed conflict, other bodies of international law or domestic law also prohibit certain acts considered to be terrorism, such as the hi-jacking of a plane.

94. What constitutes a lawful act within an armed conflict versus an unlawful act of terrorism is a source of debate. The distinction is important because it has consequences for the laws that apply: if the act takes place during an armed conflict the rules of international humanitarian law apply; if the act takes place outside of an armed conflict, the law enforcement response to it is governed by international human rights law. Some states see IHL as allowing easier recourse to the use of lethal force and therefore tend to classify acts of terrorism as a trigger for or an act within an armed conflict. This conflation of terrorism and conflict, whereby acts that are lawful under IHL are labelled as ‘terrorist’, can put the civilian population further at risk because armed groups may feel less incentive to comply with IHL.

95. Counter-terrorism activities and the labelling of an armed group as a terrorist entity also impact the delivery of humanitarian aid. Several states prohibit assistance to groups that are labelled ‘terrorist’ and some have sought to prosecute individuals engaged in humanitarian work that may benefit these groups. Such laws and policies severely limit the ability of humanitarian organisations to provide impartial humanitarian support to civilians in areas controlled by armed groups that have been labelled as ‘terrorist’ and to train such groups on IHL and IHRL.
4.1 What are the responsibilities of states under international law?

96. States have legal responsibilities both towards other states and towards individuals. The notion of state responsibility means that states that do not respect their international duties must immediately cease their illegal actions, ensure they are not repeated in the future, and make reparations to those injured by the violation, for example through compensation.

97. International law not only specifies what a state that committed a violation must do; it also instructs how third states – the international community – should react to violations of international law by other states.

98. Article 1 common to the four Geneva Conventions obliges third states to ‘ensure respect’ for IHL in all circumstances. This rule has become customary law, applicable in both international and non-international armed conflicts (see Rule 144, ICRC Customary IHL Study). This means that third states must take concrete measures to ensure that other states and non-state actors respect IHL. Third states must not encourage a party to a conflict to violate IHL. In addition, third states must not take action that would assist a state in the commission of violations, such as arms transfers or the sharing of intelligence. In fact, third states have several positive obligations: they must take proactive steps to bring violations of IHL to an end and prevent further violations, for example by using their influence on the parties. Such actions should not be viewed as illegal interference in the internal affairs of another state.

99. A state can be involved in a violation of an international obligation by another state, for example by

i. aiding or assisting the other state in the commission of the violation;
ii. directing and controlling the commission of the violation; or
iii. coercing a state to commit a violation.
In such situations, the third state must cease the violation, provide guarantees of non-repetition, and offer reparations (see International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts).

100. The violation of certain norms requires particular attention, for example torture, slavery, and genocide. These are serious breaches of so-called peremptory norms known as ‘jus cogens’-norms from which no derogation is permitted. They create additional responsibilities for states. All states must cooperate to end the breach, not recognise the situation created by the breach, and not aid or assist in the maintenance of that situation.
1 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

2 Geneva Convention III Relative to the Treatment of Prisoners of War.

3 Geneva Convention IV Relative to the Protection of Civilians in Time of War.

4 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I).

5 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

6 For more detailed overview of the distinction between the ‘classical’ and ‘functional’ approaches to occupation – each requiring a different level of control over a territory – see Diakonia International Humanitarian Law Centre Jerusalem, Easy Guide to International Humanitarian Law, 4th revised edition, 2021, p. 13-14.

7 The law of occupation is an area of IHL comprised mainly of rules specified in the Hague Regulations (contained in the Hague Convention IV of 1907) and in GC IV.


9 Art 8 (2)(b)(xxv) Rome Statute of the International Criminal Court (ICC Statute) The ‘deprivation of access to food and medicine, calculated to bring about the destruction of part of a population’ when committed as part of a widespread or systematic attack against the civilian population may also amount to a crime against humanity, see ICC Statute, Article 7.

10 The Universal Declaration of Human Rights (UNDHR) is the foundation of IHRL. The content of the UNDHR is generally accepted as reflective of customary international law.


13 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT).
